

Exceptional harm in Law 35/2015 of 22 September reforming the system for the assessment of damages for harm or loss caused to victims in traffic accidents

Analysis of the Judgment by the Pontevedra Provincial Court of 31 July 2017

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Article 33 of Law 35/2015 gives the key principles guiding the new system for assessing personal harm caused in traffic accidents: full reparation of the damage and structured compensation for it. It then goes on to discuss the principle of objective damage assessment, whereby compensation is determined according to the rules and limits laid down by the system itself, implying that no damages may be awarded for heads of loss or amounts other than those envisaged therein. Lastly, it concludes the account of the system by establishing that, notwithstanding the above, damages may also be awarded for exceptional harm where this is significant and brought about by atypical circumstances that are not referred to according to the rules and limits under the system.

Such harm must be compensated pursuant to the rules laid down for such purposes in articles 77 and 112 for cases of death and sequelae respectively while applying criteria of proportionality and a maximum limit of 25% of increase with respect to the compensation for basic personal harm.



The facts that gave rise to the judgement that we are commenting on concern the running over and death of the mother of the aggrieved party by the driver of an uninsured vehicle.

What the law seeks to do via the provision for the above-mentioned principle of objective damage assessment is for compensation to be made for all personal harm caused in traffic accidents within the system, even those forms of harm described as exceptional and which have not explicitly been covered by the rules and limits in the scale. Even so, for such harm to be taken into consideration it must be in the mould of substantial harm and have been caused by atypical circumstances.

The facts that gave rise to the judgement that we are commenting on concern the running over and death of the mother of the aggrieved party by the driver of an uninsured vehicle.

Given that the vehicle did not have the required compulsory insurance, the Consorcio de Compensación de Seguros (CCS) had allocated the sum of 94,334 euros with respect to the aggrieved daughter in the judicial proceeding, which was for her respective basic personal harm, individual personal harm and financial loss suffered. On the other hand, the sum of 12,500 euros had not been allocated which the injured party was also claiming by way of exceptional harm. This sum, among other points, was called into question in the judicial proceeding which we are examining here.

The aggrieved party argued that exceptional harm existed, claiming that her parents were divorced and that she only lived with her mother and not her father. She moreover stated that this situation had frustrated progress in her professional life.

While offering barely any reasoning, the original court awarded the aggrieved party damages by way of exceptional harm as discussed above, and ordered CCS to pay her 12,500 euros in compensation. In response to this judgment, the CCS filed an appeal, essentially claiming that the aggrieved party had not proved to it either atypical circumstances or the extent of the damage claimed by way of exceptional harm.

Here the CCS alleged that article 35 of Law 35/2015 stipulates that application of the system requires evidence in support of the criteria used in setting a quantity on compensation allocated according to its rules (with separate and individualised treatment of the different heads of damage and items involved in compensating for both non-financial and financial loss), which had not been produced in connection with the exceptional harm alleged by the claimant.

With respect to the judgment which we are discussing here, the Pontevedra Provincial Court, which found in favour of the claims by the CCS, holds that it is indeed the case that it has not been demonstrated that the daughter of the deceased had a relationship whereby she lived solely and exclusively with her mother and which was not shared to any extent with her father. Thus, in the court's view, the fact that her parents are divorced does not perforce imply that the daughter ceased to live with her father, less still given that three years earlier she had become of full legal age and was not in the specific custody of either of her parents.

On the other hand, as regards frustration of the aggrieved party's employment activity or career development at the time of her mother's death, whether or not she was engaged in professional activity has not been demonstrated and nor, if she was, whether she ceased in it, or when she did so, or for what reason.

The court considers that the high number of divorces or marital breakdowns that exist is a sociological fact of life which means that this is a common circumstance and therefore that this is not a situation that can be described as exceptional.

In the same vein, the aggrieved party's claim to be a single child without brothers and sisters does not represent an exceptional situation either, given that this is also a (common) sociological fact of life. This circumstance is moreover expressly provided for in the new scale and this is how it was treated by the CCS, which allocated the relevant amounts for such a situation.

Thus, as sole victim within the category of daughter, article 71 of Law 35/2015 recognises individual personal harm of 12,500 euros, which arises from increasing the basic personal harm rate of 50,000 euros by 25%. She was also awarded loss of earnings as sole victim for harm of this kind. Consequently, pursuant to article 87 of Law 35/2015, Table 1.C.2 was applied to this, thus doubling the sum due to her, since, given that she had sole victim status, the percentage that should be awarded in compensation is 60% for loss of earnings and not 30%, which is what this table applies for the offspring.

To summarise, the Court holds that the aggrieved party has been compensated within the rules and limits in the system, and that the personal harm and financial loss elements therein have been applied to her, while there has been no accreditation that she might have suffered exceptional harm arising from significant and atypical circumstances. Thus her parents' divorce does not in this case imply that their daughter did not have any contact at all with her father. In our opinion, it would only be fitting to broach the matter of analysing harm of this kind in situations of abandonment, disinheritance, abuse, etc. by one of the parents of the children concerned, since the situation could be similar to that of the death of a sole parent, which is envisaged as individual personal harm in the system.