

Civil liability and the role of insurance in car accident

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ABSTRACT: Right of civil liability is based on consumption of damage from damager. Therefore any losses must be consumption in this concept. One subject in civil liability and special rules in civil law is the right of consumption in car accident. It is important in very systems of law and legislator pointed to these rights in various format of civil liability and mandatory insurance. The purpose of this study is the surveying the role of civil liability in car accident. The methodology of this paper is descriptive and analysis. Finds show that legislator believes that car accident is an example of waste rule. We know that waste is not similar to Tasbib because waste has not a primary condition for consumption. In this case while bodies are not culprit in accident then accident is affected from both sides and any sides must consummated half of damage. In some cases, the responsibility of accident is undertaking third person. Islamic penal law expresses the responsibility of driver in an accident event but the determining driver as a side of accident is very important to consumption. When accident is acquired due to negligence of driver then the loss is getting from insurance of fault driver.

Keywords: civil liability of motorists, liability insurance, the insurance, traffic accidents

INTRODUCTION

The world is changing in new age and societies are developing in several aspect so transformation, Risk of car rapidly. This development of transformation has some dangerous position so accident. Therefore legislator attempts to approbate many rules for protecting people of society. They used the suggestion of legal scholars (Motavali, 2013). Civil law of car accident is most important of civil liability. More car accident accrued due to of human mistake. It is accrued due to neglect or technical troubleshooting. But these created loss or damage (Mazrooe, 2010). In other side Islamic Fiqh and law of Iran presented that the loss and damage must be compensated. In some Islamic theories compensation is the basis of human life preservation. The law and Fiqh determined very sentences for compensation based on its type and its intensity. The role of insurance is very important to compensation of damages. The Sensitive and appropriate life compensation is considered in Fiqh. If damager is not recognized then public funds is responsible of compensation. Note that law of Iran determined some rules about compensation (BaBai, 2010).

The accepting of compensate for any loss of life, its determined index and amount of money is recognized in law. For any losses and damages court must determine amount of damage based on personal status and position of the injured. But injures is not limited to non-material damages of damaged. Accident creates material and economical compensation for injured that are differenced in its nature and its ability to assess. Moreover some moral and non-material damages has not ability to measure. Therefore its determining and its alternative are impossible. Some legal system determined material payment for irrecoverable losses. But it is not as compensation, it is a payment for conglutination. Moreover, this law system determined material and economical payment for physical injuries. These losses involved the cost of treatment, lost work and disability benefits, other employment costs for care that have material and economical nature. The damage caused by vehicles was set based on general rules of civil liability before 1958 in law of Iran. But responsibility in this rule is based on fault proofed by damaged. Note that this claim is very difficult and don't achievement of damaged. The mandatory insurance help damaged after 1958 and it created a special and objective responsibility for damages. But this problem¹ is not solved perfectly about event of car accident. In this case we

¹ Submit claim by damaged

have to using insurance law. Moreover noted law and several law of compensation are in Islamic penal code (Article 528 and 527). Scattered rules show some sentences about motor vehicle accidents of 1953 and investigation of violations of the law in 1981 (Nazari, 2009).

The commonly theories of legal responsibility

This discussion states about theory of responsibility for vehicle owner. Some lawyer believes that there are three theories:

Theory assumes fault

This theory state that everybody has responsibility for damages that is created deliberately or non-deliberately. Both civil liability and law of insurance accepted Fault principle. The proofing Fault of called in car accident. Although proofing of Fault claimed caused to lack of compensated therefore legislator created assume of fault for property of vehicles. This assume state assume that relative indiscretions the more factors of car accident (Mazrooei, 2010).

Theory protection fault or failure to protect

This theory states that although legislator determined driver as property of car therefor he is the responsible of damage to other. It must be careful for avoiding from damage. Thus adverse event means violation of a legal obligation therefore it is a type of Fault. Although accuser must prove that the harmful event is due to act of property not due to external reason (Mazrooei, 2010).

Theory of creation risk

Some lawyers believe that while a person created a dangerous position and used benefited act he is the responsible of compensation. Article 1 of insurance law stated "car owner is responsibility of compensation in accident". Maybe the basis of responsibility is risk theory. But in the closely definition the respocibility of car owner is not absolute. For example if vehicle owner prove that accident is due to flood then he has not any civil liability. Therefore we cannot accept some type of responsibility an absolute liability based on risk theory (Katoozian, 2005).

Elements of liability

Three elements are necessary for creation of liability:

Harmful act
Damage
Causality

These elements are necessary for any types of liability to identifying person responsible. Therefore if every one of them don't created then compensation is not possible.

Rafie factors responsible

The Cairo and sudden events

Natural events are a type of Cairo. Because the nature of event has not any role in the disclaimer and its effect is attention to legislator. Cairo can extract from Article 227 and 229 of penal code. Cario means an event that has some characteristic: 1- External and non-attributable to the person responsible, 2-In typical unpredictable, 3- Inevitable². Being unpredictable means that there are not any special reasons to forecast events. Article 527 of penal code state responsibility of compensation that rose from events of Cario is canceled.

The aggrieved fault

The aggrieved fault and accepting risk was raised in common law. It is near to "Eghdam" rule in Figh. While the aggrieved fault exempts person that the event is natural and there is not any relationship between event and interference with vehicle. For example a person diverts his- self front of a moving car. Article 504 of Penal code states " any time a person help to other and his help caused damage for other people he has not any responsibility. Note that the act must be based on good practice". In this Article driver has not any responsibility for Fault but based on insurance law lack of driver liability created lack of owner responsibility.

² People cannot control it

Act of a third party

Third party is apart from aggrieved and the responsible person but if his action is cause of event then he canceled responsibility of car driver. For example people who push a person front of car.

The concept of Vehicle

Vehicle has several types, some of them move by motor on the earth. Some of them move at air and other move on the sea. Article 1 of mandatory insurance law state that " Land motor vehicles involved trailers tug attached to the vehicles and railway trains" according to Article 2 of executive bylaw the purpose of a land motor vehicle is any type of device that move by engine power or ground rails. Therefore Vehicles sea, air or land vehicles other than motor so Bicycle and Carts are not Coverage of the Act and our topic (Nazari, 2009).

The types of damage

The damage of Vehicle is divided to two sector based on possibility or impossibility of compensating: 1- Damage Compensation and 2- Irrecoverable losses. Compensation of damage: more damage is related to Vehicle. It is compensation and we can repair car after accident. Some damages are related to human and compensation both passenger and pedestrian. For example minor damage can regenerate so fractures, scratches, bruises.

Irrecoverable losses: if a person died in a car accident then it cannot recovery again. In this case delinquent must pay blood money. It is clearly that these damages are related to human and don't involve material damage.

Compensation practices

Payment of damage is out of ability of delinquent and he must stay in prison. It destroyed life of human and created family distress and constriction. When driver is president of family then this event affect their life majorly. In this case driver can apply accident insurance so car body damage, fire. Since these insurance are not mandatory the driver can don't use it and accepted responsibility of event. Legislator writes a law for guaranteed compensation because damaged is someone other than the driver in very cases. He writes the law as "Civil liability insurance law for Owners of Motor Vehicles". This law is approved in 1958 and improved in 2008(Hemayat, 2011).

The role of insurance in decreasing car accident

Industrial countries investor in car insurance for four decades, they improve security of roads with heavy investment (Department of Transportation Terminals, Volume 5). Industry of insurance protected to traffic regulatory reform, it success to decreasing accident and body damages with creation traffic culture so safety belt use, helmet use required for riders terms maintain pedestrian. The Insurance Corporation can attracted drover but offer and various premiums and decreased various Vehicle and bad driving.

Some insurance strategies for decreasing car accident

Changes in governmental structure of insurance industry and creation competitive space for improving efficiency for insurance management of third party. Review of third party insurance and its differences with Islamic penal code about blood money. Create strategies to decreasing effects and aftermath of accident in feat body damages. Pervasive of third party insurance coverage can decrease collusion in determining violation. It decreases third party insurance loss ratio.

Damage Compensation Responsibility based on Mandatory Insurance Law

Driver must compensation body and financial damages raised from car accident. Code 1 insurance law states "event means any format of accident, fire and Vehicle explosion in this code". This definition state that although the Vehicle makes damages but it is not absolute condition for determining insurance law. Therefore any time car burn due to Electrical wires and made damage then it is one of item in damages raised from mandatory insurance law. The law explicitly in this subject helps to injured for applying mandatory insurance law. Injured can proved interference with vehicle in damages and claim to compensation. In other cases, the proofing the causation between the vehicle and the damage is enough (Shahidi, 1998).

The role of driver in insurance law

There are some rules that states driver has civil liability in car accident. In some cases driver is not owner but always he has a role in accident. Article 528 of penal code states" any time accrued an accident between Vehicles and the driver died or damage both sides of accident are Culprit. They must compensation damages of Crews. If three driver created an accident then everyone are responsible to compensation third of damages. If several Vehicles have an accident then Culprit must pay compensation to others.

Social Security system and Compulsory insurance reform law (Approved in 2008)

According to Compulsory insurance reform approved 2008 states "third party damaged has a right to compensation indirectly". There are two different systems to compensation in Iran. They are:

Insurance

It has private and individual aspect. It created a private contract between Insurance Corporation and car owner.

Damages covered by insurance

Article 1 Compulsory insurance reform states "owner of Vehicles are responsible of compensation that rose from accident". There for all types of material and body damages are a section of this Article. Code 3 states" body damages means any types of blood money due to damage, injury, deformity and etc. Also, this code involved treatment costs.

Physical security fund losses

It uses in general and governmental aspect of damages to protecting damaged rose from car accident. In all item law pointed to Article 10 Compulsory insurance reform of body damages or third party.

The commitment to Security Fund physical damage

Physical damage Security Fund states "if there is not any insurance for damaged and created an accident law payment by Physical damage Security Fund to protecting car accident damaged".

Characteristics of the physical security fund losses

Fund is responsible for body compensation only.

While Fund interferes to compensation that damaged cannot get his material compensation from other institution.

Fund has a right to refer to the operating loss

The engagement Fund is a legal duty. It determined by government (Afshar, 2004).

CONCLUSION

The responsibility of the owner vehicle is near with theory's commitment to protect in law of Iran because any owner is responsible for compensation. Mandatory Insurance Law created a special system of civil liability. Penal code and civil law states "The responsible of creation damages must compensation it. In this case the car owner is the responsible of compensation damages. "Article 527 civil law is the only Article pointed to responsibility of car accident. Article 527 wrote in section three of chapter two of civil law. This Article state" Indiscretions if an accident events then side that has any indiscretions is responsible of compensation damages." Legislator believes that car accident is one of the items in Etlaf rule. Therefore if parties of accident have not responsibility then any sides are responsible of half of compensation.

Suggestion

There is a special law for avoid more accident. These rules must explain the condition of compensation very clearly. Today we have to elicit to general rules of the Penal code. Insurance law cannot explain all cases of creation damages in accident. For example some damaged rose very slowly after accident but legislator has not any item or Article for this case. Therefore we need to new and special law for protecting damaged. We need to power and hard rules for punishment dawdle in civil law for decreasing accident. There is a duality between penal code and civil law. The insurance law speaks about responsibility of car owner but penal Cond speaks about responsibility about car driver. Thus we need to an integrated law for protecting damaged.

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