

WORKSHOP A: Major Developments in European Tort Laws: Immaterial harm incurred by relatives of surviving primary victims

Case Hypotheticals

The following hypotheticals will not be discussed in every detail mentioned. However, the variations given are meant to show the range of issues that may arise and thereby serve as a stimulus for discussion. The primary focus of this workshop is on Hypotheticals 2 and 3, obviously, but we will nevertheless start with the more traditional scenario of Hypothetical 1 to lay the foundation for the main part of the workshop.

Hypothetical 1

Pedestrian A is killed in an accident caused by a vehicle owned by X, driven by Y and insured by Z.

- I. Can A's wife B claim compensation for non-pecuniary damage under the following circumstances, against whom, and how much would she likely get?
 - 1) B witnessed the accident and subsequently
 - a) fell into a depression requiring medical treatment or
 - b) mourned the death of her husband without a medical condition of her own.
 - 2) B did not witness the accident, but still
 - a) fell into a depression requiring medical treatment or
 - b) mourned the death of her husband without a medical condition of her own.
- II. Who else may be eligible for bereavement damages if they
 - 1) suffered a medical condition or
 - 2) merely mourned after hearing of A's demise?
 - A's children
 - A's parents
 - A's brother
 - A's grandparents
 - A's grandchildren
 - A's aunt
 - A's daughter-in-law
 - A's mistress
 - A's best friend from school days with whom he ever since spent significant parts of his spare time and/or sports activities

Would compensation for these other claimants be

 - 3) the same as for A's wife or
 - 4) different, and if so, how different?
- III. If there is no claim for compensation yet in one, some or all of the above variations in your jurisdiction, do you think there should be? Do insurers pay out compensation voluntarily in such cases, and if so, how much? Do insurers consider a future change in jurisprudence on this point and therefore make reservations for such potential claims in the future?

Hypothetical 2

Pedestrian A is severely injured in an accident caused by a vehicle owned by X, driven by Y and insured by Z. A is quadriplegic, in a vegetative state and requires 24/7 home care.

- I. Can A's wife B claim compensation for non-pecuniary damage under the following circumstances?
 - 1) B fell into a depression requiring medical treatment
 - a) after hearing from the accident or
 - b) after several weeks of taking care of her husband.
 - 2) B quits her job and joins the nurses in actively taking care of her husband.
 - 3) The care needed by A is given by professional staff 24/7, and B spends some time with her husband after her work day and on the weekends.
- II. How much compensation will B likely get? Is compensation awarded as a stand-alone claim or only in light of the fact that B also lost the companionship and support of her husband? If the latter is taken into account, will it be compensated independently or in a lump-sum calculation of the entire circumstances?
- III. Who else may be eligible for damages if they
 - 1) suffered a medical condition when hearing of A's accident and/or lasting condition or
 - 2) are merely compassionate with A in light of his condition?
 - A's children
 - A's parents
 - A's brother
 - A's grandparents
 - A's grandchildren
 - A's aunt
 - A's daughter-in-law
 - A's mistress
 - A's best friend from school days with whom he ever since spent significant parts of his spare time and/or sports activities

Would compensation for these other claimants be

 - 3) the same as for A's wife or
 - 4) different, and if so, how different?
- IV. If there is no claim for compensation yet in one, some or all of the above variations yet in your jurisdiction, do you think there should be? Do insurers pay out compensation voluntarily in such cases, and if so, how much? Do insurers consider a future change in jurisprudence on this point and therefore make reservations for such potential claims in the future?

Hypothetical 3

Same variations and questions as Hypothetical 2, but A's injuries are less dramatic. He lost a leg, but can still participate in family and professional life, though subject to significant limitations because of his permanent handicap.