

Compensation Assessment for Personal Injury Owing to Extra-Contractual Liability: Case Study on Selected Courts

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Abstract

Assessment of compensation for personal injury is an intricate part of the law of extra-contractual liability (torts) since such kind of injury results in loss of a job, part of a body, total permanent disability or death. As personal injury may involve irreparable harm, it challenges courts in quantifying reasonable expenses a victim incurs and determining the amount of disability indemnity. By using decisions of the SNNP and Sidama regional courts together with selected Federal Cassation decisions, this article aims to explore practices of compensation assessment for personal injury. The Civil Code, which applies in federal and state courts, requires assessment of damage and award compensation based on a *rule of equivalency*. Given the generality of this, courts are facing difficulties in making compensation assessments for extra-contractual wrongs that result in personal injury. The problems are related to quantifying reasonable expenses for treatment, determining the amount of disability indemnity, or deciding which kinds of pecuniary losses are included in and excluded from compensation assessment. These problems have caused arbitrary decisions of the courts for personal injury. Variation also exists among court decisions at various levels in determining the extent of harm a claimant sustains and its corresponding compensation. Lack of detailed provisions contributes to such variation, and this calls for legal reform.

Key terms:

Extra-contractual liability · Personal injury · Compensation assessment · Damage

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1. Introduction

Damage resulting from extra-contractual liability includes physical injury to a person, physical damage to property, injury to reputation, damage to economic interests, and others. These damages –caused to a person's legitimate material interest– may result in the occurrence of loss, prevention of gain, an increase of liability, or future damage, which is certain to occur.¹ Congruent with these sorts of damage, the law of extra-contractual liability² provides different remedies to put the claimant in the position he would have been in if the accident had not occurred. Monetary compensation is the usual remedy for such liability.³ The other essential remedies are injunction and restitution.⁴

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¹ George Krzeczunowicz (1977). *The Ethiopian Law of Compensation for Damage*, Finfinne Printing Press & Publishing SC, Addis Ababa p 11.

² Extra-contractual liability law has two objectives: redressing the damage (Insurance goal) and discourage extra-contractually wrongful acts (Deterrence goal).

³ Brendan Greene (2012). *Course Note: Tort Law*, Routledge, London and New York, p. 173; Catherine Elliott and Frances Quinn (2011), *Tort Law*, 8th ed., Pearson Education Limited England, p. 375; Gilbert Kodilinye, (2000), *Commonwealth Caribbean Tort Law*, 2nd (ed.) Cavendish Publishing, Great Britain, p.1.

⁴ Kodilinye, *supra* note 3, p.1.

Once extra contractual liability is established, the court's next task is to assess the amount of compensation to be paid to a victim by a way of compensation.⁵ Yet, the assessment of compensation is the most challenging part of the extra-contractual liability law. This is further complicated where damage results in physical injury- as it involves financial losses that cannot be calculated in monetary terms (non-pecuniary losses), which cover pain, suffering and loss of amenities.⁶

Although these categories of loss cannot be accorded monetary valuation, compensation is nevertheless assessed and awarded with the aim of not only putting the claimant in the position he/she would have been in had the accident never occurred but also providing security and a more comfortable lifestyle for the victim by predicting what kind of life he/she would have lived had s/he not sustained any injury.⁷ Due to the uniqueness of each case, it is highly probable that assessing the extent of harm and awarding compensation for physical injuries –followed by loss of a job, parts of the body, or disability of various kinds– involves some discretion in the decision-making process.⁸

Under Ethiopia's Extra-contractual liability legal regime, a victim who claims entitlement to compensation is required to show the causation of the damage by his/her action that constitutes an offence (liability due to fault), or its causation by an object s/he possesses (strict liability), or should show that a third party for whom defendant is answerable incurs a liability (vicarious liability) arising out of an offence.⁹ It is to be noted that the alleged act that gives rise to liability should fall under one of the categories of harm recognized as the source of extra-contractual liability under the Civil Code. The source of extra-contractual liability recognized by the law for which compensation is awarded should thus be identified.

After the occurrence of harm is proven, courts assess compensation. Courts are required to assess the extent of damage and award compensation using the 'rule of equivalency'.¹⁰ This principle conveys the notion that "losses (both material and non-material losses) must be made good in their entirety. In doing so, the idea is to place the victim in the same position that he would

⁵ Id., p. 477.

⁶ Graham Stephenson (2000). *Source Book on Tort Law*, 2nd ed., Cavendish Publishing Limited, Great Britain, p. 582.

⁷ Anita Stuhmcke (2001). *Essential Tort law*, 2nd ed., Cavendish Publishing Limited, United Kingdom, p. 142.

⁸ Stephenson, *supra* note 6, p. 582.

⁹ See the Civil Code, Article 2027.

¹⁰ See Id., Article 2091.

have been had the accident not occurred, and hence, a defendant must make full reparation for the damage he/she has caused.”¹¹

It is important to note that the assessment of compensation may deviate from the rule of equivalency if the act that gives liability emanates from strict or vicarious civil liability. For instance, if a person, in state of necessity, deliberately causes harm to another in order to save himself or another from imminent damage to person or property, in this case, courts will not apply the rule of equivalency.¹² Instead, they use equity to fix the amount of compensation due from a person who, without committing an offense, causes damage to the property of another in order to save himself or another from imminent damage or danger.¹³

Another ground that justifies deviation from the rule of equivalency relates to physical injury caused by a building or domestic animal of a person. In such cases, the owner may relieve himself from liability by surrendering the ownership of the building or the animal to the person who has suffered the damage.¹⁴ Yet, the owner of the building or animal may not relieve himself of liability by surrendering ownership if the damage is a consequence of an offense committed by himself or a person for whom he is liable.¹⁵ Hence, it is essential to note that the assessment of compensation for personal injury arising from a fault-based liability differs from the assessment of the similar damage arising from strict or vicarious liability.

In line with this, the equivalency rule applies to all extra-contractual claims, be it for personal injury or property loss. The rule is susceptible to very wide judicial discretion. Due to the generality of this principle and lack of detailed subsequent law to this effect, courts also encounter difficulties in determining what types of pecuniary losses are included in and excluded from the compensation assessment. This has made it very difficult for courts to assess the extent of the damage and award compensation for extra-contractual wrongs resulting in personal injuries. This problem has created variation in judicial decisions at various levels regarding the extent of damage the claimant sustains and its corresponding compensation. The variation ranges from awarding very minimal and very high amounts of compensation for similar damage/injury. The dearth of detailed provisions in the Civil Code

¹¹ Michel Cannarsa (2002). ‘Compensation for Personal Injury in France’, 8 *Cardozo Electronic Law Bulletin*, p. 12.

¹² See the Civil Code, Article 2067(1).

¹³ *Id.*, Article 2103.

¹⁴ *Id.*, Article 2074 (1 and 3) and 2078(1)

¹⁵ *Id.*, Article 2074 (2), and 2078(2)

contributes to such variations. Yet, the inconsistency seen in various court decisions is not well explored and documented.

This article examines the assessment of compensation for physical injury owing to extra-contractual liability. It mainly seeks to address how much compensation should a defendant pay when s/he causes physical injury to a given person, how courts can determine the amount of disability indemnity, and also the kinds of pecuniary losses included in and excluded from compensation assessment. This article also aims to highlight the problems that courts encountered in practice concerning compensation assessment for personal injuries using selected cases, mainly from the Sidama and SNNPR state courts and a few from Federal Supreme Court Cassation decisions.¹⁶

Following introduction, the next two sections deal with conceptual and theoretical frameworks of damage and its mode of compensation as well as the assessment of compensation for physical injury. Sections 4, 5, and 6 deal with the legal framework. They also examine the various components of the assessment of compensation for bodily injury and illuminate issues related to the compensation assessment for physical injury. Court decisions concerning the assessment of compensation for physical injury are also examined. Moreover, the elements that are (or are not) considered in personal injury compensation assessment are discussed based on some judicial decisions.

2. Compensation for Personal Injury: Overview of Concepts

2.1 Damage and its mode of Compensation

A tort may be defined broadly as a civil wrong involving a breach of duty fixed by the law, which attracts legal liability on a person who causes the damage, and its breach is redressable, primarily by awarding damages.¹⁷ Liability that arises from extra-contractual harm is an action for damages

¹⁶ The practices of the courts were viewed in qualitative terms. Data was gathered from court cases. Courts were selected purposely for investigation. The selection of particular courts constituted the second stage of the sampling procedure. Courts that have entertained ample extra-contractual liability matters were preferred. In this regard, three first instances and two high courts were selected for investigation out of the technological villages of Hawassa University. By taking relevant cases, which involve the assessment of compensation for personal injury, the experience of these courts was surveyed and sufficiently elucidated in the research. The study has also included relevant Federal Cassation decisions.

¹⁷ John Cooke (2017). *Law of Tort*, 13th Ed., Pearson Education Limited, United Kingdom, p.3 and Kodilinye, *supra* note 3, p. 1.

because the law of extra-contractual liability protects personal and property interests from being harmed by other persons and obliges everyone not to interfere with the interests of other persons.¹⁸ Where a person interferes with the rights (interest) of another person, without legal justification, the law of extra-contractual liability intervenes to apportion blame and award damages or other appropriate remedies.¹⁹

Nevertheless, the law of extra-contractual liability does not redress every type of harm caused by a person to another.²⁰ In some circumstances, the mere fact that the acts of a person have caused harm to another does not in itself give the victim a right to sue the one who caused the damage.²¹ Conventionally, extra-contractual liability law contains principles that can be used to determine when the law will (not) grant redress for the damage sustained by a victim.²² Hence, the claimant, to be entitled to the remedies available, is supposed to prove the occurrence of extra-contractual harm and provide individualized evidence that shows the extent of the loss²³ and such act committed by the defendant and the occurrence of damage. And also, the claimant should prove that such damage is a kind of harm recognized as a civil wrong and attracts legal liability.²⁴

Damage, in extra-contractual liability, is harm (injury) caused to a person's legitimate material or moral interest.²⁵ Moral damage is an injury to a person's moral interests, which affects his/her feelings or emotions. Moral compensation cannot be assessed in pecuniary terms and compensated as such since feelings cannot be quantified in monetary value. Krzeczunowicz noted that "equivalence between harm and pecuniary compensation is, by definition, impossible in cases of moral damage."²⁶ It is rather unrealistic to make monetary assessment to a person's feelings although the person is in vegetative state due to the damage he/she sustained. How much money can repair the disruption of feeling of a person who has been in vegetative state or who encounters grave livelihood difficulties due to a physical injury arising from extra-contractual wrong? Thus, in principle, moral damage is made good

¹⁸ Cooke, *supra* note 17, p. 3.

¹⁹ *Ibid.*

²⁰ Kodilinye, *supra* note 3, p. 1,

²¹ Cooke, *supra* note 17, p 4.

²² Kodilinye, *supra* note 3, P 1.

²³ Martha Chamallas and Jennifer B. Wriggins (2010). *The Measure of Injury: Race, Gender, and Tort law*, New York University Press, New York and London, p. 155.

²⁴ Cooke John, *supra* note 17, p 3.

²⁵ Krzeczunowicz, *supra* note 1, p 11.

²⁶ *Ibid.*

by awarding non-pecuniary compensation whereas monetary awards are supposed to be exceptions.

In contrast, material damage is an injury to a person's economic or financial interest.²⁷ The material damage may be present or future material damage. The present material damage deals with the occurrence of loss (loss or depreciation of asset/increase of liability) or prevention of gain (non-increase of the estate).²⁸ In contrast, future damage is a kind of damage, which has not occurred yet but is certain to occur in the future, and compensation is assessed even if the damage has not yet materialized.²⁹ These various forms of harm arising from extra-contractual liability may be grouped into three categories: personal injury, property damage, and moral harm.³⁰

Property damage, in extra-contractual liability, largely involves damage to the property itself and its consequential economic losses which flow from the damage.³¹ Depending on the nature of the damage and property concerned, points considered in property compensation assessment are diminution in value, profit-earning value, cost of purchasing the replacement, loss of profits, and other related matters.³² So, remedies for property damage are intended to be compensatory to place the claimant into as close as the possible position to which s/he was in before the property damage occurred.³³

Recovery for damaged or destroyed property involves relatively little controversy as compared with personal injury. Yet, there are some challenging issues that need to be seen with caution. These issues include questions such as: how could the loss be assessed? Is it loss of value or cost of replacement or repair that is assessed? How is the amount of loss determined? (Is it determined as per the market price at the time the loss occurred, or by other means?) What if the property has no market price? How do courts determine the amount of compensation in such a situation? It is to be noted that

²⁷ Ibid.

²⁸ Ibid.

²⁹ Id., p 17.

³⁰ Mo Zhang (2011). 'Tort Liabilities and Torts Law: The New Frontier of Chinese Legal Horizon', 10(4) *Richmond Journal of Global Law & Business*, 415-495, p. 470.

³¹ Id., p. 471.

³² Anita Stuhmcke (2001). *Essential Tort law*, Cavendish Publishing, London, pp.143-145.

³³ Id., p. 142.

assessment of damage involves a prediction of what would have happened to the claimant if the accident had not occurred.³⁴

When one sees personal damage, it is an infringement of the right or interests of the life or health of another person, causing injury, disability, or death.³⁵ Unlike property damage, “[e]conomic analysis of damages for death and serious permanent physical injury differs substantially from the standard analysis of property damage because these injuries include ... irreplaceable [harm].”³⁶ In this situation, “victims are not compensated for their total losses arising from an accident that results in death or serious permanent injury. Rather, victims are compensated for the monetary losses associated with the injury plus an award for the ‘pain and suffering’ occasioned by the loss.”³⁷

This makes compensation assessment of personal damages the most controversial area of the extra-contractual liability law.³⁸ Opinions are so divided over who is entitled to compensation and how much.³⁹ The assessment of damages, in such cases, remains the most unsatisfying and challenging aspect of the law of extra-contractual liability.⁴⁰ The actual amount of compensation differs substantially depending on the particular type of personal damage, the age of a victim and employment record, mainly in cases that involve disability or death.⁴¹

Assessment of compensation for personal damage has multifaceted aspects. The first aspect includes the costs and expenses for treatment and rehabilitation, such as medical treatment expenses, nurse fees, travel expenses, and lost wages.⁴² Such kind of compensation seems to be less controversial because most of the costs in this category are measurable. It is possible to calculate more or less exactly the award of such damages: it includes the actual financial losses to the date of trial.⁴³ The issue that may

³⁴ Vivienne Harpwood (2000). *Principles of Tort Law*, (4th ed.), Cavendish Publishing Limited, Great Britain, p. 409.

³⁵ Zang, *supra* note 30, p. 471

³⁶ Jennifer Arlen (2000). “Tort Damages”, *Encyclopedia of Law and Economics*, 682-734, p. 697.

³⁷ *Ibid.*

³⁸ Zang, *supra* note 30, p. 471, and Greene, *supra* note 3, p. 173.

³⁹ Zang, *supra* note 30, p. 471.

⁴⁰ Klar N. Lewis (2011). *Recent Developments in Canadian Law: Tort Law*, Ottawa Law Review Vol. 17, 325-415, p. 407.

⁴¹ Zang, *supra* note 30, p. 471.

⁴² *Ibid.*

⁴³ Harpwood, *supra* note 34, p. 409.

lead to dispute is whether the costs are reasonable or not and determining costs/expenses that were incurred by the victim.⁴⁴

The second aspect of personal damages concerns the victim's physical disabilities for which the costs of disability life assistance equipment and disability indemnity are paid. Compensation for disability encounters certain difficulties. For instance, the cost of disability life assistance equipment may only be a matter of reasonableness, but disability indemnity is considerably knotty.⁴⁵ It is impossible to predict what the claimant has lost for the future or to translate intangible losses such as pain and suffering into money, and it is in this area of the assessment of personal damage where most of the problems arise, and most of the injustice or unfairness is seen to exist.⁴⁶ Besides, what constitutes a disability, what should the disability indemnity cover and determining the amount of disability indemnity remains questionable.

The third aspect of personal injury involves disputes relating to death damages.⁴⁷ Descendants or survivors who sustain material damage as a result of the death of the victim, are thus allowed to claim compensation. The central issue is determining the descendants or survivors that are eligible to claim compensation. An issue also arises as to how the amount of death damage can be determined. The aforementioned points reveal that assessment of compensation for personal injury involves complex and controversial issues highlighted below.

2.2 Damages for Personal Injury

As indicated above, the term personal injury covers physical harm to the person, disease, and illness, including psychiatric illness.⁴⁸ Personal injury sustained by the victim may cause separate facets of damage. The first aspect is the personal injury itself which arises from the loss of some part of the body and may result in loss of pleasure in life.⁴⁹ This kind of personal injury may expose the victim to (loss of physical amenities, pain, shock, and suffering) or various kinds of disabilities (temporary disability, permanent partial or total incapacity), which are difficult to quantify and estimate in monetary terms.⁵⁰ The second dimension relates to the loss of earnings (obtained by the victim

⁴⁴ Zang, *supra* note 30, p. 471.

⁴⁵ *Ibid.*

⁴⁶ Harpwood, *supra* note 34, p. 409.

⁴⁷ Zang, *supra* note 30, p.471.

⁴⁸ Cooke, *supra* note 17, p 514.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

and potential incomes the victim would have continued to earn),⁵¹ medical⁵² and extra expenses such as nursing costs.⁵³

2.1.1 Loss of earnings

Loss of earnings is usually the main item of financial loss for a victim of personal injury. It can be assessed by contrasting the position before and after the accident and assessing the difference. Loss of earnings, which is borne by victims of personal injury, could be actual loss and future loss.⁵⁴ Actual loss of earnings is a loss that runs from the date of the accident to the date decision is made after making the necessary deduction to ascertain the net loss.⁵⁵ On the other hand, “future loss is speculative and relates to losses the plaintiff will suffer after the date of assessment.”⁵⁶ Such kind of loss which has not materialized yet but can be speculated is spread over many years to come and needs to be turned into a single capital sum payable at the date of pronouncement of judgment.⁵⁷

Depending on the severity of the personal injury, such loss of earnings may be total or partial, and for a limited period or continuing.⁵⁸ Moreover, when calculating the loss of future earnings, there are certain factors that are taken into consideration including any possible promotions and salary increases from which the claimant may have benefited during his career had it not been for the injury he/she sustained.⁵⁹ Yet, a minor is the victim of personal injury, the calculation of future loss of earnings becomes complicated since the minor does not have earnings. In some countries, the practices of courts suggest that the awards in these cases are usually very low and it is awarded only exceptionally if the child has a special talent or is exceptionally good at something such as being a promising football player or another similar career.⁶⁰

⁵¹ Cannarsa, *supra* note 11, p. 13

⁵² Cooke, *supra* note 17, p. 514.

⁵³ Cannarsa, *supra* note 11, p. 13.

⁵⁴ Richard Owen (2000). *Essentials Tort Law*, Cavendish Publishing Limited, Great Britain, p. 173.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Cannarsa, *supra* note 11, p. 15.

⁵⁸ *Ibid.*

⁵⁹ Vivienne Harpwood (2007). *Modern Tort Law*, 7th Ed. Routledge-Cavendish, London and New York, p. 435

⁶⁰ *Id.*, p. 436.

2.1.2 Pain and suffering

Pain and suffering are non-pecuniary damages that the victim of personal injury sustains besides loss of earnings.⁶¹ Such sufferings include pain, discomfort, anguish, inconvenience, or emotional trauma that are compensable as non-economic damages.⁶² They are related to the loss of enjoyment of life and the damages for such losses compensate for the frustration and anguish caused by the inability to participate in activities that once brought pleasure.⁶³ While damages like medical expenses and loss of earnings can easily be calculated in economic terms, pain and suffering are completely subjective.⁶⁴ “Non-pecuniary damages cover intangibles such as loss of physical amenity, pain, shock and suffering.”⁶⁵

Intangible injuries cannot be precisely measured, resulting in two types of pain and suffering: physical, mental or both. Physical pain and suffering are the pain of the victim’s actual injuries in his/her physique. Mental pain and suffering are more a by-product of those bodily injuries, which include mental anguish, emotional distress, fear, anger, humiliation, anxiety, and shock. Pain and suffering are subjective feelings: only the victim can explain the pain and the effects of the pain. This, in turn, leaves the judges adjudicating personal injury claims associated with pain and suffering to award what they deem a fair compensation depending on the gravity of the pain and suffering. Courts may set different value and award fair compensation to victims of pain and suffering.⁶⁶

3. Compensation Assessment for Personal Injury: General Considerations

Assessment of compensation presupposes quantifying an actual loss of a victim of personal injury. Quantifying the exact loss is complicated by several factors such as the age of the victim, the extent of the damage, the level of a

⁶¹ Joseph H. King (2004). “Pain and Suffering, Non-economic Damages and the Goals of Tort Law” 57 *Southern Methodist University Law Review*, 163-209, pp. 167- 168.

⁶² *Id.*, 164.

⁶³ *Id.*, 168.

⁶⁴ John J. Kircher (2007). “The Four Faces of Tort Law: Liability for Emotional Harm”, 90 (4) *Marquette Law Review*, 789- 920, p. 802.

⁶⁵ John Cooke (2011). *Law of Tort*, Tenth Edition, Pearson Education Limited, England, p. 543.

⁶⁶ Paul V. Niemeyer (2004). “Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System”, 90(5) *Virginia Law Review*, 1401-1421: 1404.

disability, health, and financial position of a victim. The rule in compensation assessment is a full reward which means compensation must be proportionate to the damage suffered.⁶⁷ As shown above, a victim of personal injury incurs both pecuniary and non-pecuniary losses which include pain and suffering, and loss of a body part.⁶⁸ Pecuniary and non-pecuniary losses are recoverable and compensable, so long as a direct cause-and-effect relationship is established between an act that gives rise to liability and the damage sustained.⁶⁹ Thus, the most relevant issue is what counts as a direct and immediate consequence of the act that gives rise to liability.

Apart from the medical and transport expenses, the victim incurs other expense items that are recoverable contingent on whether they have a direct relation with the act that gives rise to liability. For instance, expenses to cover the cost of special living accommodation or other capital assets can be claimed as part of the award of damage. The measure of damages, in this case, will be the sum spent to obtain the particular facility and its running costs, but not the capital cost of any facility, such as a car, which the claimant would have had. Hence, in the case of a car, the cost of its peculiar adaptation to suit specific disabilities would be claimed but not the full cost of the vehicle itself.⁷⁰

This special adaptation is applicable for accommodation to suit specific disabilities. A victim may be forced to adapt his/her accommodation (house) and its intrinsic elements in a way that fits with the disability. For instance, the victim may be required to move light switches lower down the wall to make it accessible for a victim in wheelchairs, special lifts may need to be installed to allow people to negotiate stairs or special equipment may be needed in restrooms.⁷¹ The claim is that “[i]f the plaintiff has to change to special accommodation due to his injuries, then the additional cost over ordinary accommodation is recoverable.”⁷² It is also argued that the “cost of adapting a car to special needs is also recoverable.”⁷³ Hence, the victim can claim all these expenses (which have a direct association with or emanate from the injury), starting from the date of the accident to the date of the trial.⁷⁴

⁶⁷ Cannarsa, *supra* note 11, p. 12.

⁶⁸ Owen, *supra* note 54, p. 172.

⁶⁹ Cannarsa, *supra* note 11, p. 15.

⁷⁰ Harpwood, *supra* note 34, p. 418.

⁷¹ Harpwood, *supra* note 59, p. 429.

⁷² Owen, *supra* note 54, p. 172.

⁷³ *Ibid.*

⁷⁴ Harpwood, *supra* note 59, p. 429.

Moreover, a victim of physical injury may be exposed to various kinds of inability to enjoy life in various ways. This will include impairment of the senses, inability to run, walk, or play football, and inability to enjoy sexual functions or marriage. The injury may put the claimants in a persistent vegetative state or a coma so that s/he will receive a very high award for loss of amenity.⁷⁵ Thus, the victim is entitled to damages for the inability to enjoy life in various ways and remaining in a persistent vegetative state, in a coma, or for loss of amenity.⁷⁶ It should be noted that

“[s]ome injuries are virtually impossible to assess in money terms. For example, what would be the amount of compensation a court would give for a woman who has lost a fetus and became permanently infertile as a result of medical negligence or a broken arm will be worth a certain amount, loss of an eye worth a certain figure, a scar would be worth a certain sum and so on.”⁷⁷

This requires the court to fix the market value of an injured body part. Computing the market value of a harmed eye, broken leg, or scar is something that courts have to grapple with. Assessing damages for intangibles such as pain, shock, and suffering is impossible.

Other serious difficulties are the problems related to calculating future pecuniary losses and estimating the future medical condition of the victim.⁷⁸ One has to ask about the level of damages for pain, suffering, and loss of amenities in personal injury. As Cannarsa states:

“[p]ain and suffering are subjective and are impossible to measure in terms of money. However, an award will be made to cover nervous shock, psychiatric symptoms, and physical pain and suffering. It is believed that unconscious people do not suffer any pain, and therefore, no award will be made under this head in cases where the claimant is in a coma.”⁷⁹ ... [I]t should be noted that the pain and extra expense the victim of the physical injury incurs should be measured throughout the injury, “whereas the loss of earnings and the enjoyment of life should be measured over the period for which the victim would have enjoyed the benefits.”⁸⁰

⁷⁵ *Id.*, p. 448.

⁷⁶ *Ibid.*

⁷⁷ *Id.*, p. 450.

⁷⁸ Cooke, *supra* note 17, p. 514.

⁷⁹ Harpwood, *supra* note 59, p. 448.

⁸⁰ Cannarsa, *supra* note 11, p. 13.

Forms of payment

Once a claimant succeeds in an action for extra-contractual liability and after courts decide the amount of compensation payable to the victim, the compensation payment modality may take the form of a sum or a periodic payment award.⁸¹ However, there is an argument regarding the choice between a lump sum money *vis-à-vis* periodic payments depending on the form of payment that is more appropriate, particularly in view of the interest of victims.⁸² It is important to note that granting a sum or a periodic payment has its own respective merits and demerits.

Lump-sum awards give wider discretion and freedom to victims of physical injury to choose what they wish to do with their compensation so that they devote their energies to recovery.⁸³ The lump-sum payment also enables “the claimant to concentrate on recovery without reducing their entitlement to compensation, enabling the insurer to pay up and incur no further inconvenience, and enabling the claimant to plan their life, taking into account any disability suffered.”⁸⁴

Despite its multitude of advantages, lump sum payment is not without drawbacks. First, lump-sum payment can never be an accurate reflection of what was lost because the assessment is made “based on a series of predictions and rely on the crude formulae; of multiplier and multiplicand.”⁸⁵ Second, victims of physical injury may “use the capital unwisely; no account can be taken of any improvement or deterioration in the claimant’s medical condition and it is difficult to take account of inflation, which may erode what at the time was adequate compensation.”⁸⁶ Moreover, provisional payments of damages, which can be adjusted at a later date, may be made in cases where the medical prognosis is uncertain and where there is a chance that a serious disease or serious deterioration in the claimant’s physical or mental condition will occur at a later date.⁸⁷

The following section examines the practices of courts in connection with the assessment of compensation for physical injury in Ethiopia. The question is how courts apply the rule of equivalency in assessing compensation for

⁸¹ European Group on Tort Law (2004), *Principles of European Tort Law: Text and Commentary*, Springer, Austria, p. 153.

⁸² *Ibid.*

⁸³ Harpwood, *supra* note 59, p. 458.

⁸⁴ Cooke, *supra* note 17, p., p. 514.

⁸⁵ Harpwood, *supra* note 59, p. 458.

⁸⁶ Cooke, *supra* note 17, p. 515.

⁸⁷ Harpwood, *supra* note 59, p. 459.

physical injury. It also examines what items are included and excluded in different personal injury compensation assessments using selected judicial decisions.

4. Personal Injury Compensation Assessment under Ethiopia's Extra-contractual Liability Law

As mentioned above, the Ethiopian extra-contractual liability law makes a person responsible for damage arising from his/her own fault, for damage caused by things that are under his/her control or a third person to whom he is responsible.⁸⁸ The Civil Code requires a respondent to make the damage good to put a victim in a position had his/her property has not been destroyed.⁸⁹ Like other legal systems, the first mode of redress is monetary compensation, followed by other remedies such as injunction and restitution.⁹⁰ The Civil Code gives wider discretion to courts to choose an appropriate remedy that fits with the damage and makes the damage good. In this logic, courts may award either monetary compensation only, injunction, or restitution (in lieu of/addition to compensation).⁹¹

If courts decide to award monetary compensation, they are expected to use a rule of equivalency as their vital consideration in extra-contractual liability decisions. It follows that a victim is compensated for what s/he has lost by the act giving rise to liability.⁹² The Civil Code vividly shows the kind of compensation a victim of physical injury is entitled to. It could be present or future damage.⁹³ As stipulated in the Civil Code, future damage shall be made good without waiting for it to materialize so long as it is certain to occur. Thus, irrespective of the kind of damage (present or future), the amount of compensation due by the person legally declared liable shall be equal to the damage caused to the victim by the act giving rise to the liability.

There are issues that arise concerning the assessment of sum of money that will be given to a victim who loses his/her job permanently, part of a body, or is permanently disabled. As indicated earlier, it is difficult to determine the market value of an injured body part, such as a harmed eye, broken leg, or damaged teeth, or the amount of compensation given to a woman who lost a

⁸⁸ See the Civil Code, Article 2027.

⁸⁹ *Id.*, Articles 2028 *cum.* 2090.

⁹⁰ *Id.*, Article 2090(1) & (2).

⁹¹ *Id.*, Article 2090(2).

⁹² Owen, *supra* note 54, p. 168; see also the Civil Code, Article 2090(2).

⁹³ The Civil Code, Articles 2091 & 2092.

fetus and became permanently infertile due to physical injury from a car accident. The Civil Code does not give detailed provisions that indicate how courts calculate compensation in such cases. The compensation assessment could be more complex when minors, students or self-employed persons sustain severe physical injury, permanent disability or loss of part of a body.

How do courts calculate compensation for the victim who graduated from a university but has no past work experience? What is the equivalent compensation awarded to a minor who sustains total permanent disability, and how do courts assess compensation? What amount of compensation would put a permanently disabled minor in a position s/he would have been in if the accident had not occurred? What is the amount of compensation a court can give for a chef (professional cook) who loses his/her ability to taste or smell due to an accident? What if the chef lost his business and livelihood since his senses are compromised? What references do courts use to assess compensation in the above cases? Can courts use age, employment record, health condition, financial position, unique talent or the prospect of a victim to earn income in the future as a reference to compute the amount of compensation? This shows that the assessment of compensation for cases involving physical injury has many variables to be taken into account.

Decisions –such as how much is enough and what type of items are considered in quantifying the amount of compensation– are knotty issues since the provisions of the Civil Code that regulate the assessment of compensation lack answers to these matters. Thus, courts encounter problems in quantifying reasonable damage the victim sustains and computing the amount of compensation.

Form the above discussion, it is logical to argue that compensation assessment for physical injury remains the most unsatisfying in cases where the harm involves the loss of part of the body. This is also indirectly inferred from the Civil Code provisions that allow the insured victim and victim pensioned off to bring an action for compensation for the damage s/he has suffered on the same term as though he had not been insured and had not received a pension, respectively.⁹⁴ These facts indicate that compensation assessment is the most challenging task for courts, and a reference guide is needed in this regard.

The Cassation Bench of the Federal Supreme Court, observing a lack of clarity in the Civil code in this regard, has (in a series of its decisions) underscored that the aim of extra-contractual liability law is neither to enrich

⁹⁴ Id., Articles 2093 & 2094.

the victim by giving an exaggerated compensation nor undermine the damage that the victim sustained by awarding a small amount of damages.⁹⁵ This is the guiding principle common to all extra-contractual liability cases, be it for damage to property or personal injury. Hence, the claimant must show the occurrence of damage in his/her legitimate interest, the extent of the damage, and the person who caused the damage.

The damage which is caused to the victim may be material and moral harm. Concomitant with the types of damage, the Civil Code envisages material and moral damages that can be granted to a victim by way of redress for the harm or loss s/he sustains. It is important to note, in case of property damage, the applicant may claim either for costs of damaged property or the cost of a substitute or/and loss of profits. The extent of the compensation could be assessed based on the magnitude of the damaged property. This is with an assumption that the award should put the victim in a pecuniary position that prevailed before his/her property was destroyed.⁹⁶

There is a common understanding that harms resulting from property damage are losses that are capable of being calculated more or less precisely. However, applying the principle of equivalency could be very problematic in cases where the harm involves physical injury. As stated earlier, there are serious practical difficulties in assessing precisely the actual financial loss, predicting exactly what the claimant has lost for the future, translating intangible losses such as pain and suffering into money, etc. This may demand a reader to pose a question about how courts value and determine the loss in personal injury cases. It is argued that “[d]amages are awarded for the injury sustained by the victim, and for all the consequential losses and expense which flow from the injury.”⁹⁷

Depending on the nature of the interest harmed, damage sustained by the claimant of personal injury may be pecuniary loss or non-pecuniary losses. It is clear in the Civil Code that an applicant is entitled to claim the cost of treatment and care that s/he reasonably incurs as a result of his/her injuries.

⁹⁵ See Zeyneba Hassen vs. Firew Tekalign (Cassation File No. 19338, Federal Supreme Court Cassation Division Case Reports, Vol. 5, pp. 106-112,) and Genet Getachew and Nahom Abebe vs. Wondwesen Hailu (Cassation File No. 34138, Federal Supreme Court Cassation Division Case Reports, Vol. 5, pp. 171-173). In both decisions, the Federal Supreme Court Cassation Bench underlined that Article 2091 and 2092 should be interpreted in a way the principle of equivalency is implemented effectively.

⁹⁶ Steele Jenny (2014), *Tort Law: Text, Cases, and Materials*, 3rd Ed., Oxford University Press, New York, p. 454.

⁹⁷ Cannarsa, *supra* note 11, p. 12.

However, it is inexplicit in the Civil Code whether the plaintiff can claim compensation for pain and suffering and loss of amenity other than moral compensation. Such kinds of claims are incapable of precise calculation. Thus, courts encounter problems in quantifying reasonable cost and expenses for treatment and rehabilitation, assessing victims' disability, computing the amount of disability indemnity and also what constitutes a disability and related issues.

The compensation assessment could be more complicated if the damage is sustained by children and students. A problem arises in determining the value of the lost earning capacity of children and students who have no past work experience but probably would have gone into the paid work or who would likely have been able to earn more income than they are able to earn given the long-term disabling condition caused by the act giving rise to liability. The issue that needs an answer is whether minor children victims of physical injury should be compensated. If yes, how is the amount assessed? In this regard, the Federal Cassation Bench, on the case *Ato Birhanu Feyissa vs. Nile Insurance S.C. and Ato Solomon Ahmed*, decided that it is not always necessary for the victim to be above 18 years and earning income to claim compensation.⁹⁸ Under such situation, courts are expected to apply equity and fairness to award compensation (as per Article 2095 of the Civil Code) to persons of next of kin.

Another issue worth discussing is determining a value of a loss of future earning capacity of a victim who has had a past history of employment but who was unemployed at the time of the extra-contractual wrong. Courts have faced difficulty in compensation assessment for such cases, especially when the victim has been unemployed for quite some time. This kind of scenario is

⁹⁸ In *Ato Birhanu Feyissa vs. Nile Insurance S.C. and Ato Solomon Ahmed*, the applicant, sought compensation for the death of his 11 years son. The applicant alleged that the respondent (Ato Solomon Ahmed), the driver of Nile Insurance S.C, ran over his 11 years son. Owing to the death of his son in the fatal accident, the applicant claimed the court to award compensation alleging that had it not been for the accident, his son (after attaining 18) would have provided him maintenance and other financial support. The respondent, on his part, argued that the applicant has not provided proof on whether his son would even have his own earnings let alone provide financial support. The Cassation Bench, after thoroughly examining the case and the relevant provisions of the civil code (Article 2091, 2092 and 2095), revised the decisions of lower courts by stating that the mere fact the victim is a minor and not earning income is not a bar to claim compensation by the next of kin. The Cassation Bench awarded moral compensation and material damages to Ato Birhanu using the principle of equity. (See Cassation File No. 38117, Federal Supreme Court Cassation Division Case Reports, Vol. 11, pp. 423-425).

one of the instances where the obvious difference is observed in the courts' compensation assessment decision. To attain consistent application of the law and narrow down the difference observed in the decisions of the courts, the Federal Cassation Bench, in *Ato Ayele Admassu vs. Ato Ajebu Shume*, clearly stated that it is not necessary for the claimant of compensation to earn income at the time when the extra-contractually wrongful act occurred.⁹⁹ The Federal Cassation Bench saw the matter in light of the constitutional right of a person to be protected against an act that endangers one's liberty, physical integrity, and freedom.

The cassation decision noted that the aim of extra-contractual liability law is not to measure damage based on special utility the victim losses regarding a specific job. Instead, it assessed injury based on the general utility rule so that an assessment is made about the incapacities the victim has to live with as a normal person as a result of the extra-contractual act. Thus, to get compensation, it is not a prerequisite for a physically injured victim to be employed or earn income at the time s/he sustained the injury. In this situation, courts are required to equitably decide compensation as per Article 2102 (1) of the Civil Code rather than entirely rejecting the claim.¹⁰⁰

5. Practices of Personal Injury Compensation Assessment: Overview of Some Judicial Decisions

The SNNP and the recently formed Sidama Regional State's courts are organized in accordance with the FDRE Constitution.¹⁰¹ Under respective Court Establishment laws of the two regions, the courts have material jurisdiction over several criminal and civil matters. One of the civil matters that are reviewed by the state courts is extra-contractual liability cases. In these courts, extra-contractual liability cases are settled as per Book IV, Title XIII of the 1960 Civil Code.

According to the Civil Code, the damages payable to a victim of personal injury, depending on the nature of the harm, could be moral and material. As a rule, moral harm may not be made good by monetary compensation.¹⁰² Yet, a pecuniary compensation can be awarded to victims of moral injury if an express stipulation exists in the extra-contractual liability law that pronounces

⁹⁹ *Ayele Admassu vs. Ato Ajebu Shume* (See Cassation File No. 42962, Federal Supreme Court Cassation Division Case Reports, Vol. 10, pp. 242-243).

¹⁰⁰ *Ibid.*

¹⁰¹ FDRE Constitution, Article 78.

¹⁰² Civil Code, Article 2105(1).

moral harm shall be made good by way of damages.¹⁰³ Moral harm resulting from extra-contractual liability can be remedied in monetary terms when the damage is related to physical injuries or death. The Civil Code stipulates that, in the event of harm that involves physical injuries or death, courts may award fair moral compensation to the victim of bodily injury or, in the event of his/her death to his/her family.¹⁰⁴ Hence, courts have the discretion either to grant, reduce or deny compensation. In most of the cases examined in this article, courts award moral compensation depending on the nature and intensity of the moral harm.¹⁰⁵

5.1 The practice of moral compensation assessment for personal injury

The Civil Code has stipulated the maximum amount of moral compensation that courts can award to a victim of personal injury or his/her family in the event of death.¹⁰⁶ Many question the fairness and suitability of the one thousand Ethiopian Birr threshold as the maximum moral compensation that the law has set. This concern is logical since it has been more than six decades since the Civil Code was enacted in 1960. Since then, significant changes have been made that resulted in the devaluation of Birr and the reduction of its purchasing power. In this regard, Negatu argues that during the time of the provision's enactment (in 1960) Birr 1,000 could suffice to construct a house to a poor person, but at present it cannot even be enough to buy a single suit:

¹⁰³ Id., Article 2105.

¹⁰⁴ Id., Article 2113.

¹⁰⁵ In *Belaynesh Balcha vs. Admassu Duba*, the applicant, W/ro Belaynesh Balcha, stated that Ato Admassu Duba (respondent) attacked her and snatched her bag (which has 9,500 Birr) and pushed her into a water ditch. As a result, the applicant sustained major injury including sever crack in her left knee for which she demanded 33, 666 and 1,000 Birr compensation for material and moral injury respectively. The respondent contested the credibility of evidence produced and requested the court to relieve him from any liability. The court, after examining the evidence produced and the respondent's criminal conviction, awarded the applicant 4,666 Birr for the medical expenses, 5,000 Birr to cover the costs she incurred to buy food and other necessary items and 1,000 Birr for the moral injury. (File No. 15201, Wolayita Sodo, First Instance Court (decision made, 23/7/2007EC). See also *Habitamu Tadesse vs. Afework Elias*. In this case, the applicant alleged that, due to the acts of the respondent, he suffered physical injury. He claimed material and moral damages. The court awarded 1,000 Birr moral compensation. (Hawassa City First Instance Court, File No. 31148, decision render, 22/7/2006EC). Similarly, in *Ato Temesegen Abinew vs, Ato Ababayehu Temsegen*, the court awarded 1,000 Birr moral compensation for moral injury arising from the extra-contractually wrongful acts of the respondent. (File No. 06382, Hawassa City First Instance Court, decision render, 05/04/2009EC).

¹⁰⁶ See Civil Code, Article 2116(3).

ሕጋችን ለሕሊና ጉዳት የሚከፈለው ካሳ በማንኛውም ሁኔታ ከአንድ ሺህ ብር ሊበልጥ አይችልም ስለሚል ዳኞች ካሳውን ወደ አንድ ሺህ ብር ዝቅ ማድረግ ይኖርባቸዋል። ሕጉ በወጣበት በ1950ዎቹ ዓመታት ይህ ገንዘብ ለአንድ ደሃ ቤት ሊሠራለት ይችል ነበር። አሁን ግን አንድ ሙሉ ልብስ እንኳን አይገዛም። በአሜሪካን አገር ለእንደዚህ ዓይነቱ ኪሣራ እስከ 525 ሺህ ዶላር የተከፈለበት ጊዜ አለ።¹⁰⁷

According to Nigatu, a thousand Birr maximum ceiling compensation award is inconsequential in redressing the victim's morals or mental distress. It seems that applying the provision as it is blurs the rationality of a compensation award, which is one of the challenges our courts face. So, the moral damage compensation issue requires due attention because the ceiling of Birr 1,000 for compensation for moral damage does not conform to justice and the purpose of the law of extra-contractual liability. The issue calls for a legal reform that takes into consideration current realities.

The Copyright and Neighbouring Rights Protection Proclamation can be taken as an exemplary law since it allows a 100,000 birr payment as moral damage compensation taking current developments into account.¹⁰⁸ One can imagine the mental distress of a woman who has lost a fetus and is infertile due to medical negligence, a person with a broken leg who is disabled permanently, or a person who lost two eyes due to an accident. While recognizing the seriousness of the damage and mental distress a copyright holder sustains due to the violation of their rights, it is equally significant to reiterate severity of the mental disruption victims of physical injury suffer. If the law undermines the latter and upholds the former forms of damage only, the ultimate goal of the law of compensation would be ignored and unfairness prevails.

Despite the above discussion, there is no agreement among courts in deciding the maximum amount of moral compensation to be awarded to the family members in the event of the death of the victim and when there is more than one person eligible to receive moral compensation. The issues that are bound to arise are whether each eligible family member is entitled to 1,000 Birr moral compensation separately or whether the 1,000 Birr moral compensation is apportioned to eligible family members.

¹⁰⁷ Negatu Tesfaye (2004)/ (1996 Ethiopian Calendar). *Extra contractual Liability and Unjust Enrichment* (Amharic), Addis Ababa: Artistic Printing Press, p. 196.

¹⁰⁸ Proclamation No. 410/2004 Copyright and Neighboring Rights Protection Proclamation, as amended by Proclamation No. 872/2014 Copyright and Neighbouring Rights Protection (Amendment) Proclamation. This provision reads: “The amount of compensation for moral damage shall be determined based on the extent of the damage and not be less than Birr 100,000 (Birr one hundred thousand).”

In *Awash Insurance S.C. vs. Ato Mohammed and W/ro Zahara*, the applicant (Awash Insurance S.C.) brought the case to the Federal Cassation bench. The applicant in the lower courts and the current respondent (Ato Mohammed and W/ro Zahara) individually petitioned for moral compensation following the death of their son in a fatal accident. The lower courts consistently awarded 1,000 Birr moral compensation for each applicant (2,000 Birr total). It is for this reason the applicant, Awash Insurance S.C., petitioned the Cassation, alleging that the lower courts made a fundamental error of law by granting a moral compensation exceeding 1,000 Birr. In this case, the Federal Cassation Bench's decision stressed that the maximum amount that can be awarded as moral compensation should not exceed 1000 Birr, irrespective of the number of the awardees.¹⁰⁹ This Cassation decision can be cited in similar extra-contractual liability cases, which in turn would bring uniformity in future decisions of the courts.

Another related issue that needs to be raised is whether courts are always obliged to award moral compensation. Court practice shows that courts are not obliged to always accept moral compensation claims. In *Feyissa Filha vs. Ato Yishak Loza, Wolayita Sodo University, and Ethiopian Insurance Company*,¹¹⁰ the applicant (Ato Feyissa Filha) brought a case to court claiming both moral and material compensation since he sustained bodily injury after being hit by a car owned by Wolaita Sodo University. The court rejected the moral compensation claim stating the applicant suffered a temporary injury and is likely to recover soon. The court further stated that the applicant hardly suffered moral damage for the temporary physical injury. This decision of the court leads to the question of whether sustaining a permanent injury is a requirement to claim compensation.

5.2 The practice of material compensation assessment for personal injury

In the above case (*Ato Feyissa Filha vs. Ato Yishak Loza, Wolayita Sodo University, and Ethiopian Insurance Company* case), the applicant (Ato Feyissa Filha) stated that he sustained a physical injury on his head, left eye and hand. The plaintiff claimed that, due to the accident, he incurred Birr 965 for transportation, Birr 3,107 for the medication (treatment), Birr 11,940 as

¹⁰⁹ *Awash Insurance S.C. vs. Ato Mohammed Aba and W/ro Zahara Abanur* (Cassation File No. 69428, Federal Supreme Court Cassation Division Case Reports, Vol. 13, pp. 486-487).

¹¹⁰ *Feyissa Filha vs. Ato Yishak Loza, Wolaita Sodo University and Ethiopian Insurance Company* (File No. 31148, Wolaita Sodo High Court decision made, 29/12/2007EC).

lost income for six months due to the injury he sustained, and Birr 239,760 compensation for alleged working capacity reduction by 30%.¹¹¹

On the other hand, the first respondent (Ato Yishak Loza) denied his liability citing his acquittal from a criminal suit for the same causes of action. The second respondent, Wolaita Sodo University requested that Ethiopian Insurance Company be a party in the case since the alleged vehicle has insurance coverage. The Ethiopian Insurance Company, on its part, challenged the six months of lost income alleging that the applicant was hospitalized for three days only. It further stated that the applicant sustained no permanent disability, and no medical board has declared his working capacity has been reduced by 30%.

After examining the allegation and evidence produced, the court rejected the applicant's claim of having lost 30% of his working capacity since the Sodo Hospital's medical report did not show any permanent disability. Yet, the court confirmed that the applicant did not earn wages for three months and awarded Birr 5,400 (i.e., 30 days x 60 Birr/day x 3 months). Concerning the claims related to expenses for medical treatment, the court awarded Birr 1,203 since this was the only expense supported by valid evidence. The court ordered Birr 2,000 for other expenses such as transportation, food and traditional medication. As seen from the case, all costs and expenses that have a direct relationship with the physical injury were taken into account. The court also tried to apply the rule of equivalency to assess the extent of the damage. This is consistent with the aim of extra-contractual liability law that stipulates that in case a person sustains a material injury, the material damages due by the person legally declared to be liable shall be equal to the damage caused to the victim by the act giving rise to liability.¹¹²

It is important to note that, in a few circumstances, courts are authorized to deviate from the *rule of equivalence*. This could happen if the damage is due partly to the fault of the victim,¹¹³ the damage was committed by a person who was not in a state to appreciate the wrongful nature of his/her conduct¹¹⁴ or the damage expanded beyond what could reasonably be expected in

¹¹¹ The applicant stated that he is 18 years old now and could live up to 55 years. He computed the 239,760 Birr compensation using his current age, expected life time, his average daily income and working capacity reeducation (i.e., 30% x 12 months x 30 days x 37 years x 60 Birr/day).

¹¹² See the Civil Code, Article 2090.

¹¹³ Id., Article 2098 and 2086(2).

¹¹⁴ Id., Article 2099.

consequence of unforeseeable circumstances.¹¹⁵ In *W/ro Adanech Qolcha vs. Ethiopian Electric Power Corporation, Areka District*,¹¹⁶ the applicant (W/ro Adanech Qolcha) filed a suit following the death of her husband Ato Tendamo Chundara. Ato Tendamo died of electric shock as a result of a collision between the cable and the tree while he tried to cut a tree in his compound over which an electric cable passed.

The applicant alleged that the deceased (Ato Tendamo, who was 30 years old and is survived by two children) was trying to cut trees to avoid possible destruction to his property and the damage happened due to the respondent's fault. The applicant claimed compensation for lost income of Birr 300,000 stating that the deceased used to get a yearly income of Birr 20,000 from farming activities, –which he would have continued earning if he had at least lived 15 additional years. He also worked as a laborer at a company and was paid 30 Birr per day and 10,950 Birr per year making the income for 15 years 164,250 Birr. The plaintiff further alleged that she and her sons sustained moral injury as a result of her husband's death and should be compensated stating that she is in charge of taking care of the children. So, she claimed compensation of 17,000 Birr. She additionally claimed 17,590 Birr for funeral expenses she incurred. The total compensation the applicant claimed was 498,840 Birr.

The respondent rejected its responsibility for the death of the applicant's husband and the compensation claim because it is forbidden to construct a house or plant a tree under or near an operating electric cable (citing Article 47(2) of Council of Ministers Regulation No. 49/1991). It is the deceased's own fault to try to cut a tree over which a cable is passing. The district, while installing the electric transmission in the beginning had checked whether the cables were 9 meters above the ground and had cut trees near or below these transmission cables. The deceased planted the tree after the district installed the transmission cables.

The court, after examining the allegations and the evidence presented, concluded that the deceased was at fault for planting a tree under the electric cables after the installation was made and for cutting the tree knowing the probable occurrence of electric collision which could create fire. Hence, the court decided that Ethiopian Electric Power Corporation is not liable for the death of the applicant's husband and is not obliged to pay compensation. One

¹¹⁵ Id., Article 2101.

¹¹⁶ *W/ro Adanech Qolcha vs. Ethiopian Electric Power Corporation Areka District*, (File No. 29979, Wolayita Sodo, High Court decision made, 26/01/2008EC).

of the limitations seen in this case is that the court failed to clearly show the contribution of the applicant and respondent for the occurrence of the damage.

According to Article 2086 (2) of the Civil Code, persons declared legally liable shall only be relieved of their liability where the damage is due solely or partly to the fault of the victim. In this regard, in *Ethiopian Electric Power Corporation vs. Ato Woldu G/Selassie*, the Federal Cassation Bench has decided that courts should examine the contribution of a victim for the occurrence of the damage before determining the liability of the respondent party.¹¹⁷ It is only when the victim has fully or at least partially contributed their part by their negligence or fault for the occurrence of damage that the respondent would be relieved from liability.

In similar cases in which Ethiopian Electric Power Corporation was a party, the Federal Cassation Bench emphasized that in determining whether there is fault and liability, courts should examine whether the victim is at fault and whether the necessary precautions were followed in installing electric transmission and channeling electric cables.¹¹⁸ In these decisions, the Cassation Bench underlined that it is essential to determine whether the Corporation is fully or partially liable or not liable in order to assess the amount of compensation. Thus, a respondent shall be liable depending on the contribution of the other party towards causing the damage.

This shows that one of the purposes of the extra-contractual liability law is to ensure that the compensation awarded to the victim is adequate, and courts should assess the magnitude of the damage and award reasonable compensation to the victim of personal injury. These rules and exceptions of equivalence are applicable for both present as well as future damage, which is certain to occur, and it shall be made good without waiting for it to materialize. It should be noted that the rules and exceptions of equivalence can also be used for personal injuries.

¹¹⁷ *Ethiopian Electric Power Corporation vs. Ato Woldu G/Selassie* (Cassation File No. 57904, Federal Supreme Court Cassation Division Case Reports, Vol. 11, pp. 486-487).

¹¹⁸ *Ethiopian Electric Power Corporation vs. Ato Woldemichael Shanko*, (Cassation File No. 63231, Federal Supreme Court Cassation Division Case Reports, Vol. 13, pp. 483-485), and *Meki District vs. Wro Bassa Nanama, Ato Banke Measso and W/ro Ayule Megerssa* (Cassation File No. 106450, Federal Supreme Court Cassation Division Case Reports, Vol. 18, pp. 212- 215).

6. Factors Considered in Personal Injury Compensation Assessment

Ethiopia's extra-contractual liability law provides for a few *guiding principles* that have to be taken into consideration at the time of making a compensation assessment for personal injury. One of the guiding principles relates to a victim of personal injury who is insured or who receives a pension. In this case, the law stipulates that an insured person can claim compensation for the damage s/he has suffered on the same terms as though he had not been insured. For that matter, the insurer may not claim compensation on its own behalf from the person who, by his/her act, has brought the risk covered by the insurance contract unless the insurance contract clearly provides for the subrogation of the insurer to the victim's claim against the person liable.¹¹⁹ Similarly, if a person who receives a pension sustains damage due to the acts of another person, a victim may claim compensation for the damage s/he has suffered on the same terms as though s/he had not received a pension.¹²⁰ The law also stipulates that the person paying the pension may not be allowed to subrogate the victim to claim compensation from the person who by his/her act has caused the pension to fall due.¹²¹

Courts are authorized to assess the extent of the damage and award fair compensation guided by the rule of equivalency. The most important issues in compensation assessment are defining the costs and expenses that could be considered in assessing compensation to a victim of personal injury. The Ethiopian extra-contractual liability legal regime does not stipulate which items (costs and expenses) are included and excluded from the compensation assessment. The Civil Code simply requires the offender to pay damages to a victim equivalent to the extent of the personal injury. In this sense, the essential aim of the extra-contractual liability legal regime of any nation is to compensate persons harmed by the wrongful conduct of others and put a claimant in the position s/he would have been in if the accident had never happened.¹²² Hence, as the items (to be considered as expenses that arise from extra-contractual liability), which may be claimed by the victim person, could be many and diverse, courts should define those expenses that have direct and immediate consequence of the extra-contractual liability than the others.

¹¹⁹ See Civil Code, Article 2093.

¹²⁰ *Id.*, Article 2094 Civil Code.

¹²¹ *Ibid.*

¹²² Kodilinye, *supra* note 3, p. 1, and Harpwood, *supra* note 59, p. 419.

For instance, in *Ato Desita Kayam vs. Hawassa City Municipality and Ato Tomas Lamaro*,¹²³ the applicant alleged that the car belonging to the first respondent (Hawassa City Municipality) caused physical injury that reduced his working ability by 20%. Citing this, the applicant claimed the respondent to cover the expenses he incurred and the money he needed to recover from the injury. The respondents, on their part, stated that they are not liable for the damage since the incident occurred entirely due to the fault of the applicant. The court, after examining the allegation and evidence, awarded 39,800 Birr for his working ability reduction, 65,040 Birr for transport and accommodation, 3,000 Birr for nursing, and 1,000 Birr as moral compensation. One may argue that the 3,000 Birr compensation the court awarded for nursing has direct and immediate consequences for the extra-contractually wrongful act. The decision of the court is consistent with the essence of the law of extra-contractual liability.

Yet, sometimes it could be difficult to determine the direct and immediate consequences of the extra-contractual act. For instance, in *Ato Tigilu Koniche (applicant) vs. Ato Diress Kebede, Dinkineh Kebede and Wonde Abebe (respondents)*, the applicant alleged that he was beaten by the respondents and sustained physical injury.¹²⁴ The relief the applicant sought was 1,914 Birr for medical treatment, 5,500 Birr for transport costs, 11,450 for rehabilitation, 17,500 Birr for lost income, 1,000 Birr as moral compensation and 4,000 Birr which he alleged that he lost during the attack. The respondents, without opposing the occurrence of the harm and extent of the harm, contested the amount of compensation the applicant sought. The court, after examining the evidence produced, ordered the defendants to pay 1,817 Birr to cover the victim's medical and transport expenses, 2,500 Birr for rehabilitation, 1,000 Birr as moral compensation, and 4,000 Birr the applicant lost during the attack. One may raise concern whether the 4,000 Birr has a direct relation with or a consequence of the extra-contractual wrongful act.

In another case, a court considered the expense that has a remote connection to the physical injury that is sustained. This is seen in *Ato Tamirat Menigiste and W/ro Hanna Firew (applicants) vs. Hawassa University (respondent)*.¹²⁵ The applicants claimed that the respondent left the pool it dug for a research

¹²³ *Ato Desita Kayam vs. Hawassa City municipality and Ato Tomas Lamaro*, (File No. 19693, Hawassa City High Court, decision made, 19/05/2009EC).

¹²⁴ *Ato Tigilu Koniche vs. Ato Diress Kebede, Dinkineh Kebede and Wonde Abebe*, (File No. 10413, Hawassa City First Instance Court decision made, 11/04/2009EC).

¹²⁵ *Ato Tamirat Menigiste and W/ro Hanna Firew vs. Hawassa University*, (File No. 19693, Hawassa City High Court, decision made, 19/05/2009EC).

purpose uncovered and without putting a sign that shows its depth. The applicants stated that they lost their 11 years son while he tried to swim in the pool assuming that it is not deep. The applicants alleged they had closed their business for more than three months due to the death of their son, and they also incurred funeral expenses and suffered material damage and the financial support their kid would have provided them had it not been for his death.

The respondent rejected the claim noting that the pool was dug in the University's compound and the deceased entered the compound illegally. Stating this, it asked the court to relieve it from liability. Yet, the court decided the respondent to pay 20,000 Birr for funeral expenses, 30, 000 Birr for the income the applicants lost due to the closure of their business for three months, and 25,200 Birr for lost support had it not been for the kid's untimely death, 52,800 Birr to cover the expenses they incurred while raising him.

The issue that is bound to arise is whether all items considered by the court have a direct and immediate consequence of the incident. One may say that the 20,000 Birr decided for funeral expenses, 30, 000 Birr for the lost income due to the closure of their business center, and 25,200 Birr to compensate for the lost support their kid would have provided them may be considered as the direct and immediate consequence of the extra-contractual wrong. Yet, it is logical to argue that the 52,800 Birr expense they invested for the upbringing of the child has a remote connection to count as the direct and immediate consequence of the extra-contractual wrongful act.

7. Assessment of Compensation for Physical Injury that Causes Disability or Death

7.1 Assessment of compensation for physical injury that does not cause disability

A victim may sustain personal injury which does not involve disability that can be quantified in percentage and does not inhibit the victim from his/her normal enjoyment of life. Although a victim does not sustain disability, the injury may expose him/her to various costs and expenses which can be borne for treatment and rehabilitation, such as medical expenses, nurse fees, travel expenses, lost wages, and prevention of gain.¹²⁶ In rare cases, items which may be claimed as medical expenses could be many and diverse. It is the main task of the court to distinguish costs and expenses that are associated with the damage from those costs and expenses that have remote or no relation. Courts must see the reasonableness and appropriateness of the expenses requested by

¹²⁶ Zang, *supra* note 30, p. 471.

the applicant. The victim may be awarded compensation for temporary loss of earnings. The cases below show how courts resolve issues of compensation assessment for physical injuries that do not involve disability.

In *Ato Michael Eglo vs. Ato Asamnew Tobe*,¹²⁷ the applicant, Ato Michael Eglo petitioned that the respondent intentionally pushed him into a machine, which resulted in the loss of his left-hand middle finger. As a result, he incurred 3000 Birr expenses for medication, transportation, food and other related services. The applicant further claimed that, due to the permanent injury he sustained and his inability to work, he claimed 1000 birr for the moral damage, 8580 Birr lost income from his inability to work for six months and 60,000 Birr as future damage due to his permanent personal injury (which was calculated 55 Birr per day assuming that he (aged 25 years) would live for 33 years).

The respondent alleged that the injury was a minor accident, which does not disable the applicant permanently and expose him to any future damage. He also noted that he covered the medical costs of the applicant and took care of him by taking him to his home. The court then decided that the respondent should pay 1000 Birr for moral compensation and 4000 Birr for actual compensation based on fairness and equity. The 4000 Birr compensation award for physical injury the applicant sustained in the absence of disability is consistent with the above cassation decision (see cassation File No. 42962).

Another case is between *Ato Turi Tunga* (applicant) vs. *Ato Tirbe Tgre* (respondent).¹²⁸ The applicant alleged that the respondent beat him with a rock and pickaxe so that he was found guilty of attempted murder and was serving his sentence. The applicant, stating these facts, requested the court to award 760 Birr (the money he allegedly paid for 38 individuals who took him to the hospital), 600 Birr (for three witnesses to cover their per diem and transportation expenses), and 1,200 Birr (for food and related expense), 9,000 Birr for lost income due to his inability to work for three months and 1,000 Birr moral compensation. The respondent replied that the claims raised by the applicant did not show actual losses he incurred, and the evidence is invalid.

The court rejected the 760 Birr compensation claim made by the applicant noting it is unusual for the community to ask for payment for helping a victim who sustained physical injury. Regarding the cost of witnesses, the court

¹²⁷ *Ato Michael Eglo vs. Asamnew Tobe*, (File No. 17084 Wolayita Sodo First Instance Court, decision made, 27/7/2007EC).

¹²⁸ *Ato Turi Tunga vs. Tirbe Tgre*, (File No. 19587, Arba Minch City First Instance Court, decision made, 03/03/2008 EC).

accepted the claim and awarded 300 Birr compensation. The court also awarded 1,000 Birr for food expenses and 900 Birr for moral injury. The court found the physical injury alleged by the plaintiff is a minor one; hence it decided the claim of the loss of income for six months is unacceptable.

7.2 Assessment of Compensation in Case of Disability

As stated above, a victim of physical injury, apart from pecuniary loss and pain and suffering, may lose some part of his/her body, which may also include loss of pleasure of life followed by loss of job and the occurrence of disability of various kinds. In this case, in addition to the loss of earnings and expenses for treatment and rehabilitation, the victim may sustain temporary or permanent disability for which the costs of disability life assistance equipment and disability indemnity are supposed to be paid.¹²⁹ In such a case, compensation is awarded in order to provide security and an easier lifestyle since the damage that involves loss of parts of the body, or disability, has no real monetary equivalence. If the victim has been employed at a fixed salary or wage, such loss of income can commonly be calculated precisely; but where s/he is self-employed, it could be estimated by reference to his/her past earnings.¹³⁰ The situation is more difficult if a victim is unemployed. The following cases show how courts assess compensation where victims sustain various disabilities.

In *Ato Samson Kura (applicant) vs. Gats Agro-Industry Private Limited partnership, Ato Eshetu Abebe and Niyala Insurance Company (respondents)*,¹³¹ the applicant stated that a car belonging to the first respondent caused physical injury to his left leg, which reduced his ability to work by fifty percent (50%). Due to the physical injury, the applicant claimed (1) 168,000 Birr compensation for the reduction of his ability to work by 50%, (2) 1000 Birr moral compensation, and (3) 70,000 Birr for medical and transport expenses. The respondents argued that the claimed lost income and expenses are exaggerated. The court, looking into the medical report, verified that the applicant's ability to work is reduced by twenty percent (20%) so it awarded 28,800 Birr for his workability reduction, using 1,200 Birr as his monthly income. The court also awarded 4,332 Birr and 2,000 Birr to cover his medical and transport expenses, respectively. The court further awarded 3,500 Birr for other expenses based on equity and 1,000 Birr moral

¹²⁹ Zang, *supra* note 30, p. 471.

¹³⁰ Kodilinye, *supra* note 3, p. 477.

¹³¹ *Ato Samson Kura vs. Gats Agro Industry Private Limited partnership, Ato Eshetu Abebe and Niyala Insurance Company*, (File No. 19425, Hawassa City High Court, decision made on 11/04/2009EC).

compensation. It is not clear and logical why the court reduced the monthly income from 28,000 Birr to 1,200 Birr. Moreover, the item considered as 'other expenses' is unclear from the decision of the court.

In *Ato Anchuro Umma* (applicant) vs. *Ato Hanota Umma* (respondent), the applicant alleged that the respondent injured him by which he alleged that his working capacity was reduced by 40%.¹³² The applicant claimed that he cannot undertake his farming activities because of the permanent disability he sustained. The relief he sought was 272,800 Birr for the income he would lose in the future¹³³ and 24,795 Birr for medical expenses he incurred. The respondent stated that the applicant's lost income is arbitrary, overstated and not based on expert opinion, and further argued that the applicant has not produced evidence that proves that he is a farmer.

The court confirmed, from a criminal judgment on the same case, that the plaintiff borrowed 9600 Birr and also leased his land for 19,895 Birr to cover his medical expenses. The court also verified, on the bases of a medical report from Arba Minch hospital, that the plaintiff lost 40% of his working capacity. The court further asked the kebele where the applicant resides to report his annual income, and the Kebele reported that his annual income is 51,100 Birr. Then, the court stated that there is a discrepancy in reporting the applicant's actual annual income between his declaration, the testimony of witnesses and the report from Kebele. Hence, the court found it difficult to compute the exact amount of damage the applicant sustained. Hence, it fixed the amount of compensation based on equity and awarded 18,000 Birr compensation to the plaintiff.¹³⁴ One may question the reasonableness of the 18,000 Birr compensation award with a verified 40% working capacity reduction. It is not clear as to why the court failed to use the average annual income a farmer in the vicinity can earn as a reference to assess compensation.

As it can be seen from the cases presented above and other cases,¹³⁵ courts largely award disability indemnity if the applicant proves the injury s/he

¹³² *Ato Anchuro Um'a V. Ato Hanota Uma*, Arba Minch City First Instance Court, (File No. 21182, decision made, 22/3/2008 E C).

¹³³ He noted that he is 38 years and his annual income is 12,400 Birr.

¹³⁴ *Ato Anchuro Um'a vs. Ato Hanota Uma*, (File No. 21182, Arba Minch City First Instance Court, decision made, 22/3/2008 EC).

¹³⁵ See *Ato Michael Eglo vs. Ato Asamnew Tobe*, and *Ato Turi Tunga vs. Ato Tirbe Tgre*, supra note, 127 and 128 respectively. See also *Tarekegn Qaba vs. Alemayehu Seyoum*. In this case, the applicant (Tarekegn Qaba) alleged that the respondent attacked him and has caused to lose two teeth, for which the respondent was criminally convicted. Noting this, the applicant sought 2,000 Birr moral compensation and 9,301 Birr for

sustained is the kind of harm that reduces his/her ability to work (indicating the disability level in percentage) and if it is confirmed by the medical board. This shows that the loss of one tooth, for example, is not regarded as a disability and the victim will not be granted compensation apart from expenses the victim incurs for artificial teeth transplantation.

The Federal Cassation Bench has provided a guiding rule in connection with this. In *W/ro Mimmi Abebe vs. Ato Tamirat Balcha*, the applicant, W/ro Mimmi sued Ato Tamirat for the physical injury she sustained for which the respondent (Ato Tamirat) was sentenced for aggravated attempted homicide.¹³⁶ Although the applicant petitioned to be compensated for lost income due to the injury, the Wereda court rejected the claim due to lack of proof and awarded the applicant 1000 Birr moral compensation using the criminal sentencing as evidence. The applicant appealed to the North Shewa High Court, and this court reversed the decision of the Wereda court stating that the physical injury is evident and the victim does not need to show proof of loss of her special utility as long as the injury reduced her general utility to enjoy and live her life as she used to. The High Court assessed the compensation equitably since it is difficult to determine lost income (if any) in the absence of any evidence to this effect. It awarded the appellant 40,000 Birr as compensation. The victim aggrieved by this decision took her claim to the region's Supreme Court, which also dismissed the case affirming the decision of the High Court.

other costs and loss of his two teeth. The respondent alleged that the claims were not supported by relevant evidence. The court decided that the respondent is liable and ordered him to pay 500 Birr moral compensation, 250 birr to reimburse the lost income, 1,500 birr for artificial teeth transplantation and 850 Birr for medication and transportation. (See, File No. 00740, Wolayita Sodo, First Instance Court, decision made, 17/02/2009EC). One can also see *Ato Dargu Lemma vs. Ato Tilahun Sorso*. The applicant (Ato Dargu Lemma) petitioned that the respondent hit him and became the cause for loss of his two front teeth. The respondent was criminally convicted for it. Hence, the applicant claimed 1,000 Birr moral compensation and 17,004 Birr for his physical injury including medical expense and (7,000 Birr) for artificial teeth transplanted. The respondent argued that the claims are not supported by relevant evidence and the applicant was the cause of the injury. The court decided that the respondent should pay 1,500 Birr for a dental work, 300 Birr for moral injury, 212 Birr for medication, 80 Birr for transportation and 300 Birr for the applicant's loss of income for fifteen days. (See, File No. 00445, Wolayita Sodo First Instance Court, decision made on 17/03/2008 EC).

¹³⁶ Federal Supreme Court Cassation Decision (2018) Vol. 23: *W/ro Mimi Abebe vs. Ato Tamirat Balcha* (File No. 152417).

The victim further took the case to the Federal Cassation Bench, which confirmed the occurrence of the fundamental error of law in the decision of the lower courts. The Cassation Bench stated that the assessment of compensation based on equity should not be calculated arbitrarily. The Cassation Bench noted that the applicant sustained a 40% working capacity reduction is verified. On the other hand, the Cassation Bench noted that Art 2102 which instructs compensation to be determined based on equity does not give sufficient details regarding the facts need to be taken into account.

The Cassation Bench noted that the 40% permanent work-capacity reduction should be used as a reference in the compensation. It also stated that courts should take into account factors such as reduction of general utility, current economic issues, inflation rates, and future damage. Noting all these facts, the Cassation Bench reversed the former decision and awarded 200,000 Birr compensation. This decision is a breakthrough in updating the interpretation of Art 2102 of the Civil Code. The Cassation Bench stated the elements that need to be considered when the courts adjudicate compensation claim that is difficult to assess. This cassation decision, to some extent, clarifies the vague provision.

7.3 Assessment of Compensation in Case of Fatal Accident (Death)

In case of a fatal accident, a spouse of a victim, his ascendants or descendants can claim compensation. Yet, they need to show the material damage they have sustained as a result of the fatal accident.¹³⁷ Variation exists in the decisions of courts concerning the quantification of the material damage that claimants suffered. In *W/ro Mulu Brihan, Makida Adane, Tsiyon Adane, and Tsegaye Adane* (applicants) vs. *Wubet Dry Garbage Cleaner Association and Ato Abebe Daro* (respondents),¹³⁸ the applicants stated that they incurred material damage due to the death of Ato Adane, who was the husband of W/ro Mulu and the father of Makida Adane, Tsiyon Adane and Tsegaye Adane, (who were 8, 19, 20 years of age respectively). The applicants claimed that they had lost the financial support the deceased would have provided them had he been alive. They pleaded to the court claiming the compensation they have lost due to the death of their father.

The respondent stated that the fatal accident occurred due to the fault of the deceased and argued that they should not be held liable. The court, after

¹³⁷ See the Civil Code Article 2095(1).

¹³⁸ *W/ro Mulu Brihan, Makida Adane, Tsiyon Adane and Tsegaye Adane vs. Wubet dry garbage cleaner association And Ato Abebe Daro*, (File No. 20967, Hawassa City High Court, decision made on 27/07/2008EC).

examining the claims and the evidence, decided that the respondents are responsible for the material damage. Yet, the court rejected the compensation claim of W/ro Mulu (deceased's wife) noting that she has her own means of income and will get half of the deceased's pension. For the 8-year-old Makida Adane, the court ordered payment of one-third of the deceased's wage until she attains the age of 18 years (42,000 Birr). Regarding Tsiyon Adane and Tsegaye Adane, the court gave a judgment that each should be awarded a compensation of one-third of the deceased's wage until they finish their higher education. With this, the court awarded 14,400 for Tsiyon Adane and 9,600 Birr for Tsegaye Adane. The court also awarded 25,000 for the reimbursement of funeral expenses and 1,000 Birr for moral compensation.

In another case, *W/ro Tadelech Nega vs. Ato Zefne Zaba*, the court awarded compensation presuming that the deceased would have supported the claimants throughout his life had he been alive.¹³⁹ In this case, the applicant (W/ro Tadelech Nega) stated that the respondent (Ato Zefne Zaba) was found guilty of murdering her husband. The deceased (35 years old) had two children who were under the age of ten. The applicant stated that the deceased would have maintained his children with 500 Birr until he attains 60 years. The applicant alleged that she and her children lost 200,000 Birr in material damage which they claimed in the form of a maintenance allowance. She also claimed 15,000 Birr for moral injury and 14,500 Birr for the reimbursement of funeral expenses.

The respondent argued that other individuals were also sued in the criminal proceeding and it is inappropriate to claim compensation from him only. The respondent further stated that no evidence was produced to support the applicant's claim and the evidence produced is fabricated. He also noted that the 15,000 Birr moral compensation claim also shows her intention to unlawfully enrich from it.

The court decided that the respondent pay 300 Birr monthly maintenance for the two children of the deceased for the coming 25 years (90,000 Birr). The court also awarded 5,000 and 1,000 Birr for funeral expenses and moral injury compensation, respectively. Yet, the court rejected the 50,000 Birr compensation which was claimed by the deceased's spouse on the ground that the law does not recognize the payment of maintenance for a spouse. Article 2095(1) of the Civil Code provides that "[i]n the case of a fatal accident, the spouse of the victim, his ascendants and his descendants may claim

¹³⁹ *W/ro Tadelech Nega vs. Ato Zefne Zaba*, Wolayita Sodo, High Court, File No. 31205 (decision made, 18/11/2008EC).

compensation on their behalf for the material damage they have suffered as a result of his death”.

The Federal Cassation bench has noted this point in the case between *Ethiopian Electric Power Corporation North West Region vs. W/ro Dinkua Amene*. It highlighted that being one of the next of kin of a deceased of a fatal accident does not certainly entitle the claimant to get maintenance in case of a fatal accident.¹⁴⁰ The claimants need to be in need and not in a state of earning their own earnings by their work.¹⁴¹ The Civil Code recognizes payment of compensation to the deceased spouse in the form of maintenance so long as s/he is needy and is not in a state of earning livelihood by her/his own means.

Another related issue that needs due attention is the form of compensation payment. In most cases, courts order lump sum payments. However, in *Ato Dubla Jifa and W/ro Ayete Habiso vs. Hawassa City Municipality*,¹⁴² the court awarded compensation in the form of an allowance. The applicants, Ato Dubla Jifa and W/ro Ayete Habiso –45 and 40 years old, respectively– petitioned against the Hawassa City Municipality claiming compensation due to the death of their daughter in a fatal accident. The applicants claimed that they lost the financial support their daughter would give them had she been alive. They claimed that the deceased was 20 years old and a second-year university student. They alleged that had it not been for her untimely death, she would have supported them for the rest of their lives. The respondent alleged that the fatal accident occurred due to the negligence of the deceased.

The court, after examining evidence produced and the circumstances of the case confirmed that the respondent is liable for the damage. It awarded 90,000 Birr for W/ro Ayete Habiso and 57,600 Birr for Ato Dubla Jifa. However, the court decided that the payment is not made in a lump sum. The court ordered the respondent to deposit the money either in the bank or another financial institution so that the applicants take 300 Birr from the deposited compensation monthly in the form of maintenance until they each reach the age of 65. The issue that is bound to arise is the ground for the threshold of 65

¹⁴⁰ *Ethiopian Electric Power Corporation North West Region vs. W/ro Dinkua Amene* (File No. 30442, Federal Supreme Court Cassation Decision, Case Reports, Vol. 5, pp. 149-152).

¹⁴¹ *Ibid.*

¹⁴² *Ato Dubla Jifa and W/ro Ayete Habiso vs. Hawassa City Municipality*, Hawassa City High Court, File No. 18332 (decision made, 27/07/2009EC).

years of age which presumably seems to be based on the average life expectancy in Ethiopia during the year of the judicial decision.

Recognizing the existence of variation among courts in the form of payment they order, the Cassation has rendered its decision on the possibility of an allowance payment. As per Article 2154 of the Civil Code, courts are given the discretion to order the damage to be made good by means of an allowance where the circumstances of the case justify such form of payment instead of maintenance. Accordingly, in *Ato Ermiyas Hailu vs. Ato Birhanu Damtew* the Cassation stated that courts can order payment of compensation in the form of an allowance payable than a lump sum if the court is convinced that there is sufficient justification for it.¹⁴³

8. Concluding Remarks

The law of extra-contractual liability protects personal and property interests from being harmed by other persons. If the act of a person causes harm to another without legal justification or excuse, the law intervenes to award compensation or other appropriate remedies. Yet, the claimant is required to prove the occurrence of extra-contractual wrong and provide admissible evidence that shows the extent of the loss, and such fault is committed by the offender. Yet, the assessment of compensation is the most difficult part of the extra-contractual liability law regime where the damage relates to physical injury that involves pecuniary and non-pecuniary losses which include pain, suffering and loss of amenities or debilities. Assessing the extent of damage and awarding compensation are arbitrary concerning personal injuries which are followed by loss of job, parts of the body, disability of various kinds and so on. Thus, there is lack of uniformity in the decisions of courts for certain types of injuries.

In Ethiopia, the Civil Code governs liability that arises from extra-contractual act and contains the grounds based on which compensation claims are instituted. As far as the assessment of compensation is concerned, the Civil Code stipulates the *rule of equivalency*. It seems that the rule of equivalency is applicable for all kinds of extra-contractual claims, be it for personal damage or property loss. However, the Civil Code lacks detailed rules on how compensation is assessed, and which kinds of pecuniary losses are included in and excluded from compensation assessment equations, as a result of which courts are facing difficulties in making extra-contractual liability assessments.

¹⁴³ *Ato Ermiyas Hailu vs. Ato Birhanu Damtew* (File No. 67225, Federal Supreme Court Cassation Decision, Case Reports, Vol. 13, pp. 479-483).

The analysis of the cases under the study area proves that there is substantial evidence that highlights the difficulties involved in compensation assessment, particularly for personal injuries. At the same time, there are variations on several levels of court decisions in determining the extent of damage the claimant sustains and its corresponding compensation. The absence of detailed provisions in the Civil Code on this issue (that can be used by courts) contributes to such variation. The Federal Cassation Division has been and is trying to play its part to bring clarity and ensure uniformity among courts in assessing compensation for personal injury, a pursuit that is expected to continue.

The rule that sets a 1,000 Birr maximum moral compensation renders the law of extra-contractual liability significantly unfair in the current context due to the steadily declining purchasing power of the Birr. The unfairness of the ceiling is associated with the period the Civil code was enacted (1960) and the significant decrease in the purchasing capacity of 1,000 Birr throughout the past six decades. With regard to the assessment of compensation for bodily injury, factors including the age, employment record, health condition, financial position, and the prospect of a victim to earn income should be used as elements of reference in assessing the extent of payable compensation.

The discussion and analysis in the preceding sections indicate the need to adopt short and long-term solutions to reduce the inconsistencies observed in the decisions of courts and the gaps in the predictability of court decisions of compensation assessment owing to extra-contractual liability. As a short-term solution, the Federal Supreme Court (as the case may, state Supreme Courts) should issue compensation assessment guidelines in tandem with the general rules in the Civil Code as seen in other laws, such as family and penal laws for which child maintenance and sentencing directives are issued, respectively. These directives aim to bring consistency, predictability and uniformity in the court decisions while applying these laws. The ultimate solution requires the enactment of a detailed law that embodies clear and adequate provisions regarding compensation assessment modalities. The Copyright and Neighbouring Rights Protection law and its provisions on the award of moral compensation can be used as a model to decide the maximum ceiling so as to achieve the fundamental purpose of a compensation award. These measures would indeed help ensure consistency and predictability in court decisions thereby promoting fairness and justice. ■

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