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Moral Damage in Italian Case Law with special regard to Thanatological Damage

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Provisions contained in the C.C.

Compensation for damages, under the Italian Civil Code (art. 1223), includes:

- *damnum emergens* (i.e. costs actually incurred)
- *lucrum cessans* (i.e. lost future income)

Art. 2059 c.c.

- The Italian civil code (art. 2059) provides for a right of compensation under art. 2059 of the Civil Code, with some limitations.



- In fact article 2059 c.c. allows compensation for non-pecuniary losses only in the cases stated by legal dispositions such as in case of personal damages arising by a violation of the criminal law, as asserted by art. 185 c.p.

Art. 2059

- However, according to recent judgment of Italian Constitutional Court and of the Court of Cassation, we have to include also the Constitutional provisions into legal provisions about which is spoken in art. 2059 c.c. Thus in case of individuals' health injury, pursuant art. 32 C. judges can order compensation also for non-pecuniary losses (Corte Cost. 233/2003).

Non pecuniary damages

- Biological Damage
- Moral Damage
- Existencial Damage

Biological damages

According to Art. 138 of Italian insurance code the biological damage consists in:

- a) lesions to the psychological and physical integrity ranging from ten to a hundred points;
- b) of the monetary value to attribute to each point of invalidity including the coefficients of variation corresponding to the age of the injured person.

Biological damage

- A decree of the President of Italian Republic should establish a specific table valid throughout the territory of the Republic.

but we are still waiting...



Biological damage

- The Observatory for Civil Justice in Milan draw up a criterion of compensation for damages not concerning assets, based on a table showing the following values:
- - “standard” values of compensation for biological damage linked to the seriousness of the injury to the psychological and physical integrity of the injured party, and their age;
- - possibility of personalisation, with a maximum of 30% of the amounts awarded as compensation for biological damage, linked to particular subjective conditions of the injured party

Biological damage

OPINION OF SUPREME COURT:

1- By moment can be found in the tables drawn up by the court of Milan, to be used according to the circumstances of the actual case

(Civil cassation, sentence no. 12408/11).

2- On the subject of compensation for non-asset damages, alongside biological damage, it is also necessary to compensate further disadvantages appropriately

(Civil cassation, sentence no 24016/11)

Moral Damage

- This is the damage that originates in the distress caused by the accident. Fair compensation has to be quantified taking into account the seriousness of the problem.

Existencial damage

- It is a damage which alters victims habits and their relationships, forcing them to change their lifestyle and the expression and realisation of their personality in the external world in terms of social and work relations, with consequent impairment of the personal values guaranteed by the constitution.

Non pecuniary damage: a sole category?

- The unified sections of the Supreme Court nos. 26972, 26973, 26974 and 26975 of 11 November 2008) stated that “non-asset damage as per article 2059 of the civil code, identified as damage from injuries to the person without economic relevance, constitutes a single category which cannot be divided into subcategories.”
- It should be pointed out that in its practical application, the principles enunciated by the unified sections are systematically adjusted by the decisions of the Courts, the Justices of the Peace and the Supreme Court itself.

Death Damage

- According to the major opinion the right to compensation to the **first degree victim**:
- a) biological damages suffered by the deceased. It is recognize only if there was a consistent lapse of time between the events of the wrongful act and the death;
- b) moral damages suffered by the victim due to the catastrophic consequences of the wrongful event leading to the loss life;

Death Damage

- Another opinion states that damage from immediate death must be included in the field of moral

Psychological suffering characterised by maximum intensity and a limited time span, must be compensated as moral damage, since it will not degenerate into illness giving rise to biological damage due to the limited interval of time between injuries and death

(Civil cassation, Section III, 8 April 2010, no. 8360, and Civil cassation, Section III, 13 January 2010, no. 458)

Thanatological damage

In 2014 the Supreme Court affirmed that “the loss of life cannot lack civil protection”.

Based on this statement, the Court accepted the right to compensation *per se* for the damages of (instantaneous) loss of life, i.e. thanatological damages.

(Court of Cassation, 23 January 2014 n. 136)

Death Damage

- Lately the major opinion has been followed by the Cassazione a sezioni unite (*Sezioni Unite Civili, Sentenza 22 luglio 2015, n. 15350, Presidente L. A. Rovelli, Relatore G. Salmè*)

Death Damage

The relatives, on their own, are entitled to :

- a) biological damages, in case the distress from the loss of someone
- b) moral damages, intended as a state of anxiety or psychological distress as result of the loss of a relative;
- c) the existential damages, that is very controvertial

Death of Fetus

- In case of death of the fetus it is believed that parents are entitled to damages from loss of parental bond, but the determination of the damage must be taken into account that the family relationship is only potential.
- **Corte di Cassazione, sezione III, sentenza 19 giugno 2015, n. 12717.**

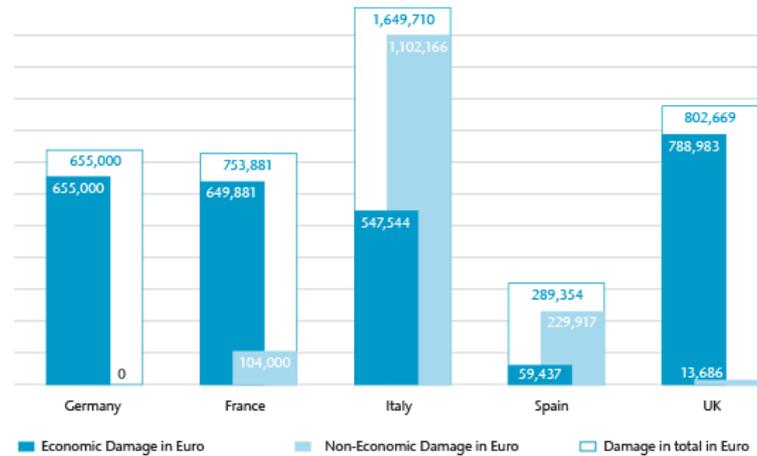
Death Damage

The relatives, under the profile jure hereditatis are intitle to:

- a) biological damages of the victim
- b) moral damages of the victim
- c) the existential damages

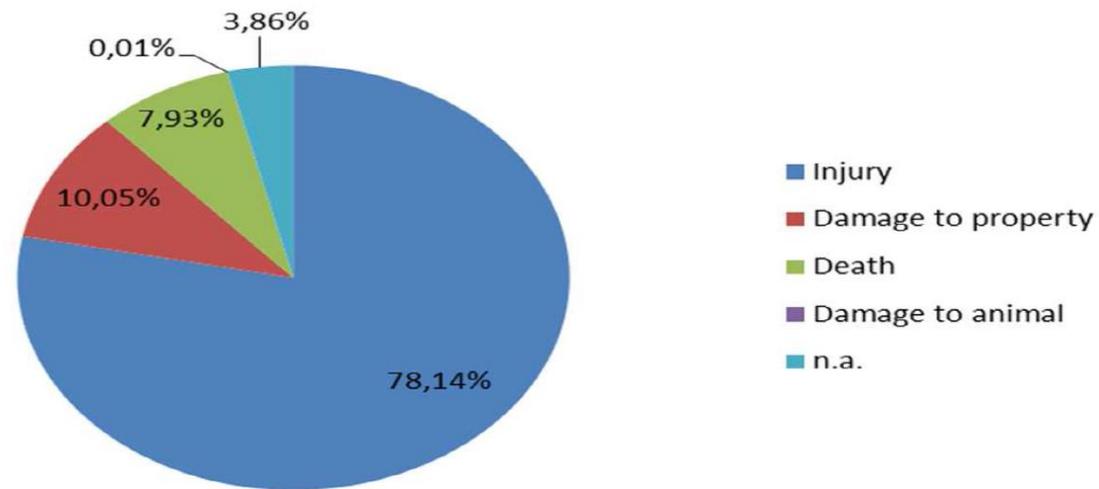
Some Data on traffic fatalities (report ANIA 2012)

Graph 1 – 41-year-old male, employee with annual net income of EUR 40,000; survivors: spouse, two children (6 and 9 years of age), 1 parent, 1 brother



Some Data on fatalities in case of MedMal (by Marsh 2014 on quotidianosanita)

The 78.1% of claims concerns personal injuries and the 7.9 %



Thanks for your attention!