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Comparison of the Punitive Damage with Compensatory, Symbolic, Indirect and Aggravated Damages

By Ebrahim Taghizadeh

Payame Noor University

Abstract - The punitive damage is a kind of damage that should be compensated by the defendant for his/her conduct in applying damage tinted with insolence and malice to the plaintiff. The origin of this law institution was in Common Law especially in England which has been developed in other countries quickly. Some conditions should be provided for demanding the punitive damage. The conduct specified in the verdict of punitive damage is the behavior tinted with insolence committed by the defendant; on the other hand, occurrence of loss is one of the conditions required for demanding the compensation of punitive damage; while in other kinds of damages, the required conditions for claiming the indemnity are different.

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I. INTRODUCTION

In recognition of punitive damage institution, it is necessary to find out the characteristics of the defendant's conduct in a case of punitive damage upon which he/she is obliged to compensate this kind of damage. What are the behavioral characteristics available in punitive damage? Is the loss occurrence necessary in punitive damage? On the other hand, in different legal systems, various kinds of damage including compensatory, symbolic or nominal, indirect and aggravated damages are studied in order to describe punitive damage [1-4]. The research method used in this article is descriptive-analytical and the documentation and library process were employed.

II. THE CONDITIONS REQUIRED FOR DEMANDING THE COMPENSATION OF PUNITIVE DAMAGE

In recognition of punitive damage institution, it is necessary to find out the characteristics of the defendant's conduct in a case of punitive damage upon which he/she is obliged to compensate this kind of damage, then, it should be responded to the question "Is the loss occurrence necessary in punitive damage?" In the present section, in addition to the abovementioned cases, we analyze the conditions of

punitive damage so that the differentiation of them from the other kinds of damage is facilitated.

III. THE MALICE IN CONDUCT SPECIFIED IN PUNITIVE DAMAGE

In cases related to punitive damage, whatever is considered as the common basis for punishment, is his/her conduct which should be analyzed to find out why it deserves such a heavy punishment. In different texts, any author employs different terms for describing the conduct specified in punitive damage; Sometimes, the terms "malice", "recklessness", "gross negligence" have been used. In Persian texts, in addition to the abovementioned terms, expressions such as "conduct tinted with deceit and imposture", "offensive conduct tinted with heedlessness", or "Conduct tinted with insolence" have also been used. In some of the states of the U.S.A. such as Mississippi, the legislators consider proving merely gross negligence and heedlessness and in some other states, intentional indifference and conduct tinted with malice as necessary [5]. In some other states, the verdict for punitive damage is applied only to the conducts that are specified by the statute laws and are tinted with fraud or malice by virtue of the Article 3294, Civil Law of California State [6].

As you see, there is no gross difference between the used terms about the subject of punitive damage, but as it is said, all of these terms may be included in this expression "The socially reprehensible conduct"[7]. However, reprehensible is a general term and may not be considered only for the conduct specified in the verdict issued for punitive damage because this term includes any fault concerning tortuous liability; even, the offense of criminal liability can be included in this term[8]. Therefore, it seems that whatever is chosen as the common aspect of the abovementioned terms and expressions is the same that is presented in definition of punitive damage; i.e., in the conduct specified in the verdict issued for punitive damage, the judge should ascertain the conduct tinted with insolence. Proving any fault committed by the defendant that is reprehensible is not sufficient [9]. Therefore, the conduct specified in the verdict issued for punitive damage is the conduct in which the defendant committed a behavior tinted with insolence in applying

Author : Department of Law, Payame Noor University, P. O. Box 19395-4697, Tehran, Iran. E-mail : eb_taghizadeh@yahoo.com

damage or loss. Wherever no damage incurred to the plaintiff, another institution is predicted in law of some of the countries. In such cases, the verdict is issued for symbolic damage that is different from punitive damage in various aspects, especially, the intensity (amount of damage). The analysis of judicial precedent and issued verdicts in this case, whether within Iran or abroad, also confirms the abovementioned points [14], because punitive damage is always compensated as a kind of surplus damage to the compensatory damage and is not a primitive institution [15].

IV. CONDITIONS OF PUNITIVE DAMAGE IN COMPARISON TO VARIOUS KINDS OF DAMAGES

To analyze the standing of punitive damage, firstly, it is necessary to study briefly different kinds of damages defined in various legal systems so that the position of punitive damage is clarified among them:

a) *Compensatory Damage*

As it is known from the title of this kind of damage, compensatory damage is used for compensating and removing the incurred losses and its objective is the restoration of the former situation; therefore, it is said compensatory damage and it is a damage the result of which is the incurrence of loss to others [16]. But, in punitive damage, the objective is preventing the individual from repeating the damaging action; therefore, it is a kind of error-oriented damage which focuses on the individual who applied damage and his fault against society [17], while compensatory damage is a loss-oriented damage in which the focus is on damaged individual so that the former situation is restored.

b) *Symbolic(nominal) damage*

Symbolic or nominal damage is a little amount of money which is given to the losing individual and this is the case where no essential and significant damage incurred to the losing individual in order to be compensated [18]. Therefore, it is evident that this kind of damage is a kind of punishment but it should be noted that its amount is trifle on the contrary of the punitive damage, and the incurred value to the individual is also insignificant in such a way that using "losing" term for him/her is not appropriate; therefore, compensatory damage is not paid in this case, i.e., it is not a kind of surplus damage; while, the punitive damage is surplus to the compensatory damage.

c) *Indirect Damage*

Indirect damage is a damage that the causation relation is not evident between it and the action which causes loss and usually, the court does not issue a verdict for its compensation and since it is caused by a remote cause, so, it is not demandable [19]. Therefore, if, presumably, this damage is demandable, it is

compensatory not punitive; therefore, it is different from punitive damage intrinsically.

d) *Aggravated Damage*

In some cases, the defendant's conduct may incur more loss to the plaintiff; i.e., it is added to incurred damage and the aggravated damages compensate the surplus loss [20]. Therefore, this kind of damage is compensatory and incurrence of loss should be proved; indeed, punitive damage is applied when no sufficient ordinary compensatory or aggravated damage is detected and there is need for punitive damage in order to achieve the objective [21]. It is worthy to be noted that punitive damage is comparable with recognizance, late payment damage, compulsion penalty, moral damage, and blood money institutions and they have common aspects, but since the aforementioned institutions have not much efficiency in the Iranian Law, sometime, they play the role of punitive damage in the Iranian Law.

V. CONCLUSION

As we found, some conditions are required for demanding punitive damage. Malice in committed conduct specified in punitive damage and incurrence of damage and loss were among the required conditions. In other words, in committed conduct specified in the verdict of punitive damage, the judge should pursue to ascertain the conduct tinted with insolence committed by the defendant; therefore, any kind of fault committed by the defendant which is reprehensible is not sufficient to be called as a punitive damage; So, the conduct specified in the verdict of punitive damage is the behavior in committing which the defendant calculated the profit and loss in applying damage. On the other hand, the doer incurs damage intentionally and with consideration to the fact that compensation of punitive damage is subsidiary and surplus to the compensatory damage; therefore, incurrence of loss is also one of the required conditions. While, in compensatory damage, the objective is restoration of the former situation, in the punitive damage, the goal is preventing the individual from repeating the harmful action. In symbolic damage, the trifle sum is paid to the injured party and is not surplus damage but in punitive damage a surplus is paid. In indirect damage, in spite that there is no causation relation between the loss and action, presumably if it is demandable, it is not compensatory. Sometimes, due to the conduct committed by the plaintiff, more loss may be incurred to him/her, therefore, the verdict of aggravated damage compensation is issued but the verdict of punitive damage is issued when, even the aggravated damage is not considered sufficient and the issuance of punitive damage compensation is necessary.

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