Abstract.

In this paper, after summarizing and reviewing the methods of computing damages for wrongful death or injury in the law and economics literature, we present the way in which damages should be compensated for according to the mainstream Greek tort law theory. We then examine the actual calculation of damages by Greek courts during the period from 2003 to 2008 in order to discover the rationale behind court assessments of damages, especially in the difficult cases of lost future opportunities due to injuries and the valuation of life in the cases of wrongful death. Finally we offer a number of proposals that the Greek judges can use to estimate damages more accurately within the existing legal framework.

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1. The Economic Approach to Accidents (due to Medical Error)

The economic approach to accidents emphasizes the need for economic efficiency and this is achieved by the minimization of the total cost of accidents, which includes three types of costs:

(1) Primary costs = the harm to the patient due to the medical error (the cost of medical care after the medical error, the lost earning capacity, hedonic losses, etc.)

(2) Secondary costs = the cost of bearing the costs of accidents (the societal costs resulting from accidents). In our case the cost of an accident due to a medical error will result in less suffering if the victim is rich or if the victim is risk-neutral or risk-loving. The opposite is also true.

(3) Tertiary costs = the cost of the tort system itself (mostly administrative costs, that is, courts, lawyers, medical and other experts, loss of time, legal error, etc).

There is also another kind of cost associated with accidents: the cost of precaution. People spend a lot of resources to precautionary measures, self-insurance, insurance premiums and avoidance of difficult or high-risk procedures, especially if they are particularly risk averse.
The economic goal is thus to minimize the sum of the cost of medical error and the cost of preventing medical error. We should invest in preventing medical error as long as the marginal benefit of precaution in minimizing the other types of costs is great or equal to the marginal cost of preventive measures.

A correct estimation by the court is instrumental in creating the right incentives to the parties. In case of under-compensation, the doctors are acting more negligently than it is efficient since there is a moral hazard problem. In addition, under-compensation could induce opportunistic behavior on behalf of the doctors, leading to more risky operations and mistakes. This effect could, in the long run, lead to more medical errors and then to distrust towards the medical profession and a backlash effect from the patients, leading to a suboptimal number of medical operations. On the other hand, overcompensation could lead to an increase in demand for medical procedures by the patients, a parallel drop in supply by the doctors (defensive medicine) and adverse selection effects (responsible and competent physicians may withdraw entirely from a high-risk area of practice and the same goes with medical students choosing areas of practice). In both situations transaction costs would be augmented in the form of increased insurance expenses by the patients and the doctors respectively.3

The economic rationale behind compensation is for the victim to be fully compensated. Full compensation means that the victim should be as good as it would be if the accident had not taken place, that is, the points (a) no accident and (b) accident with full compensation to be on the same indifference curve. This is almost impossible to be achieved, especially by a court. However the goal (from an efficiency perspective) is for the injurer to wholly internalize the cost of the accident. For law and economics, more important than fully compensating a victim is to create disincentives for inefficient negligence by the medical personnel. Only an efficient number of accidents should take place.

Compensation should cover two types of damages (primary costs): financial losses (lost income) and nonmonetary (hedonic) losses. The goal of the court is to find a money sum that is equivalent to the loss experienced by the victim (in case of injury) or her family (in case of death).

Financial loss includes, first of all, any medical expenses. It should also include future losses, i.e., the reduction in earning power. The court should estimate future earnings (their present value), taking into consideration the victim’s education and expertise (human capital), health status before the medical error, life expectancy, fringe benefits, increases in productivity, the real interest rates, inflation and tax rules. For the estimation to be correct, the court should look into cross-sectional data on earnings and expected work-life for different occupations and industry groups. We believe that it should not discount the amount of the future income (by the real interest rate) since this effect will most probably be offset by the inflation rate. The difference is, most of the time, minimal and since it is uncertain, it cannot send mixed signals to the parties.

The educational level has not only income effects, but also substitution effects: more human capital means not only a higher salary, but also a higher opportunity cost of retirement and leisure time in general. On the other hand, even though leisure is

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3 See Vliamos and Chatziplaton (2008).
more expensive, there is more demand for it due to wealth effects, but also preferences shaped by the higher level of education and culture.

In the case that the victim is a child, courts should base the compensation on a prediction of the level of education that the child would have acquired, given the demographic characteristics of her parents (educational level and income), and then use the median earnings and expected worklife of persons with these characteristics (level of income, age, gender).

In the case of a woman, courts should estimate the lost value of household services (cooking, cleaning, doing laundry, child care, etc.). The household services can be estimated using replacement cost (the cost of "outsourcing" to outside professionals) or the opportunity cost of the homemaker. Both methods have problems since the first method could lead to overcompensation (since it includes the transaction cost of finding several market alternatives and it does not include any scale economies) or under-compensation (if the woman is a homemaker with minimal or zero connection to the world of paid employment), respectively.

Besides future monetary losses because of the lost income, there are also hedonic losses for the lost enjoyment of life, pain and suffering (in the case of death or injury). However, recent empirical work demonstrates that people’s self-reported happiness is surprisingly resilient to many large changes in life conditions. Apparently, significant adverse events and conditions inflict little or no hedonic damage because those who suffer losses do not focus on them on a daily basis.

One method to estimate future losses, taking the value of leisure into consideration and hedonic damages, is the contingent valuation approach, which is based on finding out how much the victims are willing to pay to avoid certain risks. The problem here is that there is an endowment effect (victims ask for more compensation to take on an increase in risk than they will pay to reduce risk by the same amount).

Damages should be paid in a lump sum to avoid the moral hazard problem created by periodic payments (an incentive to remain disabled).

In the case of death the court should compensate the victim’s family for lost earnings minus her living expenses, plus hedonic damages for their pain and suffering.

Punitive damages (a kind of exemplary compensation in excess of actual damages, that is a form of punishment to a malicious or grossly negligent injurer, and additional compensation to the victim) routinely lead to overcompensation and thus to overinvestment in precaution. However, when the cost of precautionary measures is less than the expected cost of the harm, there can be no overinvestment, even if the courts routinely award punitive damages. The same goes when only a fraction of the victims go to court and ask for compensation. Thus, punitive damages promote the goal of minimizing accident costs when injurers systematically escape liability due to imperfect detection, enforcement error, or apathy by the victims. Punitive damages have not been introduced and are not recognized by Greek law since overcompensation is considered to contravene public policy by the Greek courts.
However, there are some additional problems in the determination of damages by the courts, namely: (a) the variations in the level of damages across victims, (b) court errors in assessing compensation, and (c) the judgment-proof problem due to insolvency of the defendant.

(a) The value of a loss (future earnings, hedonic losses) is different with every person. For economic analysis it is better to individualize compensation rather than award victims an average level; otherwise we will have adverse selection and moral hazard effects.

(b) Court error, when it is biased, i.e., when courts systematically set lower (or higher) damage awards than the actual losses, leads (in the case of undercompensation) to inefficient precaution by the patients and moral hazard by the doctors (less than efficient precaution).

(c) When the doctor has insufficient (or no) assets to pay the compensation he is considered judgment-proof. In these cases doctors are more negligent (moral hazard) and the victims invest more than is efficient in precaution. A collateral source rule (the patient can ask to be compensated by multiple sources such as the doctor, the hospital, an insurance company) is only efficient when the patient could only receive from the one source and the third party has the right of subrogation. Otherwise there is a danger of overcompensation (if the injured party could receive from multiple sources more than her damage) or moral hazard (if the hospitals or the insurers do not have the right of subrogation).

2. The Value of Human Life

How human life is valued depends on the context in which the valuation is done and the purpose of the valuation. An extensive literature has been developed over the years concerning methods evaluating human life and courts are supposed to base their decisions on compensatory damages on these methods. The general concept is that compensatory damages should keep the victim at the same utility level that he had before the tortuous act (perfect compensation), i.e., leaving him on the same indifference curve. This literature is mainly concentrated on the analysis, use and comparison of two groups of indices which possess a great degree of popularity today: The Value of Statistical Life (VSL) as opposed other Traditional Damages Fundamentals for Compensation and Deterrence.4

However, these indices bear some fundamental methodological issues. For example, should the value of statistical life (VSL) be used in liability contexts, either in determining damages or assessing liability, i.e., as a measure of the welfare loss of a fa-

4 Some scholars support the view that the question of what is the right value of life cannot be answered in the abstract. The correct value will depend on the purpose to which it is being put. This distinction is not made simply with respect to which party is using the VSL—in particular, whether the value is being used by the government or by the judicial system. For both the government and the courts, there are different contexts in which there might be consideration of value of life estimates, with the chief areas being compensation and valuation of the reduction of the risk of personal injuries for benefit assessment.
tality for purposes of compensation? Should these values be specific to the particular lives involved or should there be a uniform index based on average estimates across broad populations, such as workers in risky jobs? Confronting these issues, some distinguished scholars in economics and law have recently offered favorable comments for the use of the hedonic damages approach.5

However, the VSL approach has a constructive role to play in personal injury cases. Similarly, the traditional measures of economic damages also serve a valuable economic function and should remain one of the approaches used in setting compensatory damages.6 Although the components of compensation in personal injury cases are quite standard for both methods, it is worth summarizing them briefly to draw a comparison between them in estimating economic damages calculations.

In what follows therefore, we first present the VSL approach and the other more traditional methods in assessing the value of human life by restricting the discussion to the cases which have appeared in court rooms that set damage amounts pertinent to the individual.7 In these cases the values should differ with respect to whether those protected are young or old, sick or healthy, or involuntarily exposed to risk or voluntarily choosing the risk.8 After summarizing and reviewing the methods of computing damages for wrongful death or injury in the law and economics literature, we present the way in which damages should be compensated for according to the mainstream Greek tort law theory. We then examine the actual calculation of damages by Greek courts during the period from 2003 to 2008 in order to discover the rationale behind court assessments of damages, especially in the difficult cases of lost future opportunities due to injuries and the valuation of life in the cases of wrongful death. Finally we offer a number of proposals that the Greek judges can use to estimate damages more accurately within the existing legal framework.9

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7 This paper does not deal with the use of VSLs by governmental agencies, because, to our knowledge, governments use VSL numbers to assess the prospective economic benefits of risk reduction policies and not for purposes of compensation. As Viscusi argues, the use of VSL became widespread a quarter century ago in several departments of the U.S. administration. However, the use of VSL numbers by the Federal government has not been uniform in the sense that there is no official “government number” for the value of statistical life. The differences across agencies appear to stem largely from organizational differences and the fact that agencies differ widely in the values that they use. (see Viscusi, 2008: 4-5). For example, the U.S. Department of Transportation agencies, such as the Federal Aviation Administration (FAA), had long used the value of compensation in court cases involving wrongful death when assessing damages, so these agencies have adjusted the values upwards to move closer to estimated VSL levels, but the agencies have not adjusted the values of life to a sufficient extent.
8 Unlike individual cases in courts that set damages amounts pertinent to the individual, government agencies invariably use the same VSL irrespective of the case being analyzed based on the following argument: Government policies protect large groups of people, so VSL numbers that are reflective of the average value of the protected population are reasonable. If the protected populations have risk-money tradeoffs that are similar to the tradeoff rates reflected in VSL studies, then there is little error that arises from using average values. However, if the VSL of the protected population is quite different, the assumption that the benefit values are transferable is not valid.
9 However, here we do not deal with some very interesting issues concerning liability in case of negligence and the problem of proximate cause. Economists adopted the “Learned Hand formula” to establish negligence. For a doctor to be considered negligent the expected harm by the medical error should exceed the cost of precaution. See, Vliamos and Chatziplaton (2008), and Hatzis (2011).
3. The Essential Elements of the VSL Approach

The value of a statistical life (VSL) and is defined as the rate of tradeoff between risk and money for small risks of death. For labour market studies, which comprise most of the VSL literature, the VSL represents the compensating wage differential that workers receive for job fatality risks. The VSL is based on marginal rates of tradeoff for small risks, and is only pertinent in contexts in which one is envisioning the pricing of such lotteries of life and death. The VSL amount will overstate how much people will pay (willingness-to-pay, WP) to avoid the certainty of death because wealth effects will make the willingness-to-pay amount below the VSL. Following the same line of argument, the VSL will understate how much people must be compensated to face a series of increases in fatality risk that may cause death. This method estimates the willingness-to-accept (WA) a measure of risk. However, even this method is subject to bias: it reflects people’s valuation of small risks and for some cannot reliably be used in measuring the value of life. In addition, this can mostly measure the value of risk for risk-neutral or risk-loving individuals who incur the lowest cost from the risk (selectivity bias). We could make this assessment more accurate by using data on the amounts people are willing to pay (WP) to avoid risks (the demand for smoke detectors, the effect of air pollution on property values, the relation of the demand for specific car models and their fatality rate, etc.) The use of VSLs to value lives in personal injury cases similarly offers the prospect of considerably larger damage amounts.

In several studies, researchers divide the VSL by the number of years of life expectancy and allowing for the influence of discounting, obtain the value of a statistical life year (VSLY), that is, the money value (amount) that each year of life is worth. However, critics argue that this methodology makes the strong assumption that each year of life has the same value. Nevertheless, the VSLY measures may have some role to play in estimating individual discount rates with respect to the expected duration of life rather than as a replacement for VSL numbers. Moreover, the VSLY numbers also may be useful in imputing a VSL for retirees and other groups for which a VSL has not been estimated reliably.

However, there have been attempts to develop some further empirical refinements in the heterogeneity of VSL by considering differentiations with respect to age, race, gender, smoking status and a variety of demographic profiles. Such values could then be pertinent to the circumstances of a particular personal injury, as the VSL number can be linked to the facts of the case. For example, the U.S. Environmental Protection Agency, acting within the framework of the proposed Clear Skies Act, val-

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10 This section draws heavily on Viscusi and Aldy (2008).

11 Based on labor market evidence for the U.S. economy, the current median VSL is about $7 million for men and $8 million for women, calculated as wage premiums for risky occupations: Viscusi (2008), found that American society pays people an additional $700/$800 a year, on average, to take on risky work in hazardous occupations. Given one death per 10,000 risk takers, on average, the cost to society adds up to $7/$8 million for each life lost.
ued the lives of senior citizens over 70 years of age at 37 percent less than the values assigned to younger age groups. This argument is supported by further academic work done mainly by Viscusi and his associates, who estimate the VSL-age relationship as an inverted-U curve following the pattern of lifetime consumption.\textsuperscript{12} This empirical relationship contradicts models that assume a constant value per life year, because if each life year had the same value then the VSL would be a steadily declining function of one’s age. However, this is not always the case. The balance sometimes people strike between money and risk may remain stable or even rise with age as their wealth and personal consumption increase. Thus, the VSL for a sixty-year old could be greater than that of a twenty-year old. That means that the remaining life expectancy is not the sole determining factor. Individual wealth and willingness to bear risk both vary with age so that over many decades VSL may increase with age even though one has fewer years to live.

4. Traditional Damages Fundamentals for Compensation and Deterrence

The components of compensation in personal injury cases are economic damages and noneconomic damages.\textsuperscript{13} The rationale for calculating economic damages (financial loss) is the income loss associated with an accident or injury, i.e., the amount of compensation needed to fully insure the income losses associated with the accident. Thus, the task for setting these damages values is not to determine how much the person’s well being is worth to society or how much should be paid to prevent the injury.

Economic damages include the present value of the lost earnings for the accident victim, where this amount is reduced by the deceased’s consumption in the case of a fatality. Some jurisdictions also deduct for taxes. Economic damages also may include other case-specific expenses, such as medical costs and rehabilitation expenses plus interest payments and sometimes punitive damages. The economic damages component is pertinent to the financial loss to the individual, though in many cases the prospective economic loss is based on the average performance of one’s demographic and occupational group. Because of the linkage to the injured party’s earnings and expenses, the damages are individual-specific. People who earn less will receive lower damages for themselves or their heirs, whether the earnings gap is due to low education, few job skills, age, race, gender, or a decision not to work. Children and the retired will consequently fare particularly badly in terms of court awards, but they would receive a much larger payment based on VSL estimates, especially if these estimates make no adjustments for individual heterogeneity. The variations of economic damages with individual circumstances are widely accepted for economic damages calculations so that use of a uniform VSL level for all personal injury cases, as is often done in hedonic damage analyses, is inconsistent with this approach.

Noneconomic damages also will vary, based on case characteristics which will then provide for compensation for the pain and suffering of the accident victim and the

\textsuperscript{12} See mainly Aldy and Viscusi (2002).

\textsuperscript{13} According to Viscusi (2008: 8), it is more accurately to call them ‘payments for “financial” loss and “nonfinancial” loss’.
grief and welfare loss to the family. Noneconomic damages extend beyond the financial harm. From an economic standpoint, one would only choose to insure such losses fully if the accident did not reduce the marginal utility of income. For both fatalities and nonfatal injuries that are comparable in severity to the typical job injury, serious accidents reduce the marginal utility of income. As a result, the optimal insurance amount not only does not provide for noneconomic damage compensation above and beyond the value of economic loss, but also may provide for less than full replacement of earnings if the accident reduces the marginal utility of income sufficiently. In the case of accidents whose severity is comparable to that of job injuries, the optimal replacement rate is approximately 0.85, assuming that these benefits are not subject to taxation. Thus, taking this result at face value, there is generally no rationale at all for noneconomic damages from the standpoint of optimal insurance if the accident reduces the marginal utility of money and the financial losses are fully addressed, net of all deductions from the award, such as legal fees.

Should noneconomic damages even be part of conventional damages measures, as they now are, and if so, how should they be set? In general, it is not optimal for people to be fully compensated for pain and suffering damages that they have suffered due to a serious or fatal injury insofar as their marginal utility of money has declined as a result of such an injury. Very minor injuries, such as temporary hand burns, are tantamount to income losses and do not alter the marginal utility of income, whereas catastrophic injuries do. The reason why making accident victims whole after catastrophic losses is not optimal is that people generally will not wish to buy insurance to compensate themselves or their heirs fully for the noneconomic losses associated with accidents. Similarly, people do not purchase insurance to compensate for the grief that will result from the death of a spouse or child.

5. The estimation of Damages by the Greek Courts

Our research focused on 14 decisions of the Administrative Court of Athens District for the period 2003-2008. In all these decisions the defendant is a public hospital and the plaintiff is either the victim of a medical error that was the result of a procedure that took place in this hospital by a physician (or a group of physicians) working in it or a person closely related to the victim.

The aim of the current research was to present the criteria that the Greek courts use in order to calculate and award the compensation in case of medical error and then to compare the actual awards to the compensation that the courts should have awarded. One main limitation of our research was that we only had access to the published judicial decisions due to the Greek privacy legislation. Another limitation was that these decisions do not include critical information, like doctor and expert opinions about the extent of the injury or estimation of the future losses based on the parties’ briefs. In most cases we could find the amounts claimed by the parties but not the data that the parties used to calculate the damages they asked for.

A) The Greek legislation of compensation

According to the Greek Civil law the medical error (fault) that causes damage to a person offending his life, his corporal integrity or his health is recognized as a tort
that involves obligation of injurer to compensate the damage the victim has incurred. The conditions thus of liability for compensation because of a tort are the following: (a) the unlawful act or omission, (b) the fault (malice or negligence), (c) the damage and (d) the proximate cause between the unlawful and faulty act or omission and the damage (914 CC). In this project, though, our interest focuses only on the content of compensation and the damage that is compensated and not on the unlawful act or the existence of fault.

The establishment of liability in tort law allows the claim for restitution of economic damage (CC 929) that the person suffered – in monetary terms. The purpose of this benefit is to put the victim into the position he would have enjoyed if the tort had never been committed. Furthermore, a claim for “moral” or non economic injury (CC 932) that the plaintiff has suffered as a consequence of the unlawful act, is also permitted. These are essentially hedonic damages for pain and suffering. In case of hedonic damages the compensation aims in victim’s alleviation from pain and suffering and in mitigation of the consequences of offence through material means.

In case of personal injury covering physical or psychological harm the compensation includes the “incidental damage” (the reduction of existing fortune) and also the “consequential damage” (the profit that someone expects with probability in the normal course of events or the special circumstances). More specifically the compensation includes the following (article 929 CC):

a) Medical expenses and other related expenses. These are expenses which according to medical experts were necessary for the restitution of victim’s health, independently of their amount. In this category of damages are included the expenses for hospital care, doctors’ and exclusive nurses’ wages, medical examinations, expenses for medication, orthopedic equipment, physiotherapy, special diet, expenses for traveling and treatment abroad.

b) “Incoming” Damage. This is the damage that the victim suffered from his personal injury from the time of the injury to the time he brought action – provided there is a proximate cause between damage and unlawful act. Such damage can be either incidental or consequential (loss of profits).

c) Future losses. This type of damage includes victim’s loss of future earnings because of its reduced ability to work as a result of his personal injury.

d) Future increase of expenses. Anything the victim will additionally spend in the future as a consequence of its increased expenses. Usually, these are repeated and constant expenses made for the restriction or the alleviation of unfavorable consequences that remain with the victim after the restitution of harm (e.g. expense for medication, house cleaning, plastic surgery etc).

The court in order to award compensation should take into consideration the disability or deformity which suffered the victim if this affects its future potential, its professional, economic and social progress (CC 931). This disability should be permanent and constant without nevertheless the provisional disability being excluded, if it influences the future of person in a decisive way (e.g. loss of beneficial opportunities). It is not required that the unfavorable influence of disability or deformity in the future of
a person is certain but the simple possibility in the normal course of events, is enough.

Beyond the victim (the person that suffered direct damage of body or health) claim for compensation has also the third person which had, according to the law, the right to require from the victim the benefit of his services and because of the tort he loses them (CC 929 b'). In case therefore of a spouse injury and his resulting disability to offer his personal services, the other spouse has the right for compensation against the injurer for the loss of these services that constitute, according to the law, the owed contribution of victim in the familial needs. Beneficiaries of this compensation are also the parents for the loss of services of their child. This claim is similarly provided in case of person's death (CC 928 b).

In case of death the responsible party has to pay the medical and funeral expenses to those who are according to the law obliged to cover them (CC 928 a). This obligation concerns the persons who were obliged to pay for the living expenses of the victim and if the victim was self-sufficient the obligation is due to his heirs. Moreover, in case of death, the responsible party has also the obligation to compensate the person that had the right to require maintenance from the victim (article 928 b). As maintenance is considered, any amount that is required for food, shelter, education, entertainment, hospital expenses etc., according to beneficiary's standard of living. Beneficiaries of this claim are the spouse, the children and the parents of victim.

The compensation for future damages (loss of earnings, increase of expenses) should be paid in monthly periodic installments and only in special cases (due to special circumstances) the court award a lump sum (CC 930). On the contrary, the compensation for the expenses concerning damage of the past (medical and funeral expenses) is provided in a lump sum.

The court can award no compensation or it can reduce the amount if the plaintiff contributed with his own negligent behavior to his damage or if he omitted to deter or to limit the damage (CC 300). For the release of injurer or the reduction of compensation, the court takes into consideration the gravity of plaintiff's fault comparing it to the gravity of injurer's fault and also to the moral and social norms.

Contrary to the general rule of Greek Civil law for counterbalancing damage and profit (the damage is reduced at the amount of benefit the injured acquired), the compensation is not excluded from the reason that someone else has the obligation to compensate or maintain the one that was wronged (CC 930 §3). Consequently, the victim’s claim for compensation cannot be rejected from the injurer for the reason that other compensated the victim because the will of Greek legislator is for the injurer not to profit from the fact that a third person is obliged from the law or from other reason to compensate or maintain the victim except if there is a different provision in the law.

Furthermore, the court in tort cases, independently from the award for economic damages can also, according to its “reasonable” crisis, award damages for “moral” or non-economic injury which the plaintiff has suffered as a consequence of the unlawful act. In case of death, the court can award compensation to the victim’s family for emotional distress (CC 932). The definition of “moral” damage and emotional distress
is not given in the law, as “moral” damage nevertheless is considered the non economic damage that victim suffers from the offence of his moral, intellectual and corporal integrity or the offence of goods of financial nature. The emotional distress constitutes particular form of “moral” damage.

The compensation for “moral” damage or emotional distress aims to the alleviation of victim or his nearer relatives from pain and suffering. The law, as it was designed by the Greek legislator, permits the monetization and calculation of hedonic damages according to the “reasonable” judgment of the court, without making any allusions to the elements of the amount or to a supposed objective equivalence between the type or the intensity of offence and the arising damage. This is mostly owed to the inability of Greek legislator to clarify sufficiently the conceptual content of “moral” damage and to shape objective criteria giving thus the power to the court to take into consideration various elements for the award for hedonic damages.

B) The awards by the Greek courts

In this second part we will focus on the criteria that Greek courts use for calculating the compensation, in case of a medical error. In order to organize our findings we categorized the different types of damages the plaintiff could claim due to medical error such us:

In case of injury
- Monetary damages to the victim for future losses (Damages A1a)
  - Monetary damages to the victim for medical and related expenses (Damages A1b)
  - Hedonic damages to the victim for pain and suffering (Damages A2)
  - Monetary damages for loss of services to third parties (Damages B1a)

In case of death
- Monetary damages for loss of maintenance and services to third parties (Damages B1b)
- Monetary damages for medical and funeral expenses (Damages B1c)
- Hedonic damages to the family for emotional distress (Damages B2)

A1b and B1c damages (medical and funeral expenses)
The court, in the case that the plaintiff asks for the compensation of medical expenses always takes into consideration the relevant receipts of hospital, doctors, exclusive nurses, physiotherapists etc. or retail receipts and invoices of pharmacists, enterprises providing nursing material, orthopedic equipment, products of individual cleanliness etc. in which the provided services and the sum that was paid are certified. Furthermore, the court is always asking for medical opinions and certifications about the necessity of these expenses for the restitution of plaintiff’s health (e.g. need for medication, special diet, nursing material, medical treatments etc.). In case of a third person asking for the funeral expenses, the court similarly asks for receipts and invoices of the funeral office. If these expenses are not justified by the necessary paperwork the court dismisses the claims as irrelevant.

A1a Damages (Future losses)
In the case of damages causing loss of future earnings, the court examines the unfavorable consequence that the corporal or health damage had in the particular economic and professional activity of victim. The plaintiff should invoke and prove that he is unable to practice the professional activity that previously practiced which in the usual course of events he would continue practicing if the damage did not intervene and that he was thus damaged at least for the amount that he would previously gain from the same work. A complete proof it’s not required; the plaintiff though should present particular real future settings on which the damage might be expected. When the damage depends on future and imponderable factors, as the victim’s success in a competition, future studies etc. the relevant claim is rejected as vague or prematurely raised.

If the personal damage is of such an extent or magnitude that it cannot influence the ability of working for an income, nevertheless the income from the new professional activity (after the unlawful act) is less from the income of the previous activity (before the unlawful act), as damage is considered the difference between the income of the previous and the new activity. The proof of income is easy for employees based on the relative certifications of their employer. On the contrary, for professionals the proof of income is particularly difficult. Their income is usually proved by the official books that they have to keep according to the law and from the annual tax statements that they report to the IRS. Nevertheless many times significant differences are observed between the incomes that they report to IRS and those that the professional claims that he would have acquired if it had not been rendered incompetent for work. That happens because the income he claims is much higher compared to what it was reported in the previous years to the IRS. Such a statement, however, essentially means that previous tax statements were insincere and for this reason rarely they are brought in to the court, but even when they are brought in, the court takes into consideration, as base for the calculation of income, their content and not the plaintiff’s statements for higher income.

In case that the injured is a young person who has not begun to work yet or he has not completed his studies, the compensation is calculated from the point that the person comes to an age that would allow him to work and acquire income in the usual course of events. His likely income is estimated on the basis of his serious intentions, qualifications, progress, his intelligence and his character. If the victim, because of the injury becomes completely disable for professional activity and retires because of this disability, the damage in these cases consists of the difference between his wage and the usually smaller sum of pension.

Future earnings are calculated based on current earnings of the victim and his prospects in the particular occupation (expected increases of income, likely promotions and other benefits). These are usually very crude estimations and quite often (and rather easily) are dismissed as inadmissible since the parties cannot prove their income streams due to their failure to report their income to the IRS for the previous years. The duration of compensation is calculated in combination with the duration of disability. The court estimates in each particular case the type and the nature of professional activity, the situation of person’s health, the required corporal and intellectual ability and the biological limits of human body. The claim of compensation for future losses is usually extended up to the point that the victim would normally receive retirement pension (usually up to the age of 65 years).
**B1a and B1b Damages (loss of services or maintenance)**

The extent of compensation that a third person can claim because of loss of services depends on the way that the void left by the victim was covered, because of the victim’s inability to offer his services. In case therefore that the victim engages paid service (e.g. house cleaning) to help him, the compensation is determined by the amount of the given wage. If no paid service is engaged or the void was covered by persons of family or with restriction of needs the compensation is calculated according to a quasi wage of a paid service.

The existence and the extent of damage in case of spousal death depends in each particular case from the correlation of spouses’ abilities from which will result the obligation, the type and the size of contribution of the dead spouse based on elements that parties invoke and prove. The under age child has the right for maintenance if its income does not suffice for its maintenance which is determined according to the needs. Maintenance is also possible for the adult child if it is unable to find an appropriate occupation and gain income because of corporal or mental disability or unfinished studies. The parent that claims compensation for loss of maintenance that the child provided for him should invoke and prove that he does not have any income, he is not capable for a work suitable for his age and the situation of his health. For the calculation of compensation the court takes into consideration the likely duration of victim’s and beneficiary’s life and the likely progress of their economic status.

**A2 and B2 Damages (Pain and suffering and emotional distress)**

Hedonic damages are awarded for victim’s “moral” support and not after an assessment of the affected good. The court after estimating the facts that the parties present to the court can award a “reasonable” amount as compensation if it judges that the damage caused “moral” harm to the injured or “emotional distress” to the victim’s family. “Reasonable” amount, however, is one of the most awkward questions while the court should monetize damages without commercial value. In practice a great quantitative difference is usually observed on similar cases of pain and suffering. Also, there are no real efforts by the courts for establishing objective criteria for calculating hedonic damages or any solutions that would allow in a satisfactory degree a uniformity on similar cases of pain and suffering. As a result the parties ask for extravagant amounts of money (for the standards awarded by the Greek courts) and the courts award a small fraction of it.

The calculation for hedonic damages is based entirely on qualitative and not quantitative factors without any reference to the VSL or any other economic literature. The qualitative factors that Greek courts take into consideration as these jurisprudentially have been shaped and solidified, are the following: (a) the type and the intensity of offence (b) the consequences of damage in victim’s corporal integrity (rate of disability), mental health and also in his personal, professional and social progress (c) the conditions under which took place the unlawful act (d) the degree of defendant’s fault (e) the existence of contributory fault (f) victim’s age and situation of health before the tort (g) the social and economic status of parties (h) their personal relations (i) defendant’s behavior after the tort (j) “experience and common sense”. 


Table 1: Possible Damage Claims

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<th>Case</th>
<th>A1a</th>
<th>A1b</th>
<th>A2</th>
<th>B1a</th>
<th>B1b</th>
<th>B1c</th>
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6. Conclusions

The problem with the estimation of damages by the Greek courts in case of medical error is that they grossly underestimate lost future earnings and hedonic damages. The reason for this is that they base their estimation of loss opportunities on a very conservative estimation of the current wages and tax reporting of the parties and not on their human capital, but this is a general problem of compensation in Greek tort and also in Greek family law (Tsaoussis, 2004). The unpaid household services provided by homemakers are not included in the estimation of their contribution for their dependents.

Hedonic damages are only “reasonable amounts” based on experience and common sense of judges and the ordeal of the victims or their dependents as perceived by the judges.
The only damages that are calculated with some accuracy are restitution damages based on medical, funeral, and any other kind of expenses, if, of course, invoices can prove them.

The Greek courts should urgently introduce more sophisticated methods for the calculation of damages, especially hedonic damages. This can be achieved by the admissibility of economists as expert witnesses and, in the long run, by the introduction of related courses in legal education.

Bibliography


