



In 2013 we had in Israel 277 people who were killed in car accidents, 74% men and 26% women. 62 people were killed in work accidents, half of them in accidents which occurred on building sites. Dozens died as a result of medical malpractice, exposure to toxic materials and other accidents. Almost all of these cases were brought to court.

According to the Israeli law, when a person dies as a result of an accident, there are two types of rights that rise from the event: The first is the Estate's right to claim the damages sustained by the dead person as a result of the Tort. The second is the dependents' right to claim damages sustained to them as a result of their supporters death.

There are cases where the estate is also the dependent. For example, wife and children under the age of 18 are usually dependent on the deceased person and also the beneficiaries of his estate. In other cases the estate and the dependents are not the same persons. For example, the adult children of the deceased are not dependent on him however they can still be the beneficiaries of his estate. That is also the situation when a person made a will and ordered his money to strangers. Those strangers are the beneficiaries, however they were not dependent on the deceased person.

Therefore, we have to distinguish between the two types of claims.

The estate enters the deceased person shoes, so the estate can claim all of the damages caused to the deceased person:

- Damages during the period of the illness
- Loss of future earnings
- Non-monetary damages
- Burial expenses

The claim of the dependents is for their own damages:

- Loss of support
- Loss of services
- Burial expenses

You can see that burial expenses are included in both types of claims, but of course, one can get compensation only once.

The purpose of the Tort Law is to reinstate the situation to its previous condition. According to this doctrine one has to examine the damage sustained by the family on the one hand, while on the other hand the "profit" gained by them due to the death of their beloved. Now, that the person is dead, he doesn't take any portion of his wife's salary, he doesn't eat nor needs new clothes, so the wife's salary goes totally to herself and other members of the family. This "profit" is deducted from the extent of damage.

As I mentioned before, the Estate enters the deceased person's shoes, and is entitled to claim the damages of the deceased. One should bear in mind that a person who dies as a result of a Tort does not always die immediately.

Sometimes there is a period (even a long one) during which the victim suffers from an on-going illness. For example, people who have developed cancer as a result of their exposure to toxic materials might suffer for a long period before dying.

When the person eventually dies, his Estate is entitled to claim all the damages which this person suffered during the period of the illness, such as loss of earnings, medical expenses, mobility expenses, and third party assistance.

A part of the Estate's claim is for Non-monetary damages. In this respect we mainly deal with the shortening of the lifespan as well as pain and suffering of the deceased.

Naturally, it is difficult to assess the amounts of Non-monetary damage. Unlike in cases under the General Tort Law, in cases under the Road Accident Compensation Law, the legislator bypassed this difficulty by determining that the compensation in respect of Non-monetary damage will be a fix price of approximately €8,000. You have to agree that this is a very modest amount for a loss of life.

On the other hand, according to the Road Accident Law, every injured is entitled to compensation without having to prove liability, so that the victim's rights are balanced.

In claims under the General Tort law we don't have any fix price. In order to assess the compensation for pain and suffering, it might be helpful to prove the duration of the victim's suffer.

However, even in cases of immediate death, the Estate is also entitled to compensation for pain and suffering and the amount usually depends on how intensely the case affects the Judge's heart.

For example, a person was injured in an explosion that happened in a Gas plant. We located a fireman who testified that the person was not killed immediately but ran out of the building, all burning, and managed to mumble a few words before he died. The Court ruled for his Estate an amount of €100,000 in respect of pain and suffering.

Another example: we had a big tragedy at the "Arad Festival" in the southern part of Israel. It was too crowded and young people ran over in panic on each other. Many were injured and some girls died. The Court gained the impression from the testimonies that the girls did not die immediately and ruled for the Estate of each of the girls an amount of €170,000 in respect of pain and suffering.

In another case, the Court described very poetically the last moments of horror which a young girl underwent before she drowned in the Jordan River during rafting, and ruled for the Estate €200,000 for her pain and suffering.

The other aspect of Non-monetary Damage is the shortening of lifespan. The many years the deceased person lost – the more money will be paid to his Estate in this regard.

You remember the worker who died following the explosion in the gas plant? The deceased was 55 years old

when he died and the Court ruled €80,000 in respect of the shortening of his lifespan by 25 years, a side of the sum he ruled for pain and suffering.

In another case, the Estate of a child aged 7 years who drowned in a swimming pool, received €150,000.

To sum up, while in claims according to the Road Accident Compensation Law the estate will receive a lump sum of €8,000 in respect of the Non-monetary damage, according to the General Tort Law, the Courts rule much higher amounts, however, liability should be proven.

An interesting question that raised in regard of pain and suffering was - What happens when a person lost consciousness but died only after a month, a year, or several years after a long coma?

A 9 years old boy drowned in a swimming pool. He laid unconscious for 10 days in a hospital until he died. Is the Estate entitled to compensation in respect of pain and suffering for those 10 days? The boy did not suffer since he was unconscious.... In the past, the Israeli court ruled that when a person loses consciousness, and afterwards dies, his estate is not entitled to compensation in respect of pain and suffering for the period the deceased was unconscious. This was recently changed by the Israeli Supreme Court, which accepted that the compensation should be granted not only for the suffering, but also for the loss of enjoyment of life. Even if this child did not suffer during the period of unconsciousness, he lost his ability to

enjoy all the small things which make us happy and therefore his estate is entitled to compensation.

From the estate claim we move on to the dependents claim. The dependents are: Parents, spouse (including the common-law Spouse) and children.

As above mentioned, the dependents' claim includes loss of support and loss of services which the deceased provided for his family. In reality, a person contributes to his family more than the salary that he brings home. The members of the family are entitled to compensation for the loss of these services when he dies.

Assessing the value of the services of a parent or a spouse is currently developing in courts' judgments. In the past, courts ruled compensation only when the woman died. A few years ago the Israeli Supreme Court finally ruled that a husband also contributes to the housekeeping and education of the children, and when he dies the dependents are entitled to compensation for loss of services provided by him as well.

The last item is the loss of income in the following years, after a person dies. One how died at the age of 50, still had many working years ahead of him. In the past only the dependents were entitled to compensation in respect of loss of financial support, but several years ago the Supreme Court of Israel ruled that the estate is also entitled to compensation in respect of the dead person's loss of earnings during the "lost years".