



COMPENSATION FOR NON-PECUNIARY DAMAGES IN PERSONAL INJURY CASES IN LITHUANIA

27th of May, 2016, Milan

Assoc. prof. Solveiga Paleviciene, LL.M

LITHUANIAN SUPREME COURT (LSC) DECISION, 8 MAY 2009, NO. 2K-237/2009

Facts

- The parents of three children brought an action for compensation of non-pecuniary damage against the defendant who was intoxicated with alcohol and grossly over-speeding mortally injured the minors when his car crashed into a group of children walking along the road home from school. The defendant, who was the police officer at the time of traffic accident, drove away after the accident, leaving the injured children in the state of emergency
- The court of the first instance awarded non-pecuniary damage in amount of LTL 500'000 (€ 145'000) to each of the six parents. The appeal instance court reduced the amount of damage to LTL 150'000 (€ 43'443) to each of the parents.

Decision

- The LSC upheld the decision of the appeal instance court. The LSC mostly focused on the form of the fault of the defendant and concluded that gross negligence is one of the most important factors for setting the amount of non-pecuniary damages. However, the LSC took into consideration the non-pecuniary damage amounts awarded in the previous case-law and decided to reduce the compensation awarded by the lower instance courts.

Comment I - Amounts

- LTL 150'000 (€ 43'443) for a relative of the deceased has been one of the top compensations ever awarded in a fatal car accident case since the introduction of the possibility of compensation of non-pecuniary damage to the secondary victims by the Lithuanian Courts.
- Usually amounts of compensation in fatal cases varies from 7 000 EUR - 20 000 EUR. For example, in the case of 2015 each of the parents of their only child who died in a traffic accident were awarded € 19,221 (LSC 24 November 2015, No 2K-541-511/2015).
- In penal cases compensations may be much higher. For example, in 2011 Lithuania was shocked by the murder of a female schoolmate initiated and executed by two 18 year old girls, who were titled the 'Black Canibals' by the media. In this case the minor victim was tortured and died due to bleeding caused by the amputation of her head. Subsequently the murders cut the dead body into small pieces and threw then in the fields not far away of the murder scene. In this case the final compensation for non-pecuniary damage awarded to each of the parents of the deceased, who was their only child, was € 72,405 (144 810 EUR for both parents in total).
- In another case where two males were convicted to life imprisonment for raping a 17 year old girl and then burning her alive as she was locked in the trunk of a car, the courts awarded non-pecuniary damage to the mother of the primary victim in the amount of LTL 200,000 (€ 57,924), to the step-father who raised her since she was a toddler LTL 25,000 (€ 7,240), to the grand-mother LTL 50,000 (€ 14,481) and to her minor brother LTL 80,000 (€ 23,169) (CoA 20 November 2015, No 1A-343-148/2015).

Comment II - Relatives

- As a rule, with respect to the right of the secondary victims to compensation of non-pecuniary damage, the LSC emphasises that in general only primary victims are entitled to compensation of non-pecuniary damage. The victim's relatives are entitled to it only as an exception, in the event of a particularly strong affection, in view of all the circumstances of the grievance and its consequences.
- Typically for the judgments in penal cases, the court's reasoning on non-pecuniary damage is very scarce. However, such situation shows though the degree of fault is irrelevant to establish liability, it plays an important role in calculating damages(Art 6.250(2) CC).
- Case law also shows that the courts do not strictly follow narrow provision of the Article 6.250 and Article 6.284 of the Civil Code.

Under provisions of Civil Code, the right to compensation shall be formally acquired to:

- Minors, likewise the children of the deceased born after his death,
- Spouses (cohabitants),
- Parents incapable of work,
- Other factual dependents incapable of work.

Court practice: the list is not exhaustive

- - Other relatives with *fairly close and strong relationships with the victim*

JUDICIAL PROCESS V. ADR?

Judicial process:

- Duration (in months): First instance - 10, Appellate instance - 6, Cassation - 6, Total - 22
- Number of civil cases in 2015 (number of inhabitants in LT 2.902 mln.): 206 124 civil cases, 84 687 cases arising out of breach of obligations

ADR and other compensation systems:

- Conciliatory mediation (taikinamasis tarpininkavimas) may be used in personal injury cases under the Law on Conciliatory Mediation in Civil Disputes:
 - Within this framework, recourse to mediation is entirely voluntary. In future - possibly compulsory in some cases;
 - Still not popular: 2014 - 53 cases, 2015 - 123 cases
- Compulsory pre-litigation procedure in medical malpractice cases: persons who are entitled to compensation for the damages must make an application to the Commission on Evaluation of the Damage Caused to the Health of Patients operating under the Ministry of Health. Disagreeing with the decision of this Institution the Person within 30 days have a right to apply to the court.
- Arbitration is not prohibited but usually not applied in practice.

Conclusion. Civil litigation process remains as the most popular and most effective mechanism for compensation.



THANK YOU!

Assoc. prof. Solveiga Paleviciene, LL.M

Law firm GLIMSTEDT

Jogailos str. 4, 01116 Vilnius, Lithuania

Tel +370 269 0700, fax +370 5 269 0701

E-mail s.paleviciene@glimstedt.lt