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Some issues of compensation for moral damage caused by vehicles

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Abstract: This article addresses the complex issues surrounding compensation for moral damages resulting from vehicular incidents. It explores the legal definitions of moral damage and the challenges in quantifying such damages in the context of traffic accidents. The article examines various case law examples and legal frameworks that govern moral compensation, highlighting the criteria used to establish liability and the role of emotional distress in these cases. Additionally, it discusses the perspectives of victims, legal practitioners, and insurance companies on moral damages, aiming to shed light on the need for clearer regulations and fair compensation mechanisms. Through a comprehensive analysis, this article contributes to the ongoing discourse on the intersection of law, ethics, and social justice in relation to road traffic incidents.

Keywords: Moral damage, vehicular incidents, civil liability, vehicle damage, negligence, legal framework, traffic accidents, insurance, victim perspectives.

Introduction: Compensation for moral damage is considered to be a rather controversial, difficult to define legal institution for the protection and defense of civil rights and legitimate interests, which gives rise to various interpretations. Therefore, no matter how much research is conducted on the issue of compensation for moral damage, no matter how much scientific and practical research is conducted, they cannot be enough. The solution to this issue, ensuring a uniform approach to compensation for moral damage will always be the subject of scientific discussions. This is due to the fact that moral damage occurs as a result of the violation of personal non-property rights and intangible benefits of a citizen and it cannot be determined in units of measurement or determined in physical quantities. In

addition, the fact that the mental experiences, inner world and spirituality of each person are not the same and cannot be adjusted to the same comb also indicates the impossibility of accurately proving the amount of moral damage either by the defendant, the plaintiff, or the court applying the law. But in any case, science, in particular law, including civil law, must develop measures and mechanisms to counteract this negative impact, capable of infringing on the rights and interests of citizens, and to some extent influence such offenses through civil liability. Since moral damage is the destruction of intangible assets that cannot be seen with the naked eye and measured by any criteria, it must serve as a consolation for the citizen's mental state, his spiritual and moral suffering, his physical pain. At the same time, as one of the main methods of civil law, compensation for moral damage in monetary form is determined as the main factor, based on the fact that liability is of a property nature.

Damage caused by vehicles is not only material, but also immaterial, i.e. moral. After all, moral damage is expressed in mental anguish, losses and suffering of the victim and is subject to compensation as a "means of consolation" for him. Since "moral damage" in its essence and nature does not correspond to the legal definition of the concept of "harm" given in Part Two of Article 14 of the Civil Code. In this norm, the concept of "damage" consists in the return of the lost thing and the restoration of the violated right to its future state. In this case, "moral damage" does not perform the function of restoring the violated right of the victim, on the contrary, it acts as a certain "consolation" for the victim, liability for the person who caused the harm. The most terrible "consequence" for the victim of damage caused by vehicles is damage to health. Consequently, in this case, moral damage occurs in connection with damage to health. Because, as O. Okulov emphasizes, "in order to consider moral damage as taking place, it is sufficient that one of its components is either physical pain or moral suffering. If they are present simultaneously, then this indicates a high level of moral damage and serves as a basis for increasing the level of responsibility" [1]. According to a number of experts, "the essence of moral harm is that the actions of the perpetrator must be reflected in the consciousness of the victim and cause a certain psychological reaction. In this case, the interests protected by law and negative changes in the human psyche take the form of physical suffering or moral suffering [2].

In our opinion, compensation for moral damage, in particular liability for damage caused by vehicles, is an instrument aimed at paying the victim a certain amount of monetary compensation. In this case, it is

more difficult to determine the suffering, mental anguish or pain experienced by the victim, but it is possible to form a medical opinion based on the amount of physical damage and pain and determine the degree of harm to health. In addition, when harm is caused to the life and health of a citizen by vehicles, there are injuries, damages or direct deterioration of health, and it is in this situation that compensation for moral damage may be required. International legal documents establish the amount of compensation paid for accidents with vehicles that resulted in the death of a citizen. For example, Articles 17 and 21 of the Convention for the Unification of Certain Rules Relating to the International Carriage of Goods by Air (Montreal Convention) of 28 May 1999 provide for compensation for damage caused in an amount not exceeding 100,000 special credit rights for each passenger.

French legislation and judicial practice do not limit personal non-property rights and benefits to a specific list and in most cases allow compensation for moral damage. At the same time, judicial practice has developed a fairly detailed system of types of moral damage subject to compensation. In France, a distinction is made between moral damage in the strict sense of the word, that is, damage that occurs when a person's non-property rights are violated, such as name, image, right to privacy, and moral (non-property) damage that may occur when a person's life and health are encroached upon [3].

Moral damage is currently widely used by courts as a way to protect violated rights. However, the rules for determining the amount of compensation for moral damage have not been developed. Analyzing judicial practice, it becomes obvious that there is no uniformity in the approach to determining the amount of compensation for moral damage. In this case, it is proposed to solve the problem of determining the amount of compensation, which in practice involves resolving the dispute in a pre-trial manner and / or creating an evidence base for legal proceedings, by actually questioning the person who has suffered moral damage; determine the degree of physical and mental suffering associated with the individual characteristics of the person who has suffered moral damage, the degree of guilt of the offender and other significant circumstances in order to formulate the most reasonable explanations for the moral damage caused to the victim; allows for the practical registration of the results of this examination in the form of a corresponding summary for use in court proceedings. Practice shows that the court avoids examining the issues of determining the circumstances that deserve to be taken into account when determining the amount of compensation for moral damage, based on the

individual characteristics of the victim, and relies only on the "category of the case" and the subjective judgment of the judge. The lack of clear legislative regulation leads to the fact that the connection between the causes (i.e. circumstances that deserve to be taken into account when determining the amount of compensation for moral damage) and the consequences (i.e. the amount of compensation for moral damage) is characterized by randomness and uncertainty.

A literal interpretation of the rules under consideration gives grounds to believe that such an approach is not always correct, since the degree of participation of each subject in causing harm is not taken into account. In addition, the vagueness of the concept of "gross negligence" and the need to strengthen the content of the concept under consideration are emphasized. In this matter, the following should be noted:

Firstly, the use of this evaluative concept by the court in determining the amount of compensation does not indicate the ambiguity of its content, since the variety of circumstances that make it possible to reduce the amount of compensation or refuse it makes it impossible to establish an exhaustive list of them in the law, and the use of such an evaluative characteristic pursues the goal of its effective application to an unlimited number of existing legal situations.

According to paragraph 13 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated April 28, 2000, No. 7 "On Certain Issues of the Application of Legislation on Compensation for Moral Damage", "when determining the amount of moral damage, the courts take into account the subjective assessment by the victim of the severity of the moral damage caused to him, as well as objective data indicating the degree of moral and physical suffering caused to the plaintiff, the significance of the object of the encroachment for life, its benefits (life, health, dignity, personal freedom, inviolability of the home, valuable property, etc.), the severity and consequences of the act (murder of close relatives, causing bodily harm resulting in disability, imprisonment, deprivation of work or housing, etc.), the nature of false information defamatory of honor and dignity and the scale (coverage) of its dissemination, living conditions, personal characteristics of the victim (service, family, household, financial situation, health status, age and etc.), the degree of guilt of the person who caused the harm and the victim, the financial status of the person who caused the harm, and other circumstances worthy of attention.

As a general rule, moral damage is compensated by the

person who caused the damage, if there is fault in this by the person who caused the damage.

The most significant circumstance serving as the basis for compensation for moral damage is the fault of the person who committed the illegal action (inaction).

Thus, the law establishes that "non-property damage may be compensated only in cases provided by law. If compensation is required for bodily injury, harm to health, freedom or sexual identity, then fair monetary compensation for non-property damage may also be demanded." Fairness of compensation usually means proportionality of compensation taking into account all the circumstances of the case [4].

The literature emphasizes that in cases of non-property damage, the "general right of the individual" (allgemeine Persönlichkeitsrecht), which developed in the 19th century, is violated. It can be defined as follows: a comprehensive subjective right to respect and improvement of the individual, a specific framework right that the courts develop in individual cases [5].

French legislation and judicial practice do not limit personal non-property rights and benefits to a specific list and in most cases allow compensation for moral damage. At the same time, judicial practice has developed a fairly detailed system of types of moral damage subject to compensation.

In common law countries, the primary remedy in tort law is damages. In a tort claim, any payment to the victim is referred to as such.

The primary form of damages is compensatory damages. They are divided into economic (compensation for material damages) and non-economic (compensation for moral damages) [6].

Compensation for moral damages corresponds to our compensation for moral damages.

Compensatory damages are also divided into general and special. General damages are damages that are so specific to a certain type of offense that they do not need to be specifically stated in the claim. Special damages must be claimed separately. As we will see later, general damages often coincide with non-economic damages.

In addition to compensatory damages, there are also nominal damages, which are small amounts awarded to the plaintiff in order to establish the fact of violation of his rights without the need to prove the amount of compensatory damages.

Compensation for the wrongful gains of the offender is sometimes called "damages", but such payments are not usually considered as damages. It is considered an independent remedy (restitution/accounting for profits) and does not relate exclusively to tort law, but

concerns other areas of law, such as unjust enrichment and equity. Accordingly, these are the grounds that must be proven for this measure to be applied [7].

Moral damage is currently widely used by courts as a way to protect violated rights. However, the rules for determining the amount of compensation for moral damage have not been developed. Analyzing judicial practice, it becomes obvious that there is no uniformity in the approach to determining the amount of compensation for moral damage. In this case, it is proposed to solve the problem of determining the amount of compensation, which in practice involves resolving the dispute in a pre-trial manner and / or creating an evidence base for the trial by actually questioning the person who suffered moral damage; determine the degree of physical and mental suffering associated with the individual characteristics of the person who suffered moral harm, the degree of guilt of the offender and other relevant circumstances in order to formulate the most reasonable explanations of the moral harm caused to the victim; allows for the practical registration of the results of this examination in the form of a corresponding summary for use in court proceedings.

Practice shows that the court avoids examining the issues of determining the circumstances that deserve to be taken into account when determining the amount of compensation for moral harm, based on the individual characteristics of the victim, and relies only on the "category of the case" and the subjective judgment of the judge. The absence of clear legislative regulation leads to the fact that the relationship between the causes (i.e. the circumstances that deserve to be taken into account when determining the amount of compensation for moral harm) and the consequences (i.e. the amount of compensation for moral harm) is characterized by randomness and uncertainty.

The most significant circumstance serving as the basis for compensation for moral damage is the guilt of the person who committed the illegal action (inaction).

If we pay attention to Article 100 of the Civil Code, we can conclude that moral damage is compensated only as a result of a violation of or encroachment on the personal non-property rights (rights) of a citizen. Therefore, the question of whether moral damage caused by the violation of the property rights of a citizen is subject to compensation is natural. In our opinion, such damage is subject to compensation. Since one of the objects of illegal actions or inactions causing moral damage are the property rights of a citizen, such as the inviolability of the home and the right of ownership.

The possibility of compensation for moral damage depends on its duration.

According to Article 149 of the Civil Code, the limitation period is the period during which a citizen can protect his violated right by filing a claim in court. The general limitation period in accordance with Article 150 of this Code is set at three years. Article 163 of the Civil Code establishes claims to which the statute of limitations does not apply, one of which is claims for the protection of personal non-property rights and other non-material benefits. Moral damage is caused by the violation of the rights to personal property and other non-material benefits of a citizen.

Thus, the statute of limitations does not apply to claims for compensation for moral damage.

Naturally, along with material damage to the life and health of a citizen, he will also suffer moral damage.

According to Article 1021 of the Civil Code, if the guilty party is the person who caused moral damage, the damage is subject to compensation by the person who caused it. Moral damage is compensated regardless of the guilt of the person who caused it, if the damage was caused by a source of increased danger to the life and health of the citizen. According to Article 1022, moral damage is compensated in monetary form. The amount of compensation for moral damage is determined by the court taking into account the nature of the physical and mental suffering caused to the victim, the actual circumstances under which the moral damage was caused, as well as the personality traits of the victim. Moral damage is compensated regardless of the property damage subject to compensation.

Civil legislation establishes liability for damage caused by activities that pose an increased danger to others (Article 999 of the Criminal Code). In this case, it does not matter whether the owner of the source is guilty or not. According to Article 999, legal entities and citizens are obliged to compensate for damage if their activities are associated with an increased danger. To avoid compensation, they must prove that the situation was caused either by the victim's own actions or by a natural disaster.

Also, according to Article 1004 of the Civil Code, if the victim has shown extreme carelessness, the court may release him from partial or full compensation for damage, but such a refusal is not allowed if the harm was caused to the life or health of a citizen.

The legislation states that the owner of the risk source is liable if the activity of the risk source itself caused damage or if there was no gross negligence on the part of the victim. In addition, according to Article 1006 of the Civil Code, not only material but also moral damage

may be compensated for harm caused to the life or health of a citizen. Article 1007 of the Civil Code provides that the victim is also compensated for lost income and additional expenses related to treatment, such as the purchase of treatment, medicines, prostheses and rehabilitation equipment. At the same time, it is not specified whether the guilty party is at fault for the compensation of damage.

In general, it is noted that legal norms are applied differently and there are no specific criteria for determining moral damage caused by a road traffic accident. For this reason, some experts suggest developing a special scale for bodily injuries, valid in foreign countries, and determining the exact amount of compensation. In our opinion, establishing such a scale at the legislative level would not be useless.

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