

Comparative Investigation of Punitive Damage and How to Demand it in England and Iran law

Mehran Sharifimoghadam¹, Majid durdian²

¹Meyme (Isfahan) Branch, Islamic Azad University, Isfahan, Iran.

²Science and Research Branch, Islamic Azad University (IAU), Isfahan branch (Ardestan), Iran

DOI: 10.6007/IJARBSS/v5-i11/1916 URL: <http://dx.doi.org/10.6007/IJARBSS/v5-i11/1916>

Abstract

Punitive damage is a kind of damage which must be paid by the defendant to the plaintiff for the behavior accompanied with insolence and the bad faith he had in damaging.

The origin of this legal body was in common law and especially in England which have been rapidly extended in other countries as wells and it has objectives such as preventing the members of the society from intentional damage.

Punitive damage is a strong civil executive guarantee and it cannot be punishment in a particular sense, and this executive guarantee do seer just concern the discussion of civil ciability, rather it is applicable in contract law as well.

The amount of punitive damage is determined by the court regarding case status, but something same of laws have restricted court authorities in determining its amount. There are some disparts concerning the capability of insurance ability process, but it must be noted that insuring this kind of damage contrasts to some extent with its objectives.

Keywords: Punitive Damage, Common Law, Consideration, Civil, Performance Bond.

Introduction:

The body of punitive damage is one of widely used bodies in most legal systems of the world and especially in common law countries, but it enjoys a weak place, in such a way that it is unknown for most of people involved in legal discussion and few person resources have addressed it.

However, Iranian lawmakers forced Iranian courts to vote based on paying this kind of damage by the approval of the law modifications of Islamic republic of Iran ministry of justice jurisdiction act for addressing civil claims against foreign countries in international cases and on the condition of mutual conduct.

This made us to provide some materials in this paper concerning punitive damage body. Therefore, at first Iran courts of justices that intend to issue the verdict on this matter have on access to person resources and second, take a step for the introduction of this body to the internal law of Iran and occasionally the entrance and using its benefits.

Our aim in this paper is complete recognition of punitive damage body. In this regards at first we will investigate the concept and history of this body in the first topic and then, we will

discuss about the nature of punitive damage, which is one of the most important discussion in this regard.

Moreover, in this discussion we will see the realm of punitive damage concerning contracts. After that, in third discussion, we will propose punitive damage conditions, so to enter the fourth subject concerning.

The effects and command meuts of punitive damage body, so we will see what effect it will have on it after obtaining punitive damage conditions.

First: punitive damage concept and background

In order to analyze punitive damage body, we should investigate the concept of punitive damage and its background in different legal systems at first. In addition, we will propose the aims of punitive damage body and its critissions.

A) In concept of punitive damage

In England law, exemplary law is the equivalent of punitive law.

Punitive damages used in American law.

In addition to the two above-mentioned expressions, vindictive damage and presumptive damage have been used for expressing the concept of punitive damage (black, 1968, p104).

Although the above-mentioned expressions literally have same meaning, they have a fully consistent concept and any of which are applied in various legal systems.

Regarding this legal body, punitive damage expression is common and only Iranian jurists.

This expression has been used in single act of Islamic republic of Iran ministry of justice authority modification law for addressing civil claims against foreign governments, as well.

Therefore, in this paper, this expression also will be used.

Black dictionary has defined punitive damage as following: it is and increased degree of damages.

In which the verdict is issued in the benefit of plaintiff where the defendant has presented a cautionless behavior along with misintention or deceit in his words.

Oxford dictionary has also stated in this regard that it is a damage, which is paid for punishing the defendant in the expense of the damage he has committed to the plaintiff for the sale of compensation. It seems that this definition is incomplete, becomes we will see in the following subjects punitive damage doesn't have a compensate aspect.

Unrepairable, but what can be drawn from this definition is that regarding using "compensate", the punitive damage has a repair aspect.

Although, it was better they not to use: "punish" statement, become punitive damage is different from the punishment.

However, preventive aspect of punitive damage can be drawn from this definition. In another definition of punitive damage, it has been said that where the defendant's behavior is intentional, autocractical presnmtous or maliciousness, the court will determine that he must pay an amount of money in addition to the remedy damage.

In internal law, this expression has been defined as well.

As an example, it is said that the punitive damage is an assumption where the defendant's behavior toward the plaintiff is insulting in addition to coming.

Damage for him or show his ignorance toward others safety or it must be along with arrangements for avoiding paying the damages. It is also said that punitive damage is an amount of money, which is paid to the plaintiff for an intentional, or misbehavior of the defendant.

Therefore, punitive damage can be defined in such a way that it is a kind of extra damage in addition to remedy damage that the defendant must pay to the plaintiff for the sale of having presumption and insolence in his damaging behavior based on the court verdict.

B) punitive damage background

1) in England law

- 1- The concept of punitive damage in England law has been existed in England law traditionally and the verdict has been issued without being under certain principles and regulation (Royers 1989, p207) and it gradually permeated to other countries, but this kind of damage has been formally proposed for the first time in wilks V. wood argumentation in 1763. And in that year in "Huckle v mouey". The verdict issued for it, and until 1763, it was regarded by the courts so that the House of Lords set some limitations for issuing punitive damage verdict in Rookes v Barnard conflict (cumney 2002. P12). In this conflict, the house of lords, especially lord devlin formulated and clarified principles and regulate, tiams governing this parliament opinion, the issuance of verdicts containing punitive damages are limited into the following there categories:
 - 1- Where the plaintiff is the victim of self-willness or inequitable behavior of bureaucrats in courts to the basic law.
 - 2- Were the defendant has been limited from committing the crime, in such a way that he has committed the crime by calculating the possible gain and loss of the civil responsibility of committing tort.
 - 3- Where the law clearly allowed the issuance of punitive damage verdict.

This belief of the House of Lords in England followed different reactions and courts did not obey it absolutely.

Moreover, after that, two perspectives were emerged concerning punitive damage and countries were divided into two categories concerning applying it. The first category were countries which applied limitations set by England the house of lords about punitive damages which made the majority like England Canada, New island and the UK itself, and the second category were countries which did not consider any limitation in paying punitive damage and USA and Australia were the most important ones (Abdolahi,1004.p 87).

2) In Iran Law

In Iran Law the concept of punitive damages entered Iran legal system by passing the act of Islamic Republic of Iran courts of justice authority law for addressing civil clams against foreign governments in 2000.

Moreover, it is verdicted in international cases as a counter behavior.

This rule was passed in response to the modification of foreign sovereign Immunity Act 1996 and its following acts.

In Iran Law, the primary and general principle of compensating damage is to restore the lost to the status quoante from which various articles of civil law and other rules the fundamentals of this principle is to remedy damages.

Except the above-mentioned rule, which is only related to international cases. In other laws, there is no clarification about the punitive damages and the effort of some jurists on basing this kind of damage to general principles in remedies in Iran Law has not been fruitful. Therefore, the issuance of the verdict based on paying punitive damage lacks legal aspect in Iran Law. There are some bodies in Iran Law that have similarity with punitive damage. For example consideration blood money or compulsion penalty sometimes take punitive damage discussion can be attained to some extent through spiritual damage or payment delay damage. But it must be considered that none of these bodies are coincident with punitive damage discussion.

Second: the aims of punitive damage

The following cases can be considered as the aims of courts and law in issuing verdicts based on paying punitive damage.

A) Punishment

In fact, this aim is a part of penal-like nature of punitive damage. In other words, this task of punitive damage indicates the meaning of balance, justice and right.

Of course, we will see that the devised punishment in the discussion of punitive damage is different from the sense of punishment in its special meaning, which is discussed in criminal law and criminal responsibility.

B) Deterrence

The most important aim of punitive damage is its deterrence become it prevents the losing party to do the action again, and it has a deterring aspect for other people of society or at least, the people with same job as the losing party (Nelson 1982,P377).

C) Compensating

In the US, punitive damage finds compensating aspect in the following three senses.

- 1- Regarding lawyers' fee, since the delegated pays, the lawyers fee him and it is not considered in the courts verdict damages. While for example in Iran lawyers fee is considered as compensating damages according to article 515 of code of civil procedure (Nodrati kolvanh,2007 p25).
- 2- When the calculation of punitive damage is hard, especially in intellectual damage discussion (the same, p25).

- 3- When the verification of insuring a real loss is hard, like the breach of intellectual property (The same, p25). Creating security in economic space, benefits detoxification training and confirming standard social behavior and action.

Are other aims of punitive damages that there is no sufficient time for addressing them is this manuscript (Cody, 1997:p25).

Demanding punitive damages conditions

A) Misintention condition in punitive damage behavior

In claims related to what concerns the punishment of the defendant, we must see that what feature his behavior has, which sometimes deserves such a heavy punishment.

In a different countries, every writer has used some expression for describing the describing the desired behavior in punitive damages. Sometime "malice" has been used sometimes recklessness and sometimes-gross negligence. In Persian texts in addition to the above expressions, some expressions like the behavior along with deficit (Rodijanani,2006 p217). Or insulting behavior with insolence (Rahpeyk 2009, p33) have been used.

B) Insuring damage condition in punitive damage.

In this topic, we attempt to answer this question whether the inoccurrence of loss is obligatory for issuing the verdict to pay punitive damage or not. It may be said that the punitive damage may have a compensating aspect and it is not paid for compensating the incurred loss. Therefore, it does not differ that the loss is incurred to the plaintiff or not, this cannot be correct, since we saw in the dialogue related to the concept of punitive damage that wherever this body has been defined, there was something related to insurance the loss. Moreover, punitive damage is related to somewhere someone who has incurred a loss had done this intentionally and with misintention. Moreover, the payment of punitive damage will be done when triple principles of civil responsibility have been realized and flants.

When a loss has been incurred to the plaintiff in addition to the occurrence of loss-incurring action with special conditions. The plaintiff can demand the damages such as compensating or punitive after verifying a causal relationship between the act of the defendant and loss.

In other worlds, paying punitive damage is not the main task, it is in addition to compensating damaged, and it does not make sense without it. Therefore, the entrance of loss is one of conditions of demanding punitive damages. (khodabakhshi 2009, p323).

The insurability of punitive damages

- 1- Insuring punitive damages is in contrast with common order becomes the punishment is not transferable and everyone is responsible for his own action along misintention (Nodrati klongh 2005, p33).

That is, we transfer the punishment from the quality person to another innocent person by insuring punitive damages.

- 2- We have demolished deterring and fearing state of the punitive damages and we have made the punitive damage for from our objectives. (Katoozian 2007, p 235).
- 3- We have created a unspecified wealth for the defendant by insuring punitive damages.
- 4- In contrast to this idea, many courts consider punitive damages insurable became.
- 1- Insuring punitive damages is not in contrast to the common order, became the power of common order has decreased today regarding the principle of will sovereignty.

Has been decreased and second, punitive damages is sep? from the punishment and transferring its responsibility to the other is not the transfer of punishment and third, if we considers in contrast to common order, we have subjected the common order (Nodrati kolvangh2007, p 33).

- 2- The existence of insurance in punitive damage doesn't dam? Deterring share of punitive damage become the payment of insurance right has a deterring state itself and he important thing is that to consider the fundamental aims of punitive damages.
- 3- There is an expression from the insurance to cover all damages including punitive damage and the insurance should respond to this expectation.
- 4- The topic of punitive damage insurability is related to the insured and insurer and the contract between them and if the insurer accept the insurance, there will be no excuse on the behalf of the court to reject it (ibid pl).

Conclusion

- 1- Punitive damage is a kind of additional damage an compensatory damages which the defendant should pay if to the plaintiff for the courage and insolence that he had in his damaging behavior.

the origin of punitive damages was in England law and it has rapidly extended in countries abiding common law system and some of Rumi-Beman abiding countries have accepted this kind of damage. The mist important aim of punitive damages is to deter the doer of deterring action and other people of the society to common an intentional loss.

However, other aims like the punishment of the doer of action, benefit detoxification, creating a secure economic space and etc. are accounted for this body.

- 2- Some jurists have criticized punitive damage including that this kind of damage interchange between the responsibilities of criminal and civil law and it punishes the defendant without enjoying the accused securities in criminal law but these criticisms did not preclude the development of this body in different legal systems, although it has created some limitation in this body. There is a disagreement between jurist whether this body is a criminal body or a civil one, but, it must be considered that this body has a criminal like nature, although it is examined as a civil executive guarantee.
- 3- The court determines the amount of punitive damage with regard to the defendant's behavior and other condition of the case. However, some legal systems have set some limitations in determining its amount, which lead to limit the authority of the court in

this regard. There is a disagreement for the insurability of the punitive damage and various approaches are applied in different places in practice. However, it must be considered that its insurability to some extent has contrast with the bodies' objectives such as deterring objective.

References

- Abdullahi, M. (2004), "punitive damages in international law", Journal of International Law.
- Bagheri, A. (2001) et al Majd Law Dictionary, Second Edition, Tehran, again.
- Black, H.Campbell,(1968), blacks law dictionary, London, west publication.
- Blatt, Richard , Hammesfahr, Robert W, Nugent, Loris(1991), a state by state guide to law and practice ,first edition, London, west publication.
- Calnan, A.(1995), Ending the punitive damage debate.
- Cody, T.(1997), The discriminatory effects of punitive damages.
- consistory, N. (2008), the requirements of the contract, civil liability, Volume 1, Eighth Edition, Tehran, Tehran University Press.
- consistory, N. (2005), in charge of manufacturing defect, Second Edition, Tehran, Tehran University Press.
- Khodabakhshi, A. (2009), and the rights of civil liability insurance, printing, Tehran, deputy publishing legal and judicial development of the judiciary.
- Klvanq nodrati, A. (2007) comparative study of punitive damages, MA thesis privacy, Tehran University, College of Qom, Faculty of Law.
- Lunney, M. Oliphant, K.(2002) ,Tort law ,London, waterloo publication.
- Nelson, Paul C.(1982), Punishment for profit .
- Oxford dictionary of law,(1998), first edition, Tehran, Agah publication.
- Rahpeyc,H .(2009) civil liability of pleadings, lessons, master of Private Law, Faculty of Judicial Sciences.
- Royers W. V. H.(1989) ,the law of tort fundamental principles of law ,London, sweet and maxwell publication.
- Rvdyjany, M. (2006), guarantees its performance, Master Thesis privacy, Shiraz University, Faculty of Law.
- Salbu, Seven R.(1997), Developing rational punitive damages policies.
- Sanderse, Joseph(2008), In consumer action.
- The purpose Pashaky, R. (2009), a comparative study means commitment, doctoral dissertation privacy, martyr Beheshti University, Faculty of Law.