دِراسَةٌ فِقهيةٌ وَ حُقوقيةٌ حَولَ دَورِ الأَسبابِ المُتَعَدِّدَةِ في تَحديدِ المَسؤوليةِ في حَوادِثِ السَّيرِ

ليلى جهان بين
عُضوُ الأُسرَةِ التَعليميّةِ لِلعُلومِ الإسلاميّةِ (الفقهُ وَ الأُصولُ) في جامِعَةِ بَيام نور- طَهران - إيران

A legal and judicial investigation of the role of the multiplicity of the causes in determining the liability in driving accidents

Leila Jahanbin
A faculty member of the Department of Theology and Islamic Instructions (Islamic jurisprudence and Basics of Islamic law) , Payame Noor University , Tehran – Iran
ljahanbin@gmail.com

Abstract

Humans have been using different vehicles for a long time to transport goods and passengers. Given the growing number of motor vehicles in recent years and the subsequent increase in the number of driving accidents, it is not clear who should compensate for losses incurred to the victim in such accidents. Given that our laws have been inspired by Islamic jurisprudence, there are important judicial rules including the rule of destruction, causation, no-loss rule, warning rule, etc. that have a significant position in our current regulations for determining the liable person. Of these rules, the theory of precedent cause has been widely accepted.

Key words : Liable Cause , Cause , Vehicle , Driving Accidents.

المستخلص

لَطالَما استَخدمَ الأنسانُ مَركبات مُختَلفَة لنَقل البَضائع و الرُكاب، و في السَّنوات الأخيرة بسبب زيادة وسائل النَّقل ذات المُحرِّك و بالتّالي زيادة الحَوادث المُرورية ، هُناك غُموضٌ حول الشَّخص المَسؤول الَّذي يَجبُ أن يَذهَبَ إليه المُصابُ. نَظَراً إلى أنَّ قَوانيننا مُستَوحاةٌ من الفقه الإسلاميِّ هُناك قَواعدُ فقهيةٌ هامَّةٌ مثلُ قاعدَة إتلاف، تَسبيب، لاضَرَر، تَحذير و ... الَّتي لَها مَكانَةٌ قَويةٌ في قَوانيننا اليَوم في تَحديد الشَّخص المَسؤول و تَمَّ قَبولُ نَظَرية السَّبَب المُقَدَّم من قِبَلِ الجَميع.

الكلمات المفتاحية : السبب المسؤول- المسبّب - وسائل النّقل - حَوادث السَّير .

Introduction

In the modern world that is moving toward speed and communication, vehicles play an effective role in speeding up goods and human transportation. The increased use of vehicles has increased the dangers associated with them. To fulfill civil liability in driving accidents, three elements of loss, the harmful act, and the causation relation should be established. The third element, i.e. the causation relationship between the loss and the harmful act, which is the focus of this study, is of special significance because this relation has many complexities and ambiguities leading to the confusion of courts of law dealing with civil liability claims. Accordingly, addressing these methods, explaining their ambiguities, and providing practical solutions for courts of law are of special importance. The most important question is when the multiplicity of the causes lead to incurring the loss, i.e. there is a causal relationship between each cause and incurred loss, which one is the liable cause? Besides, in the cause of the accumulation of causes, how the liability for the loss should be divided among them? These questions are addressed in this paper.

The literal definition of cause

Cause means excuse, reason, origin, proximity, kinship, and path (Azartash, 2000: 274). It also means friendship, reason, and solution (Jar, 2001: 1164). In the Quran, cause means elevation as lifting water from the well by a rope: “Let him extend a rope to the ceiling, then cut off [his breath]” (Surah Hajj, Verse 15).

Cause is not essentially of material nature and it refers to spiritual and unseen reasons too. For instance, the holy Quran refers to "the ways into the heavens” (Ghafir Surah, Verse 37).

Judicial definition of cause

The world cause in judicial terms refers to affairs that religion has established an existential relationship between them and other affairs so that they come to the existence or become nonexistence upon the existence or nonexistence of the cause (Amid Zanjani, 2010: 78). According to al-Shahīd al-Awwal, “Every event/occurrence requires a cause” (Al-Shahīd al-Awwal, 1991: 107).

According to Imam Khomeini, the cause is any actions the produce an effect that would not come to existence without the case such as drilling a well (Imam Khomeini, 1963: 369).

The definitions of the cause provided by lawyers are influenced by the definitions stated by jurists. According to Jafari Langroudi, "If two or more persons cause a damage/loss to another person, the person immediately linked to the resulting loss is called the agent and the other person(s) who are connected to the incurred loss are called cause (Jafari Langroudi, 2008: 352).

In sum, cause refers to an act that is partially effective in the occurrence of the effect. However, the cause by itself cannot result in the effect but facilitates its occurrence (Law Research Group, Razavi University of Islamic Sciences, 2011: 146).

The definition of cause in driving accidents

Based on what was mentioned, the causing agent is not directly involved in the occurrence of the accidents and is considered as only the non-immediate agent. Therefore, cause in driving accidents means that sometimes the accident is not the direct outcome of the driver's actions, as other factors may also be involved in the occurrence of the accident and they are called causing agents.

The civil liability for the cause

There are, generally, three types of civil liability that differ in terms of the harmful act constituting one of the components of civil liability. The ordinary type of civil liability making up a general legal rule is the liability resulting from a person's action. This liability holds the person(s) involving in the harmful act responsible for their actions. The second type of liability results from another person's action. Accordingly, a person is liable for compensating the loss incurred as the result of another person's act. The third type of civil liability is the liability resulting objects/properties under which a person is responsible for the losses incurred another person by an object possessed by the person including an animal or an inanimate object.

There are three elements for each of these liabilities that shall be established to determine the person responsible for the incurred loss. These elements are: (1) The person incurring the loss, (2) The harmful act, and (3) The losing party

Depending on which element is emphasized, scholars have provided different theories about the basis of civil liability. They can be divided into three main theories:

1. Theory of fault
2. Theory of risk

3. Theory of guaranty

According to Katouzian, "Although the theory of guaranty plays an important role in creating civil liability, none of the mentioned theories can exclusively be used as the basis for civil liability, because there is an undeniable fact in these theories. According to them, the important thing is to establish justice, and these logical tools (theories) only pave the way for achieving this goal" (Katouzian, 1990: 128).

These theories are discussed below:

The theory of fault

Fault in French is associated with guilt and blaming a person for his actions or thoughts. Fault means a mistake, especially something for which a person is to blame. A faulty behavior is blamable and indecent (Badini, 2005: 52).

Fault in Persian and Arabic means offense, guilt, negligence, etc. however, its most important connotation is negligence in doing something (Anvari, 2002: 1834).

Literally, a fault is a moral concept, and humans are morally responsible for their actions and their faults must be assessed by referring to their conscience.

The real civil liability that was developed under the influence of the beliefs of law scholars of the church was a fault-based system. Civil liability is basically a technical tool for guaranteeing the moral responsibility. The idea of compensation for losses is one of the oldest human and moral ideals. This idea is highly valued in religious ethics. Repentance is accepted when losses resulting from guilt are compensated. Humans are aware of their responsibilities and know that they will be held for their mistakes and are relieved when they can compensate for evils resulting from their actions (Katouzian, 1975: 66).

According to the theory of fault, the standard for determining the liability in driving accidents is the behavior of the vehicle owner. The owner is held liable when he/she commits a fault; otherwise, he/she will be not responsible. Based on the general principle of civil liability, the owner can also disclaim responsibility by establishing some legal reasons and excuses. Therefore, the subjective standard of fault is no longer to meet the requirements of the modern industrial society because the development of industrial life, new inventions, and the growing increase of accidents and their complexities make it difficult to prove the fault of the vehicle's manufacturer, owner, or driver. Therefore, most legal

systems use objective standards to recognize the person who commits a fault including the standard of "the good father family" in the French law and "a rational human" in the Common Law. However, according to the objective and social standards, fault in the realm of civil liability is defined as "a mistake/error committed by a caution person when he/she is exposed to the same physical conditions surrounding the person who commits the fault" (Badini, 2005: 73).

Theory of risk

This theory maintains that a person who engages in activity and creates a dangerous environment for others shall compensate for the losses incurred to others as a result of the activity. Investors and factory owners who make a profit from their activities shall compensate damages and losses resulting from these activities even if the resulting accidents occurred due to workers' negligence or it was not possible to predict them (Katouzian, 1995).

However, the opponents of the theory of risk severely attack materialistic interpretations of the proponents of the theory, and they believe that the denial of fault in civil liability claims and the systematic replacement of fault by the risk that means the dominance of the material over the soul is not acceptable, because laws have established for humans to regulate interpersonal relations. In fact, laws originating from human thinking cannot ignore their creator and objectify a human being who possesses spirit and will. Objects are addressed by law only for their relationships with humans. Accordingly, properties are subject to law as they are considered as personal belongings (Badini, 2005: 266).

Besides, the theory of risk results in the underdevelopment of the community because it discourages creative human resources and suppresses the innovative power of individuals and they lose motivation to invent new things when they know that they will be blamed even if they do not commit a fault (Badini, 2005: 346).

The omission of the concept of fault in civil liability claims not only did not solve the problems faced by the losing party but also complicated such claims. It also makes it difficult for the losing party to prove the cause(s) leading to the loss.

Theory of guaranty

According to the theory of guaranty proposed by Boris Starck in France, everybody has the right to a healthy and safe life in society and making profits from their properties. This right has been protected and

supported by laws by stipulating the aggressor's civil liability: All people should respect others' rights and do not endanger other people's safety. When a right is spoiled, the person spoiling it shall compensate it and the requirement for compensation is called civil liability. This enforcement is nothing but compensation for the loss incurred (Katouzian, 1995: 209).

This theory effaced the concepts of fault and liability and emphasized the support for the losing party. It should be mentioned that if the theory of guaranty is used as a basis for legislation, it is stipulated in the compulsory insurance law as follows:

All owners of vehicles are required to ensure their vehicle for physical and financial damages incurred to third parties as results of accidents caused by the vehicle". This stipulation severs as the basis for the Compulsory Insurance Law enacted in 2008.

The criteria for determining multiplicity of the causes in driving accidents

Sometimes damages are incurred by two or more persons; an issue known as the multiplicity of the causes. In this case, of the multiplicity of the causes leading to the damage, the one which deserves to bear such liability is identified. For the accumulation or overlap of the causes, three conditions shall be established :

1. The multiplicity of the causes or the accumulation of two or more causes in a single case.
2. None of the causes is influenced or diminished by other causes.
3. The effects of one of the causes do not distance the two causes (Jafari Langroudi, 2009: 438).

The assessment of the new Islamic punishment law shows that the legislators seeking to find a rational solution to multiplicity of causes has provided three distinct assumptions:

1. The unity of the cause and agent
2. The unity of concurrent causes
3. The unity of sequential causes

The unity of the cause and the agent means the agent's action creates a barrier between the cause and the loss and thus disconnecting the direct relationship between them so that the cause must result in the loss or a precondition for its impact. However, according to Article 332 of the Civil Law and Article 363 of the former Islamic Punishment Law, in the unity of the cause and the agent, the latter shall bear the responsibility for the loss unless the cause is stronger than the agent and thus the loss is

attributed to the former. Even Islamic scholars believe that this principle is one of the most valid juridical rules and there is consensus on it (Mohaghegh Damad, 2008: 121).

However, according to the new Islamic Punishment Law, a person is responsible for the offense if the offense is attributed to him/her. In contrast, if the offense is attributed to all agents, all of them will be equally held accountable. Besides, if each of the agents has contributed differently to the damage/loss, they will be held accountable based on their contribution. Accordingly, it can be suggested that under the current legal regulations, the theory of fault serves as the basis for the driver's civil liability. Therefore, the causes of the accident must be recognized based on the faults committed by each driver.

The unity of concurrent causes

Concurrent causes are those that act at the same time and their simultaneous interaction results in damage or loss and they cannot be distinguished chronologically (Abedi, 2013: 10). According to the Islamic Punishment Law, "When two or more persons take part in committing a crime or incurring damage to another person in a manner that the crime or the damage is attributed to both or all of them, they all will be equally held accountable". The provisions of this article apply to the collision between two land, sea, and air vehicles. For instance, if two or more persons roll down a stone from the mountain slope and it hits a car passing the road leading to the driver's injury, the involved persons will be held accountable. However, it should be noted that since all the persons have been involved in rolling down the stone and they are considered as the single cause of the stone moving down they will be responsible for compensating the resulting down based on their contribution to rolling down the stone. Nevertheless, determining the exact contribution of each person is difficult and sometimes impossible. Therefore, the effect of each cause does not depend on other causes as each cause has contributed to the incurrence of the loss independently. In this case, the simultaneity of the effects of the causes is taken into account as the main requirement (Sadeghi, 1997: 78) and each person is responsible for compensating the damage following their contribution.

Sequential causes

Sequential causes are those factors resulting in a loss sequentially with the loss occurring upon the fulfillment of the last factor. The causes are arranged in a manner that the effect of each cause depends on the

existence of the other cause. According to Article 535 of the Islamic Punishment Law, "If two or more persons are involved sequentially in committing a crime, the person whose action precedes the occurrence of the crime shall be held accountable". For instance, if a person digs a hold and another person places a stone next to the hole and a passerby collides with the stone and falls into the hold, the person placing the stone next to the hole shall be held accountable unless all the persons intended to commit the crime and thus their participation is considered as complicity. According to the current judicial procedure, if multiple vehicles are involved in the occurrence of an accident, all of them shall equally pay compensation to the victims (Jamshidi, 2011: 178).

Conclusion

When multiple causes are involved in incurring damage, establishing the causation between the causes and the damage will be a challenging task. When several persons are sequentially involved in committing an illegal act, the person whose action precedes the occurrence of the harmful accident shall be held accountable. Besides, concerning the multiplicity of concurrent causes, the legislator adhered to the scholars' consensus and accepted the theory of fault. In the unity of the cause and the agent as an instance of sequential causes, an agent is responsible for the offense if the offense is attributed to him/her. In contrast, if the offense is attributed to all agents, all of them will be equally held accountable. Besides, if each of the agents has contributed differently to the damage/loss, they will be held accountable based on their contribution and their role in committing the crime. This criterion corresponds to the principle of the subjectivity of liabilities.

References

1. The holy Quran
2. Azartash, A. (2000). The modern Arabic-Persian dictionary. Tehran: Ney Publisher.
3. Anvari, H. (2002). The unabridged dictionary of speech. Tehran: Maharat Publishing Center.
4. Badini, H. (2005). The philosophy of civil liability. Tehran: Publishing Corporation.
5. Jafari Langroudi, M. J. (2008). Legal terminology. Tehran: Ganje Danesh.
6. Jafari Langroudi, M. J. (2008). Annotated legal terminology. Tehran: Ganje Danesh.
7. Jamshidi, A. (2011). The civil liability of owners of land motor vehicles. Tehran: Javdaneh Press,

8. Jar, K. (2001). Larousse dictionary. Translated by S. H. Tabibian. Tehran: Amir Kabir Press.
9. Al-Shahīd al-Awwal (1991). Al-ghavaed va al-Favaed. Translated by S. M. Sanei. Mashhad: Ferdowsi University Press.
10. Sadeghi, M. H. (2005). Crimes against individuals. Tehran: Mizan Press.
11. Katouzian, N. (1990). Civil law: Automatic guarantees of civil liability. Tehran: Tehran University Press.
12. Katouzian, N. (1995). Non-contractual requirements (automatic guarantees). Tehran: Tehran University Press.
13. Law Research Group of Razavi University of Islamic Sciences, (2011). Rules of penal jurisprudence. Mashhad: Astan Quds Razavi Press.
14. Abedi, M. (2013). The enigma of the multiplicity of causes in the Islamic punishment law with a focus on civil liability in the multiplicity of causes in medical malpractice. The 4th Conference on Medicine and Judgment, Shiraz.
15. Amid Zanjani, A. (2010). Causes of guaranty. Tehran: Mizan Press.
16. Mousavi Khomeini, R. A. (1963). Tahrir al-Wasilah. Translated by A. Eslami. Islamic Publications Office affiliated with Qom Seminary Teachers Association.
17. Mohaghegh Damad, S. M. (2008). Jurisprudential rules. Tehran: Islamic Sciences Publishing Center.