

Bodily injury

1. WHAT IS BODILY INJURY?

Bodily injury denotes the direct or indirect negative impacts resulting from physical and/or mental harm suffered by the injured party.

Bodily injury is traditionally divided into two distinct categories of damages, i.e. material damages and moral damages.

Material damages – also known as pecuniary damages – consist of the impairment of the injured party's assets that can be valued in money and include, among other things, property damage, administrative costs and, more generally, the economic loss resulting from the bodily injury.

Moral damages – also known as non-pecuniary damages – are, in contrast, not objectively quantifiable and include the physical and mental aspects of bodily injury, consisting of, among other things, the pain, fear for the future and grief due to the loss of a loved one.

2. HOW IS BODILY INJURY COMPENSATED?

Belgian liability law is governed by the principle of compensation in full for damages and objective redress.

Compensation in full of bodily injury implies that any and all damages suffered are eligible for compensation. Therefore, in order to determine the extent of the indemnity, a comparison needs to be made between the current state of the injured party and the hypothetical state in which the injured party would have found itself had the injury not occurred.

Objective redress implies that damage should be quantified concretely, where possible. Thus, in principle only the negative difference between the aforementioned two states – i.e. the present state and the hypothetical state – is to be "redressed". However, if redress should prove impossible, in the second instance, the bodily injury as such is quantified and compensated – which is the preferred option in practice.

Compensation in full with objective redress therefore entails that all bodily injury is indemnified, but no more than that.

3. IS ALL BODILY INJURY ELIGIBLE FOR COMPENSATION?

When referring to bodily injury, this implies only the damage for which a third party is liable or for which one is insured. Depending on the grounds that give rise to the right to compensation (i.e. is it a work accident, a traffic accident, etc.), all bodily injury will be eligible for compensation or not.

If the injured party is entitled to compensation for damages under *Belgian liability law*, the general principle of compensation in full applies. Subject to proof of a fault, of prejudice and of a causal link, the injured party is entitled to compensation in full for all damages suffered (both material damages and moral damages). Possibly, where applicable, a liability insurance policy may intervene that will usually provide some type of bodily injury liability coverage.

Compensation may also derive from an insurance policy under which the injured party is insured. Relevant examples include employer's liability insurance, personal accident insurance, guaranteed income insurance and so on. Compensation may also arise from the application of an automatic compensation scheme. The most well-known such example is the compensation scheme for vulnerable road users provided in Article 29*bis* of the Belgian mandatory Motor Third-Party Liability (MTPL) Insurance Act.

4. HOW IS BODILY INJURY QUANTIFIED?

It follows from the general rule of compensation in full for damages and objective redress that bodily injury is in principle quantified *in concreto*. As such, the injured party must first and foremost substantiate the damage suffered on the basis of evidence.

However, if a precise evaluation of the damages suffered is not possible, bodily injury may be estimated *in abstracto* on the basis of lump sum compensation.

In practice, the quantification of bodily injury is often done by means of the **Indicative Table**.

The Indicative Table consists of non-binding agreements which, as *soft law*, can provide an indication in a court's assessment. The Indicative Table deviates from the traditional classification of bodily injury and distinguishes three types of incapacity: personal (extra-patrimonial), economic and household.

Personal incapacity refers to the non-economically quantifiable consequences of the impairment of the injured party's physical and mental integrity in daily life.

Economic incapacity (also called incapacity for work) consists in the impact of the impairment of the injured party's physical and mental integrity on the conduct of the latter's professional life, including impairment of the injured party's competitiveness on the labour market.

Finally, **household incapacity** can be defined as the impairment of the injured party's energetic or functional potential with an economically quantifiable impact on his fitness to perform household tasks, or the need for increased efforts to complete such tasks.

If certain injuries are not covered by any of the above-mentioned heads of loss, they are classed under the heading of *special loss*. These notably include pain and suffering, damage to appearance, sexual damage and loss of enjoyment.

The evaluation method of the aforementioned loss positions then differs depending on whether the damage falls under temporary incapacity, or rather under permanent incapacity.

Temporary incapacity refers to the damage suffered by the injured party in the period between the claim and the consolidation date (i.e. the date when the injured party is fully healed or the date when the severity of the injury will no longer be subject to change). A medical assessment (amicable or court-ordered) will generally take place in order to evaluate the bodily injury and determine the consolidation date.

The assessment of temporary incapacity – according to the Indicative Table – is made *in concreto* or on the basis of lump sum compensation.

Thus, in the context of economic incapacity, the injured party will always have to prove the loss of income *in concreto*. Alternatively, personal and household incapacity will be compensated on the basis of a lump sum amount per day of incapacity at 100 % and, following that, *pro rata*.

The quantification of **permanent incapacity** is a technical matter that starts from the consolidation date and is determined according to the varying degrees of incapacity (as set out in connection with the medical assessment).

According to the Indicative Table, permanent incapacity can be evaluated and indemnified in three different ways, i.e. by awarding interest, by capitalisation or by awarding lump sum compensation. It is up to the court to assess the extent of the permanent physical injury as well as the evaluation method and the amount of the damages.

Interest is a type of compensation according to which the injured party receives a monthly or periodic amount for the future and is usually applied in the context of severe permanent incapacity.

Capitalisation is the method of compensation in which the actual bodily injury to be suffered in the future is estimated and indemnified in one lump amount. This method amounts to converting interest into capital for the period for which compensation is due after the court order or amicable settlement. Practice shows that capitalisation is mainly applied in cases of advanced degrees of permanent incapacity.

Lastly, *lump sum compensation* is the preferred mode of compensation in cases of minor to moderate permanent incapacity. The Indicative Table provides a compensation scheme on the basis of the age of the injured party, which will serve as an initial starting point. These indemnities – which can still be revised in light of the concrete circumstances surrounding the claim – are subsequently multiplied by the coefficient of the percentage of permanent incapacity on the part of the injured party, as determined in the context of the medical assessment.

FOR FURTHER QUESTIONS, PLEASE CONTACT:



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