



## Law on Compensation for Loss of Life and Health in the Field of Road Traffic

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**Abstract:** The article focuses on researching theoretical issues, and legal provisions on compensation for loss of life and health due to infringement in the field of road traffic. Besides, the article also studies the practical application of the law and the court's trial with some typical cases in recent times. Since then, providing solutions to improve the provisions of the law on compensation for loss of life and health due to infringement in the field of road traffic. To achieve those goals, the project must deal with specific issues such as a General overview of compensation for loss of life and health due to abuse in the field of road traffic; Analysis, assessment, and regulations on compensation for loss of life and health due to abuse in the field of road traffic according to current legal regulations; Analyze the current situation of applying regulations on compensation for loss of life and health due to abuse in the field of road traffic by the law with some recent typical cases. On that basis, propose solutions and proposals to improve the provisions of Vietnamese law on compensation for loss of life and health due to abuse in the field of road traffic.

**Keywords:** Law on compensation, loss of life, loss of health, the field of road traffic, Vietnam.

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## INTRODUCTION

Along with the economic development, trade exchange and the increase in population are always associated with the density of traffic participants, so the situation of violating regulations on traffic order and safety is becoming more and more complicated. Besides the explosion of motor vehicles, ensuring traffic safety and reducing traffic accidents is a big challenge for the country. Traffic safety has become a nationwide problem as it claims lives and leaves lifelong injuries for millions of people every year, causing significant economic losses to victims, their families, and the country's economy. According to the National Traffic Safety Committee (2019) statistics, there were 24,376 traffic accidents nationwide, killing 8,848 people and injuring 19,780 people. Compared to the same

period in 2018, a decrease of 1,791 cases (a decrease of 5.52%), a decrease of 43 deaths (a decrease of 0.49%), a decrease of 1,792 people of injuries (a decrease of 9.5%). It focuses on some big cities with many residents such as Hanoi, Ho Chi Minh City, Binh Duong province, Dong Nai province, etc.

It can be seen that, in cases of road traffic safety violations, there are usually many interwoven legal relationships, including administrative, criminal, and civil. From the perspective of civil law, legislators are concerned with the liability to compensate for damage caused by violations of regulations on road traffic safety and order. Which, compensation for life and health is considered the most serious issue worthy of attention (Hung, 2016). Because it is inherently a source of "asset" and life is the most precious human life.

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Currently, legal documents are issued to regulate this issue such as the Civil Code 2015, along with documents and resolutions guiding the application of compensation in this field and co-judge documents. The Supreme People's Court guides the application of several provisions of the Civil Code (National Assembly of the Socialist Republic of Vietnam, 2015) on compensation for non-contractual damages. However, these regulations are still incomplete, complete, and consistent in determining who is responsible for compensation, determining damage, and the level of compensation when violating healthy, leading to problems for the application of the Court in settling the liability to compensate for damage, in which there are many errors leading to the judgment being canceled and having to be re-tried (Dung, 2016). From the above situation, systematically and scientifically research the provisions of the law on compensation for life and health due to violations of regulations on road traffic safety and order to understand properly. and correct implementation, as well as detecting inadequacies to perfect them is a really necessary and urgent job. Therefore, the author strongly chooses the topic: "Law on compensation for loss of life and health in the field of road traffic" as the research topic for the article.

## LITERATURE REVIEW

Compensation for loss of life and health due to harm in the field of road traffic is one of the contents of the liability to compensate for damage outside the contract. The content of liability for compensation for damage outside the contract is of interest to many legal researchers. There have been a number of studies on non-contractual compensation liability, including mention of liability to compensate for damage, specifically as follows:

Nguyen Van Hoi (2017), "responsibility to compensate for damage caused by property according to Vietnamese civil law"; Doctoral thesis in jurisprudence, Hanoi Law University.

Hoang Van Can (2018), "Liability to compensate for damage caused by violations of the road traffic law - Through trial practice in Lang Son province", Master thesis of jurisprudence.

Ngo Thi Anh Tho (2017), "Solutions to improve the efficiency of the scene investigation of traffic accidents in Cau Giay district, Graduation thesis.

Trinh Tuan Anh (2016), "About the basis for arising liability for non-contractual damages under the 2015 Civil Code", *Procuracy Journal* No. 19/2016.

In the above studies, the authors basically focus on studying the most basic theoretical issues about liability for damage caused by the property, which point out the nature of liability to compensate for damage. by conduct and by property; conditions for arising liability to compensate for damage caused by acts. Thereby, the authors study and clarify the nature of the liability to compensate for property damage that is an adverse consequence that an entity has to bear due to the violation of legal regulations on management or because they are the beneficiaries of the benefits that the property brings to ensure a balance between the values that the operation of the property brings with the damage it causes. At the same time, the author gives some solutions and recommendations to improve the legal provisions on liability to compensate for damage caused by property.

## RESEARCH RESULTS AND DISCUSSION

### General overview of compensation for loss of life and health due to abuse in the field of road traffic

The concept of liability to compensate for harm to life and health in the field of road traffic: First of all, it is necessary to confirm: Road motor vehicles are a source of extreme danger. Clause 19, Article 3 of the 2008 Law on Road Traffic stipulates: "Road motorized means of transport include cars; tractor; trailers or semi-trailers towed by cars or tractors; two-wheeled motorcycles; three-wheeled motorcycles; motorcycles (including electric scooters) and the like". And Clause 1, Article 623, of the 2005 Civil Code lists the sources of extreme danger in practice: "Sources of extreme danger include motorized transport vehicles, power transmission systems, and industrial plants. in operation, weapons, explosives, inflammable, poisons, radioactive substances, wild animals, and other sources of extreme danger as prescribed by law".

According to point b, Section 1, Part III, Resolution No. 03/2006/NQ-HDTP dated July 8, 2006, of the Judicial Council of the Supreme People's Court guiding the application of a number of provisions of the Civil Code 2005 on compensation for non-contractual damage: "To determine the source of extreme danger, it is necessary to base on Clause 1, Article 623 of the Civil Code and other relevant legal documents or regulations of state agencies. competent in that particular area".

From the above analysis and comments, the author would like to introduce the concept of liability to compensate for damage in road traffic accidents as follows: is a type of liability for non-contractual damages arising when someone has acts

of violating regulations on road traffic safety causing damage to human life, health and property.

### **Features of liability for damage compensation in traffic accidents**

As analyzed in the concept of "traffic accident" above, a common point about damage and loss that the authors all make when talking about traffic accidents includes physical and mental losses. Therefore, it can be understood that when a traffic accident occurs, there is not only physical damage but also mental damage, and of course, the person responsible for compensation will have to compensate both physical and mental damages arising from traffic accidents. In fact, when a traffic accident occurs, the material and mental damage are extremely large, along with that, the loss of these two types of loss also occurs in parallel, because of the fact, of the accident. Traffic accidents often occur in the case of people driving means of transport, so when an accident occurs, the presence of both human and material (driver and vehicle) is obvious. will cause damage to both the driver and the vehicle. Actual material loss is understood as the damage that people have to bear in monetary terms caused by the infringing party, including property loss, reasonable costs to prevent, limit, recover damage, lost or reduced actual income.

Material loss in a traffic accident is therefore well known that the damage to property caused by the act of causing the traffic accident causes this property to be completely destroyed or damaged causing a decrease in value. These losses are common and recognizable and are easily identifiable when converted to the cash value. Therefore, in order to compensate and compensate for material loss caused by a traffic accident, the person with the obligation to compensate can only and must pay compensation in cash equivalent to the value or part of the damaged value of the traffic accident. property damage as prescribed by law, unless otherwise agreed by the parties. Mental loss is understood as the loss that a person has to suffer due to the invasion of his or her life, health, honor, dignity, and reputation, which causes mental loss to the injured person. harmful as sadness, pain, etc.

Therefore, the mental loss caused by the act of causing a traffic accident is non-physical damage, or more specifically, damage to health, life, honor, dignity, and reputation. created by the person causing the accident. Usually, to compensate for this damage, the person with the compensation obligation is forced to stop the violation, apologize, publicly rectify and also have to pay a sum of money to compensate. As a matter of fact, the way to compensate for the mental loss caused by a traffic accident is not only done with an ordinary monetary

compensation measure, the obligor must also take measures to restore and compensate for this loss. Because it can be seen that mental damage (except for the loss of life) can be partially restored and compensated, therefore, the law always prescribes a method of mental compensation in addition to compensation.

### **Current status of legal regulations on compensation for damage to life and health in the field of road traffic**

Conditions for arising liability for damage in road traffic accidents:

As analyzed, the liability to compensate for damage in road traffic accidents is the liability to compensate for damage outside the contract. Therefore, in order to incur liability for damage in road accidents, it is necessary to satisfy the conditions prescribed in Article 584 of the Civil Code (2015). Accordingly, the following three conditions are included:

There is actual damage, specifically: It can be seen that the liability for compensation for damage in road traffic accidents is different from criminal liability because criminal liability is posed due to the dangerous nature of the behavior. The possibility of serious consequences for society, but for compensation liability in road traffic accidents, only damage, whether serious or not serious, is required, if the victim claims compensation, The person causing the damage must be responsible for compensation. In road traffic accidents, the damage is understood as the decrease in the material and spiritual value of a person caused by a road traffic accident, including loss of life, human health, and damage to property.

Having caused illegal damage, specifically: One of the conditions giving rise to the liability to compensate for damage, in general, is a violation of the law. Acts of causing unlawful damage are human acts in the form of actions or inactions that infringe upon human life, health and property, and other rights and interests protected by law. In road traffic accidents, the following illegal acts that cause damage will generate liability to compensate for damage to the subject of illegal acts.

There is a causal relationship between causing damage and actual damage, specifically: Acts of violating the law are objective causes leading to the arising of results without such causes. This is also the objective basis of responsibility, only this relationship can be determined to force the cause of damage to compensate the damage sufferer. Determining the cause-and-effect relationship is determining that the damage must be true as an inevitable result of the violation of road traffic order

and safety, which also means determining the liability to compensate for damage in the road traffic accident.

#### **Determination of damage in road traffic accidents according to the provisions of law**

Property damage: According to the provisions of Article 589 of the Civil Code 2015, property damage includes direct damage and indirect damage. Direct damages are damages that are specifically identified when the property is breached (damage to the value of the property compromised). These are types of damage that can be measured in units of measurement at the time of damage. This type of damage can include the residual value of the property at the time of the damage (when the property is lost, destroyed, or damaged beyond repair), or it is the cost of the repair itself, restoring the use of the property (in case the property is damaged but can be repaired).

Loss related to health and life: Damage caused by infringing health is understood as the loss and loss of material as well as mental that the person who commits the act of causing damage causes damage to the injured person. harmful. Physical damage is actual damage that can be specifically calculated using units of measurement. In principle, only the actual damage is compensated, so when claiming for damage, the aggrieved person must present proofs that the actual damage has been incurred.

Statute of limitations for initiating lawsuits to claim damages and time limit for enjoying compensation for damage:

First, is the statute of limitations for initiating a lawsuit to claim damages. Pursuant to the provisions of Article 588 of the Civil Code 2015, the statute of limitations for initiating a lawsuit to claim compensation for damage is 3 years from the date the claimant knew or should have known that his/her lawful rights and interests were infringed. According to the 2005 Civil Code, the statute of limitations for initiating a lawsuit is only 2 years, but the 2015 Civil Code stipulates that the statute of limitations for initiating a lawsuit is 3 years. This has important implications for complex traffic accidents where damage is difficult to determine. Contributing to protecting the legitimate rights and interests of the victims, they have more time to collect evidence and prove the damage.

Second, is the time limit for enjoying compensation for damage. For damage sufferers: This time limit is applied to cases where the person whose health is violated has been cured and recovered but completely lost his working capacity.

According to Clause 1 of the above Law, the person suffering from health damage is entitled to compensation only when he has completely lost his working capacity and according to Clause 2 of this Article, only those to whom the aggrieved person is obliged to provide compensation. alimony while still alive will be entitled to alimony (in case the damaged sufferer dies). This provision of the Civil Code has unintentionally prevented people from suffering from health damage, so they are no longer able to work to receive alimony if they had no income before the damage.

Thirdly, if the person being supported is a minor or the person who was born but became pregnant before the damaged sufferer dies, they are entitled to this amount until they reach the age of 18. If these people have reached the age of 15, even though they are not yet 18 years old, but have joined the labor force and have their own income sufficient to support themselves, they are not entitled to alimony from the time they have that income. However, if during this time they do not work anymore and have no income, they will continue to receive alimony.

#### **Solutions to improve the law on liability to compensate for the loss of life and health in the field of road traffic**

Through the results of theoretical research and analysis of the current legal provisions on liability for compensation for non-contractual damages in general as well as compensation for damage in road traffic accidents in recent years, the author makes a number of recommendations to contribute to the improvement of the legal provisions as follows:

Firstly, on the issue of the fault of the person causing the road traffic accident, the Civil Code only provides for the fault in civil liability in general. There is no legal document stipulating the fault in road traffic accidents, so in the process of solving, there are many different views on whether the intentional fault is determined by behavior or by consequences. Therefore, I request the competent authority to issue a document guiding how to specifically determine whether the intentional or unintentional fault of the person causing the road traffic accident is determined by behavior or consequences so that conduct proceedings in an objective, comprehensive and proper manner to settle the case in accordance with the provisions of law.

Second, it is necessary to increase the level of compensation for loss of life when the person causing the damage is at fault. According to the analysis of damage to health and life, in many cases,

the amount of compensation for The loss of life is much lower than the compensation for the loss of health. Therefore, it can now be seen that this is an inadequacy of the current law that makes the existence of "underground law" that makes many drivers determined to crush accident victims to death. On the other hand, it is not easy to prosecute the person causing the accident for the crime of murder because the accident happens very quickly and the evidence is easily disturbed. The cost of medical treatment and rehabilitation is currently very expensive. Besides, if the injured person loses his/her ability to work and needs someone to take care of him regularly, the damage includes reasonable expenses for the treatment. care for the injured.

Third, supplement regulations on responsibilities for operation, use, preservation, and transportation of highly hazardous sources. operate, use, preserve, keep and transport sources of extreme danger in accordance with the provisions of law". Understood by this regulation, the obligation to preserve, keep, transport, and use the highly dangerous source belongs only to the owner. Meanwhile, the owner is not the subject who always performs the preservation, custody, transportation, and use of highly dangerous sources. In many cases, the owner transfers the preservation, custody, transportation, and use of highly dangerous sources to another entity.

Fourth, on the method of refunding compensation for damage to legal entities and employers. In order to meet the timeliness of compensation for damage, the civil law stipulates that, first of all, the responsibility for compensation belongs to a legal entity, the employer in case a driver is a salaried person, then has the right to request the driver to refund that amount if the driver is at fault causing the damage (Because of the legal person's ability to compensate, the employer is often higher than the hired driver). However, if the driver's economic status is so low compared to the amount due to be refunded, refunding that amount on a one-off basis will still put them in a difficult position to complete the refund. again. Therefore, the law should have specific provisions on the refund method in these cases in the direction of gradually deducting from their salary and wages.

## CONCLUSION

Road traffic accidents in our country occur continuously, causing relatively large loss of life and property. The settlement of material consequences in road traffic accidents is to determine the damage and determine who is responsible for compensation for the damage. While there is no specific regulation

on compensation for damage in road traffic accidents, this settlement is only based on the provisions of the Civil Code on liability for compensation for non-contractual damage. These legal documents are still not specific, so it is difficult in practice to pay compensation for damage in road traffic accidents.

With a systematic analysis, the topic has defined the concept of many issues related to the topic as well as the nature and characteristics of those problems such as traffic accidents, characteristics of traffic accidents, types of liability for damage arising in traffic accidents, who must compensate for damage in types of compensation liabilities arising in road traffic accidents, The difference between traffic accidents caused by human behavior and traffic accidents caused by vehicles is a source of high danger in order to find out existing problems and make recommendations to contribute. the final part of the law on liability for compensation for non-contractual damage in general and compensation for damage in road traffic accidents in particular.

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