

The Right Ability to Compensation for moral damage for the transfer In Civil law jurisprudence

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Summary

This study aims To clarify the position of civil law's jurisprudence regarding compensation for moral damage and the ability of the right to be compensated for it to be transferred to the heirs through the statement and discussion of jurisprudential trends to favor one of them.

If the subject of material damage and its compensation has settled many of its provisions, then the provisions of moral damage and the issue of its compensation are among the issues that the controversy has not stopped so far, opinions differed about the possibility of compensation for it, and despite the fact that modern laws in most of them take the principle of compensation for Moral damage within the scope of tort liability, this does not mean that there is no one who opposes this and tries to exclude it with many arguments.

The matter did not stop there, but the jurisprudential difference extended to the extent to which the right to compensation for moral damage was transferred to the heirs. The basis of this dispute was about the nature of the right to compensation for moral damage.

One of its features is that it is a purely personal right, and its consideration as a financial right and its entry into a person's wealth depends on the estimation of the benefactor or his claim to it. If he dies before he is claimed, this right expires with the death of the injured party, and the heirs have no right to claim it, As for the other section of the jurists, they said that this right is transferred to the heirs even if the injured party did not claim it before his death, because the occurrence of death before the claim of the right does not benefit the relinquishment of it, because the waiver is not assumed even with the recognition that this right is a personal right.

In this study, we address the position of legal jurisprudence regarding compensation for moral damage by presenting the doctrinal trends, and then we also address the position of civil jurisprudence on the issue of the transfer of the right to compensation for moral damage to the heirs.

Research Methodology: Analytical method: It is based on the analysis and discussion of jurisprudential opinions in order to derive appropriate results to compensate for the moral damage and pass it on to the heirs.

The study recommended: adopting the jurisprudential trend in compensation for moral damage and its transmission to the heirs, even if the injured party did not claim it before his death.

Keywords: moral damage, compensation, transfers of compensation, heirs, material damage.

Introduction:

Damage, in general, is the absolute damage to others, and it is any harm or damage caused to a person, this damage has two forms. It may be

material damage to a person's money or body, or it may lead to a loss or forfeit of his earnings.

Civil jurisprudence was stable on the necessity of compensation for it, but it was not in

agreement in compensation for the second form, which is moral damage, as opinions differed about the principle of compensation from moral damage, there are opponents of this principle and there are supporters of it, and accordingly, the legislative position differed from This issue is that there are laws that do not provide for moral damage, such as French law, and there are, on the other hand, laws that explicitly stipulate it, such as the Egyptian, Iraqi and Jordanian law.

The question regarding the transfer of the right to compensation for bodily damage in its moral aspect does not arise except in the case in which the injured person dies before he agrees with the one who caused the damage to pay its value or obtains a final adjudication, In these two cases, the amount of compensation is entered into his financial assets and is transferred to his heirs after his death, as is the case with the rest of the elements of the estate.

If the injured person dies before the agreement is reached or a final adjudication is issued to compensate for the damage incurred by him, does the right pass from him to his heirs? There are two conflicting directions to answer this question?

The first direction: rejects the transfer of this right to the heirs when the injured person dies before that agreement is achieved or a final judicial judgment is obtained in Iraqi and Jordanian laws or under a prior agreement or claiming these rights in court in accordance with the Egyptian Civil law.

The second direction: it goes to the transfer of the right to compensation for moral damage to the heirs as long as the injured party did not waive it before his death.

Previous studies:

We did not find a specialized study dealing with the position of civil jurisprudence regarding compensation for moral damage and the transfer of the right to compensation for it. Rather, some of these studies dealt with the jurisprudential position at great length, whether in

compensation for moral damage and its transmission to the heirs. These studies include:

Muhammad Yahya al-Mahasneh, rights holders to Compensation for Moral Damage in the Case of the Injured Death , Journal of Law, Kuwait University, 2000 AD, Vol. 24, p. 2, pp. 279-311.

It deals in the first chapter: the development of the right to compensation for moral damage and its transfer in the event of the injured death in the judiciary and legislation, and the second chapter: the assessment of the right to compensation for moral damage and its transfer in the event of the injured death.

Amjad Muhammad Mansour, Compensation for Moral Damage for Tort Responsibility and its Transmission, The Arab Journal for Security Studies, Naif Arab University for Security Sciences, 2005 AD, Vol. 20, p. 39, pp. 49-76.

In the first chapter, he dealt with the definition of moral damage and its types, and shed light on the doctrinal dispute over the principle of compensation for moral damage, in great detail that did not exceed two paragraphs.

Chapter Two: Conditions for Compensation for Moral Damage, Chapter Three, Persons Beneficiaries of Compensation for Moral Damage, and Chapter Four: When does the right to compensation for moral damage transfer.

Muhannad Azmi Masoud Abu Moghli, Compensation for Moral Damage, A Comparative Study, Journal of Civil Judiciary, 2012, p. 3, p. 6, pp. 13-33.

In the first chapter, he dealt with the elements of estimating moral damage and compensation for it, and in the second chapter the reality of the elements of estimating and compensating for moral damage.

Youssef Ahmed Ali Mufleh, The Extent of Transmission of Moral Damage to Others According to Jordanian Legislation, Journal of Legal Sciences and Politics, 2018, p. 8, p. 2, p. 93-118.

In the first topic: the concept of damage and the distinction between moral and material damage, the second topic: compensation for moral damage, and the third topic: the right of the heirs to claim compensation for moral damage and financial consideration.

The position of civil jurisprudence on compensation for moral damage

If the civil jurisprudence is stable on the necessity of compensating material damage as the harm that affects a person in a right or a legitimate interest, but the aforementioned jurisprudence differed in the permissibility of compensation for moral damage within the scope of tort liability because there is no explicit text on this compensation (Al-Amiri, 1981).

Although the French legislator, through the development of the stages of its legislation, has adopted the principle of compensation for moral damage and the French courts have ruled it, this was not according to a general text that can be relied upon as the basis for an integrated theory that defines the scope of the principle of compensation for moral damage and cases of its entitlement, that Sporadic and scattered texts in special legislation dealing with specific topics, which sparked a deep doctrinal controversy among those who consider these texts sufficient to consider them (a general principle) in the permissibility of compensation for moral damage. While another group argued that these texts were not considered a general rule for determining the features of the principles of moral compensation, but rather they were exceptions to the rule that moral damage was not considered as a reason for compensation.

The discussion of jurisprudence and its questioning of the French legislator about the creation of a jurisprudential theory between a supporter of the principle of compensation for moral damage and an opponent of it revealed a third, mixed doctrine, whose companions tried to adopt a middle position that reconciles all opinions, and we will address these opinions as follows:

The dissenters of Compensation for moral damages

The proponents of this doctrine (MAZEUD.1933) had several arguments that they relied on to defend their point of view in rejecting the principle of compensation for moral damage. These arguments are:

Firstly, Modern French civil law is devoid of an explicit text about compensation for moral damage; even the preparatory work for the law did not include any idea of compensation for moral damage (Al-Zanoun, 2006).

Secondly, The nature of the moral damage, even if it is included in the content of a person's moral patrimony, which consists of rights and benefits adjacent to him that were born with him, such as his right to respect his dignity or his person, i.e. the various advantages of freedom, but this (moral) moral obligation does not fall within the scope of private law, but within the scope of the law Naturally, it thus does not have legal protection, unlike financial disclosure, as it consists of acquired funds and original rights that are not inherited and legally protected as one of the components of the human being. And that what some legislations have done in protecting moral integrity and compensating the injured when it is violated is a departure from this principle and exceptionally (SAVIGNY.1840).

The proponents of this doctrine also see that the nature of the moral damage contradicts the financial compensation for this damage, since the financial compensation is only in exchange for something that can be evaluated in money, and this is not the case with regard to moral damage family honor, for example, or a person's reputation and reputation are things that cannot be valued with money and do not appear in the person's possessions (MASSIN. 1893).

Third, Compensation for moral damage is unethical: Allowing compensation for this damage does not comply with the principles of morality, as the verification of this damage by the judge leads to a deeper search for the internal feelings of the claimant of the damage, and this research may lead to the violation of some private secrets that the person is keen on Not disclosing them and discussing these secrets

publicly in the court arena which the principles of morality reject (DORVILLE. 1901).

Since dignity, honor, consideration, and a feeling of love represent the moral ideals of the individual in his life, there is nothing uglier than for the individual to lower these values and moral ideals to the status of money and allow him to demand their establishment financially and enrich himself as a result of the aggression of others.

In this regard, the two Jurists (Boudry and Bard) say that it is scandalous for justice to discuss issues related to honor, sacred emotions, and human pain (Al-Saeed, 1992; Al-Amiri, 1981; Al-Sanhouri, 1964).

Fourthly, The impossibility of reparation for moral damage through material compensation: the goal of compensation is (to erase) the damage and remove it, that is, to return the injured person to the position he was in before the damage occurred, and this goal is not achieved in the event of moral damage, Paying a sum of money to the injured party, in this case, does not erase the moral damage and does not return the injured person to the position he was in before the damage occurred, and as (Masin and Boudry) say that money is not in exchange for everything, so money cannot replace the thing unless it is Things are done physically (Naji, 1984).

Fifth, the impossibility of evaluating and estimating the value of moral damage varies from a practical point of view: in terms of proving the occurrence of the moral damage and determining its scope, and there is an obstacle before the subject judge in how to estimate compensation for this damage and the elements on which this assessment is made, Hence, we open the door to control for the impossibility of having a sound criterion on the basis of which this evaluation is carried out, which causes the judge to encounter a material impossibility to determine the amount of compensation (Al-Saeed, 1992; Marks, 1988; Abu Al-Saud, 1983).

Proponents of compensation for moral damage

As a result of the criticisms leveled by the jurists (Al-Sanhouri, 1964) to the opponents of compensation for moral damage doctrine, the role of this trend has diminished, and the prevailing opinion in jurisprudence and the judiciary is to say that it is permissible to compensate for this type of damage, and it is treated as harm similar to material damage in most cases. He must be compensated (Taha, 1970).

The adherents of the doctrine that says that compensation for moral damage is not permissible to have been criticized by supporters of those who say (Al-Sanhouri, 1964) that this compensation is permissible and who responded to the arguments on which they relied, as follows:

Firstly, In terms of legislative texts:

It is known that there is no explicit and clear text in the Civil Code deciding compensation for moral damage. However, the text of Article (1382) of the French Civil Code did not specify the damage to be compensated as (material damage), but the word (damage) was mentioned in general, and therefore it includes both material damage and moral damage.

Secondly, regarding to the nature of the moral damage:

As for Savini's objection to financial compensation for moral damage, claiming that the nature of this damage does not allow compensation for it and that the rights related to (moral liability) are outside the scope of positive law, and fall within the scope of natural law, this saying does not It may be admitted, as it contradicts the general principles of French law, and states that (DORVILLE. 1901):

The rights related to (financial disclosure) or the elements of this disclosure fall within the scope of French positive law, as shown by the study of legislation and the judiciary since the issuance of the Civil Code, This study reveals that the will of the legislator has tended to apply the principle of civil liability as a general principle that includes compensation for moral damage, which

finds its legislative support in the text of Article (1382) of the Civil Code.

Third, Ethical aspect:

As for saying that compensation for moral damage does not conform to the principles of morality, it is an inaccurate statement, because the judge's assessment of the moral damage or its proof by the litigants before the judge does not prejudice the principles of morality. It contradicts the principles of morals, as what hurts the soul and harms morals is to leave the damage without compensation.

Also, the statement that searching for the inner feelings of the moral damage claimant leads to the violation of his private secrets in the court arenas is false; This is because there are many issues that are more private and related to morals, such as divorce cases and the search for lineage, which is considered, and in all cases, this issue can be avoided by holding secret sessions, and compensating for moral damage does not mean appreciating human feelings, emotions, dignity, honor, and reputation. With money, the goal of this compensation is to satisfy the injured and relieve his pain, and this goal does not contradict but rather agrees with the principles of morality (Al-Sadda, 1984; Al-Sharqawi, 1981; Abu Steit, 1954).

Fourthly, The objective of compensation:

In terms of what proponents of the inadmissibility of compensation for moral damage held, the goal of compensation is to (erase) the damage and remove it, and this goal is not achieved in the event of moral damage.

It replied that there are some cases in which monetary compensation would erase the moral damage in whole or in part. For example, a person who suffers from psychological pain as a result of an accident that caused a distortion in his face can benefit from the amount of monetary compensation in the treatment of this distortion, and then the damage is removed. The moral affliction that afflicted him represented by the psychological pain he was suffering from, and the publication of the judicial ruling acquitting the person who offended his honor or

reputation, and ruled him with a sum of money as compensation would mitigate the moral damage he sustained. Therefore, it is not true that monetary compensation for moral damage does not erase it in all cases (Al-Dhnoon, 2006).

Fifth, from a practical aspect:

As for saying that there is no compensation for moral damage due to the difficulty of proving its occurrence and determining its scope, the proponents of the trend in favor of compensation for moral damage believe that no matter how difficult this may be when assessing compensation, it cannot be a reason for wasting the right of the injured to compensation and an obstacle to The requirements of justice and ideals and that this difficulty may be faced by the judge even when assessing some types of material damages or when estimating penal penalties (Marei, 1936; Amer, 1956; Al-Amiri, 1981). On the other hand, this arbitrary assessment of the judge exists in one way or another with regard to compensation for material damage (DORVILLE. 1901).

The middle doctrine in compensation for moral damage:

Some jurists have settled on the middle doctrine between the two previous opinions, as they do not allow compensation for moral damage in all cases, nor do they prevent it in all cases, but rather allow it in some cases with special conditions or certain restrictions.

This doctrine was divided into three opinions:

The first opinion: Among them are those who advocate (the impossibility of financial compensation for moral damage unless it results in material harm), and among the most prominent jurists of this opinion are (Meynail) and (Daloz) and after them (Esmein) and distinguished between two types of moral damage (Al-Dhanoun, 2006; Al-Amiri, 1981; Al-Sada, 1984; Al-Saeed, 1992):

First: moral damage resulting in material damage, for example:

Damage to the merchant's reputation, which leads to a breach of trust in dealing with him, which leads to people's reluctance to deal with him, and he suffers financial loss.

The second: moral damage that does not result in material damage, which is what, is expressed as (pure damage), for example:

Assaulting a girl's reputation leads to depriving her of the opportunity to marry, but that harm remains confined to the context of moral damage and does not result in material damage, so there is no sense in compensation for it because this compensation will not fix anything for that girl.

This view has been criticized by some jurists:

This opinion contradicts the legal system of compensation, and to indicate that what is being compensated for is the material damage that arose from the moral damage and not the material damage that arose from the illegal act, meaning that what is being compensated for is an indirect material damage that occurred as a result of the moral damage. This contradicts what has been established by jurisprudence and the judiciary that the damage that is compensated for must be direct damage, that is, there must be a direct relationship between the committed error and the damage that occurred, in order for the compensation claim to be accepted (DORVILLE. 1901).

The proponents of this view acknowledge moral damage in its existence, but they attach compensation for it to the material consequences resulting from it. They reject the principle of financial compensation for moral damage as damage independent of material damage, and thus they reach an implicit denial of compensation for this damage and therefore has only a nominal existence caused by material damage, or in other words, it is material damage that has a moral cause, and therefore it is clear that this opinion contradicts the legal system and the principles of justice and equality (Al-Amri, 1981).

The second opinion: There are those who hold the opinion (the impossibility of financial compensation for moral damage unless it was

caused by a criminal offense). This opinion went to the view that it is not permissible to compensate for moral damage unless the damage resulted from a criminal offense (Al-Sada, 1984).

This view is supported by the two jurists (Aubrey and Roe), who hold that the criminal offense affects the victim either in his security, his financial responsibility, or his legitimate emotions, and all of this requires financial compensation. Because these crimes cause the affected person either a loss of profit, prejudice to his personal wishes, or injure his responsibility and hurt his legitimate feelings (Naji, 1984).

As for the damage resulting from the harmful act or a civil crime, compensation is not required. They also distinguish the moral damage resulting from a criminal offense - which compensates for it financially - from the moral damage resulting from a civil crime - and this does not compensate for it financially - (AUBRY.1951).

However, this opinion has been criticized for simulating arbitrary discrimination that has no basis in law. He also did not provide an acceptable and convincing justification for this distinction. Perhaps (Aubrey and Rowe) in their adoption of this view were influenced by the old idea that compensation may be seen as a (special punishment) for the perpetrator of the crime more than the satisfaction of the injured for the damage he sustained, and he has also criticized This view is because it makes civil liability for moral damage linked to, subordinate to, and mixed with criminal liability, in contrast to the current trend that recognizes the independence of the two responsibilities, one from the other, for a long time. (Al-Saeed, 1992).

Third opinion: Permissibility of financial compensation for some types of moral damage:

The supporters of this view show them being more serious and objective than others. Instead of establishing the distinction on the nature of the error, they based it on the nature of the damage and advocated this view (Terbin,

Mangan, Laylor) and divided the moral damage stemming from the individual's moral responsibility as a result of prejudice to it into two groups (MAZEUD.1963):

The first group: are related to (the social aspect of moral liability), which includes the case of assault on honor, reputation, and consideration, as well as the aesthetic appearance of a person.

The second group: are related to (the emotional aspect of moral liability), which includes every attack on feelings or every harm that affects the emotions of love, such as the pain and sorrows that an individual suffers as a result of killing or torturing a loved one.

Then they say that compensation for the moral damage that affects the elements of the social aspect of moral liability is permissible. This is because what affects honor, reputation and consideration always lead to financial damage, while moral damage that affects the psychological or emotional aspect of the moral liability cannot be compensated for, and in other words, it is not possible to compensate for purely moral damage because it did not cause the individual material damage. MAZEUD.1963), they also add the permissibility of compensation for future material damage resulting from prejudice to moral liability, and this opinion is criticized.

The differentiation of the elements of moral liability as mentioned, and the permissibility of compensation for damages incurred by some and not others, cannot be accepted. On what basis was this distinction made?

The elements of moral liability are all of one nature and these elements include the emotional, spiritual, emotional, and moral life of the individual. ?

From the foregoing, we conclude that the opinions and ideas of the jurists of the mixed sect, regardless of their validity in some cases, remained mere purely doctrinal ideas that did not find a way for them to enact legislation, although they tried to reconcile the opinions of the supporters of compensation for moral

damage with the views of the doctrinal its opponents.

After studying the jurisprudential position (the principle of compensation for moral damage in France as well as the most important doctrines that dealt with it), we can say that the approach adopted by French jurisprudence at present confirms the existence of compensation for moral damage within the scope of tort responsibility and that the jurisprudential consensus found a way for it In much French legislation that expressly provides for it.

The majority of French jurists see in justifying the recognition of compensation for moral damage that it is not intended to restore the injured person's condition to what it was before the damage occurred, because this is impossible in most cases, even concerning material damage, but rather it is intended to alleviate the pain and sorrows that befell him. As a result of his injury, or what affects his affections of weakening or disturbing his reputation or his social position, and that the injured party's acceptance of compensation for the moral damage he has suffered does not prejudice the rules of morality or the ideals of humanity as long as the compensation provides him with relief from his psychological pain and sorrows, what The injured person did not take advantage of the injury he suffered to exploit the person responsible for him and enrich himself at his expense, in addition to the fact that it is not fair or ethical rules for the perpetrator to escape from the public and private punishment represented by compensation alike.

Also, the difficulty of estimating moral damage did not discourage jurists from adhering to and accepting the principle of compensation for moral damage, because this difficulty also exists when estimating material damage and the court has sufficient capacity to estimate that compensation through the help of experts, and the judiciary witnesses many such procedures daily.

After this brief presentation of what has been clarified in this topic regarding the permissibility of compensation for moral damage arising from tort liability, we prefer the opinion that

compensation for moral damage is permissible in all cases.

The civil jurisprudence position on the right Ability to compensation for moral damage to transfer.

The difference in civil legal jurisprudence did not stop with compensation for moral damage, but extended to the extent to which the right to compensation for moral damage was transferred.

Restrictive direction of transmission of the right to compensation for moral damage

This trend in transferring the right to compensation for moral damage to the heirs is based on arguments drawn from considerations related to the emergence of this right and from the position of the injured before his death, and from the purpose of compensation and the role of compensation granted for moral damage (Mark, 1988 AD), and the following is a statement of these considerations.

Firstly, the right's nature and origin:

Compensation for moral damage, in the opinion of some jurists, is a personal right that is considered a financial right, and then its entry into the custody of the injured person depends on the latter's assessment and his claim for it.

It follows that if the injured person dies before claiming this right, it lapses and it is prevented from being transferred to his heirs (Sharaf al-Din, 1982; Abu al-Naga, 1987 AD; Abd al-Salam, 1990 AD).

The basis for this is that the moral damage does not affect the financial liability of the injured party because it is a non-financial damage, and therefore nothing of this liability is diminished so that the heirs can claim compensation for this detraction. The transfer of the right to compensation will only come out of revenge and compensation, and if the heirs obtain it, it will be nothing more than enrichment without reason, especially since the heirs demand compensation for damage that did not touch them, so they are not asking for compensation for what they suffered or endured, but rather for compensation

for what the immediate injured (Al - Jundi, 1999 AD).

Only the injured party has the option to transform the non- financial damage into a financial right, and the heirs have no right to make a monetary evaluation of his physical and psychological pain.

(GUIHO. 1991/BENABENT .1991/ STAREK .1991/SAVATER.1841)

This is for two reasons:

First: The compensation corresponding to a non-financial value is difficult to estimate without the intervention of the injured person, as he is the only one who can disclose the damage he has suffered.

Second: Compensation for moral damage is a right attached to the person, and only the immediate victim has the right to demand it. They measure this provision - who decide - on the rules of the indirect lawsuit, which the creditors' right to use is limited to rights not related to the person of the debtor (Amer, 1979 AD, Kanawati 1992 AD), pursuant to the provisions of Article (1166) of the French Civil Code, Article (1/366) of a Jordanian Civil, and Article (235) of an Egyptian Civil.

Likewise, logic and the rules of morality dictate that the injured person alone remains the owner of the right to compensation for the personal pain he suffers, whether with regard to filing a lawsuit related to this right or refraining from filing it, whatever the motive behind this, we are facing a special advantage, because if The right to compensation for moral damage aims to satisfy the injured, and therefore this satisfaction remains subject to his personal discretion, Here, we are not dealing with a right that enters into a financial liability without the will of its owner, as is the case with the right to compensation for material damage. Material damage, by its nature, responds to monetary compensation, and therefore the right to compensation arising from it appears at first sight in the financial liability of its owner as one of its elements, without the need for acceptance, and accordingly, this right can be transferred to others, or in other words, it

is solvable. As for moral damage, on the contrary, monetary compensation is exceptional, disproportionate to its nature, and carries with it the meaning of punishment. More than the meaning of compensation, and therefore this right to compensation is owned by the injured party alone, and it is not transferred to others, whether they are heirs or creditors (DABIN.1935).

Secondly, The position of the injured before his death:

One of the foundations underlying the restrictive tendency to transfer the right to compensation for moral damage to the heirs is the assumption that the injured has waived his right to compensation before his death, based on what is required by the rules of Roman law, that the injured if he dies before filing a lawsuit Compensation arising from a personal injury he sustained, which he may have waived before his death (Mark, 1998).

Hence, it is not for the heirs after that to initiate this lawsuit, in addition to that, this lawsuit aims to satisfy the victim's desire for revenge, and such lawsuits expire with the death of their owner, If this person dies without raising it, it is assumed that he has been pardoned.

(CARBONNIER. 1980) (Abd al-Wahhab, 1964; Sharaf al-Din, 1982; Abd al-Salam, 1990)

In this regard, the Egyptian Court of Cassation ruled in a decision in which it stated: "The compensation that arises from the beating is a personal right whose owner may waive it without any person, regardless of the relationship between them having the right to claim it, and since the injured person has died before it appears. His intention is to sue his opponent and demand compensation, so none of his heirs can claim it."

Third, Purpose of compensation for moral damage:

Proponents of the restricted trend hold that the goal of compensation for moral damage is of a personal nature, which requires granting compensation to those who were personally

injured, because the compensated values are originally non-financial values. Hence, no sum of money can compel such a damage that affects those values unless the aim of paying the sum is to alleviate the suffering and amuse him, and this requires paying compensation to him personally, just as he paid it to the heirs - and he is likewise - It violates its intended purpose, and compensation will be considered a punishment for the responsible person rather than compensation for the injured, as it will be considered enrichment for the heirs because of the moral damage suffered by their inheritors, and this enrichment is not justified (Sharaf El-Din, 1982; Hijazi, 1954; Al-Malahush, 1990).

Hence, it would be morally painful for the heir to receive such financial compensation because of the suffering he personally did not suffer.

Supporters of the restrictive trend go on to say that this suffering gives the injured the right to claim financial compensation in court, but this should not lead to the transfer of this right to the heirs, because the transfer of any non-financial right to a financial right does not imply that all financial rights They must be treated with the same views, whatever their source.

In fact, it is impossible to make a complete abstract when analyzing the compensation law from the cause of compensation and the nature of the damage being compensated, and as long as the cause of compensation is physical or moral suffering proven by the injured, it can only be related to a purely personal injury, and it must be This character trait of damage stems from the law of compensation and its placement within the same formula. If the injured person dies without filing a claim for compensation, it is assumed that he has abandoned the exercise of a right that is a personal right for him (Abu Al-Naga, 1989).

Proponents of this restricted trend point out that the inheritance does not include all the rights of the deceased nor all his obligations, as there are some rights of a nature that are closely related to the person of the deceased and are not transmitted to his heirs, and accordingly, psychological pain and sorrows are not inherited, as well as joy and pleasure. And if the

heirs of the deceased had suffered moral damage as a result of the accident that occurred to him, they can claim compensation for the moral damage that they personally inflicted, and they do not have the right to demand compensation for the moral damage suffered by their legator (RODIERE.1966)).

Fourthly, The role of compensation for moral damage:

There are two conflicting theories in determining the role of compensation awarded for moral damage:

The first: It is called the theory of private pain, and it establishes a claim for compensation for moral damage on the right of private vengeance

The second: it is the convincing theory, it is estimated that this lawsuit extends to giving the victim sufficient conviction to relieve his pain and alleviate his suffering (Abu Al-Naga, 1987).

According to the opinion of those restricted to the right of transfer, if one of the two theories is adopted, the result will be the same: The right to compensation for bodily pain will not be transferred to the heirs. With regard to the theory of private pain, if the compensation claim conceals the private pain that befallen the victim, it must be extinguished with the death of the injured.

The reason is that the injured must be the only one who has a monopoly on his own revenge, because he has suffered from the consequences that caused the damage because of the action committed by the person responsible for the accident, and therefore he is the only one who has the right to decide whether he wishes to apply this punishment or not, and results This pain must disappear if the injured person dies before requesting it, and as a result there will be no acceptance of the issue of the transition right.

This same thing is mentioned when we adopt the persuasive theory, because this theory, which estimates that allocating an amount of money to the injured, for reasons related to the feelings of the injured in relieving the pain and restoring the balance of feelings affected by the harmful act,

this implicitly and necessarily means that compensation will not have Meaning if this amount is obtained from someone other than the person who suffers from it, otherwise there will be no compensation (Abu Al-Naga, 1987).

These are the foundations on which the owners of the restricted trend relied, and it seems that they did not escape the discussion, as the owners of the second trend, which stipulates the transfer of the right to compensation for moral damage to the heirs, mentioned several discussions that they receive and their opinion is based on, as we will see.

The trend in favor of transferring the right to compensation for moral damage as long as the injured party did not waive it

This trend is considered the opposite of the restricted trend, and a group of commentators has said it, and the sum of their opinion is:

The right to compensation for moral damage is transferred to the heirs in the same way as material damage, and there is no restriction on this transfer except that the injured party does not waive it (Mark, 1988).

But those who hold this opinion will not be given what they want to decide without taking up the foundations on which the opinion of their opponents is based, through the discussion from which the validity of those foundations is determined to build a judgment on, and then, through their response to them, they evaluate their opinion.

Firstly, In terms of the right's nature and origin:

Saying that the right to compensation for moral damage is not considered a financial right and therefore does not fall into the responsibility of the injured person until after he has claimed it, is a statement that does not agree with the general rules of civil liability nor with logic.

As it does not agree with the general rules of civil liability, the right to be compensated for moral damage is the same as that of material damage. The interest arises for the injured from the time of the occurrence of the harmful act.

Claiming this right is not a condition for its emergence. Its emergence and there is a difference between the right and its use, and if the subject of this right is a sum of money, then it is necessarily a financial right and the lawsuit against it is a financial lawsuit, and thus it falls under the responsibility of the injured before his death (Abu Al-Naga, 1987; Al-Malahush, 1980).

Either he does not agree with logic; Because if the right does not exist and is not included in the financial liability before it is claimed, then this same claim is not valid before the existence of the claimed right, and saying that leads to a vicious circle and makes the emergence of the right to compensation impossible (Mark, 1998).

As for the two reasons on which the restricted trend relied, saying that it is difficult to estimate the moral damage that has befallen the victim if he does not file the case himself is not acceptable for several considerations, including that the damage is not estimated by the injured, but is estimated by the judge and the difficulty of estimating the damage exists even if the injured party files the case by himself. It is a matter that does not prevent the lawsuit from being accepted (Al-Sanhouri, 1964), Rather the proximity of the heirs to the victim and their contemplation of his pain enables them to know the harm that has befallen him in a more clear way than that which the judge can reach by way of punishment (Ahmad Sharaf al-Din, 1982).

As for invoking the rule that prevents the creditors of the injured person from using lawsuits related to his person or his non-attachable rights: (M/1166) a French civilian, (M/366/1) a Jordanian civilian, (M/235) an Egyptian civilian. It is indispensable because this rule prevents its application to the heirs of the injured. The right may be related to the injured person. And authorizing his creditors to file a lawsuit against him means forcing the first to use it, and this contradicts his will not to claim this right for privileges related to his person. His death, when we consider the heirs as an extension of the person who inherited them, and that their claim to the right is only an interpretation of the will of the latter (MAZEUD.1963).

It does not prevent the transfer of the compensation claim to the heirs, because the right to compensation may not be attached to it during the life of the injured party, and if it is forbidden for the creditors of the injured in this case to initiate a claim with it because they have no interest in that. And because this right is considered outside the transaction, its transfer to his heirs is not considered a transaction in it. The fact that the right may not be dealt with during the life of its owner does not prevent it from being transferred due to death - when it is a financial right - to his heirs who are considered an extension of his person (MAZEUD.1963).

It is not possible to accept what DABIN made of the distinction between compensation for material damage and compensation for moral damage on the basis that the right to compensation for material damage appears in the financial liability of its owner without the need for acceptance, while the right to compensation for Moral damage is an exceptional right that carries with it the meaning of punishment more than the meaning of compensation, because the right to compensation for moral damage ultimately devolves into a monetary amount like the right to compensation for material damage, and this right in both types of damage is only It is considered an element of financial disclosure, and the idea of punishment to be attached to compensation for moral damage is an old idea from the effects of Roman law and old French law and is no longer accepted at present.

Secondly. The position of the injured before his death:

What the owners of the restricted tendency say that the right to compensation for moral damage expires if the injured person dies before claiming it, and then the failure of the injured party to claim this right before his death is considered a presumption of relinquishing it, and then his heirs may not claim it, that It is not a given, and has no basis in truth (MAZEUD.1933), Because it cannot be assumed that the right has been relinquished by the mere failure to file a lawsuit against it before death, death may occur immediately after the injury, and the injured

person does not have enough time to file it, Assigning the right to compensation is not assumed, but rather it is necessary for the injured party to issue a statement that benefits this with certainty.

But if this waiver is not achieved with certainty, the heirs may pursue a claim in compensation in the name of their injured legator, when this right has not been forfeited by prescription (Zaki, 1976).

And the fact that the right to compensation for moral damage is a right related to the person of the injured person that no one else is allowed to engage in is a matter that does not apply to heirs in the opinion of some jurists because they are not from others, but they leave the bequeathed within the limits of his legacy and take his place in all his rights, so a person remains their inheritor. It continues in their person, so it is not separated from the injured person when his heirs initiate it, and as a result, they have the right to file a lawsuit against him before the competent courts (MAZEUD, 1933).

If the right to compensation for moral damage is related to the person of the injured person so that it is not permissible to transfer it to others unless he expresses his will in its necessities, then the effect of this personal characteristic of the right to compensation appears in preventing its transfer among the living, but this characteristic does not prevent this from being established. The right to be owed by the injured person, his inheritance, his transfer, and then to his heirs on the basis that they are a continuation of his personality and his rights (Mark, 1988; Zaki, 1976).

Third, Objective of compensation:

What is said about the purpose of compensation for moral damage refuses to be claimed by the heirs. Here, a distinction must be made between the right to compensation as a means and moral satisfaction as an effect of this right, and the purpose of compensation is not to return the situation to what it was before the harmful act occurred, otherwise it is not possible to return the deceased to life, but it is intended to provide

some Advantages and some satisfaction that increases in proportion to the contents of the moral liability of the injured party. The final effect of paying the amount of compensation is to restore the account balance of the moral patrimony to the injured person if the satisfaction is a moral value, but in terms of compensation, it is considered a financial right that passes on the death of the injured to the heirs (Sharaf Al-Din, 1982; Al-Sanhouri, 1964).

Also, the claim that the transfer gives the heir enrichment without reason. It is a wrong saying: because the right to compensation for pain is a financial feature, and recognition of such a feature must necessarily lead to considering this right as one of the elements that are established in the financial liability of the injured person, and that the heir who is the successor of the injured person combines this right with all the elements of the financial liability of the latter. Therefore, there is a legitimate reason that justifies the exercise of this right by the heir, and then the enrichment without reason is denied (Abu Al-Naga, 1987).

Also, to say that it would be unfair (under the pretext that the heir did not suffer anything from the suffering of the injured) if we allow the transfer of the right to compensation for such suffering?

This does not mean that the heirs benefit financially from the suffering of the injured, and this is not acceptable, because the right arose before the death of the injured, and entered his financial liability, and it is unreasonable for him to leave it just because of the death of the injured before filing a lawsuit against him, otherwise, it would be in the interest of the official to prepare for his victim on the spot to avoid compensation for the damage, or to conduct negotiations related to compensation until the time of the death of the victim, when a comparison is made between the heirs receiving a monetary consideration for the suffering of their injured legator and the official benefiting from the death of the injured person who did not file the case, the first order must be chosen (Sharaf al-Din, 1982).

Those in this direction ask a question:

Why does the pain compensation law remain non-financial when the injured did not file a claim before his death and it becomes financial to the contrary? And how can compliance with the lawsuit change the nature of the law to compensation? The answer presented by some, according to which the obligation passes by the injured party claiming compensation on the financial level and is to this extent a moral law, all of this seems illogical from the one hand that the compensation law did not arise in the financial liability of the injured and in this case it must only be absolutely transferable to the heirs. On the other hand, this law forms part of his financial liability at the time the accident occurred. So in this case, the portability imposes itself (Abu Al-Naga, 1987).

Fourthly. The role of compensation for moral damage:

It seems that this justification is indefensible for the following two reasons: On the one hand, the theory of private pain contradicts the realistic development of the rules of civil responsibility, and it is true that in the period when the law did not exist, the idea of revenge (retaliation) had a certain importance, but with the development of the authority of the state began this idea with the disappearance and the state became the only one that bears the prosecution of all criminal violations, and then the injured person has a specific role to request financial compensation for the damage he has proven, so the idea of private pain is considered encouraging for the re-emergence of systems that do not exist in modern law, And if we refer to the texts related to contractual and tortious civil liability in the laws, we see that they confirm the talk about harm and compensation and do not leave any room for the idea of private pain, then it is not possible to justify not transferring the right to compensation for bodily pain with the idea of private pain, and on the other hand we do not object to the feature disguised damages for moral damages. In principle, it should be given to the injured person who suffered from that damage, but the convincing idea can be given a broader meaning considering the conviction

granted to the heir of the financial liability of the injured person as a kind of conviction for the latter.

But it can be objected that such a solution is based on an assumption that is not always accurate, but if there is a choice between this solution, which prefers the disappearance of compensation with the death of the injured, on the pretext that compensation must convince the injured himself - then we will choose the first solution and in a more logical way, it is characterized by avoiding the accident free of charge for the official, regarding the physical and moral suffering suffered by the injured person, and this analysis must lead to the possibility that the heirs file a claim for compensation for the damage instead of the injured (Abu Al-Naga, 1987). After reviewing the position of the trend that says restricting or preventing the transfer of the right to compensation for moral damage to the heirs and the position of the second trend, which is opposite to it, we prefer what the owners of the second opinion held, and that is due to the convincing arguments adopted by the owners of this opinion.

Conclusion

Damage is an element of civil liability; Nodal and tort, which are two types of material damage and moral damage, and civil law jurisprudence has settled on compensation for material damage according to conditions if it is achieved, and civil jurisprudence did not agree with regard to compensation for moral damage, so it was divided between supporters and opponents.

The opposing trend was based on several grounds, including the nature of the moral damage that falls within the content of a person's moral responsibility, which does not fall within the scope of private law but within the scope of natural law, as it does not have legal protection, the impossibility of reparation for moral damage by financial compensation: The objective of compensation is to (erase) the damage and remove it, that is, to return the injured person to the position he was in before the damage occurred, and this goal is not achieved in the event of moral damage.

By responding to the arguments against compensation for moral damage, he supported the idea of compensation for moral damage by restitution: the rights related to (financial disclosure) or the elements of this disclosure fall within the scope of positive law. The principle of civil liability as a general principle that includes compensation for moral damage, that the judge's assessment of the moral damage or its proof by the litigants before the judge does not prejudice the principles of morality, but rather it is a matter of damage that has occurred and must be compensated for, and the lack of compensation for it is incompatible with the principles of morality, as What hurts the soul and harms morals is to leave the harm without compensation.

Some jurists have settled on the middle doctrine between the two previous opinions, as they do not allow compensation for moral damage in all cases, nor do they prevent it in all cases, but rather allow it in some cases with special conditions or certain restrictions.

The difference in civil legal jurisprudence did not stop at compensation for moral damage but rather extended to the extent to which the right to compensation for moral damage is transferred to the heirs, and two trends emerged: the restrictive trend of transferring the right to compensation for moral damage; This trend is transferring the right to compensation for moral damage to the heirs is based on arguments drawn from considerations related to the emergence of this right and from the position of the injured before his death, and from the objective of compensation and the role of compensation granted for moral damage.

As for the direction in favor of the transfer of the right to compensation for moral damage, as long as the injured party did not waive it, it is considered the opposite of the restricted trend, and the sum of their opinion: The right to compensation for moral damage is transferred to the heirs, as is the case with material damage, and there is no restriction on this transfer Except that the victim did not give up.

The researcher prefers the jurisprudential trend, which recognizes compensation for moral

damage, as well as its transfer to the heirs, for what supports that practical reality, and for their sound legal arguments.

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