

## **Regional Variations of Compensation Awards: The Quantum of Damages in Personal Injury and Wrongful Death Claims in Western Europe**

by Paul Szöllösy\*

This paper concerns the standard of compensation in personal and fatal injury cases in various countries of Western Europe. As is generally known, there are substantial differences in the *legal bases of liability*, according to the traditions, the evolution and the aspirations of the national legal systems in Europe. Even if these diverging legal bases affect the system and the level of compensation, I shall not deal with the bases of tort law, but rather focus on the variations in the *amount of damages* awarded for physical injury or wrongful death in Western-European countries.

Already in 1972, and again in 1981/82, I had the privilege of lecturing in the Scandinavian countries on this subject.<sup>1</sup> I used then some topical cases, known to Swiss Re's Claims section, as a model to calculate the amounts likely to be awarded for serious personal injury or wrongful death in various countries. An updating of the sums assessed some 6-7 years ago may not only show the evolution that has occurred since but also indicate current development trends regarding the level of compensation.

When speaking about the *standard of compensation*, I try to answer the question: What is the total quantum of damages due by the person liable (the "tortfeasor") or his liability insurer to the victim or the latter's dependants and the subrogating social insurance carrier, according to the general rules and practice of the tort law, i.e. without reference to aviation accidents.

In this connection, one has to be aware of the influence of *social security schemes* on the compensation system in Europe. The claimant normally cannot collect double compensation in Continental Europe; in other words, the social insurance benefits he gets must be deducted from his claim for tort damages. In most European countries the social security systems have a right of *subrogation* against the person liable for the accident or against his liability insurer. In the case of comparisons with countries like Great Britain and the Scandinavian countries where the social security carriers have *no* right of subrogation, it must be borne in mind that this has a substantial influence on the level of tort compensation. In these countries the considerable social security benefits which the injured person receives, apart from tort damages, do not have to be reimbursed by the tortfeasor or his insurer (and therefore do not appear in the following examples).

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<sup>1</sup> See *Scandinavian Ins. Q.* 1983 pp. 128-141.

In my 1982 lecture, I demonstrated the quantum of damages in the light of six “model cases”, of which I would now like to present you three, with updated sums of awards.

*Case No. 1.* The most severe of the examples chosen: a 20-year-old Spanish girl of an upper middle class family and not yet employed suffered incomplete tetraplegia and consequent total disability following a road accident. After one and 1/2 years in hospital she now requires permanent care for about 12 hours daily.

*Case No. 2.* An accident at work in England causing serious bodily injury: a plant fitter, aged 34 at the time of the court decision and with a former annual net income of about £ 6,000, became paraplegic (paralysed from the waist down). He spent about six months in hospital and is 80% disabled. However, despite the remaining ability to work, he has so far not been able to pursue a gainful activity.

*Case No. 3.* At the age of 36 a nuclear plant worker died of an overdose of drugs, erroneously prescribed by his doctor in the treatment of his grave migraine condition. He was survived by his widow (36) and three children (14, 11 and 6). Doctor's and Chemist's liability was admitted four years after death.

How would these cases be assessed in those countries where we wish to compare the compensation practice? Tables 1-3 show, for cases 1, 2 and 3, the corresponding amounts, which I tried to calculate according to the standards and methods applied in the countries concerned.

As already mentioned, the basis used for comparison is the amount which the person liable or his liability insurer has to pay according to the law of torts. It includes both the direct claim of the injured person and the right of recourse of those social security institutions which, on the basis of legal or statutory subrogation, can reclaim their benefits paid to the victim from the person liable or his insurer.

When looking at my comparative tables, one should be aware that they by no means contain extremely high awards for the countries concerned. Whereas I obviously had to take model cases with the most serious injuries or the death of the breadwinner, I have chosen victims with rather modest actual earnings or earning prospects. The awards shown do, therefore, in no case exceed the average amount granted for similar injury or loss of support in the particular country.

I should also mention that e.g. in medical malpractice cases with injuries comparable to my model case No. 1 in *Great Britain* awards exceeding £ 650,000 have already been published.<sup>2</sup> In *France* *Ffr. 10-12 Million* have also been awarded to victims with spinal or brain injuries, and in *Switzerland* compensation amounting to or exceeding 3 *Million Sfr.* may be granted to a fully disabled victim in an exceptional case.

To close and sum up my brief presentation, I would comment on the figures shown as follows:

- Whereas some 6-7 years ago there was a striking difference of 4:1 in the compensation level of Western European countries like Germany, France or Switzerland on the one hand and Italy or Spain on the other, this discrepancy has now gradually been reduced to a proportion of about 2.5:1.

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<sup>2</sup> Cf. *World Ins. Rep.* 5.8.1988, No. 343, p. 11.

TABLE 1

Case No. 1: Motor Third Party Liability. Girl aged 20 became fully disabled and, after 1 1/2 year in hospital, requires permanent nursing (12 hours daily) following incomplete quadriplegia. (Amounts converted into *Swiss francs* as per 31.8. 1988)

<b>FRANCE</b>		<b>ITALY</b>		<b>SPAIN (Barcelona)</b>	
Hospital expenses	375,000	Hospital expenses	115,000	Medical and hospital expenses	130,000
Pretium doloris	65,000	Pain & suffering		General damages	
Préj. esthétique	60,000	loss of amenity*	150,000	(future loss & nursing expenses, pain & suffering, loss of amenity:	
Préj. d'agrément	75,000	"Torto morale" of the parents*	35,000	(6,500 × 185 points)	1,200,000*
I. P. 100%	500,000	"Danno biologico"	216,000	Special damages	<u>50,000</u>
Future nursing, Prosthesis etc.	630,000	Invalidità 100%	200,000		<u>1,350,000</u>
Future care & special expense	220,000	Future nursing, (11,400 × 18.077)	206,000	= Pesetas	104,000,000
Préj. moral of the Parents	50,000	Future med. care	57,000	* in Madrid & other jurisdiction only	
I. T. T., Interest	25,000	Interest & expenses	46,000	50-60% of this sum	
	<u>2,000,000</u>		<u>1,025,000</u>		
= approx. FFrs.	8,020,000	= It. Lire	901,000,000		
		*Only if tortfeasor convicted of criminal offense			
<b>GREAT BRITAIN</b>		<b>GERMANY</b>		<b>SWITZERLAND</b>	
Special expenses	55,000	Medical expenses	150,000	Medical expenses	225,000
Pain & suffering		Pain & suffering	270,000	Pain and suffering	120,000
loss of amenity	215,000	Future loss		Future loss	
Future loss of earnings	16,000 × 13	26,300 × 23.4	615,000	36,000 × 23.97	863,000
Future care	32,300 × 13	Nursing & Care		Nursing and care	
Alterations to house	80,000	54,000 × 24.2	1,307,000	36,000 × 25.27	910,000
Future expenses	152,000	Alter. to house	84,000	Alter. to house	100,000
	<u>1,130,000</u>	Future expenses	204,000	Other expenses	
= approx. £ Stg.	425,000	Interest & increment for future inflation	510,000	8,000 × 25.27	202,000
			<u>3,140,000</u>	"Tort moral" of the parents	<u>40,000</u>
		= DM	3,720,000		<u>2,460,000</u>

TABLE 2

Case No. 2: Employer's Liability. Plant fitter, now aged 34, became paraplegic: functionally disabled to 80% following accident at work; anticipated annual net income about £ 6,600 (= SFrs. 18,000). (Amounts converted into Swiss francs)

<b>FRANCE</b>				<b>SPAIN (Barcelona)</b>	
I. T. 1 1/2 years	27,000	Temp. loss of wages	27,000	Medical expenses	54,000
Medical expenses	190,000	Medical care (USSL): free	—	General damages	
Préium doloris	50,000	Torto morale*	138,000	(Future loss & expense	
Préj. esthétique	50,000	"Danno biologico"	164,000	+ pain & suffering:	
Préj. d'agrément	62,000	Future econ. loss	251,000	6,400 × 140 points)	896,000**
I. P. P. 80%	300,000	(18,000 × 17.44 ./ 20%		Special damages	50,000
100% economic		Increment for			<u>1,000,000</u>
(18,000 × 13.628)	245,000	inflation		= Pesetas	78,000,000
Future nursing,	350,000	(svalutazione) 20%	50,000	** only half of this sum in Madrid	
Special costs	125,000	Future expenses	<u>50,000</u>		
Future med. care	76,000		<u>680,000</u>		
= FFrs.	<u>5,900,000</u>				
		= It. Lire about 600,000,000			
		*only if tortfeasor convicted of criminal offense;			
		to parents only in most serious cases.			
<b>GREAT BRITAIN</b>				<b>SWITZERLAND</b>	
Special damages		Loss of wages	60,000	Loss of wages	81,000
loss of wages	110,000	Medical expenses	65,000	Medical expenses	130,000
Pain & suffering		Pain & suffering	169,000	Pain and suffering	100,000
loss of amenity	174,000	Future loss		Future loss	
Future loss of		24,000 × 18.8	451,000	28,000 × 19.59	549,000
earnings		Increased needs,		Increased needs,	
24,000 × 14	336,000	future care & exp.		future care	
Future care		19,500 × 20.8	405,000	14,000 × 21.75	305,000
15,300 × 14	210,000	Increment for		Special expenses	105,000
Future expenses	170,000	future inflation	<u>300,000</u>		<u>1,270,000</u>
	<u>1,000,000</u>		<u>1,450,000</u>		
= approx. £ Stg.	375,000	= about DM	1,700,000		

TABLE 3

Case No. 3: Nuclear plant worker (36) died following one year of sickness caused by doctor's and chemist's negligence, survived by widow (36) and 3 children (14, 11, and 6). (Amounts converted into *Swiss francs*, as per 31. 8. 1988)

<b>FRANCE</b> (presumed <i>net</i> income of deceased: 25,000 p. a.)	<b>ITALY</b> ( <i>net</i> income of deceased: 20,500 p. a.)	<b>SPAIN</b>	
Loss of earning 1 year 25,000	Medical care (USSL): free —	Loss of earning 1 year 20,000	
Medical & funeral exp. 250,000	Funeral expenses 30,000	Medical & funeral expenses 80,000	
Preium doloris 1 year 25,000	Contribution 2/3* 233,000	Pecuniary & non-pecuniary loss of:	
Pecuniary loss: 75% = 18,750 × 13.13*	= 13,650 × 17.09	– Widow 195,000	
“Préj. moral”:	“Danno morale”:	– 3 Children 195,000	
– Widow 18,000	– Widow 45,000		
– 3 children 37,000	– 3 Children 135,000		
– Brother & Sisters 5,000	– a brother & a sister 22,000		
	“Svalutazione” 55,000		
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	625,000	= Pesetas 38,000,000	
= FFrs. 2,500,000	<hr/>		
*no allowance for remarriage prospects	= It. Lire about 455,000,000		
<b>GREAT BRITAIN</b> (supposed <i>net</i> income of deceased: 30,000 p. a.)	<b>GERMANY</b> ( <i>net</i> income 30,000 p. a.)	<b>SWITZERLAND</b> ( <i>gross</i> income 40,000 p. a.)	
Funeral & other expenses 27,000	Medical expenses 105,000	Medical expenses 125,000	
Widow: – loss of trial 4 years à 14,000 56,000	Pain & suffering 43,000	Funeral expenses 14,000	
– future loss 17,250 × 11* 190,000	His loss of income 38,000	Loss of widow 40% on 40,000 = 16,00 × 18.52	
Pre-trial & future loss of 3 children: – A 12,000	Funeral expenses 8,000	./ 12%*** 260,000	
– B 20,000	Loss of dependency: Widow with 3 children 70% on 20,000 + fix costs = 24,300 × 6.7 163,000	Child A 4,800 × 5.41 26,000	
– C 33,000	Widow alone: 20,250 × 12.5 253,000	Child B 4,800 × 7.69 37,000	
Interest (for 4 years on pre-trial loss 12,000	Loss of pension, children's support after 18 30,000	Child B 4,800 × 10.97 53,000	
<hr/>	Interest & increment for inflation 160,000	“Moral damage”:	
	<hr/>	Widow 30,000	
	350,000	3 Children 45,000	
= approx. £ Stg. 130,000	<hr/>	Interest 20% on 451,000 90,000	
*No deduction for prospect of remarriage	= DM 950,000	<hr/>	
**if claimed before death		800,000	
		<hr/>	
		680,000	

\*\*\*Deduction for remarriage prospects

TABLE 4

Comparative table of the quantum of damages in 3 model cases  
in 6 Western-European Countries 1982-86 (Amounts in Sfr. 1000)

Case	France		Italy		Spain		Great Britain		Germany		Switzerland	
	1982	1988	1982	1988	1982	1988	1982	1988	1982	1988	1982	1988
No. 1	1,710	2,000	650	1,025	470	1,350	920	1,130	1,880	3,140	1,925	2,460
No. 2	885	1,475	495	680	400	1,000	460	1,000	680	1,450	735	1,270
No. 3	335	625	325	520	190	490	328	350	470	800	445	680
Nos. 1-3	2,930	4,100	1,470	2,225	1,060	2,840	1,708	2,480	3,030	5,390	3,105	4,410
1982-88 increase in %		40 %		51 %		168 %		45 %		77 %		42 %

- The courts of the Southern European countries, especially those in the north of Spain, strive to adjust their awards for personal injury to the Western European standard, i. e. the level of damages increases here even more than in Western Europe in the long run.
- The quantum of damages granted for personal or fatal injury tends to rise, generally speaking, more than the inflation rate of prices or wages.
- In every Western European country, the compensation awarded for serious injury cases or loss of support exceeds very substantially the liability limits imposed by the Warsaw Agreement and the Hague Protocol on aviation accidents.