



## Damages due to Death of Client at Agricultural Terminal.

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[Courts accept complaint for compensation for damages against an agricultural terminal and the lessee of an usufruct.](#)

**In the month of July, 2018**, a 38 year old woman, married and with two under-aged children, entered an agricultural terminal to buy goods in bulk for her grocery shop. While the woman was walking through the parking area, a large quantity of 10-kilo sacks with rice fell on top of her, killing her immediately. These sacks of rice fell from a freight hoist that was attached to the wall of a shop selling wholesale products. This facility had been provided under usufruct by the terminal to a third party, who in turn rented it out to an individual.

### JUDICIAL SCENARIO

**In September, 2018** the widower presented a civil complaint for compensation for damages, jointly against the agricultural terminal, and the lessee of the usufruct of the shop. The complaint did not include the under-age children. The total sum involved amounted \$1,856,000,000, broken down as follows: \$1,056,000,000 for loss of income, and \$800,000,000 for pain and suffering.

**In May, 2020** the ruling in first instance was issued, which admitted the complaint, and joint and severally condemned the defendants. This ruling rejected the loss of income claimed, and only admitted the claim for pain and suffering. Therefore, defendants were sentenced to pay the sum of \$80,000,000, mentioning the victim's reckless exposure, which was taken into account for establishing this sum.

**In April, 2021**, and after having read the appeals filed against the sentence in first instance, the Court of Appeals confirmed the joint and several sentence against the defendants for pain and suffering, but increased the sentence to the sum of \$110,000,000, dismissing the existence of the victim's reckless exposure and the reduction of damage as a consequence thereof.

**In September, 2021**, the Supreme Court confirmed the ruling in second instance.

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[Victim's Exposure to Risk](#)

Defendants claimed the victim's reckless exposure as she did not enter the agricultural terminal by the area used by the public in general, but by the parking area which was only for use by suppliers.

Thus, the sentence in first instance established that ...*"[the victim] exposed herself to the damage; witnesses for the defendants as well as the plaintiff stated she was not cautious when going underneath a machine such as a freight hoist, which was operating at the time, and that because it is noisy, people nearby are aware of its presence. Therefore this Judge considers that she did not take the necessary precautions to avoid the occurrence of the event on which this suit is based, and although this does not exempt the defendants from guilt, it does permit a prudent reduction of the damage, in accordance to what is set out under 2330 of the Civil Code."*

Notwithstanding the above, the sentence in first instance does not provide a calculation of the total amount for pain and suffering and the percentage or degree of the victim's exposure to risk, information that is necessary for establishing the reduction in the determined damage.

On the other hand, the Court of Appeals established that in accordance with statements from plaintiff's witnesses and a statement from defendant's witness, when the accident occurred the freight hoist was not operating, and no signs had been posted regarding its installation. Based on this, the Court of Appeals determined that *"... in this particular case, the victim did not imprudently expose herself to the risk, as she should have foreseen what could happen to her, and none of the alleged factual circumstances claimed for reaching such a conclusion have been confirmed"*.

Notwithstanding the foregoing, neither did the Court of Appeals specify which parameters were used for increasing the sentence to the sum of \$110,000,000.

Finally, it should be noted that as regards the application of the criterion of imprudent exposure to the risk, and the reduction in the sentences, courts rarely provide details that would lead to an understanding of how this was applied in this particular case.

### Rejection of Loss of Income

As regards the claim for loss of income, the widower only mentioned in his complaint that, as a consequence of the death of his spouse, family income was reduced; this was determined by a simple mathematical calculation, multiplying a supposed personal income of \$4,000,000 by the number of months remaining until her retirement age. This is known as the method for calculating loss of income by using a strictly linear method (or a multiplier method)".

In this regard, both the court of first instance as well as the Court of Appeals stated that *"...although it is true that both the indirect damage and the loss of income are compensable, it is also true that whoever claims them must prove them, and the type and amount of the damages should be able to be established, according to the proof provided and subject to the evaluation made of them by the judges on points of law"*.

In this regard, the courts that heard this case indicated that *"... for calculating and establishing loss of income it is necessary to establish that regarding compensation for damages, these must be true, determined or at least able to be determined, and above all accurate" and that the proof provided by plaintiff was "...insufficient for performing an examination regarding the*

*reasonableness and certain probability of occurrence which is required for determining compensation for damages for this concept, given the vagueness and generality of its content”.*

In short, it is established that for granting compensation for loss of income, the existence of plaintiff’s proven activity that enables the probability of future earnings to be determined with a reasonable degree of certainty.