TECHNIUM
SOCIAL SCIENCES JOURNAL

Vol. 8, 2020

A new decade for social changes

www.techniumscience.com

ISSN 2668-7798

9 772668 779000

Compensation for immaterial damage from motor liability in the Republic of Kosovo

Asmir Sadiku, PhD. Candidate

South East European University, Tetovo, The Republic of North Macedonia
asmirsadiku@gmail.com

Abstract. In the Republic of Kosovo, one of the issues that is mostly encountered in the practice is the compensation for immaterial damage from motor liability. Public transport has multiplied importance for the life and economic development of a country, as this development of various types of public traffic has facilitated the movement of people, and above all the transport of goods and people from one place to another. Contemporary life cannot even be imagined without the different types of public traffic such as: air, road, water and rail transport which include motor vehicles of different types. But, this public traffic needs a normal and safe development. Because, humanity today is paying a huge price with human casualties, risking health, as motor vehicles in addition to becoming pollutants of the human environment, they are also the cause of accidents with great economic damage, bodily injury, and even the loss of life of participants in public traffic. This thesis will address the civil legal liability for damages caused by vehicles in Kosovo, in particular immaterial damage and its compensation, the legal framework that regulates the field of motor liability, cases from court practice, in which the amount of money for compensation of immaterial damage is judged from traffic accidents.

Keywords. Damage, causing damage, immaterial damage, traffic accident, motor liability, insurance company, Republic of Kosovo

1. Introduction

Traffic accidents happens most of the time because in traffic we have various participants, even unconscious participants who drive vehicles at high speed and outside of stipulated rules, or even not adapting to the road conditions and their status, as well as disrespecting signaling signs which regulates the traffic. Then, accidents also occur even due to the use of motor vehicles that have different weights (trucks/cars), and that are often in non regular technical condition, due to overtaking and speeding, not good road infrastructure, unsuitable technical status of existing roads, and especially when the signaling is deficient and outdated or completely absent, non-adaptation of speed to atmospheric conditions, non-respecting of provisions regarding the priority at the crossroads, conduct against the provisions when using lights in traffic, failure to maintain a certain distance between vehicles, due to not good roads maintenance, which especially during the winter months has impact on causing accidents, accidents that are causing significant material damage, but also cause bodily injuries of various extents to the people, where as a result, some of them are remaining disabled for whole of their life, and are also causing fatal accidents, so the loss of human lives.

2. Causing damage from traffic accidents

According to the World Health Organization, "every year in the world, as a result of accidents, about 1,000 people die in road traffic only, whereas about 15 million sustains bodily injuries". Out of these data it results that "on average, every day, in the world in accidents 820 people lose their lives, while other 50 thousand sustains bodily injuries. Today in the world there are more than 30 million disabled people in the world due to the consequences of road traffic accidents". In Kosovo, both before and after the war, approximately 160 people die in various road accidents each year, whereas the number of people sustaining injuries is much higher.¹ According to data published by UNMIK Police: "during year 2000, in Kosovo occurred 8714 traffic accidents, most of them in the region of Pristina, Peja, Gjilan, Prizren and Mitrovica. Out of these accidents, 137 were fatal, causing death of 169 people, whereas 1,593 persons were injured. UNMIK police during this year, has registered thousands of violations of traffic rules".² So, traffic safety continues to be one of the most important challenges in Kosovo. Although this area continues to be a major concern for policymakers and security and traffic experts around the world, the problems that Kosovo citizens are confronting are still basic ones. The large number of accidents, especially in road traffic that are caused by various factors, consequently leaves a relatively large number of victims and other damage, which could be avoided or at least controlled by the policies, laws and good practices. As, this is a phenomenon of specific social importance, respectively due to this reason Kosovo society must take preventive measures (raising and developing the culture in traffic, increasing the sense of responsibility of traffic participants, efficient roads oversight, control of technical maintenance of traffic vehicles, as well as setting of adequate technical equipment/signs, according to the norms provided on public traffic safety, especially the provisions of the Law on Road Traffic Safety and the Law on Road Transport.³

Table 1. Data on accidents according to sources from Kosovo Police⁴

Year	2011	2012	2013	2014	2015	2016	2017
Fatal accidents	130	116	104	111	117	99	122
Deceased persons	157	121	119	127	129	110	137
Accidents with injuries	4490	4555	4963	4876	5275	6130	6390
Injured persons	8321	8651	9811	9713	10671	12009	12645
Accidnets with damages	13338	14044	13868	10333	11145	12312	11183
Accidents with hit and run away	930	1039	1009	975	1185	/	/
Total accidents	18888	19754	19944	16295	17722	18541	17695
Issued tickets	276897	247788	286922	321114	303971	326515	396924

¹ Data from World Health Organization, <http://www.who.int/en/>. March 2015

² Data from UNMIK Police – Police of United Nations and was placed in Kosovo after the war as part of international administration of Kosovo

³ Muharremi Merita, Civil liability from damages caused by vehicles in Kosovo and Albania (Doctoral dissertation), Tirana, 2018, pg.82

⁴ Data from Kosovo Police, Table 1 and Table 2, <https://www.kosovopolice.com/>

Table 2. Table and graphic presentation for the countries in region

No.	Country	No. of traffic accidents (2012)	No. of traffic accidents (2013)	Deceased from traffic accidents (2012)	Deceased from traffic accidents (2013)
1	Republ of B & H	25958	26655	140	158
2	Republ of Montenegro	8103	5264	46	74
3	Republ of Serbia	37559	37127	684	643
4	Republic of Macedonia	4111	4236	124	170
5	Republic of Albania	4439	4873	334	295
6	Republic of Kosovo	19754	19998	116	104
	TOTAL	99924	98153	1444	1444

3. Legal framework in regard to compensation of immaterial damage from motor liability in Kosovo

Compensation for damages from motor liability in the Republic of Kosovo is regulated by Law No. 04/L-018 "On Compulsory Motor Liability Insurance" (Official Gazette of the Republic of Kosovo/no. 4/14 July 2011).⁵ Whereas, the Central Bank of the Republic of Kosovo in compliance with the above-mentioned Law has approved the Regulation on the procedures for addressing of claims for compensation of damages from compulsory motor liability insurance, dated 27 December 2012.⁶ Its preamble states: "This regulation aims to promote fair and equal treatment of policyholders and injured parties by the Insurers. This regulation stipulates the procedures for receiving, registering, addressing, payment and controlling of claims for compensation arising from compulsory motor liability insurance. This Regulation applies to all CBK licensed Insurers for the sale of compulsory motor liability insurance as well as to the Kosovo Insurance Bureau regarding its liability on addressing of damages which are obligations of the Compensation Fund".⁷ Thus, the Regulation has the main purpose addressing of damages from the motor liability insurance provided by the Insurer, the insured of which is the cause of the damage (Article 4.) The claim for compensation must be submitted to the person authorized by the Insurer, and upon the receipt of the claim for damages, the authorized person has the duty to verify the validity of the insurance coverage. Of course, the claim for compensation is made in writing by the injured party in person, through the legal representative or by his authorized person. If the submitted request is not completed with necessary evidence and documentation to decide on the compensation, the Insurer is obliged to request its completion

⁵ Law No. 04/L-018 on Compulsory Motor Liability Insurance

⁶ Regulation on the procedures addressing the claims for compensation of damages from compulsory motor liability insurance, the Board of the Central Bank of the Republic of Kosovo approved this Regulation on 27 December 2012

⁷ Article 1 and 2 of Regulation on the procedures addressing the claims for compensation of damages from compulsory motor liability insurance

within the legal deadline (3 days).⁸

4. Realization of compensation for immaterial damage from motor liability

The claim for damage compensation must be submitted to the head office or to the branches of the Insurer in one of the following manners as: a) directly, b) by mail, c) by e-mail or d) by fax. The claim for damage compensation is made by filling of unique template: "Submission of the claim for damage compensation by from motor liability insurance".

Insurer's authorized person, verifies whether the claim for damage compensation is completed, whereas necessary documentation for damage compensation according to this Regulation is as follows:

1. For damage in motor vehicles and assets:

- a) Claim for damage compensation (unique template);
- b) Accident report – by police, original or certified copy;
- c) European Accident Report;
- d) Copy of insurance policy;
- e) Motor vehicle registration certificate (copy);
- f) Photocopy of ID card and bank card, as well as data on address and phone number;
- g) Authorization on the right to damage realization certified by a licensed notary or other competent bodies for certification of authorizations;
- h) Minutes on damage to the motor vehicle, along with photos of the damaged motor vehicle;
- i) Evidence on ownership of the damaged property, evidence of the use of the property and minutes on the damage;
- j) As consequence of not using the motor vehicle - for the lost profit, in cases when the motor vehicle is used for commercial purposes, evidence from the Tax Administration of Kosovo;
- k) According to the need, the Insurer may also request any of the following documents:
 - i. Photo documentation;
 - ii. expertise of the traffic expert conducted during the criminal proceedings;
 - iii. final decision by the competent court;
 - iv. the insured's statement about the accident;
 - v. Service statement, 168 based on approved Regulation by CBK;
 - vi. Pro invoice that specifies the value of damaged parts, work, work material, etc;
 - vii. Fiscal invoices on vehicle repair.

2. For the compensation of damage to persons with consequent injury, the documentation from paragraph 1 of this article is necessary:

- a) Birth certificate or identity card of the injured party;
- b) Original medical documentation (emergency report or other medical evidence proving injury on the day of the accident, hospital discharge list and medical check-up reports;
- c) In special cases, additional reports from various radiological examinations, and other specialist examinations, if required by the Insurer;
- d) Invoices on medical costs;
- e) Evidence of the amount of income realized during the medical leave, and the income that would realize during the period of incapacity for his work;
- f) In case of temporary or permanent disability, proof of personal income from the employment contract. If the injured party is not employed, the average wage is considered as a basis

⁸ Muharremi Merita, Civil liability from damages caused by vehicles in Kosovo and Albania (Doctoral dissertation), Tirana, 2018, pg. 138-139

according to the qualification of the injured party.

3. For damage to persons resulting in death:

- a) Death certificate issued by medical institution;
- b) Original death certificate, original marriage certificate, original certificate on the family community and original birth certificates on all claimants/injured parties;
- c) Evidence on occupation and incomes of the deceased person;
- d) Documents of medical treatment (if the deceased was in treatment) as well as other eventual costs before death;
- e) Usual burial costs;
- f) Any other document that the injured party considers reasonable to support any compensation related to possible costs incurred as a result of the death case.

The regulation stipulates the treatment of claims for compensation and the timelines of treatment and payment of damage (Article 7), Compensation of motor vehicles (Article 8), Compensation of material damage in case of death, bodily injuries and endanger of health (Article 9) and Compensation of immaterial damage (Article 10). Insurers' liabilities to cases in court proceedings are regulated by Article 15 of the Regulation. Whereas, the execution of damage payment is stipulated by Article 17. "The provisions of this regulation will be applied by the Kosovo Insurance Bureau and for damages that are liabilities of the Compensation Fund".⁹

Another regulation which covers the field of compensation for damage from motor liability is the Regulation on determination of the criteria for the assessment of immaterial damages covered by motor liability insurance, approved by the Board of the Central Bank of the Republic of Kosovo on 31 August 2016. This regulation specifies its purpose in Article 1 paragraph 1 and 2; "1. This regulation stipulates the unique criteria for compensation of immaterial damages and other damages, arising from immaterial damages as a result of traffic accidents, which are subject to compulsory motor liability insurance. 2. This regulation applies during the settlement of claims for compensation, for damages in traffic accidents occurred in the territory of the Republic of Kosovo".¹⁰

This regulation counts the forms of material damage, on the basis of which compensation is provided, as follows:

- a) Lost hold of family members, in case of a family member death;
- b) Loss of profit due to permanent, complete or partial incapacity for work of the injured person;
- c) Missing profit due to temporary incapacity for work;
- d) Medication and rehabilitation costs;
- e) Costs for care and foreign assistance from a third person;
- f) Damage to items used for personal needs, clothes, etc;
- g) Burial costs and constructing of over-grave memorial.¹¹

5. Cases from court practice in the Republic of Kosovo, regarding the compensation of immaterial damage from motor responsibility

So, in regard to the compensation of immaterial damage from motor liability, due to causing bodily physical- pain and fear, the Basic Court in Pristina - General Department, with the

⁹ See abovementioned Regulation, Articles: 4, 5, 6, 7, 8, 9, 10, 15, 17 and 19, approved by CBK

¹⁰ Article 1 of Regulation on determination of the criteria for the assessment of immaterial damages covered by motor liability insurance, approved by the Board of the Central Bank of the Republic of Kosovo on 31 August 2016

¹¹ Article 13 paragraph 3 of Regulation on determination of the criteria for the assessment of immaterial damages from motor liability

Verdict C.no. 3146/2015, dated 12/23/2019¹², has partially approved the claim of the plaintiff L.M. from Pristina, and forced the defendant Insurance Company "S.", to pay to the plaintiff on behalf of compensation of damage in the accident caused on 22.03.2015 following amounts:

1. On behalf of immaterial damage:
 - a. For bodily physical pain, the amount of 800 euros;
 - b. For sustained fear, the amount of 700 euros;
2. On behalf of immaterial damage:
 - a. For reinforced food, the amount of 150 euros;
 - b. For the care of a third person, the amount of 150 euros.

The court, in determining the amount of compensation for immaterial damage for bodily-physical pain, obtained the opinion of medical experts, so that in its reasoning to stipulate the nature and extent of injuries in this traffic accident, the court by plaintiff's proposal obtained the evidence through expertise, with experts in the field of orthopedics and psychiatry. Orthopedic expert N.D. based on the examination of the medical documentation which is in the case file, it has concluded that the plaintiff as a result of the caused accident has sustained bodily injuries which are qualified as light bodily injuries. The court on behalf of the physical pain approved the claim in the amount of 800 euros, assessed as a fair compensation, and which serves the purpose of compensation, because the plaintiff, as a result of the injuries received, sustained physical pain of various intensities, and that of particularly severe intensity about 20 minutes, from the moment of accident, the arrival of people who have been close up to the health facility, where there the plaintiff received the aid. Pain with severe intensity 24 hours. With medium intensity 7 days, as well as with low intensity are still present, still accompanied by pain especially physical exertion and change of weather, as well as the need for time to time movement or carrying of any weight. Regarding the need for third party assistance, the orthopedic expert stated that it was necessary for a period of 3 weeks, including assistance in maintaining hygiene, clothing, food, and being sent for medical check-ups. Reinforced food was needed for three weeks, equipped with protein, milk products, minarets, vitamins etc. Whereas physio-therapeutic rehabilitation was required 1 time every 10 days. Based on conclusions from medical experts, the court found that there was no decrease of the general vital activity.

The court, in taking the verdict, applied Article 137 of the LOR, which stipulates that: The damage is the reduction of someone's property (ordinary damage) and the prevention of its increase (lost profit), as well as the infliction of physical pain to another, mental suffering or fear (immaterial damage). Whereas the provision of article 183 par. 1 of the LOR¹³, stipulates that for caused physical pain, for spirit sustained pain, due to reduction in life activities, disfigurement, vulnerability of authority, honor, freedom or personality rights, death of a close associate, and fear, if the court would conclude that case circumstances and especially the intensity sidomos intensiteti of pain and fear and their duration justifies that, will adjudicate fair money compensation, regardless of material compensation and lack of material compensation. Thus, based on thbis legal provision and Article 323 of Law on Contested Procedure¹⁴, assessing all the criteria and measures for determining the amount of compensation for immaterial damage, especially considering the nature and extent of the bodily harm caused to the plaintiff, his young age, the time of the accident which was

¹² Verdict of Basic Court in Pristina – General Department, C.no. 3146/2015, dated 23.12.2019

¹³ Articles 183 and 137 of Law on Obligational Relationships of Republic of Kosovo

¹⁴ Article 323 of Law on Contested Procedure of Republic of Kosovo

important in the amounts approved, and the assessment in the medical expertise, the court partially approved the claim of the plaintiff as grounded, and in the value of the compensation of damage as under item I of the enacting clause of this verdict. The Court assesses that the amounts of compensation approved under enacting clause of this verdict are adequate, considering the damage caused to the plaintiff and that the amount of money on behalf of compensation will enable the plaintiff to be satisfied, that to some extent, to compensate for the intangible goods from which he has been deprived, respectively the degree of satisfaction which he would have had if he had not lost the same, and all this considering all the circumstances of the injuries caused, the intensity of the pain and fear, their duration and the time required for recovery. When deciding on the claim for material and immaterial damage compensation, as well as in relation to the amount of compensation for this damage, among other things, the court has considered the importance of the violation of the good and the purpose that this compensation serves, as well as the criteria set by the judicial practice.

In another verdict, the Court of Appeals of Kosovo in Pristina, the verdict Ac.no. 3175/16, dated 10.18.2019¹⁵, in the contested legal case of plaintiff A.N. from Peja, represented by his authorized lawyer Z.N. from Peja, against the respondent Insurance Company "Dardania" (now Eurosig) with seat in Pristina, which is represented by its authorized lawyer Xh.B. from Prishtina, due to the compensation of the damage, deciding according to the complaint of the respondent, filed against the verdict of the Basic Court in Peja - Branch in Klina C.no.280/14, dated 24.05.2016, the court of appeal had approved partly as grounded the complaint of the respondent the Insurance Company "Dardania" (now Eurosig) with seat in Pristina, so it amended the verdict of the Basic Court in Peja - Branch in Klina C.no.280/14 dated 24.05.2016, more precisely its provision II, which is related to the experienced physical pain, fear, as well as the costs of medical treatment, and the case for this part is adjudicated as follows:

- On behalf of experienced physical pain, the amount of 1.300,00 €;
- On behalf of experienced fear, the amount of 800,00 €;
- On behalf of medical treatment costs, the amount of 1.155,00 euros, all this by interest of 8%, calculating it from the date of receipt of the verdict of the court of first instance dated 24.05.2016, until the final payment, within 15 days' timeline from the day of receipt of this verdict, under threat of enforcement by force.

The Court of Appeals noted that the Court of first instance erroneously applied the provision of Article 183 of the Law on Obligational Relationships of the Republic of Kosovo, when adjudicating forms of immaterial damage for physical pain and experienced fear, to the amount as in the enacting clause of the appealed verdict, as the amounts are high and do not correspond to the social intentions and objectives for compensation of damage, therefore in this regard the court of second instance partially approved the plaintiff's appeal, amended the appealed verdict in the part relating to the experienced physical pain, experienced fear as well as the costs of the medical treatment and judged as under item I of the enacting clause of this verdict, assessing that the amounts approved by the court of first instance for the forms of compensation for immaterial damage, physical pain and experienced fear, are not based on applicable criteria for assessment, nor in the judicial practice established by the Kosovo courts for these forms of damage compensation, nor in the nature and type of the damaged good.

The Court of Appeals considers that the amounts judged by this court as under provision I of this verdict are adequate to the criteria and purpose stipulated under Article 183 of the LOR, these amounts represent an adequate satisfaction that the injured party (in this case the plaintiff) more easily confront immaterial damage suffered, although these forms of damage cannot be

¹⁵ Verdict of Court of Appeals of Kosovo in Pristina, Ac.no. 3175/16, dated 18.10.2019

assessed or compensated with money. Paragraph 2 of Article 183 of LOR stipulates that “*when deciding on the claim for immaterial damage, as well as on the amount of its compensation, the court will consider the importance of the violation of the good and the purpose for which this compensation serves, and also due to the fact that with it, not to conform to goals that are incompatible with its nature and social purposer*”. So, from the interpretation of this legal provision it results that the compensation must be adequate to the nature of the injury, the intensity and duration of the experienced pain, the fear of the injured party, so that the compensation represents a relief in confronting with overcoming of consequences of the damage that in this case the plaintiff suffered in the traffic accident, at the same time they should be real and present real satisfaction as much as possible, conforming even society targets for damage compensation.

Conclusions

Compensation of immaterial damage from motor liability in the Republic of Kosovo, compared to all other forms of compensation for immaterial damage, is treated more in judicial practice in Kosovo. As result of this, we have more court decisions including the compensation of immaterial damage, especially such decisions, where the amount in cash is stipulated, in the case of causing damage from traffic accidents. In this regard, the basic courts or court of appeals in Kosovo, sets the compensation of immaterial damage from the contested legal matters of plaintiffs as natural persons against respondents, which are usually the Insurance Companies or the Bureau. Courts approve such lawsuits and sets amounts in cash, depending on height of violation of the respective good, which is protected by law into force. As basis for rendering of verdict by courts in Kosovo serve the provisions of the Law on Obligational Relationships and the provisions of the Law on Contested Procedure. As a shortcoming of the legal system in Kosovo can be highlighted the delay in addressing of this case by the courts, where a real judicial system has not yet been established, which would enable these lawsuits to be addressed within a reasonable timeline.

References

- [1] Data from World Health Organization, <http://www.who.int/en/>. March 2015
- [2] Data from UNMIK Police – Police of United Nations and was placed in Kosovo after the war as part of international administration of Kosovo
- [3] Muharremi Merita, Civil liability from damages caused by vehicles in Kosovo and Albania (Doctoral dissertation), Tirana, 2018, pg.82
- [4] Data from Kosovo Police, Table 1 and Table 2, <https://www.kosovopolic.com/>
- [5] Law No. 04/L-018 on Compulsory Motor Liability Insurance
- [6] Regulation on the procedures addressing the claims for compensation of damages from compulsory motor liability insurance, the Board of the Central Bank of the Republic of Kosovo approved this Regulation on 27 December 2012
- [7] Regulation on determination of the criteria for the assessment of immaterial damages covered by motor liability insurance, approved by the Board of the Central Bank of the Republic of Kosovo on 31 August 2016
- [8] Verdict of Basic Court in Pristina – General Department, C.no. 3146/2015, dated 23.12.2019
- [9] Law on Obligational Relationships of Republic of Kosovo, Law No. 04/L-077, dated 10.05.2012
- [10] Law on Contested Procedure of Republic of Kosovo, Law No. 03/L-006, dated 30.06.2008
- [11] Verdict of Court of Appeals of Kosovo in Pristina, Ac.no. 3175/16, dated 18.10.2019