



## SPANISH SUPREME COURT DOCTRINE ON COMPENSATION FOR DAMAGES TO THE VEHICLE WHEN REPAIRS EXCEED THE VEHICLE VALUE



The Spanish Supreme Court passed judgement last July 2020 establishing the compensation for material damages resulting from a road traffic accident when the cost of repairs exceed substantially the vehicle value.

Case-law determines that in case the cost of repairs is substantially higher than the vehicle value, the owner of the vehicle must be granted an amount equivalent to the price of the damaged vehicle, plus a percentage – called “affection value” – which intends to compensate for administrative costs, difficulties to find a similar vehicle in the market, uncertainty about its functioning, amongst other.

The above is normally applied when the cost of repairs is approximately twice the vehicle value. Each provincial Court of Justice applies a different percentage, within a range from 25 to 30% in most cases, to 40/50% applied by some Spanish Superior Courts.

Increasing the vehicle value by the affection value percentage should not be done when compensations are based upon the market value of the vehicle, because in such cases it is assumed that this value will enable the owner of the vehicle to purchase a vehicle similar to the damaged one.

## SPANISH SUPREME COURT CRITERIA ON THE THEORY OF RECIPROCAL COMPENSATIONS FOR DAMAGE

In this report we inform you about the new criteria applied in Spain on the way to compensate for damages in Court cases in which it has not been possible to prove the causal contribution of each one of two involved drivers. In other words, when drivers give conflicting versions and proper evidence of liability does not exist.

This new criteria comes from a decision rendered in 2019 by the Supreme Court in a road traffic accident case: a two vehicles collision resulting in material damage, in which it had not been possible to prove which of the two drivers whose cars collided negligently drove through a red light.



As it had been established by the 2012 Supreme Court decision, the theory of reciprocal compensations for damage applies only in cases in which the Judge declares proven that it has not been possible to determine the cause for the accident due to lack of evidence.



The Supreme Court decision states precisely the provisions of article 1902 (1) as it concerned a material damage case only.

To sum up, the Supreme Court decision establishes that when the proceedings contain neither of the two drivers' evidence enabling it to determine the degree of contribution to the accident by one or other, the claim must not be dismissed but fully granted, provided the damages claimed have been duly substantiated.

The 2019 decision rendered by the Supreme Court Chamber One establishes that for cases in which the cause for the accident cannot be proven, the defendant will be ordered to compensate the plaintiff in 50% of the damages caused.

### **CURRENT CASE-LAW**

When the Court considers that the cause for the accident has not been proven, a different theory is to be applied depending if it refers to INJURIES or to MATERIAL DAMAGE.

**INJURIES:** each driver must take charge of 100% compensation to the third party in accordance with the established criteria by the 2012 decision.

**MATERIAL DAMAGE:** each driver will take charge of 50% of the damages caused to the third party in accordance with the established criteria by the 2019 decision.

And in case the Court deems that the cause for the accident has been proven, the decision made will be based upon the evidence results on the liability of one or both drivers, and in the proportion that has been confirmed as proven.

Despite it may appear that this case law could take a significant turn on the way we have been settling claims as we have doing till now, we think that in practice, our way to handle claims will not be too affected. If we are to face with conflicting versions cases, or with TPL claims which in our opinion lack evidence, we may not necessarily have to deal with them, and if we are to make a recovery claim, we must not take legal action systematically.

We will have to analyse individually on a case by case basis, and have clear what evidence may be produced in favour of the adverse party or against us. Also, it is to be taken into account that referring to material damage the burden of the proof is reversed, so that if the driver of the vehicle cannot prove he was driving with due care and attention, and the judge has the slightest doubt about it, the claim will be dismissed or accepted.

*(1) A person who – by act or omission causes damage to another, is obliged to repair the damage caused.*