

Spiritual damages in tort cases in Shanghai, China

Description

[This is an old post written by the blogger of this blog. What is discussed about in this article has been remaining unchanged.]

Under Chinese laws, in a tort case involving severe violation of personal interests (bodily integrity, fame, privacy etc.), victims are often granted both economic damages and spiritual damages.

If you are unfortunately caught in road accidents in Shanghai and are deprived of a limb, compared with similar victims in other parts of China, you are lucky to be entitled to more compensatory damages calculated based on Shanghai local economic data (e.g. per capital income, per capital expenditure etc.), but you will find yourself unlucky when it comes to spiritual damages that may be made available in court judgment.

To avoid abuse of award of spiritual damages to victims, in 1999, Shanghai High People's Court, in the absence of any specific rules and instructions from the Supreme Court of China, provided in one of its guidelines on application of civil laws that spiritual damages are generally capped at RMB 50,000 (a figure that is two times the per capital GDP of Shanghai in 1998). From that on, seldom has one seen a Shanghai court's judgment granting an amount of more than RMB 50,000 for spiritual damages suffered by victims. However, we have seen judgments delivered outside Shanghai in which an amount of RMB 200,000 was awarded to plaintiff as spiritual damages.

More ridiculously, Shanghai courts have come to link the RMB 50,000 to the grades of disability of victims. Since disability in China is graded into ten (10) levels from grade 10 up to grade 1 in terms of severity thereof, courts throughout Shanghai have come to the practice that in the case of disability of grade 10, victim will be granted spiritual damages of RMB 5,000, and in the case of disability of grade 9, spiritual damages will be increased by RMB 5,000 to RMB 10,000, and so on, and in the case of grade 1 disability, the spiritual damages will be RMB 50,000.

That was true as proved in those cases I personally have handled.

Such low amounts of spiritual damages granted by Shanghai courts have led to calls for adjustment of the old rules given the backdrop that Shanghai is now seen as the best and most successful city in China. One of the grounds for arguing for increase of spiritual damages in Shanghai is that as the capping amount of RMB 50,000 was determined then in light of the per capital GDP then, such capping amount shall be adjusted in line with the increase of annual per capital GDP in Shanghai. According to the Shanghai local economic data of the year of 2009, the per capital GDP in Shanghai is RMB 77,555, namely, around USD 11,371, which means that the capping amount for spiritual damages shall be increased to RMB 155,111.

It remains to be seen whether Shanghai courts are going to make a change in respect of spiritual damages soon.

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