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ITALIAN CONSTITUTIONAL COURT LIMITS DAMAGES IN ROAD TRAFFIC ACCIDENTS.

The exclusion of compensation for permanent biological damages: when traffic injuries are difficult to detect by instrumental or visual clinical assessment.

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The Italian Constitutional Court by order 242/2015 declares manifestly unfounded the question of constitutionality raised by the Justice of the Peace of Reggio Emilia.

He questioned the combined provisions of **Article 139, paragraph 2**, last sentence of the provision of Legislative Decree (L.D.) N. 209/2005, as it was amended by Decree Law (D.L.) n. 1/2012; and of **Art. 32 paragraph 3-quater** of L.D. n. 1/2012, convened with mod. from the Law n. 27/2012 in contrast with Articles 3(1), 24(2), 32(3) of the Italian Constitution.

The result is the **end of compensation for permanent biological damages such as whiplash**, dizziness and nausea resulting from road accidents. This includes all the minor traffic injuries "that are not susceptible of an objective and clinical instrumental assessment" and "by the coroner feedback, from which it results that the existence of the injury is visually or instrumentally not ascertained". (With regard to Article 139.2 of the L.D. 209/2005 and the 32.3 quarter of the D.L. 1/2012)

The Court's ruling confirms what has been said in the judgment 235/2014, in reference to the exclusion of the need of the instrumental response. The exclusion is attributable to temporary damage which, in accordance to paragraph 3-quater of Article 32, can therefore be just "visually" satisfied on the basis of the resulting data from the coroner feedback. Then the medical-legal procedure must follow a proper sanitary method, and it has deemed as not objectionable the requirement of additional and necessary instrumental diagnostics. Additional and necessary instrumental diagnostics, with the purpose of linking "permanent" damages to the already mentioned micro-lesions.

This means that **traffic injuries**, which burden insurance companies, **will not always be compensated**, since it will be necessary to have injuries (even slight) susceptible of an objective and instrumental clinical assessment to be compensated. In particular the damage, namely the presence of obvious traffic injuries on the person, will be proved only "visually or instrumentally" by the coroner.

Then there are **conflicting interests**: on the one hand the **injured** and on the other the **insurance company**. The opposition, therefore, is between a lawful request from a damaged person to be compensated, following a fact that has harmed his person, and a legitimate interest of the insurance companies, not to burden their domestic economy with indirect consequences for policyholders. On the basis of the criteria of reasonableness and balance of interests, "in a system such as that of civil liability for the circulation of vehicles mandatorily insured, the insurance companies, which contribute, by Law, to the Guarantee Fund for the victims of the road, also pursue charitable purposes". The decision

of the Italian Court not to include in the compensatory damages, the minor damages within the limits described above, is the result of the rejection of the constitutionality, due to the lack of contrast with the above-mentioned Articles of the Italian Constitution.

The consequences of a different decision could have led to a spiraling of claims in road traffic accidents for minor damages (as it was explained in the limits above). Consequently the claims would have resulted in an **increase in insurance premiums with a deduction from the final consumer, namely the insured**. This would have led to an estimated increase of vehicles uninsured with obvious consequences both in relation to public order, the right to health and physical integrity as well as in reference to the market economy, all in opposition to Law 27/2012 (Cresci Italia). The other scenario is the decrease of circulating vehicles in Italy with a resulting reduction of road traffic accidents, as well as the reduction of Italian economy.

The Italian Constitutional Court therefore does not eliminate, but rather reinforces, the legal consequences of the Law CRESCI ITALIA (Law 27/2012). The Law relaunches liberalisation policies of economic activities, at a time in which the economic crisis could lead to conservation.

The aim of strengthening open and competitive markets is central on the public agenda, and its full realization will require further efforts. We should wait yet more time to see Italy totally out of the notorious crisis.

Notes and bibliographical references

(1) Article 3 of the Italian Constitution sets out the principle of equality that should be applied even in relation not only with individuals, but also with legal persons (such as insurances companies).

(2) Article 24 of the Italian Constitution refers to the right to judicial protection which, however, must be based not only on the right to "start" the action by the plaintiff (the injured) but also the right to defend of the defendant (insurance company)

(3) Article 32 of the Italian Constitution refers to the sake of life affected by the presence of damage.

See also the L.D. of 7 September 2005, n. 209 (Codice delle assicurazioni private- Code of Private Insurance), Article 139, paragraph 2, last sentence, has been amended by art. 32, paragraph 3-ter of the D.L. of 24 January 2012, n. 1 (Disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitività'-Urgent measures for competition, infrastructure development and competitiveness), converted with amendments by Law 24 March 2012, n. 27. The D.L. no. 1 of 2012 has been converted with amendments by Law no. 27 of 2012, Article 32, paragraph 3-quater.
