

THE COMPENSATION FOR DEATHS CAUSED BY ROAD TRAFFIC ACCIDENTS: A COMPARATIVE STUDY BETWEEN ISLAMIC (SHARIAH) LAW AND CIVIL LAW IN ARAB COUNTRIES

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ABSTRACT

The purpose of the current research is to find out the views of jurists in some Arab countries on the extent to which the heirs of the victim are entitled to compensation for the death of the deceased as a result of the traffic accident and the amount of compensation, in comparison of Shariah. To achieve the research aims, the relevant literature and legal articles were consulted. Approach: The analytical descriptive approach. The results showed that there were differences in the positions of the jurists and their attitudes, and their opinions differed regarding the compensation of the heirs of the victim as a result of the death of their heir due to the traffic accident. Some of them considered that death is harm to the victim, and some did not.

Keywords

Deaths, Road Accidents, Shariah Law, Civil Law, Arab Countries.

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Introduction

Civil law in any country is one of the most important and important laws of the State; It has direct relevance to both the individual and the community. It regulates the transactions of people and individuals with one another unless this relationship is regulated by another law. Through the study of the civil laws of some Arab countries, it has endeavored to cope with the cultural boom in the contemporary world in its various social and economic aspects, considering the intellectual, cultural, and psychological orientations of the State; To establish justice and good among the members of society.

In contrast, the Arab laws affirmed that the right - in general - is the basis for the establishment of justice in civil transactions; in terms of releasing the judge's authority to investigate and evaluate the various aspects of the case so as not to describe the law to be rigid; on the other hand, allowing for the stability of dealing and recognition of the reality of civil transactions. Or in terms of the formulation of texts in light of realistic and psychological trends with an appreciation of the materialism under this Islamic jurisprudence; on the other hand, allowing for the stability of dealing, and in recognition of the reality of civil transactions.

The Civil responsibility is based on three pillars: the wrongful act, the harm, and the causal

relationship. Therefore, the Omani legislator explicitly stated that any damages should be compensated. The article 176.1 of the Omani Civil Transactions Law issued by Royal Decree No. 29/2013 stipulates that "Any damage to third parties is obligatory even if it is non-discriminatory." Some laws of the Arab countries, such as the Jordanian law, and the Egyptian have also affirmed the same meaning in the area of reparation for the damage suffered by others. However, there is a discrepancy between the laws of the Arab states in some acts that cause harm, especially those relating to traffic accidents. The laws of the Arab countries have sought to keep abreast of the legal developments in the contemporary world in various aspects, including civil laws, countries are built by its citizens; Consequently, these laws sought to preserve the human element, as the real wealth that should be preserved from anything that would disrupt them from the roles assigned to them in the progress of the State and progress towards the ranks of the developed countries. Therefore, the current research problem relates to research is to analysis of damage leading to death, the result of traffic accidents in some Arab countries laws, the extent of the difference between the laws of these countries, and Shariah.

Research questions and objectives

The research answer certain questions to solve the research problem such as: Are the heirs of the

victim entitled to compensation due to the traffic accident leading to the death of their heir in some laws of the Arab countries? What is the amount of compensation due to the heirs of the victim due to the traffic accident leading to the death of their heirs in the civil laws in some Arab countries? What is the extent of the discrepancy between the laws of some Arab countries, and Shariah, that the heirs of the injured should be compensated for traffic accidents? In contrast, the objectives of the research are to clarify the position of some laws of the Arab countries to compensate the heirs of the death of their successor; In addition to determining the amount of such compensation, and the extent of the discrepancy between these laws, and Shariah in the obligation of the heirs of the injured compensation due to traffic accidents. To compensate the damage: the literature view has started by clarifying the concept of damage from the linguistic, legal and legal aspects; and then to present the opinions of jurists on the extent to which the heirs of the injured person are entitled to compensation resulting from traffic accidents or not in some laws of the Arab States, especially the incident leading to death.

Definition of Damage

Damage from the linguistic, legal, and legal aspects: Harmful Language: derived from the word damage means: loss, harm, distress, distress, and jealousy (Turquoise, 2007). Mustafa, et al. (2004) defines the harm in terms of language as: against benefit, it is said: harm, harms him harmful and harmful: it is hated or hurt. It is harmful to the sense of wasting and is in the annexation and if it is against the benefit of the opening and the download «Mnni evil» any disease and name damage. The second is the "meeting of the thing", which is a kind of goat, ie, the milk and the flesh of the flesh beneath it, and the third is the blind "force". It is strong. It is said: "If a person is blind to the thing, if he is strong and oppressor, he will not be harmed." It is also meant to harm in terms of language: all that is against the benefit, and harmful in the sense of wasting and bad situation and hence came harmful, which is contrary utility (Suyuti. 1983. 84).

The legal definition of harm is: harm to the person as a result of prejudice to one of his legitimate interests or one of his rights.

On the other hand, from the point of view of shariah, a word of harm has several definitions,

including: that someone else may be harmed by what he benefits from (Ibn Rajab, 2001: 267). As Mowafi (1997: 97/1) defines the harm as "breach of a legitimate interest of the self or of non-infringement, arbitrariness or negligence".

Therefore, the damage is achieved, and its existence is the justification for the victim to claim compensation for the right of the perpetrator of the damage, regardless of its legal status, including the small and large; if the damage to third parties must be compensated.

Damage to death: The damage to death caused by traffic accidents causes legal scholars to ask a number of legal questions about the extent to which the heirs of the deceased are entitled to compensation as their heirs are affected by the accident such as "How does the assault on physical integrity cause harm? What is the extent of the damage caused to the deceased by his separation of life?" The two previous questions have been answered in aspects of to which extent the heirs of the victim are entitled to compensation or not, and the result of the traffic accident, which led to the death of their heirs; and the amount of compensation in some civil laws in some Arab countries. The jurists in the Arab countries have divergent opinions on this legal controversy, divided into three views; some of them felt that death harm to the victim, and some did not consider it, and there is a third team that took a compromise trend between the two views. These views and trends can be clarified as follows:

First trend: Death is not harmful: the authors of this trend see death as not harmful to the victim. The damage that can result from it is a return injury to others. The owners of this opinion were based on several arguments, the first of which is that every soul is bound to die inevitably: death is inevitable for all the creatures created by Allah, including the sons of man, because Allah says (interpretation of the meaning): "Every soul consumes death" (Surat Al-Imran: 85) , And secondly: that death cannot be considered harmful because before death the victim was not subjected to death, and after death does not harm the deceased because it is not permissible to harm the deceased. The third is that the dead person's personality ends with his death, so that he does not acquire the rights; therefore, no one can grant others more than their rights.

This trend is supported by the jurists and adopted by the Sudanese legislator through Law No. (86) for the year 2005 not to devote the right of the victim to compensation for the damage of death, and the transfer of the claim to that right to his heirs. The Sudanese legislator did not recognize the right to compensation for psychological damage except for the injured who suffered a permanent disability based on Chapter 132 and those affected by the death of a deceased person following a traffic accident, namely his wife, children and parents based on the provisions of Chapter 146 on the basis of direct harm from Their loss of a person with a strong relationship makes their loss a painful psychological event; not on the basis of the transfer of the right to claim compensation as a debt owed to them (AlHadad, 2005).

The second trend: the opinion of those who believe that death is harmful; and that the attack on the human right to life; is the biggest attack that can be inflicted on the person, as it takes the most precious possessions and destroy its existence and entity. According to Ibrahim (2005), the damage caused by death is either material or psychological. Physical damage is caused by the injury to the injured person by the loss of the financial gain that he would have received from his salary or profits from his activity. Psychological damage is the physical suffering resulting from wounds, fractures, and bruises; in addition to the morbidity of the victim as the spirit exits terrible pain.

This trend results in significant legal effects, considering that the damage caused to the deceased directly causes the right to compensation in the event of death. This right is transferred by the deceased to his heirs and they have the right to claim it in court on behalf of their heirs.

The third trend: the trend of compromise: the view of the owners of this trend that the distinction should be made between the first two cases: in which death is separated from the accident for some time: in which the damage is achieved and the damage is the expenses of medication, treatment, and lack of income and moral damage. As for the second case: in which death is a condition for the accident, and the deceased is not entitled to any compensation for the absence of harm. The Egyptian courts tended to adopt this distinction and ruled that "if the death of the victim causes a harmful act against others, this act

must precede death even at the moment, so that the injured person at this moment is entitled to the right to compensation for the damage caused to him and as this damage develops, when this right is proved to him before his death, his heirs inherit it in his estate.

The development of the idea of compensating the damage: The idea of retaliation, which prevailed in Arab societies, began to diminish after it was replaced by the idea of blood. The diem was initially voluntary; it was compulsory. As was the determination of the amount is left to the injured, and agreed with the developer of damage. However, the development of the concept of the state and the extension of its legislative and executive power in societies contributed to determining the amount of fatality on the one hand and to the state's responsibility for the punishment on the other. This led to the idea of criminal responsibility represented in punishment, the notion of tort liability, and compensation (Sultan, 2007).

The Egyptian, French and Omani laws approved the general rule that "every person who caused his harm to others is liable for compensation." In other words, the perpetration of the fault leading to the injury causes the civil liability, especially the tort liability. This is confirmed by article 163 of the Egyptian Civil Code. Article (176/1) of Omani Civil Transactions Law issued by Royal Decree No. 29/2013 stipulates that "Any damage to third parties shall be obligatory even if it is not distinguished by compensation." In contrast, article 256 of the Jordanian Civil Code provides that "any damage to a third party is required by its non-specific actor to guarantee the damage." It is noted from the aforementioned article that it does not require that the fault of the person responsible for the damage be proved.

The Concept of Wrong in linguistic, legal, and Shariah: It is worth talking about the concept of error leading to damage through the definition of the linguistic, legal and Shariah aspects; because of its close link with the damage. Wrong at language is: error and errors: against the right, and the wrong way. It is said: I have sinned if I sinned, I am wrong and I am wrong (Ibn Manzoor, 1994: 65-66).

At the legal cases, the word "error" is given in several definitions, and every definition of error is considered from an angle. This is because there is no comprehensive and agreed upon definition of

the error. Despite this difficulty, the jurists tried hard to devise a comprehensive definition of error. And varied according to their individual trends, considering the extent of the social and economic development of the society in which they live, some of them worked to narrow the circle to limit the responsibility, and some of the opposite group worked to expand to help the injured to access compensation in the easiest ways. The first view is the opinion of legal scholars in the modern world. They define the mistake as a harmful act that is unlawful; that is, harmful work that is contrary to the law, and it is taken on this view that the law does not provide for illegal acts or acts that suit with him exclusively to infer from them the acts contrary to him. The second view is the opinion of the jurist, Planiol, where the error is defined as a "breach of an earlier obligation." Planiol, restricts the obligations which are wrongly violated by the official in four groups: to refrain from violence, to refrain from cheating and to refrain from doing something that is not prepared for him Reasons for strength, skill and vigilance in carrying out the duty of supervision over persons or objects (Senhuri, 1952: 21-32).

Planiol 's definition is the basis from which most contemporary laws have been enacted in various states in attempting to expand the idea of error. Planiol believes that the previous legal duty is not a breach of an existing obligation between two parties; it is a breach of any of the general obligations that each person has under the principles of the law. This definition is merely an attempt to classify the error and divide it into several types; because Planiol did not provide the precise and clear criterion for determining the nature and types of wrongdoing; it merely established a list of public duties without the established criterion for such errors.

The third view is the opinion of Levy where the error is defined as a breach of legitimate trust and then shows the standard of this confidence. He states that the determination of error requires reconciling a reasonable amount of trust that people have to the person and thus have the right to refrain from acts that harm them and a reasonable amount of confidence This person has the right to have the right to do any work without causing harm to others, so that a person cannot be held accountable unless he acts in a manner inconsistent with the legitimate trust of the people.

People are not responsible by others if their actions do not come out for this legitimate trust.

This opinion has been criticized for several reasons, the most important of which is that this definition does not include an officer who shows the behavior that protects the person from the mistake if he takes it. Levy's criterion is merely an attempt to put the error in a philosophical mold rather than as a specific criterion for the same error (Senhuri, 1952), Sultan (2007), Al-Far (2006) and (Al-Jundi, 2015).

The fourth opinion is the proponents of this view that the corner of error must be analyzed into two elements. The first element is the right attack with the perception of the aggressor to abuse, and the second element is the realization. One of the proponents of this trend is Savate, who knows the error as a breach of a legal duty with the knowledge of the violator or has been able to recognize and comply with this duty. Savate believes that the legal duty is the source of the law or contract or is a specific moral duty ordering or stopping an act or a public duty not to harm others. Supporters of this trend are also Faqih Jusran, who defines the mistake as "a violation of a right that cannot be violated by a person who has violated his sanctity to oppose it with a stronger right or a similar right." In the same way, al-Faqih Demog defines the error as "an attack on a right where the aggressor understands the side of the attack" (Al-Senhuri, 1952) and Zahra (2014).

There is other definition of the concept "error" for example: Al-Sharqawi (1981) defines the mistake as "breach of a legal duty, whether that duty is a special duty, any obligation or a general duty of duty imposed on everyone living in a group governed by law to respect the rights and freedoms of others and not to violate these rights and freedoms"

Abdel-Daaem (2003) believes that error is only "a deviation from normal behavior, knowing this deviation." Markas (1961) defines it as a "breach of a legal duty associated with the realization of the violator." Shanab (1969) defines the legal error as "a deviation from the usual behavior of the person who is in the same external circumstances as the perpetrator of the damage, knowing it." Sultan (2005) defines the error as: "Deviating a person's behavior while recognizing this deviation".

As for the definition of the error from the point of view of legitimacy, Ibn Rahab (2001) said: "The

error is that he intended to do something that happened to him other than what he meant., Al-Jarjani: The Concept of Wrong is what a person does not have in mind, which is a valid excuse for the fall of the truth of Allah if he is subject to ijihad and becomes a suspicion in the punishment so that the sinner cannot be sinned or punished by punishment. For example, if a material, he would injure an individual, and also what happened during his sleep, then he turned on a man and killed him (al-Jarjani, 1985).

Damage's Types, Investigation, and Compensation Amount in Shariah Law and Civil Law in Arab Countries

Damage and its components in the event of death: Damage is one of the three pillars of civil liability; civil liability is not carried out without it even if there is a "harmful act", as well as a causal link. Civil liability is the responsibility of criminal responsibility; it is committed solely for the commission of the offender's offense even if it does not cause harm to others, and the damage may be inherited by the heir before the death; or by an apostate who injures another person; in all cases, who has a handicap.

Types of Damage in the case of death: In general, the damage is divided into two basic types: physical damage, which affects the person in his body, his money, and psychological damage, which affects the person in his feelings, passion, dignity or honor. This can be illustrated as follows:

Physical damage: In some respects, a person may suffer material damages; which can be repaid by lawfully compensated damages, and physical damage is divided into several types:

Breach of a legitimate interest: Material damage is required to be caused by a breach of a legitimate interest and to be an investigator. For example, if a person dies in a traffic accident; in this case, the person who was dependent on them (who will be spent on his or her life) is entitled to return to the official compensation; Or on the basis of a breach of a financial interest if they are not the owners of the maintenance of the law, but the deceased was spending on them. In such a case, however, the injured party - the holder of the interest - is required to prove that the deceased has been paying it on a continuous basis, and that this chance of continuation has been realized.

Damage investigation: The damage to be compensated is required: to be an investigator,

and the potential damage - which has not occurred and does not know whether it will occur in the future or not - is not compensable (Mansour, 2006). So, in this case legalist must distinguish between two situations namely: the first potential harm, the future damage. Second: potential damage, missed opportunity.

3.2 :Second: Psychological damage: arising from the psychological damage suffered by the injured; where the person suffers in his feelings, emotion, dignity or honor, due to some damage to physical injury such as deformation caused by wounds; Therefore, the French law has limited literary compensation to the case of tort liability. Egyptian and Jordanian law have agreed that compensation must be compensated for, but they differed in the case. Egyptian law limited compensation to spouses and relatives to the second degree only for the harm done to the deceased's relatives. The Jordanian law did not place this limitation; rather, it left the matter to the discretion of the judge according to the circumstances (Al-Far, 2006, 188).

Damage to the deceased (inherited damage or inherited compensation): The jurists went on to say that the deceased has some immediate rights that should be done in an outstanding manner as expenses for the processing and burial of the deceased; however, there are several types of damage, depending on the case of the death of the victim. Either the accident leads to an injury that ends his life directly or after a period of time. Therefore, the damage is divided into several types. There are damages during the period of injury, damage prior to direct death and damage caused by loss of life. For financial damages resulting from bodily injury, the heirs may claim compensation even if the death penalty is imposed. The remedy is that the compensation falls into the financial liability of the victim as soon as the accident occurs. As for the psychological damage, the right of compensation is not transferred to the heirs unless the injured person has demanded it before the courts or has been determined by agreement (Sultan, 2007, 788).

The Omani legislator has dealt with damages prior to death or loss of life by determining the objective of compensation. The purpose of the compensation is to achieve the basic goal of returning the victim to the situation that existed before he suffered harm. To this end, the

legislator, jurists and the judiciary sought to establish a legal system that guarantees the injured person the right to compensation and enables him to realize it (Omani Civil Transactions Law, 2013). Compensation is also intended to bypass the results of the accident indirectly. The Article 176 of the Civil Transactions Law of Oman stipulates that: Any damage to third parties is obligatory even if it is not discriminatory. In addition, the Article 181 of the same law provides that compensation shall be estimated in all cases to the extent that the injured person the reward of earning on condition that it be a natural consequence of the harmful act.

First the Economic Damage

The economic damage is related to the financial liability and is determined by two elements, which are what was spent to repair the damage caused by the accident and the loss of profit. It is known that the traffic accident causes damage, but the injured person tries his best to remedy the aggravation or continuation of the damage. Spending for remedying damage can be in the form of expenses of medication, treatment or judicial expenses and repair expenses can be a means.

Second is the Loss of Profits or Gain

Loss of profits is the negative economic impact of the injury on the activity of the injured or future in the field of work, whether it is stagnant from the exercise of his activity during the treatment period or disability permanent or in part to do. The jurisprudence can be approved when it determines that the damage must be assessed according to the individual circumstances of the victim, according to his sources of income and economic potential, and the impact of disability resulting from the injury. This is subject to the discretion of the judge of the subject.

Damage to the parents of the deceased (reflexed damage): Most of the contemporary legislation has settled on compensation for the repugnant damage, with disagreement over the nature and content of the damage. The physical injury of the injured person is often a source of other harm to persons with whom they have certain physical or emotional ties. The injury or death of the original victim affects those ties, causing them moral or moral harm (Mansur, 2006, 7, 7-89).

First: The concept of reflexed damage: Reflexed, damage to subordination, which causes the person direct damage as a result of injury to others. In the area of traffic accidents, the return injury is the

result of the victim's injury or death caused by the relations of relatives or friends. On the other hand, nothing to the detriment of another person is material or psychological damage is a positive return to compensation nor any grief to the death of a friend or relative or lover has the right to compensation and then had to determine the conditions of the damage returned to be able to claim compensation.

Second: Conditions of Reflexed Damage: The entitlement of the injured person is dependent on compensation for the availability of the conditions of damage approved by the jurisprudence, of the judiciary is that the damage is personally (a), direct (b), investigated (c) and (d) legitimately.

a. Personal Injury: The damage is personal if the injured person has the right to self-control and is self-sufficient and has led to confusion in his financial position or impact on his morale in a negative manner. The distinction is usually based on this condition between cases that open to the indirect victim, and the inherited case.

The Supreme Court of Oman stated that "if a person dies in a traffic accident resulting in two claims and a personal claim, the first relates to the right of the heirs to claim the right to compensation arising before the death of the victim for injury caused by injury or death, The personal case is related to the right of the deceased's relatives to claim compensation for personal injury caused by the original damage to the victim, which is called the reflexed and there is nothing It is prohibited to estimate this compensation as much the right to harm and the loss of gain even if the compensation exceeds the value of the value of his parents. "

b. Direct damage: The use of the term direct damage may seem inappropriate at first, since the original is that the damage indirectly reflected by its nature is indirect. However, what is meant here is the causal relationship between the damage caused to the third party and the incident. It is based on the theory of cause produced in the assessment of the nature of the damage and on its basis, the damage to the injured party - which may result from the accident or other circumstances - is not considered a direct damage

c. Damaged Might Happen: The damage must be verified to have occurred or will inevitably occur. Potential damage is what may or may not occur. Compensation shall be compulsory only if it occurs. On this basis, the injured person shall have

the adverse effect of proving the material and psychological losses he has suffered. It is inconceivable that a victim of physical injury will be harmed only in rare cases.

d. Damage to a legitimate interest: While the damage caused to the victim other than the victim by personal, direct and realized reflection, the nature of the damage caused by the violation depends on the legitimacy of the interest to which it is prejudicial, if that interest is illegal. The natural child cannot claim compensation for the death of the father of his father, and if he proves that his father used to give him money and consider him a son without seeking to attach to his proportion, but if the proportion or proven the interest, which is valid prejudice is legitimate and the right of the son in alimony.

Third: The Position of the Omani Judiciary against Reflexed Damage: The Omani judiciary, like the other Arab Countries, has recognized the repugnance and notes this in many of the principles decided by the Supreme Court in the Sultanate. Among the principles decided by the Supreme Court is that " To compensate for the personal injury suffered by the original damage suffered by the victim, the so-called reflexed damage. There is nothing to prevent this compensation from being estimated to the extent of the injured right and the loss of the gain even if it exceeds the estimated value of the blood. Apostate in terms of subject as well as the different applicants for compensation for each of them, even if they are the same persons as their claim for compensation is not in the same capacity. The repossessed damage shall be calculated in the estimate and there is nothing to prevent the appreciation of this damage and the loss of gain even if the compensation exceeds. The judicial system is to prove to the victim that the malicious act of the offender has infringed upon his financial interest and that the damage has already occurred or that in the future shall be inevitable and the lesson in the realization of the physical injury of the person claiming the death of another person is proven to have been borne by the deceased continuously and permanently and that the opportunity to continue to do so was realized. " The judge then appreciates what was lost to the victim of the opportunity to gain loses his family and compensates him on this basis.

The amount of compensation due to the heirs of the victim due to traffic accident leading to the

death of their heir in the civil laws in some Arab countries at the Sultanate of Oman model:

Amount of compensation arising from traffic accidents at the Omani law: One of the established principles and established rules is the same, and the judgment that the person causing the damage to another party is obliged to compensate him in such a way as to force that damage. The cause of harm to others is necessary, even if it is not deliberate. Traffic accidents that occur almost daily and injure others are among the most frequently brought to court for compensation. The claim of compensation shall be heard before the Criminal Chamber in accordance with the public case, and the civil service shall be independent.

The estimate of compensation is limited to material damage only without moral compensation pursuant to Article 3 of Royal Decree No. 118/2008, which reads: "Municipalities" shall be referred to as all the material and psychological damages.

It should be noted here that the claim submitted by the parties to claim compensation for damage caused by vehicle accidents is divided into two parts in terms of the legal basis for the right of claim, if the claim is based on tort liability, it is governed by Royal Decree No. 118/2008, The claim is based on the contract of insurance. The Royal Decree No. 118/2008 does not apply to it, but is governed by the Personal Accidents Law.

The ruling must be committed to compensation for each injury according to what is prescribed in the Islamic Shariah. Royal Decree No. 2/83 AD referred to the rules of Shari'a.

Conclusions

It is not sufficient for tort liability to be available in Egyptian law, or for infringement or deviation in Jordanian law. The act must result in damage as stated in Omani law. If the damage is not accepted, then the tort claim is not accepted, because it is not an action without interest. The person charged with proving the damage is the victim and can prove it by all means of proof, including evidence and evidence, because the damage is a material fact.

The research also showed the great compatibility between the Omani and Egyptian legislations in their acceptance of the principles, conditions and elements of the harm of death.

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