



Criminal Law

Elixir Criminal Law 51 (2012) 10974-10976

Elixir
ISSN: 2229-712X

Liability arising traffic accident in Iranian law

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ARTICLE INFO

Article history:

Received: 23 August 2012;

Received in revised form:

30 September 2012;

Accepted: 10 October 2012;

Keywords

Liability;

Fault; Risk;

Traffic accident;

Driver.

ABSTRACT

In this paper civil liability which is caused by traffic accident is studied in the view of Iranian law especially in Islamic penal law, civil liability law and compulsory insurance for vehicle owners. In this study it can be seen that Iranian law maker in Islamic penal law obey from fault theory and in compulsory insurance law they use risk theory for vehicle owners.

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Introduction

Liability is a basic term in Iranian criminal and civil law, determining whom compensates damages and tolerates punishment causing of anti social acts. The term of liability means undertaking consequences of the acts that someone must do it. In legal term, liability is based on its lexical meaning too, and is with obligation. Responsible is someone that must accept consequences of refusing of duties and obligations [1]. There are also other theories in this area [2-7].

There must be three elements for being liability,

1. Damage 2. Determinate act 3. Proving the casualty between damage and the person doing deterrent act. The most important thing in civil liability causing of traffic accidents that recognizing by experts is diagnosing of the casualty between damage and person who does the deterrent act.

There are different theories about casualty between damage and person does deterrent act [8-12].

In Iranian Law System, there is another element for liability that is fault in most legal system liability is based on fault, but law- maker can create liability without fault if the social benefits requisites and there are also other theories about the basis of liability [13-15].

Basis of the liability arising traffic accident in Iranian Law

Basis in civil law/civil liability code/Islamic penal punishment, article 335 of civil code and 336 of the I.P.P. In those articles, the legislator, fault is provided as creating liability and actor is liable, if there he or she will perform fault and injured prove the fault. This theory has Islamic Feqqh basis too [17]. In the first article of the civil liability 1952, legislator imitated foreign law and fault is the basis of liability [18]. Difficulty and problem of this theory are specified in proving, because inured must prove the fault and casualty between fault and damage. For other theories about the matte [19].

The degree of the fault in liability in our statute, the degree of fault and effect of act is pointed in some cases

There are no difference between the fault and the effect of the act, and in some cases it is pointed, in civil coed and Islamic

penal code too. By viewing rules and regulations, the article 336 civil codes must be considered separately.

When the effect of the act of one of the responsible persons is more than the other in this case, responsibility is fixed by degree of effectiveness. In the other case one of the responsibilities isn't fixed too, therefore drivers pay half of the damage of the other hand, because no one is unique case of the accident. The presumption equals of the fault of drivers. If two drivers are responsible by article 336I.P.P. that is later than 335 civil codes, drivers are liable, and each driver must pay damages of the other driver. Article 365 I.P.P is clear by this article each one must pay half of the damages of other hand [20]. Because article 165 marine law is later than article 335 civil codes and article 336I.P.P is special, this article (165) annulled article 335 and allocated article 336 I.P.P. so if two vehicles are ships, degree of liability is fixing by importance of fault.

Different presumptions

Accident without fault of the drivers or driver in this case, external cause like third person or fore major like landslide, storm in way may cause accident and driver or drivers have no important rule if force major is unique cause of the accident, casualty between driver's and damage is not presumptuous.

Undoubtedly, presumption of liability of the driver is not imagined, and so, the driver is not responsible and compensation [21-22].

Accident causing fault of two drivers and dividing liability

In this presumption, degree of liability of the two persons must clear. Article 335 of civil code has no regulation in this case and merely declares liability of two persons and degree of liability must fixed by viewing article 9 336I.P.P. Islamic lawyer (Fogaha) tabled liability when wasting and damages are invoked two parties if two parties are liable not, there are different theories about dividing liability causing of the accidents which are discussed here.

There are different Theories, some of them are tabled,

1. paying all of damages each of two drivers to another, some of religious lawyers (Fuqaha) like abu hanifa, hanbali and maleki's be live that if two horsemen or captain or car drivers or

pedestrian and raiding accident together and die or causing something waste, each party must pay damages of another.

Crating theory,

Because the range of faults isn't affected, some times the drive that committed bigger fault pays fewer.

2. Dividing whole damages between parties equally: article 336 I.P.C accepted mostly theory of the Shiite's Feqqeh.

In Feqqehi books separate between accidents of owners of ships, vehicles and accidents of non-owners of ships and vehicles. For example in the book mebani tekmeleh menhaj explained liability of the each party of accident to pay half price of the laorse of other party, but he tied later and said if the horseman is owner, this is so, other wise each party pays half price of the horse to its owner in tahrir alwasileh ruled as previous explanation. Fazele hendi in the book keshf alsanm explain accident rule as follows, if two free persons (not slave) crash without intention to killing, heritors will pay half blood money and other half of diyeh (blood money) fallen because causing damage is basis of the act of other party. This rule explained in meftah all erameh.

3. Dividing based on fault degree

French courts divide liability in ratio of fault degree. In common low (article 254 of the civil code of 1900) but in I.P.C rejects this theory clearly. In some of our codes. This theory has precedence.

4. Dividing liability based on interference degree

Actual sample of this theory cold be seen in article 14 of the civil liability code that ruled each parties fault degree, depends on the interference method, will be determined by court. Some low years be live that diving liability in Iranian low based on this theory and I.P.C regulations (as articles 335, 336) relate to cases that influence degree of each causes couldn't be proved. This theory is more equal than other theories about dividing liability which I.P.C doesn't accept in case of traffic accidents.

Accident resulting fault of drivers,

Like civil law, in this case, guilty endure liable article 164 of marine act and last of the article 336 I.P.C. accepted this theory

Fault basis in obligate insurance 1969,

On which theory is based on obligate insurance act approved 1969n? Some low years be live that 3 theory are more important than others:

1. holders fault presumption 2. breaching vehicle's protecting obligation. 3. Non-fault liability, based on risk. We can be live that motor vehicle holder's liability is near to protecting obligation theory.

Liabe person based on obligate insurance act,

O.I.C defines liabe as all motor vehicle holders, human being or legal persons are liable compensating all body or fiscal damages arising vehicle accidents or their cargos to third persons.

Based on articles 1 and 3 of O.I.C (1969) holder means owner of the vehicle not possessor, because possessor could be changed easily so he or she can not obligate to insure liability and if possessor be a person of he than owner liability impose to owner, but in case of possessor's fault, owner can refer to possessor.

Compensable damages based on O. I. C,

Based on O. I. C, vehicle's holder must compensate body and fiscal damages arising traffic accidents.

Liabe person and how to establish liability,

Some low years be live that when drivers of two vehicles or one of them are liabe, proving this fault doesn't cause, in efficiency of O. I. C, but it indicates that accident has two responsible, holder and guilty owner.

If accident arises crashing two land vehicles, owner of the vehicle that it's driver based on article 336 I.P.C is guilty, must compensate damages, either he driver is owner or not.

Liability basis on rededicated O.I.C,

In Iran, O. I. C approved 1969, accepted liability. There are other theories about this matter.

Liabe person based on rededicated O. I. C,

Article 1 of the old code, clearly, response led holders of motor vehicle for compensating body and fiscal damages arising those vehicles or their cargos to third parties. Even as civil liability general rules arising Feqqeh rules and in civil code and I.P.C, driver of the vehicle caused accident is liabe for compensating damages.

Liability in this act based on which theory risk or fault there are disputes. Some be live that no codes abrogates other codes and so legislator wants to arrange holder's liability besides owner's liability based on general rulers. By proving 2nd note, article 1, rededicated O. I. C holder in article 1 is either owner or possessor.

Note 2 by viewing this code, holder is either owner or possessor of the vehicle and each person buy insurance, other one has no obligation to buy again.

Conclusion

As said before, fault is one of the bases of liability. In our regulations, civil liability and I.P.C, is based on fault, so liability based on risk is exceptional. O. I. C 1967 could not decrease problems by accepting risk theory even caused differences between I.P.C and O. I. C. Although O. I.C 2009 couldn't finished disagreements by proving risk theory but is better than O. I. C 1968 because it clear up situation of the liabe person (driver) or (holder). In any case, there is the problem that we must extract civil liability rules from O. I. C, in stead of having a special act.

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