

# Giménez Torres & Yúfera

## Abogados

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**Madrid Barcelona Tarragona Marbella**

# Compensation for personal injuries suffered by road accident casualties under Spanish Law

Warsaw, 19 September 2011

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# Introduction

- **Inexistence of a system up until the year 1995.**
- **Private Insurance Arrangement and Supervision Act 30/1995:** “Traffic ready reckoner”.
- **Constitutional Court Judgment 181/2000**, dated 29 June 2000, which made it compulsory to apply the ready reckoner in road accident cases.
- **Royal Decree 8/2004:** *System for evaluating the injuries and losses caused to people in road accidents.*

## **II. Application of the “system for evaluating injuries and losses caused to people in road accidents**

**( Annex to Legislative Royal Decree 8/2004)**

**II.a)** Types of injuries eligible for compensation.

**II.b)** Calculating the damages payable for personal injuries in the use of motor vehicles.

## **II.a) TYPES OF INJURIES ELIGIBLE FOR COMPENSATION.**

### **a. Death.**

Damages payable to the various relatives the deceased may have.

### **b. Permanent injuries, whether they are disabling or not.**

**b.1.** Sequelae: concept.

There is no independent valuation of pain and suffering

**b.2.** Permanent disability.

### **c. Temporary disabilities.**

**c.1.** Inpatient temporary disability.

**c.2.** Impeditive outpatient temporary disability.

**c.3.** Non-impeditive outpatient temporary disability.

In addition: expenses of providing medical, pharmaceutical and hospital assistance must at all events be paid

## II.b) CALCULATING THE DAMAGES PAYABLE FOR DEATH IN THE USE OF MOTOR VEHICLES.

- Damages payable to relatives: **fixed amount of money (moral damages included)**.
  - Depend on the members of the deceased's family
  - How old they are.
- **Correction factors:**
  - Deceased's income
  - Family circumstances.
  - Victim is sole boy/girl
  - Deceased are both parents
  - Lost of a foetus.
  - Casualty contribution to causing the accident

Tables I and II of the Annex to **Legislative Royal Decree 8/2004, 29<sup>th</sup> October**

## II.b) CALCULATING THE DAMAGES PAYABLE FOR PERSONAL INJURIES IN THE USE OF MOTOR VEHICLES.

Tables of the Annex to Legislative Royal Decree 8/2004: different types of personal injury and a financial value to be attached thereto.


- Secuela → Points → Euros.
- Correction factors are included: earnings, age, disability.
- **Casualty contribution to causing the accident or worsening its consequences**

Updated on a yearly basis.

## II.b) CALCULATING THE DAMAGES PAYABLE FOR PERSONAL INJURIES IN THE USE OF MOTOR VEHICLES.

### PERMANENT INJURIES (Permanent disability and sequelae).

#### Basic amount of the compensation

- The system lists and scores the various permanent injuries or sequelae (Table VI).   
Adobe Acrobat Document
- Medical expert report for evaluation of sequelae.
- Disfigurement (between 1 and 50 points).
- Points → euros: Table III.



## II.b) CALCULATING THE DAMAGES PAYABLE FOR PERSONAL INJURIES IN THE USE OF MOTOR VEHICLES.

### PERMANENT INJURIES

#### Some examples



#### Points

- 1 point (+disfigurement= 1 point)
- 55 - 60 points (+disfigurement= 35 points)
- 1 - 8 points

## II.b) CALCULATING THE DAMAGES PAYABLE FOR PERSONAL INJURIES IN THE USE OF MOTOR VEHICLES.

### **PERMANENT INJURIES (Permanent disability and sequelae).**

#### **Correction factors (Table IV)**

**Economic damage:** increase up to 75% depending on the casualty's annual income  
**Lucrum cessans.**

**Additional moral damage:** Sequela more than 75 points or the sequelae more than 90 point together.

**Partial, total and absolute permanent disability:** a number of fixed amounts in Euros.

**Great disability: need assistance of another person for daily life:** a number of fixed amounts in Euros.

**Adapting the vehicle and the house:** applicably to all permanent disability.

**Family moral damages**

**Death of a pregnant woman's foetus.**

It should be borne in mind that the resultant compensation for permanent injuries could also be reduced if the casualty already suffered from some kind of permanent injury or disability before the accident or contributed to causing the accident or worsening its consequences.

## **II.b) CALCULATING THE DAMAGES PAYABLE FOR PERSONAL INJURIES IN THE USE OF MOTOR VEHICLES.**

### **PERMANENT INJURIES (Permanent disability and sequelae).**

To sum up :

1. Determining the sequelae and the points allocated based on how serious they are (Table VI).
2. Adding the disfigurement points to the result (Table VI).
3. Converting the points to Euros (Table III)
4. Applying the correction factors to the resultant amount (Table IV).

## II.b) CALCULATING THE DAMAGES PAYABLE FOR PERSONAL INJURIES IN THE USE OF MOTOR VEHICLES.

### TEMPORARY DISABILITY.

Calculated and compensated independently.

Compatible with permanent injuries.

#### Basic amount of compensation

- The casualty will be compensated with a monetary amount for every day of disability.
- The system establishes three different types of temporary disability (Table V.A):
  1. Inpatient temporary disability (67,98.-€)\*.
  2. Impeditive outpatient temporary disability (55,27.-€)\*.
  3. Non-impeditive outpatient temporary disability (29,75.-€)\*.

\* *Year 2011 published financial values.*

## II.b) CALCULATING THE DAMAGES PAYABLE FOR PERSONAL INJURIES IN THE USE OF MOTOR VEHICLES.

### TEMPORARY DISABILITY.

#### Correction factors

- Increase compensation depending on the casualty's net annual personal employment income: rise by 75%.
- Lucrum cessans.
- Possible reduction up to 75% if the actual casualty contributed to causing the accident or worsening its consequences.

# III. Practical Case

- Accident resulting in the loss of an arm at the height of the right shoulder.
- For a 30 year-old right-handed casualty.
- A professional table-tennis player.
- Annual income of €46,000.
- The casualty was in hospital for 25 days, at home for 13 days during which he was unable to go about life as usual, and on leave for a further 9 days albeit not impeded for going about life as usual.

We will use *Year 2011 published financial values*.

# III. Practical Case

## **Permanent injuries (Permanent disability and sequelae).**

1. Determining the sequelae and the points allocated based on how serious they are (Table VI).

- Main permanent injury: amputated arm.
- **Score:** between 55 and 60 points (intermediate score of 57 points).

2. Disfigurement (Table VI).

- Between 1 and 50 point (intermediate 24 points)

The abovementioned gives us **81 points** in total.

# III. Practical Case

**Permanent injuries (Permanent disability and sequelae).**

3. Converting the points to Euros (Table III).

Puntos	Hasta 20 años	De 21 a 40 años	De 41 a 55 años	De 56 a 65 años	Más de 65 años
1	806,54	746,69	686,82	632,28	565,92
2	831,43	768,01	704,59	649,78	574,89
3	853,77	787,10	720,39	665,40	583,95
4	873,57	803,91	734,20	679,14	588,85
5	890,83	818,45	746,04	691,01	593,86
6	905,56	830,73	755,90	700,97	597,56
7	925,02	847,44	769,84	714,69	604,70
8	942,55	862,46	782,31	727,00	610,85
9	958,21	875,76	793,29	737,89	616,00



# III. Practical Case

**Permanent injuries (Permanent disability and sequelae).**

3. Converting the points to Euros (Table III).

Puntos	Hasta 20 años	De 21 a 40 años	De 41 a 55 años	De 56 a 65 años	Más de 65 años
10-14	971,96	887,37	802,80	747,38	620,18
15-19	1.142,31	1.045,59	948,84	879,95	692,08
20-24	1.298,77	1.190,90	1.083,01	1.001,73	757,75
25-29	1.454,92	1.335,80	1.216,70	1.123,21	824,82
30-34	1.601,10	1.471,49	1.341,88	1.236,94	887,39
35-39	1.737,55	1.598,16	1.458,77	1.343,13	945,61
40-44	1.864,55	1.716,07	1.567,60	1.441,95	999,59
45-49	1.982,31	1.825,43	1.668,55	1.533,60	1.049,41
50-54	2.091,13	1.926,48	1.761,84	1.618,30	1.095,20
55-59	2.235,90	2.060,63	1.885,35	1.730,79	1.160,27

# III. Practical Case

**Permanent injuries (Permanent disability and sequelae).**

**3. Converting the points to Euros (Table III).**

<b>Puntos</b>	<b>Hasta 20 años</b>	<b>De 21 a 40 años</b>	<b>De 41 a 55 años</b>	<b>De 56 a 65 años</b>	<b>Más de 65 años</b>
60-64	2.377,82	2.192,15	2.006,48	1.841,08	1.224,05
65-69	2.516,99	2.321,09	2.125,21	1.949,23	1.286,60
70-74	2.653,41	2.447,51	2.241,63	2.055,23	1.347,91
75-79	2.787,14	2.571,44	2.355,76	2.159,17	1.408,02
<b>80-84</b>	2.918,28	<b>2.692,95</b>	2.467,65	2.261,08	1.466,95
85-89	3.046,81	2.812,08	2.577,35	2.360,97	1.524,74
90-99	3.172,86	2.928,88	2.684,89	2.458,92	1.581,39
100	3.296,42	3.043,37	2.790,33	2.554,98	1.636,92

# III. Practical Case

**Permanent injuries (Permanent disability and sequelae).**

3. Converting the points to Euros (Table III).

In conclusion, for a 30 year-old young man with a permanent injury scoring 81 points, each point is valued at €2,692.95, which would give us a total basic compensation of €218,128.95:

**Basic amount of compensation:**

$$81 \times 2,692.95 = \text{€}218,128.95$$

# III. Practical Case

## Permanent injuries (Permanent disability and sequelae).

### 4. Applying the correction factors to the resultant amount (Table IV).

- **Financial losses:**

Casualty's annual income (€46,000) → increase of between 11% and 25%  
We would apply 15% → €250,848.29.

- **Correction for permanent disability:**

Right –handed professional table-tennis player → €80,000.

**Final compensation of €330,848.29.**

- Possible increase: **adapting the casualty's home and** expenses of providing **medical, pharmaceutical and hospital assistance, etc.**

# III. Practical Case

## Temporary disability.

### Basic amount of compensation

- 25 days as an inpatient (25 x €67,98 = €1,699.50)
- 13 impeditive days (13 x €55,27 = €718.51) and
- 9 non-impeditive days (9 x €29,75 = €267.75)

**Basic compensation for temporary disability will be €2,685.76.**

### Correction factors

Considering the casualty's annual income → €46.000 → 15% → 402,86

**Total compensation for temporary disability €3,088.62.**

# IV. Other issues

## – How to claim.

- Negotiations.
- Judicial claim:
  - a. Civil.
  - b. Criminal.

## – External claim handlers.

# IV. Other issues

- **Special rules in regard to payment of compensation.**
  - a. Interest.
    - Payment within three months and two years of the accident: interest equal to the legal interest of money plus 50%.
    - More than two years: no less than 20% **annual** interest.
  - b. Lifetime income.
  
- **Entities related to compensation of personal injuries in road accidents.**
  - a. The Insurance Compensation Consortium.
  - b. Spanish Auto Insurance Office (OFESAUTO)
  - c. UNESPA.

# V. De lege ferenda.

What is in the oven in Spain?



# Thanks for your attention

Warsaw, 19 September 2011

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