

POLAND

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Compensating Relatives in Connection with Serious Personal Injury Suffered by a Direct Victim: Judgment of 9 August 2016 (II CSK 719/15)

FACTS: The plaintiff is a mother of a son born in 1997 with very serious birth-related injuries. Her son (now 15) was awarded compensation for non-pecuniary and pecuniary damage in 2007. The plaintiff was the only parent to take care of her child, suffered depression (only diagnosed in 2013) and is suffering from back pain. She demanded approx € 47,000 as compensation for **her** non-pecuniary loss.

Decision

- The Court of first instance awarded compensation, but the verdict was reversed on appeal on the grounds that an indirectly injured person is only entitled to compensation for non-pecuniary loss when the direct victim dies and not when she survived the tort. In addition, the claim has prescribed.
- The Supreme Court allowed the claim of indirect victims although it confirmed that the P's claim had prescribed
- Basis: the protection of personality interests (strong family ties) as a justification for bereavement damages

Comment

- The Court had earlier created a new type of a personality right: **the right to close family ties**, which in fact transforms an indirect victim into a direct victim who can assert their own rights; it's applied to wrongful death cases not covered by claims for bereavement damages (introduced only in 2008)
- Arguments against : 1) Polish law has always adhered to the rule that indirect victims are protected by way of exception (competence of the legislator), 2) a court is not competent to assess what family bonds are normal, and in particular what is a typical relationship between parents and a child.