

LATVIA

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**Judgment of the Supreme Court of the Republic of Latvia, Department of Civil Cases, 25 April 2017 in case no SKC- 247/2017 (C04426012):
Insurance Indemnity and Compensation of Non-Pecuniary Loss for Road Accident**

Brief Summary of the Facts

Two persons D and E, as passengers, were involved in a traffic accident on a route bus. The Claimants' daughter D died as a result of the accident.

The State Police decided to terminate the criminal procedure and stated that the bus driver had violated the Road Traffic Rules, as a result of which the driver had died.

The Claimants (parents of the deceased D) claimed compensation (insurance indemnity) from insurance company (the Defendant) in the amount of EUR 2,510,000 under art 15 of the Law on Compulsory Third Party Liability Insurance for Motor Vehicle Owners (**the Law**).

Brief Summary of the Facts

The Defendant paid as insurance indemnity € **2,347** for the funeral costs and € **140** for each claimant in respect of the pain and mental suffering due to the death, in accordance with the Cabinet of Ministers Regulations No. 331 of 17 May 2005 On the Amount and Procedure of Calculation of Insurance Indemnity for Non-material Losses Caused to a Person (**the Regulations No. 331**).

First instance court dismissed the claim, but Court of Appeal satisfied the claim partially and awarded compensation in the amount of EUR 50,000 for each of the Claimants.

Both parties appealed against the judgment.

Judgment of the Court

- The Court rejected the Defendant's argument that the caused damage exceeds € **140** (limits determined by the Regulations No. 331) had not been insured by the insurance contract.
- The Court rejected the Defendant's argument regarding the violation of the autonomy of the private law and the freedom of contract since the traffic accident, according to the judgment of the Constitutional Court, is not subject to any limitation which has become ineffective.
- The Court refused to refer the questions to the CJEU in this regard.

Judgment of the Court

- The Court rejected the Claimants' arguments that awarded compensation in the amount € 50,000 per parent) was too low and that it did not meet the minimum insurance requirements set by the EU directives.
- It derives neither from the EU directives nor from the judgment of the Constitutional Court that the insurer must in all cases bear the burden of compensation for non-pecuniary loss to the maximum extent possible.

Judgment of the Court

- The court shall determine the amount of the compensation on a case-by-case basis, taking into account the various factual circumstances of the particular case, for example, whether the compensation is paid directly to the physically injured person or the family of the deceased, etc.
- The compensation for caused harm must neither be an enrichment nor have the nature of remuneration (compensation) in its usual sense. The purpose of indemnity compensation is to provide the victim with satisfaction of his suffering.
- A fact that the death of the child causes immeasurable moral suffering to the parents is considered as insufficient.

Commentary

- Judgment of the Court correctly states that insurance company cannot limit amount of insurance indemnity arguing that Regulations No. 331 determine limits lower than the Law.
- It is insufficient to justify awarded amount of compensation with reference only to the fact that the death of the child causes immeasurable moral suffering to the parents, since the court should not only establish fair compensation, but also justify why the awarded compensation is considered to be fair.

Commentary

- However, reasoning for rejection of the Claimants' argument that awarded compensation in the amount of € 50,000 per parent is too low gives reason to worry.
- There is feeling that the Court treats amount of insurance indemnity (€ 2.5 million) determined in clause 1 part 1 art 15 of the Law **as a maximum**.
- Reference to existing case law in Latvia regarding compensation for non-pecuniary loss is not positive since highest amount awarded for severe personal injury is only **€ 71,144**.