

Moral compensation for road traffic accidents victims in Algeria: A comparative study with Egyptian and Jordanian Law

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Abstract---The issue of compensation for moral damages for road accidents victims is considered one of the delicate matters within the scope of civil liability, given its connection to non-material interests that affect human dignity, sentiments, and feelings. Although the Algerian legislator has dedicated clear and independent provisions to regulate this type of damage, while referring to the established principles of compensation within the general rules of tort liability outlined in Article 124 and subsequent articles of the Civil Code, analysis has shown that Law 88-31 often tends to restrict the awarding of moral compensation. This is evident both in terms of limiting the beneficiaries—where it is confined to the rightful claimants of the victim in case of death—and in terms of assessing its value, especially when compared to comparative legislation such as Jordanian and Egyptian law, which adopt more flexible and humane approaches. The study concluded that legislative amendments are necessary to establish objective criteria for assessing moral compensation and to expand the range of its beneficiaries. This would achieve a balance between the aggrieved party and the party causing the harm, and would enshrine the principle of justice and the protection of human dignity in the Algerian legal system.

Keywords---Moral compensation, Civil liability, Moral damage, Rightful claimants, Road accidents victims, Comparative legislation.

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Introduction

The principle of compensation is considered one of the fundamental pillars upon which the civil liability system is based in various modern legislations. It represents the legal tool that restores balance to the legal positions of the parties after this balance has been disrupted by the occurrence of damage resulting from an unlawful act or negligence. Compensation is viewed as a means of achieving justice and rectifying the harm suffered by the injured party, whether it is material damage affecting their financial assets or moral damage affecting their feelings, dignity, and social standing. However, most studies and doctrinal and judicial trends have traditionally focused on material damage due to its tangible nature that is amenable to assessment, while moral damage has remained subject to profound debate and controversy between those who deny its compensability on the grounds that it is impossible to assess in monetary terms, and those who regard it as a legitimate right no less important than material damage because it affects the human aspect of an individual's personality. The intellectual and legal evolution in contemporary societies has produced a notable shift in the perception of the concept of damage, where it is no longer limited to material loss alone, but has come to encompass everything that affects a person's feelings, reputation, and dignity.

Significance of the Study

This topic acquires increasing importance in light of the multiplicity of cases in which compensation for moral damage is raised, particularly with regard to traffic accidents that result in death or bodily injury leading to acute psychological pain, disfigurement, or permanent disabilities, especially with the alarming increase in traffic accident figures and casualties.

Objectives of the Study

This study aims to achieve a set of fundamental objectives, most notably:

Determining the legal basis for compensation for moral damage in Algerian legislation.

Analyzing the position of the Algerian judiciary on moral compensation claims, particularly in traffic accident cases and civil liability matters.

Comparing the Algerian system with certain comparative systems (Egyptian and Jordanian) to elucidate differences in concept and application.

Proposing legal and legislative solutions that would enhance the protection of morally injured parties and ensure the achievement of compensatory justice.

Problem Statement

This study seeks to shed light on the extent to which Algerian legislation has succeeded in reconciling the principle of compensation for moral damage with the requirements of justice and victim redress, compared to comparative legislations that have explicitly stipulated this right?

The following sub-questions emerge from this:

What is the legal basis upon which compensation for moral damage in Algerian law is grounded?

To what extent are the current legal provisions adequate in achieving balance between the injured party and the person responsible for the damage?

Chapter One: The Conceptual Framework of Moral Compensation for Traffic Accident Victims

The Algerian legislator has enshrined the principle of compensation for moral damage as a means of achieving justice and providing comprehensive redress, particularly in light of the increasing number of traffic accidents and the profound psychological effects they leave on victims and their families. Alongside material damages that can be quantified numerically, there are moral damages that affect a person's psychological, social, or emotional well-being, which are sometimes difficult to measure but are no less serious than material damage. Therefore, the conceptual framework of moral compensation requires defining its meaning, legal nature, and the foundations upon which it is based, in order to

clarify the extent of its independence from material compensation and its position within the civil liability system.

First: The Concept of Moral Damage

Legal doctrine has differed in its characterization between those who consider it real damage requiring compensation, and those who view it as intangible damage that cannot be remedied with money. However, the prevailing trend, especially in modern jurisprudence, has recognized the right of the injured party to claim redress for this type of damage, considering that financial compensation is a symbolic means of alleviating suffering. This principle is based on the general rules of tort liability, which require the redress of all damage, whether material or moral. Thus, moral damage has become a fundamental component of compensation theory, aimed at achieving comprehensive justice and ensuring the human dignity of victims.

1. Definition of Moral Damage:

Moral damage is defined as harm inflicted upon a person affecting their feelings, reputation, or dignity without having a tangible material nature, such as psychological pain, grief, or humiliation. This damage is considered among the personal rights protected by law, as it is compensated for being an infringement upon the psychological and moral aspects of the individual¹.

a. Doctrinal Definition:

It is everything that affects a person's psychological, emotional, or social inner being in terms of pain, sorrow, or injury to their dignity, or violation of their honor or reputation, without resulting in direct material loss. Legal doctrine views this damage as an assault on the moral values protected by law, and considers it grounds for compensation in order to achieve justice and redress the non-material harm inflicted upon the individual. Moral damage, as referred to by Eastern jurists, encompasses everything that affects the psychological aspect of a person, such as pain resulting from the loss of a relative, humiliation, defamation, or deprivation of life's enjoyment.²

b. Legal Definition:

Algerian law does not provide an explicit definition of moral damage. However, the legislator stipulated the principle of compensation for moral damage in Article 182 bis of the Civil Code, where it merely enumerated its forms, while delegating the authority to assess moral compensation to the judiciary under Article 131 of the same Code.

It is non-material harm that affects a person's honor, reputation, emotions, or social status as a result of an unlawful act, and entitles the injured party to compensation in accordance with the provisions of civil liability. This definition is based on a general principle stating that all damage, whether material or moral, must be redressed to ensure the protection of individuals' personal and moral rights.³

2. Conditions and Forms of Moral Compensation:

Moral compensation is considered one of the most prominent legal means for redressing non-material damages inflicted upon individuals as a result of unlawful acts. However, benefiting from it requires the fulfillment of specific conditions that ensure its seriousness and balance justice in its application. Its forms also vary according to the nature of the damage and the relationship between the injured party and the person responsible, which necessitates a precise study of its conditions and forms in light of jurisprudence and case law.

a. Conditions of Compensable Moral Damage:

The first condition is that the moral damage must involve a violation of a legitimate moral interest. The concept of moral damage in jurisprudence and law refers to any infringement upon a legitimate moral interest protected by law, whether related to a personal right or a legitimate social or

¹ Ibrahim al-Sayyid Ahmad, *Moral Damage in Jurisprudence and Case Law*, 1st ed., Modern University Office, Cairo, 2008, p. 15

² Muhammad Husam Mahmoud Lutfi, *The General Theory of Obligation*, Dar al-Salam Press, Cairo, 2007, p. 192

³ Abd al-Wahhab Arafat, *The Intermediary in Civil Compensation for Civil Liability*, University Press House, Cairo, 2004, p. 39

emotional status. This is based on Article 124 of the Algerian Civil Code⁴, which establishes the principle of compensation for all damage inflicted upon others, whether material or moral. French jurisprudence has adopted this approach in accordance with Article 1382 of the French Civil Code⁵, considering that compensation does not require the existence of a legal relationship between the injured party and the victim; rather, it suffices that the damage has affected a legitimate interest protected by law. This development represents an expression of jurisprudence's transition from strict limitation of moral interests toward broader recognition of moral rights arising from legitimate human relationships, in pursuit of the principle of justice in redressing non-material damages.

The second condition is that the moral damage must be certain. Commentators agree that moral damage⁶, like material damage⁷, must be certain⁸. Certain damage is damage that is confirmed, meaning it has actually occurred or will inevitably occur. The criterion for establishing moral damage is harm to a person's honor and reputation, or violation of their feelings, sentiments, or emotions. If none of these are realized, the grounds for compensation are negated.⁹

The third condition is that the damage must not have been previously compensated. The meaning of this condition is that the victim may not obtain redress for the same damage more than once¹⁰; the injured party cannot combine multiple compensations for the same damage, which is referred to as *res judicata*. This requires that the parties, cause, and subject matter be identical. If a person suffers moral damage and the person responsible for the damage compensates them, it is considered that they have fulfilled their obligation in this regard, and there is no basis thereafter for claiming another compensation for the same damage.¹¹

The final condition is that the damage must be personal. What is meant by this condition is that the right to claim compensation is limited to the person who suffered the damage and no one else¹². Therefore, third parties cannot pursue the person responsible for the damage if the aggrieved party refrains from filing a lawsuit. The injured party is the one who has the right to claim compensation, as it is an inherent right. This right expires upon their death and does not transfer to heirs unless there is a final agreement determining it or a judicial ruling.¹³

b. Forms of Moral Damage:

The forms of moral damage vary according to the type of harm that affects a person's personality or social standing. It may manifest in psychological and emotional pain resulting from the loss of a relative or exposure to a painful accident that leaves a profound impact on the victim's psyche.

It also includes insult or violation of honor and dignity through slander, defamation, or fabricated accusations that wound feelings and deprive a person of their standing among people.¹⁴

It also appears in harm to reputation or social status resulting from actions or statements that diminish others' respect for them.

Among its forms is also deprivation of life's enjoyment and loss of psychological comfort due to temporary or permanent disability. In addition, there is emotional damage that affects the victim's relatives upon losing or seriously injuring a loved one.

Generally speaking, moral damage encompasses everything that affects human values that are priceless¹⁵, and requires compensation aimed at redressing psychological harm and achieving moral satisfaction for the injured party.

⁴ Ahmad Shawqi Abd al-Rahman, *Research Studies in Civil Liability*, Knowledge Establishment, Cairo, p. 183

⁵ Huda Abdullah, *Lessons in Civil Law: Unlawful Acts*, Halabi Legal Publications, Lebanon, 2008, p. 76

⁶ Abd al-Aziz al-Lasasmah, *Theory of Obligations in Light of Jordanian Civil Law*, International Scientific House for Publishing and Distribution, Lebanon, 2002, p. 128

⁷ Abd al-Hakam Fuda, *Civil Compensation: Contractual and Tort Liability*, University Thought House, Cairo, 2004, p. 19

⁸ Anwar al-Amrusi, *Commentary on the Amended Civil Code Texts*, (no publisher), 1993, p. 282

⁹ Ibrahim al-Sayyid Ahmad, *Civil Liability*, Legal Books House, Cairo, 2006, p. 471

¹⁰ Huda Abdullah, previous reference, p. 77

¹¹ Abd al-Aziz al-Lasasmah, previous reference, p. 131

¹² Le professeur, Philip Étourneau, *droit de la responsabilité*, DALLOZ, 1996, p. 194

¹³ Abd al-Aziz al-Lasasmah, previous reference, p. 131

¹⁴ Jalal Ali al-Adawi, *Sources of Obligation: A Comparative Study in Egyptian and Lebanese Law*, University House, 1994, pp. 392-393

3. The Difference Between Moral Compensation and Material Compensation:

The importance of distinguishing between material and moral compensation in civil liability for traffic accidents lies in determining the nature of the damage and the basis of compensation. Material compensation addresses calculated financial losses, while moral compensation concerns psychological or moral harm, reflecting the comprehensiveness of the compensation system in achieving justice effectively.

a. In Terms of the Nature of the Compensable Damage:

Material compensation differs fundamentally from moral compensation in terms of the nature of the compensable damage. Material damage consists of financial or economic losses affecting a person's property or body, and can be quantified numerically, such as material losses for vehicle repair or medical treatment costs for bodily injury. Moral damage, on the other hand, relates to the non-material aspect of the human being, such as psychological pain, grief resulting from the loss of a relative, or violation of dignity and feelings of inadequacy following the loss of a body part of the injured person. Moral damage is characterized by being intangible and difficult to assess accurately because it affects human values and personal feelings. The former concerns financial rights, while the latter affects the personal and moral rights of the human being, making compensation symbolic, aimed at satisfaction and redressing the feeling of pain.¹⁶

b. In Terms of the Method of Assessing Compensation and Redressing Damage:

The assessment of compensation varies according to the nature of the damage. Compensation for material damage is determined on the basis of actual financial losses that can be assessed, such as medical expenses, loss of earnings, or property damage, and is based on objective criteria that can be proven by documents or through judicial expertise. Moral damage, however, relates to psychological harm and the victim's feelings, and is intended to restore the injured party's dignity more than the financial compensation itself. While it is not possible to restore the situation to what it was before the occurrence of moral damage, redress is limited to alleviating suffering by granting compensation that achieves the principle of justice, which confirms the distinction of moral compensation by its human character even if it is in material terms.¹⁷

c. In Terms of the Legal Effects Resulting from Compensation:

The effect of compensation differs according to the type of damage. Material compensation aims to restore the financial balance of the injured party and redress what they have lost in earnings or suffered in losses, while moral compensation seeks to achieve psychological satisfaction and restore dignity, as it is not measured by a financial criterion but rather a symbolic one that reflects the law's recognition of moral damage and embodies the principle of justice and equity through material compensation if damages are combined in a single incident. Thus, it becomes clear that material compensation produces a direct financial legal effect, while moral compensation produces a moral and ethical effect aimed at achieving justice and equity.¹⁸

Second: The Legal Basis for Moral Compensation for Traffic Accident Victims in Algeria

Moral compensation for traffic accident victims in Algeria is a symbol of achieving justice and promoting the principle of redressing damage in all its forms. The Algerian legislator has given special importance to protecting the moral rights of victims, considering that psychological harm is no less significant than material damage.

¹⁵ Al-Sayyid Muqaddam, *Compensation for Moral Damage: A Comparative Study*, Master's Thesis in Contracts and Liability, Institute of Law and Sciences, University of Algiers, 1992, p. 150

¹⁶ Muhammad al-Arusi Mansouri, Fatima Amal Halloush, *Transfer of the Right to Compensation to Heirs in the Scope of Compensation for Moral Damage*, Legal and Political Sciences, University of Sidi Bel Abbes (Algeria), Issue 1, 2021, p. 61

¹⁷ Briq Rahma, Dellaj Muhammad al-Khadr, *Compensation for Moral Damage in the Scope of Civil Liability and Criteria for Its Assessment*, Journal of Law and Political Sciences, Volume 06, Issue 02, 2020, Algeria, p. 119

¹⁸ Fadli Idris, *The Concise Guide to the General Theory of Obligation*, University Publications Office, First Edition, Algeria, 2006, p. 215

1. The Legal Obligation for Moral Compensation for Traffic Accidents in Algeria:

Most modern legislations have recognized the right to compensation for moral damage as a means of satisfying the injured party and redressing their psychological pain, which the Algerian legislator has also adopted under Article 182 bis of the Civil Code, although it merely described its forms and manifestations without providing a clear definition of moral compensation. It also delegated the authority to assess compensation to the judge under Article 131 of the same Code.

Regarding the subject of our research, moral compensation for traffic accident victims did not see the light until the issuance of Law 31-88¹⁹, which amended and supplemented Order 15-74 concerning compulsory motor vehicle insurance and the system of compensation for damages resulting from traffic accidents. Law 31-88 addressed the deficiency that existed in Order 15-74, which did not contain an explicit text or article on compensation for moral damage. This was remedied by Law 31-88, which recognized the possibility of compensation for moral damage resulting from traffic accidents. However, it restricted it to the beneficiaries of victims' rights in case of death only, and set a flat ceiling for compensation not exceeding three times the guaranteed national minimum wage at the date of the accident for specific categories of beneficiaries, such as parents, spouse, and minor children.

a. The Right Holder to Moral Compensation According to Algerian Law:

Referring to Article 08 of Order 15-74, every traffic accident causing bodily harm results in compensation for every injured victim or their beneficiaries due to the damage they suffered resulting from the accident²⁰, even if the victim does not have the status of a third party vis-à-vis the person civilly responsible for the accident. The guarantee also covers the insurance subscriber, the vehicle owner, in addition to the vehicle driver and the person causing the accident. Since the legislator has equated moral damage with material damage in terms of the automatic principle of compensation, the law has obligated insurance companies to compensate victims or their families for death or bodily injuries affecting any person due to the use of the vehicle without requiring the element of fault, which is termed "compensation based on liability without fault." Thus, the legislator has sided with protecting traffic accident victims, considering the accident a social phenomenon requiring compensation for all victims regardless of their contribution to the occurrence of the accident. Bodily harm resulting from a traffic accident is not limited in its effect to the injured victim alone; it can cause other damages to persons connected by material or emotional relationships, where the death of the victim following an accident affects that relationship or bond, causing legitimate moral damage to their families.

b. Persons Entitled to Moral Compensation in Traffic Accidents in Algeria:

In principle, the first beneficiary is the direct victim who has suffered harm affecting their dignity or psychological well-being, such as serious bodily injuries or permanent disfigurements that leave a profound moral impact. This compensation is only granted to those whose psychological or moral suffering as a result of the accident has been proven.

However, the Algerian legislator, according to the text of Paragraph Five of the Annex to Law 31-88, which specifies the schedule of compensation granted to victims of bodily traffic accidents or their beneficiaries, has stipulated granting moral compensation to specific categories on an exhaustive basis. It has expanded the scope of this right to include the victim's family members in case of death, namely parents, spouse, and children,²¹ as they are the most psychologically affected and pained by the loss of their relative, provided that the family and emotional relationship connecting them to the victim is proven.²²

The scope of beneficiaries does not extend to distant relatives or persons who have not suffered actual harm, in accordance with the rule of "personal and direct damage." Thus, it becomes clear that the Algerian legislator has adopted a balance between protecting those affected by psychological pain

¹⁹ Official Gazette No. 29 dated July 20, 1988

²⁰ Official Gazette No. 15 issued on February 19, 1974

²¹ Nabil Saqr et al., *The Scientific Guide for Lawyers - Drafting Petitions - Insurance and Traffic Accidents in Jurisprudence and Practice*, Layma House Publications, 2025, p. 151

²² Yabdiri Rabiaa and Abdellaoui Khadija, "The Emergence of the Right to Compensation for Aggravated Damage within the Framework of Civil Liability," *Journal of Law and Human Sciences*, Volume 17, Issue 2, July 17, 2024, pp. 135-150

and controlling the scope of beneficiaries to avoid exaggeration or unjustified expansion in granting moral compensation.

c. Legal Assessment of Moral Compensation for Traffic Accident Victims in Algeria:

The essence of civil liability is no longer embodied in imposing punishment, but rather in restoring balance between the injured party and the person causing the damage through fair and appropriate compensation. This is confirmed by the rules of civil liability that link the obligation to compensate with the occurrence of damage to others without any reference to punishment.²³

The amount of moral compensation is calculated based on the value of the guaranteed national minimum monthly wage in effect on the date of the accident. According to the text of Paragraph Five, which set a ceiling of three times the base wage at the time of the accident.

In simplified form:

Moral compensation due to each beneficiary = $3 \times$ National minimum monthly wage on the date of the accident.

Therefore, the ruling on compensation for moral pain resulting from a bodily traffic accident leading to one or more deaths includes parents, spouse, and children of the victim only. The benefit is granted to each individual separately and independently, provided they have legally proven their connection and relationship to the victim.²⁴

2. Procedures for Traffic Accident Victims to Obtain Moral Compensation in Algerian Law:

The procedures for traffic accident victims to obtain moral compensation in Algerian law are subject to a set of legal rules aimed at ensuring the right of the injured parties to redress the psychological harm they have suffered. These procedures follow an organized legal path that begins with proving the damage and determining liability, then submitting the claim to the competent authorities. Respecting these procedures is a fundamental guarantee for achieving justice and enabling victims to obtain their rights in a legal and fair manner.

a. Proving Moral Damage:

Proving moral damage is considered one of the most difficult legal issues in the field of civil liability, due to its inability to be materially measured or accurately assessed as is the case with material damage. Moral damage consists of psychological suffering or emotional pain resulting from an unlawful act, and it is intangible damage. However, the Algerian legislator explicitly recognized it in Article 124 of the Civil Code, which provides that "any act causing harm to others obliges its perpetrator to compensation."

Thus, the injured party must prove the occurrence of the damage and that it resulted from the fault of another. However, the judiciary often shows leniency in this proof due to the difficulty of providing direct evidence of psychological suffering. Algerian courts have relied on judicial presumptions as a source for proving this type of damage, such as the case of a family breadwinner. However, the modern judicial trend seeks to expand the scope of protection for moral and human rights, considering that the mere occurrence of a harmful act that by its nature leads to psychological pain is sufficient to prove moral damage. Thus, the burden of proof has become lightened in consideration of the special nature of this type of damage, within the framework of achieving justice and fairness for the injured party.²⁵

b. Methods for Traffic Accident Victims to Obtain Moral Compensation:

Traffic accident victims in Algeria enjoy the right to obtain moral compensation according to specific legal procedures aimed at ensuring redress for them. The first of these methods is amicable settlement between the victim and the insurance company. To support the legal protection of traffic accident victims, consolidate the principle of automatic compensation, and avoid the negative

²³ Ibrahim al-Sayyid Ahmad, *Moral Damage in Jurisprudence and Case Law*, previous reference, p. 21

²⁴ Nabil Saqr et al., previous reference, p. 151

²⁵ Younes Khaled, "The Nature of Evidence and Its Place in Algerian Civil Law and Judiciary," *Horizons for Science*, Volume 3, Issue 4, September 1, 2018, pp. 62-76

consequences of resorting to the judiciary, such as delays in obtaining rights²⁶, Decree No. 15-74 was amended by Law No. 88-31. This amendment introduced a new means of obtaining compensation, represented by conciliation or what is known as amicable settlement, in accordance with the provisions of Article 16 thereof, which stated that compensation due in bodily traffic accidents is determined either by mutual consent or judicially based on the schedules annexed to this law. By virtue of conciliation, compensation became possible in an amicable manner, without the need to file a lawsuit before the judiciary or wait for a decision thereon. Based on the aforementioned Article 16, as well as Article 10 bis of the same law, the legislator explicitly stipulated that the insurance company may not refuse to pay the due compensation legally imposed upon it. In the event of failure of the conciliation or amicable settlement procedure, victims may resort to the civil judge to claim compensation, based on the provisions of Article 16 of the aforementioned Law 88-31. Victims harmed by the death of their relative may claim compensation before the competent court, whether as heirs or beneficiaries. Compensation amounts are subject to the judge's assessment according to the annex of Law 31-88. Within this framework, the Algerian legal system seeks to achieve a balance between fair and equitable compensation for victims and ensuring the stability of the compensation system for bodily traffic accidents.

Chapter Two: A Comparative Study Between Algerian Legislation and Other Legislations

A comparative study between Algerian legislation and certain comparative legislations is a necessary step to understand the extent of progress of the Algerian legal system in the field of compensation for moral damage resulting from traffic accidents. It contributes to evaluating the efficiency of national texts in achieving justice in accordance with comparative laws, revealing deficiencies, and presenting reform proposals aimed at unifying judicial jurisprudence and strengthening victims' rights, thus contributing to the development of the compensation system in Algeria.

First: Moral Compensation for Traffic Accident Victims in Comparative Law

A comparison between legislations reveals differences in the foundations and criteria adopted for assessing this type of compensation. Through studying the experiences of some countries, more equitable and effective mechanisms can be identified for addressing the psychological and moral effects suffered by victims.

1. Moral Compensation for Traffic Accident Victims in Egyptian Law:

The Egyptian legislator has recognized this right within the provisions of its Civil Code, particularly in Articles 222, 223, and 224, which enshrined the principle of compensation for moral damage once the occurrence of the accident is proven²⁷. The judge is granted discretionary authority to determine the value of compensation according to the circumstances of the incident and the extent of psychological pain and suffering inflicted upon the victim or their heirs.

a. Beneficiaries of Moral Compensation in Egyptian Law:

The Egyptian Court of Appeal ruled in its judgments issued on November 27, 1940, and October 15, 1938, under the old Civil Code, that the right to claim compensation for moral damage – such as psychological pain or physical suffering – is a purely personal right²⁸, intended to redress the harm suffered by the person themselves. Therefore, it does not enter into the financial estate of the victim and does not transfer to heirs, but rather expires upon death even if the lawsuit was filed before that. However, Egyptian jurisprudence did not settle on this approach, as other rulings emerged permitting the transfer of this right to heirs on the condition that the injured party had initiated the lawsuit or the compensation was determined before their death, whether by agreement or final judicial

²⁶ Youssef Delenda, *The System of Compensation for Bodily and Material Damages Resulting from Traffic Accidents*, Huma House for Printing, Publishing and Distribution, 2nd ed., 2012, p. 78

²⁷ Youssef Delenda, *The System of Compensation for Bodily and Material Damages Resulting from Traffic Accidents*, Huma House for Printing, Publishing and Distribution, 2nd ed., 2012, p. 78

²⁸ Abd al-Razzaq al-Sanhuri (n.d.), *The Intermediary in Explaining the New Civil Code: The General Theory of Obligation, Sources of Obligation, Part One*, Beirut: House of Revival of Arab Heritage, p. 124

ruling. This is stipulated in Article 222, which provides that compensation includes moral damage as well, but may not transfer to others unless it has been determined pursuant to an agreement or final judgment. From interpreting this article²⁹, the Egyptian legislator explicitly recognized the right of the injured party to obtain compensation for moral damages they suffer as a result of being injured in a traffic accident or otherwise.

b. Assessment and Procedures for Obtaining Moral Compensation in Egyptian Law:

Egyptian jurisprudence subsequently adopted the modern French position, recognizing the possibility of transferring the right to moral compensation to heirs, based on the fact that this right becomes financial after its determination. The Egyptian Court of Cassation ruled that preventing heirs from filing a civil lawsuit on the grounds that the damage is personal is a position influenced by ancient Roman law that is no longer in force. Consequently, the procedures for obtaining moral compensation in Egyptian law are subject to the judge's discretion, who considers the severity of the psychological damage, the personal circumstances of the injured party, and their relationship to the accident, with the possibility of transferring this right to heirs after its legal establishment.³⁰

c. Differences Between Egyptian and Algerian Law:

The Egyptian legislator explicitly stipulated in Article 222 of its Civil Code the possibility of compensation for moral damage³¹, granting the judge broad discretionary authority to assess compensation according to the circumstances of each case. In Algeria, however, there is restriction by explicit text in the annex of Law 88-31³² regarding moral compensation. Moreover, the Algerian judiciary tends to be restrictive in granting moral compensation, unlike Egyptian courts which expand its application in consideration of the human and psychological aspects of victims. The two systems also differ in determining beneficiaries, where Egyptian law permits compensation for both the victim and their family, while Algerian law limits this exclusively to legal heirs in case of the victim's death only. In addition, the Egyptian legislator relies on fair and personal assessment by the judge, while in Algeria the principle of proportionality between the severity of the damage and the financial penalty is not observed, as the same amount of compensation is fixed for all cases, making Egyptian application more flexible and Algerian more conservative.

2. Moral Compensation for Traffic Accident Victims in Jordanian Legislation:

Although the Jordanian legislator has not established detailed provisions specifically for this type of compensation, Jordanian jurisprudence has given it considerable attention through the application of Articles 266, 267, and 268 of the Jordanian Civil Code³³. This approach has contributed to establishing a balance between the requirements of legal justice and humanitarian considerations in addressing the effects of traffic accidents.

a. The Right Holder to Moral Compensation Resulting from Traffic Accidents According to Jordanian Law:

Jordanian legislation recognizes the right of the injured party to claim moral compensation once it is proven that the accident caused them moral damage affecting their dignity, feelings, or social status, based on Article 267 of the Civil Code, which established the principle of compensation for both types of damage: material and moral. The legislator expanded the scope of this right pursuant to Article 266/2, which considered psychological pain and grief resulting from the loss of a loved one as forms of compensable moral damage³⁴. Thus, the right to compensation includes every victim upon being injured in an accident and extends to their family in case of death due to the suffering and grief they experience as a result of losing their relative.

²⁹ Sulayman Marqus, *Provisions of Obligation in Tort*, Legal Book House, Cairo, 1998, p. 30

³⁰ Abd al-Razzaq al-Sanhuri, previous reference, p. 160

³¹ Hussein Amer and Abd al-Rahim Amer (1979), *Tort and Contractual Civil Liability*, Second Edition, Egypt: Dar al-Ma'arif, p. 120

³² Egyptian Civil Code, Article 222

³³ Moral damage due to death may be compensated for every mother, father, spouse(s), and children within the limit of three times the value of the guaranteed national minimum monthly wage on the date of the accident

³⁴ May Mashhour al-Jazi, *The Position of the Jordanian Legislator in Assessing Compensation for Moral Damage*, University Journal for Legal Studies, 2004

b. Assessment and Procedures for Obtaining Compensation According to Jordanian Law:

The Jordanian legislator granted the judge broad discretionary authority in assessing moral compensation, in accordance with Article 267 of the Civil Code, which authorizes them to determine the value of compensation in proportion to the nature of the psychological pain and the extent of its impact on the victim or their family. There are no fixed computational criteria in Jordanian legislation for assessing this compensation, as the special circumstances of each incident and the degree of moral pain suffered by the injured party are considered in each case. Compensation lawsuits are filed before the competent civil courts according to usual procedures, with the necessity of proving the damage and the causal relationship between the accident and the moral damage. The judiciary bases its ruling on the principles of justice and equity, which was confirmed by the practical application of Article 268, which permitted compensation for moral damage alone, making Jordanian jurisprudence characterized by flexibility and humanity in handling traffic accident cases³⁵.

c. Differences with Algerian Law:

Comparative analysis between Jordanian and Algerian laws in the field of moral compensation for traffic accident victims reveals a clear divergence in legal basis and judicial application. Jordanian law explicitly stipulated in Articles 266, 267, and 268 of the Civil Code the possibility of compensation for moral damage³⁶, granting the judge broad discretionary authority in determining its value according to the nature of psychological pain or grief resulting from the accident. In contrast, the Algerian judiciary is bound by the text of Article Five of the annex of Law 88-31, as previously mentioned. Moreover, Jordanian jurisprudence is characterized by a flexible and humanitarian approach, as it recognizes compensation for damages directly affecting the injured party to redress their suffering and grief for the disability they sustained in their body, while Algerian jurisprudence has deprived traffic accident victims of this compensation and limited it to compensating the victim's beneficiaries in case of death only. The two systems also differ in assessing compensation; while Jordanian law grants the judge broad discretionary freedom based on justice and equity as required by Article 268, the Algerian system relies on the principle of financial proportionality between the magnitude of damage and compensation, based on the narrow application of the principles of Article Five mentioned above.

Second: Evaluation of the Moral Compensation System for Traffic Accident Victims in Algeria

Despite Algerian legislation's recognition of the principle of compensation for moral damages, its practical application faces some restrictions and challenges at the level of texts and legal assessment. This evaluation aims to highlight the strengths and weaknesses of the current system and propose ways to develop it to achieve greater justice for victims.

1. Advantages of the Moral Compensation System for Traffic Accident Victims in Algeria:

The moral compensation system for traffic accident victims in Algeria is characterized by several advantages that reflect the legislator's concern for achieving justice for the injured. It has established the general principle of redressing moral damage within the rules of tort liability, ensuring victims' right to claim compensation for psychological and emotional harm. The automatic victim compensation system established by Order 74-15 has provided greater flexibility in compensation, allowing consideration of the specificity of each case according to its humanitarian and social circumstances.

a. Existence of Explicit Legal Provisions:

The existence of clear legal provisions regulating moral compensation is considered one of the most prominent advantages of the Algerian system, as it establishes the legal basis for claiming compensation for psychological and emotional damages resulting from traffic accidents, based on Article 124 of the Civil Code, as the foundational rule for compensation. However, Paragraph Five of the compensation schedule annex to Law 88-31 has definitively determined the beneficiaries exclusively³⁷.

³⁵ Jordanian Civil Code, No. 43 of 1976, Article 266/2 and Article 267

³⁶ Jordanian Civil Code, Articles 267 and 268

³⁷ Jordanian Civil Code, Articles 266, 267, and 268

b. Automatic Compensation System:

The automatic compensation system stipulated in Order 74-15 is considered one of the most important legislative reforms established by the Algerian legislator to ensure effective protection for traffic accident victims. This system came as a result of the legal and social deficiencies that characterized the pre-1974 period, when civil liability was based on proving fault that could be rebutted by the driver, which led to a wide category of victims being deprived of compensation, either due to their inability to prove fault or their bearing part of the responsibility. This situation led to serious social and humanitarian problems, especially for persons who suffered serious injuries or for the beneficiaries of deceased victims, in the absence of legislative provisions ensuring necessary protection for them. The legislator came through Order 74-15 to establish an automatic compensation system based on the principle of compulsory insurance, whereby compensation is granted to the victim or their beneficiaries regardless of fault, within a framework of fair distribution of risks between the insurer and the injured party.³⁸

c. Exemption of Beneficiaries from the Burden of Proof:

Exempting beneficiaries from the burden of proof is considered one of the prominent features of the compensation system for damages resulting from traffic accidents in Algerian legislation, as the legislator adopted this principle to facilitate victims' obtaining their rights without entering into the complexities of proving fault. Under Order 74-15, the basis became the realization of damage and its relationship to the accident, without the need to prove the driver's negligence or negate their responsibility.³⁹ This approach reflects the legislator's will to make compensation of a social and humanitarian nature, aimed at redressing damage more than searching for the wrongdoer. Algerian jurisprudence has also enshrined this approach, considering that the victim does not bear the burden of proof, ensuring swift and fair compensation for victims. This exemption from the burden of proof is a step toward protecting vulnerable groups, especially in accidents where it is difficult to determine the actual responsible party, thereby consolidating the principle of social justice and human solidarity in Algerian legislation.

2. Disadvantages of the Moral Compensation System for Traffic Accident Victims in Algeria:

Despite the advantages of the moral compensation system in Algeria, practical application faces a set of challenges and legal restrictions. The application of texts and their conservative judicial interpretation, in addition to the absence of objective criteria for assessing compensation, limits the effectiveness of victim protection. This study aims to highlight the most prominent disadvantages of the system and how they affect the rights of traffic accident victims.

a. Regarding Beneficiaries - Limited Number of Beneficiaries:

One of the most prominent disadvantages of the moral compensation system in Algeria is the restriction of the circle of beneficiaries, where the right is limited to legal heirs from father, mother, spouses, and children only, without expanding its scope to include relatives or persons connected to the victim by strong emotional ties such as siblings or grandparents. This restriction is derived from the conservative interpretation of legal provisions, such as Article 124 of the Civil Code, which determines compensation for damage affecting "others" without clarifying the extent to which moral damage covers indirect persons. Moreover, complementary laws relating to compulsory insurance do not expand the circle of beneficiaries, making some victims unable to claim their rights despite suffering psychological or emotional distress as a result of the accident. This restriction affects the achievement of comprehensive justice, as it deprives some persons actually harmed of benefiting from compensation, which highlights the need to expand the scope of beneficiaries in accordance with the human nature of moral damage.⁴⁰

³⁸ Official Gazette No. 29, previous source

³⁹ Order No. 74-15 dated January 30, 1974, concerning compulsory motor vehicle insurance and the system of compensation for bodily damages, Official Gazette No. 15 issued on February 19, 1974, amended and supplemented by Law 88-31 dated July 19, 1988, Official Gazette No. 29 issued on July 20, 1988

⁴⁰ Ali Filali, *Obligations: The Act Deserving Compensation*, Mofem for Publishing and Distribution, 2nd ed., 2007, p. 140

b. Deprivation of Those Injured with Disability or Wounds from Moral Compensation (It is Limited to Death Cases Only - Compensating Their Families):

The deprivation of those injured with disability or wounds from moral compensation is one of the most prominent deficiencies in the Algerian compensation system, as moral compensation is often limited to death cases and compensating the victim's family only, without extending to the injured who suffer from permanent or temporary disability or psychological pain resulting from the accident. This approach raises legal and humanitarian issues because it neglects an important aspect of moral damage affecting the direct victim's dignity, feelings, and psychological stability. Moreover, this restriction is inconsistent with the principle of complete redress of damage stipulated in the rules of Algerian civil law and the principle of automatic compensation of Order 74-15, which did not distinguish between material and moral damage. The person disabled by the accident may lose their comfort, ability to work, or social standing, which are moral damages deserving redress. Modern jurisprudence and comparative judicial precedent have praised the expansion of the scope of compensation to include psychological pain and personal suffering of the injured person themselves, not just their family. Maintaining this restriction in Algeria is considered a departure from the principle of equality among victims and requires legislative intervention to correct the deficiency to achieve justice and keep pace with modern development in the field of civil liability.⁴¹

c. Complexity of Procedures for Obtaining Compensation:

The first is compensation in kind, where some jurists distinguish between specific performance and compensation in kind; the former occurs before breach of obligation, and the latter occurs after this breach and the realization of liability.⁴²

Specific performance removes the damage resulting from breach of obligation and leads to restoring the creditor to the state they would have been in had there been no breach, while compensation in kind does not remove that damage as the breach remains, and provides the creditor with an alternative that is sufficient.⁴³

The Algerian legislator stipulated the obligation of compensation in kind for damage whenever possible in Article 164 of the Algerian Civil Code, which stated: "The debtor, after being put in default in accordance with Articles 180 and 181, shall be compelled to perform their obligation specifically, whenever this is possible."⁴⁴

As for compensation by equivalent, if specific performance becomes impossible due to complete impossibility⁴⁵, the judge is not obligated to rule even if the creditor insists on it, and therefore in all cases where compensation in kind becomes impossible, which is the most appropriate method for redressing damage, the judge resorts to compensation by equivalent in application of Article 176 of the Algerian Civil Code, which states: "If it becomes impossible for the debtor to perform the obligation specifically, they shall be ordered to compensate for the damage resulting from non-performance of their obligation."

d. Low Compensation Amount with Social and Economic Changes:

The low amounts of moral compensation in Algeria are among the most prominent problems affecting the effectiveness of the damage redress system, especially in light of rapid social and economic transformations. Although the legislator has established schedules for assessing compensation in the annexes of Law 88-31, specific to compensating traffic accident victims, these assessments mostly remain weak and disproportionate to the magnitude of psychological suffering incurred by victims or their families. This is due to the absence of objective criteria for assessing moral compensation, and to the adherence of law and judiciary to symbolic amounts that do not keep pace with the rising cost of living or the value transformations that have made moral damage more impactful in individuals' lives. Moreover, changing economic conditions and monetary inflation have caused compensation amounts to lose their real value over time, reducing the function of compensation as an effective means of

⁴¹ Muhammad Hussein Mansour, *Theory of Right, Knowledge Establishment*, Alexandria, 1998, p. 275

⁴² Hassan Ali al-Dhunun, *The Detailed Explanation of Civil Law: Damage*, Wael House, Jordan, 2006, p. 365

⁴³ Said Muqaddam, *Theory of Compensation for Moral Damage in Civil Liability*, National Book Institution, Algeria, 1992, p. 179

⁴⁴ Order No. 75-58, containing the Civil Code

⁴⁵ Same reference, p. 183

restoring balance to the victim and not reflecting the principle of justice in redressing damages. This requires the legislator to reconsider the minimum moral compensation assessment and link it to contemporary economic and social standards to ensure genuine and comprehensive justice.⁴⁶

3. Legislative Proposals to Improve the Moral Compensation System for Traffic Accident Victims in Algeria:

The moral compensation system for traffic accident victims in Algeria, despite its importance, requires legislative review that keeps pace with current social and economic transformations. Judicial practice has revealed some deficiencies, whether in determining beneficiaries or in assessing compensation amounts and the lack of clarity in the criteria regulating it. From this standpoint, the need emerges for reform and legislative proposals aimed at enhancing justice and effectiveness in redressing moral damages and achieving broader legal protection for victims and their families.

a. Expanding the Circle of Beneficiaries:

Expanding the circle of beneficiaries of moral compensation is a necessary step to achieve the principle of justice and equity in compensating traffic accident victims. Algerian law in its current form narrows the scope of beneficiaries, as it is often limited to direct heirs in cases of death, ignoring relatives or persons who incur real psychological damages as a result of the accident, or those who were passengers in the vehicle that was a party to a horrific accident that caused them psychological trauma. Therefore, it is necessary for the legislator to move toward adopting a broader concept of family and emotional and social relationships, including non-legitimate parents, siblings and grandparents, or even persons who had a shared life relationship with the victim. Comparative legislations that have recognized this expansion can also be consulted. This approach would enhance social justice and make compensation proportionate to the magnitude of real moral harm, not just the legal form of the relationship⁴⁷.

b. Strengthening the Role of Judicial Expertise in Determining Compensation Amount:

Strengthening the role of judicial expertise in determining the amount of moral compensation is considered one of the most important reforms that can contribute to achieving justice in compensating traffic accident victims. The determination of compensation value is often left to the judge's assessment, without precise criteria or technical tools to help assess the magnitude of psychological and moral damage accurately. Hence the importance of judicial expertise emerges as a scientific technical means enabling the court to evaluate the extent of psychological suffering and the severity of moral pain suffered by the victim or their family, based on medical and psychological criteria. This requires training specialized experts in assessing moral damages and obliging the judge to seek their opinion before determining the final amount. The legislator can also establish a clear legal framework for expert reports that ensures effective assessment with transparency, ensuring victims' rights and limiting the large disparity in compensation amounts between similar cases⁴⁸.

c. Enacting More Flexible Procedures to Expedite the Process of Obtaining Compensation:

Victims in Algeria suffer from the length and complexity of administrative and judicial procedures, leading to delays in enabling them to obtain their rights. Therefore, current procedures should be reviewed to allow reduction of deadlines and rapid resolution of claims, by adopting simplified and practical methods before competent authorities. It is useful to expand the scope of using electronic means in filing cases and tracking decision-making stages through digital platforms, ensuring transparency and speed. This reform should be accompanied by accelerating deadlines for resolving claims and granting compensation, with imposing penalties for unjustified delays. Such procedures

⁴⁶ Murad Fadl bin Abdullah Abduhu, Monetary Inflation and Its Impact on Wages and Debts, *Jordanian Journal of Islamic Studies*, Al al-Bayt University, Volume 15, Issue 1, 2019, pp. 165-178

⁴⁷ Omar Basem Nayef, Assessment of Compensation for Variable Damage: A Comparative Study, *New University House*, Egypt, 2022, p. 177

⁴⁸ Abd al-Razzaq Ahmad al-Sanhuri, previous reference, p. 420

would achieve expeditious justice and restore confidence in the effectiveness of the compensation system, especially for vulnerable categories of victims⁴⁹.

d. Periodic Review of Compensation Amount Considering Inflation and Purchasing Power:

Periodic review of compensation amounts is considered one of the most important reforms that should be included in the compensation system for traffic accident damages, in response to continuous economic and social changes. Compensation granted to victims today may lose its actual value after years due to inflation and deterioration of the purchasing power of the national currency, making the injured party not actually receive genuine redress for the damage they suffered. From this standpoint, the legislator should adopt a legal mechanism ensuring automatic review of compensation amounts at specific time intervals, in light of official economic indicators such as the annual inflation rate and standard of living, such as linking compensation amounts to the consumer price index issued by the National Statistics Office to ensure they keep pace with economic fluctuations. It is preferable that the task of determining this review be assigned to a specialized body comprising representatives from the judiciary, insurance companies, and economic experts, to ensure balance between the interests of victims and insuring parties, and to enshrine the principle of fair compensation that aligns with the social and economic reality of the country.⁵⁰

e. Establishing Objective Criteria for Moral Compensation:

Establishing objective criteria for moral compensation is one of the most important steps to ensure justice and consistency in judicial rulings related to traffic accidents. The absence of precise criteria makes compensation assessment subject to the judge's discretion and personal evaluation, leading to disparity in judicial decisions between similar cases. Therefore⁵¹e, the legislator must intervene by establishing a legal framework that determines the elements the judge relies on in assessing moral damage, such as the degree of kinship between the victim and beneficiary, the extent of psychological pain and suffering resulting from the accident, and the impact of damage on the social and professional life of the injured party. Psychological expertise should also be utilized to assess the severity of moral impact scientifically,⁵² achieving a balance between judicial assessment and objective evaluation. The legislator can draw inspiration from comparative experiences by adopting guidance schedules that determine approximate proportions for compensation according to the type of damage. Adopting such criteria enhances the principle of equality before the judiciary and limits disparity in rulings, and contributes to achieving legal security for victims and insurance companies alike, ensuring fair and realistic compensation for moral damages.⁵³

Conclusion

In conclusion of this research, it becomes clear that the issue of compensation for moral damage in Algerian legislation is among the precise and vital issues within the scope of civil liability, as it represents an embodiment of the idea of justice and redress for non-material damages affecting feelings and human dignity. Although the Algerian legislator has not explicitly stipulated special provisions for this type of compensation, Article 124 of the Civil Code has opened the door for jurisprudence in compensating moral damages, considering them real damages deserving redress. Nevertheless, judicial application remains fluctuating between expansion and restriction, depending on the circumstances of each case and the judge's assessment. The study has shown that the Algerian legislator tends toward

⁴⁹ Nabil Ibrahim Saad, *The General Theory of Obligation: Provisions of Obligation*, New University House, Egypt, 2009, p. 101. See in the same context Abd al-Razzaq Ahmad al-Sanhuri, previous reference, p. 883

⁵⁰ Jalal Ali al-Adawi, *Fundamentals of Obligations: Sources of Obligation*, Knowledge Establishment, Egypt, 1977, p. 506

⁵¹ Sanaa Khamis, *Strict Liability of the Producer as a Compensation Mechanism for Victims of Defective Product Accidents: A Comparative Study*, Master's Thesis in Contract Law, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, Algeria, 2015

⁵² Zahia Houria Si Youssef, *Civil Liability of the Producer*, Huma House for Printing, Publishing and Distribution, Algeria, 2009, p. 326

⁵³ Larbi Belhaj, *The General Theory of Obligation in Algerian Civil Law, Part 01, Legal Act "Contract and Unilateral Will"*, Ben Aknoun, Algeria, 2001, p. 30

conservatism in determining the beneficiaries of moral compensation, as it is limited to the direct beneficiaries of the victim's rights after death, which raises problems related to achieving justice for those actually harmed by the accident. Moreover, determining the compensation amount itself in all cases without criteria distinguishing between the magnitude of psychological pain or moral damage, the victim's status, and the circumstances of the accident leads to disparity in rulings and weak compensation effectiveness.

In contrast, comparison with foreign laws, such as Jordanian and Egyptian laws, has shown that those legislations adopted a more flexible and humanitarian vision, as they explicitly recognized the right of the injured party and their family to moral compensation, and granted the judge broader discretionary authority to assess damage according to the principles of justice and redress.

Accordingly, developing the Algerian legal system in this field has become an urgent legislative necessity, through enacting clear texts that determine the foundations and controls of moral compensation, expanding the circle of its beneficiaries, and reviewing compensation amounts in accordance with social and economic circumstances. Compensation for moral damage is not a legal luxury, but rather a fundamental pillar for ensuring human justice and protecting individual dignity in the face of harmful acts.

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