

# The Status of Vietnamese Law on Compensation for Damage of Owner of Motorized Means of Transport

Huyen Pham Thi\*, Thao Duong Thi\*\*

\*(Thai Nguyen University of Technology, Vietnam  
Email: phamhuyentc@tnut.edu.vn)

\*\* (Thai Nguyen University of Technology, Vietnam  
Email: duongthithao@tnut.edu.vn)

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## Abstract

Compensation for damage of owner of motorized means of transport is one of contents in liability for compensation for non-contractual damages stipulated in the 2015 Vietnam Civil Code. The article clarifies the provisions of the Civil law and the conditions giving rise to this liability. Based on analyzing the status and inadequacies in the law enforcement process, the authors propose two groups of solutions that are completion specific provisions and practical measures to improve effect in application of the law on compensation for damage of owner of motorized means of transport in Vietnam.

**Keywords** —motorized transport means, compensation for damage, source of extreme danger, owner of motorized mean of transport, 2015 Vietnam Civil Code.

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## I. INTRODUCTION

In Vietnam, the number of motorized means of transport (MTM) increases rapidly to serve demand of resident. This followed by problems in the process of using them, which causes damage to property, health, and life of other person. At that time, it gives rise to the liability for compensation for non-contractual damages, and it is required to identify the person has to compensate in that case: the owner, the possessor, or the user of the means. Then, it must verify the conditions that gives rise to the liability for compensation, the type, and the level of damage need to be compensated. Therefore, it is important to study the current legal regulations on the liability for compensation for damage of owner of motorized means of transport (OMTM), from that propose solutions to remove legal limitations on this issue. This is very necessary to apply in solving real-life cases, especially in the context of the increasing number of accidents caused by MTM in Vietnam.

### *What is MTM*

In Clause 1, Article 601 of the 2015 Vietnam Civil Code (2015 VCC), it just only mentioned to MTM as one of the extreme danger sources and so far, there is no document that gives complete concept of MTM.

In Clause 17, Article 3 of the 2008 Vietnam Law on Road Traffic (2008 VLRT) stipulates: "road means of transport include road motorized transport means and road rudimentary transport means". Accordingly, in Clause 18, Article 3 of the 2008 VLRT and Point b, Section 1, Part III of Resolution 03/2006: MTM include car; tractor; trailers or semi-trailers towed by cars or tractors; two-wheeled motorcycles; three-wheeled motorcycles; mopeds (including electric mopeds) and similar vehicles, including motor vehicles for the cripple [1].

These vehicles have common features of being motorized, controlled by humans and operated by energy sources, not using human power.

### *Liability for compensation for damage of OMTM*

The 2015 VCC stipulates that the owner of property has the right to possess, use and dispose of it in accordance with the provisions of law. However, if such property causes damage for the other individuals, organizations and subjects, the owner is responsible for compensating for damage caused by property. MTM is one of the sources of extreme danger, so when there is a damage, the owner must compensate for damage caused by it. If the owner has transferred possession or use of it to another person, such other person must compensate, unless otherwise agreed. Where an owner, or a person to which an owner has transferred possession or use, of a source of extreme danger is at fault by allowing the unlawful possession or use of the source of extreme danger, the owner, or the person to which the owner has transferred possession or use, of the source of extreme danger as the case may be must compensate jointly for the damage [2].

### *Research situation*

There has not been a separate study on liability for compensation for damage of OMTM. However, there have been many works with research and analysis related to this problem, such as: "Liability to compensate for damage caused by property is a source of extreme danger in current Vietnamese law", Nga N.T.T. 2018; "Law on Compensation for Non-Contract Damage in Vietnam-Judgment and Commentary, Dai D.V. 2016; "Liability to compensate for damage caused by sources of extreme danger", Doan T.N.H. 2019; "Problems in applying the law on compensation for non-contractual damages", Trang N.T. 2019; etc.

The above works just study the most general aspects of liability for non-contractual damage, compensation for damage caused by sources of extreme danger. While MTM is a source of extreme danger with an owner, when there are problems related with compensation for damage caused by means, it is necessary to consider the liability, the level of involvement of owner to determine the liability for compensation of owner.

Therefore, the authors chose to study the content of compensation for damage of OMTM according to the 2015 VCC, through which it is possible to study more deeply about the liability of OMTM rather than stopping at the fact that it just is a part of the compensation for non-contractual damage.

### *Research object and method*

In this study, the authors focus on studying the liability of OMTM when vehicle causes damage, regulations on this type of liability, the inadequacies when implementing provisions, and proposing solutions to improve the law on these issues.

The authors also use traditional scientific research methods such as: Analytical and synthesis methods to analyze concepts, provisions, and cases be tried with the judgment of the Court; the scientific heuristics method is used to propose solutions for perfecting the law.

## **II. CONDITIONS GIVING RISE TO LIABILITY TO COMPENSATE FOR DAMAGE**

### *A. There is damage*

Liability to compensate for damage is aimed at restoring benefits to aggrieved person, this means that in order to rise liability to compensate for damage caused by MTM, there must be an element: "damage occurs" and "this damage must be caused by MTM" [3].

The Civil Code mentions to "damage" but does not define what damage is, does not mention what damages related with MTM. However, damage can be understood as a decrease in material benefits, personal value of aggrieved person, these are the benefits that they has or is certain to have. They can be damage to property, health or life, etc.

### *B. There are illegal acts of OMTM or illegal damage-causing activities of MTM*

Infringing upon the rights to ensure safety of life, health, property of another person is violation act of the law. Depending on the severity and nature of the violation, civil, administrative or criminal liability will arise. Violations of the law that cause damage to the life, health and property of others

may be the driver's failure to comply with the regulations on preservation of MTM leading to the vehicle being illegal possession, the owner is still responsible for compensation. Sometimes, OMTM or drivers do not commit illegal acts but they are still responsible for compensating for damage. Because MTM is a source of extreme danger, when owner registers the ownership, they have accepted the risk that may happen to their vehicle, therefore they have to compensate for damage even if they do not act to cause damage.

**C. *There is a causal relationship between illegal acts of OMTM or illegal damage-causing activities of MTM and the damage that occurs***

According to Section 1.3, Clause 1, Part I, Resolution 03/2006/NQ-HDTP, a causal relationship is interpreted as: "Damage must be the inevitable result of illegal acts and vice versa. illegal acts are the cause of damage" [4]. Based on this relationship, only damages that are considered inevitable consequences of illegal acts will the person causing such damage be responsible for compensation. Thus, "liability to compensate for damage is only applied when it is precisely determined that the illegal act is the cause of the damage. In other words, the damage is the result of illegal acts" [5].

The causal relationship is understood that damage of life, health and property of other person must be the inevitable result of acts violating traffic safety regulations of MTM and vice versa.

**D. *The fault in liability to compensate for damage caused by MTM***

In general, fault is one of four conditions giving rise to liability to compensation for non-contractual damage, but it is not a necessary condition to give rise to liability to compensate for damage of OMTM. Clause 2, Article 601 of the 2015 VCC and Point a, Clause 2, Section III of Resolution 03/2006/NQ-HDTP stipulate that OMTM (owner of source of extreme danger) possessing or using a vehicle (source of extreme danger) must compensate for damage caused by the vehicle (source of extreme danger). However,

compensation for damage must consider the consequences of the case to determine the level of compensation for non-contractual damage according to the provisions of the 2015 Vietnam Civil Code or the 2015 Vietnam Penal Code, amended and supplemented in 2017.

**III. PRACTICAL IMPLEMENTATION OF LAW ON COMPENSATION FOR DAMAGE OF OMTM**

**A. *Practical implementation of law on compensation for damage in road traffic accident with the participation of police agency and Procuracy***

When a traffic accident (TAC) occurs, the traffic police (TPL) is usually the first person to be present at the accident site to conduct settlement.

According to Circular No. 76/2011/TT-BCA, November 22, 2011, the role and task of TPL in the initial investigation stage of a TAC is to be present immediately after the TAC occurs. Carrying out initial handling such as: rescuing victim, handling the scene in case the victim dies, protecting luggage, personal belongings, means of transport of the parties causing accident, impounding person and vehicles. In case the the person casing the accident flees, TPL need to deploy to arrest the fleeing person. Next, TPL will have to conduct an examination of the scene, take statements from subjects, collect relevant documents about the TAC. In that process, if detecting signs of crime, TPL immediately transfers file to the competent investigating police agency. This force then receives the case, coordinates with TPL to conduct investigation, at the same time notify Procuracy of the same level to supervise the investigation according to the provisions of law. Through the investigation process, when identifying signs of crime, the investigative police make a decision to prosecute a criminal case according to Article 154 of 2015 Vietnam Penal Code, and send decision, documents relevant to the Procuracy to prosecute.

When assigned to accept the case, investigator must develop an investigation plan, procurator must make an investigation request. Based on the results of the scene examination shown on the scene diagram, the expert conclusions on traces, injuries,

causes and property damages, compared with the testimony of accused and witnesses to determine the fault of those involved in TAC. This is to make an accurate conclusions about the crime of the accused before the end of the investigation to make an investigation conclusion to propose the prosecution. Transferring the file to the same-level Procuracy must have all the proceedings, documents and evidences for accusations as prescribed in Article 233 of 2015 Penal Code. When determining that the TAC has no criminal signs, the investigating agency shall issue a decision not to prosecute the criminal case according to Article 158 of the 2015 Penal Code, and at the same time send the investigation decision together with the case file to the Procuracy. If finding that the decision to terminate the investigation is grounded, the Procuracy returns the case file to the investigating agency for settlement according to their competence.

The result of the initial investigation stage are the basis for forcing the person who violates the regulations on road traffic law to be held criminally or administratively responsible. At the same time, it is also the legal basis for determining the liability to compensate for non-contractual damage because when a TAC occurs, property, life or health or a combination of the above three factors may be infringed.

Article 48 of 2015 Penal Code stipulates that the person causing the damage must compensate the person suffering the damage caused by the criminal act, but does not introduce sanctions in the case that the person causing the damage does not take the initiative to compensate. It only provides the principle of dealing with the person who causes damage if voluntarily compensating for damage will be lenient - this is considered a mitigating circumstance to be applied when determining the crime. The criminal law protects the damage sufferer, provides conditions for the person causing the damage to take the initiative to compensate the damage sufferer. But often this is less proactive on the part of the person causing the damage or is insignificant, just enough to serve as a basis for

applying for punishment reduction as prescribed or when the aggrieved person has to appeal the judgment or decision related to compensation for damages.

If the case does not prosecute criminal liability, TPL will handle TAC according to administrative procedures. The compensation for damage will be settled in direction that parties can reach an agreement at the police headquarters, and the fact that the person causing TAC voluntarily compensates for damage will be an extenuating circumstance when TPL issues a decision to sanction the violation. If the involved parties cannot reach an agreement, the TPL must make a record and guide the parties to contact the competent court for settlement according to civil procedures. At that time, compensation for damage in TAC will become a case for compensation for damage to be settled by a competent court according to civil procedures.

Although the civil and criminal laws have made many provisions to protect the rights of the victims, in fact there are still many problems related to compensation for damage. For example, the aggrieved person has to suffer heavy loss of life, health, property but cannot or has many difficulties to receive compensation for damage, specifically there are a number of actual existing contents as follows:

*The person who cause accidents often take the initiative to compensate for damage and quickly overcome the consequences for many reasons, but mainly to benefit themselves.*

As soon as an accident occurs, in order to remedy the damage in a timely manner and prevent other damages that may arise, person causing the accident often "advance" an amount of compensation for the family member of aggrieved person to pay for hospital fees or funeral expenses. In many cases, aggrieved person and their family were "satisfied" with this initial compensation and did not require to pay more. In case of health damage, after being quickly and satisfactorily compensated, many aggrieved persons actively refused to conduct the assessment to determine the injury rate disability at



the request of the investigating authority. When health damage is not determined, investigating agency is forced to make a decision not to prosecute the case, to stop the investigation, therefore accident cause person can escape from criminal prosecution. This is also an extenuating circumstance for penal liability stipulated at Point b, Clause 1, Article 51 of 2015 Penal Code: "The offender voluntarily repairs, compensates for damage or overcomes the consequences" [3]. If person causing accident has adequately compensated for aggrieved person or their family member, they can file a petition to competent authority to exempt the person who caused accident from criminal liability. In addition, the fact that the parties agree on the compensation level in advance will save the court costs that the accident-causing person has to bear at the court hearing.

In addition, above causes are also pressures for accident-causing person in process of negotiating and settling compensation. They is forced to accept a higher compensation than actual damage, that is offered by aggrieved person and their family, because they think that it is condition for them to refuse to conduct the assessment or have an application competent agencies exempt from criminal liability for accident-causing person. This makes compensation in this period often arise lawsuits, negative, affecting the rights and obligations of the parties.

***The responsibility of police agency in dealing with the parties about level of compensation for damage in the TAC is not really clear***

Normally, the parties will base on the investigation conclusions of police agency to determine their part of liability, negotiate and make compensation. The parties can negotiate, investigators or TPL will act as "mediators" between the parties because they know progress of case, determine the fault of each party and they are also experienced in dealing with similar cases. The Circular No. 77/2012/TT-BCA stipulating the process of investigation and settlement of TAC, at Point b, Clause 4, Article 16: "In case the parties involved in a traffic accident cannot agree to

remedy the consequences by themselves. then TPL have the liability to guide parties to contact the court at the same level for settlement according to civil procedures"[1]. However, this rarely happens in practice.

***The real purpose of compensation for damage is not for aggrieved person, but just for the sake of using grounds to reduce the penalty.***

This also shows a less serious aspect of criminal law in process of considering extenuating circumstances. Because if after judgment is pronounced, the party causing the accident does not continue to pay compensation, the aggrieved person must continue to carry out the procedures to be compensated for damage. In fact, if the party causing damage does not have or does not pay enough to compensate, the loss still belongs to the aggrieved party, the law still has no sanctions to force the accident-causing person to fully compensate as the judgment has declared.

***B. Practice of settlement of compensation for damage in TAC at Court***

Besides criminal issues, the main civil issues that the Court deals with are disputes over compensation for non-contractual damages from TAC related cases. Amounts and levels of compensation are usually set before the case goes to trial. During the trial period, the Judge only recognizes parties' prior agreement. If there is no agreement, the Court will directly determine compensation level based on documents and evidences collected by procedure-conducting agency and provided by the involved parties. In most cases, the Court decides an amount of money to force the person who is responsible for compensation to pay compensation in one or more times. Practice of solving cases of violations against regulations about control of road traffic means of courts at all levels usually has a number of issues as follows:

***Compensation for loss of life is sometimes lower than compensation for damage to health***

In most judgments, when there is a loss of life, value of life when violated is inadequately compensated, even lower than value of body and

health, although human life is precious and cannot be measured by value. This can be seen in the following judgment:

The first instance judgment No. 1/2020/HS-ST, December 16, 2020 [6], according to indictment, at about 5:27 am on January 30, 2020, Tran Nguyen Hoang Phong drove a car from basement of building at 108 Hong Ha, Ward 2, Tan Binh District to the intersection Prince Hoang Minh Giam. Arriving in front of 123 Hong Ha, Ward 9, Phu Nhuan District, the driver could not control the speed, rushed to left of opposite lane, directly crashed into a motorbike by Mr. Le Manh Thuong driving Ms. Nguyen Thi Bich Huong, traveling in the opposite direction. As a result, Mr. Thuong died at hospital, Ms. Huong suffered multiple injuries with an injury rate of 79%. The investigation results showed that Phong was positive for drugs, driving car without driver's license, exceeding allowed speed, without control of the wheel, causing the accident.

Phu Nhuan District Court sentenced Phong to 7 years and 6 months in prison for violating regulations on driving traffic vehicles, forcing Phong to pay 1.4 billion VND to Ms. Huong, compensation of 477 million VND to family of Mr. Le Manh Thuong.

This is one of typical cases where damage caused by violation of health has a higher compensation than damage caused by the violated life. If victim suffers health damage, cost of treatment, taking care of aggrieved person, the lost income is quite large compared to cost for treatment and care of the injured victim die. Although in case of loss of life, there is an additional funeral fee, but this is an insignificant amount and requires valid proof, but in reality, this expense is difficult to prove full.

In addition, the time limit for enjoying compensation is specified in Article 593 of the 2015 Civil Code. In case the aggrieved person completely loses his working capacity, they are entitled to compensation from the time of complete loss of working capacity until his death, unless otherwise agreed. In the case the aggrieved person is death, only those for whom the dead person is

obliged to support while they are still alive will be entitled to alimony from the time of their death.

This provision has some limitations. Because the person causing damage has mentality that he only wants to make a one-time compensation, but if aggrieved person is still alive and falls into the above cases, liability of them must be prolonged. Therefore, in many TACs, some drivers after causing an accident, even though they see victim alive, they do not help, but continue to control vehicle to turn around to run over victim or hit them directly, causing victim to die in order to mitigate the damage to be compensated. Although this is an act of murder, but in many cases, because there are no witnesses, the Police agency and the Procuracy cannot find evidence to charge them, so they are only prosecuted for crime of violating regulations on law of driving a road vehicle with a very light penalty.

#### ***Determine compensation for mental loss***

The civil law stipulates that the amount of compensation for mental loss in case of health is violated shall not exceed fifty times the base salary, in case of death of the victim, the compensation shall not exceed one hundred time. Although the law stipulates maximum amount of compensation, aggrieved party will often also claim highest level of emotional compensation, but in practice they are never given the amount they desire [7]. When the Court resolves case, the aggrieved person usually receives only 25 months of basic salary. They rarely give arguments to evaluate and determine the compensation amount, but often just make the provisions of the law and decide the compensation amount, and think that it is appropriate. However, there are exceptions, the Court carefully considers claim of aggrieved person, based on the provisions of law, argues and evaluates sharply to force the person causing accident to pay compensation for mental loss.

#### ***Appealing or protesting to request the Court to consider reducing the compensation level***

As analyzed above, when damage occurs due to TAC, the person causing the damage or owner of

vehicle, whether at fault or not, must also compensate, except for cases prescribed by law. In fact, when there is a first-instance judgment, the parties often do not stop but one of parties continues to appeal at a higher level to claim their rights. If the judgment has not yet taken legal effect, but the Court declares that the party causing damage must compensate for aggrieved party, usually one of the two parties will appeal to request a change in the level of compensation if the amount of compensation did not meet the expectations of the parties.

Appealing or protesting is right of the involved parties, but the superior court not only relies on appeal request but also on the first-instance judgment and other evidences to consider and settle the case, protect the interests of parties, especially to protect the interests of the aggrieved party.

**C. *Some inadequacies in the process of implementing the law on compensation for damage in road traffic accidents***

- Determining the time of damage in TAC still does not have a clear opinion. At the time of first-instance trial or at the time of causing damage, the law has not yet provided for it. Determining when to damage is very important because at two different times the amount of damage can be changed due to fluctuations in market prices and other external factors.

- The issue of compensation for mental loss is according to the provisions of Articles 590 and 591 of the 2015 VCC, but currently there is no specific basis for calculating this amount. In addition to proven costs, there is a cost of compensating for mental loss that the person causing accident must compensate for aggrieved person in the case of a health loss. In case the victim dies, the person causing accident must pay compensation to the first-line heirs of victim, if not, the person whom the victim has directly raised, who has to directly nurture the victim is entitled to this amount. Point b, subsection 1.5, section 1, part II, Resolution 03/2006/NQ-HDTP stipulating the determination of compensation for mental loss due to compromised health and point c, subsection 2.4, section 2 Part II

provides for the mental compensation for the loss of life. However, these regulations only list in general but do not specify specific criteria as a basis for determining the level of compensation for damage. For example, it is advisable to state the level of mental compensation corresponding to percentage of health loss of victim along with other grounds such as impact on occupation, aesthetics, social interaction, family activities, and personal, etc.

- The 2015 VCC stipulates that in case there is compensation for mental loss, the two parties agree, if no agreement is reached, if the health of victim is violated, the compensation level for mental loss is required to be high not exceed fifty times the base salary prescribed by the State. For those who have lost their lives, the level of compensation for the fine loss shall not exceed one hundred times. Most of victims want to be compensated for their mental loss to the maximum extent, but rarely the Court does it. They gave a different number and thought that it was appropriate, but what factors the Court relied on, the law did not clearly provide for this issue. Victims are very difficult to prove because the spirit is an intangible factor that is difficult to determine. Therefore, determining the mental loss of victim, changing the compensation level compared to their original claim of the Court will affect interests of victim, except for some cases where the request of victim is unreasonable and the Court must consider reducing the amount of compensation accordingly.

- The Clause 2, Article 601 of 2015 VCC stipulates: "An owner of a source of extreme danger must compensate for damage caused by such source. If the owner has transferred possession or use of the source of extreme danger to another person, such other person must compensate (for the damage), unless otherwise agreed" [2]. Thus, the subject to compensate for damage caused by MTM is: the owner, the person assigned by the owner to legally possess and use it. But in practice, there are errors when determining the subject to pay compensation, such as not bringing the person responsible for compensation to participate in the proceedings, determining that the subject indemnifying is not the

owner of MTM, these lead to the aggrieved person being affected, taking a long time to claim compensation. In fact, compensation for damage in traffic accidents often has a prominent problem that the person responsible for compensation does not have to pay for damage, but this responsibility is replaced by "supporting" for family of the victim, they accept money and case is closed. This means that the victims still do not know how to use the law to protect their legitimate rights and interests, or they know but do not want legal trouble because sometimes receiving "support" from the defendant will be more beneficial, and thus the party causing damage is not responsible before the law. This happens a lot in rural areas, where the law has not been fully implemented to the resident [7].

- Difficulty in tracing the person causing accident to claim when TAC occurs. When an accident occurs, driver takes advantage of the terrain with no people or no surveillance cameras to flee, leaving victim to stay. Or driver using vehicle with fake number plate, causing the accident to flee, leaving the vehicle, but the authorities could not find the owner of vehicle. As a result, the victim suffers consequences, damages without receiving any compensation.

- Another problem arises after the Court has decided to recognize agreement or judgment, the person causing accident must compensate for damage, but they have no property to compensate. Thus, the victims, although recognized by law as being compensated for damage, did not receive the money. Or during the settlement of case, the person causing the accident have dispersed their property, leading to aggrieved person not being compensated immediately. They must wait for the competent authorities to continue to deal with it in order to recover the property, handle property and then complete compensation procedure for victim [8]. It is the above issues that lead to the victims having a lot of difficulties in claiming compensation, not to mention those who suffer from difficult circumstances, now it is even more difficult to overcome the consequences caused by others for them.

#### **IV. RECOMMENDATIONS AND SOLUTIONS TO IMPROVE EFFICIENCY OF THE IMPLEMENTATION OF LAW ON COMPENSATION FOR DAMAGE BY OMTM**

##### **A. *Proposals to improve the law***

The law respects and protects the legitimate rights and interests of individuals and organizations; when their rights and interests are infringed, or causing damage, the person causing damage must bear civil liability and specifically pay compensation for damage. To ensure rights and interests of the parties in this relationship, the authors propose following recommendations:

##### ***Firstly, it is necessary to come up with and agree on specific concepts***

It is necessary to introduce the concept of source of extreme danger instead of listing specific sources as at present, because this list makes it difficult to research and apply the responsibility for compensation for damage caused by them. Moreover, the concept of MTM should be introduced because although Resolution 03/2006/NQ-HDTP mentions MTM, it is based on other relevant legal documents or regulations of state agencies competent in each field, there is still no specific and unified guidance, which causes difficulties in application of law.

##### ***Secondly, perfecting regulations on conditions for arising liability to compensate for damage caused by source of extreme danger***

The trial practice in past time has shown a fact that as long as it is found that damage is related to the source of extreme danger, it is necessary to apply the responsibility to compensate for the damage caused by this source, regardless of whether the damage is caused by the source of extreme danger or caused by illegal acts. Currently, there is no document stipulating or guiding the conditions for arising liability for compensation for damage caused by source of extreme danger, This leads to confusion in the division of compensation liability due to illegal acts with compensation liability caused by source of extreme danger itself.



***Thirdly, it is necessary to specify more clearly who is responsible for compensation for damage***

In case the owner assigns another person to possess and use property which causes damage, there should be specific regulations: if damage is caused by fault of the person assigned to possess and use source of extreme danger, this person must compensate. But if damage occurs that this person cannot know and is not required to know by law, the owner of source of extreme danger must compensate. For the person assigned to manage the source of extreme danger, if any damage occurs, the owner must jointly compensate. Because the owner assigns another person to possess source of extreme danger in the labor relationship is different from that in the civil relationship.

In case the person assigned by owner to possess, use source of extreme danger, then this person assign it to a third party, it is also necessary to have specific regulations on responsibility of participants when there is damage. Resolution No. 03/2006 guides: "If B is assigned a car by A through a property lease contract, it means that A no longer possesses and uses that car, but B is owner and legal user of that car; therefore B must compensate for damage. If in this case, with the consent of A, B delivers car to C through a sublease contract, then C is the legal owner and user of that car; therefore, C must compensate for damage". This guide only mentions one case, which is the handover of source of extreme danger (the car) when owner agrees, but does not mention the subject to compensate in case the damage occurs without the consent of owner. In addition, there are no regulations on the third person assigned by owner to possess and use source of extreme danger but delivered according to the labor relationship. To solve this problem, it is necessary to identify specific cases: i) If the person assigned by owner to possess and use source of extreme danger is handed over to a third party with consent of owner, the third person is determined to be the person assigned to possess and use source of extreme danger. When damage occurs, it shall be settled according to the provisions of law. ii) Without the consent of owner of source of extreme

danger, the third person is determined to possess and use source of extreme danger illegally. If that person causes damage when using them, it will be based on Point b, Section 2, Part III of Resolution No. 03/2006 for settlement.

***Fourthly, complete the regulations on compensation levels in Articles 590, 591 of the 2015 VCC and the guidance in Resolution No. 03/NQ-HDTP on compensation for damage, especially clearly defining the compensation level for damage about spirit***

Because level of compensation for mental loss when life loss is not reasonable, in many cases it is lower than when health is violated. Damage-causing person must pay compensation for costs of medical treatment, fostering and rehabilitation of lost or reduced health and functions, compensation for lost or reduced actual incomes for person suffering from health damage. Therefore, the compensation period is very long. As for those who have lost their lives, their family are entitled to compensation for funerals, alimony, compensation for mental losses, but still much lower. The law only stipulates "maximum" level makes it difficult to determine the amount of compensation in each case. According to the authors, it is necessary to determine the minimum level to best protect the interests of the victims. On the other hand, the compensation for damage to health and life only partially compensates for damage they have to bear, but current level of compensation equal to one hundred months' salary is quite low, it should be increased to a reasonable level to be more fair to the unfortunate person who have lost their lives.

***Fifthly, it is necessary to strengthen legal aid work so that victims know more about their rights, can ask legal aid centers to claim damage, especially those in difficult circumstances can get free legal aid***

Because sometimes they are afraid to seek legal services because they do not have money, so they suffer a lot of disadvantages, their interests are not guaranteed in the best way.

***B. Solutions to improve effectiveness of application of the law on compensation for damage of OMTM***

Firstly, it is necessary to strengthen the propaganda and dissemination of the law in various

forms such as television, newspapers, social networks, organizing propaganda contests, learn through people who are trained in the field of law, etc. Thereby helping resident have the necessary legal knowledge to protect their own legitimate rights and interests and that of their family member on a case-by-case basis.

Secondly, there should be tougher regulations on resident participating in civil liability insurance, especially OMTM. Currently, the only sanction applied to OMTM that does not participate in civil liability insurance is a fine. Decree No. 03/2021/ND-CP stipulates compulsory civil liability insurance of OMTM, the number of person participating in insurance has increased significantly, but it all comes from the fear of being punished rather than from a perceived benefit of participating in civil liability insurance.

Thirdly, it is necessary to add lighting and surveillance cameras on the roads, especially those with a lot of traffic. This helps the vehicles circulate smoothly, as well as easily extract images and content about the accident. It is the basis for tracing the person causing accident, the basis for the victim to claim compensation for damage, contributing to raising people's awareness when using means of transport.

Fourthly, TPL needs to regularly strengthen inspection and sanction violations of the law on transportation to limit violations, to raise the awareness of owners and drivers of MTM.

In that way, it is not only possible to limit the damage occurring in transportation field, timely compensate for damage to victims, but also contribute to the protection of security, order and social safety.

## V. CONCLUSION

This work studies provisions on the liability for compensation for damage of OMTM, analyzes the current civil law provisions, as well as evaluates the practical application of the law through a number of cases of the Courts at all levels. The authors have made recommendations to amend and supplement a number of articles of civil law in order to perfect the regulations on liability for compensation for damage caused by source of extreme danger and MTM, as well as the liability of OMTM. The ultimate purpose is to protect the legitimate rights and interests of the parties in relationship regarding the liability to compensate for non-contractual damages. Understanding these regulations will help to better protect legitimate rights and interests of each person and those around in the case of rising to liability for compensation for damage caused by MTM.

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- [7] <https://tapchitoaan.vn/bai-viet/phap-luat/trach-nhiem-boithuong-thiet-hai-do-nguon-nguy-hiem-cao-do-gay-ra>.
- [8] <https://tapchitoaan.vn/bai-viet/phap-luat/vuongmac-trongap-dung-phap-luat-ve-boi-thuong-thiet-hai-ngoai-hop-dong>.