



Valuation system for bodily injuries in Spain in MTPL

LEGAL SCALE

AND

NON PECUNIARY DAMAGES PROCESSING

A GOOD LEGAL TOOL NEEDED OF REVISION



MOTOR TRAFFIC ACCIDENTS

Statistics 2007

Accidents in Spain

- Total fleet of vehicle 29,700,000
- Total number of driver licenses 22,700,000
- Total cost of compensation payments: 12,549 million €

- Number of accidents with material damages: 3 million (8.34% plus than 2006)

- Number of accidents with bodily injuries: 100.508 accidents (11.610 less than 2006), of which
 - 59,221 occurred in urban zones and
 - 28,966 occurred on highways

- Number of victims 2007: 134,275 2008 Nov.
 - Deaths 2,741 1,762
 - Severe injuries 23,360
 - Injuries 108,174.



Evolution of Road Accidents 1996-2007

Evolución Accidentes en Carretera (+)

Number of total accidents



Fatal accidents

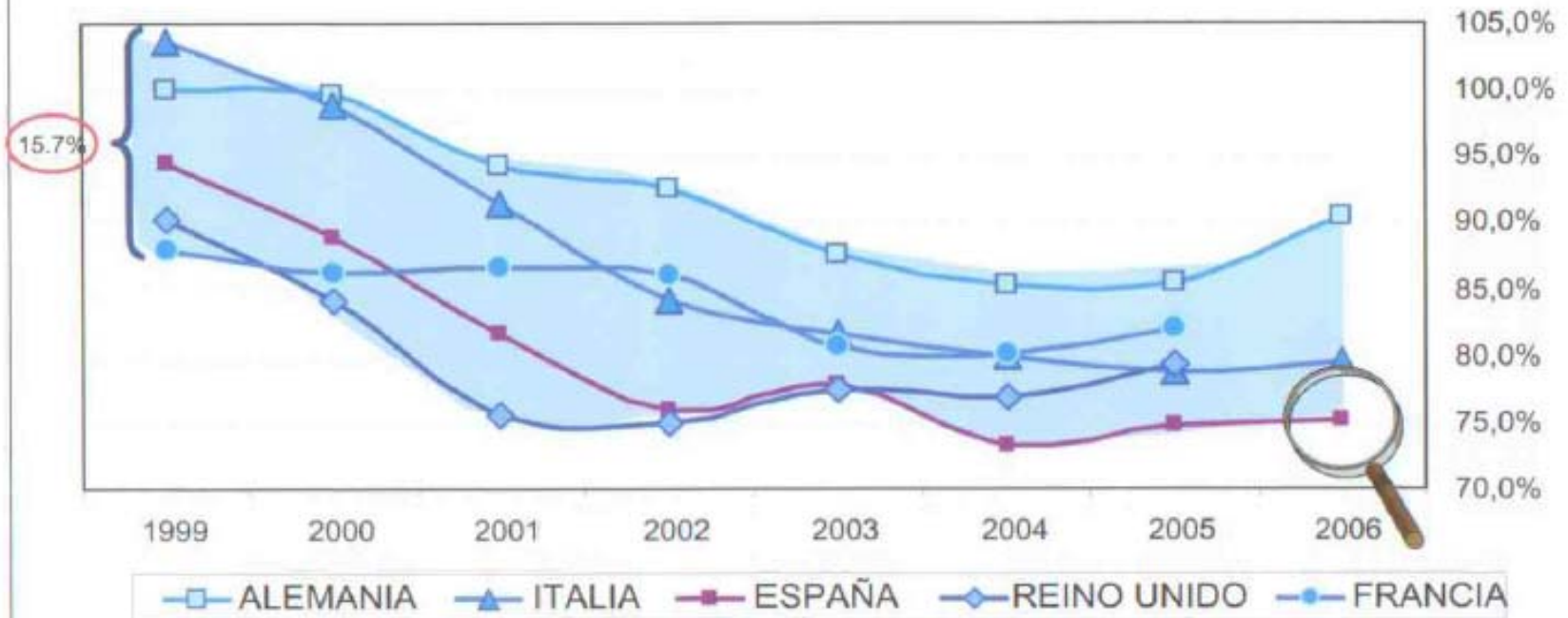


Mensual

Media Trimestral

Accidents in Europe Comparative Ratios

Ratio de Siniestralidad



Premiums versus compensations

Liability Law

- Spanish Civil Code (Código Civil). Art. 1902
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- **INSURANCE LAW**
- Royal Decree Leg. no. 6/2004, 29 October (Supervision on private insurance Law)
- Royal Decree Leg. no. 8/2004, 29 October (modified by Law 21/2007, 11 July): MTPL LAW (totally adapted to 5th Directive)
- Royal Decree no. 1507/2008, 12th September. Internal Rules
- Law 50/1980, 8 October Insurance Contract law (supplementary)

- **CRIMINAL CODE** Spanish Penal Code
- Art. 109, 116 Liability *ex delicto*
- Compensation: Art. 110
 - Restitution
 - Repair the damage
 - Compensation for economic and moral damage

Limits of Spanish MTPL

- Since 1 January 2008: Law 21/2007 11 July 2007

- **BODILY INJURIES: objective liability**
70 million € per accident.

The level of whole bodily injuries for each victim must be fixed by application of a compulsory the Legal Scale.

Bodily injuries are divided into:

- o pecuniary
 - o non pecuniary damages:
- 
- Death
 - Temporary
 - Permanent

- o **MATERIAL DAMAGES: fault or negligence**
15 million € per accident.

What's includes Material Damage cover?

- Repair costs
- Total loss
- Reduction in value
- Expert's reports
- Rental car costs
- Towing costs
- Retention

What's includes BODILY INJURY ?

All bodily injuries, including total pecuniary and non pecuniary damages (the value of loss, loss of income and moral damages or pretium doloris) are calculated according to a legal scale in the Compulsory MTPL Law (named BAREMO). It's compulsory for everybody (Courts-insurers-victims)

No other compensation than the Legal Scale compensation can be recognised to victims by the Courts. The Scale represents the whole compensation rights (patrimonial and not patrimonial damages).

Medical expenses, hospital cost and burial/ funeral fees are the only additional covers in MTPL insurance independently to the Legal Scale .

The legal amounts of payments to the victims are free of legal taxes (payments made under Compulsory MTPL Law).

The payment made by Social Security system (pensions) is not claimable and is independent of any right that the victim has against the motor insurer

Annex of law: Legal scale

- Annex 1 to the Law of Civil liability and insurance in circulation of Motor vehicles.
- Law 30/ 95, 8th November 1995 and Law 8/2004, 29th October MTPL insurance.
- The legal scale is a system for the evaluation of whole non pecuniary damages and pecuniary losses caused to victims in traffic accidents.
- Criteria for the determination of responsibility and the whole compensation.



Pecuniary and non pecuniary damages

- The Legal Scale establish global awards for whole pecuniary and non pecuniary losses. This means that normally it is impossible to know what amount corresponds strictly with which head of damages. (not separation between pecuniary and not pecuniary concepts integrated into the compensation).
- A medical report is always necessary.
- Loss of earnings are non specifically compensated out of the Legal Scale.
- Normally the loss of earnings caused by temporary injury is compensated (by means of a forfait) but in case of death or permanent injuries the compensation is unreliable.
- Loss of a chance is in practice non compensated.

Opinions about the scale

- The valuation system displays important technical and material lacks and deficiencies. Between 1991 and 1995 the scale worked only as a reference. Since 1995 it is obligatory.
 - **Advantages:**
 - Utility (not only for traffic accidents).
 - Uniformity in the indemnifications. (It obliges the Courts).
 - It favours the extrajudicial agreements.
 - He 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).
 - Is very harsh and inflexible.

Annex of law: Legal scale

DEATH

- **TABLE I.** Basic compensations for death including moral damages. (close list of persons who has right to be indemnified and amount that corresponds to each of them: 5 excluding groups)
- **TABLE II.** Correctional factors for basic compensations for deaths. (Economic and moral damages)

PERMANENT INJURIES

- **TABLE III.** Basic Compensations for permanent injuries (including moral damages) according the number of points and the age of the victim.
- **TABLE IV.** Correctional factors for the basic indemnifications for permanent injuries.(economic damages and complementary moral damages)
- **TABLE VI.** Classifications and valuation of psycho-physic damages: punctuation arcs (between maximum and minimal number of points for each injury)

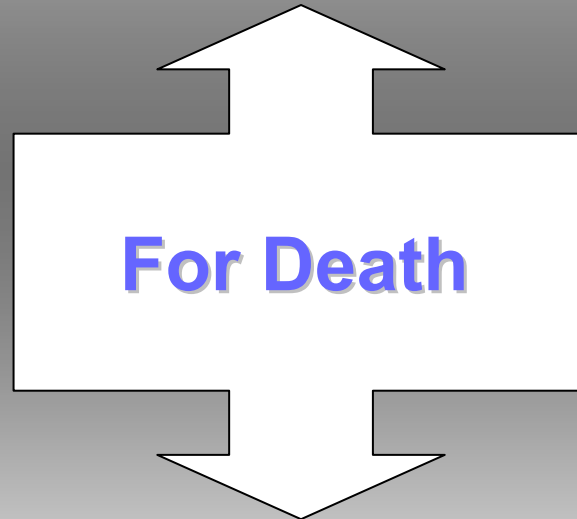
TEMPORARILY DISABILITY

- **TABLE V.** Indemnifications for temporary incapacity. Disability day with hospital assistance or not. Basic and complementary economical prejudices.

How non pecuniary damages are compensated?

Basic moral damages + List of heirs

Table I (basis compensation)



Complementary moral and pecuniary damages

Table II (corrective factors)

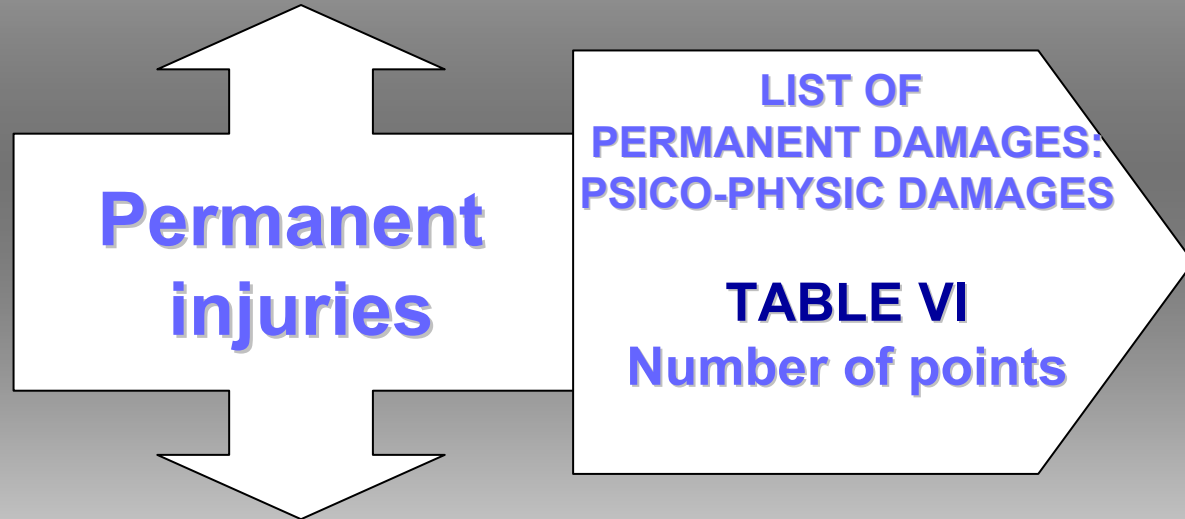
RESUME: Death (tables I and II).

- **Table I.** It includes **the basic moral damages**, basic patrimonial damages and legal determination of damaged person (heirs with right to be indemnified) .
- There are two questions to consider: the number of heirs and its relation with the victim and the age of the close relatives. (widowed or widow, older and minor age sons, parents and dependent brothers)
- **Table II. Corrective factors:** including jointly economic prejudices and moral complementary damages: as especial family circumstances. Victim the only son. Death of both parents. Pregnant victim and loss of pregnancy.

How non pecuniary damages are compensated?

Basic moral damages: valuation per point

Table III



Complementary moral and pecuniary damages

Table IV

Permanent injuries (tables III, IV and VI).

- **Table VI:** The quantity of the compensation depends of the type of permanent injury (Table VI). The value is calculated by means of a number of points assigned to each injury (0 -100);
- **Table III:** To such score the value of the point in euros is inversely proportional in function of the age of the injured party. (the less age more value of points);
- **Table IV:** The factors of correction in form of: economic prejudices- loss of income, complementary moral damages, permanent disability for normal job or activity, great handicaped (need of third person aid, adaptation of house, vehicle adapted, loss of pregnancy)

Which are the categories of injuries envisaged in Table VI?

Chapter 1: it relates to the after-effects belonging to the head as they affect the encephalic mass, neurological and neuropsychiatry deteriorations. It relates to also the osseous system of the head, the system olfactory, oral, ocular and auditory with special tables for the two last.

Chapter 2: it relates to the body, the spinal column, the bodies of the neck and the thorax, the abdominal lesions and of the pelvis, including those which affect the bodies and the internal organs.

Chapter 3: it relates to the higher ends and scapular girdles, including the shoulders, the clavicle, the arms, the elbow, the front arm levers, the wrists, the hand and the fingers with a special attention on the problems of articulation.

Chapter 4: it relates to the lower hips and ends, including/understanding the thigh, the knees, the leg and the feet with the tarsus, the metatarsus, and the fingers with a special attention on the problems of articulation.

Chapter 5: it relates to the cardiovascular apparatus distinguishing the peripheral system from the cardiac system.

Chapter 6: it relates to the central nervous system with separation of the spinal cord and the cranial nerves.

Chapter 7: it relates to the peripheral nervous system for the upper limbs and lower.

Chapter 8: it relates to the disorders endocrines.

A special chapter relating to the aesthetic damage is also laid down.

Non pecuniary loss

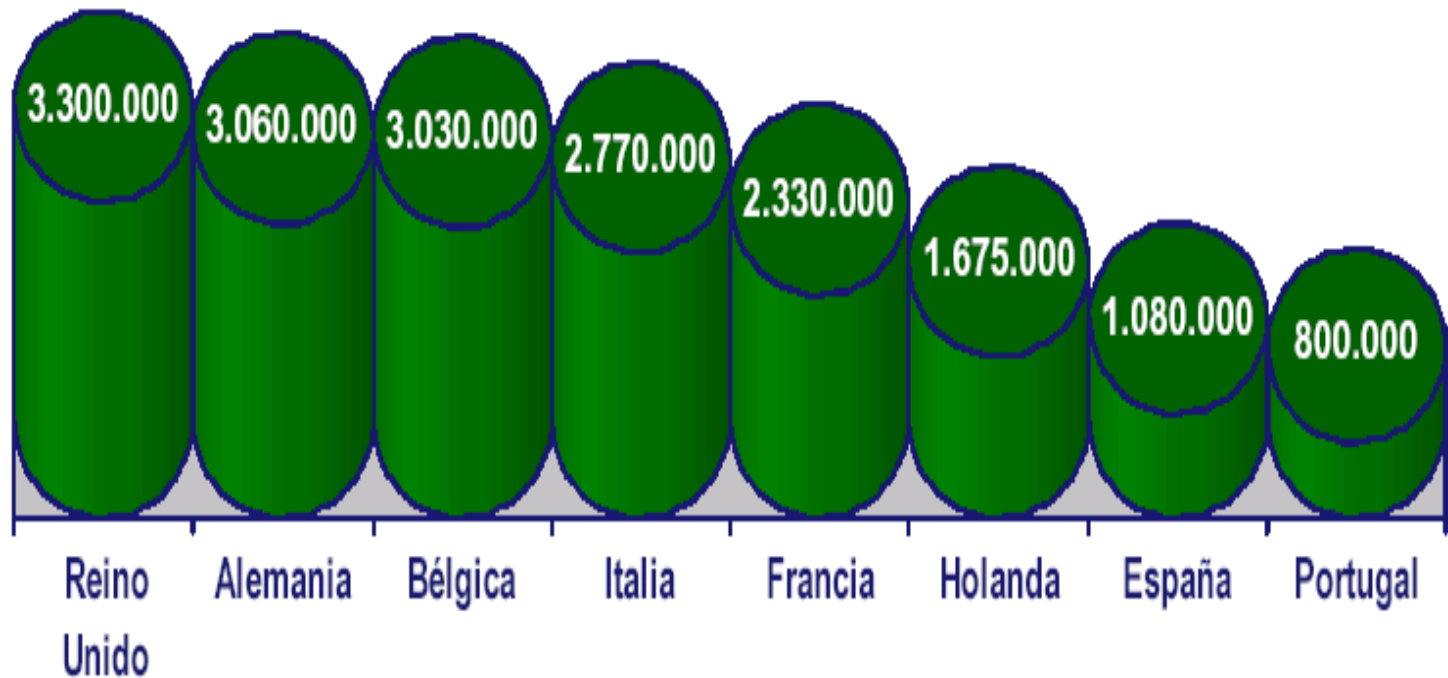
- **1.- Pain and psycho-physical injury.**
- **2.- Temporary and permanent injury.**
- **3.- Aesthetic Damage.**
- **4.- Damage to sexual function.**
- **5.- Loss of earning capacity, loss of congenial employment, and loss of housekeeping ability.**
- **6.- Loss of life expectancy.**
- **7.- Damages for spoiled holidays.**
- **8.- The protection of mental health.**

Temporary disability

- Basic compensation
- (included moral damages + basic economic losses)
- Daily 2008:
 - - Hospital day 56,38€
 - - No hospital allowance
 - Preventive: 45,81€
 - No preventive: 24,67€
- Corrective elements:
 - Economic losses according different levels of net incomes per year.(As a percentage among 10%-75% of net incomes): The much incomes the victim had higher level of percentage.

Indemnification corresponding to a young disabled tetraplegic (C6-C7), 25 years with 80,000 € annual income in 2007

(considering that the expenses of medical attention were identical in all the countries)



Whiplash problem in Spain

- 98% of whiplash injuries occur in traffic accidents caused by rear or lateral impacts.
- Approximately 25,000 people sustain whiplash injuries in Spain every year.
- According to data facilitated by the CTAG, the treatments for whiplash injuries amount to more than 1,000 million € annually within the territory of the European Union.
- The average time for the treatment of whiplash is between 30 and 90 days, but it depends on each tactical mission and the intensity of whiplash.



The role of the medical experts in assessing compensation for personal injury

- **Civil jurisdiction: Private legal experts**
- **Criminal process: Forensic doctor**



Claims settlement in Courts

- **Civil action.**
- **Adhesive proceedings**

Towing vehicles

Percentage of responsibility share by the insurer of the tractor and the insurer of the trailer.

Agreements between companies. (Convention 1.1.1987)

- Insurer of the tractor takes responsibility for 70%
- Insurer of the trailer takes the other 30%.

Lack of agreement:

each insurer will contribute in proportion to the amount of the annual premium corresponding to each vehicle. (Article 19 New Rules 2008)

Spanish Time-barred

- Prescription period is of one year from the date of the accident.
- The prescription can be interrupted by means of a legal process, official claim, or answers of the insurer.



Brief Conclusions

I) New law 21/2007 has fulfilled the mandate of the 5th Directive to increase the amount of the indemnifications.

II) The increase of limits is purely formal because the compensations have to be calculated according to the legal scale that has not been still modified.

III) Legal Scale is a closed system to compensate the whole damages (pecuniary and non pecuniary damages) suffered by victims in traffic accidents.

IV) The Legal Scale is compulsory for insurers, victims and Courts. (MTPL law and Constitutional Court Decision 181/2000)

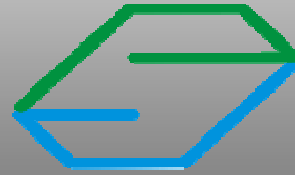
V) A legal modification of the scale is not foreseeable until 2010.

VI) The insurers must activate the payment of the compensations by means of offers or motivated answers within three months from the date of the claim on the injured party.

Brief Conclusions

- VII) Retard interests and penalties will be imposed to the insurers that do not fulfil the obligations of offers and motivated answers. (1,5% legal rate of money or 20% two years after the accident).
- VIII) It is foreseeable that the premiums of the insurance of the automobile must increase in the next years.
- IX) The Legal Scale is acceptable as an instruments to stabilised the level of compensations of victims but it needs to be constantly adapted to the economic level of life of victims.
- X) The levels of compensation in case of severe injuries (great handicaped persons and brain damages) are very low with respect to other European States: the protection of this class of victims is not sufficient guaranteed.
- IX) The great difficulty to accept the Legal scale is referred to the lack of valuation for pecuniary losses which are included jointly with moral damages.

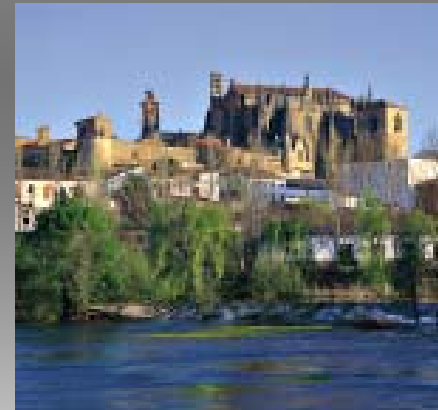
Thank you for your kind attention



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CONGRESS

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