

VALUATION SYSTEM FOR BODILY INJURY IN SPAIN

I.- INTRODUCTION.

The Spanish Motor Third Party Liability insure is governed by a legal system for assessment of bodily injuries. This legal system was incorporated into an appendix to the law of Civil Responsibility and insurance concerning the use of motor vehicles approved by law 30/95 8th November.

“The insurance companies and Courts are obliged to calculate damages for bodily injuries in accordance with the system for evaluation of damages set out in the annex of this law”.

Law 34/2003 of 4th November introduced an amendment with the aim to adapt some technical criteria in the table VI, containing the description of the injuries, without revising the valuation of same injuries and without adapting them to real needs of victims.

The legal Scale in the Spanish system reached two main objectives: to unify the level of compensation in all Spanish Territory and to created a technical instrument to allow the insurers to know and to constitute sufficient technical reserves to guarantee the payments to the victims in view to stabilise the financial consequences of the Motor insurance branche.

II.- STATISTIC DATA 2007

Total fleet of vehicle 29,700,000

Total number of driver licenses 22,700,000

Total cost of compensation payments: 12,549 million €

The total cost of the 2007 accidents has supposed payments by value of 12,549 Millions € covering the damages corresponding to 2.7 million accidents with material damages and 88,187 accidents with bodily injuries (this figure represents 9%less than 2006).

The number of accidents has decreased in 2007 respect 2006 in 11.610 less accidents.

Number of accidents with bodily injuries: 88,187

Number of victims: 134,275

Deaths 2,741

Severe injuries 23,360

Injuries 108,174.

III.- EVOLUTION ROAD ACCIDENTS IN SPAIN

The curve of accidentally in the period between July of 1998 and Julio of 2007 show an important decreasing level.

An important reduction of the number of accidents as well as the tendencies in quarterly averages (in red) is observed and in monthly averages (in blue).

This reduction is due to continuous campaigns in road traffic safety develop by the traffic authorities and also is a consequence of introduction of a system of driver license per points (since 2006).

IV.- THE COMPARATIVE RATIO OF ACCIDENTS VERSUS PREMIUMS in some European countries:

(cost accidents versus premiums)

- Germany the cost accidents is 90% of premiums collected
- Uk the cost of accidents is 83% of premiums collected
- France 82%
- Italy 80%

- Spain are reached a 75%
- For each 100€ collected in nets premiums, 75€ have a destination to compensate victims.

VI.- LIMITS ON MTPL IN SPAIN.

Since 1st January 2008 bodily injury damages must be insured up to € 70 million per accident. The Spanish law has changed the criterion basic on minimum limits for a criterion of maximum covers. For property damage, the maximum sum is € 15.000.000 per accident, regardless of the number of victims. Each year this sum increases according to the value of the European Consumer Prices.

Anyway the compensation for bodily injuries of each victim must be fixed by application of the legal scale annexed into the law (not modified yet since 2003). According this legal scale the amount of indemnity is indicated in charts which are revised yearly according the general cost of living of the previous year. In 2008 the level of indemnities has increased the 4, 2% respect 2007.

The new limits established will be come in force from 1st January 2008 but this elevation of limits of cover in the law will not present any practical effect in the present compensatory system just the legal scale is modified. The revision of legal scale is foreseen for 2009/2010.

The maximum current level of compensation by means of application of the legal scale doesn't allow paying more than 1.500. 000€ for bodily injuries compensation (medical damages and futures assistance fees not includes).

The Internal Rules in 2008 allow increasing the level for material damages with the excess of cover for bodily injuries. The global total cover for Spanish MTPL is, in consequence, 85millions € per accident.

VII. - MATERIAL DAMAGES COVERAGE

Repair costs: total repair cost of vehicle in the workshop chooses by the owner of the vehicle.

Total loss normally the compensation is only the rescue value or 80% of the current market value of the vehicle.

Reduction in value: only for industrial vehicles or vehicles used in transport of passengers or goods.

Expert's reports: always is provided for the insurance company .in case of disagreement the insured has the right to appoint another expert.

Rental car costs: It's limited to the proof the necessity

Towing costs: It's generally cover

Retention: Cost of standing economical losses for stop the normal activity.

VIII .-COMPENSATION SYSTEM FOR BODILY INJURY: LEGAL SCALE

According to the Law 8/2004, 29th October, “Refund Text of law about Civil Liability and Motor Insurance Car” to use of Legal Scale is compulsory for everybody (insurers, Courts, lawyer and victims.)

The first section of the legal Scale prescribes a series of general criteria and the second section contains series of rules explaining how tables of the scale work.

The Court decisions are basis on principles of “technical full compensation” and the principle of assessed compensation. This is only a theoretical approach because we can proof the legal scale doesn’t allow the full compensation in case of severe injured cases.(great handicapped or brain damaged).

Once that a bodily injury is valuated up to 100 points the other accumulated injuries doesn’t allow increase the amount of compensation. i.E. Paraplegic with blindness is equally compensated that paraplegic with out blindness. The painful syndrome in great handicapped persons is difficultly compensated.

Law has determined who may claim damages for fatal accidents as well as those cases in which compensation may be received not only by the injured party but also by the victim’s close relatives.

In this respect, the Legal Scale has defined the concept of damage and had determined what heads of damage may be claimed through a process which gives rise to relative certainty.

XI .- LEGAL SCALE

The criteria includes:

- 1) Compensation by the psycho-physics damages is included in its integral meaning of restoration of the right to be health. It means that we are speaking about the “restitutio ad integrum”
 - 2) Moral damages that is equal for all victims.
 - 3) Total compensation includes also:
 - a) Economical circumstances: ability to work and Loss of incomes of the victims.
 - b) Familiar and personal circumstances: Complementary moral damages. Pecuniary damages for relatives with dependency to the victim.
 - c) Especial circumstances: Other concurrent disabilities. Needs of help of assistance, adaptation of house for the victim or adaptation of vehicles. Etc.
- But always considering only the foresee circumstances into the legal Scale.

X .- PECUNIARY AND NON PECUNIARY DAMAGES.

There are corrective elements of diminution in all the compensation as well as the concurrence of the own victim in the production of the accident or the aggravation of its consequences.

In addition, there are also corrective factors in compensations by permanent injuries as the subsistence of incapacities pre-existing or the behaviour from other people in the accident that has influenced in the final harmful result;

Concurrent disabilities or the subsistence of pre-existing incapacities are corrective elements of aggravation in the compensation by permanent injuries. Anyway it will be necessary a medical report in valuation of temporary disability, permanent injuries, handicap situation, as well as in all recovering cases.

XI.-SOME OPINIONS ABOUT THE SCALE

The current valuation system in Spain by means of a legal Scale displays important technical and material lacks and deficiencies. Between 1991 and 1995 the scale was only a reference criterion. Since 1995 it is obligatory.

Advantages:

Utility: it has been used to value another type of accidents or extra contractual liability cases.

Uniformity in the indemnifications: it generates legal security and homogenises compensations.

It favours the extrajudicial agreements and the friendly transactions.

It is generous in the valuation of the slightest damages and stingy in the valuation of serious damages.

Disadvantages:

It does not have good technical level.

Socially he is censurable in some of its forecasts.

It values concepts that by their own nature are not measurable (lost of income).

It is very harsh because it forces to guarantee under its valuation the totality of damages.

XII.- CLAIMS FOR BODILY INJURY. DEATH

Death: close relatives Table I

There are five excluding close relatives groups:

- 1) Widow with sons minor and older than 18 years old.
- 2) No widow but only minor sons
- 3) No widow but only sons older than 18 years old.
- 4) No widow not sons but ascendant:
 - Parents
 - Grand parents.
- 5) Not ascendant but brothers
 - minor than 25 years old
 - Older than 25 years old.

Table II:

Economic losses: according level of income

Family circumstances: victim the only son, death of both parent in the same accident and loss of pregnancy in case of the victim deceased.

XIII.- Table II :

Economic losses : according level of income

Up to 25.000annual income €= 10%

Up to 51.000annual income €= 25%

Up to 87.000 annual income €= 50%

More than 88.000 €= 75%

Family circumstances :

- victim the only son,
- death of both parent in the same accident
- loss of pregnancy in case of the victim deceased.

XIV.- CLAIMS FOR FATAL ACCIDENTS.

TABLE I AND II: COMPENSATION IN CASE OF DEATH.

TABLE I. It includes the quantification of the moral damages, the basics of patrimonial damages and the legal determination of heirs, and it will fix the criteria for exclusion and concurrence among them. For settling damages it is necessary to take in account the number of heirs and its relation with the victim and the age of the close relative.

TABLE II. It describes the criteria that must be taken in account to fix the complementary damages, as well as corrective elements of these.

To these effects, it must consider that such damages and economic losses are fixed by means of percentage of increase or diminution on the quantities fixed to table I and that are satisfied separately and in addition with the expenses corresponding to the emergent damage, (this is, those of medical aid and hospitable and those of burial and funeral).

Each corrective element fixed to this table doesn't exclude to each other, but that can concur jointly in a same accident.

XV.- PERMANENT INJURY.

Table III

The table works by means of punctuation per points. It is inversely proportional to the age of injured party (more value of point as less is the age of the victim)

The Table III combines the number of points assigned to each injury with the age of the victim.

Table VI: to each injury corresponds a number of points. There is a punctuation arc to allow the valuation moving between a maximum and a minimum importance degree.

XVI.-TABLES III, IV AND VI: PERMANENT INJURIES COMPENSATION

TYPES OF INJURIES: TABLE VI.- The quantity of these compensation are fixed starting from the type of permanent injury suffered by the injured (from the physical or functional point of view), by means of a number of points assigned to each injury (table IV);

BASIC SCORE: TABLE III. - To such score is applied the value of the point in Euros that is inversely proportional in function of the age of the injured party and increasing the value of the point as it increases the score (table III);

CORRECTIVE ELEMENTS: TABLE IV.- Finally, on such quantity is increased with the percentage of increase or reduction derived of the corrective elements (table IV), with the purpose of concretely fixing the compensation by the damages and economic consequences that will have to be satisfied, in addition to the expenses of medical aid and hospitable.

XVIII. - THE NON PECUNIARY DAMAGES includes the compensation of damages and non pecuniary losses (moral damage).

1.-Pain and psycho-physical injury (connected with permanent incapacity). The pain and suffering of the victim is fixed by a global sum of compensation for temporary injuries (daily calculation) and another sum of global compensation for the permanent injuries including any pecuniary loss.

2.-Temporary (daily sum) and permanent injury (amount fixed globally)

3. - Aesthetic Damage (referred to permanent injuries)

4. - Damage to sexual function. (Referred to permanent injuries)

5. - Loss of earning capacity, loss of congenial employment, and loss of housekeeping ability. (in connexion with permanent incapacity).

6. - Loss of life expectancy: Not separate category but connected with the permanent injury.

7. - Damages for spoiled holidays: It constitutes exceptional (atypical) kind of damage which can be independently compensated.

8.-The protection of mental health (permanent or temporary connected with permanent or temporary incapacity).

XIX .- TEMPORARY DISABILITY

The basic compensation includes moral damages.

A) Basic compensation: It consists in a daily a sum of:

-per hospital day 56, 38€

-per no hospital allowance

Preventive: 45, 81€

No preventive: 24, 67€

B) Corrective elements: Basic on economic losses according the different levels of net incomes per year.

XX .- LEVEL OF COVERAGE IN GREAT INJURED

Spain has one of the European lowest levels in the compensation of great injured damages or permanent disability (in particular great handicapped people and brain damaged).

The problem fundamentally consists in having included in the valuation system a global appreciation of the moral damage, economic losses and lost profit that does not allow in certain cases of being able to value with objectivity the true reach of suffered damages.

XXI .- WHIPLASH PROBLEM IN SPAIN

This problem is not different to the other countries. Normally in criminal proceedings there will be the forensic doctor who determines the serious injuries concerning the whiplash damage and also the time needed for recovering in case of temporary incapacity or the permanent effects in other case.

In case of civil proceedings the victim can prove the injury by means of a medical report from the Social Security medical services. The time of recover is fixed by the medical expert in the Social security medical services and normally it is accepted as irrefutable proof of damages.

The whiplash is valued according the legal scale for bodily injury according the kind of incapacity suffered by the victim. Really this type of injury is considered in some cases as a source of fraud in claim in which the victim try to extend the period of

temporary disability or the seriousness of injuries. Anyway it is difficult to fight against the medical expert solution when the doctor is a civil servant with capacity to link the Social Security or the Criminal court decision.

XXII .- MEDICAL REPORT

There is an administrative body of medical experts (forensic doctors) who appear in the proceeding whenever it is necessary to determine the existence of a personal injury and to provide a medical assessment.

Each criminal Court has a forensic doctor assigned to it who provides a medical report upon judicial order, which is always produced for the judge or the Court. These doctors are legal experts in the medical assessment of personal injury.

In criminal Court, the judges always refer to the expertise of forensic doctor (they are civil servants attached to the criminal jurisdiction) who act only in criminal proceedings without being paid by either party.

In other type of proceedings (civil action) a lawyer instructs a medical expert specialized in assessment in personal injury.

XXIII.- BODILY INJURIES INTO THE SPANISH COURTS

Civil action. The Court placed where the accident happened is competent to handle actions based on traffic accidents. For Civil actions the competent Court is the “Juzgado de 1ª Instancia” and in the case of Criminal Procedure, the competent tribunal is the “Juzgado de Instrucción.

In the Spanish procedure system allows pursue civil actions within the Criminal Proceedings. The claimant can to act civil action into the criminal procedure or, on contrary to reserve to act in civil Court.

The Civil claim is made against the driver, the owner and the insurance company and according the amount claimed the process can be settling by verbal process or ordinary process. Appeal recourse is admitted against sentences but it is necessary to dispatch the amount fixed in sentence as guarantee payment. Courts competent are Audiencias Provinciales.

Cassation recurs is really limited for the amount (superior to 150.000€) and for cassational interest

Criminal Adhesive proceedings. The defence of a civil claim in the process of criminal proceedings is always possible because Spanish law establishes that from all criminal acts arise a civil claim for damages, and article 1902 of Civil Code states that “whoever by action or omission causes damage to another, by intervening fault or negligence, is obliged to compensate the damage caused“. For this reason the civil action as a supplementary or “adherent claim“ is common in the Criminal Process. Every victim has the right to claim in the criminal proceedings against the author of the damage and he also has a direct right against the Third Party Liability insurer of the driver/owner of the vehicle involved in the traffic accident.

XXV. - SPANISH TIME BARRED: PRESCRIPTION OF RIGHTS

One of the most important things to know with regard to the Spanish legislation is the short period of time established by the law for prescription. Only one year from the date of the accident without claiming is sufficient to make the victim lose their right to be indemnified.

The legal period required to report a crime (if the events had a criminal element) is 6 months. After this period it is only possible to act in civil way and the prescription is one year.

The victim or, their lawyer, can interrupt the period of prescription by means of a official letter (sent by certified, post or bureau fax or similar) and then a new period of prescription will start to run for a new year counted day by day.

The prescription is also interrupted if the insurer gives the victim an answer to their claim a Court' decision derived from a criminal procedure has a prescription of one year if the victim doesn't claim in this period. But for Civil Court's decision criteria is considerer that the victim will have a period of 15 years to claim against the insurer.