

Disrespect for life in China, a display of weak human rights protection

Description

The lady who was coerced to undergo to an abortion of her seven-month fetus has caught the attention of the whole nation in China, and probably of the whole world, an incident just following another closely related event involving the high-profile blind activist who has been fighting against local abortion practice in Shandong province, an eastern province in China.

That picture itself speaks a lot. I believe no one with flesh and blood won't be stung by the lying mother and her stillborn baby just at her side. One of the widely followed law professors on the twitter-like Sina weibo commented "why are my eyes are always filled with tears?" For me, I would added to that "why is my heart always filled with anger and hatred?" Yes, I am telling my true feelings inside.

As a lawyer I have not represented any person in abortion cases, however my experiences in personal injury cases have actually proved and manifested clearly a sheer lack of respect for human life, integrity and dignity, as a whole, human rights, in this most populous country in the world.

1. how much is one's life worth in China?

It may not be appropriate to raise this question in general circumstances but it is a real question when it comes to the compensation for the victim in a death accident.

Assuming A is killed in a road accident by a car and the car driver is 100% liable for the death of A, how much will the driver be required to pay to compensate for the death? Since May 1 of 2004 when China Supreme Court issued its interpretation on compensation for personal injuries, amount of compensation for death of anyone in China will be a simple math equation.

According to Article 29 of the said personal injury interpretation:

the amount of compensation for one's death shall be that of twenty multiplied by the amount of average disposable income of the urban residents or rural farmers, as the case may be, in the preceding year in the city where the court of forum is located. In the case the victim is over sixty years old, the number of excess over sixty shall be subtracted from the multiplicand of twenty in the aforesaid equation. In the case the victim is over seventy-five years, the multiplicand shall be five instead of twenty.

In addition to the amount of death compensation, claimants in such a case will also be entitled to claim funeral expenses equal to six month average monthly salary of workers in the preceding year in the place where the court of forum is located. Further, an amount of money can also be claimed and awarded for the dependants (minor children or incapacitated adults without source of income) who live on the means of the victim.

For example, if a person, urban resident below 60, dies from an accident in Shanghai, and a lawsuit is commenced thereby in 2012, the death compensation will be $36,230 \times 20 = 724,600$ (RMB), or

approximately, 113,834 (USD). If the victim is a farmer according to his household registration, his death compensation will be $15,644 \times 20 = 312,880$ (RMB), or approximately, 49,153 (USD).

I am not sure whether those figures of death compensation seem reasonable or not to outsiders. With everything being expensive in China, those amounts do not appear good enough.

2. A farmer's life is much less valuable than an urban counterpart

As indicated above, under current rules, a farmer (judged as such by his or her household registration, the *hukou*) even though working in cities like Shanghai may be much less compensated if he or she is wrongfully killed.

This has sparked debates for long as to whether it is fair to differentiate farmers from urban residents when it comes to compensation for their lives when their lives are deprived illegally. A more direct and mind-boggling question is: why a farmer's life is cheaper than that of an urban resident?

Despite the challenge posed by the public, the China Supreme Court shows no sign of changing the practice.

Though we do note that China Laws of Tort Liabilities, the newly enacted basic civil right law, provides that where an tortious act results in the death of more than one person, the amount of death compensation awarded for the victims may be the same (note- regardless of urban or rural residents), the latest attempt to redress the disparity noted above, though to a limited extent only.

3. Spiritual Damages in Shanghai, China

The need for spiritual damages has long been recognized in Chinese laws. Generally speaking, when an individual suffers severe emotional or mental anguish as a result of tortious conducts inflicted on his or her other personal rights (such as bodily integrity, reputation, health, dignity and freedom etc.), he or she may claim spritual damages against the wrongdoer or the tortfeasor. Nevertheless, there has been no clear guidlines as to how to determine the amount of spiritual damages that can be awarded to the plaintiff.

In absence of national uniform rules, Shanghai local courts (from People's High Court to district courts) have developped their own rules and pattern for awarding spiritual damages: the amount of spiritual or emotional damages shall start from RMB 5,000 if the victim's injury constitutes the least degree of disability, namely, 10th Grade disability; and amount of RMB 50,000 can be awarded if the victim dies or his injury constitutes the most degree of disability, namely, the 1st Grade disability without regard to any other elements or factors surrounding the case. For more information in this regard, please refer to my post: [spiritual damages in tort cases in Shanghai](#)

I frequently ask myself after getting a judgment with a ridiculous amount of spiritual damages: is this mean amount of money enough for someone whose leg has been that badly impaired?

To compare, I notice that in the west, claim for emotional distress has started gaining support from their courts and has developped further into independent lawsuits without proving physical injury or harm first.

4. Personal Injury and Work Injury

In Shanghai, it used to be the case that a person who is injured on the way up to office or back to home by a vehicle can make two separate claims based respectively on the general personal injury laws and on the work injury insurance laws.

However, from June of 2010, Shanghai People's High Court has handed down a guideline providing that items that are overlappingly claimed in both personal injury suit and work injury insurance suit cannot be both supported but only the higher one (in whichever suit) will be awarded. For instance, plaintiff may claim disability compensation in both suits, but he may only get one disability compensation amount that is greater as computed in the two suits.

To me, this is a retrogress in terms of protection of human rights, though theoretically and logically this sounds perfect at law, but when you think about someone being deprived of basic human ability to work or to move around, money can never make up for the loss. So how come you take away that already pitiable amount of compensation?

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