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Reform of Moroccan legislation relating to the compensation of
victims of motor accidents

At the request of the delegation of Morocco, the attached note is circulated for the information of participants.

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Reform of Moroccan legislation relating to the compensation of victims of motor accidents

A new law on the compensation of victims of accidents caused by motor vehicles was enacted on 2 October 1984. 1/

This law does not change the legal basis of compensation, which continues to be governed by the provisions of the Moroccan Civil Code. 2/

Moroccan legislation is based on liability for proven or presumed fault. 3/

It is for the judge to assess the liability of the author of the accident, unless there is agreement between the parties; it is also for the judge to evaluate the loss or damage and the corresponding compensation. 4/

However, as of 1 December 1984 the parties concerned and the judge will have to comply with the provisions of the above-mentioned law of 2 October 1984 which establishes the bases for assessing compensation for victims of motor accidents and the procedure for such compensation.

I. BASES OF EVALUATION

Under this law, indemnification will be made for all the costs and expenses that have been or will be incurred by the victim which are necessary for his recovery and, where appropriate, his re-education: medical, surgical, pharmaceutical and hospital expenses, and purchase and replacement of prosthetic or orthopedic devices; as well as the costs of transportation of the victim and, where appropriate, of the person accompanying him. In the latter case, physiological damage is also taken into account.

The victim also has the right to compensation for loss of earnings as a result of temporary loss of working capacity, as well as for total or partial permanent physical disability.

1/ Dahir containing Law No. 1-84-177 of 2 October 1984 (published in Official Bulletin No. 3753 of 3 October 1984).

2/ Dahir of 12 August 1913 containing the Code of Obligations and Contracts (DOC).

3/ The victim must prove the fault of the author of the accident (article 77ff of the DOC). However, by applying the concept of custody of property, as provided for in article 88 of that Dahir, the jurisprudence has considerably extended the scope of liability by introducing the concept of presumed fault which can only be excluded in cases of force majeure or where the fault of the victim is established.

4/ Under article 98 of the DOC, loss or damage giving rise to compensation is any actual loss suffered by the plaintiff, and the necessary expenses he had incurred or would incur in order to make good the consequences of the act committed.

In addition, compensation for physical disability is supplemented by compensation for all loss or damage which stems from and aggravates it, whether economic or physiological, i.e., need to rely on a third party to perform the acts of daily life, total change of occupation and other unfavourable consequences for the victim's career, complete or virtually complete interruption of schooling, and aesthetic impairment, as well as the suffering endured by the victim (pretium doloris).

In the event of death of the victim, entitled parties are compensated for loss of affection, as well as for loss of the resources they enjoyed when the victim was alive.

Those eligible are all persons for whose support the victim was responsible by virtue of his personal status, or whom the victim supported when he was alive.

Costs and expenses are reimbursed on the basis of the relevant documents submitted by the victim. The compensation of the various types of loss or damage mentioned above is based on the following rules:

Physical incapacity: account is taken of the percentage fixed by the medical expert by reference to a functional incapacity percentage table established by decree. This table sets forth the criteria for evaluating the various injuries and consequences, as well as the minimum and maximum percentages which the medical expert can establish in each case.

Once the incapacity percentage has been established, it is multiplied by the victim's reference capital and the resulting sum represents the principal compensation due to the plaintiff for permanent physical disability.

Nevertheless, in order to safeguard the purchasing power of low-income victims, the value of the physical incapacity percentage cannot be less than one fifth of the minimum civil service salary.

Where appropriate, this compensation is supplemented by additional amounts payable on account of the above-mentioned loss or damage (damage to a career, aesthetic impairment, need to rely on a third party, etc.). The compensation for such loss or damage is established as a percentage of the victim's reference capital, or the minimum reference capital provided by law, according to rates which range from 5 to 50 per cent of the capital.

Reference capital: this is the sum obtained by multiplying the victim's wage or salary or professional income by the capitalization rate given by the franc de rente table corresponding to the victim's age. The franc de rente table is a capitalization table indicating, for each age, the current value of a series of life annuities corresponding to a monetary unit.

With the use of this table, a table was annexed to the law indicating sums for each age according to levels of wages or salaries or professional income, rising (in steps of 3,000 Dirhams) from the minimum civil service salary to a maximum of 500,000 Dirhams.

However, in the case of high salaries a reduction is applied so that compensation for the maximum annual salary, 500,000 Dirhams, cannot be more than seven times the compensation for the minimum wage.

Any increase in the level of the minimum civil service salary brings an automatic increase in the reference capital established by law.

The victim must provide proof of his wage or salary or professional income; if he has no income, or in the absence of proof, he will be considered to earn the minimum wage.

In the case of persons exploiting or managing their own property or business, their income will be determined by reference to the salary of a person engaged in a remunerated activity of a similar nature.

The situation of persons engaged in studying or vocational training has been taken into account, and they have been attributed notional salaries varying in amount according to the level of the studies pursued.

Compensation due to eligible persons as a result of loss of affection, which can be enjoyed only by spouses, parents and children, is made at a flat rate (ranging from one and a half to two times the minimum civil service salary). Compensation for loss of resources is established on the basis of the victim's reference capital, at a rate varying from 10 to 35 per cent of the latter according to the nature of the bonds linking the beneficiaries to the victim.

The total amount of compensation granted for loss of resources cannot exceed the victim's reference capital; otherwise, a proportional reduction is made in the compensation due to each of the beneficiaries.

On the other hand, if the compensation granted to all the beneficiaries together is less than the victim's total reference capital, a proportional increase will be applied, but the amount granted to each beneficiary cannot exceed 50 per cent of the reference capital.

Where appropriate, this compensation is reduced according to the victim's degree of responsibility in the accident.

The compensation payable to victims and entitled persons is established in the form of capital. However, compensation payable to minors is paid in the form of annuities: totally in the case of minors having title, and partially in the case of minors who are victims (the amount paid in an annuity is fixed at half the compensation for victims aged 10 years or less, and one third in the case of victims aged over 10 years, the remainder being capitalized and paid to the persons concerned when they come of age.

The annuity purchase money is paid to the National Pension and Insurance Fund, a public fund responsible for the management and payment of annuities provided for by the ordinary law.

The new law concerns only bodily injury; damage to property will be governed by the ordinary law, as is currently the case. Likewise, the provisions introduced concern only accidents caused by motor vehicles subject to compulsory insurance. However, owners of vehicles not subject to that obligation, and the guarantee fund which comes into operation in the event of non-insurance, must comply with the provisions of the law as regards the criteria and bases for evaluation.

II. PROCEDURE

The new law provides for compulsory settlement between insurance companies and the victims or entitled persons. Except in the case of a public right of action, plaintiffs must submit their claims to the companies concerned, which must make a proposal for the amount of compensation payable under the law within 60 days of receipt of such claim. In the event of disagreement, the parties may turn to the courts.

Measures have been introduced to facilitate these settlements, in particular the compulsory transmission to the parties concerned (including the insurance companies) of the official accident report.

In addition, in order to encourage insurance companies to pay victims or eligible persons rapidly, the compensation due to the latter may be increased and administrative penalties imposed.

The goal pursued by the enactment of the law of 2 October 1984 is to inform victims and eligible persons of their rights, to establish rational criteria for compensation, reducing the large variations observed in the granting of compensation, and in future to control the evaluation of accidents for which the insurance companies are responsible.