

# Liability & Compensation for Personal Injury and Death Resulting from Road Traffic Accidents in Turkey\*

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## Abstract

Liability and compensation for personal injury and death resulting from road traffic accidents is one of the great issues on the liability and compensation agenda of our time. Applicable liability regulations of Turkish Law in road traffic accident cases are of importance because once a road traffic accident occurs in Turkey; Turkish law applies to the dispute.

It is also significant to mention about the Turkish compensation system based on the distinction of personal injury compensation and compensation in the event of death as a result of a road traffic accident. In light of this distinction, we examine basic issues in codified legal system as well as the policy approaches behind in order to focus on how someone can get damages.

**Key words:** Strict liability, road traffic accidents, motor vehicle, compensation, pecuniary damages, non-pecuniary damages.

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## I. Introduction

Road traffic injuries became a major public health burden in the 21<sup>st</sup> century. According to the official data supplied by the Turkish National Police Head of Traffic Services Department, 3524 people were killed and 285.059 were injured or disabled in reported 1.199.010 road traffic accidents on Turkish roads in 2014 (*Table below provides the statistical data for the last ten years*).

### Road Traffic Accident Statistics<sup>1</sup>

YEAR	Number of Accidents	Number of Deceased	Number of Injured
2005	620.789	4.505	154.086
2006	728.755	4.633	169.080
2007	825.561	5.007	189.057
2008 **	950.120	4.236	184.468
2009 **	1.053.346	4.324	201.380
2010 **	1.104.388	4.045	211.496
2011 **	1.228.928	3.835	238.074
2012 **	1.296.634	3.750	268.079
2013 **	1.207.354	3.685	274.829
2014 **	1.199.010	3.524	285.059

There is a significant increase in the number of accidents as well as the number of injured. Despite this trend the number of deceased decreased, but would still be considered high. When facing this striking data, two questions arise for determination: Is there a way to achieve “ideal compensation” for personal injuries caused by a road traffic accident? Is it possible to figure an amount that would fully compensate the death caused by a road traffic accident? Both questions would be answered in negative without any doubt, not only in respect

<sup>1</sup> General Directorate of Security Department of Traffic Services <http://www.trafik.gov.tr/Sayfalar/Istatistikler.aspx> (Last Visited: November 12, 2015). It should be noted that the data of the year 2014 has been highlighted as the latest official data supplied by the Turkish National Police Head of Traffic Services Department.

of the injuries and death resulting from road traffic accidents but in respect of all other possible sources of personal injury and death.

Although there is no way to achieve an ideal compensation for personal injuries and death; there is also no doubt that the victims of the road traffic accidents should be better protected by law and judiciary. The question then has to be structured as “How is it possible to protect a road traffic accident victim’s best interests and achieve a positive outcome for them and their families under Turkish Law?”

Here we shall only outline the Turkish approach and the paper is structured on two basic pillars in this regard. First, applicable liability regulations of Turkish Law in road traffic accident cases will be analyzed, considering the fact that when a road traffic accident occurs in Turkey, Turkish law is applicable. Then, we will focus on the Turkish compensation system based on the distinction of personal injury compensation and compensation in the event of death as a result of a road traffic accident.

## II. Liability & Sources of Liability

### A. General View

Turkish Code of Obligations (Law No: 6098) (hereinafter “TCO”)<sup>2</sup> has regulated three main sources of obligations: contracts, torts and unjust enrichment under General Provisions/Section I. The foundations of tort liability in Turkey are contained in TCO Art. 49. This article lays down the basic principle of liability for fault: *“Whoever causes damage unlawfully to another, whether intentionally or due to negligence is obliged to indemnify this other person”*. As stated in the provision, fault is generally considered as an intentional or negligent conduct and tort liability is established on the aforesaid conduct of the tortfeasor<sup>3</sup>. There are five requirements for fault

<sup>2</sup> Official Gazette, 4 Feb. 2011 No: 27836, Enacted: 11 Jan. 2011.

<sup>3</sup> For detailed analysis of tort liability in Turkish Law see Kemal Oğuzman / M. Turgut Öz, *Borçlar Hukuku Genel Hükümler*, V.2, 10th ed. (amended and updated), İstanbul, 2013, p.11; Selahattin S. Tekinay / Sermet Akman / Haluk Burcuoğlu /

liability in this sense: the violation of a codified normative rule, unlawfulness, fault (intention or negligence), causation and damage.

There are also special liability laws provide for liability independent of fault for certain situations and activities. We name them as strict liability or causal liability provisions and the liability here is to be established independent from the tortfeasor's conduct<sup>4</sup>.

A full discussion of these provisions is beyond the ambit of this paper, and therefore, we will focus primarily on special strict liability provisions in respect of road traffic accidents. But it shall be emphasized that in strict liability regimes, dangerous devices and installations or dangerous activities are generally constitute the basis for liability<sup>5</sup> <sup>6</sup>. The specific risks of the activity of operating a motor vehicle has resulted the statutory strict liability rules in this sense<sup>7</sup>. Turkish strict liability regime for damage caused by motor vehicles is embodied in Road Traffic Act (Law No: 2918) (hereinafter "RTA")<sup>8</sup>, which has been enacted under the influence of Swiss Road Traffic Act<sup>9</sup>.

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Atila Altop, *Borçlar Hukuku Genel Hükümler*, 7th ed. (amended), İstanbul, 1993, p. 663; Haluk N. Nomer, *Borçlar Hukuku Genel Hükümler*, 14th ed. (amended), İstanbul, 2015, p.137; Fikret Eren, *Borçlar Hukuku Genel Hükümler*, 18th ed., Ankara, 2015, p.516; Ahmet M. Kılıçoğlu, *Borçlar Hukuku Genel Hükümler*, 17th ed. (updated), Ankara, 2014, p.274; Hüseyin Hatemi/ Emre Gökyayla, *Borçlar Hukuku Genel Bölüm*, 3rd. ed., İstanbul, 2015, p.116.

<sup>4</sup> See Haluk Tandoğan, *Türk Mesuliyet Hukuku*, Ankara, 1961, p. 89 ff. Also see Oğuzman / Öz, p.135; Tekinay/Akman/Burcuoğlu/Alttop, p.670; Nomer, p. 155; Eren p.614; Kılıçoğlu p.313; Hatemi/ Gökyayla p.149.

<sup>5</sup> Cees van Dam, *European Tort Law*, NY, 2006, s. 77.

<sup>6</sup> It shall be noted that TCO Art. 72 impose a general rule of strict liability along the other special rules / codifications. For a detailed analysis of this general strict liability provision and other types of strict liabilities in the same vein see Ayça Akkayan – Yıldırım, "6098 Sayılı Türk Borçlar Kanunu Düzenlemeleri Çerçevesinde Kusursuz Sorumluluğun Özel Bir Türü Olarak Tehlike Sorumluluğu" *IUHFM V. LXX, I. 1*, 2012, p.205. Also see Mustafa Tiftik, *Türk Hukukunda Tehlike Sorumluluklarının Genel Kural ile Düzenlenmesi Sorunu*, Ankara, 2005.

<sup>7</sup> General Assembly of Turkish Court of Cassation, Case No.: 2012/17-215 Decision No: 2012/413 dated 27.6.2012 Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015).

<sup>8</sup> Official Gazette, 13 Oct. 1983 No: 18195, Enacted: 18 Oct. 1983.

<sup>9</sup> For historical background and features of this regulation see Fikret Eren, "Karayolları Trafik Kanunu'na Göre Motorlu Araç İşletenin Akıt Dışı Sorumluluğunun Hukukî

RTA, is basically regulating the liability for damage caused as a result of motor vehicle being “in operation”, regardless of the question of whom is at fault<sup>10</sup>. This is referred as strict liability as we have already mentioned. The way in which the compensation is then determined and calculated is laid down in the TCO, which is regulating the Turkish Law of Damages. It shall be noted that that the mentioned regulations of TCO are framed in a very general way, which means that these provisions are not specifically designed for the probable consequences of road traffic accidents<sup>11</sup>.

## **B. The Strict Liability Imposed on the Operator**

### **1. RTA Art. 85: Liability Provision**

Art. 85 of Turkish RTA impose upon the “operator” of a “motor vehicle” strict liability for personal injury, death and property damage, resulting from the “operation of a motor vehicle”<sup>12</sup>.

In cases where the motor vehicle is being operated under a name of a commercial enterprise, then the operator of the motor vehicle and

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Niteliği ve Unsurları” Journal of Ankara University Faculty of Law, 1982-1987, V.XXXIX, I1-4, p.160 ft. 2 [Hereinafter Eren, Akit Dışı Sorumluluk]; Kılıçoğlu p.367.

<sup>10</sup> See Oğuzman / Öz, p.201; Tekinay/Akman/Burcuoğlu/Altop, p.710; Nomer, p. 190; Kılıçoğlu p.386. For proper application of RTA, the scope of the regulations shall be determined. See RTA Art. 2 a& b. For detailed information about the scope of the Act see Nomer, p.185 ff.

<sup>11</sup> After the presentation of this conference paper, four articles of RTA have been amended with Law No: 6704 dated 14.04.2016. (Official Gazette, 26 April 2016 No: 29695, Enacted: 14 April 2016). The amendments will be covered in relevant sections. At this point it is important to note that new provisions based on the fact that in consequence of the special characteristic of the compensation claims within the scope of mandatory liability insurance, the procedures and principles stipulated in RTA and the general conditions of the insurance shall be applied primarily. As regards the matters not regulated in RTA and the general terms and provisions, then tort provisions of TCO shall be applied.

<sup>12</sup> See Haluk Nomer, “2918 Sayılı Karayolları Trafik Kanununa Göre Motorlu Araç İşletenin Hukuki Sorumluluğu”, İstanbul Bar Journal, 1992/66, N. 1-2-3, pp. 36-89. Also see Oğuzman / Öz, p.196; Tekinay/Akman/Burcuoğlu/Altop, p.706; Nomer, p. 186; Eren p.668; Kılıçoğlu p.368; Hatemi/ Gökyayla p.156.

the owner of the related enterprise will be deemed jointly and severally liable for the damages according to the provisions<sup>13</sup>.

This liability is established independent from the operator's intentional or negligent conduct. This means, unlike general tort liability, here the victim does not have to prove the facts that the defendant (operator) acted intentionally or negligently, in order to justify the application of liability rules<sup>14</sup>. In other words, driving (operating) a vehicle is allowed by law but due to the undertaken risk, victims can more easily prove their claim and get compensation. Thus the position of the victim can be deemed improved when compared to the general tort liability.

## 2. Positive Requirements Regarding the Imposed Strict Liability

We shall focus on three positive requirements regarding the imposed strict liability: motor vehicle, motor vehicle operator and damage caused in the course of the operation (running) of the motor vehicle.

### a. Motor Vehicle

Motor vehicle is defined in the third article of the RTA that refers basically to vehicles moving with an engine power<sup>15</sup>. It is important to mention that only the liability for damages caused by motor vehicles will be deemed within the scope of the regulation<sup>16</sup>.

<sup>13</sup> Oğuzman / Öz, p.206; Nomer, p.192; Eren p.679; Kılıçoğlu p.376; Hatemi/ Gökyayla p.156. Also see 4th Circuit of Turkish Court of Cassation, Case No: 2009/3997 Decision No.: 2009/6066 dated 28.04.2009 LegalBank (www.legalbank.com) (Last Visited: November 23, 2015); 4th Circuit of Turkish Court of Cassation, Case No: 2005/12 Decision No: 2005/13603 dated 15.12.2005 LegalBank (www.legalbank.com) (Last Visited: November 23, 2015).

<sup>14</sup> 21st Circuit of Turkish Court of Cassation, Case No: 2013/16505, Decision No.: 2013/22364 dated 2.12.2013 Kazancı Precedent Database (www.kazanci.com) (Last Visited: November 23, 2015).

<sup>15</sup> Oğuzman/Öz, p.198; Tekinay/Akman/Burcuoğlu/Alttop, p.710; Nomer, p.190; Eren p.676; Kılıçoğlu p.384.

<sup>16</sup> E.g. Trolleybuses, elevators and cablecars are not within the scope. See Oğuzman / Öz, p.198; Tandoğan, p.234; Kılıçoğlu p.385.

## b. Motor Vehicle Operator

The liability is primarily imposed on the “operator” of the motor vehicle. The operator is the person who uses the vehicle in his own expense and who has the power of disposal that goes with such use. In other words he is the person who has the supervision of the motor vehicle<sup>17</sup>. The owner is usually deemed to be the operator but the owner need not always be the operator<sup>18</sup>. Motor vehicle driven by the employees of the operator and causing damage will render the operator liable under the provisions of RTA Art. 85/5<sup>19</sup>. As stated above in cases where the motor vehicle is being operated under a name of a commercial enterprise, then the operator of the motor vehicle and the owner of the related enterprise will be deemed jointly and severally liable for the damages. The ruling of Turkish Court of Cassation is in line with this provision<sup>20</sup>.

Another important issue that has to be taken into consideration is usage of vehicles by third persons. A person using a vehicle on short-term basis, for instance someone who borrows the vehicle for a

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<sup>17</sup> For detailed information about the operator see Oğuzman / Öz, p.203; Tekinay/Akman/Burcuoğlu/Altop, p.712; Nomer, p.190; Eren p.681; Kılıçoğlu p.370.

<sup>18</sup> See 4th Circuit of Turkish Court of Cassation, Case No.: 2002/14353, Decision No.: 2003/4658 dated 14.4.2003 that considered the position of the operator Kazancı Precedent Database (www.kazanci.com) (Last Visited: May 23, 2016). The burden of proof lies with the one making the claim. 17th Circuit of Turkish Court of Cassation, Case No.: 2013/9991, Decision No.: 2013/12832 dated 25.9.2013 Kazancı Precedent Database (www.kazanci.com) (Last Visited: May 23, 2016). Also see Oğuzman / Öz, p.204; Tekinay/Akman/Burcuoğlu/Altop, p.712; Nomer, p.191; Eren p.681; Kılıçoğlu p.370.

<sup>19</sup> Nomer, p.193; Eren p.689; Kılıçoğlu p.382.

<sup>20</sup> As an example, Turkish Court of Cassation ruled that; in case of a traffic accident caused by cargo trailer which has been used under name of a company, the operator (who was the owner in that case) and the cargo company shall be deemed jointly liable for the damages. 4th Circuit of Turkish Court of Cassation, Case No.: 2009/3997 Decision No.:2009/6066 dated 28.04.2009 (Journal of Court of Cassation Judgments, 2009/10, p. 1859). Also see 17th Circuit of Turkish Court of Cassation, Case No.: 2014/22035, Decision No.: 2014/17799 dated 4.12.2014 Kazancı Precedent Database (www.kazanci.com) (Last Visited: November 23, 2015)

couple of days will usually not be treated as operator<sup>21</sup>. But in case of long term lease agreement, the user of the vehicle may be treated as the operator<sup>22</sup> if he is taking care of all the running costs<sup>23</sup>.

The same approach applies in cases of vehicle liens. But those cases in which the lien is put on the vehicle by registration instead of establishing possession shall be considered differently. The pledgee is not going to be deemed as operator then<sup>24</sup>.

If the motor vehicle is used with the consent of the operator, or if it has been stolen because of the negligence of the operator, the operator will remain liable under RTA Art. 107<sup>25</sup>.

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<sup>21</sup> Oğuzman / Öz, p.274; Nomer, p.191; Eren p.682; Kılıçoğlu pp.371-372.

<sup>22</sup> For instance, the financial leasing company is not held liable for the damages caused by the long-term lessee. 17th Circuit of Turkish Court of Cassation, Case No.: 2014/15245, Decision No.: 2014/12483 dated 24.9.2014 Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015); 4<sup>th</sup> Circuit of Turkish Court of Cassation Case No: 2010/10330 Decision No.: 2011/12331 dated 23.11.2011 Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015)

<sup>23</sup> Kılıçoğlu p.373; Eren, Akit Dışı Sorumluluk, p.176. Turkish Court of Cassation requires support of the above stated facts with additional evidence. See Nomer, s. 191 especially footnote 590. Also see 17th Circuit of Turkish Court of Cassation, Case No.: 2013/18596, Decision No.: 2015/10502 dated 12.10.2015 Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015), 17th Circuit of Turkish Court of Cassation, Case No.: 2013/21210, Decision No.: 2015/6525 dated 5.5.2015 Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015), 17th Circuit of Turkish Court of Cassation, Case No.: 2013/1732, Decision No.: 2013/2886 dated 5.3.2013 Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015). In these cases, the Court held that the long term lease agreement shall be supported by the evidences such as invoices, permits, commercial books and current account statements.

<sup>24</sup> See Nomer s. 191 for details.

<sup>25</sup> See the judgement of 11th Circuit of Turkish Court of Cassation in line with this. Case No: 2007/11144 Decision No.: 2009/78 dated 12.01.2009 LegalBank ([www.legalbank.com](http://www.legalbank.com)) (Last Visited: November 12, 2015). Also see Oğuzman / Öz, p.206; Nomer, p.186; Eren p.685; Kılıçoğlu p.378; Hatemi/ Gökyayla p.157.

### 3. Damage Caused in the Course of the Operation (Running) of the Motor Vehicle

The typical way is the harm caused through collusion of the moving motor vehicle with moving or even immovable objects<sup>26</sup>. If the above liability requirements are satisfied then the operator of the motor vehicle will be liable in accordance with the RTA Art. 85.

#### IV. Unavoidable Events

Since we are dealing with a kind of strict liability it is never easy to raise a defense. Nevertheless, defendants of road traffic accident liability cases will be able to raise force majeure as a defense<sup>27</sup>. Thus, the operator of the motor vehicle will not be held liable if he can prove that the accident was caused as a result of force majeure or circumstances that can be imputed to the gross fault of the victim or a third party, according to RTA Art. 86/1.

In order to avoid the liability of the operator due to unforeseeable and unavoidable events, it is important to understand that the reason shall be an external one such as natural events and act of a third party. It is also significant to mention that the defects in the construction of the vehicle<sup>28</sup>, mechanical failure of the vehicle<sup>29</sup>, human failure of the driver<sup>30</sup> will not count as an unavoidable event.

<sup>26</sup> Tekinay/Akman/Burcuoğlu/Altop, p.527-528; Eren p.676; Kılıçoğlu p.390; Eren, Akit Dışı Sorumluluk, p.183.

<sup>27</sup> Oğuzman / Öz, p.202; Nomer, p.194; Eren p.704; Kılıçoğlu p.399; Hatemi/ Gökyayla p.157.

<sup>28</sup> Oğuzman / Öz, p.202; Eren p.703; Kılıçoğlu p.398; Eren, Akit Dışı Sorumluluk, p.202. E.g. A broken tire chain causing the damage does not count as an unavoidable event. General Assembly of Turkish Court of Cassation, Case No.: 2012/4-107 Decision No.: 2012/326 dated 30.5.2012

Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015).

<sup>29</sup> In this case, liability for defective products may be in question. See Nomer, p.192; Eren p.703; Eren, Akit Dışı Sorumluluk, p.202.

<sup>30</sup> Nomer, p.194; Eren p.702; Kılıçoğlu p.397. To illustrate, death of the driver does not count as an unavoidable event. General Assembly of Turkish Court of Cassation,

These kinds of situations cannot even constitute basis for a reduction in the amount of compensation to be paid.

## V. Injured Party's Contributory Fault (Negligence)

Contributory negligence is an important element of Turkish tort law. The role contributory negligence plays in the context of strict liability is the same as it plays in the context of fault based liability. The aim here is to adequately attribute to each party involved their own part of the loss<sup>31</sup>. Thus victim's fault will be considered as a contributing factor to his hurt and the damages awarded to him will be reduced in accordance with RTA Art. 86/2. This approach is possible towards all persons. In other words this approach reduces the liability of the tortfeasor by taking the contributory fault (negligence) of the victim into account, regardless of victim's age or other features<sup>32 33</sup>.

It shall also be noted that, according to the provisions of RTA Art. 90<sup>34</sup>, the form and content of the compensation will be subject to TCO Art. 51<sup>35</sup>.

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Case No.: 2012/11-1096 Decision No.: 2013/382 dated 20.3.2013 Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015).

<sup>31</sup> For detailed analysis of the legal consequences of contributory negligence see Başak Baysal, *Zarar Görenin Kusuru*, İstanbul, 2012.

<sup>32</sup> Oğuzman / Öz, p.208; Tekinay/Akman/Burcuoğlu/Alttop, p.540; Nomer, p.193; Eren p.707; Kılıçoğlu p.401.

<sup>33</sup> 17th Circuit of Turkish Court of Cassation Case No: 2013/503 Decision No.: 2013/3122 dated 11.3.2013 LegalBank ([www.legalbank.com](http://www.legalbank.com)) (Last Visited: November 12, 2015).

<sup>34</sup> After the presentation of this conference paper some RTA provisions have been amended as we've previously mentioned. Latest amendment related to RTA Art. 90, which have been made with Law No: 6704 dated 14.04.2016, shall be expressed at this point. According to the new provision of RTA Art. 90, compensation within the scope of mandatory liability insurance is subject to the procedures and principles stipulated in RTA and the general conditions prepared in the framework of this Act. As regards the question of reparations and compensation, matters not

## VI. Non-Paying Passengers Traveling in the Motor Vehicle

In these cases victim's claims can be based on the general provisions according to the provisions of RTA Art.87<sup>36</sup>. As stated, TCO Art. 49/1 and TCO Art. 66 shall be applied regarding the liability in this sense. The exclusion of the injuries suffered by the non-paying passengers from the scope of RTA shall be deemed as a weakness.

## VII. Liability of the Driver

In those cases where the accident occurs while the motor vehicle is driven by a third person other than the operator than the liability of the driver will be based on the general fault provision of TCO Art. 49/1<sup>37</sup>.

## VIII. The Obligatory Insurance Imposed by the RTA and its Function

The introduction of strict liability is important and can be deemed as a regulation in favor of the victims. But imposing strict liability regulations helps the victims of traffic accidents only so long as the tortfeasors can pay.

The regulations set forth in RTA Art. 91-93 regarding the obligatory insurance, impose an obligation on insurers to provide the minimum mandatory coverage and this can be deemed the protection of the public is assured<sup>38</sup>. It shall be noted that not only the strict liability regulations but also tort law in general is very much

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regulated in RTA and the general terms and provisions, tort provisions of TCO shall be applied.

<sup>35</sup> See Oğuzman / Öz, p.208 for details and comparison.

<sup>36</sup> Oğuzman / Öz, p.200; Tekinay/Akman/Burcuoğlu/Altıp, pp. 526-527; Eren p.708; Kılıçoğlu p.403; Hatemi/ Gökyayla p.156.

<sup>37</sup> Oğuzman / Öz, p.220; Tekinay/Akman/Burcuoğlu/Altıp, p.533; Nomer, p.192; Eren p.689; Kılıçoğlu p.375.

<sup>38</sup> Rayegan Kender, Türkiye'de Hususi Sigorta Hukuku, 14th ed. (updated), XII Levha, İstanbul, 2015, pp.6-7; Tekinay/Akman/Burcuoğlu/Altıp, p.542; Nomer, p.194; Eren p.718; Hatemi/ Gökyayla p.157.

influenced by the development of the insurance possibilities<sup>39</sup>. Thus the establishment of the obligatory insurance in this context can be deemed as factor to balance the high operational risks of the motor vehicle. In addition to that many Turkish drivers voluntarily obtain insurance coverage<sup>40</sup>. It is also very important to highlight that the victim has been given a right of action against the insurer according to RTA Art. 97<sup>41</sup>.

### **IX. Liability Regarding the Cases where the Motor Vehicle is not in Operation**

The operator of a motor vehicle may also be held liable for the consequences of the road traffic accidents even if the car is not 'in operation'.<sup>42</sup> This is the case if the operator is to blame for the accident or if a fault in the car caused the accident<sup>43</sup>. Such a case constitutes a combination of fault liability and strict liability. (See RTA Art. 85/2 for details.)

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<sup>39</sup> See van Dam, p.816.

<sup>40</sup> Nomer, p.194.

<sup>41</sup> After the presentation of this conference paper some RTA provisions have been amended as we've previously mentioned. Latest amendment related to RTA Art. 97, which have been made with Law No: 6704 dated 14.04.2016, shall be expressed. According to the new provision of RTA Art. 97, the victim shall submit a written claim to the related insurance company before going to litigation within the limits prescribed by the liability insurance policy. If the insurance company does not reply in written within 15 days from the date of submission of the claim or in case of any dispute concerning whether the written answer meets the demand or not, the victim may go to litigation for damages or may choose to arbitrate within the framework of Law No: 5684.

<sup>42</sup> Oğuzman / Öz, p.213; Tekinay/Akman/Burcuoğlu/Alttop, p.710; Nomer, p.186; Eren p.695; Kılıçoğlu p.387; Hatemi/ Gökyayla pp.156-157.

<sup>43</sup> Eren p.698; Kılıçoğlu p.387.

## **X. Assessing the Situation: Against whom can the Victim of a Road Traffic Accident Claim Damages Resulting from that Accident?**

Based on the liability construction mentioned above, we need to clarify one last issue before getting on the compensation system. As a victim of road traffic accident, one can always direct his claim to the one/s that is deemed liable under the provisions mentioned above<sup>44</sup>. But a claimant demanding damages, primarily has to assess the economic power and the fault level of the other side. In most of the cases with regard to road traffic accidents the address shall usually be the insurance company since the amount of the compensation stemming from the road traffic accident might be high in value for the tortfeasor<sup>45</sup>.

Claims for compensation must be submitted to the insurer of the party responsible for the damage. Victims are authorized to demand the compensation from the insurer by the means of a lawsuit within estimated boundaries of compulsory liability insurance<sup>46</sup>.

Of course there is always the possibility of the absence of insurance. Although compulsory automobile liability insurance

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<sup>44</sup> See supra Section III ff.

<sup>45</sup> "...Compulsory ... insurance sub LoB accounted for approximately 74% of the policies issued in land vehicles liability insurance in 2014. The share of the sub LoB in direct premium volume and claim payments are 91% and 98%, respectively..." See Republic of Turkey Prime Ministry Undersecretariat of Treasury, "Annual Report about Insurance and Individual Pension Activities", 2014, p.44.

<sup>46</sup> After the presentation of this conference paper some provisions of RTA have been amended. Latest amendment related to RTA Art. 97, which have been made with Law No: 6704 dated 14.04.2016, shall be expressed at this point. According to the new provision of RTA Art. 97, the victim shall submit a written claim to the related insurance company before going to litigation within the limits prescribed by the liability insurance policy. If the insurance company does not reply in written within 15 days from the date of submission of the claim or in case of any dispute concerning whether the written answer meets the demand or not, the victim may go to litigation for damages or may choose to arbitrate within the framework of Law No: 5684.

(which is also called as traffic insurance) is required for every vehicle in Turkey according to provisions of RTA Art. 91, victims may face with cases where the involved motor vehicle is not insured. For those cases Turkish lawmaker was used to regulate a trust account in order to compensate the damages caused by a driver who lacks traffic insurance<sup>47</sup>. It has to be mentioned that the regulations regarding this trust account is abolished in 2007 with Law No. 5684<sup>48</sup>.

## **XI. Compensation**

### **A. General View**

Victims of road traffic accidents may face several types of injuries as a result of the accident. Material injuries which will give victim the right to demand so called “pecuniary damages”. The compensation can be claimed by the injured party for the amount required to restore the damaged vehicle to its former condition<sup>49</sup>.

The injured party can also claim for loss of use with a daily rate depending on the type of the vehicle<sup>50</sup>. In line with the scope of this paper, below we will focus on the compensation for personal injuries and death. In order to present the structure preferred by the lawmaker, it is important to make a distinction between the cases that victims of road traffic accidents stay alive but get injured and cases that cause death of the victims of road traffic accidents.

### **B. Cases that Victims of Road Traffic Accidents Stay Alive but Get Injured**

In cases that victims of road traffic accidents stay alive but get injured, TCO Art. 54 define the types of damages that the person liable for a tortuously inflicted personal injury has to pay. In other

<sup>47</sup> Oğuzman / Öz, pp.208-209; Tekinay/Akman/Burcuoğlu/Altıp, p.543; Nomer, p.196; Eren p.721.

<sup>48</sup> Official Gazette, 14 June 2007 No.: 26552, enacted: 3 June 2007.

<sup>49</sup> Oğuzman / Öz, p.110; Tekinay/Akman/Burcuoğlu/Altıp, p.786; Nomer, p.209; Eren p.741; Kılıçoğlu pp.411-412; Hatemi/ Gökyayla p.159.

<sup>50</sup> Oğuzman / Öz, p.111; Tekinay/Akman/Burcuoğlu/Altıp, p.787; Nomer, p.209; Eren p.742; Kılıçoğlu p.412; Hatemi/ Gökyayla p.159.

words, victim of a road traffic accident can claim for damages pursuant to TCO Art. 54 in cases of personal injury. It must be noted that not only physical injury but also mental (psychological) injury can cause pecuniary loss and non-pecuniary loss.

The victim may demand the specific damages referred by TCO Art. 54 are:

- Medical expenses
- Lost wages
- Loss or impairment of working capacity
- Loss resulting from jeopardized economic future

In terms of date of damage assessment, the damage from bodily injury is to be calculated on the day of the award according to TCO Art. 75<sup>51</sup>.

Most special laws that provide for strict liability refer to general regulations of the TCO, including TCO Art. 56, on the subject of reparation. RTA is one of those legal regulations. TCO Art. 56/1 provides for the payment of an “appropriate sum” for non-pecuniary prejudices in case of bodily injuries under certain preconditions. TCO Art. 56/2 also allows the ones who are closely related to the heavily injured victim to claim reparation from the liable third party<sup>52</sup>. Spouse, parents, siblings and in special cases fiancé may be considered as the ones who are closely related to the victim<sup>5354</sup>. The

<sup>51</sup> For detailed analysis see Oğuzman / Öz, p.130; Nomer, p.218; Kılıçoğlu p.429.

<sup>52</sup> Nomer, p.235; Haluk Burcuoğlu, “Yeni Yasal Düzenlemeler Işığında Bedensel Zararların Tazmini Esasları ve Usulü Kongresi”, Ankara Barosu, 2013, p.16.

<sup>53</sup> Oğuzman / Öz, pp.101-102; Tekinay/Akman/Burcuoğlu/Altıp, pp.837-842; Nomer, p.235; Fulya Erlüle, « 6098 Sayılı Türk Borçlar Kanunu’nda Beden Bütünlüğünün İhlalinden Doğan Manevi Tazminat Talebi », MÜHFED, Özel Hukuk Sempozyumu Özel Sayısı, 6098 Sayılı Türk Borçlar Kanunu Hükümlerinin Değerlendirilmesi Sempozyumu (3-4 Haziran 2011), Sempozyum No: III, Prof.Dr.Cevdet YAVUZ’a Armağan, 2011, p.145 ft.2. See for the discussion under the former TCO (Law No. 818) Nomer, p. 234.

<sup>54</sup> The ones who are closely related to the victim do not have to be the successor of the victim. 17th Circuit of Turkish Court of Cassation, Case No: 2013/8536 Decision No.: 2013/8925 dated 13.6.2013 Kazancı Precedent Database (www.kazanci.com) (Last Visited: November 23, 2015).

mentioned are the ones who are affected not directly but in a reflective way.

Here it must be stated that the characteristic of the injury suffered shall be severe in order to be regarded within this context<sup>55</sup>. This is a subjective criterion and shall be evaluated according to the facts of the case. Before 2012 codification, the closely related ones were not allowed to claim non-pecuniary damages in case of a bodily injury, even the injury is severe<sup>56</sup>. After the ruling of Turkish Court of Cassation (which is so called a principle ruling), courts started to rule in favor of the closely related ones especially when a severe injury or severe after-effect is in question<sup>57</sup>. After 2012 codification, the closely related ones are allowed to claim non-pecuniary damages in case of a bodily injury by law, which can be deemed as a real improvement<sup>58</sup>.

TCO Art. 56/1 is also referring to special circumstances, which means that certain degree of severity of the injury is required even for the application of the first article.

Each case is unique and requires specific attention: the specific circumstances of each case will be determinants of compensation level and this is highlighted in the wording of the related article (see TCO 56/1). The same injury may have different consequences for the

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<sup>55</sup> Burcuoğlu, p.16; Seda İrem Çakırça, "6098 Sayılı Türk Borçlar Kanunu'na Göre Ağır Bedensel Zararlarda Yakınların Manevi Tazminat Talebi", Prof. Dr. Aydın Zevkliler'e Armağan, C.I, p.790.

<sup>56</sup> 21st Circuit of Turkish Court of Cassation, Case No: 1997/8067 Decision No.:1997/8106 dated 8.12.1997 and 21st Circuit of Turkish Court of Cassation, Case No: 2004/24 Decision No.: 2004/1413 dated 23.02.2004 Kazancı Precedent Database (www.kazanci.com) (Last Visited: May 12, 2016).

<sup>57</sup> Oğuzman / Öz, p.263; General Assembly of Turkish Court of Cassation, No.:11-22/430, dated 26.4.1995; General Assembly of Turkish Court of Cassation, No.:4-251/265 dated 01.04.1998 Kazancı Precedent Database (www.kazanci.com) (Last Visited: May 12, 2016). See for further information and comparison with Swiss Law Erlüle, p.149 ff.

<sup>58</sup> Oğuzman / Öz, p.258; Kılıçoğlu p.438; Legislative Intent of Art. 55, Grand National Assembly of Turkey, Draft Law No. 6098 and Committee of Justice Report (2011)(<http://www.kgm.adalet.gov.tr/Tasariasamalari/Kanunlasan/2011Yili/kanmetni/6098ss.pdf>) (Last Visited: November 12, 2015).

victims of traffic accidents since some injuries can affect the careers and lives of victims differently<sup>59</sup>. The loss of a finger by a professional pianist will have a different impact on his career than the same loss for an opera artist. Thus the level of compensation may be adjusted according to the specific factors of the case<sup>60</sup>.

### C. Cases that Cause Death of the Victims of Road Traffic Accidents

In case of the death of a victim, people who indirectly effected due to the death have right to claim for material and moral damage such as the victim's relatives, mother, father, spouse, children, siblings, fiancé and the persons who are in the care of the victim.<sup>61</sup> Those are people who are in close relation to the victim.

The ones who are in close relation to the deceased are entitled to claim compensation:

- Funeral expenses<sup>62</sup>
- Medical expenses and victims losses with regard to the loss or impairment of working capacity if the injured party has stayed alive for a while after the accident<sup>63</sup>

According to the provisions of TCO Art. 53/3, if the injured person is died as a result of the accident, surviving "dependents" can claim damages from the liable party. Those are the ones whom the victim was supporting in a way. Here the calculation will be based on the costs of maintenance of dependents to the extent that the deceased would have been able to pay the sum should he have survived according to TCO Art. 53/3<sup>64</sup>. According to TCO Art. 56/2, in the case of death, the judge may award an appropriate sum as

<sup>59</sup> See Eren p.770; Hatemi/ Gökyayla p.165.

<sup>60</sup> See Oğuzman / Öz, p.275.

<sup>61</sup> Oğuzman / Öz, p.99; Nomer, p.219; Eren p.755; Kılıçoğlu p.416; Hatemi/ Gökyayla p.163.

<sup>62</sup> Oğuzman / Öz, p.99; Nomer, p.219; Eren p.752; Kılıçoğlu p.415.

<sup>63</sup> Oğuzman / Öz, p.99; Nomer, pp.220-221; Eren p.753; Kılıçoğlu p.414.

<sup>64</sup> Oğuzman / Öz, p. 106; Tekinay/Akman/Burcuoğlu/Altop, p.638; Nomer, p.219; Eren p.760; Kılıçoğlu p.417.

reparation to the ones closely related to the deceased. Here the assessment of the special circumstances is also crucial<sup>65</sup>.

## **XII. Non-Pecuniary Damages Under Turkish Law: How it functions?**

The non-pecuniary damages under Turkish law is still not functioning as a satisfaction but rather the purpose of procuring for the injured party (or the one who is closely related to the injured or dead victim when regulated by law) through a monetary payment, an amenity to offset mental distress, reduced enjoyment of life<sup>66</sup>. We can observe that in the most recent rulings, Turkish Court of Cassation is aiming to set the reparation amounts in severe cases of non-pecuniary impairment considerably higher than before<sup>67</sup>. The claim to non-pecuniary damage is basically inheritable and transferable<sup>68</sup>. One of the preconditions for the inheritance is that the person entitled to claim has expressed his intention to assert claims before his death, according to the TCC Art. 25/4<sup>69</sup>.

## **XIII. The Amount of Compensation: Important Role of Judicial Discretion**

Injuries and/or death may affect the victims and the ones who are closely related to the victims differently. In this regard, judges supposed to have great discretion in determining the amount of the compensation<sup>70</sup>. TCO Art. 51/1 clearly states that the judge

<sup>65</sup> Nomer, p.219; Kılıçoğlu p.439.

<sup>66</sup> "Satisfaction" is a notion that is taken from Swiss Law. Turkish Legislator instructed the judge to weigh all the surrounding circumstances when deciding the level of the award.

<sup>67</sup> See 17th Circuit of Turkish Court of Cassation, Case No: 2010/1488 Decision No.: 2010/4651 dated 24.5.2010 Kazancı Precedent Database (www.kazanci.com) (Last Visited: November 23, 2015).

<sup>68</sup> Oğuzman / Öz, p.267; Tekinay/Akman/Burcuoğlu/Altıp, p.923; Nomer, p.236; Eren p.787; Hatemi/ Gökyayla p.183.

<sup>69</sup> Oğuzman / Öz, pp.267-268; Tekinay/Akman/Burcuoğlu/Altıp, p.923; Nomer, p.236; Eren p.788; Hatemi/ Gökyayla p.183.

<sup>70</sup> 4th Circuit of Turkish Court of Cassation, Case No: 2012/5054 Decision No.: 2012/7616 dated 30.4.2012 Kazancı Precedent Database (www.kazanci.com) (Last Visited:

determines the form and extent of the compensation provided for loss or damage incurred, with due regard to the circumstances and the degree of culpability.

Where the injured party consented to the action which caused the loss or damage or circumstances attributable to him helped give rise to or compound the loss or damage or otherwise exacerbated the position of the party liable for it, TCO Art. 52/1 gives the judge the discretionary power to reduce the compensation due or even dispense with it entirely. In cases in which the loss or damage was caused neither willfully nor by gross negligence and where payment of such compensation would leave the liable party in financial hardship, the judge may reduce the compensation according to the provisions of TCO Art. 52/2<sup>71</sup>.

The level of the compensation on the other hand, could be argued. It is not easy to objectively and comparatively evaluate compensation levels as low, adequate or high. Nonetheless at this stage it is possible to point out the criteria that have to be taken into account while determining the amount of the compensation.

The question here is whether 'family', 'profession', 'standard of living' and 'social statuses' shall be taken into account while determining the amount of the compensation or not. When the answer is positive, it's widely accepted that the victims may feel compensated. However, when the answer is negative, it's widely accepted that the victims may feel under-compensated. These criteria had been covered by former regulations of TCO but cancelled by the effectuated code on the grounds that the judge has given a great discretionary power and it is not necessary to explicitly state those criteria in the wording of the regulation<sup>72</sup>.

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November 23, 2015); 21st Circuit of Turkish Court of Cassation, Case No: 2016/986 Decision No.: 2016/4813 dated 21.3.2016 Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015); 11th Circuit of Turkish Court of Cassation, Case No: E. 2009/1969 Decision No.: 2010/8243 dated 12.7.2010 Kazancı Precedent Database ([www.kazanci.com](http://www.kazanci.com)) (Last Visited: November 23, 2015).

<sup>71</sup> For detailed information see Nomer, s. 223 ff.

<sup>72</sup> See Official Reasoning of TCO Art. 51/1.

#### XIV. Form of Compensation

It is at the discretion of the judge whether the compensation for bodily injury or death takes the form of an annuity or a lump sum; the judge determines the type and size of compensation for the damage that has occurred according to the TCO Art. 51<sup>73</sup>. In practice, a lump sum is usually awarded to the injured party in Turkey<sup>74</sup>.

Under certain circumstances it is not possible to determine the exact scope of the bodily injury at the time of the compensation judgment. In those cases the judge may keep and exercise his authority to make alteration in compensation judgment for the two consecutive years starting from the date of the finalization of judgment according to TCO Art. 75.

#### XV. Statutory Prescription Period

Claims for pecuniary damages based on the provisions of RTA (against the operator of the motor vehicle or an insurance company) have a statutory prescription period of 2 years starting from the time when the damage and the perpetrator have become known by the victim<sup>75</sup>. (See RTA Art. 109). In any case, duration of 10 years starting from the date of the road traffic accident, is the long-stop period that shall be taken into account<sup>76</sup>. If the traffic accident requires a criminal case procedure then prescription shall be prolonged pursuant to Penal Law, thus longer prescription durations shall become valid<sup>77</sup>.

<sup>73</sup> Oğuzman / Öz, p.113; Tekinay/Akman/Burcuoğlu/Altop, p.672; Nomer, p.222; Kılıçoğlu p.774.

<sup>74</sup> Nomer, p.222; Hatemi/ Gökyayla p.169.

<sup>75</sup> Oğuzman / Öz, p.211; Nomer, p.244; Eren p.830; Kılıçoğlu p.503; Hatemi/ Gökyayla p.157; 17th Circuit of Turkish Court of Cassation, Case No: 2013/16843 Decision No.: 2015/4189 dated 12.3.2015 Kazancı Precedent Database (www.kazanci.com) (Last Visited: November 23, 2015)

<sup>76</sup> Oğuzman / Öz, p.211; Nomer, p.244; Eren p.833; Kılıçoğlu p.503; Hatemi/ Gökyayla p.157.

<sup>77</sup> Oğuzman / Öz, p.211; Nomer, p.242; Eren p.834; Kılıçoğlu p.488; Hatemi/ Gökyayla p.157. 17th Circuit of Turkish Court of Cassation, Case No: 2013/3218 Decision No.: 2014/2861 dated 3.3.2014 Kazancı Precedent Database (www.kazanci.com) (Last

Claims for non-pecuniary damages of road traffic accident victims on the other hand, shall be based on the provisions of the TCO (with the reference of RTA Art. 90<sup>78</sup>) thus there is a statutory prescription period of 2 years starting from the time when the damage and the perpetrator have become known by the victim<sup>79</sup>. It has to be noted that a 10 year long-stop period is also applicable here according to the related provisions of TCO Art. 72)<sup>80</sup>.

One additional point, however, still remain to be considered. According to the abovementioned provisions, a short period of prescription that is based on a subjective criterion (knowledge of the victim) and a long-stop period of ten years (from the moment when the wrongful act –here the accident- was committed, regardless of the victim’s knowledge, shall be applied together. As seen, personal injury claims are treated as the same as all the other types of claims and subject to the general prescription regime. However, personal injuries are generally regarded as more serious than property damage. Thus a particular importance has to be attached to the former with regard to the prescription periods. At this stage it is important to highlight the clear international tendency towards implementing special prescription provisions to be applied in personal injury cases<sup>81</sup>.

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Visited: November 23, 2015); 17th Circuit of Turkish Court of Cassation, Case No: 2009/6982 Decision No.: 2009/5833 dated 29.9.2009 Kazancı Precedent Database (www.kazanci.com) (Last Visited: November 23, 2015).

<sup>78</sup> After the presentation of this conference paper some RTA provisions have been amended as we’ve previously mentioned. Latest amendment related to RTA Art. 90, which have been made with Law No: 6704 dated 14.04.2016, shall be expressed. According to the new provision of RTA Art. 90, compensation within the scope of mandatory liability insurance is subject to the procedures and principles stipulated in RTA and the general conditions prepared in the framework of this Act. As regards the question of reparations and compensation, matters not regulated in RTA and the general terms and provisions, tort provisions of TCO shall be applied.

<sup>79</sup> Oğuzman / Öz, p.211; Nomer, p.244; Eren p.830; Kılıçoğlu p.505; Hatemi/ Gökyayla p.157.

<sup>80</sup> Oğuzman / Öz, p.74; Nomer, p.241; Eren p.833; Kılıçoğlu p.487; Hatemi/ Gökyayla p.157.

<sup>81</sup> See Reinhard Zimmermann, *Comparative Foundations of a European Law of Set-Off and Prescription*, Cambridge, 2004, pp. 62-111 for detailed comparative analysis of the highlighted issue.

## XVI. Importance of Road Traffic Accidents Involving Visiting Victims

Visitors in Turkey are also at risk of road traffic accidents. According to the official Road Traffic Accidents Statistic Report of Turkish Statistical Institute<sup>82</sup>:

- Total number of foreign persons involved in road traffic accidents in Turkey in 2013 → 3414
- Number of persons involved in accidents with death → 124
- Number of persons involved in injured accidents → 3289
- Number of persons killed → 70
- Number of persons injured → 2717

Non-residents involved in road traffic accidents generally fall into two different categories. The first main profile concerns tourists involved in road traffic accidents. The second profile relates to cross-border workers. There is no doubt that the impact of the road traffic accident will be different depending on the profile. It's most likely that the cross-border worker may be covered by labor insurance policies. The shock of the tourists, who are far away from their home, may be different. And when we consider family vacations, the likelihood of children being involved in road traffic accidents involving tourists is also greater. How the accident will affect them?

We do not have any data distinguishing the types of the tourists (as the ones with rental cars / coach passengers / pedestrians...) or whether they are more at fault than local residents. The absence of comprehensive and comparable data makes it very difficult to comment on the legal consequences of road traffic accidents involving visitors. But it is obvious that over the last decade there has been an increased number of compensation claims from visiting victims and this issue would definitely be determined specifically in order to point out the hardship and create more satisfactory conditions for those victims.

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<sup>82</sup> "Road Traffic Accidents Statistic Report", Turkish Statistical Institute ([http://www.tuik.gov.tr/Kitap.do?metod=KitapDetay&KT\\_ID=15&KITAP\\_ID=70](http://www.tuik.gov.tr/Kitap.do?metod=KitapDetay&KT_ID=15&KITAP_ID=70)) (Last Visited: November 12, 2015).

## **XVII. Conclusion**

The safety of roads has been improved by physical measures in Turkey and we all have benefitted from this improvement. But road traffic injuries can still be deemed as one of the important public health and development issue according to the official data supplied by the Turkish National Police Head of Traffic Services Department.

Turkish Law holds a strict liability with regard to the compensation for damage caused by motor vehicles. In this respect the position of road traffic victims are favorable when compared to traditional fault liability.

Compensation regime on the other hand has been greatly influenced by social and political circumstances; social security systems as well as the national health provisions. Turkish compensation practice can be analyzed in two aspects: in cases of pecuniary loss due to bodily injury or death, the awarded compensation may be deemed fairer when compared to the compensation awards in non-pecuniary damage. It is not possible to figure out the individual value of the non-pecuniary disadvantages in monetary terms. But the judge should be focused on severity of the injury and the loss of amenities of the claimant in order to award an adequate compensation. Turkish compensation system works well on the whole, but there are still important tasks to accomplish regarding liability law especially the non-pecuniary damages within this regard in the coming future.

The establishment of the obligatory insurance, as factor to balance the high operational risks of the motor vehicle, is in favor of the victims. In addition to that many Turkish drivers voluntarily obtain insurance coverage. It is also very important to highlight that the victim has been given a direct right of action against the insurer according to RTA Art. 97.

After 2012 codification, the closely related ones are allowed to claim non-pecuniary damages in case of a bodily injury by law, which can be deemed as a real improvement that also affects road traffic accident cases. This improvement makes the position of the victim and the closely related one to the victim more favorable without any doubt.

The provision that gives the judge an opportunity to keep and exercise his authority to make alteration in compensation judgment for the two consecutive years starting from the date of the finalization of judgment can also be deemed in favor of the victims, especially regarding the cases that is not possible to determine the exact scope of the bodily injury at the time of the compensation judgment.

Defense of contributory negligence on the other hand can be considered as a factor which makes the position of a road traffic victim less favorable since this approach reduces the liability of the tortfeasor by taking the contributory fault (negligence) of the victim into account. The exclusion of the injuries suffered by the non-paying passengers from the scope of RTA could also be deemed as another weakness.

Applicable prescription provisions have to be considered as another area that has to be analyzed carefully. Despite the fact that there is an international tendency towards implementing special prescription provisions to be applied in personal injury cases; the same prescription period regulations apply in all the injuries caused by a road traffic accidents regardless of the type of the injury.

One can claim that the levels of compensation of road traffic accident victims are not high enough. Especially when we make a comparison from common law - civil law perspective, it is possible to notice a difference between compensation levels. There are a lot of underlying policy factors, along with the difference between the substantive and procedural laws as well (e.g.: civil action claims raised by road car accident victims are not tried by juries in civil law countries so as in Turkey).

But despite the existing differences it is always possible to link the two perspectives by the help of unifying factors. The contact of the strict liability and related compensation regime with insurance law shall be valued and may be taken as a unifying factor in order to open a room for comparative discussions and legal borrowings as Markesinis had perfectly stated in his comparative treatise<sup>83</sup>.

We do strongly believe that this comparative approach would help to enhance national compensation practices in order to protect the

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<sup>83</sup> See B.S. Markesinis / H. Unberath, *The German Law of Torts (A Comparative Treatise)*, Oregon, 2002, p. 738.

victims of the road traffic accidents in a better way, even if there is no way to achieve a perfect compensation for personal injuries and death.

### ABBREVIATIONS LIST

Art.	Article
ed.	edition
ff.	folio
ft.	footnote
l.	Issue
No.	Number
p.	page
pp.	pages
RTA	Road Traffic Act
TCO	Turkish Code of Obligations
V.	Volume

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