

FRANCE

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Cour de Cassation (Civ 2), 23 March 2017

Non-pecuniary loss of the indirect victim of a personal injury

The facts:

- a man is being murdered (stabbed in the street)
- his wife (53) claims compensation from the French Compensation Board for the Victims of Crimes

The wife's damage

- Pecuniary loss:
 - Funeral costs
 - Medical costs
 - Loss of incomes (works only 80% since then)
- Non-pecuniary loss:
 - major depressive disorder with permanent incapacity (10%)
 - sadness of having lost a loved-one (after 35 years)

Decision of the Court of Appeal, Paris 17/09/15

Concerning non-pecuniary loss:

- pain and suffering & permanent incapacity
✓ as a direct victim (+)

and

- loss of a loved-one (*préjudice d'affection*)
✓ as an indirect victim (+)

Appeal from the Compensation Board:

- “the moral suffering of the spouse of a deceased person can only give rise to damages *either* as pain and suffering and permanent incapacity (*déficit fonctionnel permanent*) if it develops into a depressive disorder *or* as loss of a loved-one (*préjudice d'affection*)”
- Did the Court of Appeal compensate twice a single head of damages?

Decision of the Court of Cassation

No ground to squash:

“the loss suffered by victim’s family members can sometimes be divided into two types, those who are related to *their own body* and those *deriving from their relationship* to the victim”

= loss of a loved-one as an indirect victim (*victime par ricochet*) *is not included* in non-pecuniary loss as a direct victim in case of a pathologic depressive disorder.

Is this solution reasonable?

Different from the recent German Legislative Act on Bereavement Damage 21/07/2017:

- introduces damages for the loss of a loved-one (*Hinterbliebenengeld*)
- "*Schockschaden*" can still be awarded for pathologic disorder consecutive to the loss but it will then **include** *Hinterbliebenengeld* (no cumulation of both actions).

A different solution for pecuniary loss

In case of a personal injury (with a surviving victim) and a **family member taking care of the direct victim:**

- assistance by a third party
 - ✓ action from the direct victim (+)

or

- loss of incomes of the family member
 - ✓ as an indirect victim (+)

Greater compensation for greater pain?

- In this case, the Court of Appeal evaluated as follow:

Non-pecuniary loss as a direct victim

- ✓ Pain and suffering: 12 000€
- ✓ Permanent incapacity: 14 500€

Non-pecuniary loss as an indirect victim

- ✓ Loss of a loved-one: 25 000€

- Deciding that indirect loss *was not included* in direct loss allowed the victim to **multiply x2 non-pecuniary loss**