Lisbon funicular tragedy: the legal aftermath

From insurance disputes to questions of public responsibility, the disaster exposes the complexity of liability in collective transport accidents

by glória paiva

It was a busy afternoon like any other in central Lisbon, on 3 September. The Glória Funicular, inaugurated in 1885 and one of the capital's symbols, was operating normally when, at 18:03, the traction cable connecting the two carriages collapsed. Carriage No. 1 detached, descending uncontrollably until it collided with a building; No. 2 fell around ten metres and remained suspended by the railing. The accident, which caused 16 deaths and 22 injuries, is now under investigation to determine liability.

The incident, described by prime minister Luís Montenegro as "one of the greatest human tragedies in our recent history", highlights the legal complexity of events of this nature. Coverage and responsibilities involve insurance law; the role of the State and the operator, public law; and criminal lawyers may be called upon to support victims or defendants. Despite the media attention, the case is legally similar to other collective transport accidents, explains **Rui de Amorim Mesquita**, partner at Antas da Cunha Ecija: "In these scenarios, the first step is a forensic investigation by the Public Prosecutor to determine the causes. Afterwards, it is decided whether or not there will be a formal accusation".
The criminal process may take months or years, but supporting the victims is the priority, according to Mesquita. "Injured persons and their families need salaries, medical treatments, surgeries, psychological support. Even travel, clothes and damaged mobile phones have to be covered. This is what mandatory insurance is for", he points out. In cases like this, Fidelidade, the insurer of the state-owned Carris, operator of the funicular, assumes initial responsibility, recalls **Carla Azevedo Gomes**, partner at SPS-Barrilero. "Civil liability coverages, which safeguard damages to third parties, are usually activated", she says. Fidelidade has already announced a technical commission to accelerate compensation, which could reach €100,000 per victim.

According to Azevedo Gomes, "this is followed by verification of the contracted sums, namely, whether they will be sufficient to cover the claim, or whether capital apportionment or intervention by the policyholders and responsible entities will be necessary". Accumulation with other insurances is also possible, such as work accident, travel or life

policies, Mesquita notes. The problem is that "very often people do not know what they can claim".

Another challenge is the potential insufficiency of capital given the number of victims, especially as there are foreigners among them. For Mesquita, "compensation in Portugal, in the event of death, is very low", and the difference compared to other countries could lead to international litigation. In such situations, "extrajudicial negotiations should be the most efficient way to resolve claims of this magnitude", assesses Azevedo Gomes. However, if these fail, recourse to the courts will remain. She adds that poorly adapted policies, slow responses and communication that is "not always transparent and unequivocal" may also be an issue. Nevertheless, she believes in the solidity of the Portuguese insurance market: "Insurers have healthy solvency margins and there is rigour in the provisioning of claims", says Azevedo Gomes.

PUBLIC AND CRIMINAL LAW IN FOCUS

The case also raises questions of public law, according to **Miguel Lorena Brito**, partner at Eversheds Sutherland, as it concerns "a public means of transport operated by a company with public capital under a concession contract". Although the operator is responsible for the accident, "it could be possible for liability to be shared with the grantor/transport authority" if a failure of oversight by the Lisbon Municipality were proven.

Tiago Melo Alves, founding partner of Melo Alves, notes that once the technical cause of the tragedy has been determined, it is necessary to "establish the causal link between that factor and the damages suffered by the victims" in order to individualise responsibility. "Criminal lawyers may act both alongside victims or families, as assistants in the criminal process, and in the defence of any defendants", he states.

Initial investigations point to a problem in the sealing of the cable connecting the funiculars. Brito emphasises that "the obligation to ensure its maintenance and safety falls, primarily, on the operator". However, he recognises weaknesses in supervision: some responsibilities are dispersed, and the Instituto da Mobilidade e dos Transportes (IMT) supervises only part of the funiculars since a legislative change in 2020. As some are national monuments, rules on heritage conservation also apply.

According to Alves, there is unlikely to be sufficient evidence for negligent homicide, but "the violation of technical duties, such as failure to comply with safety checklists, would more easily fall under this specific crime". He recalls precedents such as Entre-os-Rios and


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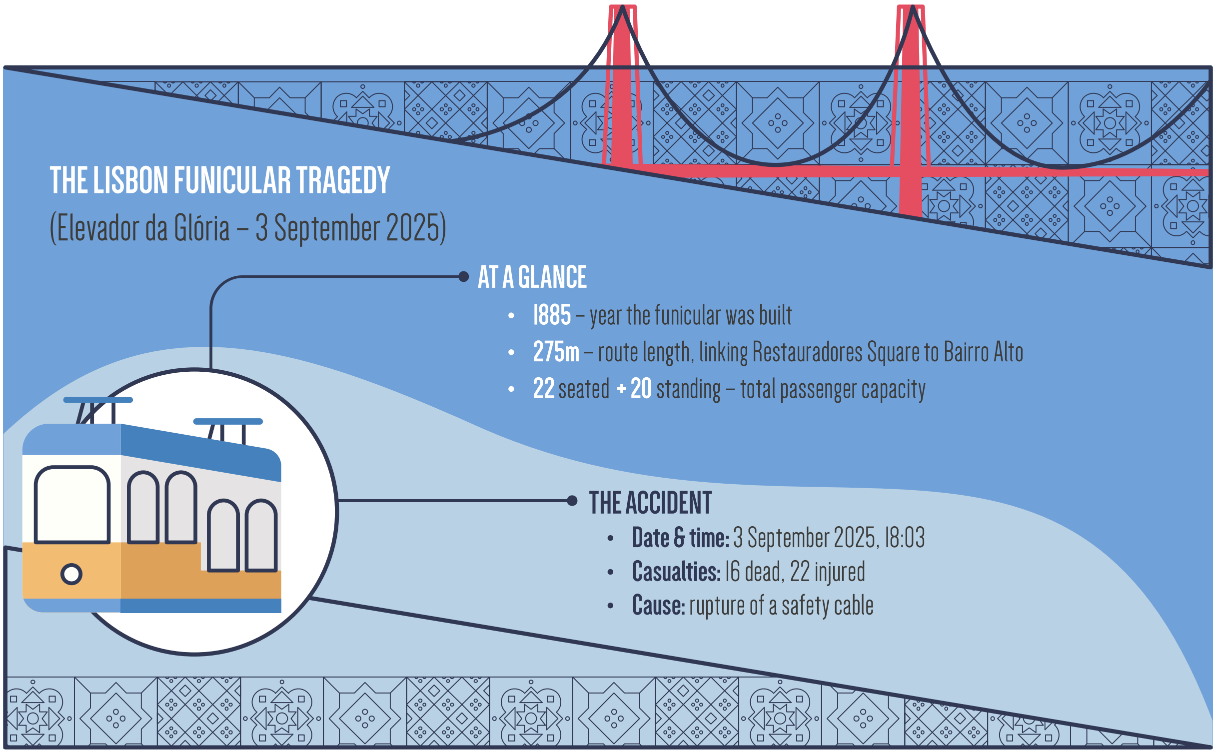

Pedrógão, where charges of negligent homicide ended in acquittal. "The Public Prosecutor, pressured by public opinion, tends to charge for homicide, and then cannot prove it. Often, if the 'right crime' were charged, there would be a conviction". In his view, criminal liability should be "a last resort", after civil, administrative or disciplinary responsibilities have been assessed.

Brito concludes that the accident highlights structural problems: "the price is not always the most important factor in selecting a proposal", he warns, noting that deserted tenders and base prices that are too low compromise quality. He advocates stricter evaluation of the technical and financial capacity of providers, as well as clarification of the regulatory framework. Ultimately, "the accident shows the need to modernise these systems without losing their historical identity, while ensuring higher safety standards".


TIAGO MELO ALVES


CARLA AZEVEDO GOMES