

**Assessing Compensation for Moral Damage Resulting from Physical Injuries in
Palestinian Law: A Comparative Study**

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Abstract

This research aims to clarify the mechanism for assessing compensation for moral damages resulting from physical injuries in Palestinian and comparative law. This is achieved by outlining proposed criteria for assessing such compensation under applicable Palestinian and comparative legislation. To achieve this objective, the research employed descriptive, analytical, and comparative methodologies, along with a critical approach. This involved studying and analyzing legal texts, drawing upon the Palestinian Civil Code, various court decisions, and other legislation, such as Jordanian and Egyptian law, to the extent necessary to present a broad range of legal and jurisprudential opinions on moral damages and their compensation, as required by the nature of this research. In conclusion, the study reached several key findings, most notably: the value of moral damages resulting from physical injuries can be estimated using a proposed criterion. This involves first examining previous instances of pain similar to the current pain and then determining the compensation value for those instances. Following this, the level of pain is classified according to a three-tiered system (mild, moderate, and severe). The researcher recommends adopting the standard proposed in this study by defining levels of pain and suffering according to the three-tiered classification (mild, moderate, and severe), while ensuring that the compensation amount does not exceed a predetermined maximum limit, and also taking into account the duration of the pain.

Keywords: *compensation, damage, moral damage, bodily injury, civil liability.*

المخلص

يهدف البحث الحالي إلى توضيح آلية تقدير التعويض عن الضرر المعنوي الناتج عن الإصابات الجسدية في القانون الفلسطيني والمقارن، وذلك من خلال توضيح المعايير المقترحة لتقدير التعويض عن الضرر المعنوي الناتج عن الإصابات الجسدية في ظل التشريعات والقوانين النافذة في فلسطين والقانون المقارن. ولتحقيق هدف البحث فقد تم استخدام المنهج الوصفي والمنهج التحليلي والمنهج المقارن، وإتباع الأسلوب النقدي، عبر دراسة وتحليل النصوص القانونية، وذلك من خلال الرجوع إلى القانون المدني النافذ في فلسطين، وأيضاً الاستفادة من بعض قرارات المحاكم المختلفة، بالإضافة إلى بعض التشريعات الأخرى مثل القانون الأردني والمصري بالقدر اللازم لبيان القدر الأكبر من الآراء العلمية القانونية والفقهية الواردة في الضرر المعنوي وكيفية التعويض عنه وفقاً لما تقتضيه طبيعة هذا البحث.

وختاماً فقد توصلت الدراسة إلى العديد من النتائج أهمها: من الممكن تقدير قيمة الضرر المعنوي الناتج عن الإصابات الجسدية من خلال معيار مقترح، بحيث يتم أولاً البحث في آلام سابقة مشابهة للألم الحالي ومن ثم التعرف على قيمة التعويض المقدر فيها، وبعد ذلك يتم تحديد مستوى الألم وفقاً للتصنيف الثلاثي (الخفيف والمتوسط والشديد). ويوصي الباحث باعتماد المعيار المقترح في هذه الدراسة من خلال تحديد مستويات الألم والمعاناة وفقاً للتصنيف الثلاثي (الخفيف والمتوسط والشديد)، مع الالتزام بضرورة ألا يكون المبلغ المعروض أعلى من مبلغ الحد الأعلى المقرر مسبقاً، والأخذ أيضاً بعين الاعتبار مدة استمرار الألم.

الكلمات المفتاحية: التعويض، الضرر، الضرر المعنوي، الإصابات الجسدية، المسؤولية المدنية.

Introduction

In tort liability claims, the injured party is entitled to compensation for the harm suffered, to the extent that it restores the balance disrupted by the wrongful act. This compensation includes any loss or loss of profit, as compensation is the ideal judicial means to redress harm (Al-Habashi, 2022, p. 247). The compensable harm is of two types: material damage and moral (or non-pecuniary) damage. Jurisprudence defines the latter as "any harm that does not affect a person's property" (Al-Sanhuri, 1964, p. 723). Material damage, resulting from an attack on a person's body or property, is the more common type. In contrast, moral damage arises from an attack on a person's feelings, emotions, dignity, honor, or any other value that people cherish (Al-Sanhuri, 1981, p. 970). While the general rule is that compensable harm is material, moral damage is the exception and raises several issues regarding its compensation. It is considered difficult to assess because it is subject to personal criteria more than objective ones (Al-Haidari, 2015, p. 12). The types and forms of infringements that constitute moral damage are numerous and cannot be exhaustively listed. Moral damage may result from an infringement on a financial right or a non-financial right, such as the right to bodily integrity, the right to life, and the right to personal freedom. Therefore, the criterion for moral damage remains linked to the infringement's impact on a person's moral values, including their moral integrity. It is noted, however, that moral damage most frequently occurs in cases of infringement on non-financial rights, making its forms diverse and difficult to enumerate (Al-Shahadat, 2022, p. 18).

Regarding the position of the legislation and laws in force in Palestine on compensating for moral damages resulting from physical injuries, these laws do not contain sufficient provisions to regulate claims for moral compensation in all its forms. However, this does not preclude the possibility of claiming such compensation in Palestinian courts. There are texts in the amended Civil Offences Ordinance No. 5 of 1947 that suggest the permissibility of claiming moral compensation. For instance, Article 2 of this law defines the term "damage" as "death or loss or damage to property, or deprivation of comfort, or impairment of physical well-being, or reputation, or similar damage or loss." This text implies that compensation covers all harm, including moral or non-pecuniary damage, and is not limited to material damage alone.

In comparative legislation, we find that most have explicitly adopted the principle of compensation for moral damages. For example, Jordanian legislation, in Article 267/1 of the Jordanian Civil Code No. 43 of 1976, states: "The right to compensation also covers moral damage. Any infringement on another's freedom, honor, reputation, social standing, or financial makes the infringer liable for compensation." Similarly, other Arab civil codes explicitly provide for compensation for moral damage:

- Qatari Civil Code of 2004 (Article 202/1): "Compensation for an unlawful act includes damage, even if it is moral."
- Saudi Civil Transactions Law (Article 138/1): ";Compensation for a harmful act includes compensation for moral damage."
- Bahraini Civil Code of 2001 (Article 162/1): "Compensation for an unlawful act covers damage, even if it is moral."
- Egyptian Civil Code of 1948 (Article 222): "Compensation includes moral damage as well, but in this case, it may not be transferred to others unless determined by agreement, or the creditor claims it before the court."
- Iraqi Civil Code No. 41 of 1951 (Article 205/1): ";The right to compensation also covers moral damage. Any infringement on another's freedom, honor, reputation, social standing, or financial makes the infringer liable for compensation."
- UAE Civil Transactions Law No. 5 of 1985 (Article 293/1): "The right to compensation covers moral damage, and it is considered moral damage to infringe on another's freedom, honor, reputation, social standing, or financial."
- Kuwaiti Civil Code (Article 231/1): "Compensation for an unlawful act covers damage, even if it is moral."

From the foregoing, it is evident that the majority of comparative legislations have affirmed that moral damage is the harm arising from an attack on a person's honor, reputation, dignity, freedom, social standing, or financial standing (Al-Jazi & Abu Hilaleh, 2024, p. 131).

This trend has been adopted by both Palestinian and comparative judiciaries. The Palestinian Court of Appeal defined moral damage as "damage resulting from an infringement on another's

freedom, honor, reputation, social standing, or financial standing" (Palestinian Court of Appeal, Civil Appeal No. 7/2016). This is the same definition adopted by the Jordanian judiciary, where the Jordanian Court of Cassation, in one of its decisions, defined moral damage as "that damage resulting from an infringement on another's freedom, honor, reputation, social standing, or financial standing" (Jordanian Court of Cassation, Cassation of Rights No. 3244/2006).

Regarding compensation for moral damages from physical injuries, the legislation in force in Palestine has largely confined it to the context of road accidents. According to Article 144 of the Palestinian Insurance Law, any person injured in a traffic accident is entitled to material and moral compensation. The article states: "1- Every person who uses or authorizes the use of a motor vehicle shall be liable to compensate the injured for any bodily, material, or moral damage resulting from a road accident in which the vehicle was involved. 2- The liability of the person who uses or authorizes the use of the vehicle shall be full and absolute for compensating the injured, regardless of whether there was fault on his part or on the part of the injured." This context sparked the idea for this research: to discuss moral damage, specifically the compensation for such damage arising from physical injuries, including the legal problems associated with its assessment. While the current legislation in Palestine has adopted the principle of compensation for moral damage in the Insurance Law, the difficulty lies in the mechanism for assessing this compensation due to the absence of specific criteria, unlike the assessment of material damages. This requires the researcher to examine the various aspects of this topic, the associated problems, the position of Palestinian and comparative legislation, and to analyze the comprehensiveness and adequacy of the legal texts in the Palestinian civil codification and comparative legislation. The research will also highlight its practical application through the decisions of the Palestinian Court of Cassation and Court of Appeal, in addition to the rulings of comparative judiciaries, such as the Jordanian Court of Cassation and the Egyptian Court of Cassation.

Research Problem

This research addresses a significant problem related to the failure of the legislation and laws in force in Palestine to adequately cover the assessment of moral damage arising from physical injuries. This is compounded by the ongoing jurisprudential and judicial debate over the criteria

and factors influencing the assessment of this damage. Accordingly, the main question is: What is the mechanism for assessing compensation for moral damage resulting from physical injuries in the legislation and laws in force in Palestine and in comparative law?

Significance of the Research

The importance of this research lies in its focus on the legal and procedural issues surrounding moral damage, specifically the assessment of compensation for it in the context of physical injuries. This is achieved by analyzing the applicable legal texts and presenting the practical and applied reality through the rulings of the Palestinian judiciary concerning compensation for moral damage. This study also has practical significance for those interested in the judiciary and individual rights, helping them understand this type of damage, the mechanisms for compensation, and who is entitled to it. For researchers, this study can serve as a nucleus and a reference for future research on this topic.

Research Objectives

This research aims to clarify the mechanism for assessing compensation for moral damage resulting from physical injuries in Palestinian and comparative law. This is achieved by elucidating the proposed criteria for assessing compensation for moral damage from physical injuries under the legislation and laws in force in Palestine and in comparative law.

Research Methodology

This research will follow the descriptive, analytical, and comparative methods, adopting a critical approach. It will involve studying and analyzing legal texts by referring to the civil law in force in Palestine, as well as benefiting from various court decisions. Additionally, it will draw upon other legislations, such as Jordanian and Egyptian law, to the extent necessary to present the broadest possible range of scientific, legal, and jurisprudential opinions on moral damage and its compensation, as required by the nature of this research.

Research Structure

The research is structured into two main chapters:

Chapter One: Proposed Criteria for Assessing Compensation for Moral Damage Resulting from Physical Injuries.

Section One: Level and Degree of Pain

Section Two: Setting a Cap on Compensation

Section Three: The Per Diem Method

Section Four: The Victim's Health and the Gravity of the Fault

Chapter Two: The Legal Position on Assessing Compensation for Moral Damage Resulting from Physical Injuries.

Section One: Assessing Moral Damage from Traffic Accidents

Section Two: Lump-Sum Compensation

Chapter One: Proposed Criteria for Assessing Compensation for Moral Damage Resulting from Physical Injuries

One of the most significant characteristics of moral damage is the difficulty of its assessment. This type of damage affects the non-pecuniary aspect of a person, a value that is not financially quantifiable, making it difficult to estimate the corresponding compensation. It is challenging to determine the correct compensation for damages resulting from attacks on reputation, honor, suffering, and other forms of moral damage (Al-Dasouqi, 1995, pp. 129-130). Therefore, this chapter aims to present a clear mechanism to address the legal problems associated with assessing compensation for moral damage from physical injuries. In the absence of a specific mechanism, the researcher attempts in this chapter to establish an objective criterion that achieves the goals of compensation, guided by the opinions of researchers in previous studies and relying on judicial precedents. This criterion is based on a set of principles through which the assessment process is carried out, as follows:

Section One: Level and Degree of Pain

The psychological harm resulting from pain and suffering due to physical injuries is difficult to quantify. However, this does not mean that the person who caused the damage should escape compensation, nor should they be made to pay more than what is due. This implies that a pre-determined amount for moral damage compensation could be unjust to either the plaintiff or the defendant (Al-Haidari, 2015, p. 23).

Therefore, some legal scholars have suggested assuming a relative similarity in the experience of pain among people. This framework presumes that people's experience of pain is equal. Although this is not entirely accurate, there is no other way to measure the level of pain and suffering resulting from moral damages due to physical injuries. Consequently, the value of people's feeling of pain is assumed to be similar (Siraj, 1998, p.212). Based on this, the value is determined according to what has been established in other similar cases.

Despite the imprecision of the previous assumption, there is no precise method to measure pain and suffering. It must be assumed that people are equal in this regard until proven otherwise scientifically. This is based on the assumption that people are equal in their experience of life, and therefore, the value of their feeling of pain is presumed to be similar.

Since physical injuries are diverse and varied depending on their consequences, the level of pain and suffering can be classified based on the material outcome of the physical injury as mild, moderate, or severe. In this context, the American National Association of Insurance Commissioners (NAIC) has adopted a nine-point scale to measure the level of suffering and pain (Avraham, 2006, p. 94). This classification can be used as a guide to determine the value of moral damage, as follows:

1. Emotional only - (fear without physical harm).
2. Temporary insignificant - (such as cuts, bruises, minor scars, and rashes) which heal quickly.
3. Temporary minor - (such as infections and fractures) which take longer to heal.
4. Temporary major - (such as burns, side effects of medication, and brain damage) which take a significant time to heal.

5. Permanent minor - (such as loss of a finger, or loss or damage to organs, including non-disabling injuries).
6. Permanent significant - (such as loss of one eye, loss of a limb, or loss of a kidney or a lung).
7. Permanent major - (such as paraplegia, blindness, loss of two limbs, or brain damage).
8. Grave permanent - (such as quadriplegia, severe brain damage, or a terminal diagnosis).
9. Death.

It is also possible to classify degrees of pain numerically from 1 to 10, as is the case with physical injuries like burns, which are medically classified into four levels, each with its own degrees. However, this criterion cannot be applied generally to all cases of physical injuries (Al-Haidari, 2015, pp. 24-25). Therefore, the researcher believes that the NAIC's nine-point scale is the best classification, as it covers most physical injuries. Consequently, a compensation value for moral damage could be assigned to each of the nine points listed by this organization. For example, a fourth-degree burn is classified as severe, then further graded by severity and intensity. Despite the severity and pain of such burns, they are not comparable, for instance, to the pain resulting from some types of cancer. Thus, the pain from a fourth-degree burn could be classified as severe of the third degree, while cancer pain could be classified as severe of the tenth degree, which is the highest.

The English judiciary had adopted a method for calculating the level and degree of pain known as the "Golden Rule," where the jury is asked to imagine themselves in the position of the injured person, assess the harm they have suffered and the pain and suffering they feel, and then determine the appropriate compensation accordingly. However, this method was rejected by American courts, and if used, it would necessitate a retrial. An example is the case of *Goutis v. Express Transp., Inc., Div. of F.V. Miranda, Inc.*, 699 So. 2d 757 (Fla. Dist. Ct. App. 1997), where the jury was asked to put themselves in the position of one of the parties. This is not allowed because it encourages the jury to rule based on personal interest and bias rather than on evidence. It is also disallowed because it touches a sensitive financial nerve, asking jurors theoretically how much compensation they would want if they were in a similar situation

(Avraham, 2006, p. 91). If a juror has had a similar experience that caused them pain, it might lead them to exaggerate the compensation, or if they have not, they might not appreciate it adequately (Al-Haidari, 2015, p. 14). Therefore, this method is unacceptable, as compensation should be based on clear criteria, not just internal emotions.

Section Two: Setting a Cap on Compensation

It is possible to set a general upper limit for compensation for moral damage resulting from physical injuries, which would help in its assessment. In ancient Roman law, the legal assessment of the amount of compensation for moral damage was fixed at a specific sum (twenty-five "as") for moral damage related to the crime of assault (Abd al-Sami', 2007, p. 294).

In modern comparative legislation, it is noted that most have not predetermined an amount for moral damage compensation. However, some legislations have set a maximum cap. In the United States, for example, some states have capped non-economic damages at \$250,000 (Banja, 2005, p. 122).

Based on the above, the researcher believes that the law has acted wisely by avoiding a predetermined amount of compensation. However, it is advisable to establish a maximum limit in the law that sets a ceiling for the compensation amount, taking into account the various forms of moral compensation.

It is observed that moral damage often results from an infringement on non-financial rights, as the forms of moral damage in terms of their extent are numerous and difficult to enumerate (Al-Shahadat, 2022, p. 18). In France, the French Council of State awarded compensation of 20,000 French francs in the "MOREL" case for physical pain resulting from burns to the victim's face and hands (Al-Tamawi, n.d., pp. 465-466).

As for aesthetic damage, the judge assesses compensation based on the significance of this damage on the injured person's body, its extent, magnitude, and location. However, the judge cannot assess compensation for physical damages in general without taking into account, from a scientific perspective and without explicitly stating it, the external circumstances, conditions, and influences of the damage. The Egyptian legislator, in Article 170 of the Civil Code,

indicated that the judge should assess the extent of compensation for the harm suffered by the injured party, considering the surrounding circumstances. There is no similar provision in Palestinian or Jordanian law, but the Jordanian Court of Cassation has addressed this issue and considered the surrounding circumstances when assessing compensation for damage. French courts are also influenced in their assessment of compensation for aesthetic damage by certain factors, such as the victim's gender and age (Al-Amiri, 1981, p. 177).

Section Three: The Per Diem Method

In this method, the damage, including suffering and pain, is divided into units of time, such as days. A monetary value is then assigned to each unit. The total number of units is multiplied by the monetary value per unit to arrive at the compensation for moral damage (Avraham, 2006, p. 137).

Based on this, it was stated in a case that despite a sharp division among states on the use of the per-unit-of-time argument, federal appellate courts generally permit this method. For example, if we assume the damage lasted for 10 days, it is divided into units, say 100 units. A monetary value is then assigned to each unit, let's say 100 dinars. The number of units is then multiplied by the monetary value, resulting in 10,000 dinars in our case. American courts have differed significantly in their acceptance of this method, as follows:

First: The View Rejecting the Per Diem Method

This is the minority view among American courts. The argument is that calculating compensation this way is not based on evidence or a scientific method but on the arbitrary choice of a specific value for each unit. The claim that the value of a unit is one riyal or one hundred riyals is arbitrary. The second reason is based on American law, which does not permit the plaintiff's attorney to suggest a specific amount for moral compensation. By using the per diem method, the attorney achieves the same prohibited practice but in a different way, indirectly suggesting to the jury the appropriate amount for moral compensation. The third reason for its prohibition is that it leads the attorney to present testimony expressing their opinion and conclusion without an evidentiary basis (Arrington, 1959). The fourth reason is that the jury is likely to be misled by this method, leading to excessive compensation, as their

minds may be drawn to the validity of the proposed amount for each time unit. Finally, this method harms the defendant because they must either reject this argument, which they cannot do as it is not based on refutable evidence, or try to reduce the value of the units, which would make the jury feel that they acknowledge and agree with the method, with the dispute being only about the amount, not the method itself (Arrington, 1959).

Second: The View Accepting the Per Diem Method

This is the majority view among American courts that have accepted this method for several reasons. One is that it provides guidance to the jury, so they do not assess compensation arbitrarily. It is also not accepted that this method misleads the jury, nor that it is not based on any foundation, because the jury must assess the amount of compensation whether using this method or another, based on the evidence presented by both parties. The attorney's suggestion of the total amount according to this method is merely an aid to the jury, which they can accept or reject. As for the argument that it is not evidence, it is undoubtedly not evidence in itself but is presented for illustrative purposes to the jury, not as evidence per se. The defendant can counter this method by proposing the amount of compensation they deem appropriate if their fault is proven. As for the possibility of error due to this method, the court's role is to supervise the jury and correct their mistakes if they occur. Finally, although many courts adopt this method, some require the court to clarify to the jury that using this method is not in itself evidence of the value of compensation. In *Mkt. Tavern, Inc. v. Bowen*, 92 Md. App. 622, 657 (1992), the court noted: "In fact, the plaintiff did not even argue that the trial judge erred in not cautioning the jury against using this method as evidence of compensation, but only asserted that the per diem method was inappropriate, and this argument is not accepted."

Section Four: The Victim's Health and the Gravity of the Fault

Although the judge generally enjoys broad discretionary power in determining the amount of compensation the injured party deserves, and when deciding on this matter, they are ruling on a matter of fact with no one to review their decision, in most cases, the judge refers this matter to a medical expert. The judge relies on the expert's opinion to determine the cause of the damage and whether it is a natural result of the incident, as well as to determine the extent,

severity, and scope of the damage to the victim's body (Al-Dhanoun, 2006, p. 337). However, some argue that it is difficult to determine the extent and features of physical pain, even with modern medicine. This is based on the premise that the standard governing this pain is a subjective one, specific to the injured person. Pain varies from one person to another depending on the victim's age, gender, the severity and location of the injury, the victim's temperament or mood, and their tolerance for pain. This pain can reach an exceptional level, causing neurological disorders in the victim, where they lose control over their perception or will, becoming agitated when performing a task and endangering their safety and life (Al-Naqib, 1999, p. 314).

It is well-known that the medical expert's opinion is merely an opinion and is not binding on the judge. The judge can adopt it as is, adopt part of it, or disregard it when assessing compensation for physical damage. The judge can reduce the expenses and fees claimed by the plaintiff if they are deemed to exceed the usual and customary limits and are found to be extravagant, excessive, or wasteful, even if they are from official bodies or government hospitals. The French court of Chartres ruled in 1938 that it is unacceptable for someone injured in an accident to go to the most prestigious and expensive hospitals, stay in the most luxurious and costly rooms, choose the most skilled and highly-paid doctors, and pay them whatever fees and other expenses they demand, as long as the burden ultimately falls on the person who caused the harm. It should not be forgotten that the trial judge is the final arbiter and ultimate reference in assessing these damages and determining the compensation for them. The judge awards compensation in light of the assessment elements available in the case, using technical expertise, guided by similar judicial precedents, and applying their reason to assess the appropriate compensation that is equal to the damage (Al-Naqib, 1999, p. 262).

Regarding compensation for moral damage, the element of deterrence in cases of gross negligence finds a significant application in this type of compensation, as it is not governed by clear material standards. Therefore, the judge finds themselves compelled to apply their personal feelings and the victim's feelings towards the person responsible for the moral damage. Thus, the degree of the fault's gravity is one of the important factors that the judge considers when assessing compensation. A judicial application of this is a ruling by the Egyptian Court

of Cassation, which ordered the governor of Alexandria to pay compensation of nine thousand pounds to the plaintiffs for the moral damage they suffered due to the death of their legator by drowning at sea and the lack of adequate rescue means on the beach (Egyptian Court of Cassation ruling dated 28/6/1969).

A segment of legal scholarship argues that since civil liability entails compensation, not punishment, it is logical that the gravity of the responsible party's act should have no effect on the amount of compensation. Civil compensation should cover the damage, all the damage, and nothing but the damage, regardless of the gravity of the responsible party's act. Although this solution is dictated by general rules at present, it was only established after a long evolution. However, this rule is more theoretical than practical, as courts tend, in reality, to increase or decrease the amount of compensation according to the gravity of the responsible party's act. This fact is acknowledged and confirmed by all jurists (Al-Amiri, 1981, p. 170).

Based on the foregoing, the researcher believes that it is possible to assess the value of moral damage resulting from physical injuries through the preceding criteria. This would involve first examining previous instances of pain similar to the current pain to identify the compensation value assessed therein. Then, the level of pain would be determined according to a three-tiered classification (mild, moderate, and severe), while ensuring that the compensated amount does not exceed a pre-determined maximum limit, and also taking into account the duration of the pain.

Chapter Two: The Legal Position on Assessing Compensation for Moral Damage Resulting from Physical Injuries

The assessment of the amount of compensation for moral damage in general, and from physical injuries in particular, has not been definitively settled by any specific means or method to date. The elements for assessing this damage remain unenumerated and are not governed by a general theory (Al-Jazi & Abu Hilaleh, 2024, p. 132). Regarding the approach of the legislation in force in Palestine on this matter, it raises several questions: What is the concept of compensation for moral damage in general? And for physical injuries in particular? What is the position of Palestinian and comparative legislation and judiciary on this? Are there specific

types of compensation for moral damage resulting from physical injuries? Answering these questions will serve to clarify and demystify the mechanism for assessing compensation for moral damage from physical injuries, which will be thoroughly discussed in this chapter as follows:

Section One: Assessing Moral Damage from Traffic Accidents

French courts historically adhered to an old principle known as the "sovereignty of trial judges"; regarding the assessment of damage, under which judges enjoyed unrestricted sovereign authority in assessing the harm suffered by the victim. However, the Court of Cassation later moved away from this principle, transforming the judges' sovereign authority into a discretionary one in evaluating damage (Al-Hababseh, 2020, p. 70). The Egyptian legislator, on the other hand, provided for the judicial assessment of moral damage without setting specific criteria for it. This is the same position taken by the Egyptian judiciary in Appeal No. 334 of year 36 (judicial year) (Al-Daouqi, 2015, p. 262).

As for Jordanian legislation, Jordanian courts have complete freedom to determine the amount of compensation as they see fit according to the law. The court's authority to assess the value of the damage, and thus to determine the value of the compensation, is absolute, without review by the court of law (Al-Amawi, 2011, p. 472). This was affirmed by the Jordanian Court of Cassation, which ruled that "the issue of assessing the value of the damage and determining the appropriate compensation for it is one of the matters that the trial court has discretion over, without being subject to review by the Court of Cassation except within the limits of causation" (Jordanian Court of Cassation, Cassation of Rights No. 6702/2019 and Decision No. 7615/2019).

Moral damage has also been explicitly provided for in many comparative legislations, including the Iraqi Civil Code No. 40 of 1951, in Article 205/1, which states: "The right to compensation also covers moral damage. Any infringement on another's freedom, honor, reputation, social standing, or financial standing makes the infringer liable for compensation." This is paralleled by Article 222/1 of the Egyptian Civil Code No. 131 of 1948, Article 293 of

the UAE Civil Transactions Law No. 5 of 1985, and Article 162(a, b) of the Bahraini Civil Code No. 19 of 2001.

In the legislation and laws in force in Palestine, compensation for moral damage is provided for under Article 2 of the amended Civil Offences Ordinance No. 5 of 1947, which defines "damage" as "death or loss or damage to property, or deprivation of comfort, or impairment of physical well-being, or reputation, or similar damage or loss," as well as Article 144 of the Palestinian Insurance Law. Therefore, in the legislation and laws in force in Palestine, compensation includes all damage, including moral or non-pecuniary damage, and is not limited to material damage only.

Regarding the legislation and laws in force in Palestine, they have not specified a particular mechanism for assessing compensation for moral damage. The situation in Palestine indicates the adoption of the legal system's principle of comprehensive or full compensation. This is inferred from Article 3 of the Civil Offences Law No. 36 of 1944, which states: "Every person who has suffered harm or damage due to a civil offence committed in Palestine is entitled to receive the remedy provided by this law from the person who committed that offence, or who is responsible for it." This principle is applied by Palestinian, Jordanian, and other courts (Palestinian Court of Cassation, Cassation of Rights No. 748/2016). Therefore, Palestinian courts have the freedom to determine the amount of compensation as they see fit according to the law, meaning the court's authority in assessing the value of moral damage is absolute. This was confirmed by the Palestinian Court of Cassation, which stated that "the determination of the value of compensation, when not specified by law, is within the authority of the trial court, and it is not subject to review by the Court of Cassation as long as it has explained the elements of the assessment and the factual aspects of the compensation claim" (Palestinian Court of Cassation, Cassation of Rights No. 185/2018).

Regarding compensation for moral damage resulting from physical injuries within the framework of the legislation and laws in force in Palestine, this compensation does not deviate from the general meaning of compensation for moral damage mentioned earlier in some provisions of the Civil Offences Law. Therefore, we find that the legislation and laws in force in Palestine have recognized the permissibility of compensation for moral damages in some

physical injuries, including those resulting from traffic accidents. Article 144 of the Palestinian Insurance Law states: "1- Every person who uses or authorizes the use of a motor vehicle shall be liable to compensate the injured for any bodily, material, or moral damage resulting from a road accident in which the vehicle was involved. 2- The liability of the person who uses or authorizes the use of the vehicle shall be full and absolute for compensating the injured, regardless of whether there was fault on his part or on the part of the injured." It also covers compensation for moral damages resulting from crimes of defamation, slander, and contempt as stipulated in the applicable Jordanian Penal Code and the Decree-Law on Medical and Health Protection and Safety. In this regard, Article 365 of the Jordanian Penal Code No. 16 of 1960 states: "The private plaintiff may, in the lawsuit he has filed, request compensation for the material damages he has suffered from defamation, slander, or contempt, and for such monetary compensation as he estimates for the moral damages he believes he has suffered. The court shall assess this compensation according to the nature of the crime, its severity on the victim, and in relation to his social standing, and shall rule accordingly." Similarly, Article 29/2 of the Decree-Law on Medical and Health Protection and Safety No. 31 of 2018 states: "It is prohibited to obstruct the work of medical and health service providers and their teams, or to defame, slander, or hold them in contempt. The medical and health service provider has the right to claim monetary compensation for the moral damages he has suffered, and the court shall assess this compensation according to the nature of the crime and its severity on him, considering his social standing, in accordance with the applicable Penal Code."

Furthermore, Article 10 of the Palestinian Medical Malpractice Insurance and Compensation Regulation No. 19 of 2023 stipulates that "The party responsible for compensation shall be liable to compensate the injured or deceased as follows: 1- Medical treatment and rehabilitation expenses and loss of earnings during the treatment period. 2- Compensation for moral damages. 3- Compensation for loss of future earning capacity." Article 12 of the same regulation specifies: "1- Compensation for moral damages resulting from medical malpractice shall be as follows: a- (100) Jordanian dinars for each night the injured person stays in a hospital or any treatment institution for treatment due to medical malpractice. b- (1000) Jordanian dinars for each surgical operation performed on the injured person due to medical malpractice that required his stay in the hospital. 2- If the injured person is not entitled to compensation under

items (a, b, c) of paragraph (1) of this article, he is entitled to compensation not exceeding (1000) Jordanian dinars or its equivalent in the legally circulated currency. 3- The total amount of compensation for moral damages shall not exceed (20,000) Jordanian dinars or its equivalent in the legally circulated currency. 4- If the medical malpractice leads to the death of the injured person, the amount paid to his heirs shall be (50%) of the maximum limit specified in paragraph (3) of this article, minus the share of the dependent heirs according to the deceased's certificate of inheritance."

In summary, the researcher concludes from the above that moral damage resulting from physical injuries represents any infringement on a right or a legitimate interest that causes the victim physical pain leading to psychological pain, or harms their professional status and social standing, making this compensation multifaceted in its forms and manifestations.

Section Two: Lump-Sum Compensation

Lump-sum compensation refers to an amount awarded to the injured party without its assessment being based on a specific criterion, or in other words, without measure or scale (Mansour, 2022, pp. 97-98). By tracing the position of the laws in force in Palestine regarding the use of lump-sum compensation to assess moral damages from physical injuries, we find two approaches: the first is a fixed lump-sum compensation, and the second is a lump-sum compensation assessed by an expert appointed in the lawsuit.

First: Fixed Lump-Sum Compensation

This type of compensation is also known as legal assessment of compensation, where compensation for moral damages is estimated as a fixed amount predetermined in legislative texts or in regulations and instructions. An example is Article 144 of the Palestinian Insurance Law, which states: "Every person who uses or authorizes the use of a motor vehicle shall be liable to compensate the injured for any bodily, material, or moral damage resulting from a road accident in which the vehicle was involved." Similarly, Article 145 of the same law states:

"The insurer, the insured, or the Fund (as the case may be) shall be liable to compensate the injured who has suffered bodily, material, or moral damage as a result of a road accident." Article 152 of the Palestinian Insurance Law has specified fixed amounts for moral damage resulting from traffic accidents, which are:

- Fifty dinars for each one percent of the permanent disability rate.
- Forty dinars for each night the injured person stays in a hospital or any treatment institution for treatment due to the road accident.
- Five hundred dinars for the surgical operation or operations performed on the injured person due to the road accident that required their stay in the hospital.
- If the injured person is not entitled to compensation under paragraphs (1, 2, 3) of this article, they are entitled to compensation not exceeding five hundred Jordanian dinars or its equivalent in the legally circulated currency.

This approach has also been adopted by the Jordanian legislator. Article 9 of the Jordanian Compulsory Motor Vehicle Insurance Regulation No. 12 of 2010 stipulates: ";a- Subject to the provisions of Article (10) of this regulation, the matters set out below shall be determined by instructions issued under the provisions of this regulation: 1- The lump-sum amounts that the insurance company is obliged to pay to the injured party in any of the following cases: - Death - Permanent total disability - Permanent partial disability - Temporary disability - Moral damages resulting from death or permanent total or partial disability." The Instructions on the Liability of the Insurance Company in Compulsory Motor Vehicle Insurance for the year 2010, in Article 3, stipulated fixed lump-sum amounts for moral (non-pecuniary) damage: 3,000 dinars for moral damage resulting from the death of one person, payable to the legal heirs; 3,000 dinars per person for moral damage resulting from permanent total disability; and 3,000 dinars multiplied by the percentage of disability per person for moral damage resulting from permanent partial disability (Al-Jazi & Abu Hilaleh, 2024, p. 132).

According to the above, the Palestinian and Jordanian laws previously presented cover two forms of moral damage: moral damage resulting from the victim's permanent or partial disability, and moral damage resulting from the death of the victim in a traffic accident.

In addition to the above, the Jordanian legislator adopted fixed lump-sum compensation for moral damages resulting from physical injuries in the Instructions for Insurance on Stored Stem Cells of 2014. Article 5 of these instructions states: "a- It is stipulated that the limits of the insurance company's liability for compensation for damage under the insurance contract concluded between the insured and the insurance company shall not be less than the limits set out in the table below. b- It is prohibited for the insurance company and the insured to agree to reduce the limits of the insurance company's liability below the limits set out in the table attached to these instructions, but they may agree to increase them."

Although this method is accepted by a wide range of legal scholars (Dasouqi, 1972) as it achieves the greatest degree of appropriateness between compensation and damage, with the victim quickly receiving their right to compensation, some researchers (Mansour, 2022, p. 85) believe that this method has a significant degree of arbitrariness. The failure to consider the specific circumstances of the claimed moral damage may make this type of assessment a violation of the general principles followed by the legal system under which the claim falls.

Second: Lump-Sum Compensation Assessed by an Appointed Expert in the Lawsuit

When assessing compensation for moral damage, the judge may resort to specialists and experts to determine the actual amount of damage to be compensated. An expert is any person with a skill, science, craft, profession, or wisdom, who is summoned in this capacity before the judiciary to provide assistance and help to the court by clarifying what is ambiguous or hidden from it, not to rule or decide on the case, because deciding the case is the task of the judge, not the expert (Al-Qatawneh, 2014, p. 963).

The Jordanian Court of Cassation has relied on expertise as a means of assessing compensation for moral damages. In one of its decisions, it stated: "It is inferred from the text of Article 267/1 of the Civil Code which provides that... and since jurisprudence and the judiciary have established that expertise is the only means to assess moral damage in light of the circumstances of the case (Cassation of Rights 3238/2005), and since the legislator has left the assessment of this compensation to the court in light of what the expertise determines" (Jordanian Court of Cassation, Cassation of Rights No. 1892/2008).

This approach is also followed by the Palestinian judiciary, where the judge, when assessing compensation for moral damage, may appoint an expert to determine the value of the damage. The expert then submits a report to the court containing a specific monetary amount as compensation for the moral damage, whenever it is due, as a lump sum to the plaintiff without detailing how it was calculated. This raises a legal problem that may involve a degree of arbitrariness that could harm the parties to the compensation.

Conclusion

Moral damage resulting from physical injuries, unlike material damage which affects a person's financial assets, affects a person's non-financial interests, such as disfigurement from physical injuries, deprivation of the joys of life, and the psychological effects of contracting a certain disease. Therefore, moral damage is what harms a person's emotions and feelings, causing internal pain. What has been researched in this study is the assessment of compensation for moral damage resulting from physical injuries in Palestinian law.

Research Findings

- Moral damage resulting from physical injuries represents any infringement on a right or a legitimate interest that causes the victim physical pain leading to psychological pain, or harms their professional status and social standing, making this compensation multifaceted in its forms and manifestations.
- Regarding the position of the legislation and laws in force in Palestine on compensating for moral damages resulting from physical injuries, these laws do not contain any clear provisions regulating claims for moral compensation in all its forms and types. However, this does not mean that claiming this compensation in Palestinian courts is not permissible.
- It is possible to assess the value of moral damage resulting from physical injuries through a proposed criterion, whereby previous instances of pain similar to the current pain are first examined to identify the compensation value assessed therein. Then, the level of pain is determined according to a three-tiered classification (mild, moderate, and severe), with the necessity that the compensated amount does not exceed a pre-determined maximum limit, and also taking into account the duration of the pain.

- There is no precise method to measure pain and suffering, so it must be assumed that people are equal in this regard until proven otherwise scientifically. This is based on the assumption that people are equal in their experience of life, and therefore, the value of their feeling of pain is presumed to be similar.
- It is possible to set a general upper limit for compensation for moral damage resulting from physical injuries, which would help in its assessment.
- Palestinian courts have the freedom to determine the amount of compensation as they see fit according to the law, meaning the court's authority in assessing the value of moral damage is absolute.

Research Recommendations

- To establish a maximum limit in the law that sets a ceiling for the compensation amount, taking into account the various forms of moral compensation.
- To determine the minimum and maximum financial compensation for moral damages in general and moral damages resulting from physical injuries in particular, taking into account the forms and shapes of moral damage and the criteria for its assessment.
- The researcher hopes that the Palestinian Court of Cassation will adopt the broad concept of compensation for moral damages resulting from physical injuries, as is the trend in the Jordanian Court of Cassation.
- The researcher recommends the necessity of adopting an objective, not subjective, criterion through which the amount of compensation for moral damage resulting from physical injuries is regulated, and to stipulate this criterion in civil legislation and laws, given that this assessment is left to the discretion of the judge.
- To adopt the criterion proposed in this study by determining the levels of pain and suffering according to the three-tiered classification (mild, moderate, and severe), while adhering to the necessity that the compensated amount does not exceed a pre-determined maximum limit, and also taking into account the duration of the pain.
- The researcher suggests seeking the assistance of experts in addition to the judges' assessment in the context of compensation for moral damages resulting from physical injuries, as these injuries are capable of having their severity assessed.

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