

The Citizen, Traffic Accidents, and the Law

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□ This is the third in a series of articles in which we are serialising parts of a lecture delivered at the University of Malta to the general public by Dr. J. Galea Debono.

At the time of going to print, the proposed amendments for merging Criminal and Civil Proceedings arising out of traffic accidents have not yet become Law. These amendments will be referred to in the fourth and concluding article in this series.

□ CIVIL REDRESS is obviously more important from a practical point of view as it strives to re-instate the injured party in his position prior to the accident through financial compensation.

There are various ways of reaching one's goal procedurally. If one is very lucky, he can have his claim settled out of court directly with the party responsible for the damage or his Insurance, with or without the assistance of counsel. If this is not possible, and it seldom is, the parties involved or their respective insurances might agree to have the issue settled by an arbitrator who is usually either a lawyer or an insurance surveyor. This procedure might be somewhat quicker and certainly cheaper than legal proceedings but it has the considerable disadvantage that no appeal lies from the arbitrator's award. Most cases, at least the more serious and contested ones, end before the Judge of the First Hall of the Civil Court, who, more often than not, appoints a lawyer as legal referee to hear the evidence and file a report on his findings. If one of the parties, or both, disagree with the referee's report, they are entitled to ask the Court to appoint three additional referees who will review the first report.

If the parties disagree with eventual judgement, there is always the Court of Appeal, composed of three judges, to review the case. It is not surprising, in the circumstances, that you might now and then read law reports in the press on damages awards for accidents that happened years and years before. That, very often, is not the end of the story.

One has still to enforce the judgement against the losing defendant. This can often prove to be a different and frustrating exercise, unless he happens to be backed by a sound insurance firm ready to honour its policy commitments without further wrangling and delaying tactics.

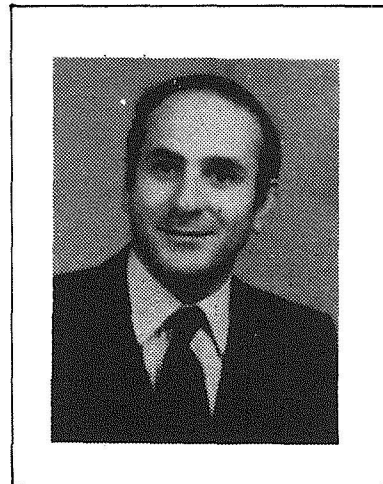
Under our law compulsory insurance covers only damages arising from death or bodily harm to third parties. Any coverage above that such as - (1) Comprehensive Insurance and (2) Full Third Party Insurance - is optional, though highly recommended in a place where driving habits are notorious. In cases of damages arising from death or bodily harm, a court judgement against a defendant can be enforced directly against his insurance, provided that the insurance firm is notified of proceedings instituted against their insured by means of a Judicial letter within seven days from the filing of the summons in court.

But assuming that an injured party is successful in pursuing his claim and that he obtains a favourable judgement against defendant, and ever hopeful that said defendant can afford to pay for his misdeeds or that he is adequately backed by insurance, what is he like to get in pounds, cents and mills at the end of it all?

The Court can only give financial or pecuniary redress and this takes the form of compensation for:

1. Actual loss 'Damnum emergens'.
2. Future loss of earnings 'Lucrum cessans'.

Our law makes no provision for compensation for moral damages, like other legal systems, where large sums have often been awarded for pain, shock, psychological suffering and the like. In this respect our law is somewhat retrograde, though the position is now much better than it was up to 1962, after the lifting of the £1,200 ceiling on damages awards not arising from malicious acts. Under our law, compensation is strictly related to pecuniary or financial loss.



Under actual loss would fall items like:

1. Repair bills and salvage and towing costs.
2. Hiring of another car whilst one's own is undergoing repairs.
3. Depreciation of a 'new' car following an accident.
4. Hospitalisation and medical fees and expenses.
5. Transportation to and from hospital for outpatient treatment.
6. Cost of travelling by the injured party or his close relatives in order to obtain treatment.
7. Cost of drugs or artificial limbs.
8. Wages paid to a nurse or domestic help during convalescence.
9. Any actual loss of wages, salaries or income resulting between the time of the accident and the time of the judgement or award.
10. And, of course, funeral expenses in fatal cases.

All such items would of course have to be substantiated by bills and receipts.

The computation of potential loss of future earnings is, as can be expected, more engaging an exercise because of the many imponderables involved.

To many it may seem impossible to meet out real justice and award adequate compensation without either overdoing or else awarding much less than that justly due. Indeed, the uncertainty about the length of one's life expectancy, working life, the

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possibility of promotions, demotions, loss of jobs, salary increases, inflation trends and the lot make the exercise very much a leap in the dark.

In this vast area of doubt and speculation, our courts, following the 1962 lifting of the ceiling on damages awards, have in a number of judgements adopted precedents laid down by English Courts.

The repeated application of these precedents by judges, referees and arbitrators alike has now stabilised the situation providing a workable, though not of course a perfect formula for the computation of potential loss of earnings. The basic element in this formula is the determination of the Multiplier or Working Life Purchase, i.e. the number of years for which future compensation will be awarded. Case law, taking all the imponderables above mentioned into account, has come out with a maximum multiplier of 20 years. This would apply in the case of victims in their teens, twenties and early thirties. The multiplier would then decrease the more advanced in years the victim happens to be. A man in his forties will be awarded anything between 15 to 10 years purchase. A man above fifty will seldom be awarded more than ten years purchase, and, very often, less.

Having established the multiplier, one next determines the annual or weekly earnings potential over the number of years covered by the multiplier, taking into account likely increases in income and working out an average weekly or annual income. Multiplying this annual earning potential by the multiplier one obtains the gross potential earnings of the injured party.

Next, one relates this to the actual degree of disability suffered which can range from 100% in case of death to say 50% for the loss of an eye or 20% for a bad limp, depending on the gravity of the injury and permanent disability as certified by doctors.

A look at the example below might clarify matters: Youth of 25 years with a 20 years multiplier.

Present wage: Lm20. Wage in twenty years time: Lm40.
Average weekly wage: Lm20 + Lm40 = Lm60 ÷ 2 = Lm30 × 50 (weeks) × 20 years = Lm30,000.

But with only 50% disability -	
Potential loss	Lm15,000
Lump sum deduction of 20%	<u>Lm 3,000</u>
	<u>Lm12,000</u>

This latter deduction is to make good for the interests that are likely to accrue on the amount paid out in a lump sum and received at one go by the claimant, whereas in normal circumstances he would have received this over a long span of time.

Where the victim is dead and a claim is made by his heirs, considerable deductions are often

made to take into account the amount the deceased would have had to spend on himself, and, in cases where the deceased is not survived by a wife or children, to take into account the fact that, if the deceased was of a young and marriageable age, he was likely to get married and raise his own family, thus reducing the probability that the claimants, in this case parents, brothers and sisters, might have continued to enjoy any benefit from the deceased wage earner for a very long time. It is not uncommon for a deduction of two thirds of the total lump sum to be made in the latter cases.

An interesting question arises in cases where a married woman perhaps advanced in years or in

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her middle age, who has never been gainfully employed, is injured or killed in an accident. Would she, her husband or heirs be able to recover damages for future loss of earnings? In recent years the trend taken by our Courts in a number of judgments has been to take a more liberal and perhaps more generous attitude in such claims and awards have been made for potential future loss of earnings

though making certain prudent deductions to take into account the lesser probability of such a loss due to the unlikelyhood of such a woman having to resort to go to work.

This problem has, however, also been solved from angle another as well. In cases where either because of the wife's disablement or death, the husband has to take on domestic help to keep the household going, then he is compensated for the estimated expense he is likely to in-

cur as a result of his wife being incapacitated. Here, perhaps, case law has slightly departed from the above classification of recoverable damages into actual loss and loss of future earnings as compensation for future expenses is strictly not actual loss, nor loss of earnings, nevertheless similar awards have even passed the scrutiny of our Court of Appeal and this is certainly a positive development which I am sure few would criticise.

(TO BE CONTINUED)

