A Gordian Knot or not? On the relation between apologies, liability and compensation

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Banner on website of Insurance companies

Clicking brings insured to dedicated website:

http://contacthelpt.nl.transurl.nl/contact
Consider two paradigms of (tort) law (‘ideals’)

1. Justice is done on the basis of the truth
   – Courts should decide on the basis of the truth
   – Damages should be assessed objectively

2. Restitutio in integrum: the goal of tort law is recovery
   – Monetary compensation is not enough
   – Emotional recovery is a substantive goal
Article 21 Dutch Code of Civil Procedure

The parties are obliged to provide fully and truthfully the facts relevant to the case. If this obligation is not complied with, the court can take the measures it deems appropriate.
Article 7:953 Dutch Civil Code

If a liability insurance prohibits the insured to make certain acknowledgements, a violation of this prohibition will not have any effect insofar as such acknowledgement is correct. A prohibition to acknowledge facts never has any effect.
UK Compensation Act 2006, section 2

An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.

‘This provision is intended to reflect the existing law.’

Explanatory notes Compensation Act 2006, nr. 18
UK Compensation Act 2006, section 2

‘There is certainly a public perception that you should not say sorry, especially after a bump in a car or something like that, because it immediately prejudices your case and will be the first thing that the insurance company will worry about. If we are told that it does not matter whether or not you say sorry—as we probably will be—why do we not state that clearly in the Bill? We are trying to make some declaratory statements at the start of it to ensure that people understand the current law.’

Hansard 20 Dec 2005 col GC 282 (Lords) (The Earl of Erroll)
Goals of apology legislation

1. Authoritative statement that an apology is not an admission of liability

2. Voiding provisions in insurance contracts that sanction truthfulness

3. Excluding apologies from evidence
Effectivity of apology legislation

1. More apologies, promotion of emotional recovery

2. Procedure: less adversarial interactions, less litigation, more settlements, more ADR

3. Lower amounts of damages payed