

On the Calculation of Compensation for Mental Damage

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ABSTRACT. *The calculation of the amount of compensation for mental damage, because the legal provisions do not expressly stipulate, in the case, how to convert to specific figures, the practice is mostly determined by the discretion of the judge combined with the investigation factors. There are six factors in the judicial interpretation, which are used as the reference for the judge to calculate the amount of money. However, when these factors are applied in practice, the judge does not explain the rationality of these factors. From then on, this paper attempts to analyze the factors of investigation of compensation for mental damage, so as to make the application of investigation factors more reasonable and pursue the final case justice.*

KEYWORDS: *Mental damage; Investigation factors; Discretion*

1. Difficulties in calculating the amount of compensation for mental damage

The purpose of compensation for mental damage is to comfort the sufferings. Based on the situation of the victim, the principle of subjective compensation for damage is adopted. However, the factors of the infringer, such as the degree of fault and profit of the infringer, should also be examined. Different from property damage and personal damage, mental damage has many difficulties in calculation. First, individual differences. Mental damage, in essence, is the problem of the victim's own feelings. The calculation of mental damage compensation must depend on the sufferings of the victim and be measured subjectively. Different people may have different degrees of subjective mental pain in the face of the same infringement, which requires the judge to make a comprehensive and discretionary decision. Second, you can't communicate with money directly. Spiritual damage does not have direct property content and can not be quantified directly by means of money. In China, the amount of spiritual damage can not be unified. For example, according to Anhui Province, there are three levels: 1. 1000-5000 for those who do not constitute the disability level; 2. 5000-80000 for those who constitute the combined disability level; 3. 50000-80000 for those who cause death. Fujian Province is divided into general tort 1000-10000; serious tort 10000-50000; especially serious tort 50000-100000. However, the reply of Fujian Academy of higher learning to the difficult questions was basically the same as that of Anhui in 2005. How can the calculation of mental damage compensation lead to such complexity? Because mental damage compensation has multiple functions, both compensation and soothing [1], which is to seek alternative indirectly to reduce pain. There is no absolute standard to follow. Third, the principle of uncertainty is applicable. The calculation of property damage compensation and personal damage compensation can be measured according to the principle of full compensation, the principle of offsetting profit and loss, the principle of offsetting fault and the principle of property compensation. However, the calculation of mental damage can not directly apply to the above principles. The premise of full compensation is that the damage compensation can be calculated, but the mental damage can not be directly quantified, so it can not be applied. There is a certain space for the principle of offsetting profit and loss and the principle of offsetting fault, and the benefit status or fault degree of the victim can be used as a reference factor to determine the amount. As far as the principle of property compensation is concerned, due to the diversity of relief methods for mental damage, its application is also limited.

2. Investigation Factors for the Calculation of the Amount of Compensation for Mental Damage

In our country, due to the short time to determine the mental damage compensation system, there is no authoritative functional and typed measurement standard for the amount of mental damage compensation. It mainly depends on the discretion of the judge combined with the investigation factors. In order to make the amount of mental damage compensation predictable, we should first clarify the investigation factors, and then make the measurement mode transparent. Six factors of investigation are listed in the judicial interpretation. First, the degree of fault. The degree of fault is very important for determining the amount of compensation for mental damage. The subjective mentality of the infringer is closely related to the degree of pain of the victim [2]. The degree of pain of the victim determines the degree of comfort for the victim. The degree of fault of the infringer

also involves the attitude of the infringer. The positive admission of the infringer can reduce the mental damage of the victim and be easy to comfort. After the event, the infringer apologizes in time and has a sincere attitude. The amount of compensation for mental damage will be reduced. Second, the specific circumstances of infringement. The specific circumstances of the infringer show the subjective mentality of the infringer, and then affect the comfort of the victim's pain. Third, the consequences of tort. In practice, there is a demand of "serious mental damage" party to support the compensation for mental damage, which shows the decisive role of the consequences of tort on the compensation for mental damage. The consequences of tort reflect the difference of legal interests before and after the victim is injured, which is an important factor for the judge to determine the amount of compensation. In addition, it should be clear that the social impact is also the embodiment of the consequences of tort, only the social impact is for the society, and the consequences of tort are for the victims themselves. Fourth, economic living standard. The amount of compensation for mental damage can not be separated from the level of social and economic development. The level of compensation for mental damage in a country is generally proportional to its economic development. The victim's attitude to money determines to what extent the compensation for mental damage can comfort his mental pain, while the victim's attitude to money depends on the local economic level. Fifth, the infringer gains profits. On the one hand, the law forbids anyone to gain profits through illegal acts; on the other hand, if the infringer gains benefits based on the loss of the victim, the inner pain of the victim will increase. Therefore, to impose compensation liability on the infringer not only prevents potential infringement, but also comforts the victim. However, this factor is only applicable in the case of infringement of spiritual personality right [3]. Sixth, the economic ability to take responsibility. When the amount of compensation for mental damage is fixed, we should focus on examining the legal interests of the victim. If the victim suffers the same degree, the amount of compensation obtained by the victim varies greatly due to the different resources of the infringer, which is contrary to the principle of fairness. Therefore, the economic capacity of the infringer is generally not examined.

3. Conclusion

The calculation of the amount of compensation for mental damage should be based on the investigation of factors and the discretion of the judge. The investigation factors should be selected and applied according to different situations. The investigation factors are not immutable. First, understand the specific application conditions of the investigation factors and apply the investigation factors reasonably according to different cases.

References

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