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CIVIL LIABILITY IN THE LAW OF THE REPUBLIC OF SERBIA: THE INJURED PARTY'S CONTRIBUTION TO THE OCCURRENCE OF DAMAGE

Abstract:

The injured party's contribution to the occurrence of damage is a highly complex institution. Contributory liability may be defined as the situation in which damage is not attributable solely to the tortfeasor but also to the injured party. In legal doctrine, one frequently encounters divergent opinions concerning both the scope and the extent of the injured party's contribution to the damage. A particularly contentious issue is whether the injured party's liability requires the element of fault or whether it may rest solely on the causal contribution to the damage. The aim of this paper-given the importance and complexity of the institute under analysis-is to dispel uncertainties, or at least to reduce them, through logically derived conclusions on the subject matter. A special emphasis is placed on presenting generalized solutions more concisely by clarifying which circumstances the court assesses when determining the amount, scope, and proportion of the injured party's contribution to the occurrence of damage.

Keywords*: contributory fault, shared liability, case law, tortfeasor's fault.*

INTRODUCTION

Damage is a very broad concept with which we encounter daily. According to professor Jakov Radišić, "damage is not a concept used solely by lawyers and having exclusively a legal meaning; rather, its significance extends beyond the legal sphere. Thus, damage may occur when someone misses an event or an action (the damage of not having read a certain book, of not having gone on an excursion), etc."[1] Nevertheless, in legal and normative terms, the concept of damage has a narrower meaning.[2]

1 See in the book: Radišić, J. (2021). *Obligaciono pravo – opšti deo, četrnaesto izdanje*. Pravni fakultet: Univerziteta u Nišu, p. 217.

2 *Ibidem.*

Damage constitutes an injury to the psycho-physical integrity of a person, as well as a certain loss in material terms. Everyone is obliged to refrain from actions by which damage may be caused to another person.[3] The principle prohibiting the infliction of damage is a crucial tenet of civil law.[4] The Law on Obligations of 1978 (hereinafter: LOO) itself provides that anyone who causes damage to another is obliged to compensate it, unless he proves that the damage occurred without his fault.[5]

The basic classification of damage is into material and non-material damage. Material damage represents a reduction of someone's property and/or the prevention of an increase in property. Non-material damage was for a long time a contentious issue and was defined conceptually for the first time with the entry into force of the LOO. Therefore, non-material damage constitutes the infliction of physical or psychological pain or fear on another. The elimination of the consequences of a damaging event on the property of the injured party constitutes compensation for material damage. Although material damage is exact, visible, and relatively straightforward to determine, the problem arises when one must determine the injured party's contribution to the occurrence of damage. In other words, when the extent and scope of the injured party's contribution to the damage must be assessed and determined, a simple task becomes highly complex and challenging, both for court experts and for the courts themselves.

Accordingly, the aim of this paper is to, through a detailed analysis of statutory solutions as well as case-law decisions, attempt to answer the contentious questions relating to the subject matter, with an emphasis on defining methods that would assist courts in rendering correct and equitable judgments in the context of determining the amount and scope of the injured party's contribution to the damage sustained.

2. THE CONCEPT AND TYPES OF DAMAGE

The Law on Obligations ("LOO") defines damage as the diminution of a person's property ("ordinary damage") and the prevention of its increase ("loss of profit"), as well as the infliction of physical or psychological pain or fear on another ("non-material damage"). An injured party who has contributed to the occurrence or aggravation of the damage is entitled only to proportionally reduced compensation. If it is impossible to ascertain which portion of the damage resulted from the injured party's own conduct, the court will award compensation in light of all the circumstances of the case. "They should receive compensation corresponding only to the adequate consequence of the tortfeasor's conduct, that is, compensation for the damage that occurred up to the disruption of the causal link."[6]

Civil codes generally do not define the concept of damage.[7] The Austrian General Civil Code and the LOO are exceptions in this regard: they do not provide an exhaustive definition, but they do enumerate the various matters and types of damage.[8]

One of the general prerequisites for obligation-law liability is the existence of

3 Article 16 of the Law on Obligations („Sl. list SFRJ", br. 29/78, 39/85, 45/89 - odluka USJ i 57/89, "Sl. list SRJ", br. 31/93, "Sl. list SCG", br. 1/2003 - Ustavna povelja i "Sl. glasnik RS", br. 18/2020).

4 Article 154 LOO.

5 *Ibidem*

6 Loza, B. (1981). *Obligaciono pravo – opšti deo, drugo izmenjeno i dopunjeno izdanje*. Zenica: Dom Štampe, p. 235.

7 Radišić, J. (2021). *op.cit,* p. 218.

8 *Ibidem*.

damage.[9] Liability cannot arise unless harm has been inflicted on a person or on material assets.[10] Damage may arise on two bases: by breach of a contractual provision, or by a tortious act.[11] The occurrence of a harmful consequence due to the tortfeasor's wrongful act creates an obligation-law relationship between the tortfeasor and the injured party, giving rise to non-contractual liability.[12] For compensation claims based on breach of contract-whether for delay or non-performance-the rules governing non-contractual liability apply by analogy.[13]

Legal doctrine distinguishes several types of damage depending on whether it is contractual or non-contractual. This paper will analyze the fundamental classifications of damage in the context of non-contractual liability. The elementary division is between material and non-material damage, based respectively on impairment of property rights or of personal rights. Material damage has been defined as the diminution of a person's assets or the prevention of their increase. Thus, it concerns injury to a person's material goods. Material damage also arises from bodily injury in the form of treatment costs, impairment of health, permanent or temporary incapacity to work, loss of personal income, and the like.[14] It is relatively precise, visible, and measurable, and its amount can be determined using objective criteria.

By contrast, non-material damage constitutes an impairment of the psycho-physical integrity of the person. It is assessed according to the circumstances of each case-namely, the findings and opinions of forensic medical experts and the court's own evaluation. Prior to the enactment of the LOO, compensation for non-material damage was long a contentious issue and was rarely awarded, because legal theory and practice lacked a unified approach to how to quantify such harm. The LOO now provides that, when deciding a claim for non-material damage and determining its amount, the court must consider the importance of the right infringed and the purpose served by the compensation, while ensuring that the award does not gratify tendencies incompatible with its nature and social function. In this way, the legislator has recognized the right to compensation for non-material damage and provided guidelines for determining its amount.

In addition to the basic division, it is important to distinguish material damage into actual (ordinary) damage and loss of profit. Ordinary, simple, or actual damage is defined by the LOO as the diminution of a person's assets.

In relation to this type of damage, loss of profit signifies the prevention of an increase in a person's assets. It is a form of material damage suffered because an unlawful act by another has prevented the injured party from realizing a specific economic benefit.[15] "Loss of profit consists of the expected increase in assets."[16] It is not enough that the injured party merely anticipated the gain; the objective circumstances of the case must substantiate the right to compensation on that basis.

9 Milošević, Lj. (1982). *Obligaciono pravo – šesto izmenjeno i dopunjeno izdanje*. Beograd: Savremena administracija, p. 154.

10 *Ibidem*.

11 Radovanov, A. (2008). *Obligaciono pravo – opšti deo*. Novi Sad: Pravni fakultet za privredu i pravosuđe Univerziteta Privredna akademija u Novom Sadu, p. 264.

12 *Ibidem*.

13 *Ibidem*.

14 Milošević, Lj. (1982). *op.cit,* p. 156.

15 Radišić, J. (2021). *op.cit.* p. 220.

16 *Ibidem.*

Moreover, damage is distinguished as concrete or abstract. Concrete damage can be evidenced and its amount determined precisely, whereas abstract damage is presumed. Typically, the amount of abstract damage is established in advance, i.e., before it has actually materialized.

Material and non-material damage may also be categorized as existing or non-existent damage. Existing damage manifests immediately upon commission of the harmful act, while with future damage it remains uncertain whether it will ever occur.[17]

The distinction between direct and indirect damage partially overlaps with that between actual damage and loss of profit-loss of profit is always indirect, whereas actual damage need not always be direct.[18] Direct damage, in principle, arises immediately upon execution of the harmful act, while indirect damage ensues from the impairment of an object or a legally protected interest and thus represents harm beyond and above the value of the destroyed or injured asset.[19]

3. FOUNDATIONS OF CIVIL LIABILITY

In order for a person to be held liable for damage in civil law, there must exist the basis of their liability. The basis of tortious civil liability is that on which the obligation to compensate damage rests.[20] "The basis of liability is that upon which liability is founded."[21]

Legal doctrine distinguishes two theories with respect to liability for damage: the subjective theory and the objective theory. The subjective theory of liability rests on the notion that fault is the basis of liability, whereas proponents of objective liability hold that it suffices that the damage was caused, irrespective of fault.

The subjective theory of liability dates back to the enactment of the lex Aquilia, i.e. classical Roman law.[22] At that time, damages generally arose from the tortfeasor's deliberate act, and there was no need to consider any other basis of liability beyond fault.[23] Only later, with the advent of technical revolution, did harms occur whose attribution of fault became difficult to prove. The burden then fell on the injured party to prove that the tortfeasor committed the wrongful act. Subsequently, a presumption of fault was introduced, easing the injured party's position. Today, pursuant to Article 7(1) of the Law on Civil Procedure (hereinafter: LCP), parties are required to present all facts on which they base their claims and to propose evidence supporting those facts. A party asserting a right bears the burden of proving those facts material to the existence or exercise of that right, unless otherwise prescribed by law.[24] In our legal system, the presumption of fault is applied, which may be rebutted by proving that the person was not at fault for the ensuing damage.[25] The injured

17 Radovanov, A. (2008). *op.cit,* p. 264.

18 Milošević, Lj. (1982). *op.cit*, p. 156.

19 Radovanov, A. (2008). *op.cit,* p. 265.

20 Loza, B. (1981). *Obligaciono pravo – opšti deo – drugo dopunjeno i izmenjeno izdanje*. Zenica: Dom štampe, p. 200.

21 *Ibidem.*

22 *Ibidem.*

23 *Ibidem.*

24 Article 231(2) of the Law on Civil Procedure

25 A common example in legal doctrine and case law is that parents are held strictly liable for their child's

party's position is thus facilitated, since the person who denies fault for the harmful event-or for the damage incurred-must also prove that denial.

In contrast to the subjective theory, the objective theory of liability began to be applied only in the mid-19th century: "It increasingly occurred that, under the influence of advanced means of production and improvements in transportation, harms began to appear as normal consequences of certain activities or uses of specific means (things)."[26]

Under Article 154(2) of the LOO, it is provided that for damage arising from a thing or activity which poses an increased risk of harm to the environment, liability is strict-that is, without regard to fault. Today, objective liability as the basis of liability is applied in almost all legal systems.[27]

In our legal system there exists yet another basis of liability: liability on grounds of equity, a more recent development also regulated by the LOO. In the case of damage caused by a person who is not liable for it-and where compensation cannot be obtained from the person who was obligated to supervise that person-the court may, when equity so requires and particularly in light of the tortfeasor's and the injured party's respective financial circumstances, order the tortfeasor to compensate the damage, in whole or in part.[28]

The basis and the elements of liability are not synonymous. The basis of liability is the reason for the obligation to compensate, whereas an element is that which must necessarily be fulfilled for liability to arise.[29]

The elements of liability for asserting the right to compensation are: (1) the existence of damage; (2) the wrongfulness of the tortfeasor's act; (3) the causal link between the tortfeasor's act and the harmful consequence; and (4) the tortfeasor's fault.[30] Under the subjective theory of liability, all of these elements must be met; under objective liability, only the existence of damage and the causal link between the tortfeasor's act and the harmful consequence are required.

According to professor Jakov Radišić, the facts that may exclude liability for a wrongful act are: the performance of a public duty, the injured party's consent, necessary defense, a state of necessity, lawful self-help, and the exercise of one's own right. When rendering a final decision on the basis and elements of liability for wrongful acts and on the right to compensation, the court considers all the circumstances of the case. For this reason, professor Radišić used the term "may" rather than "shall" when enumerating the grounds for excluding liability-indicating that the list is not exhaustive but merely illustrative.

4. SHARED LIABILITY / CONTRIBUTORY FAULT

Fault is one of the elements of liability entitling a party to compensation. Whether the wrongful act consisted of a positive deed or an omission that could have prevented

acts until the child reaches seven years of age under an absolute liability standard, and from the age of seven onward under a relative standard. Thus, once the child has reached seven years of age, parental liability is founded on a presumption of fault, subject to the possibility of exculpation.

26 Loza, B. (1981). *op. cit.* 194.

27 *Ibidem*

28 Article 169(1) of the LOO

29 Loza, B. (1981). *op. cit,* p. 192.

30 Radovanov, A. (2008). *op.cit,* p. 265.

the damage, the person at fault will be liable provided that the fault can be attributed to them.

For there to be fault, the person must possess the capacity for judgment-one who is not aware of their actions cannot be held liable for the resulting harm.[31]

Civil-law doctrine recognizes two theories of fault: the subjective theory and the objective theory. The subjective theory grounds liability in the tortfeasor's state of mind toward the resulting damage. It examines whether the tortfeasor intended the harm or was reckless. In contrast to the objective theory, the subjective theory defines fault as conduct deviating from what is reasonably expected or from statutory norms.

Professor Ljubiša Milošević[32] notes that some theorists-such as the French jurist Planiol-proposed that fault consists in violation of certain prior duties: the duty to refrain from all violence, from all deceit, from any act requiring special strength or skill, to supervise dangerous things in one's possession, and to oversee those entrusted to one's care.[33] Breach of these supposed duties would give rise to fault and thus to civil liability. However, this view was not adopted, since these duties are not explicitly codified and cannot rightly be called statutory obligations.[34]

What has been accepted by both doctrine and case law is that fault may manifest in greater or lesser degrees. Under Article 158 of the LOO, fault exists when the tortfeasor causes harm intentionally or through negligence. The more serious forms of fault are dolus (direct intent) and dolus eventualis (conditional intent), while the lesser degrees are ordinary negligence and gross negligence.

The subsequent articles of the LOO set out the grounds for excluding liability. Article 159 provides that a person who, by reason of mental illness, retardation, or other incapacity for judgment, is not responsible for the harm they cause, and that one who causes damage while in a temporary incapacity for judgment is nevertheless liable-unless they prove they did not reach that state through their own fault, in which case the person responsible for placing them in that state is liable. Article 160 addresses minors: a child under seven years of age is not liable for harm they cause; a child aged seven to fourteen is not liable unless it is shown they had capacity for judgment when causing the damage; a minor aged fourteen and above is liable under the general rules of liability.

Article 161(1) of the LOO excludes liability for harm caused in necessary self-defense, except where defense is exceeded. The next article similarly exempts from liability one who, in lawful self-help, causes harm to the person who necessitated that self-help. Finally, Article 163 provides that a person who permits another to act at their own risk cannot later claim compensation for harm caused by that act. Any declaration by the injured party consenting to a wrongful act forbidden by law is void.

Damage may be caused by multiple parties, and one way this occurs is when the injured party's own conduct contributes to the tortfeasor's wrongful act. In such cases, liability is apportioned between the tortfeasor and the injured party.[35] An injured

31 Milošević, Lj. (1966). *Obligaciono pravo*. Beograd: Naučna knjiga, p. 119.

32 *Ibidem.*

33 *Ibidem.*

34 *Ibidem.*

35 Salma, J. (2007). *Obligacono pravo – šesto izdanje.* Pravni fakultet Univerziteta u Novom Sadu, p. 466.

party who has contributed to the occurrence of damage, or to its being greater than it otherwise would have been, is entitled only to proportionally reduced compensation.[36] When it is impossible to determine which portion of the damage stems from the injured party's conduct, the court will award compensation in light of all the circumstances of the case.[37]

Accordingly, the Judgment of the Belgrade Court of Appeal, Gž 6329/2011 of October 10, 2012, is instructive:

From the reasoning:

"…In determining the parties' respective contributions to the occurrence of the harmful event, the first-instance court, despite having correctly and fully established the facts, drew an incorrect conclusion regarding the extent of the plaintiff's contribution to the harmful event, and thus misapplied substantive law in assessing the amount of the monetary obligation the defendant owes the plaintiff. The second-instance court, on its own motion, has ensured the proper application of substantive law, as also properly noted in the lodged appeal.

"Pursuant to Article 192(1) of the LOO, an injured party who has contributed to the occurrence or aggravation of damage is entitled only to proportionally reduced compensation. In the present case, the plaintiff's contribution was reflected in a series of failures made during the defendant's hiring and during his employment: the plaintiff hired the defendant without verifying passage of the requisite firearm-handling examination, issued him a rifle without confirming his proficiency, provided no training or instructions on proper use of a hunting rifle, and required him to work up to twenty hours per day-including permitting untrained guards to work overtime-all of which the first-instance court correctly found. However, by these omissions, the court of appeal determined that the plaintiff contributed 50% to the occurrence of the damage, since his conduct contributed equally to the harm as did the defendant's own contribution-namely, that despite lacking training and knowledge in proper firearm handling, the defendant used the weapon outside a safe range, failed to exercise due care by firing into asphalt in the direction of individuals who had already passed by, and thereby injured two persons, conduct for which he was convicted in a final criminal judgment. For these reasons, the defendant's claim that the plaintiff's contribution was 90% (and his own only 10%) is unfounded. Since the plaintiff paid the injured party RSD 850,000 for non-material damage and RSD 172,870 for procedural costs (totaling RSD 1,022,870), the defendant must reimburse him 50% of that amount-i.e. RSD 511,435. Because the first-instance court awarded RSD 716,009, the plaintiff is not entitled to the excess RSD 204,574 awarded in the first paragraph of the operative part."

In every concrete case, the court must ascertain the injured party's contribution to the damage-even in cases of bodily injury. This duty is confirmed by the Decision of the Niš Court of Appeal, Gž 1806/2020 of July 29, 2020:

"…If the injured party sustained some bodily injuries due to the tortfeasor's unlawful conduct and others through his own self-injurious actions, the court must determine which injuries were inflicted by the tortfeasor's conduct and which were self-inflicted by the plaintiff, thereby contributing to the occurrence of damage."

36 Article 192(1) LOO

37 *Ibidem*, Article 192(2) LOO

The court is always obliged to rigorously examine the causal chain of events, in which the findings and opinions of experts-both forensic medical and of other specialties-are of great importance.[38] In the case at hand, the court decided to determine the injured party's contribution to the occurrence of damage because the forensic medical expert noted in their report and opinion that it is possible certain injuries were self-inflicted by the injured party (e.g., striking one's head against a wall). "If fault, or the proportion thereof, cannot be determined, the parties share the compensation amount proportionally among themselves."[39]

The injured party's contribution to the damage also exists where, by their own actions, they could have prevented or mitigated the harm, or where such a duty is stipulated by contract.[40]

A common example in case law of the injured party's contributory fault is consenting to ride with a driver known to be intoxicated, as illustrated by the Judgment of the Belgrade Court of Appeal, Gž. 5085/2012 of December 6, 2012:

Excerpt from the reasoning:

"The injured party who consented to the ride, knowing the driver was intoxicated, contributed to the harmful consequences of the traffic accident caused by the intoxicated driver."

Further from the reasoning:

"According to the facts established at first instance, and in line with the criminal case file, the traffic accident was preceded by the plaintiff's socializing with S. S., during which, immediately before the criminal event, both consumed alcohol. Given that it was undoubtedly known to the plaintiff that S. S. had consumed alcohol and did not possess a driver's license (as the plaintiff stated when questioned in the proceedings before the Basic Court in V. against the accused S. S.), by agreeing to ride with him in that condition, he consciously assumed the risk of possible harmful consequences. Therefore, the plaintiff's degree of contribution to the occurrence of harmful consequences is assessed at 40%."

5. CRITERIA INFLUENCING THE DETERMINATION OF THE AMOUNT AND EXTENT OF THE INJURED PARTY'S CONTRIBUTION TO THE OCCURRENCE OF DAMAGE

The liable party is obliged to compensate the entirety of the damage.[41] The obligation to indemnify is considered due from the moment the damage occurs.[42] In order for the court to establish the extent of the debtor's liability, it must first determine the amount of damage for which compensation is sought.[43] However, where the amount of

38 Antić, O. (2008). *Obligaciono pravo – drugo izmenjeno i dopunjeno izdanje*. Beograd: Pravni fakultet Univerziteta u Beogradu, str. 471.

39 Salma, J. (2007). *op.cit*. p.467.

40 Rešenje Vrhovnog suda Srbije, Prev. 105/2005 od 24.3.2005. godine

41 Đurovi, R., Dragašević, M. (1980). *Obligaciono pravo sa poslovima prometa*. Beograd: Savremena administracija, p.180.

42 Article 186 LOO.

43 Radišić, J. (2021). *op.cit*. p. 310.

damage cannot be quantified numerically-as in the case of loss of profit-the court fixes the compensation based on the ordinary course of events and on measures undertaken by the injured party.[44] Taking into account also the circumstances arising after the harmful act, the court will award such compensation as is necessary to restore the injured party's material situation to what it would have been had the damaging act or omission not occurred.[45] Bearing in mind the injured party's financial situation, the court may order the liable party to pay less than the full amount of damage if the harm was caused neither intentionally nor through gross negligence, and if the liable party's modest means would render payment of the full indemnity unduly burdensome.[46] If the tortfeasor caused damage while acting for the benefit of the injured party, the court may likewise award a reduced compensation, taking into account the care the tortfeasor exercised in his own affairs.[47] The moment at which the damage is determined is the moment of the judgment.

Compensation is assessed according to objective criteria (e.g., the market value of the item) and subjective criteria (e.g., special circumstances, the injured party's affection for the damaged or destroyed item).

The injured party's contributory fault also influences the amount of compensation. In most cases it is impossible to determine precisely; thus, courts must exercise their discretion in evaluation and assessment. They generally rely on the findings and opinions of judicial experts of various specializations.

Commonly, a traffic-technical expert will calculate, in their report and opinion, the injured party's contribution to the occurrence of damage. The court values the expert's findings-especially in traffic accidents-but also considers all circumstances of the specific case. Judicial practice has developed certain benchmarks: for failure to wear a seat belt, a contribution of 20-30%; for falls on damaged pavement (potholes), 10-20%-with consideration given to whether it was daytime and whether the injured party was familiar with the route. In traffic accidents involving two passenger vehicles, contributions of 30%, 40%, or even 50% have been applied.

However, it must be emphasized that failure to wear a seat belt does not always constitute contributory fault. In this regard, the District Court of Novi Sad held (Gž. no. 1130/2000 of April 25, 2000):

"There is no shared liability where the injured motorist did not buckle the seat belt, and the injury occurred due to movement of deformed parts of the vehicle toward the body-not due to movement of the body toward the windshield."

Excerpt from the reasoning:

"The defendant's contention that the court misidentified the facts concerning the objection of shared liability-namely, the failure to wear a seat belt at the time of the harmful event-does not stand. It was correctly found that the plaintiff's injury occurred regardless of belt use, as it was caused by movement of the vehicle's deformed parts toward the co-driver's body, not by the plaintiff's body moving toward the windshield. Nor does the defendant's argument that the court based its merit decision on evidence the defendant disputed carry any weight."[48]

44 *Ibidem*

45 Article 190 LOO.

46 Article 191(1) LOO.

47 Article 191(2) LOO.

48 Vujanić, M., Obradović, D. (2022). *Naknada štete u saobraćaju – podeljena odgovornost*. Zbornik

Thus, every traffic accident is unique, and the effect of not wearing a seat belt on the injured party's liability must be assessed on a case-by-case basis.[49]

6. CONCLUSION

In assessing the injured party's contribution to the occurrence of damage, certain case-specific circumstances assume decisive importance. Today, courts have developed criteria for determining both the extent and the degree of the injured party's contributory fault. These criteria draw on established case law, the experience of the presiding judge, and the similarity of antecedent cases.

The court fixes the degree and amount of the injured party's contribution by exercising its equitable discretion and on the basis of expert findings and opinions from various disciplines. Expert reports carry legally relevant weight, especially in cases of traffic accidents, which, regrettably, we encounter almost daily.[50]

Before issuing a final decision, the court must thoroughly analyze each case on its own merits, taking into account the most important principles and the positions of the highest judicial and scholarly authorities.[51] Where it is impossible to ascertain which portion of the damage is attributable to the injured party's conduct, the court will award compensation in light of the specific circumstances of the case.[52]

From the foregoing, it follows that the court determines the injured party's contribution through equitable assessment tailored to the facts of each case-a practice that has proven just, given the unique nature of every matter. Any attempt to constrain the court-whether by prescribing fixed ranges for monetary awards or otherwise-would lead to unjust outcomes, unacceptable under both legal doctrine and judicial practice.

radova XXV Međunarodna nučna konferencija – Prouzrokovanje štete, nakanda štete i osiguranje, Beograd - Valjevo, p. 177.

49 *Ibidem.*

50 Rešenje Apelacionog suda u Nišu, Gž 1806/2020 od 29.7.2020. godine

51 See for a detailed treatment the research paper by Vujanić, M. & Obradović, D. (2022), Compensation for Damage in Traffic - Contributory Liability, in the Proceedings of the XXV International Scientific Conference - Causation of Damage, Compensation for Damage and Insurance, Belgrade-Valjevo, where the authors propose a method-based on quantitative calculations-for accurately assessing the injured party's contribution in traffic accidents that have resulted in prior material damage.

52 Article 192(2) LOO

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ГРАЂАНСКОПРАВНА ОДГОВОРНОСТ У ПРАВУ Р. СРБИЈЕ: ДОПРИНОС ОШТЕЋЕНОГ ЛИЦА НАСТАНКУ ШТЕТЕ

Апстракт:

Допринос оштећеног лица настанку штете је врло комплексан институт. Подељена одговорност се може дефинисати као настанак штете за коју није одговоран само штетник, већ и оштећено лице. У правној теорији, неретко се сусрећемо са неуједначеним ставовима у вези обима и висине доприноса оштећеног лица настанку штете. Као спорно питање намеће се одговорност оштећеног лица у контексту да ли је за исту потребна кривица или се одговорност темељи само на доприносу штете. Циљ рада, а имајући у виду значај и сложеност института анализе, јесте да се отклоне недоумице, или бар умање логичним изведеним закључцима у вези предметне проблематике. Посебан акценат рада је да се уопштена решења прикажу концизније на тај начин што ће се разјаснити које околности суд цени при доношењу одлуке о висини, обиму и доприносу оштећеног лица настанку штете.

Кључне речи: *допринос штети, подељене одговорност, судска пракса, кривица штетника.*

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