



Adaptation of Compensation Methods in Civil Code, Civil Liability and Judicial Process

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Abstract:

Damage means the loss or damage to an object or a person and his demise is divided into different types of materialistic, spiritual/ intangible, physical and loss of profit. Usually, most losses can be compensated by cash. In addition to the above method, sometimes the guilty one should also bestow the exact financial loss to the owner. In intangible/spiritual loss (honor and prestige) the court requires the guilty person to apologize to the complainant and the innocent verdict for the complainant will be published in the press. In Civil Law and civil liability and responsibility, the compensation method can be counterfeit and tangible/ objective; however, in the judicial processes of the Court of law, counterfeit compensation method is more applied, esp. the legal guardian type. According to the rules and law principles, non-profit in civil law, civil liability and judicial process can be claimed and compensated. Provided that the concrete benefits are clear and appropriate action it is achieved. Spiritual/ intangible compensation methods are divided into two main categories: financial compensation and spiritual ones which are used in several cases. It is true that spiritual damage and loss cannot be fully redeemed through financial payment, yet it can alleviate the resulting pains. All in all, compensation methods in the Civil Law and Civil Liability are divided into real/objective compensation and the counterfeit ones, the judicial process prefers the second type better.

Key words: damage/loss, compensation of the loss, ways/ methods of compensation, civil liability/responsibility



1.1. Introduction:

In primary human societies, damages and losses were of limited kinds, and they were nominal with regard to their social activities and social life in those periods. Along with technological advancements and the explosion of man-made inventions, the potential losses expanded their domain, and the more people enlarged their juridical relations because of evaluating high-tech devices, the more the types of damages and losses vary. Causing damage and in return its compensation in juridical world is a significant issue. When a loss is imposed on a person by another, justice seeks full compensation of the losses on the injured one. This approach provides a series of judicial rules. These judicial rules are called civil liability/ responsibility. In this judicial field, different methods have been predicted to compensate for the loss. In Civil Law, the legislator states that the rules associated with the quality of compensation of the loss have three forms: usurpation, squandering, and instigation. However, in the civil liability law, the legislator gives much more freedom to the court to determine the compensation method, or predict Article 3 of the civil liability code; as a result, in judicial process, too, some special methods are common.

Various compensation methods are in fact different ways to fulfill the commitment of the doer of the damage. As these losses (materialistic, spiritual, and physical) differ in nature and each has its own types, the compensation methods of them vary as well. Therefore, recognizing different methods of losses which can be compensated has some pros and cons. fundamentally; there are two main methods for compensation of the loss. One is the real/ objective compensation and the other one is counterfeit compensation, both of them have different kinds. These two methods have been used alongside each other in many judicial systems. In Iranian law and Islamic Jurisprudence these methods have been accepted and considering financial losses, the real/ objective compensation is preferable, but in case that there is physical loss to the body, primary choice is counterfeit compensation. In Iranian law, compensation methods for physical losses are incomplete; also financial compensation of spiritual losses is not clear either in regulations or in judicial process. Therefore, it is useful to have a discussion on them.



In this paper, in addition to defining the concept of loss and damage, we tried to achieve a consistent method in order to study compensation of the losses, and eventually investigated its nature and the weak points and strong points of these approaches regarding the legality of them in Civil Code, Civil Liability, and Judicial Process.

2.1. The Concept of Loss/ Damage:

Loss/ damage is literally an infinitive meaning losing, suffering damage, the loser and loss itself. Loss/ damage is a harm to financial benefits or non-monetary harm to the one suffering the loss. In other words, loss is used in two ways: 1. Loss as a detriment, 2. Loss as a disadvantage. In Civil Law, loss has been utilized in two forms: legislator sometimes uses it as “harm”, in this usage there is no difference between loss and detriment, and in some cases other words such as forfeit, injury and loss were used, the word injury refers to physical harms done to the body and soul of a person and sometimes loss means something which is paid to compensate for the harm done. In Civil Liability, there is no definition of the word loss, but in different Articles, variety of its types and instances were mentioned.

3.1. Compensable loss:

Loss can be categorized considering different aspects. In this section, we mention some significant compensable losses including materialistic ones, spiritual ones, physical and non-profit losses.

1.3.1. Materialistic losses:

Substantial/ materialist losses refer to general and nominal financial losses and profitable demise. This kind of loss can be transformed to cash and the occurrence of which may also be present in the absence of the object (object destruction) or in the form of lack of interest (business because the whole-sale seller did not deliver the product, he could not sell it in a favorable market), from a financial point of view, the issue of compensation of this property can be a material object, such as a loss or damage caused by a car accident, and a primitive harm such as medical costs and disability or financial rights such as damage to business reputation.



Destruction of property:

This type of loss can occur when private property will be reduced because of some damaging operation. Reduction of property and asset can happen due to a drop in positive asset/ property or a raise in negative assets. For example, if an individual's asset is one million tomans before the predicament and decreases to eight hundred thousand tomans after it, it can be claimed that financial loss occurred to the so-called person. Reduction of property or asset in the example here may happen because of complete destruction or partial damage to the real property of the one who suffers the loss (positive reduction of property), or it can be realized through indebted financial obligation to pay certain obligations (negative equity gains). Destruction of property may be the loss of the same property or interest in or right of exhibition, this categorizing method is formed on the basis of Article 29 of the Civil Code, the physical property, interests and rights. One type of property is exact, but the loss of which means a financial loss that was previously available and sometimes becomes evident due to incomplete or faulty, or loss of property. Assume that because of damage, somebody's home catches fire and is destroyed, or the damaging action or offense causes significant loss or destruction to the cars. In these two assumptions, the owner loses the real property and the incurred loss or damage is of financial type.

Loss of interest:

Being deprived of the expected benefits is habitually called dominant/chosen interests. Such benefits do not exist when a harmful act such as crime or illegitimate ascendancy occurs. For example, in the case of the theft of a truck, whether the thief had used the vehicle to carry the goods before returning it to the owner of the vehicle or not, he should guarantee the benefits that routinely and consistently are earned by its owner. According to the Shiite jurists, when someone dominates the property of the other and benefits from it, undoubtedly, that person is considered the guarantor. On the contrary, when the interests of a person occupying a realistic possibility is removed and exploiting the property of their supremacy does not exist even for that intruder, If possession is by usurpation, still consensually it is believed that the person who is occupying is



the guarantor, yet if it is not by usurpation/ by force, a group of jurists do not believe is the guarantee. Though, in this assumption, too, they consider liability.

Destroying the right:

The late doctor Hassan Emami in one of the divisions that he stated about property, talks about the material and non-material assets and described non-material property as non-existent property, but society has given them credit and the law has given them recognition. Such right of exploitation, easement and so on, he has put all kinds of financial right in the circle of non-material assets. Legal interpretation of Article 29 of the Civil Code on value of these rights will allow us according to the famous rule "من اتلف مال الغير فهو له الضامن" and also according to the Articles 328 and 331 of the Civil Code explicitly refers to the responsibility of the one who imposes the losses on property, the factors of decline and fall of financial rights guarantee the rights of the holders and the owners.

Spiritual loss/ damage:

The authorities in law have provided different definition related to this case. Dr Langeroodi defines spiritual loss as a loss to the reputation, honor and spiritual/ moral values, such as revealing one's secret; anti- material loss.

Late Dr Mahdi Shaidi says: spiritual or moral loss is a damage/ harm done to the non-material belongings of a person, such as soul, credit, and body. Spiritual loss which can be compensated by the wrong doer is a loss to one's prestige, credit, and personality, and loss to the body, soul, and freedom based on the Civil Code or any other rights. It seems that in the above definitions two points have been left out, first, the harm done to the non-material belongings of a person such as prestige, credit and a healthy soul is not always spiritual, and can be accompanied with material losses as well. For instance, if it is told to an author that his data in the book is nothing more than plagiarism, this fact, in addition to molar losses brings about financial losses as well, because that statement led to a decrease in the amount of sales. Next point is that some financial/ material losses are not purely materialistic, that is they contain some spiritual losses which can be way more than material losses. Getting rid of some non-expensive souvenirs, such as a rosary



beads inherited from the nanny or grandpa's shoes or watch or some objects from our ancestors cannot just be a material loss, on the contrary the spiritual loss of such objects is way too much for their owners. Therefore, imposing some harm or damage to non-material or financial belongings of a person is called spiritual loss.

Note Article 14 Code of Criminal Procedure 1392 pinpoints that: spiritual loss means harms to the soul, prestige and personal or familial or social credit of a person. All in all, spiritual loss is a loss which cannot be changed to cash, and it consists of harms to the soul, prestige, credit, personality, trade credit and professional credit of people.

In judicial process, spiritual loss is considered in many cases. For instance, the second verdict of the appellate-court in Tehran province, in this verdict the defendant was sentenced to pay 2000000 rials to the plaintiff because of spiritual loss that he suffered. The lawsuit was as follows briefly; by publishing an essay by plaintiff in one of the newspapers on criticizing the functioning of the Instruments and Landed Property Registration Authority of Iran which was filed, the plaintiff who was in charge of the communication of this institution provided an answer and claimed that the so-called office undertook to draw a conveyance in which the seller had not been alive at that time and this way the dead person's house was conveyed to his second wife without the heir's information. Consequently, the so-called office in complaining about the defendant stated that they published untrue things and the court made hi, pay 50000 rials as the financial punishment. The plaintiff pursuant to the verdict claimed that this action caused damage to his reputation, and wanted to take compensation for spiritual losses, but the primary court rejected his claim. As a result, he asked for reconsideration of the case with the use of the court's verdict. The appellate-court with regard to the rule of no harm, Article 171 Civil Code, Civil liability, the rule of supporting the rights of the authors, artists and etc approved in 48.10.11, the rule of registering the approved inventions 1310, the rule of the approved press 64.12.22 and paragraph 3 Article 9 of the Criminal Justice Act and considering the fact that the opposition between the mentioned rules does not contradict the norm, and financial payment as a compensation cannot equal these losses, yet it can be a healing method for the damaged and easing his pains and compensating some of the losses; therefore, the plaintiff's claim was



accepted and the defendant was to pay 2 million rials due to spiritual losses to the plaintiff and the defendant was forced to apologize to the plaintiff.

Physical harm:

Physical harm stays somewhere between material and spiritual loss, since it contains both materialistic and spiritual aspects. When a person's health is at risk, this event causes both spiritual losses and financial costs for medication, operation, and funeral.

Evaluating these physical losses is not an easy task, for most of these losses will come true in the future, so there is a space for effective and influential possibilities, doubts and hunches. For instance, it is hard to believe what side effects happen due to a bone fracture or brain concussion, or we cannot even estimate how long their treatment process will last and how much it will cost and how disable that person will be because of that accident. Furthermore, besides these financial costs, physical loss leads to spiritual losses for the injured one and his/ her close relatives and this fact makes evaluation of the losses difficult. In general, we can categorize physical losses in 4 groups: medication and treatment costs, the costs of disability and legal incapacity, whatever the immediate family have been deprived of because of that physical loss, and spiritual losses of the injured and his/her close relatives.

Non-profit losses:

This kind of loss refers to the destruction of some property which is not now available as an asset. Non-profit losses are those benefits which are produced for the plaintiff/ claimant according to the customary processes, still because of the behavior of the one who brought about the damage (such as breach of contract), that profit was not received by the other party. For example, the claimer had bought some goods for sale, and the defendant knew this fact but breached the contract. Non-profit is a loss imposed on the assets and financial rights of a person. It is right that none of the goods are destroyed, however, a part of future assets have been lost. Therefore, full compensation of the loss is obligatory. Article 5 of civil liability indicates that non-profit is a loss to the body or health which brings about a disability to the injured one or his/her working power decreases partially or completely. The one who caused such a loss has to



compensate fully for those losses. What the judge must take into account based on article 5 is the drop in human strength for work and earning money. In other words, compensation of the loss must be in a way that these losses are minimized to a certain degree. To determine the amount of the loss, the occupation of the injured one (a surgeon or a worker...) has direct impact on the matter.

These kinds of losses have been the center of attention in courts of law, and in some cases some verdicts have been stated. For instance, the verdict of the full supreme court, 1375.4.5, states that: with the implication of legal documents, what the defendants did, caused a bone fracture in the claimer's leg, the court decided wergild for the victim this felony, because the victim was deprived of working power; the court made the defendants pay a certain amount to the victim. Considering the fact that the rules related to wergild and meaning of the rules about atonement money do not contradict the compensation of other losses imposed on the victim, and knowing that these losses are the losses defined in the norm, therefore as an interpretation of articles 1, 2, 3 of the civil liability and by favoring the general rule of *لا ضرر* and indirect harm/ damage and squandering compensation of these losses is not problematic.

Although in this verdict, they did not talk about non-profit directly, by using the phrase "strengthening working power" which is a case of that loss, with regard to articles and legal rules, defendant is sentenced to compensate for these losses.

Compensation methods in Civil Law, Civil liability and judicial process:

This process in the realm of civil law and civil liability may happen in two ways: helping the injured reach his/her pre-accident state and compensating by paying the equivalent or counterfeit compensation. We will discuss them here.

Objective/ tangible compensation:

Objective/tangible compensation refers to returning the injured one to his/her previous condition; this is an important, common way in the rules of various countries and it is considered a civil liability. By objective compensation or returning to the previous status, we mean compensation



as if no harm was done. This is the most complete way of compensation and it is also one of the major goals of civil law and conditional liability.

In Iranian law, objective compensation in article 311 of the civil law on usurpation and article 329 the same law has been predicted about squandering. There is a preference for this kind of compensation in articles 222, 237 and 238 of the civil law.

In civil law, article 311 it is stated that: the usurper must give the exact usurped property to its owner. According to this article, until the time that the real usurped exists, the usurper cannot give another property to its primary owner in return, nor can the owner ask for financial compensation from the court; unless declining the objective property is a way of destroying it. this verdict is an obvious example of objective compensation and there is an agreement between the jurists on this matter.

What matters in this article is on the condition that the usurped property becomes damaged based on Article 329 of the civil code, two situations must be separated. If it is possible, the usurped property must be recovered and returned to the primary owner. Otherwise, the usurper not only must return the exact property, but also must pay the difference between the damaged and fine property to the primary owner. But if this damage is considered as a loss by the court, then the equivalent method will be used. In case that the price of the property increases due to the damage done, the owner does not have the right to ask for compensation. Unless this increase is the excessive object which belongs to the usurper.

Nevertheless, we must pay attention to the fact that the above rule is not imperative and agreement on its contrary is possible. It is true that the so-called rule in Article 311 of the civil law is about usurpation and seemingly it has a special regulation, but objective compensation has a reasonable, natural basis, and in Iranian law, it is top priority in civil liability of out of contract and the liability of contracts.

Therefore, Article 329 civil law about destruction talks about another kind of objective compensation. Accordingly, if somebody destroys another person's dwelling or building, he must rebuild it as before, and if it is impossible to do, he must pay the price of it.



Article 3 of the civil liability gives authority to the courts to choose the way to compensate, accept the objective compensation, even if it does not regard it as a priority and it is done based on the judge's idea.

Destroying the source of the damage is one other way of objective compensation. If that destruction factor continuously causes damage, it is advisable to destroy that factor to avoid further losses. In Articles 311 and 329 Iranian civil law on usurpation and destruction, it is obligatory to provide the previous status in two ways: by returning the real property and destroying the source of damage. An example of the case is that, somebody builds a wall in his own property which does not allow the passage of light or air to the neighboring houses. So, that person's responsibility is not based on a contract, and compensation in many judicial systems is destruction of the wall. What's more, publication of the apology and refutation of the conviction sentence about the accused person is of objective compensation which is included in rule 10 of the Civil Liability and it is mentioned with other types of compensation.

Some legal authors stated that objective compensation is basically mentioned in the contract liability, yet it should be noted that the so-called method has a high status in Civil Liability which is not mentioned in the contract, and legal authors provide many examples for it, including the destruction of a building which was made against the regulations, refutation of a forged document, broadcasting the announced verdict about the accused sentence, returning the usurped object.

Some jurists do not legitimize objective compensation as a way of compensating in the Civil Liability and they believe compensation of the loss cannot happen except when the injured person receives the amount of money which equals the lost object; but the majority oppose this idea and they accept objective compensation as a significant and in some cases as the best method of compensation of the loss. However, what we have to mention is that objective compensation is not always possible, and it can face financial barriers and in some losses it is not even imaginable. This is the case with the spiritual losses and destruction of a unique object. Additionally, if the court announces the verdict of objective compensation, the obligatory fulfillment of the case needs involvement of a responsible person, so the performance of the



sentence may be refuted. Because the physical obligation in case that he is not willing, opposes the respect to individual freedom. For instance we cannot force the contractor do a task again. Only indirect plans for doing the obligatory tasks such as financial obligation is possible to be mentioned in the legal sentence if it is not fulfilled.

When compensation is objective, the judge can choose this kind of compensation. But if the plaintiff wants the destruction of something which happened contrary to the commitment, that destruction is obligatory; because this deed which puts an end to the illegal situation, is similar to the performance of a similar contract which is the right of the obligee, such as destruction of a neighboring building which has intruded the injured person's property.

The major advantages of this kind of compensation are that it places the injured in a condition which is almost near the previous condition before the occurrence of the loss. So, this way is more desirable for the claimant, while financial compensation of the loss is less popular.

If the injured does not have the right to ask for objective compensation and reclamation of the exact property, and only receiving its equivalent is plausible, in reality he is forced to sell his property to the accused. Moreover, the property may have a value more than its real price. Therefore, if he cannot receive the real property and only receiving the financial compensation is possible, he may receive nothing more than sham compensation.

If the injured does not deserve the objective compensation, he may face bankruptcy or indigence of the accused, therefore he may get a partial compensation, yet returning the previous condition of the injured does not necessarily need proof of the loss. This method compensated both spiritual and financial losses; moreover it can stop spreading the loss and damage. In returning the previous conditions, there is a factor; that is the law system by bestowing the right to claim the objective compensation to the injured, considers his benefit in stabilization of certain situations.

It must be noted that despite having the authority based on Article 3 of the Civil Liability and determining the quality of compensation of the loss with regard to the situation, this cannot refute the priority of objective compensation, and regarding Articles 329, 311, 321, 313, and 301



of the Civil Law about usurpation, it must be noted that by taking the situation into account, if the objective compensation is possible, the judge is supposed to choose it.

Counterfeit compensation:

Compensation for the loss through the equivalent (financial one) is the most common. According to this method the same amount which equals the loss must be given to the injured. It is accepted all over the world. Most of the time the only way to compensate for the loss is giving the equivalent to the injured one; that is the court decreases the same amount of money from the one who imposed the damage, and then adds it to the assets of the injured, so the injured gains a status similar to the one before the damage.

In most of legal systems the equivalent which the court considers is money. But sometimes they will assign non-monetary compensation as well.

Therefore they can pay the equivalent financially or in another form, such as counterfeit method. This is the case when the exact property is lost and the other party provides the counterfeit exchange and bestows it to the injured one, so that the injured can benefit from almost similar amount until the real property is back. The second method is giving money to the other party. Iran's Civil Code in Article 950 states that: the case here relates to the property which is abundant in type for instance animals. But recognizing this kind of property is the duty of the norm and the court. As this method has lots of limitations and is difficult, it is not that common in judicial systems except Iran.

The second method is financial one, which is the most common method everywhere.

As paying money is easy, the courts use it a lot, even for spiritual losses. In many cases, providing the exact amount is not possible, and the only way to compensate is by paying money. Objective compensation is true only for physical property, but if the loss is related to one's reputation, prestige and economical benefit and legal profit, the best way to compensate is through paying money. This deed is commonly accompanied by apologizing, publication of the sentence and removal of the disturbance. Physical losses in Iran get wergild which is not an exact equivalent and even not the same cost. The court announces some deadlines for this wergild



payment; this case is mentioned in Article 488 of the criminal procedure in Iran. Installment of the amount is mentioned in Article 277 of the civil code, and monthly payment is in Articles 3, 5, 6 of the civil code.

The advantage of counterfeit compensation is its vast covering ability of all types of losses, because objective compensation fails to do so. One fact in counterfeit compensation is that, paying the equal amount does not destroy the source of loss, but it compensates for the losses. Bankruptcy may make this sentence refuted and hard to practice. Paying money does not stop the harm, yet it has a secondary desirability for the injured, that is he wishes to achieve the status before the loss through medication. There are two main discussions in Iran about counterfeit compensation:

The equal amount for a real property is possible when the loss is financial and it is done to physical property, second, this property is of replaceable type. In other cases, the only way of compensation is through paying money. Even in a case that the property is replaceable if the same property cannot be found the other party has to pay money for it.

In Articles 311, 328, and 331 of the civil code the usurper and the injured are free to choose the replaceable property or the exchangeable amount of money. In all these articles it is mentioned that the exact property or the replaceable one or the equal amount of money must be paid. But this concept must be put aside, because from the contents of articles 312 and 329 we get that if the lost property is replaceable, the other party has to give the exact object to the owner and the owner cannot ask for money instead. Legal authors and the public see eye to eye to this matter. Third, the exact object can provide the pre-loss condition better.

Conclusion:

Compensation of the loss is of 4 types in civil code; material loss, spiritual, counterfeit and non-profit ones. Usually, in courts of law despite giving sentences related to material losses and spiritual ones, no sentence is passed about non-profit losses, and many courts believe that non-profit cannot be compensated. By interpreting note 2 of article 515 of the judicial rules of public



courts adopted in 1379, they concluded that this type of loss does not have an equivalent; but to be precise the legislator meant the losses caused by losses not the main point about non-profit.

To compensate there are two ways: objective and counterfeit compensation, which have different forms each. In Iran's law, objective compensation is more preferable than counterfeit one. But counterfeit compensation, esp. paying money is widespread and covers many losses. All in all, we can say that counterfeit compensation in the form of money is more common because of its advantages, and it is widely used in civil law, civil liability and judicial processes.

In some cases, in Iran's civil law, the injured can ask for the exact repairing of the loss. In objective compensation they attempt to bring the injured's status back to his former loss position. The way the loss is determined regarding the real cost (objective) of the loss is an advantage of both methods. That is the injured's situation can be redeemed to his former status either by himself or the other party, the cost will be calculated in the form of money/ cash, therefore the problems of objective compensation do not arise. On the other hand, based on Article 3 of the civil liability, the courts decide about the amount of loss and the way and quality of its compensation, so the judge has the opportunity to choose either objective compensation method or the subjective one.

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international journal of social science and psychology ISSN: 2348-3016

Volume 1, Issue 3, July 2016, PP83-101

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Article 6 of the law of civil liability, "... if at the time of the injury, the injured party is legally obliged or may later be obliged to keep the third party and caused his death, a third party should be deprived of it, importer losses of pension funds as appropriate survive as long as possible habitually damaged and required third-party maintenance, pay to that person. In this case, the diagnosis should be provided, with the courts. If the embryo of a third person in the event of damage or yet unborn child, the person concerned will be entitled to a pension."



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international journal of social science and psychology ISSN: **2348-3016**
Volume 1, Issue 3, July 2016, PP83-101

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SCIENTIFIC RESEARCH CENTER

international journal of social science and psychology ISSN: **2348-3016**

Volume 1, Issue 3, July 2016, PP83-101
