



Damages arising from Physical Injuries and Compensation Methods in Iranian Civil Liability Law

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Abstract

By commencing formulation of legal and criminal rules based on Islam, blood money rules were written and enacted in 1982 titled as "Islamic Penal Code (Blood Money)" in the first period of the Islamic Consultative Assembly. It was reviewed in 1991 and enacted with some corrections, but these rules were faced with some problems from the first years of enforcement. One of the most important problems is losses more than blood money. So, from the beginning of these rules enforcement, the judicial system was faced with abundant problems as regards claims for damages arising from physical injuries and since it was not clarified for the judges, different verdicts were issued in this regard. Although it has not yet been settled and a binding vote has not been issued in this regard, this opinion may be a basis for final corrections in blood money rules. It seems that lack of accurate knowledge about nature and philosophy of blood money on one hand and lack a comprehensive analysis of the executive problems on the other hand have converted losses caused by physical injuries issue into an acute problem of the Judiciary.

Keywords: Damages, physical damages, moral damages, body injuries, civil liability.

Introduction

Development of industry and trade in the twentieth century and subsequently occurrence of different events in the industry of passenger and cargo transportation, and worker – client disputes caused by labor relations in different countries and emergence of various opinions and legal doctrine about compensation for losses incurred by the victim, and governments intervention through creating insurance industry whether in the internal or international arenas make the government support the victim. So, the legislators have encouraged natural and legal persons to conclude insurance contracts with insurance companies and determined legal and criminal guarantees for compensation, particularly when there were heavy losses, to prevent multiple problems. In the Iranian Law, since many legal rules comply with Shiite jurisprudence, compensation is justified by "principle of no harm". The subject of civil liability insurance is compensation for losses caused by fault or risky activities of a person. In civil liability insurances for physical damages, compensation for treatment costs of body injuries caused by accidents covered by insurance for third parties is the subject of contract.

Financial losses refer to compensation for direct losses caused by the events covered by the contract for the properties and objects possessed legally by the third parties. In these cases, the insurer is committed to pay compensation for losses incurred by the third party, and litigation costs, lawyer and experts fees in the case of recourse to the court based on verdicts issued by legal courts. Compensation will be paid directly by the insurer

to the victim third party. Liability insurances are very various and there are proper compensations for occupational risks and activities.

Blood Money and Damages arising from Body Injuries

Establishment of Islamic Republic system in Iran provided again an opportunity where Islamic jurisprudence may retrieve its prior role in managing the society and government. Formation of a system based on guardianship of the Islamic Jurist and emphasis of Constitutional Law on the point that "all civil, criminal, financial, economic, administrative, cultural, military, political, etc. rules must be based on Islamic principles" (Fourth principle of Constitutional Law) make Shiite jurisprudence areas to be engaged in the sophisticated political matters and remedy management of this newly established government.

Although Imam Khomeini tried in exile and after victory of Islamic revolution to explain theoretical bases of Islamic government thought and response to the challenges of this thought, it must be confessed that abundant problems of the first decade of Islamic republic system sovereignty did not permit him to elaborate all he had in the mind. Albeit Imam continually sought to provide proper mechanisms for managing the society based on Islam until the last years of his life, and his messages and statements during 1987–1989 regarding authorities of Islamic ruler, guardianship of the Islamic Jurist, and formation of Expediency Discernment Council etc.¹ confirm this matter.

Before studying blood money issue and damages arising from body injuries, it is necessary to review the most important laws cited by the courts before formulation and enforcement of the mentioned rules regarding body injuries, whether intentional or unintentional.

Laws governing Body Injuries before Establishment of Islamic System: The most important laws that can be mentioned in this regard are namely, General Penal Code, Civil Liability Law

General Penal Code: General Penal Code and its amendment had 288 articles; articles 1 to 169 were first enacted in January 12, 1926, but articles 1 to 59 were revised in May 27, 1973. Articles 170 to 280 were enacted in January 27, 1926, and articles 281 to 288 were enacted in July 19, 1931.

Civil Liability Law: This Law that had been enacted in May 6, 1960 was mainly derived from Swiss Obligations Law and German Civil Law and included 16 articles.

When the bill related to this Law was passing through the enactment process, deputy Minister of Justice declared in a speech in the auditoriums of this Ministry that, The main reason of preparing this bill was that the laws were not adequate for compensation based on current economic and social circumstances. So it can be stated that legislators of Civil Liability Law sought to complete Civil Law 1928 as regards "automatic liability" (Articles 307-337 of Civil Law). Article 1 of the mentioned Law provided that, Anyone who causes damages for life, health, property, freedom, dignity, business reputation or any other right of recognized for persons by law, without legal authority, intentionally or due to imprudence and bring about material or moral losses for another person will be responsible for compensation.

So, one can state that according to "Civil Liability Law", anyone who causes material and moral losses is bound to compensate them.

According to Articles 1, 2, 5, and 6 of Civil Liability Law, any of below losses could be requested in body injuries. Treatment costs, Disability compensation, Increase in living expenses, Moral damages.

If the injury led to death of the injured person, "all costs particularly cost of burial" must be paid, and if death was not immediate, "treatment costs and losses arising from inability to work in the illness period are regarded as among damages".

Now, we review the process of formulation and enactment of blood money rules in the Islamic Republic of Iran.

Laws governing Body Injuries after Establishment of Islamic System: By formation of the first period of the Islamic Consultative Assembly in 1980, extensive endeavors were

started to make the rules Islamic and the Supreme Judicial Council formulated different bills in different legal and criminal areas and submitted the Islamic Consultative Assembly for ratification.

The first bill was Limits and Retaliation Law enacted in August 25, 1982 by Judicial Affairs Commission of the Islamic Consultative Assembly. In a short time after enactment of this law, i.e. in December 15, 1982, blood money section of the Islamic Penal Code was enacted in the mentioned Commission in order to be enforced for five years.

This Law that contained 211 articles included different matters such as body injuries, assault and battery, physical disability, and murder, albeit if they occurred by a pure mistake or quasi intentional mistake; it was regarded as a substitute for the rules provided in Chapter One of the Third Part of General Penal Code enacted in January 27, 1926 and some articles of Civil Liability Law enacted in May 6, 1960.

Judicial Affairs Commission of the Assembly enacted this Law in July 30, 1991, and since there were disagreements on some articles between the Assembly and Guardian Council, this law was raised in the Expediency Discernment Council and was enacted in the session dated November 28, 1991. Now, Chapter Four of the Islamic Penal Code that has been allocated to blood money rules contain 103 articles (294 to 497) and constitutes near one fourth of the mentioned law.

Damages arising from Body Injuries: As mentioned earlier, before enactment of blood money rules, the victims of body injuries might claim for all losses including treatment costs, losses of disability, increase in living costs, and so on. But by enactment of blood money rules in 1982 and determining constant values of blood money for different injuries, ranged from murder to assault and battery, disability, etc., this question was raised that whether the injured person may claim for other damages arising from body injury or not.

In the other words, has enactment of blood money law abolished those articles of Civil Liability Law that pertain to damages of body injuries or not? What made this matter important was that the blood money paid to the victims of body injuries did not compensate for heavy losses of treatment and hospital in most cases and they were obliged to bear these costs and other losses arising from the body injury. It must be noted that such a situation led to dissatisfaction of the victims with the Islamic system Judiciary².

Anyway, legitimacy or illegitimacy of compensation for losses arising from body injuries has been always discussed during past years by legal and judicial circles and it is still on the top of executive problems of blood money legal articles. In the following, blood money issue through the lens of Maraji¹.

Asking for religious opinions of Maraji, Religious opinions of

Maraji gained in the first years of enforcement of blood money legal articles indicate that receiving money more than blood money is illegitimate.

In response to below question: An automobile driver has hit a boy and broken his leg, the boy does not have parents and another person has grown him. The driver has promised to pay costs of treatment and drugs, and the boy leg is likely to recover in the early future; so is the driver bound to pay blood money besides paying the costs or not, and if yes, how much is the blood money?

Ayatollah Golpayegani stated that: The blood money of breaking the leg bone is one hundred Dinars if it gets defective, and eighty Dinars if it gets sound, there is no difference between children and adolescents. In the injuries over than pericranium (Islamic Penal Code, Article 480, paragraph 4), the criminal is not responsible for other costs more than blood money; and in pericranium and lower than pericranium, the criminal and the victim can compromise for the physician fees³.

However in the next years, some maraji believed in legitimacy of receiving money for losses besides blood money. Two below theories can be mentioned as examples.

When damaging a person body realizes blood money and the injury needs treatment, the criminal is required to pay the treatment costs besides blood money. Also the criminal must compensate for the financial losses caused by the injury, for example when the victim cannot do his job for several days due to that injury or fracture.

Another contemporary Marja has commented in this regard that: As regards organs blood money, when treatment costs are more than the amount of blood money, the criminal is required to pay this difference; because according to the "principle of no harm", the criminal must pay it since he has caused the losses⁴.

Since we do not seek to study jurisprudential viewpoints, it suffices to mention these few comments.

Compensation for Moral Damages arising from Losses over than Blood Money

In the history, intellectual rights and properties have always been valued by the humans and have been claimed like material properties; damages to these rights are called moral damages. Moral damages refer to damages to reputation and dignity of the victim or one of his relatives; for example, a patient dignity is hurt due to disclosure of his patience secret. In fact, any kind of losses that is obtained through hurting dignity, social or personal reputation, or due to physical or mental grieves and finally emotional damages are called moral damages. Compensation for financial losses is among evident issues, but moral damages compensation and calculation are among controversial issues that are associated with ambiguity.

From the beginning, protective methods for compensation have been considered in the process of societies' regulation including physical punishment and financial penalties. Gradually by evolution of societies and stabilization of legal criteria, these remedial methods were made standard depending upon the system governing any society. Islam, as the most complete divine religion, has paid a particular attention to human rights. In fact, legal provision of Islam are the most comprehensive and standard legal principles that are applied as a basis for inferring laws in different legal issues. The victim rights and compensation are among these issues for which there are some Quranic verses and narratives from Imams in the Islamic legal system and such principles as no harm, causation, and wasting in the Islamic jurisprudence, and based on these documents, the legislator has accepted compensation of financial losses by money. That is, the cause of financial loss is responsible for providing its equivalent or price⁵.

An important question that is raised here is that whether blood money provided by the legislator as a remedy for compensating damages arising from death and injuries has been provided for all material and moral damages or it is merely allocated to moral damages. Some legal authors have defined blood money as a remedy for compensating moral damages of the victim. But this theory is not acceptable because first, it is not matched with the background and historical evolution of blood money; second, allocation of blood money to moral damages implies that the legislator had disregarded material damages compensation which is a very tangible issue⁶.

In response to the ambiguities raised regarding compensation of moral damages caused by body injuries, one can state that the legislator has sought to legitimize blood money principle according to verse 4 of Nesa Surah, and compensation of all damages by blood money is not acceptable. Furthermore, compensation of moral damages by money has not been prevalent at the time of blood money legislation⁷.

On the other hand, moral benefits such as health, beauty, and different benefits that are gained through physical health have rational value, and the wise consider conventional compensation of financial losses and physical injuries necessary; the wise practice is among the most important documents for jurisprudential provisions proof. It must be noted that compensation of moral damages caused by physical injuries, like other types of damages, rely upon three important principles namely, no harm, no distress and constriction, and wasting. As no harm principle prohibits losses caused by positive orders, it prohibits losses caused by negative orders as well. Consequently, lack of compensation of moral damages caused by physical injury and death hurts the victim and this is prohibited by virtue of no harm principle; though financial compensation of emotional damages is very difficult, satisfying the victim financially is regarded as a kind of compensation because continuity of damages is prohibited like its creation. So, financial compensation may cancel continuity of damages and subsequently prohibition.

The same verdict applies to no distress and constriction principle because this principle is not allocated to positive orders too. So, any positive order that impose distress, no distress principle will prohibit it. Paying an amount of money for compensation of emotional damages is a method for removing distress. Therefore, financial compensation of moral damages caused by physical injuries has no problem.

As regards relying upon wasting principle for compensation of moral damages, it must be noted that moral benefits of human have rational value and though these benefits are not financial inherently, they are regarded as property. However it is worth mentioning that material and moral damages issues have not been stated separately in the Islamic jurisprudence and contemporary jurists do not have consensus in this regard⁸.

Some believe that receiving any kind of remedy except for blood money is illegitimate and some accept a surplus remedy that has a legitimate reason. Also, another group has accepted payment of a cost independent from blood money. Moral damages have been raised in the current Iranian laws and one of the most important laws in this regard is Civil Liability Law. Civil Liability Law 1960 is the most important legal reference regarding compensation in a broad sense and moral damages.

Article 1 of this Law provides that, "Anyone who causes damages for life, health, property, freedom, dignity, business reputation or any other right of recognized for persons by law, without legal authority, intentionally or due to imprudence and bring about material or moral losses for another person will be responsible for compensation". Article 2 has provided that claims for moral damages, whether associated with material damages or independently, may be investigated.

According to Article 5, if physical injuries or damages to health of a person cause civil deficiency, the causer is responsible for all compensation of all damages. This article has somehow considered damages that are created by physical injuries and the blood money does not suffice for their compensation. However it must be noted that compensation of moral damages will be based on conditions and features of claims for damages. That is, damages must be obvious, direct, uncompensated, and predictable and mere claim of a person cannot be heard. It is concluded that moral damages have an important position in Islamic legal issues and Civil Law, particularly in civil liability and have various examples. They are not confined to damages to dignity and personal and social reputation; rather they include physical injuries, disability of working, mental health, and beauty. So, damages caused by assault and battery for which the blood money does not suffice are regarded as among moral damages.

Civil Liability for Damages caused by Accidents

From long ago, human has used different vehicles for transpiration of goods and passengers. In today world that is

world of speed and communication, vehicles have been transformed dramatically and many developments have been made to create speed and security in these vehicles. Among vehicles of the current era, automobile has a particular position. Use of automobile has been developed remarkably and is extending day by day. Parallel with this development, risks of this vehicle have been increased and we witness every day its human and financial losses. Unfortunately the rate of these losses is increasing in our country.

With regard to the importance of this issue and to protect rights of victims of damages caused by motor vehicles, particularly traffic accidents, the legislators of most countries have formulated specific laws. Besides these laws, rules of Liability Compulsory Insurance have protected the victim more than ever. Among foreign countries, New Zealand has taken the most important stride and compensates all material damages caused by traffic accidents by a system similar to Social Security. In Quebec from 1977, automobile insurance and compensation of damages caused by traffic accidents have been assigned to the administrative systems. Half of the United States of America has enjoyed laws in 1970s and 80s that compensate all damages of the victim⁹.

In the common law system, liability for compensation of losses arising from traffic accidents is called strict liability by which the victim does not need to prove fault of the causer¹⁰.

In the common law system¹¹, the automobile owner is responsible for compensation of losses caused by his vehicle, but sometimes the driver is likely to be liable^{9,12}.

In Germany, Austria, Switzerland, and Japan, possessor of the vehicle is subject to strict liability.

In the Egyptian Law¹³, compensation liability is imposed on the owner when he can be regarded as the "guardian" of the vehicle.

What is the legal basis of liability?

That is, on which legal theory is the liability of vehicle owner based? Some lawyers¹⁴ believe that three theories are more important than other theories: i. assumption of fault for the owner, ii. breach of an obligation pertaining to vehicle protection, and iii. strict liability based on risk theory.

With respect to Article 1 (Liability Compulsory Insurance Law) that introduces owner of the vehicle as the responsible for compensation, assumption of fault for the owner does not seem accurate. It may be stated that since civil liability is based on fault in the Iranian Law, the legislator has based the owner liability on fault but has assumed fault to facilitate compensation for the owner of the vehicle. However, as mentioned, with regard to Article 1 of the above mentioned Law and proof of the owner innocence, he cannot be absolved from liability; so we are obliged to disregard this theory.

It may be stated that the liability of vehicle owner is due to the breach of an obligation he has had; in the other words, since the owner of the vehicle has not looked after his vehicle properly, some losses have been incurred by another person, he is liable for compensation. Although this theory is more consistent with the liability provided in the Compulsory Insurance Law, it is not regarded as the unique basis of liability; otherwise the owner could prove that he has done his best and shirk his responsibilities. While we know that the owner cannot be exempted from liability except for interference of an external cause like force majeure.

Strict liability based on "risk theory": the followers of risk theory believe that a person who has created a dangerous environment and takes benefit from his activity will be liable for compensation of losses. Initially, with regard to the Article 1 of Liability Compulsory Insurance Law that has regarded strict liability for the owner of the vehicle, this liability may be regarded based on risk theory but a little attention shows that this liability is not strict; for example, if the owner proves that his automobile has hit another vehicle due to flood, he can be exempted from liability. So, this liability cannot be regarded as a strict liability based on risk theory.

In the French Law, Article 2 of Traffic Accidents Law 1985 has introduced only the victim fault as the cause of liability exemption, when it unique cause of the event; though this unique cause has the characteristic of force majeure. However with regard to other rules of this Law, the basis of liability caused by traffic accidents is closer to the risk theory and strict liability.

In the common law system, liability of compensating for losses of traffic accidents is studied under the title of strict liability and owner of the vehicle is sometimes recognized as liable for losses caused by the driver fault. As regards losses arising from incidents other than accident, the vehicle is not required to be moving; rather the causal relationship between vehicle and the created losses suffices.

As regards losses arising from accident, two vehicles collision must be due to both vehicles movement. Therefore, if collision of a moving vehicle with a non-moving vehicle brings about losses, this event is not covered by Article 335 or 336 of Islamic Penal Code. So, it can be stated that in the accident, the interference of each vehicle plays a role as a part of causation of the damaging collision¹⁵.

As regards accident, Article 336 of Islamic Penal Code provides that "whenever collision of two vehicles brings about losses, if the accident is imputed to both and both of them are guilty, or if neither of them is guilty, each one is liable for half of losses incurred by another one, whether these two vehicles are of a same type or not and whether their faults are equal or different. And if one of them is guilty, only the guilty is liable. Below points must be taken into account.

First, Islamic Penal Code has been enacted after Insurance Law. So, it governs the accidents. This law seeks to state penalty of the offender and impose compensation as a penalty on the criminal that is necessarily the driver. So, Article 336 of Islamic Penal Code is focused on final liability based on wasting and merely states liability of the driver as the principal regardless of fault of the parties.

Second, Islamic Penal Code states losses caused by accidents of all types of vehicles, but Compulsory Insurance Law is focused on losses caused by motor vehicles and since it is regarded as a specific law relative to Islamic Penal Code, it must be enforced in its specific case. So, when two non-motor vehicles collide with each other, Compulsory Insurance Law will not obviously govern. But as regards motor vehicles, regardless of personal liability of the driver, compensation is imposed on the owner by virtue of Liability Compulsory Insurance Law.

Third, although Islamic Penal Code states liability of the driver, fault of the driver is effective on determining the party who must compensate for the losses. So, according to Compulsory Insurance Law, the insurer of the automobile whose driver has been guilty will pay compensation. Thus liability is imposed on the owner of the vehicle (compensation is received from insurance company and insurance fee is paid by the vehicle owner). However when the owner has not insured his vehicle and the driver is recognized guilty in the accident, the victim must raise an action against the owner or the driver; and by virtue of Compulsory Insurance Law that considers the driver liable, he can receive compensation from the driver. Also he can raise an action against the driver according to Islamic Penal Code. But the owner whose driver has been guilty may refer to the driver and claim for what he has paid to the victim. This is the final liability that is imposed on the driver. Also the insurance company that has paid compensation to the victim may refer to the guilty driver. And when neither of the drivers is guilty, each one pays the half of losses of the other one. This liability that is based on wasting is focused on the principal and so both parties are regarded liable regardless of fault and it is close to Compulsory Insurance Law from this perspective.

Anyway some lawyers⁷ believe that when the drivers of both vehicles or one of them are guilty, proof of this fault will not make Compulsory Insurance Law ineffective; rather proof of fault shows that in the accident both owner and guilty driver are liable. In the other words, in the accident of two vehicles, the driver fault shows that one can use liability provided in Compulsory Insurance Law against the owner. So, when the losses are caused by accident of two motor vehicles, the owner of the vehicle whose driver has been guilty according to Article 336 of Islamic Penal Code will be liable for compensation, whether the driver is the owner or not. It is evident that when the drive act is criminal and is subject to discretionary punishment, this punishment is imposed on the driver (Article 714 of Discretionary Punishment Law); paragraph 5 of Article 4 (Liability Compulsory Insurance Law) has excluded losses

caused by criminal conviction and fines payment (contributor negligence).

Conclusion

By Attention to the logic and philosophy of jurisprudential provision for understanding new provisions when social and economic relations data have changed compared to the revelation time and past ages, legal principles that may respond to the needs of modern life while being loyal to the Islamic religion, can be inferred. The salient example of this matter can be found in the extreme difference of legal theories, relied upon justice considerations, and jurisprudential provisions, relied upon traditional jurisprudential rules, regarding compensation of physical injuries. The difference between jurists and lawyers opinions has still remained after discussion and analysis for more than a quarter of a century and daily issuance of a wide range of judicial verdicts.

It is concluded that though in the initial logic of religious and jurisprudential decrees, blood money has been considered for all losses caused by physical injuries, blood money entity must be reviewed and the best equivalent must be clarified in the new law due to the emergence of new matters and modern data of human life, and specifically medical advancements and considerable costs that are unprecedented during human life history.

Based on the presented issues, blood money may properly be considered for moral (non financial) damages. So, blood money includes all moral damages caused by physical injuries and one cannot claim for an amount more than the determined money under the title of moral damages.

As regards financial losses caused by physical injuries, it seems that treatment cost belongs to our time and has never been raised in the past centuries and eras and so it could not draw the legislator attention like today. It seems that treatment costs have not been considered as a title independent from losses of physical injuries. Therefore, by considering treatment cost as an independent damage besides blood money, it can and must be regarded reparable. The findings in this study are in accordance with Yasmin et al¹⁶ and Rahim et al¹⁷.

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