Appraising damage caused to a motor vehicle

The Supreme Court gives an opinion for the first time on how to determine the appropriate way to pay compensation for damages caused to a motor vehicle in a traffic accident when the cost of repair clearly surpasses the market value of the damaged vehicle and even the purchase value of a vehicle of the same characteristics in the second-hand market

Comment on the judgment by the Civil Division of the Supreme Court of 14 July 2020

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1. Introduction

Most traffic accidents only cause property damage among those vehicles involved. In Spain, most such accidents are processed via direct compensation arrangements through the so-called CICOS system (Claims Compensation Computer Centre, *Centro Informático de Compensación de Siniestros*), which handles approximately two million claims a year.

Even so, regardless of whether accidents are processed via direct compensation arrangements (which have the advantage of greater speed in settling the claim) or by conventional means, there always remains the underlying issue of whether it is an own damage claim, where what the policy establishes should apply, or a liability claim, where the aggrieved participant in the accident is a third party that stands outside the contractual relationship between the insurer and the insured and therefore who, pursuant to Article 1 of the Law on Civil Liability and Motor Vehicle Road Insurance and Article 1902 of the Civil Code, should be compensated for loss caused irrespective of what the insurance contract of the perpetrator of the loss might establish.

The so-called total loss clause is usually worded as follows: 'It may be considered that there is total loss of the insured vehicle when the budgeted amount of repairs exceeds 100 % of the compensable or covered value in each case (value as new/market value, depending on the age of the vehicle)'.

The problem the cited clause poses in practice (which stipulates that in the event of total loss of the vehicle compensation shall be paid for the loss according to value at the time of the accident) is whether this is a clause that delimits the risk or which limits the rights of the insured. We cannot assert that there is unanimity in case law as to whether it is consistent with one particular assumption or the other.

Assessing the loss caused in civil liability or third party claims is no easy task, above all when the damage brought about exceeds the value of the vehicle. The judgment we are examining, which is of great interest to all of us who come to be involved in traffic accidents, seeks to determine the premises for settling this question and clarifying the contention which minor case law has upheld in general terms.

2. Appraising damage for vehicles in cases where own damage is covered

As we have already noted, when own damage comes into the equation (usually because the insured is responsible for the accident), not too many problems arise in that, settling the claim must be carried out in accordance with the provisions in the insurance contract.

In such cases, policies generally envisage that compensation for the vehicle parts should be paid at value as new, whereas, if the damage exceeds the vehicle value (sale or purchase value, as appropriate) or a high percentage thereof, compensation is paid for the value of the vehicle at the time of the loss event and applying suitable depreciation. Thus, if the vehicle is not repaired, our discussion does not involve affective value, since, as we shall see anon, this concept is a feature of what are termed civil liability or "third party" claims.

It is also common for own damage cover to involve insuring the vehicle value "as new" for the first two or three years after purchase. Value as new is what appears as the retail value as of the accident date and must include the legal taxation and extra charges that make the vehicle roadworthy.

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The judgments delivered by the Provincial Higher Courts of Vizcaya (Section 3) of 2 June 2011, La Coruña (Section 6) of 6 March 2015, Asturias (Section 7) of 27 November 2015 or Barcelona (Section 13) of 30 April 2013 describe it as a clause that delimits risk, for which reason it is only necessary for it to comply with the requirements for transparency and integration within the contract. On the other hand though, the judgments by the Provincial Higher Courts of Teruel of 21 February 2012, Zamora of 17 November 2015, Orense (Section 1) of 17 November 2016, Alicante (Section 9) of 20 June 2014 or Pontevedra (Section 1) of 12 May 2014 contend that this is a clause that limits the rights of the insured, meaning that pursuant to Article 3 of the Insurance Contracts Act, in addition to the two aforementioned requirements, the clause must be expressly accepted by the policy holder/insured. This means that it must be specifically distinguished from the other clauses and expressly signed. If this is not the case, it will not be binding with respect to the insured and may therefore not be applied by the insurer.

In upholding the latter point of view, judgment 212/2016, of the Burgos Provincial Higher Court of 24 May 2016 argued that 'The limit on compensation, which in own damage cover generally equates to the actual cost of repairs and in cases of total loss or a "total loss" only to the market value of the vehicle, represents a limitation on the coverage or the compensation that the insured naturally expects, which, though it may be a valid clause, to be effective as such requires that the insured has learned of the restrictions which it brings in and that they should not come as a surprise to the latter. And therefore, as a clause that limits the natural providence of the coverage taken out it is subject to the system for validity which is envisaged in Article 3 of the Insurance Contracts Act which, in the case under consideration, has not been satisfied, since for these purposes it appears insufficient just to have carefully framed standard wording signed where the signatory claims to be aware of the limitation clauses contained on a document other than that signed (the general conditions) and which the general clause signed refers to; the requirement in Article 3 of the Insurance Contracts Act cannot be held to have been fulfilled by the simple submission of general conditions...'.

3. Appraising damage for a vehicle in a claim involving civil or "third party" liability

In cases such as these, and as we were saying at the beginning, in practice they pose more problems in that the aggrieved third party is protected by law, which provides that the latter must be compensated for the damage caused. This is what Article 1902 of the Civil Code states when it stipulates that 'someone who causes harm to somebody else through act or omission and where fault or negligent omission is present must remedy the harm caused.' In this regard the issue at hand means examining what is understood by harm caused in certain specific situations. Naturally problems do not tend to arise when the damage is less than the value of the vehicle at the time of the accident. In such cases the damage caused will be the vehicle repair value.

Problems emerge though when the appraised loss exceeds the vehicle's market value. Furthermore, as in the case analysed in the judgment discussed, on top of this there is an additional kind of detriment that is caused to the aggrieved party, such as might concern the replacement vehicle they require while their vehicle is undergoing repair.

Thus far in minor case law, in general terms, when the damage to the vehicle has amounted to more than double or even triple the market value it has been held that the repair value should be paid. In some cases an invoice proving the repairs has been required, whereas in others (particularly of late) the estimate has been accepted, although the judgment ruled a certain window for the aggrieved party to carry out the repairs. It was said that the aggrieved party should not have to put up the money in advance to repair the vehicle first, so the courts interpreted that it would be enough to submit the estimate for the claimant's filing to be accepted.

4. 4. The judgment by the Civil Division of the Supreme Court of 14 July 2020

4.1. The object of proceedings

The judgment examines a case of the kind set out under the previous heading. This involves property damage suffered by the aggrieved party who is filing a claim for damages based on Article 1902 of the Civil Code against the party responsible for the crash and their insurer.

In the claim payment was sought from the joint defendants for repairing the damage suffered to the claimant's vehicle (€6,700), as well as the additional sum of €7,828.63 calculated up to the date of the claim plus subsequent monthly payments for the rental of a replacement vehicle which would continue to accumulate up until the motor vehicle in the accident had been fully repaired.

The defendants contested the claim by pleading (and this is what concerns us) that the damage repair was not financially justifiable given that the repair amount of €6,700 far exceeded the vehicle's market value of €3,470. With respect to the expenses claimed for renting a replacement vehicle, this claim was similarly rejected since they had been generated by the claimant given that the latter knew that the vehicle had been declared a total loss three days after the accident and that therefore there would be no point in repairing it as this would not be financially justifiable.

4.2. Lower court judgments

The judgment at first instance court level gave leave for the claim to proceed in its entirety, concluding that repairing the vehicle whatever the cost represented the preferable compensatory solution, even though the amount for repairing the damaged vehicle was potentially over and above its market price. It also found in favour of the expenses on the replacement vehicle, arguing that the aggrieved party needed the vehicle for their personal activities.

The defendants appealed against this decision. The appeal court judgment was delivered by section 4 of the Granada Provincial Higher Court, which partly allowed the appeals and, in reversing the lower court judgment, it ruled that the appellant defendants in the original claim should jointly and severally pay the claimant the sum of €4,511 plus interest at the statutory rate in contrast to the amount of €14,611.66 which the court of first instance had originally sentenced them to satisfy.

The Court held that the repair work was not financially justifiable, since there was a disproportionate discrepancy between the vehicle's market value (€3,470) and the repair value (€6,700), and it reduced the sentence amount to €4,511, which was the sum arrived at by applying an affective value set at 30 % to the vehicle's market value. It likewise dismissed the ruling that rental expenses should be paid on a car of similar characteristics to that damaged, on the grounds that it was not considered logical for the money spent on renting not to be used on either repairing the vehicle's accident damage or else buying a similar car in the market. It likewise stated that three days after the accident the company had given notification that the vehicle was a total loss.

We should point out that the final decision by the Granada Provincial Higher Court is not typical. Such a solution is normally provided when the aggrieved party does not intend to repair the vehicle. In such a case, the compensation paid out is the vehicle's market value plus a percentage (which tends to be around 30 % of this value) for the trouble that might be occasioned for the aggrieved party when buying a vehicle similar to that which they used to have, concept known as affective value. Nonetheless, when the aggrieved party decides to repair the vehicle, the normal turn of events would have been that, if repairing the vehicle is double its market value, as is the case here, the court would have accepted the latter's claims, even (as we have said) where this involves submission of a repair estimate, as the court of first instance indeed did.

This is why the judgment which the Supreme Court issues is significant, since this is the first time that it has ruled on this matter and, as shall see, as regards repairing the damage it takes the same view as the Granada Provincial Higher Court.

4.3. The stance of the Civil Division of the Supreme Court

The claimant filed an extraordinary appeal against this judgment based on a procedural violation, as well as an appeal to the Supreme Court in the interests of uniform application of cassation law, the first of these being dismissed. In their appeal the petitioner claims that the higher court judgment avoids the fact that an affirmative injunction was sought, which was to address the repair of the damaged vehicle without compensation being requested. This circumstance attests to the fact that their claim for compensation for damage was serious and final and that this therefore did not lack consistency in a legal sense. To justify the appeal being in the interests of uniform application of cassation law, several judgments by higher courts were cited which, in cases such as this one, diverge from the opinion in the decision appealed.

In short, as stated, a legal matter is being raised for the court regarding the way to compensate damage when the sum for repairing a motor vehicle clearly exceeds its value at the time of the loss event. As can be seen, both in the lower court judgment and in that ruled by the High Court, the difference between the repair value and the market value, which is roughly double the amount, is considered to 'clearly exceed the vehicle value'.

After making certain general considerations both concerning the victim's right to obtain reimbursement as a guiding compensation principle given harm or damage unjustly endured and regarding how the property damage suffered should be compensated (and while maintaining that it will have to be rational and fair without it being possible to saddle the perpetrator with disproportional repairs or an exorbitant financial sacrifice beyond the true significance of the damage), the Court stops to examine the problem posed in the case being analysed.

The judgment makes a general analysis of how valuation of property damage should be done, perhaps (although it does not expressly say so) by referring to cases where the vehicle's repairs do not exceed its market value. Thus it says verbatim 'Where property damage is concerned the natural compensation for the detriment is generally achieved

through effective repair of the damage suffered in a specialist workshop, the cost of which the aggrieved party passes on to the perpetrator of the damage or to insurers, who meet the cost of repair directly or compensate it through agreements between them. It is a fact that repair work can entail a certain advantage for the owner of the damaged vehicle which derives from replacement of old and worn parts with new ones in optimum condition, although compensation of the victim cannot be carried out as an exact science so certain benefits are tolerable and fair, while it is still also the case that the vehicle value depreciates when it suffers an accident that impairs it. This specific form of compensation leads us back without further ado to simple assessment of the value of the repair work carried out'.

Even so, in analysing the specific case it asserts that it is not possible to unilaterally impose the repair work or to saddle the cost of it upon the perpetrator of the damage without taking account of what the labour cost comes to and the spare parts required to repair the vehicle in cases of a total loss. It therefore acknowledges that the problem arises when, if repairs are feasible and the owner's intention to carry them out is in earnest and genuine (or even if they have been performed and paid for), the aim is to pass on the cost of these to the perpetrator of the damage even though such a cost is clearly disproportionate with respect to the value of the vehicle at the time of the accident.

Therefore, according to the Civil Division of the Supreme Court, the solution which the lower court's judgment provides is not contrary to the law, whereby the compensation of the aggrieved party is performed by setting a pay-out equal to the price of the damaged vehicle plus a percentage amount, which has been termed a surcharge by way of a supplement for risk or security, and which in our judicial practice has been generalised using the expression 'affective price or value', which is to include administrative expenses, difficulties in finding a similar vehicle in the market, uncertainty as to how well it works, etc. among other circumstances that may be weighed, which must be appreciated by the courts in their specific role of loss appraisal.

To summarise, for the High Court, when repair work is double the market value of the vehicle there is a clear lack of proportion between both items which means that carrying out repairs is not financially justifiable. Thus, in these cases the aggrieved party must be compensated with the market value of the vehicle plus a percentage, by way of affective value, for the trouble caused to them in having to obtain a vehicle with similar characteristics to the one they had before the accident.

With respect to costs to replace the vehicle which the claimant had incurred (€7,828.63), the judgment states that, on the one hand, the insurer delayed its offer to five months after the loss event took place and, on the other hand, rental expenses cannot be demanded until execution of the repair work when the latter was found to be without justification. Therefore the court holds that it is appropriate to grant compensation for the value of the usage which the claimant was deprived of, which amounts to the sums for rental supported by documentary evidence from the accident date up to 8 May 2014 bearing in mind that the company against which action was brought made its offer to pay the relevant compensation on 5 May that same year.