

POLAND

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Compensating Relatives of a Direct Victim: Violation of Family Bonds

1) Supreme Court of 27 March 2018, III CZP 60/17

The plaintiffs' child was born with severe brain damage due to oxygen deficiency, because its mother was forced to have a natural birth. The plaintiffs were immigrants from Chechnya who lived in an immigration centre. They claimed compensation on behalf of the child and themselves.

Case III CZP 60/17

The Court of Appeal awarded a rent, damages for pecuniary losses and € 285,000 as compensation for non-pecuniary losses to the child, as well as € 47,620 to its mother and € 71,420 to its father for their own non-pecuniary losses.

On cassation, the Supreme Court referred the case to the extended panel of 7 judges on the question of **whether the protection of personality interests (family ties) is a correct ground for damages.**

2) Case III CZP 36/17, decision of 27.3.2018

A preliminary question filed by the Financial Ombudsman:
does compulsory third-party liability motor insurance cover claims for non-pecuniary loss of the relatives of the victim who has been severely injured but survived the tort?

3) Case III CZP 69/17, decision of 27.3.2018

A preliminary question filed by the Polish Financial Supervisory Authority: essentially the same as in the other two cases.

Three identical decisions

YES – compensation is allowed based on the violation of family bonds (personal rights)

The first argument referred to the open catalogue of personality rights in art 23 KC.

The right to close family bonds in fact transforms an indirect victim into a direct victim who can assert her own rights and claim compensation for her moral damage.

Only for death or also for serious injury?

It can be argued that the closest relatives of the deceased are entitled to bereavement damages based on art 446 § 4 KC regardless of whether their personal right has been infringed. Article 446 § 4 KC simply limits the entitlement to the closest persons.

Hence, it is possible that any close persons who can prove a strong emotional bond, its violation, fault and the moral harm stemming from it can claim compensation in the regime of protection of personal rights (art 24 in conjunction with art 448 KC.)

Family law not an obstacle

- Pecuniary protection of personality rights is not pre-empted by the provisions of family law the object of which is to protect family relations by specific sanctions.
- The evolution of case law reflects the change in the moral views and the values that society attaches to certain rights and interests.
- There is no ethical ground to differentiate between the breach of family ties due to the victim's death and due to a serious irreversible injury, especially when the victim became comatose or is in a persistent vegetative state.

But limitations apply

The liability towards relatives should, however, be limited. The violation of a family bond can be established in exceptional cases, based on objective assessment criteria.

- 1) a family bond must be a particularly strong emotional and mental relationship, which is real and persistent, &
- 2) there must exist exceptional circumstances in which it is impossible for the relatives to create and maintain a personal contact typical for a given type of relationship (eg a relationship between parents and child) due to severe and deep disturbance of vital functions.

The 'EU standard' - an argument in favour

The decision is compatible with 'a European standard' which means a more intensive protection of the physical and mental integrity of a person.

The Supreme Court generally noted a trend in other European countries to award compensation to the relatives of gravely injured victims of torts. !!

In the case III CZP 36/17, it expressly referred to art 10:301 sec 1 PETL and art 2 § 202 sec 1 DCFR

Two dissents

Two Justices questioned both

- the recognition of a personal right in the form of an emotional family bond and
- the possibility of allowing claims for non-pecuniary loss due to the violation of such a right to the indirect victims.

According to one Justice, there is no such legal ground in the present law for the claim in question and,

according to the other one, the discussed claims could be based on art 446 § 4 construed *per analogiam*.