



IURA & PRAXÍS SL

Spanish System for the valuation of the damages and damages caused to the people in traffic accidents in 2007

**By
M^a José Fernández Martín
Lawyer ICAM**

I

General criteria for the determination of the responsibility and the indemnification.

The present system will be applied to the valuation of all the damages to the people caused in traffic accident, unless they are consequence of intentional crime.

The assumption in that will be compared to the fault of the victim, being this one not imputable, the accident is due to their conduct or concurs with her to the production of he himself.

To the effects of the application of the tables the age of the victim and harmed and the beneficiaries will be the referred one to the date of the accident.

They have the condition of harmed, in case of death of the victim, the people enumerated in Table I and, in the supposed rest, the victim of the accident.

They will give rise to indemnification the death, permanents injuries, severe bodily injury, and the temporary incapacities.

In addition to the indemnifications fixed in accordance with the tables, the expenses of medical aid and hospitable will be satisfied in any case and in addition, in the indemnifications by death, the expenses of burial and funeral.

The quantity of the indemnification by moral damages is equal for all the victims and the indemnification by the psico-phisycal damages is understood in its integral meaning of respect or restoration of the right to the incapacities.

In order to assure the total indemnity the damages and caused damages they consider, in addition, the economic circumstances, including which they affect to the ability to work and loss of income of the victim, the familiar and personal circumstances and the possible existence of exceptional circumstances that they can serve for the exact valuation of the caused damage.

There are elements correctors of diminution in all the indemnifications, even in the expenses of medical aid and hospitable and burial and funeral the concurrence of the own victim in the production of the accident or the aggravation of its consequences. In addition, in the indemnifications by permanent injuries, the subsistence of incapacities pre-existing or other people's to the accident that has influenced in the final harmful result; and the production of concurrent disabilities and, in their case, the subsistence of pre-existing incapacities are elements correctors of aggravation in the indemnifications by permanent injuries.

At any time the total or partial substitution will be able to be agreed or to remember the indemnification fixed by the constitution of a life rent in favour of the injured person one judicially.

The indemnification or life rent could only be modified by substantial alterations in the circumstances that determined the fixation of the same ones or by the appearance of suffer damages.

Annually, with effects of first of January of every year and as of the following year to the take effect of the present Law, the amount of compensation (quantities fixed) to the annexed present will have to be updated and, in its defect, they will be updated automatically in the percentage of the general index of prices to the consumption corresponding to immediately previous the natural year. (IPC)

In this last case and to facilitate their knowledge and application, by Resolution of the Main directorate of Insurances these updates will become public. In the temporary determination and concretion of the permanent injuries and incapacities, as well as in the health of the harmed one, it will be precise medical report.

II

Explanation of the system.

Indemnifications by death (tables I and II).

Table I.

It includes/understands the quantification of the moral damages, basic the patrimonial damages and the legal determination of victims and, fixing the criteria of exclusion and concurrence between such.

For the determination of the damages the number of injured people and its relation with the victim, of a part, and the age of the victim, another one consider. The indemnifications are expressed in thousands of euros.

Table II.

It describes the criteria to weigh to fix the remaining damages and caused damages, as well as the elements correctors of such. To this aim, it must consider that such damages and damages 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 to expenses corresponding to the emergent damage, this are, those of medical aid and hospitable and those of burial and funeral. The factors of correction fixed to this table are not excluding to each other, but that can concur jointly in a same claim.

Indemnifications by permanent injuries (tables III, IV and VI).

The quantity of these indemnifications pays attention starting off of the caused type of permanent injury for the harmed one from the physical or functional point of view, by means of points assigned to each injury (table VI);

To such score is applied to the value of the point in Euros. in inversely proportional function at the age of the harmed one and increasing the value of the point as it increases the score (table III);

and, finally, on such quantity increase percentage of or reduction is applied to the factors of correction in form of (table IV), with the purpose of concretely fixing the indemnification by the damages and caused damages that will have to be satisfied, in addition to the to the expenses of medical aid and hospitable.

Tables III and VI. correspond, for the permanent injuries, with table I for the death. In particular, for the table VI has to consider: System of score: It has one double perspective. On the one hand, the score from zero to 100 that it contains the system, where 100 are the assignable maximum value to the greater resulting injury; by another one, each injury contains a minimum score and other maxima.

The score adapted to the tactical mission will settle down considering the specific characteristics of the injury in relation to the limitation degree or loss of the function that has undergone the member or affected organ.

The table VI incorporates, as well, in its chapter 1, sections ocular System and auditory System, tables in which the corresponding damages straight of the organs of the Vista and the ear are reflected alongside, in the axes of the abscissas. Those of the left side of these organs, in the axis of the ordered ones. Therefore, with the data contained in the medical report on the visual or auditory sharpness of the injured one after the accident the corresponding ones will be located alongside straight, in the axis of the abscissas, and those of the left side, in the axis of the ordered ones. Drawing up perpendicular lines from each one of them, the score of the injury will be obtained, that will correspond to the contained one in the picture where both lines come together. The score oscillates between 1 and 85 in the organ of the vision, and 1 to 60 in the one of hearing.

Concurrent incapacities: When the harmed one is with different injuries derived from he himself accident, a joint score will be granted, and that will be obtained applying the following formula:

$$[(100 - Ms) 100 \times m] /] + M$$

M = Score of greater value.

m = Score of smaller value.

If in the arithmetical operations decimal were obtained fractions it will clear to the highest unit. If they are more than the two concurrent injuries, it will be continued applying this formula, and term M will correspond with the value of the result of the first conducted operation.

In any case, the last score could not be superior to 100 points. If in addition to the permanent sequels the aesthetic damage is valued, the points by this concept will be added arithmetically to the resultants of the permanent incapacities, without applying with respect to those the indicated formula.

Table IV. One corresponds with table II of the indemnifications by death and the same rules are to him applicable, singularly the one of possible concurrence of the correction factors. Indemnifications by temporary incapacities (table V). These indemnifications will be compatible with any others and they are determined by a daily amount (variable according to it needs, or no, hospital stay) multiplied by the days that take in healing the injury and corrected according to the factors that express the own table.

M^a José Fernández Martín (March 2007)