



The compulsory insurance law and fair compensation without consideration of gender

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Article published on March 28, 2015

Key words: Tortuous Liability, Strict Liability, Third Party, Legal Basis, Contractual Basis, Motor Vehicles.

Abstract

Motor vehicles are considered as one of the greatest technological achievements. Having too many benefits, these vehicles also sometimes cause severe bodily injuries and property damages to individuals-who are technically called Third Parties. Gradually, these damages increased significantly in quality. In the past, the reliance of rules on the traditional basis of tort liability required injured parties to demonstrate the fault of the driver. However, there was possibility the victim of an automobile accident would not be able to prove the fault of the tortfeasor and consequently could not claim for compensation. Therefore, new rules were ratified in order to provide injured party with quick and efficient compensation. Strict liability has been recognized by legislator, according to which drivers are responsible in any accident even though the fault cannot be attributed. Motor vehicles' owners are also required to refer to a legal insurer company in order to insure their responsibility.

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Introduction

Since 19th century, following the industrial revolution, the widespread use of machines flourished all over the world. This revolution came to its highest point during the 20th century, the time when the car could be found everywhere. Simultaneously, the number of victims as a result of accidents caused by machines or the deficiencies of machines significantly increased in frequency and quality. Motor vehicles are one of the manifestations of industrial revolution which cause more injuries, in comparison to other technological achievements. The laws of countries defined the responsibility on the basis of fault. Therefore, in case of not being able to demonstrate the fault of the driver, the injured party had no right. An amount of money is paid to an insurance company to guarantee a person or property. The insurance company will give back a certain amount of money in case of any injury or damage to the insured property or body. In Latin, the word 'sicorte' (some Islamic religious authorities have referred to this word in their rulings) has been derived from the same word 'sicorous'. In French, the word 'Assurance' is used to refer to an insurance contract and it means reliability. The word 'insurance' is made of two arabic and persian words of 'qarar' and 'dad' respectively. In Arabic, it is called 'Misaq'. In Persian, it is called 'Peyman'. It is also called 'aqd' in Persian, but in most cases the word 'aqd' is just applied for the known contracts, which have their own special rules and titles, like 'bei', 'ijare', 'rahn', 'solh' and etc. (Erfani, 1969, Ebadi, 1989). The aim of this article was the compulsory Insurance Law and fair Compensation Without consideration of Gender and considered as one of the greatest technological achievements.

Material and methods

Third Party Liability Insurance for Owners of Motor Vehicles

A) Lexical and technical definition of 'Insurance'

In Persian, the equivalent of the word 'insurance' is 'bimeh' which some believe that it has been derived from the Persian root 'bim'. Therefore, they suggest that the word 'bime' is also a Persian noun and it

means to guarantee, an assurance that is used to hedge against the risk of a contingent loss (Moein, M. 1983). Allame Dehkhoda defines 'bime' as follows: "it is an special guarantee of body or property that has been developed in the modern civilization. An amount of money is paid to an insurance company to guarantee a person or property. The insurance company will give back a certain amount of money in case of any injury or damage to the insured property or body". (Dehkhoda, 1998). In Latin, the word 'sicorte' (some Islamic religious authorities have referred to this word in their rulings) has been derived from the same word 'sicorous'. In French, the word 'Assurance' is used to refer to an insurance contract and it means reliability.

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Motor Vehicle, its Operator and Owner

Motor Vehicle

Motor vehicle is a self-propelling vehicle that works with the power of an engine and moves on roads or rails (Moazzi, 2007; Salehi, 2002). In order to determine the cost of insurance or the premium, insurance companies categorize automobiles in different groups according to their types. The categorization is usually based on engine power, prices of accessory equipments, how easy is to fix that car, car price and etc. (Moazzi, 2007).

The Operator and the Owner of a Motor Vehicle

Third Party Insurance Law has defined 'operator' as the one who 'guides a motor vehicle on a road or rail, whether he/she has the knowledge and competency of driving or not'. In other words, operator is the one who operates controls and manages a motor vehicle. (Katouzian, N, 2005; Babai, A, 2008).

The word 'Owner' legally means someone who owns a car. However, none of the articles in the Law imply that the responsibility of the owner is the result of his objective right or his control over the motor vehicle. The owner is guarantor and responsible for all the damages to others resulting from his motor vehicle, whether his non-physical control has been maintained over the vehicle or it has been removed as a result of a private agreement or thievery (Katouzian, N, 2009).

Third Party

Definition of Third Party

Authors and juristics say that a third party is not considered as one of the parties to a contract and can not be recognized by law as a surrogate either. Therefore, when a contract is concluded, a third party will be neither rightful nor injured. Principally, the act of parties of a contract can not affect another one other than the two primarily involved in the concluded contract. Some scholars have introduced third party in a different way. They believe that third party is the one who does not participate in concluding a contract by himself or on behalf of someone else and he is not considered as a surrogate (general or specific) of none of the parties to a contract. (Qasem Zadeh, M, 2008; Sadeqi, M, 2004)

Results and discussion

Definition of Third Party in the Law of Compulsory Third Party Insurance

The contract of liability insurance is concluded between an insurer and an insured, in order to cover damage or injury suffered by a person in case of an accident. Hence, those other than the insured, especially those who have been injured as a result of car accident, will be called third party (Mohammadi, M, 2006). According to the Law of Compulsory Third Party Insurance of 2008 (Note 6 of Article 1, former Law of Compulsory Insurance of 2008), everybody who has been injured bodily or financially in motor vehicles' accidents, other than the at fault driver- is under the coverage of liability insurance.

Definition and Authenticity of an Obligation in favor of Third Party in the legal system of Iran

The civil Code of Islamic Republic of Iran, Article 196 stipulates: "Anyone who makes a contract it is deemed that he is acting for himself unless in making the contract the contrary laid down or unless subsequent evidence to the contrary is established. When making a contract, however, anyone can make provision for the benefit of a third person". Moreover, it has been specifically clarified in Article 768 that is about the definition of a contrast of settlement: "in a contract of settlement it is possible that one of the parties, in return for the share which he receives, should engage himself to pay an alimony for a specified period each year or each month. This engagement may involve alimony for the other party to the settlement or to a third party or parties". In further clarifying, Articles 769 and 770 are about the giver of the profit in a condition after the death of the beneficiary, or bankruptcy or indigence of the person who undertook the engagement.

The Essential Conditions of an Obligation in favor of a Third Party in the legal system of Iran

1. A contract should be concluded in the names and accounts of the two primarily involved

According to Article 196 of the Civil Code, especially where it says "who makes a contract it is deemed he is acting for himself", it can be inferred that in order to authenticate an obligation in benefit of a third person, the contract must be concluded in the names and accounts of the parties to the contract. In other words, when making a contract, the principal or the principle's representative can make a provision for the benefit of a third person as well. Otherwise, there will be no obligation to a third person. (Sadeqi, M, 2004; Katouzian, N, 2008).

2. The existence and determination of the subject-matter of an obligation

Based on the contents of Articles 190 and 694 of the Civil Code concerning the existence and determination of the subject-matter of an obligation, it should be said that the obligation in favor of a third person,

is subjected to its definition provided in the basic contract and the relationship between the promise and the beneficiary. In other words, depending on different contracts and agreements, the conditions can be variable as well. In some contracts and transactions like Sales, the quantity, type and nature of the object of the sale must be known (Article 342 of the Civil Code). However, in some other contracts, the subject-matter is defined with more tolerance and based on bona fide; even a future alimony of a third party can be the subject-matter of an obligation.

3. *The existence (the availability) of a third person*

Some legal scholars believe that it can be inferred from the overall meaning of Articles 496 and 768 of the Civil Code that a third person should be existed; Otherwise, an obligation in favor of a third party who does not exist, is invalid. However, many legal experts also has rejected the mentioned opinion (Sadeqi, 2004; Katouzian, N, 2008; Qasem Zadeh, M, 2008). As mentioned before, the latter group suggests that when the intention of a person is not considered as one of the two elements of an established right and he makes no role and contribution in making an obligation, then, his existence is not necessary either. They often consider the establishment of a right in favor of a third person, as an *Iqa* (unilateral obligation) that it is not necessary for the beneficiary to exist at the time of making a unilateral obligation (Katouzian, N, 2008).

4. *The third party should be known and identified*

Based on the same opinion that a third person is recognized as a party to the contract, some experts believe that one of conditions of the validity of an obligation in favor of a third person is that the third person should be known. An unknown and unidentified person does not obtain any right (Shahidi, M, 2004).

5. *The competence of the third party*

In making an obligation in favor of a third person, he will be under no obligation. The possession of the object of an obligation is gratuitous. Principally, there

is no need for the third person to be competent at the time of the conclusion of contract. However, based on Article 1212 of the Civil Code, when an obligation is made in favor of a third person, he must be competent to possess the thing which is subject of the obligation (Sadeqi, M, 2004).

Damages Covered by Compulsory Third Party Insurance Laws of 1968

1) *Bodily injuries*

Any hurt or injury to a person caused in an insured car accident, that interferes with the health or earning capacity of the person or may lead to a disability or his death is considered as a physical injury. Doctor's fees and hospital charges of injured persons in addition to the amount of Diyye (i.e blood money) will be paid by the insurer up to the agreed coverage limit (Jafar Zadeh, E, 2004).

2) *Property damages*

Damages to third persons' properties (either movable or intangible properties) as a result of car accident are categorized as the property damage. The compensation responsibility of the insurer is in accordance with the terms of the insurance contract. In other words, the insurer's responsibility is up to the certain amount of money that has been agreed at the time of the conclusion of the insurance contract.

Argument in favor of the inequality in Diyya (i.e blood money) between man and woman

Those who believe that a Muslim woman's diyye is half of a Muslim man cannot rely on the Quran in order to demonstrate their opinion. There is only one verse in the Quran (Sura An-Nisa, verse 92) that has referred to the woman and man's Diyya. The mentioned verse cannot be the reference of those who believe in the equality of man and woman's Diyya. The reasons of Islamic clerics are based on valid sources like the Quran and Sonatn (i.e tradition). Therefore, the only remained source will be Ravayat (i.e narrative):

1. Ravayat

Imam Sadeq (peace be upon him) has said: embryo's Diyya is consisted of five parts: Diyya differs on the stage of fetal development. When it is completed, it's Diyya is equal to 100 dinar and when it becomes a living soul after four month of gestation, it's Diyya is equal to 1000 dinar or 10000 dirham for a male fetus and 500 dinar for a female fetus. According to another narrative, Imam Sadeq has also said: a woman's Diyya is half that of a man (Toosi, Bitā).

2. Ijma (consensus of religious authorities)

Some religious scholars have supported the inequality of man and woman's Diyya (Najafi, 1984). Mohaqeq Ardabili says in his book: "*Fa kaannahojima*" which means maybe there is an *Ijma* that he agrees with inequality (Muqaddas Ardabili, M, 1985)

3. Rational Justifications (Istihsan-juristic preference)

-Inequality in the Value of Man and Woman

Supporters of *Tasnif* theory refer to the verses of the Quran that equate two women as substitute for one man, in matters requiring witnesses and the verses that allot women half the share of inheritance available to men, who have the same degree of relation to the descendent. They conclude that these verses demonstrate that women are inferior to men. Ibn Qayyim al-Jawziyyein his book-*I'laamul Muwaqqi'een*- writes that men are more perfect than women. He says that men are more useful, because they are in charge of religious positions and governmental offices and they have to keep the safety of borders and participate in Jihads (i.e to struggle in the way of Allah) and etc. He, then, concludes that the value or in this case the blood money of a woman cannot be the same as that of a man and that is the reason why the divine legislator has set the blood money of a woman as half of a man. (Ibn Qayyim al-Jawziyye, 1969). However, the only distinction, which Islam recognizes is the distinction in piety. Men and women have equal rights in Islam. Since, there are differences of potentials and abilities, their rights are not necessary identical. The reason for this disparity has been explained in various manners. Islamic scholar, Muhammad Rashid, has referred to this in his book, *Tafsir Al-Manar*. He

rationalizes that a family will suffer more by losing a man than losing a woman. Thus, the rulling on the sum paid is the same as well as the rules of inheritance (Rashid, Al-Manar, 1990).

Argument in favor of the equality of Diyya between woman and man

1. The Quran

The word 'Diyya' has been repeated two times in Sura An-Nisa verse 92 : "Wa man qatalamu'minankhata'an fa tahrirurabatimmu'minah(Tin), wa in ka_na min qaumimbainakumwabainahummisa_qunfadiyatumm usallamatunila_ahlihi...". The meaning of this verse is that whoever kills a believer by mistake-then the freeing of a believing slave and a compensation payment presented to the deceased's family is required unless they give up their right as charity. Rashid Rida says in his *Tafsir Al-Manar*: the word 'Diyya' has been referred in the Quran as an abstract and unknown noun. Therefore, it appears that the amount of the blood money should be enough to satisfy the deceased's family. However, the consensus of religious authorities (Ijma,') is that the blood money paid for the killing of a Muslim man will be one hundred camels and the blood money of a woman is half the sum paid for the killing of a man. Nevertheless, it seems that the mentioned verse does not establish any difference between man and woman (Rashid, R, Al-Manar, 1990).

2. Ravayat (Narrative)

MohaddisNoori in his book, *Mustadrak al Wasail*, quotes from Imam Reza (peace be upon him): "Waal-diyya fi aln-nafs dinar ashraalaaf dirham, aw maaho men-al-ibl, aalahasbeahl-aldiyya. Enkaano men ahl-aleinaalefdinaroenkaano men ahl-elvarq fa-asharaaalaf dirham waenkaano men ahle-ibl fa-meaho men-al-ibl." it means that the Diyya is one thousand dinar or ten thousand dirham or one hundred camels that everybody should pay according to his own type of property. If he is dealing with gold, then one thousand dinar should be paid and if he is dealing with silver, ten thousand dirham should be

paid and if camels are his properties, he should give one hundred camels (Noori, 1318-1320).

The Operator of a Motor Vehicle

When the driver of a motor vehicle is at fault in a crash resulting in bodily injury to a third person (whether a man or a woman), his act is considered as similar to a deliberate act and he is responsible to compensate the injured. Therefore, driver is responsible for the compensation of bodily injury. It has to be noted that in this case the responsible party is recognized according to the general rules of responsibility- the rules of *Itlaf* (i.e. deliberate destruction) and *tasbib* (i.e. indirect destruction).

The Insured or the Owner of A Motor Vehicle

According to the Compulsory Third Party Insurance Law of 2008, an owner of a motor vehicle is the proprietor or the possessor of the motor vehicle (Note 1 of Article 1 of the former Law (Compulsory Insurance of 2008)). Hence, the Compulsory Third Party Insurance Law has been ratified in order to oblige the owner to insure his responsibility. Some lawyers believe that the owner is responsible to redress bodily injuries resulting from his motor vehicle, under any circumstances, even though he has not maintained a liability insurance.

The Insurers or the Insurance Companies established under the control of the Central Insurance of Iran

The Compulsory Third Party Insurance Law has obliged insurance companies to conclude an insurance contract according to its regulations and the related bylaw on the owners of motor vehicles (Mohammadi, M, 2006). On the other hand, the Law stipulates that insurer must pay for the damage caused by the insured car according to the auto insurance policy and under any circumstances (Note 2 of Article 1 of the former Law).

The Bodily Injuries Supply Fund

The legislator has established an independent Fund named as 'Bodily Injuries Supply Fund' which is centrally located in Tehran and has its representative

branches in all of the country's provinces. The Fund supports injured persons as a result of car accidents. Mainly, it has been established to redress bodily injuries (related to third persons) that are not payable because of several reasons, like the loss or the expiration of an insurance policy, the invalidity of an insurance contract, the suspension of an insurer, the escape of the at fault person or failing to recognize him, the bankruptcy of an insurer or bodily injuries which are not generally covered by insurance policy (except for the ones that have been clarified in Article 7). According to its defined responsibility, injured persons who are not able to receive compensation are rightful to directly refer to the mentioned Fund, present the necessary proofs and receive compensation (Article 14 of the former Law (the Compulsory Law...)).

Conclusion

The contract of Compulsory Liability Insurance of Owners of Motor Vehicles that is legally concluded between an owner of a motor vehicle and an insurance company that is working under the control of the Iranian Central Insurance is technically called the Compulsory Third Party Insurance Contract. This contract is one of the bases of providing equal compensation for injured persons in crashes related to motor vehicles and their attached trailers. According to the mentioned contract, the insurer is obliged to pay for at least two and a half percent of bodily obligations. The legislator ratified the 2008 Law of Compulsory Third Party Insurance, in order to fairly compensate the damages to injured persons in motor vehicles' crashes. Article 4 of the Law, especially its Note 2, obliges the insurer to pay for the damages to injured persons indiscriminately, without consideration of their gender or religion, up to the agreed limit of the insurance policy. There is a logical relation between compensation, based on the compulsory third party insurance and *Diyya*, based on the Islamic Penal Code. Although both have common factors, each of them has some unique features as well. Based on this logical relation and the provisions of the Compulsory Third Party Insurance

Law, the legislator has recognized the nature of Diyya as one way of compensation.

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