

THE DAMAGES FOR WRONGFUL DEATH UNDER TURKISH LAW

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1. The Present Statutory and Case Precedent Authorities Relating To Actions For Damages For Wrongful Death Under Turkish Law

The present statutory authority for wrongful death under Turkish law is found mainly in the Turkish Code of Obligations (TCO) Articles (41-60) under the chapter title of Torts. There is also a provision in The Highway Traffic Code.

The Tortfeasor is responsible for fatal injury he has caused (Art. 45 and 47 of Turkish Code of Obligation TCO).

There are other persons than tortfeasor who can be held liable for wrongful death. According Art. 55 of TCO, Employer is responsible for damages caused by his employees and workers in the accomplishment of their work. If the employer proves that he has taken all necessary measures in the circumstances in the choice, instruction and supervision (*diligentia in eligendo, instruendo, custodiendo*) of the worker to prevent the damages or in the case when such measures are not taken if he can prove that in spite of the measures the damages would happen he can not be held liable. Turkish *Cour de Cassation* (Yargıtay) with its decision on the Unification of Jurisprudence of March 27, 1957, no: 1/3 decided that for the establishment of the responsibility of the employer and of the worker the existence of the fault is not necessary. The employer is responsible for objectif omission; oversight to this duty of supervision.

According Art. 56 of TCO in case of injury caused by animal the person who is the holder of the animal is responsible. The holder

of an animal is according to Turkish *Cour de Cassation* (Yargıtay). Third Civil Chamber's decision of April 4, 1967, no: 2967/2377 is the person who gets an economic or moral profit from animal. The holder can get read of his responsibility by taking all necessary measures or proving that even such measures could not stop the injury.

According Article 320 of the Turkish Civil Code the chief of the family is responsible for damages caused by the minors or weak minded persons and mentaly sick placed under his control.

According Art. 58 of TCO (Turkish Code of Obligations) the building owners are responsible for damages caused by their buildings.

According Art. 50 of the Highway Traffic Code the holder of an motorcar, of a mobile vehicle or a tractor with tires is responsible for pecuniary and bodily damage including the death of the injured person caused by their use. If the holder proves that the damage happened because of a *force majeure* or a heavy fault of the injured or of a third person he is not responsible. If the fault or injured is light the judge takes it, into consideration of award.

The contracts excluding or limiting civil responsibility in road accidents are nul and void. There is a tendency in the road injuries to give awards even when the holder of the motor car, mobile vehicle or the tractor with tires is not responsible. The Cour de Cassation Commercial Chamber on January 28; 1964 with its judgment no: 5910/600 and on October 2, 1965 with its judgment no: 505/2722 held responsible and give awards when the holders of the motor cars involded were without fault. However a year later the same chamber decided on the contrary, in fact on December 20; 1966 with its judgment no: 4285/3759 the commercial chamber declined awards because there was no fault of the holder of the motor car.

2. The Types Of Damages Which Are Awarded For Wrongful Death Under Turkish Law, Including Both Pecuniary And Moral Damages

According Art. 45 and 47 of TCO the following damages are awarded for a tort which caused wrongful death of a person:

- 1 — According Art. 45 1 of TCO funeral expenses,
- 2 — According the same Art. same where death does not immediately follow the injury expenses of medical treatment,
- 3 — According Art. 45 2 where death does not immediately follow the injury damages resulting from inability to work,
- 4 — According to Art. 47 moral damage (non pecuniary loss) is accepted only for the members of the deceased's family. As the civil code prohibits all recovery for moral damage except where there is express provision for it the other persons outside of family members deprived of the deceased's material support will not be getting the non pecuniary damage. However in its interpretation of this Art. 47 of (TCO), Turkish *Cour de Cassation* has enlarged it to include not only the members of the family but the close persons to victims. A close person is defined as person who is affectionately, fondly attached to the victim (the Fourth Civil Chamber of the *Turkish Cour de Casation* in its judgment of January 23, 1965 no: 3350/327).

The Turkish *Cour de Cassation* with its decision on the Unification of Jurisprudence (all civil chambers united decide) of June 22, 1966 no: 77/7 decided that in case of wrogful death moral damage could be awarded where there responsibility without fault.

3. The Persons Who Are Necessary, Proper And Permissible Parties Plaintiff And Claimants In Wrongful Death Cases Under Turkish Law

The legal heirs; the estate can sue, beside the heirs there is also other persons who can recover pecuniary loss. The primary purpouse of a giving an action to persons other than the heirs is to compensate the Turkish Code of Obligations allows a claim for loss of support to words the loss of the economic assistance which they derived from the salary earned by the deceased and used for their support or alternatively from the services rendred to them by the deceased. So the Turkish Code of Obligations allows a claim for loss of support to any person who has been deprived by the death of the actual support in the present or of the reasonable prospect of support in the future quite apart from any right he might have had to demand

that support. Art. 45 3 gives this right to action to persons deprived of their support.

This is interpreted by the Turkish Cour de Cassation as allowing claims by the concubine (Fourth Civil Chamber on January 5; 1967 with its judgment no: 10932/55); fiancée (Commercial Chamber no November 21, 1965 with its judgment no: 1914/3002); a wealthy brother's death was considered a loss of support for a minor brother (Plenary Assembly of all civil Chambers on October 16, 1968).

The wrongful death of a wife who was busy solely about her household duties was accepted as supporting her husband (Fourth Civil Chamber of the Turkish Cour de Cassation on October 3, 1966 with its judgment no: 4939/8581. The death of a minor child was considered as a loss of futur support to his parents and damages were awarded (Pleanary Assembly of all civil chambers of Turkish Cour de Casation on October 10, 1968.)

In Turkish Law in non-fatal injuries only injured person is entitled to sue for an award not even family members and dependent can bring any claim for them "les larmes ne se monnaient pas" (Tears do not permit calculation in money). But the members of family can bring claim for moral damage and Turkish cour de Cassation accepted that for this even the faul if there is a wrongful death for his injury.