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Compensation for damages in the event of death, in the Italian Legal System

di
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Abstract
This paper intends to identify the main legal issues that regard the current debate in Italy concerning the recognition of compensation for damages, in the event of death, caused by a wrongful act of another. The first part intends to give a general overview of the main questions related to the identification and quantification of non-pecuniary damages, suffered both by the first-degree victim of the wrongful act, and possibly transferable to the heirs, under the profile jure hereditatis, as well as directly by the relatives with an autonomous right, jure proprio. In the second part, a comprehensive analysis is made of the ongoing debate concerning the controversial legal figure of thanatological damages, also in the light of a recent ruling of the Court of Cassation (known as "Scarano" decision) that, in conflict with prior long-standing case law, affirms the principle that damages for instantaneous loss of life gives rise to a direct right of compensation in favor of the victim and consequently transferable to the heirs.
Il presente contributo si propone di delineare le principali questioni che riguardano il dibattito in Italia in merito alla risarcibilità dei danni conseguenti alla morte causata da una condotta illecita altrui. Nella prima parte dello scritto si intende svolgere una breve disamina delle problematiche relative alla identificazione dei danni non patrimoniali subiti sia in prima persona dalla vittima primaria dell'illecito, ed eventualmente trasmissibili agli eredi, sia *iure proprio* dai congiunti. Nella seconda parte si considera analiticamente il dibattito che ruota in particolare intorno alla controversa figura del danno tanatologico, alla luce della recente sentenza della Corte di Cassazione (nota come sentenza "Scarano") che, in contrasto con il consolidato orientamento giurisprudenziale, afferma il principio della risarcibilità del danno per la perdita istantanea della vita e la conseguente trasmissibilità in capo agli eredi del relativo diritto al risarcimento dei danni sofferti dal *de cuius*.

1. Introduction

The discussion on the right to compensation for damages resulting from the death of a member of the family, caused by the wrongful act of another, has for many years divided, from multiple perspectives, both legal commentators

[1] and case law in Italy.
In today's paper, it is my intention to identify the main legal issues that form part of the current debate in Italy, and which has flared up following a recent ruling of the Italian Court of Cassation [2]. The judgment, known as the "Scarano" decision - after the Judge-Rapporteur – conflicts with prior long-standing case law and introduces the principle that damages for instantaneous loss of life, caused by injuries suffered as consequence of a car accident, gives rise to a direct right of compensation in favor of the victim and therefore transferable to heirs. Considering the conflict with prior, the Court of Cassation, in plenary session, has now been called on to take a position on this legal issue in order to provide a harmonized interpretation within the Court. A decision of the plenary court is expected soon.

2. Main legal issues considered by the Italian courts in relation to the recognition of damages resulting from death caused by tort.

A first set of questions regards the capacity to institute legal proceedings to request non-pecuniary damages by the relatives of the deceased victim.
It is generally accepted that the so-called second-degree victims of a unlawful act, i.e. the relatives of the victim, have a legal right to recover non pecuniary damages suffered in their own personal sphere related to the death of a kinsman i.e. so-called "relative damages" ("*Danni riflessi*") . The prerequisite commonly accepted by legal commentators and by consolidated case law, consists in the prerogative of a qualified relationship with the victim that generally corresponds to the ordinary connection under a family affiliation, though this is as such not sufficient, since the relative is also required to demonstrate a particular *de facto* affective connection. In fact, the existence of a family affiliation under the legal framework is neither necessary nor sufficient. On the one hand, it is by now fully accepted that an "institutional" family affiliation is no longer required because *de facto* relations are able to establish intensive affective interaction and solidarity as well [3]; on the other hand, it is not sufficient in view of the fact that the courts will assess, on a case by case basis, both the actual importance of the affective bond as well as the impact of the prejudice suffered by the primary victim on the relationship of the relative, to the extent of even jeopardizing its existence [4].
In relation to the *locus standi* of the relatives not pertaining to the traditional nuclear family (i.e. grandparents, grandchildren, son-in-law, sister-in-law and so on) , there exists conflicting positions in the case-law: a first older opinion [5] subordinates the right of compensation, besides the legal affiliation, to the prerequisite of cohabitation, whereas a second more recent ruling [6] no longer requires such condition on the grounds that the lack of cohabitation may be attributable to specific circumstances of life, but does not affect the continuity of an affective bond and psychological affinity with the deceased relative. Recently the Court of Cassation [7] endorsed the former principle by confirming that, in order to qualify as damages able to harm family members not belonging to the nuclear family, (grandparents, grandchildren, son-in-

law, sister-in-law and so on) , cohabitation is mandatory as a minimum requirement through which the intimacy of the larger parental relationship is expressed.

A second set of questions regards the recognition of pecuniary damages, although the legal issues are relatively limited. Compensation for damages, under the Italian Civil Code (art. 1223) , includes both the *damnum emergens*, *i.e. costs* actually incurred (*e.g.* health care expenses such as treatment and hospitalization costs of the victim, funeral expenses, value of the goods of the deceased victim destroyed during the unlawful act) , as well as the *lucrum cessans*, *i.e.* lost future income (*e.g.* contributions, subsidies or other benefits which could have been available to the deceased person under the statutory rules or by family solidarity, victim's future earnings until retirement, other expected services, protection, care and/or assistance for the survivors/beneficiaries) . In this context, the relatives might encounter difficulties in providing evidence of the existence and the extent of the income and/or contributions that the deceased person would have received.

More complex are the legal issues related to the identification and quantification of non-pecuniary damages, suffered both by the first-degree victim of the wrongful act and possibly transferable to the heirs, under the profile *jure hereditatis*, as well as directly by the relatives with an autonomous right, *jure proprio*.

The Italian statutory rules do not provide for a definition of non-pecuniary damages but provides for a right of compensation under art. 2059 of the Civil Code, with some limitations.

This is not the place to analyze the broad interpretation of this article, which over time evolved up to including, besides damages arising from criminal or unlawful acts, any kind of prejudice caused by the impairment of inviolable personal rights recognized in the Constitution.

Conversely, it seems important to underline that more recent court decisions have reconsidered the former principles which gave rise to a particularly complex unclear framework, resulting *de facto* in a unfair treatment between different victims of an unlawful event causing death, in particular, in respect of those damage profiles whose recognition is entrusted to the equitable evaluation of the single courts.

The damages profiles which emerge from the case law can be summarized as follows:

A) The right to compensation pertaining to the first degree victim, and possibly transferable to the heirs, in principle to:

a) biological damages suffered by the deceased, *i.e. de cujus*, which can be recognized, as set forth below, only in very limited cases and solely if there was a noteworthy lapse of time between the events of the wrongful act and the death;

b) moral damages suffered by the victim where the latter was aware of the catastrophic consequences of the wrongful event leading to the loss of his/her own life, i.e. catastrophic damages;

c) damages for loss of life, i.e. thanatological damages, recognized to date only occasionally by the lower Italian Courts and by a part of legal commentators.
B) The relatives, under a profile *jure proprio*, are entitled to:
a) biological damages, in case the distress from the loss of someone close has evolved into a "*temporary or permanent injury to a person's physical and mental integrity which can be identified through a medico-legal assessment and which has a negative impact on the activities of daily life and on the dynamic and interpersonal aspects of the life of the injured party, regardless of any repercussions on his/her capacity to produce income*". The same concept is applied in the Italian Code of Private Insurance (article 138) and it is commonly accepted that this has a general extension;
b) moral damages, intended as a state of anxiety or psychological distress as result of the loss of a relative;
c) the controversial existential damages, mostly correlated to the damages due to the loss of a parental relationship which, according to recent changes in the case law, might exist when the relative of the deceased victim can establish that, upon the harmful event, his/her ordinary living habits were seriously disturbed to the point of being compelled to change lifestyle [8].

3. The debate related to the "thanatological" damages.

Having introduced the main legal issues related to damages for wrongful death, I would like now to focus on the ongoing debate concerning the controversial legal figure of thanatological damages. Compensation for this type of damage has systematically been rejected in prior decisions of the Italian Court of Cassation [9] as well as by the Constitutional Court in 1994 [10]. The main reasons rejecting the right of compensation to damages for instantaneous loss of life include: a) the application of the civil liability regime requires not only a prejudice to a personal legal position but also a suffered loss connected to this prejudice. A situation of instantaneous death impedes, *per se*, that the wrongful event can produce an actual loss for the offended person who is no longer in life [11]; b) health and life belong to two substantially different legal categories, so that compensatory treatment based on biological damage related to damage to health cannot be applied to damage for loss of life. For this reason, a compensatory right exists only in the event of damage to health prolonged over time; c) an heir cannot inherit indirectly something that was never an established right for the person who lost his life, i.e. the *de cujus*, considering that the loss of life involves the loss of legal capacity [12]; d) the function of providing a remedy and comfort related to the compensatory regime of a wrongful act cannot be applied in case of a death since this would be regarded as punitive which is not admitted under the civil liability regime.
On the other hand, some influential legal commentators, in particular Nicolò Lipari, have argued in favor of the right to compensation including in cases of instantaneous loss of life, both on the assumption that a death represents the maximum impairment possible to an individual's rights to good health

and, in such terms, should give rise to a right to damages as well as, from a more visionary perspective, on the assumption that the destruction of a human life not only constitutes evident harm to the victim but also an "offense to his core family and results in a "very high cost to the society" [13]. This interesting viewpoint qualifies life, once destroyed, as a good to be defended not only in the interest of the person and his/her family, but also in the interest of the collectivity.
More generally, it is interesting to note that for quite some time, there have been some remarkable court decisions that advocate the idea of a wider social justice by introducing solutions capable of compensating the lack of restitution of a loss of live and, consequently, of balancing the well known contradictory aphorism "it is cheaper to kill a person than to wound him". Hence, by establishing that damages for death fall outside the succession system, the courts have preferred to give a major weight to the prejudice of the parental relationship [14].
Additionally, in order to validate the transferability of damages linked to the death of the victim, the case law has, on several occasions, considered that "terminal biological damages" are capable of being compensated where death was caused by the injuries suffered and that between the occurrence of such injuries, which affected the psychological and physical integrity of the deceased victim, and death, there elapsed a "considerable period of time" [15]. The main legal questions in the case law are mostly focused on the analysis of the adequate time period required to give rise to a lawful right to compensation. This has resulted in an uncertain and vague system also considering that the judge must necessarily make a case by case evaluation, under equitable principles, with specific regard to the assessment of the daily psychophysical damages suffered and that these were the cause of death.
Other examples are the so-called "catastrophic damages" or terminal moral damages, consisting of the sufferance of the victim when aware of the future fatal outcome. The right to compensation has also been recognized by the courts in the event that the victim survives, even only briefly, the injury and on the basis that the victim's suffering was caused by the full awareness of the "tragic consequences of the injuries" [16]. As a result, there is no eligible right for compensation if the harmful event is followed by immediate coma and the victim was not conscious prior to death.
This approach has been criticized on the basis that it is inconsistent because it would entail that a gravely injured person who went immediately into coma and died soon afterwards has no right to compensation whereas a person remaining conscious and dying soon afterwards, would have such a right.
Recognition of "catastrophic damages" might even qualify as unfair treatment if we consider a recent decision of the Court of Cassation [17] related to the Ustica Air Crash, that denied to the relatives of the victims the right to be compensated for the prejudice of the right to life suffered by the passengers, for the reasons that a deceased victim can not possibly acquire a right deriving from his/her own death and, on the other hand, given the lack of evidence of the existence of a state of consciousness for the victim in the brief period between the wrongful event and death.

4. The "Scarano" decision.

In this context, the recent "Scarano" decision of the Court of Cassation comes to a completely different solution, in that it considers the above elements of damage (i.e. terminal biological damage, catastrophic damage) as mere artificial loopholes to overcome the absence of a right to compensation for damages due to instantaneous loss of life.
The facts of the case can be summarized as follows:
A women, married with two children, was involved in an motor vehicle accident and dies shortly after. Her husband, also present during the accident, survives despite his serious injuries but evidently cannot stand the grief of the death of his wife and, after two years, commits suicide. The relatives of the wife and husband (i.e. the children, the mother and sister of the deceased women) initiate legal proceedings against the author of the car incident by claiming compensation for non-pecuniary damages suffered both under a "*iure proprio*" and a "*iure hereditatis*" profile. The damages claim, *iure hereditatis,* was rejected in first instance and on appeal on the ground that the time between the incident and the death (approximately three and a half hours) was insufficient to grant the victim rights transferable to her heir. The appeal decision was challenged before the Court of Cassation which overrules the decisions of the lower courts, and recognizes the principle of the immediate acquisition by the victim of rights to compensation with respect her loss of life and, as a consequence, the possibility to transfer this to the heirs *pro quota*.
In the grounds of the decision, the Court reasoned that the lack of the right to compensation for loss of a person's own life constitutes a response that "does not correspond to the commonly-held feeling in this given historical moment", since "the loss of life cannot lack civil protection".
Based on this statement, the Court accepted the right to compensation *per se* for the damages of (instantaneous) loss of life, i.e. thanatological damages.
These damages are distinct from damages for loss of health and therefore differ from "terminal biological damages" and "terminal moral damages" (or "catastrophic damages") of the deceased victim. Indeed, according to the High Court, the "loss involves compensation regardless of the consciousness of the victim, without the need to consider the requirements of both the persistence of life for a considerable period of time after the prejudice, as well as the criterion of the intensity of the suffering caused by the awareness of the inevitable forthcoming end of life". The prerequisite that a significant period of time should elapse between the prejudice and death is therefore considered unacceptable, since victims of a fatality should not receive different treatment on the basis of the criterion of the time of survival, given that the pertinent question relates not to the daily loss of integrity until the event of death but rather to the loss of life, assessed *a priori* and not a *posteriori*.
The High Court goes on to reason that the right to compensation for loss of life is acquired by the victim immediately at the time of fatal accident and is consequently transferable to the heirs. This motivation has introduced an

exception to the principle of the impossibility to compensate damages for the mere occurrence of a damaging event, whereas such right exists to compensate the consequences of such event, "considering that the death event has as a consequence, the loss of not only something but of everything; not only one of many goods but the loss of the supreme good of life [18].
The right to compensation is acquired before the time of death and, according to the Court, such mechanism safeguards the principle of the remedial or relief function of compensation, considering that "the victim's credit related to the loss of his/her own life due to the wrongful act of another, increases his/her estate". As a result, as stated by the Court, the punitive function is not recognized, as this would be contrary to our civil liability regime.
The personalistic perspective adopted by the Court is particularly clear in this case where the defined principles are strictly functional to the granting of additional fundamental rights to the person, but is also very innovative for the Italian legal civil liability system. Notwithstanding the affirmation of the Court of Cassation of the existence of a compensatory and relief function of compensation for instantaneous death, it is difficult not to perceive some kind of punitive effect in the decision.
The Scarano ruling tackles another important aspect related to the criteria for quantifying the non-pecuniary damages and ultimately those connected to the (instantaneous) death.
There emerges from the decision a certain suspicion towards the tables system. It is to be noted that the payment method in Italy for compensation of damages to persons is mainly the result of the outcome of court decisions which, starting from the last decade of the twentieth century, has given rise to the development of a tables system in various tribunals, to ensure a higher level of certainty and of equal treatment, even if the amount of compensation is still determined case by case.
The tables prepared by the Milan Tribunal were given particular importance in a recent decision of the Court of Cassation that regarded them as a reliable guideline for the quantification of damages throughout Italy, as they are believed to be the most appropriate guide to guarantee of an equitable compensation of motor vehicle incident damages and, more in general, of the safeguarding of the principle of equal treatment. However, the Scarano ruling considers hat the current state of the art of the "collective equity" included in the tabular system of Milan, is not always a guarantee to implement the so-called personalization requirement for the quantification of damages [19].
By specifying the fundamental distinction between damages for loss of life and damages for loss of health, the former not being provided for in the tables of the Milan Tribunal, the Scarano ruling states that the courts on the merits have a discretional right to identify the proper evaluation criteria that allow to come to an equitable compensation, considering for example age, health conditions, future life expectations, the occupation and the personal and family conditions of the victims.

Under this profile, the reservations expressed by legal commentators on a system that fosters equity rather than certainty and predictability can be shared. By conferring to each court the task of determining an equitable compensation on a case by case basis, it is very difficult to reconcile the complex network of interests involved in civil liability and this means that the final amount of compensation cannot be determined by "independent variables" [21], which would alter the fundamental need of certainty. This uncertainty that would lead to a higher level of compensation is likely to involve an increase in insurance premiums to the prejudice of the economically weaker sectors of society.
Even if damages for loss of life is recognized, it would be difficult not to include such events in a table system in order to achieve a reasonable balance between the value of the human life of the prejudiced person and the interest of the author of the wrongful act not to have his assests excessively aggravated. It is useful to recall that the predictability and certainty of the possible damage types is considered crucial for the proper administration of compensation by insurance companies. The table system is certainly a useful instrument for insurance companies for this purpose, provided that it is structured to ensure an adequate level of discretion so that each case can be evaluated on its own merits.

5. Conclusions.

As a general conclusion, the Scarano Ruling remains an interesting, though controversial, decision considering its clear ambition for a higher "social justice", but it is doubtful that it can resist the verification by the Plenary Court.
The main obstacle is, in my opinion, related to the extinction of the legal capacity of the victim: indeed as long as the person is alive, although agonizing, there is no prejudice to his life but to his health. Furthermore, once the victim passes away, he can no longer acquire any right since the moment of death correspond to the moment of the loss of legal capacity. Hence, the damages for death apparently have a punitive effect, which is not in line with the principles adopted by the Italian civil liability system. In this respect, it seems important to consider a recent decision of the Court of Cassation that affirms that "under the current regime, the right to compensation for damages related to the prejudice of a personal right is not recognized if this has a punitive effect or objective – considering that the idea of punishment or sanction as a response to a civil liability event does not belong to our system and this regardless of the importance of the wrongful event – but must be related to the actual prejudice suffered by the holder of the impaired right, considering that enrichment without any justifying cause is not possible [22].
The issue related to the recognition of damages for loss of live raises also some important philosophical and ethical questions. Is it really possible to value life? In setting the level of compensation for a lost life, does this not involve an unfair treatment on the basis of the specific social background of

the victims, considering for example their jobs, personal life and familiar conditions? Hence, is it correct to value a blessed life (e.g. successful business, a large family, a rewarding social life) also more favorably at the time of death in respect to a person who was less fortunate?

Note:
[*] Il presente contributo riproduce l'intervento svolto dall'A. nell'ambito del XIV Congresso mondiale AIDA "Il diritto delle assicurazioni nel quadro mondiale" (Working part: Motor Insurance) tenutosi presso l'Università Europea di Roma (28/9-2/10, 2014)
[**] Il presente contributo è stato preventivamente sottoposto a referaggio anonimo affidato ad un componente del Comitato di Referee secondo il Regolamento adottato da questa Rivista.
[1] Among many comments: G. Giannini, *Il danno alla persona come danno biologico*, Milano, 1986; *Il risarcimento del danno alla persona*, Milano, 1991; R. Caso, *Uccidere è più conveniente che ferire: la distruzione della vita tra paradossi, irrazionalità e costi del sistema risarcitorio del danno non patrimoniale,* in www.jus.unitn.it; M.Bona, *Il danno da perdita della vita: osservazioni a sostegno della risarcibilità*, in *Danno e Resp*., 1999, 623 ss. G. Arnone, *Danno tanatologico: l'imperituro* barrage *della Cassazione*, in *Danno e responsabilità*, 2010, 808;; N. Lipari, *Danno tanatologico e categorie giuridiche*, in *Rivista critica di diritto privato*, 2012, 523; C.M. Bianca, Il danno da perdita della vita, in *Vita not*., 2012, 1498 ss. A. Galasso, *Il danno tanatologico*, in *Nuova Giur. civ. comm*., 2014, 25 ss.; A. Palmieri, R. Pardolesi, *Di bianco o di neo: la «querelle»sul danno da morte,* in *Foro it.,* I, 2014, 760; P. Ziviv, *Grandi speranze (per il danno no patrimoniale)* , in *Resp. civ. e Previd*., 2014, 380
[2] Court of Cassation, Sez. III, Civ., 23 January 2014 n. 1361, in *Danno e Resp.,* 2014, 363
[3] As recently recalled by the Court of Cassation 16 June 2014, no. 13564, the legitimacy to claim compensation for damages due to a wrongful death of a relative does not only pertain to the members of the legitimate family, but also to those who are part of a so-called "natural" family, provided that the latter can establish the existence of a stable and lasting affective relationship with the deceased which, considering the significant sharing of life experience and sentiments, is considered equivalent to a family by marriage (in the same terms, see also Cass. 16 September 2008, no. 23725; Cass. 7 June 2011, no. 12278 and Cass. 21 march 2013, no. 7128)
[4] In these terms Cass. Plenary Session, 1 July 2002, no. 9556.
[5] Cass. Sez. III, Civ., 23 June 1993, no. 6938
[6] Cass. Sez. III, Civ. 15 July 2005, no. 15019
[7] Cass. Sez. III, Civ., 16 March 2012 no. 4253
[8] It is important to highlight a decision of 11 November 2008 of the Plenary Session of the Italian Court of Cassation, which excluded the concept of existential damages (subsequently confirmed by the decision nos. 26973, 26974 and 26975, known as the "San Martino" rulings) (see Cass., Sez. Un.,

11.11.2008, no. 26973, Foro it., 2009, I, 120 ss; among the many comments, F. D. Busnelli, *Le Sezioni Unite ed il danno non patrimoniale, R.d.civ*., 09, 97; F. D. Busnelli, *Le Sezioni Unite e il danno non patrimoniale,* in F.D.Busnelli S.Patti (a cura di) , Danno e responsabilità civile, Torino, 2013, 59 ss.) , which has reconsidered the system of non-pecuniary damages, by stating that all suffered prejudices must necessarily be connected to a sole notion of non-pecuniary damages, as a macro-category for the purpose of preventing the duplication of claims for compensation. However, immediately after the publication of the above mentioned decisions, a process of revision of such ruling has begun, which include critical efforts of legal commentators made with the aim to take the self-sufficiency of the different compensatory damage claims into consideration and to restore the classical division containing three types of damage (biological, moral and existential damage) which was formally transposed in the decisions of the 2003 Plenary Session of the Court of Cassation. More recently, the Italian Court of Cassation, by decision no. 19402 of 22 August 2013, has confirmed "biological damage, moral damage and damage to the relationship respond to different evaluation perspectives in respect to the same prejudice, that may involve, for the victim and his/her relatives, documented medical damages, internal grief and a modification of lifestyle, by which the courts must examine all different aspects of the harmful event, avoiding at the same time, duplication, but also non-compensated damages, and, with particular regard to damages to family relationships, the judge must assess whether the relative of the deceased victim has established that, following the harmful event, the surviving relatives have suffered a disturbance of their normal living habits to the extent of being compelled to change lifestyle". The "Scarano" decision is framed according to the same division into three types of damages, though affirming to uphold a formal continuity with the Plenary Session ruling of 2008, basically by recognizing the principle of complete compensation of the damage, *de facto* it has set forth different approaches by which it can implement such principle. The decision confirms: (a) the sole category of non-pecuniary damages is confirmed by affirming however its complex nature which entails an autonomous compensatory right available for the three damage types (biological, moral and existential damage) which can be distinguished on the basis of the concrete evidence acquired during the proceedings and which can contribute to identify the content of the non-pecuniary damages. In addition, the decision represents that moral damage must be deemed inclusive of an additional and specific aspect related to the dignity of the person; (b) the autonomous qualification of the existential damages where the suffering and sorrow do not remain within the intimate sphere, but evolve in prejudices of such significance as to create a disturbance to the existence (c) the need to ensure a complete compensation for damages by means of a comprehensive assessment of the case under examination; (d) the principle of compensatory right *iure hereditario* in case of damages for immediate loss of life.

[9] In a decision of the Court of Cassation there is an opening, though only *obiter dictum*, in which it has been recognised that, in case of wrongful

death, together with the moral damage of the deceased person and the biological damages relating to the non-instantaneous death of the deceased person, both transferable j*ure hereditatis*, the right to compensation also exists for "damages for death such as loss of integrity and expectation of a biological life related to the prejudice to the inviolable right to life, protected under art. 2 of the Constitution. In such terms Cass. 12 July 2006, no. 15760
[10] Cass. 27 October 1994 no. 372 which rejected the constitutional legitimacy argument related to articles 2043 and 2059 c.c., for the reason that such provisions do allow the compensation of non-pecuniary damages deriving from the death of a relative in a car accident.
[11] As previously confirmed by Cass., Plenary Court, 22 December 1925, no. 3475, in *Il Foro italiano*, 1926, I, 328.
[12] Cfr. Cass., Plenary court, Civ., 22 December 1925, no. 3475 22 December 1925, as well as Cass. 16 May 2003, no. 7632
[13] In these terms N. Lipari, *Danno tanatologico e categorie giuridiche*, in *Riv. crit. dir. priv.*, 2012, 527, who maintains that the traditional opinion that does not recognize the figure of damages for death is heavily conditioned by the way in which the categories of damage have been framed *a priori*, so that it is necessary to call into question our traditional schemes by modifying its structure and providing for a new classification. Among the legal commentators in favour to compensation for the instantaneous loss of life: C.M.Bianca, Il danno da perdita della vita, in Vita not., 2012, 1498 ss. A.Galasso, *Il danno tanatologico*, in *Nuova Giur. civ. comm.*, 2014, 25 ss; M.Bona, *E' risarcibile iure successioni la perdita della vita? (una risposta positiva)* , in Giur. It., 2000, 1200
[14] Cass. 19 August 2003, no. 12124, in Foro it., 2004, I, 434; Cass., Sez. III, civ., 31 May 2003 n. 8828
[15] Cass. Sez. III Civ., 27 December 1994, n. 11169; Cass., 16 May 2003, n. 7632
[16] Cass. 31 May 2005 no. 11601; Cass. 6 August 2007, no. 17177; Cass., Plenary court, 11 November 2008 no. 26772; Cass. Plenary court., Sez. Un. 11 November 2008 no. 26773
[17] Cass. 28 January 2013, no. 1871
[18] The Courts, by placing the emphasis on the exception, appear to support a continuity of the principle set forth by the Plenary Sessions of 2008, by which only the damage-consequence gives rise to compensation but not the damage-event
[19] The court also expressed its doubts in relation to the limitations of compensation for the damage related to harm of minor importance provided for in the Italian Statutory rules (such limitation, in principle, applicable to motor vehicle torts has now also been extended to cases of medical liability pursuant to law no.189/2012) . In this respect, the Constitutional Court should shortly decide on the legitimacy of art. 139, para. 3 of the Private Insurance Code, where it provides for a limitation on the possible compensation for damages to the person, without any appropriate evaluation of the specific interests at stake (i.e. the economical interests of the insurance company on the one hand and the interest of a complete

compensation for the personal damages, related to the health care on the other) , knowing however that the Europe Court of Justice has already confirmed, in relation to the same article, the compliance of the Italian statutory rules with European law as well as the legitimate right of Member States to put a ceiling on rights to compensation in relation to motor vehicle accidents of minor importance.

[20] G.Ponzanelli, *La sentenza "Scarano"sul danno da perdita della vita: verso un nuovo statuto di danno risarcibile?*, in *Danno e responsabilità*., 2014, 400; F.Martini, *La volontà di realizzare una rivoluzione copernicana si scontra con la mancanza di solide basi giuridiche,* in *Guida al diritto*, 2014, fasc. 7, 30 ss

[21] G.Ponzanelli, *La sentenza "Scarano"sul danno da perdita della vita: verso un nuovo statuto di danno risarcibile?*, in *Danno e responsabilità*., 2014, 394

[22] In this respect, see Cass. Sez. I Civ., decision no. 1781 of 8 February 2012.

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