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## **Victims of traffic accidents are not correctly indemnified for lost profit**

**This release is available in Spanish.**

Spain is the only country in the EU where the victims of traffic accidents are not correctly indemnified for lost profit (compensated for the profit not realized due to damages) in cases of death or invalidity of the victim of a traffic accident. Those are the conclusions of a doctoral thesis carried out by **Javier López y García de la Serrana** in the department of Commercial Law of the University of Granada and supervised by Professors **Luis de Angulo Rodríguez** and **Javier Camacho de los Ríos**.

This research work, Pioneer in our country, also states that it is necessary to reform the Spanish legal system to clearly regulate the assessment of damages for the victims of traffic accidents, as the present Assessment System approved by Act 30/95 came into force more than 12 years ago and there are "many points which should be cleared up or even rectified; above all it should be regulated the assessment of damages, both for general damage or lost profit, in order to regulate the lost profit from identical principles with regard to death, permanent and temporary damages, founded on the principle of total indemnity of the victim".

### **Different attitude**

The author of this work says that, unlike Spain, "pratically all European countries try to find the total redress of the personal damages daños in case of traffic accident, and the main difference with the Spanish system is the different attitude towards compensation of the different type of damages". In UK, Germany, France and Italy, economic damages are made good without restrictions, and the courts are open when it comes to establish compensations for such damages, whereas moral damages are assessed in a more arbitrary and restrictive way in such countries. "In Spain -says Javier López- courts are very generous when it comes to indemnify for moral damage and very restrictive when it comes to indemnify for material damages".

Our country has followed the tradition of the restrictive interpretation of the so called lost profit, causing a difficulty in order to obtain the whole satisfaction, something that, according to the expert, "should not happen in those cases where the loss has been properly proved". The legal system established by Act 30/95 did not make clear if the compensation for the concept of lost profit in the cases of death, invalidity or temporary incapacity of the victim, ran out with the correcting factors of the scale.

A separate remark must be done for commercial vehicles. In this sense, the author of this work states that "any paralization of a commercial vehicle during its reparation is a supposedly fact of lost profit, and therefore capable to be compensated when properly proved".

Part of the results of this research work have been published in the *Journal of the Spanish Association of Lawyers Specialized in Public Liability Insurance* (issue 26 – 2º quarter 2008).

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