

Relevant Differences in Indemnities Awarded by Courts for Similar Cases

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INITIAL STATEMENT

One of the essential principles of Tort Liability, specifically when determining compensation for pain and suffering in the event of third-party death or injuries, is that, when cases with similar damage are involved, the sums to be paid determined by the courts of justice should also be similar, not necessarily identical, but having a certain relation between them, so that if differences do occur there should be a specific reason for them.

The above generates reasonably predictable certainties and scenarios, which enables all of the different participants in the Tort Liability system, including insurers and insureds, to foresee future situations regarding asset exposure for cases involving death and injuries.

On the other hand, the existence of relevant differences in sums to be paid as compensation for pain and suffering determined by the courts for similar cases, generates uncertainty regarding the criteria used and, ultimately regarding the rationality of, and justification for, such a difference.

In the paragraphs below we shall address six cases which are grouped into three categories under the assumption that they are comparable as regards their origin and claimed compensation, but where the rulings in comparable cases show clear differences between them.

CASE COMPARISON

1st Category: Death of wife and mother, and family's subsequent legal complaint. The first case involves the death of a woman due to complications generated by cosmetic surgery. As a consequence of this, the widower and under-age daughters sued the clinic where the operation had been performed. Finally, an executed judgment established a global sentence in the amount of \$160,000,000, broken down into \$40,000,000 for pain and suffering for the widower, and a similar figure for each of the under-age daughters.

On the other hand, and within this same category, we refer to the case of a woman who died as a result of injuries caused by a large stone that was thrown onto her car from an overpass on an intercity highway. Executed judgement, in what is comparable to the preceding case, established an indemnity in the amount of \$100,000,000 for the widower and a similar amount for each of

the four under-age daughters, i.e. a global sentence for family members in the amount of \$500,000,000.

2nd Category: Disability due to work-related accident. As a consequence of a fall, a worker suffered severe injuries which led to the presentation of a work-related complaint for compensation for damages. In this labor complaint an expert established the disability percentage to be 32.5%, sentencing the employer to the payment of \$150,000,000 for pain and suffering.

In another work-related complaint for compensation for damages, a worker suffered burns as a result of a work-related accident; disability percentage was established at 35% (higher than the one mentioned in the preceding paragraph). In this case compensation for pain and suffering was established at \$25,000,000.

3rd Category: Death of a worker. Complaint filed by his heirs for the pain and suffering caused to the worker prior to his death (inherited damage)

The first case involved the death of a worker by asphyxia, as he was buried by debris from an excavation. His heirs (four under-age sons and his widow) sued for inherited pain and suffering, i.e., the damage, anguish and/or harm suffered by the worker prior to his death, and obtained a global indemnity in the amount \$50,000,000.

In the second case, a worker died as a result of injuries suffered after having been run over and crushed; he agonized for almost 4 hours. In this case his illegitimate under-age daughter sued before a labor court, and received \$350,000,000 for inherited pain and suffering .

RELEVANT ASPECTS FOR LIABILITY

The abovementioned trials, which were grouped together in three similar categories as regards the events, illustrate the existence of a considerable difference in the sums granted for pain and suffering by our courts of justice, in cases where no substantial differences can be found in each of the categories.

Thus, in the case of two women of similar age and socioeconomic status, in one case the widower and daughters receive an indemnity of \$100,000,000 each, and in the other, indemnity is \$40,000,000 for like family members. This points to an unequal treatment from two angles, both as regards the defendant - sentenced to pay a higher amount, and the plaintiff – who received a lower indemnity.

Is there a justified explanation for this difference? After reading both sentences (and also those of the other trials mentioned above), there do not appear to be any special characteristics that could explain the difference in these amounts.

What does this generate? Uncertainty. In fact, we believe that the above leads to consequences when attempting to determine an exposed risk for future similar cases, an essential matter for the insurance market when underwriting risks of such a nature. The same thing happens when a loss of such characteristics has already taken place, making it difficult to determine exposure

and margins of a sentence, which are necessary concepts for making a proper analysis of the exposed risk to equity.

In this regard, what was established by the Supreme Court in a verdict issued in July, 2020 can be clarifying as regards determination of the *quantum* of pain and suffering. In Whereas Clause Number Ten of the cassation ruling, said Court mentioned the following:

“Notwithstanding what has been said regarding the sum established for the indemnity for pain and suffering, this Court cannot but comment on the fact that compensation of said damage should never constitute a source of profit, and it also does not have a neither can it fail to comment also that compensation is not punitive in nature, so that even though its assessment is in the hands of the base judges - and therefore is not susceptible of being revised by this cassation appeal - it should be kept in mind that this right must be exercised with rationality, proportionality and especially with juridical equality parameters.”

FINAL COMMENTS

The Whereas Clause of the ruling mentioned above would appear to give out the correct signal. Similar cases should be concluded by sentences that mention sums that have a certain correlation between them, thereby avoiding unjustified disparities. The key should therefore be in exercising rationality, proportionality and especially juridical equality parameters, which in the end means that when facing cases with common characteristics, ruling should be similar. In this regard, it is primarily the respective Courts of Appeals that should assume such a part, modifying sentences in first instance that do not fulfill these parameters.

At the same time, one of the main tools for controlling and managing juridically uncertain situations such as these, is the collection and systematization of previous jurisprudential rulings, for which systems have been developed by both the Judiciary and universities and private participants (especially in the insurance market). These enable an overall monitoring of the judicial system’s performance to be carried out, as well as specific estimates and calculations to be made for real cases, all of which help to avoid disproportionate judicial criteria which lack the necessary quota of juridical equality that situations of similar characteristics should have.