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Insurer's Obligations in Motor Vehicle Owners' Civil Liability Insurance in Iranian Law

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Abstract

The present article aims to analyze and examine the performance of Iranian law in relation to the insurer's obligations in the civil liability insurance of land motor vehicle owners and aims at the common goal of this system, which is to compensate for the damage caused, satisfy the injured party, and restore the injured party to their previous status. Despite the excessive development of the use of civil liability insurance, the legal nature of this contract has not yet emerged. Explaining the effects of this contract on its parties and injured third parties will be possible only by relying on awareness of the nature of this contract. Deviating from the general rules of contracts in liability insurance policies, such as the insurer's obligation to pay losses to the injured third party even in the event of the policyholder's intent and other cases that cannot be justified by general rules, all indicate that an independent nature should be considered for this type of insurance. Under these circumstances, the question of the present article is: What is the basis of the insurer's obligations in the civil liability insurance of land motor vehicles owners in Iranian law? The research method in this study is descriptive-analytical, and the findings indicate that the insurer's obligations in the civil liability insurance of land motor vehicles owners in Iranian law are based on collective civil liability. The collective civil liability system in Iranian law means that if only one of the vehicles involved in the accident has a valid compulsory insurance contract in a collision, all the damages of the injured parties (except the driver who caused the accident) are compensated.

Keywords: Obligation, insurer, civil liability, land motor vehicles, Iranian law, judicial procedure

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Introduction

In the present world, automobiles play an effective role in people's lives, and despite their many and undeniable benefits, they have also brought with them many human and financial losses; to the extent that the most important issue is civil liability. However, the general rules of liability in their usual form are not applicable in this field and produce incorrect results, and this belief has emerged that a new approach should be taken regarding civil liability arising from traffic accidents, abandoning traditional and moral systems and focusing more on social necessities. In Iranian law, before the enactment of the Compulsory Motor Vehicle Insurance Law of 1968, based on the general rules of civil liability, including Article 1 of the Civil Liability Law and Article 335 of the Civil Code, the person whose collision and damage caused by vehicles resulted from his intent or negligence (usually the driver) was recognized as responsible, and the owner or holder per se was not responsible for the damage caused by vehicles due to ownership and possession. Until, with the expansion of the use of these vehicles and the increase in fatal and injury

accidents, and the victims of these accidents facing drivers who could not afford to pay the heavy damages of these accidents, the legislator decided to establish a special civil liability system for such accidents. In this regard, three compulsory insurance laws were enacted in 1968, the amendment to the compulsory insurance law in 1988, and the compulsory third-party insurance law in May 2016. The ultimate goal of these laws is to protect victims by making third-party insurance mandatory. At the same time, making insurance mandatory was initially a consequence of the establishment of a special civil liability system for owners, but during the reforms made in 1988 and 2016, the legislator's approach changed and owners were simply required to obtain an insurance policy. The legislator has sought to distribute all losses resulting from car accidents among all car owners based on reasonable criteria. The first article of the Compulsory Insurance Law... approved in 1347 and Article 1 of the 1387 law clearly show that all vehicle owners are collectively responsible for all losses resulting from accidents, and compulsory insurance is a liability tool for covering losses. This article explains the various dimensions and angles of the insurer's obligations in the civil liability insurance of motor vehicle owners in Iranian law, with an emphasis on judicial practice.

The concept of obligation

Considering that the obligation in the Persian legal concept is equivalent to the word Obligation, it would be better if this word were the center of the study. Obligation is a general word borrowed from Latin literature that, depending on the context in which it is used, has extremely wide and diverse meanings. The most basic of these meanings are:

-What a person is obliged to do or to leave off (regarding obligation);

-An obligation imposed on individuals by law (obligation and obligation);

-A promise, contract, social relations, courtesy, kindness and affection, a law or obligation that obligates the parties to fulfill their agreements (the basis of obligation);

-Taking on the task of carrying out and executing an order (obligation in the infinitive sense);

-A legal or moral obligation (obligation);

Professors and writers of law in Iran have not provided an equivalent form of this content. Most of them have chosen a description in the French legal culture and have included in its explanation: An obligation is a legal relationship between two or more people by which one of the two (debtor) is obliged to transfer or surrender property to the other (creditor). (Amiri, Qaem-e-Maqam, 2006: 49).

Jafari Langroodi introduces this description, which is based on the topic of commitment, as commitment in the general context; because it will not be specific to contracts and will also include compulsory guarantees; and also, it is not specific to financial matters and includes matters such as non-financial obligations of spouses towards each other, such as their commitment to support and good relations with each other. In criticizing this definition, he says: “The subject of the commitment may not be any of the cases mentioned in this definition; and for example, the subject of it may be the waiver of a pre-existing right. Such as the waiver of all or part of an existing right by virtue of a peace; therefore, this definition is not comprehensive.” (Jafari Langroodi, 2017: 7). However, commitment in its specific meaning will only include obligations whose subject has an economic and financial essence; whether the obligation arises from a legal act or arises from a legal event. Betabright considers commitment to be the same as “obligation”. Although he has also considered the words “commitment”, “condition”, “oath”, “oath” and “guarantee” to be equivalent to commitment elsewhere; which is not consistent with the obligation nature of commitment. (Jafari Langroodi, 2017: 7). Some other scholars believe that “commitment means a legal duty to perform or refrain from performing an action, as well as the responsibility of the obligor in the event of a breach of the obligation”. (Jafari Langroodi, 2017: 23).

Definition of insurance:

In terms of law, insurance is a contract by which one party undertakes to compensate for the damage caused to him or to pay a certain amount in exchange for payment of a sum or sums from the other party in the event of an accident occurring or occurring. (Rohani, 2011: 1). Technically, it is the set of operations by which one party (the insurer) forms a group (the policyholders) in an organization called an insurance company and receives a share from each of them called the insurance premium, and undertakes to compensate for the damage caused or to pay a certain amount in the event of a certain accident occurring to them. (Rouhani, 2011: 2).

The concept of civil liability

Civil liability is equal to an individual being obligated to pay compensation for the damage he has caused to another; civil liability arises when a person damages another's right without legal permission and causes him harm as a result, regardless of whether the act that caused the damage is a crime or a quasi-crime. In any case where a person is obligated to compensate another's damage, it is said that this person has civil liability and is a guarantor. This logical and fair rule has existed for a long time that "anyone who causes harm to another must compensate for it, except in cases where the harm to others is not in accordance with the law or the harm caused to the person does not appear to be unjust and unusual." (Jaffari Langroodi, 1400: 644). Civil liability as a guarantee of the implementation of civil laws plays a special and fundamental role in the demand and exercise of the rights of individuals and ultimately in the arrangement of social and legal relations. Without the concept of civil liability, a right will lose its true and objective meaning and will take on an intellectual and internal direction; in addition, what actually turns a right from a potential state into an actual state and makes it tangible for the right holders are the rules and regulations existing in the legal system of countries, including our country, which are included in various frameworks and laws. Therefore, in a general definition, it can be said; Civil liability is a responsibility that arises in response to causing damage and forces the person who caused the damage to compensate for the damage. Civil liability means the responsibility to pay the damage. (Jafari Langroodi, 1400: 645).

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The reason for speaking of "possible" developments is that: First, the judicial practice has not yet tested its positive and negative aspects of these developments and has issued fewer opinions; Second, the doctrine also has a similar situation; Third, the possibility of a change in judicial practice is probable; because for some reasons, the expectation of a change in judicial practice is insignificant. (Khodabakhshi, 2016: 191). Therefore, in this section, we examine the legal changes based on inference and with the caution that is necessary for the initial move.

-1Commitment to insurance or guarantee of compensation in the new regulations approved

Article 1 of the Law on Compulsory Insurance of Civil Liability of Owners of Land Motor Vehicles Against Third Parties approved in 1968 (the previous law) included two obligations; first: making insurance coverage mandatory and the obligation of the owner of the vehicle to do so; second, civil liability arising from the ownership of this vehicle and its “ownership” position. The amendment to this law in 1968 included major changes; changes that are theoretically important. (Izanloo, 1999: 49). The term “owner” that appears in both laws was a subject of disagreement, especially in legal doctrine; important effects were obtained from this dispute; Some considered the provision of Article 1 of the former law to include an obligation to compensate for damage. (Katouzian, 2006: 614). A liability that had a specific face and was far from fault, and its basis had also been much discussed. Some also believed that no new basis could be obtained from Article 1 of that law; but it included some changes; changes that could be effective in realizing liability. (Khodabakhshi, 2011: 80).

The extent to which these theories had in common was the distance of the liability of the holder from the theory of fault and the difference in the content of the “driver” and the “owner” of the vehicle. One was interpreted based on fault and the other on the theory of risk or similar, so it is not necessary to enter into those topics, but what seems important is the current situation. Note 1 of Article 1 of the new law states: “The holder, in the sense of this law, is either the owner or the possessor of the vehicle, and whoever obtains

the insurance policy subject to this article, the obligation of the other is waived." (Rahimi, 2010: 36). Note 2 of the aforementioned article also states regarding the persons who may be responsible in a driving accident: "The liability of the holder of the vehicle does not prevent the liability of the person whose act or omission caused the accident. In any case, the damage caused shall be paid from the insurance policy of the vehicle that caused the accident." (Rahimi, 2010: 40). It is possible to think that the new laws also distinguish between the liability of the driver and the holder; The first, according to the theory of fault and the connection of the accident to him, and the second, due to the theory of risk and being the owner, are obliged to be "owners" and in this respect there is no difference from the previous law, only the concept of the owner has become clearer. This view, which contains intellectual backgrounds resulting from the previous law, does not seem correct; in explaining it, another change made in the new law should be pointed out, and then return to this discussion.

-2The scope of the newly formulated laws (obligation towards civil liability or insurance)

Unlike the previous law, which opened a loophole to civil liability and in Article (1.1) placed the obligation to compensate for damage on the owner of the vehicle, in the new law, the owner's obligation is only focused on insuring his liability and the obligation to compensate for damage has been neglected. Of course, in Notes 3 and 4, the definition of physical and financial damage is mentioned, and in Note 5, the definition of a driving accident is defined; from these notes, civil liability is inferred. In Note 2, Article 4 of the new law, compensation for the losses of the victims is mentioned; it can also be said that the insurance obligation that is directed to the holder, by implication, also contains an obligation to compensate for the damage; because insurance coverage is not without a subject, and since the holder is obligated to compensate for the damage, he also obtains insurance in this way. At the same time, these spider webs are not strong enough to give a specific face and a distinct and independent basis to the liability of the holder and to separate it from other conventional bases in Iranian civil liability law or jurisprudential approaches. Undoubtedly, someone who claims the existence of a specific and distinct independent liability of the holder must be equipped with a conclusive reason. In the previous law, from the concept of compensation for damage in Article 1 and the exception of the law in Article 4 (Cairo force), it was possible to infer an independent liability close to the theory of risk; but in the new law, such a thing is not possible; in Article 1 of this law, the obligation is only for obtaining insurance coverage and there is no trace of the liability for compensation for damage. In the previous law, the specific and independent liability of the owner was also a matter of doubt, and despite the reflection of this theory in the doctrine of judicial procedure, compensation for damage was considered practical through other principles, rules and foundations, especially the provisions of the Islamic Penal Code and the theory of fault. (Tahmasbi, 2011: 114). In other words, Article 1 of the law (1); "All owners of land and rail motor vehicles, whether they are real or legal persons, are obliged to insure the said vehicles against physical and material damage that occurs to third parties as a result of accidents involving the said vehicles or their trailers or their cargo, at least to the amount stated in Article 4 of this law, with one of the insurance companies that have a license to operate in this field from the Central Insurance of Iran." (Tahmasbi, 2011: 115).

-3The 2008 regulations and the issue of the owner In driving accidents, specifying the principles of liability is very difficult, which requires more scrutiny in this matter; on the one hand, the developments in these accidents will be towards compensation for the damages suffered by the injured party, and the views above fault are prominently based on it. This transformation, which exists in many legal systems, especially when it is accompanied by the historical sedimentation of the previous law and the authors' defense of the independent basis of liability and its distance from the theory of fault, encourages the lawyer to strengthen this basis and avoid falling into the circle of the theory of fault. On the other hand, the removal of the obligation to compensate for damages from the scope of Article 1 of the new law, the unanimous decision No. 13 dated 6/7/1362, which was issued according to the theory of error and fault, the strong jurisprudential background and the examination of this type of liability in other cases of liability, the rulings of Islamic penal laws and their reliance on the jurisprudential basis of "attribution of the accident" and the examination of driving accidents through loss and causation, and the provisions of Note 2 of Article 1 of the new law, which does not consider the liability of the vehicle owner to be an obstacle to the liability of the

person whose accident is attributed to his act or omission, and in fact indicates that the basis of liability is the same as the ability of customary truth and "attribution", all indicate that the principles of liability arising from proportionality will not be liable in the above situations, but in any situation it is obliged to The driver must stop the vehicle on the right shoulder and immediately take the injured person to the first clinic or hospital with his own vehicle or another vehicle and inform the law enforcement officers. The lack of responsibility of the driver in question will not prevent the third party from using the insurance regulations. (Kazemi, 2012: 101). Note 2 of Article 1 of the new law also speaks of the responsibility of a person other than the owner; therefore, there is still a difference between the owner and the driver, and the owner's responsibility is beyond fault, which is not an accepted matter; because first, the owner is defined in the law and no one other than the owner of the vehicle is responsible for the damage due to possession and supervision of it. However, the basis of responsibility cannot be derived from this matter itself; because confiscation is desirable. Since the determination of liability is silent in the law, it should be determined based on the principles of civil liability law; it was said that in this case, the theory of attribution is applied; secondly, Note 1 of Article 1 of the new law does not seek to determine the basis of liability, but to avoid the non-use of insurance coverage for a person who did not conclude the insurance contract from the beginning and has taken possession of the car or in any case, or is held liable for other reasons that cause the vehicle to be involved in the accident, so that the insurer does not evade paying compensation for this reason. In the negotiations related to this content of the laws, the same issue was intended; because the initial writing method of the content was in such a way that it was possible to think of insurance for each person, and not the vehicle, in an independent manner; To avoid this process, it was proposed that “whoever obtains the insurance policy subject to this article will be relieved of the obligation of the other.” (Part of Note 1 of Article 1 of the new law) (Babaei, 1400: 121). Therefore, the basis of liability cannot be felt and sought in the space of the insurance policy; Thirdly, the purpose of Note 2 of Article 1 is that liability is not only directed at the person who is in possession of the vehicle, but also at anyone whose act or omission the accident is attributed to will be liable. For example, a car swerving in an inappropriate direction causes another driver to hit a pedestrian. In this case, although the second car injured the pedestrian, the accident is attributed to another person or the person who manipulates the car wheel to cause it to malfunction while driving and cause damage by swerving the car is responsible, and the driver of the car is not responsible. (Izanlu, 2009: 40).

-4A look at past case law regarding the owner issue

During the rule of the past laws, the dominant and almost definitive case law analyzed driving incidents based on the concept of the reliability of the behavior or the theory of fault, but in some cases it was seen that the content of the owner was used in a different sense and with special responsibility. For example, in one of the decisions issued by the general courts, interpreting Article 1 of the previous law, the owner as the holder of compensation may be inferred from the sum of Notes 2 and 5 of Article 1 and the exceptions in Article 7 of the new law, that in the event of a driving accident for any reason, even if it is caused by force majeure such as a landslide or earthquake, the insurer must compensate the damage. Even if the driver is not responsible. The explanation is that Article 4 of the previous law stated: "The following cases are excluded from the scope of insurance subject to this law: Damages caused by force majeure such as war, flood, earthquake...". Some authors, by paying attention to this exception and placing it next to Article 1 of that law, which mentioned the responsibility for compensation for damage, believed that the civil liability of the owner is distinct from that of the driver, because the driver's innocence does not mean that compensation for damage is excluded, and only the causation of the crime must be proven (Katouzian, 2006: 611-612).

In the new laws, this exception has not been made and it will be possible, based on this development and with an apparent interpretation, to state that if a driving accident is the result of the power of cairo, the insurer must still pay the losses incurred. This belief is not correct; because first, unlike Article 1 of the previous law, which stated the obligation to compensate for the damage, Article 1 of the new law only talks about the obligation to insure; therefore, Article 1 of the new law does not contain a basis for liability and finally, the new law is silent about the power of cairo. In the absence of this law, one should refer to the

generalities of other laws, including the note to Article 337 of the Islamic Penal Code, which states: “If the collision of two vehicles is beyond the control of the drivers, such as if the collision occurs as a result of a landslide or storm or other force majeure factors, there is no guarantee”.

Also, the unanimous opinion of the Supreme Court of Iran, No. 67, dated 14/7/1362, states: “If the murder is intentional and the person to whom it is attributed has not committed any offense, and the murder occurred solely due to the victim’s offense, the driver is not responsible…”; Secondly, compensation for damages resulting from the Cairo Force is unreasonable and has no place not only in jurisprudence, which is the basis for interpreting laws, but also in comparative systems in this sense. Even in the French legal system, where the maximum compensation for damages was determined by the 1985 law, the Cairo Force has no effect. Of course, legal systems can use institutions such as social insurance or accidents to compensate for damages and not involve themselves with civil liability. This approach also has its own rules and is not consistent with our discussion. Thirdly, it must be accepted that, except in some special cases, the new law imposes liability on the insurer when the principle of civil liability of the operator of the insured vehicle is established. This is also the obligation of insurance companies, and any other interpretation is contrary to the purpose of the law and its historical background. (Khodabakhshi, 2011: 117).

Damages to third-party property

The law amending the law on compulsory insurance of civil liability of owners of land motor vehicles against third parties was approved in July 2008, and its implementation plan began in September of the same year on a trial basis for a period of 5 years. The aforementioned law has some innovations that will be mentioned in this section.

-1Insistence on compensation for damage caused by insurance

The attitude of the new law towards reimbursement of damages to victims of driving accidents is that the damage caused should be compensated by insurance companies. In this regard, Article 1 of the aforementioned law emphasizes the duty of motor vehicle owners to insure their vehicles, and unlike Article 1 of the previous law, which initially emphasized the liability of the owners, the new law does not mention the liability of the owners. In addition, Note 2 of Article 1 states that the liability of the vehicle owner does not prevent the liability of the person whose act or omission caused the accident. In any case, the damage caused is paid from the insurance policy of the vehicle that caused the accident. The legislator's insistence on paying the loss from the insurance policy, regardless of who is responsible for the incident, is an innovation that shows that the legislator attaches more importance to compensating the injured party from the insurance policy than identifying the responsible person according to the rules of liability. In addition to the above note, Note 2 of Article 4 of the new law stipulates that the insurer is obliged to pay the damage caused to the injured party in fulfilling the obligations contained in this law, regardless of gender and religion, up to the limit of the insurance policy obligations. This note itself is one of the useful and positive provisions of this law because the halving of the blood money is a legal provision that is not related to the contract between the insured and the insurer. Insurers receive the same premium when issuing an insurance policy, and the gender and religion of the injured party have no effect on the amount of the premium, so it is logical that gender and religion should not have an effect on the insurer's obligations when compensating for damage.

-2Expanding the discussion of third parties

It was stated in Article 2 of the Compulsory Insurance Law of 1347; All persons who suffer physical or financial damage due to vehicle incidents, the subject of this law, are considered third parties from the perspective of this law, with the exception of the following persons:

-The insured, the owner or driver of the vehicle that caused the accident.

-The insured's employees responsible for the accident while working and performing their duties.

-The insured's spouse, father, mother, children, grandchildren and ancestors, if they are passengers in a vehicle where the driver or the insured is responsible for the accident.

In short, in the 1947 law, the third party had a narrower meaning, but in the 2008 law, any person other than the driver who caused the accident is interpreted as a third party and can enjoy the features of the law. In this regard, the owner himself is also considered a third party in situations where the driver of the vehicle did not cause the accident. The only exception is the driver who caused the accident, who, of course, is also covered by compulsory insurance according to Article 115, Paragraph B of the Law of the Fifth Five-Year Development Plan of the Islamic Republic of Iran, approved on October 15, 2009. The aforementioned paragraph states that the Ministry of Economic Affairs and Finance is obliged to apply third-party insurance to third-party insurance for the driver as well as the passenger. Although this paragraph of the Fifth Plan Law is not precisely regulated, its meaning is that drivers must be insured just like passengers. In practice, in insurance policies, by adding an amount to the insurance premium of the driver who caused the accident, the driver who caused the accident is also insured like other passengers. 3- Expanding the financial capabilities of the Bodily Injury Fund

Article 10 of the Compulsory Insurance Law of 1968 established a fund called the Bodily Injury Insurance Fund, which created organizations to support and compensate victims in cases such as not having car insurance, unknown persons in accidents, etc. The aforementioned fund was established, but in practice, due to limited financial resources, it was unable to fulfill its mission; and it could only compensate part of the damages based on government approvals. Article 10 of the new law also confirms the existence of the Bodily Injury Fund, and Note 1 determines the amount of the fund's obligations, which is actually the same as the obligations of insurance companies, and the fund must compensate for damages like the insurance company. This note prevents the fund from being able to pay an amount less than the legally prescribed amount of damages to the victims. On the other hand, Article 11 provides very good financial resources for the fund so that the fund can fulfill its obligations. Developing support for the injured by expanding the financial resources of the Bodily Injury Fund is another innovation of the new law, which is a very worthy and appropriate measure.

-4How to receive compensation in the 1395 law

Based on the law approved in 1395, insurance coverage has been greatly expanded so that currently, according to the law, no traffic accident occurs (only the officer must prove the traffic accident), which is paid primarily by the insurance company. Secondly, and in necessary circumstances, it is not foreseen that if the damage caused by motor vehicle accidents is part of the obligations of insurance companies, it will be paid by the insurer, and if it is not, their obligations will be paid by the Bodily Injury Fund. (Tizmehr, 1398: 73). Not having a driver's license by the vehicle owner, not having a third-party insurance policy, low liability limits on the individual's insurance policy, and the escape or incompetence of the attacker, etc. are examples of the protection provided by the Bodily Injury Fund. In the amended laws of 2008, the payment of blood money was conditional on the completion of the injured person’s treatment and health, but the new laws have become more far-sighted; the insurance company or the bodily injury fund will realize fifty percent of the estimated blood money of the person at the time of the first accident and pay it to the person on account. If the accident results in the death of a person, the amount of blood money is also known. According to the new law, damage to cars no longer requires a police report and if the parties agree, the insurance company will pay the damage. Such measures have been taken so that people can get their physical and financial damages more quickly. If there is a dispute between the insurance company, the injured person, or the third-party insurance holder, this dispute will be handled in a diagnostic council that will be established at the Central Insurance of Iran.

Among the features of the Bodily Injury Fund in the new law, the following can be mentioned:

-Protection of victims who suffer physical damage due to covered accidents, but the insurers have no obligation to compensate for the damage and are unable to fulfill their obligations.

-Any matter that prevents compensation for the physical damage of the victim according to the law and the general and private conditions of the insurance policy can be compensated through the fund, with the exception of the cases specified in Article 7 of the Law on Amendments to the Compulsory Insurance Law…

-Third-party liability towards third parties is a legal obligation.

-The right to apply to the fund is limited to cases where compensation for damage by the insurers is not possible.

-The victim's replacement fund has the right to apply to the cause of the damage or the person responsible for the damage and refund the amount paid.

-If the insurer owes the damage and the fund is bankrupt, the victim's replacement fund will apply to the bankruptcy liquidator and collect its claim from the funds that can be divided among the creditors of the bankrupt insurer.

-The management of the fund will be the responsibility of the Central Insurance of Iran and its conditions will be based on the approval of the Cabinet of Ministers.

Laws of 2016 regarding insurance and denial of civil liability of vehicle owners

Although not long has passed since the approval of the new law and researchers and lawyers have not presented a theory regarding the innovations and changes made, the recent law has definitively ended doubts and left no room for doubt in the denial of civil liability of motor vehicle owners and, consequently, the abrogation of the theory of risk in the Iranian legal system.

In fact, in the new law, the legislator has explicitly limited the obligation of motor vehicle owners to insurance and has also stated the guarantees of its implementation, none of which is compensation for damages to the victims or civil liability, and therefore there is no doubt in the denial of civil liability of vehicle owners; Therefore, although the theory of risk emerged in the Iranian civil liability law system with the enactment of the Compulsory Motor Vehicle Insurance Law, with the amendments and changes made to the new law, the aforementioned theory has lost its most important application. In fact, the Compulsory Motor Vehicle Insurance Law has destroyed its offspring during the two periods of amendments made in 2008 and 2016, making it pointless to talk about the theory of risk and civil liability of vehicle owners in the current legal system.

It should be noted that denying civil liability to vehicle owners does not mean going back or reducing protection for victims of accidents caused by motor vehicles, because the legislator has compensated for this gap by imposing criminal liability for owners and direct insurance coverage, in which all vehicle owners share in providing financial resources, and has protected victims more fully.

-1Obligation to insure

The law passed in 1395, like its predecessor, only emphasizes the obligation of owners to insure motor vehicles and, unlike the law of 1347, does not make any reference to their civil liability. (Babaei, 1400: 214). However, some jurists still believe in the civil liability of the owner in the form of strict liability or, in other words, liability without fault resulting from the protection of objects (Katouzian, 1397: 348). However, Article 2 of this regulation states: “All owners of vehicles subject to this law, whether they are natural or legal persons, are required to insure their vehicles against physical and financial damage caused to third parties as a result of accidents involving the said vehicles, at least to the amount stated in Article (8) of this law, with an insurance company that has a license to operate in this field from the Central Insurance”.

This obligation is also repeated in Article 7 regarding vehicles that enter or leave the country. Although this regulation is not much different from Article 1 of the previous law and refers only to the obligation to insure, Note 2 of this regulation, contrary to the previous law, which did not consider the owner's liability to prevent the liability of the person to whom the accident is attributed and was considered the most important support for the proponents of civil liability of vehicle owners, has removed any doubt about the owner's obligation to obtain an insurance policy: "The liability of the vehicle owner in obtaining the

insurance policy subject to this law does not prevent the liability of the person to whom the accident is attributed to his act or omission. In any case, the damage caused shall be paid from the insurance policy of the vehicle that caused the accident".

It is worth noting that Note 2 of the 1387 law stipulated: "The liability of the vehicle owner does not prevent the liability of the person whose act or omission caused the accident..." The phrase "owner's liability" was considered by a group of lawyers to mean his civil liability towards the injured parties (Izanloo, 1388: 38), which is explicitly stated in the new law: "The owner's liability in obtaining an insurance policy..." However, Article 2 of this law and Note 2 thereof do not contain the slightest reference to the civil liability of vehicle owners, and there does not seem to be any ambiguity in the wording of these two regulations that would open the way for a contrary interpretation. Of course, some lawyers believe that there are serious doubts in the compatibility of this path chosen by the legislator with legal principles, because the logic of law requires that legal obligations be designed in such a way that the consequences of their non-compliance are borne by the obligor himself; However, here, the consequence of the owner not purchasing insurance will be for the driver responsible for the accident, and the offending owner will only be sentenced to pay a fine to the state. (Babaei, 1400: 215).

-2The lack of possibility of recourse to the owner (owner) of the vehicles

Regarding compensation for damages, the legislator only refers to the right of the injured party to refer to the driver who caused the accident, the insurer, and the compensation fund for bodily injuries, and in Article 4 it stipulates: "In the event of an accident and causing bodily or financial damage to a third party:

-If the vehicle causing the accident has an insurance policy subject to this law, the insurer is responsible for compensating for the damages incurred within the limits of the provisions of this law. If it is necessary to file a lawsuit regarding the claim for damages, the injured party or his representative files a lawsuit against the insurer and the person who caused the accident. This ruling does not negate the criminal responsibilities of the driver who caused the accident.

-If the vehicle does not have an insurance policy subject to this law or is subject to one of the cases stated in Article (21) of this law, the physical damages incurred will be compensated by the Fund in compliance with Article (25) of this law. If a lawsuit needs to be filed in this regard, the injured party or his representative shall file a lawsuit against the driver who caused the accident and the Fund. Therefore, this regulation only refers to the liability of the insurer, the compensation fund for physical damages and the driver who caused the accident, and the injured party is not given the right to refer or file a lawsuit against the holder.

- 3- The insurer's inability to refer to the owner (owner and third-party property)
- In other articles of the Compulsory Insurance Law, the legislator emphasizes the absolute liability of the insurance company and the Bodily Injury Compensation Fund for bodily injuries to victims. According to Article 9, "The insurer is obliged to compensate for the damages caused to third parties in accordance with the provisions of this law" and, according to its note, "If in an accident, the person responsible for it is sentenced to pay more than one blood money to each of the victims, the insurer is obliged to pay the total bodily injuries, regardless of whether the amount in excess of the blood money is less than or more than one full blood money." One prominent lawyer uses the inability of the insurer to refer to the owner of the vehicle as evidence to prove that the nature of the Compulsory Insurance Law of 2016 is liability insurance, not just an obligation to insure with a guarantee of criminal enforcement. They believe that if the nature of this insurance were only accident insurance (in the case of bodily harm) and property insurance (in the case of material harm) and the insured's liability was not covered, the insurer should have been able to refer to the insured, like the fund, after compensating the injured party. However, this is not the case and the insurer's recourse to the insured is exceptional. At the same time, the insurer has the right to refer to the driver who caused the accident in some cases. For example, according to Article 14: "In traffic accidents resulting in injury or death, where, according to the report of a traffic accident expert or traffic police, the main cause of the accident is one of the driving violations that caused the accident, the insurer is obliged to

pay the damage to the injured party without any conditions or obtaining a guarantee, and after that, it can refer to the person who caused the accident for recovery as follows:

- - In the first accident resulting from the driver's violation that caused the accident during the term of the insurance policy: equivalent to two and a half percent (2.5%) of the physical and financial damages paid;
- - In the second accident resulting from the at-fault driver's violation during the insurance policy period: equivalent to five percent (5%) of the physical and financial damages paid;
- - In the third accident resulting from the at-fault driver's violation and subsequent accidents during the insurance policy period: equivalent to ten percent (10%) of the physical and financial damages paid.
- Also, according to Article 15: "In the following cases, the insurer is obliged to pay the damage to the injured party without any conditions or obtaining a guarantee, and then it can refer to the injured party's representative through legal authorities to recover all or part of the funds paid to the person who caused the damage:
- - Proving the intent of the at-fault driver in causing the accident before the judicial authorities;
- - Driving while intoxicated or using drugs or psychotropic substances that have an effect on the accident, which has been confirmed by the police force or forensic medicine or the court;
- - If the at-fault driver does not have a driver's license or his license is not appropriate for the type of vehicle;
- - If the at-fault driver steals the vehicle or is aware that it has been stolen."
- In all these cases, the insurer only has the right to refer to the driver who caused the accident, and the possibility of the insurer referring to the owner of the vehicle is not foreseen in the law. In fact, the Compulsory Insurance Law of 1395 was designed to provide greater protection for the injured parties and even obliged the insurer to cover the bodily injuries of third parties in certain cases that are basically considered exceptions to insurance coverage and then refer to the person responsible for the accident to return the damages paid to the representative of the injured party. As stated in Article 15 of the aforementioned law, firstly, the legislator has not assigned any responsibility to the owner; and secondly, with an approach similar to the law of 1347, it has expanded the scope of the insurance company's duties. Thus, in the 1968 law, the insurer's payment and subsequent referral were only in the case of intentional damage and driving without a license, but in the 1976 law, in a smart move and in order to provide greater protection to the injured party, it expanded the scope of the insurer's obligation and, in addition to the two aforementioned cases, it also referred to driving while intoxicated and under the influence of drugs and psychotropic substances, theft and illegal possession. In addition, in a useful step, it also explicitly stated the meaning of driving without a license. (Babai, 1998: 246).
- 4- The impossibility of the Bodily Injury Compensation Fund resorting to the holder (owner or third-party property?)
- It is not hidden that if the vehicle owners fail to comply with the obligation to obtain an insurance policy, the Bodily Injury Compensation Fund will be responsible for compensation to the injured party; but the question that can be raised is: in the event of compensation, who will the fund have the right to resort to? The owner or the driver who caused the accident?
- It is clear that in the event of assuming civil liability for vehicle owners, the right of recourse of this fund to the owner should also be accepted because the owner is originally obligated to compensate for the damage and based on that, he is obligated to insure, and the compensation for the damage was made by the insurer and the compensation fund on behalf of him and during the period of the person responsible for the accident. (Taqizadeh, 2017: 150).
- According to Article 25: “The fund is obliged to pay the damage to the injured party without obtaining a guarantee from the injured party or the person who caused the damage, and then it is obliged to recover the funds paid to the injured party’s representative through legal authorities as follows:

-If the payment of damages is due to the absence, expiration or invalidity of the insurance policy, it shall be referred to the person who caused the accident;

-If the payment of damages is due to the suspension or cancellation of the license or the cessation or bankruptcy of the insurer, as referred to in Article (22) of this law, it shall be referred to the insurer and its managers.

-If the payment of damages is due to the vehicle causing the accident not being identified, after it is identified, it shall be referred to the person who caused the accident or his insurer, as the case may be;

-If the payment of damages is due to the passengers inside the vehicle causing the accident being beyond the capacity, it shall be referred to the person who caused the accident".

In none of the cases mentioned in this article, even in the event that the vehicle does not have a valid insurance policy or the insurance policy has expired, the fund may not refer to the holder. Also, according to Article 12 of this law, "... in cases where, due to failure to comply with the permitted capacity of the vehicle, the total physical damage to the victims of the vehicle at fault in the accident exceeds the aforementioned ceiling, the amount of damage to which the insurer is liable shall be divided among them in proportion to the damage caused to each of the victims, and the difference in the physical damage of each of the victims shall be paid by the Physical Damage Compensation Fund in accordance with the relevant regulations and recovered from the person causing the accident in accordance with the provisions of this law".

Executive guarantees regarding the obligation to obtain an insurance policy

As mentioned above, the legislator has not considered civil liability for vehicle owners in any of the articles of the law and has only obliged them to obtain an insurance policy. Various enforcement guarantees have been established regarding this obligation, the most important of which is the payment of a fine to the Physical Damage Compensation Fund.

-1Cash penalties in question

Clause C of Article 4 stipulates: "If the vehicle does not have the insurance policy subject to this law and the vehicle is in the possession of the driver who caused the accident with the owner's permission, if the owner is a legal entity, he shall be sentenced to a cash fine equal to twenty percent (20%) and if the owner is a natural person, to a cash fine equal to ten percent (10%) of the total bodily harm suffered. The aforementioned amount shall be deposited into the fund's special income account with the National Treasury, and one hundred percent (100%) of it shall be allocated to the fund by making a provision in the annual budgets".

As is clear from the wording of this clause, the enforcement guarantee imposed, in addition to being a criminal enforcement guarantee and not of a civil nature, is conditional on the realization of the damage and is claimable if the vehicle belonging to the owner causes damage to a third party; Therefore, if an owner fails to fulfill his obligation to obtain an insurance policy and his vehicle causes damage to another person, the injured party only has the right to refer to the driver who caused the accident and the compensation fund for bodily injuries, and in this case, the owner is only sentenced to pay a fine. The collection of a fine as a guarantee of fulfilling the obligation to insure the vehicle is one of the innovations of the new law, and a fine was not imposed in the previous two laws.

It should be noted that, based on the jurisprudential principles of legislation in the present era, the legislator can impose an obligation to act or leave an act in the area of Shariah permissions or the area of exemption and impose a guarantee of execution for these obligations. The imposition of a guarantee of execution is one of the powers of the Islamic ruler. However, what needs a little reflection is that the ruler's authority in imposing a guarantee of execution is limited to imposing a guarantee of execution for criminal purposes, and the guarantee of execution of newly introduced rulings cannot conflict with established rulings. Therefore, the ruler cannot consider the guarantee of execution required for obtaining insurance as a compulsory guarantee and civil liability, because adding or reducing the means of compulsory guarantee is a departure from Islamic standards and is outside the jurisdiction of the legislator according to the undisputed principles of the Constitution, including Article 4. (Sharif, 1392: 586). However, imposing a guarantee of execution for criminal purposes, including the payment of a cash penalty, based on jurisprudential rules such as "al-ta'zhir lakal amal al-muharram wa al-ta'zhir bama yarah al-hakim" will not face any obstacles. For example, although the legislator considers the registration of marriage and divorce necessary to maintain social security, he cannot, by interfering with the conditions and provisions of the

marriage, guarantee the implementation of the non-registration as the non-fulfillment of the marriage. Rather, the guarantee of the implementation of these provisions is merely a guarantee of criminal enforcement, such as a fine or imprisonment. Accordingly, it is necessary for those responsible to comply with the laws and regulations that are established within the scope of the free zone, and the punishment of the violator in any way that the ruler deems appropriate, whether it is a fine or the compulsory insurance law approved in 1387 and 1395 is also in accordance with the legitimate and unimpeded whipping (Fadel Lankarani, 1428: 151). This view has also had the seal of approval of the supervision of the jurists of the Guardian Council, while the establishment of civil liability in the 1347 law for vehicle owners was certainly contrary to the principles and standards of Sharia in this regard.

2- Payment of one year of compulsory insurance premiums

According to Article 24, paragraph b of the aforementioned law, one of the financial resources of the Bodily Injury Compensation Fund is an amount equivalent to a maximum of one year of compulsory insurance premiums, which is collected from vehicle owners who refuse to take out insurance as the subject of this law. Therefore, in addition to paying the fine mentioned in Article 4, if the owners refuse to take out insurance, they are also required to pay a one-year insurance premium. This enforcement guarantee also lacks legal character and is mostly criminal in nature, but it is not conditional on the realization of damage and is collected from those who refuse to take out insurance in any case. This provision was also contained in Article 11, paragraph b of the Law Amending the Compulsory Insurance Law approved in 1387. The legal nature of the aforementioned amount is unclear, and the authority and method of its collection and delivery to the Bodily Injury Compensation Fund have not been mentioned.

3- Other guarantees of performance of the obligation to obtain an insurance policy

It was said that the most important guarantee of performance stipulated in the law approved in 1395 regarding the obligation to obtain an insurance policy is the payment of a fine stipulated in Article 4. At the same time, the legislator has also considered other guarantees of performance for this obligation, none of which describe civil liability or the obligation to compensate for damage, and are mostly criminal or disciplinary in nature.

4- Including vehicle owners as third parties and negating the insurer's consequential liability towards the owner

Until the amendments of 1387, the vehicle owner was considered among the exceptions to the third party. In justifying this ruling of the legislator, some jurists believe that the owner himself is responsible for compensating for damage and in fact, the insurance company is considered his representative or successor in compensating for damage based on the contract he concluded with the owner. Therefore, considering the principle of relativity of contracts and considering that the owner himself is one of the main parties to the insurance contract, we should consider him among the exceptions to the third party. In fact, the insurer's liability is a function of the holder's liability, and therefore the insurer has no liability towards the holder himself. Therefore, this group of lawyers has implicitly criticized the legislator's approach and considered it difficult to justify in terms of legal principles. (Rah Peek, 2011: 176). In the amendments made in 2008 and 2016, the legislator has not assigned any liability to the holders, so that we consider the insurer's liability as a successor and subordinate to it, and therefore we do not consider the holders to be subject to third parties. In other words, unlike the 1968 law, where owners were civilly liable for damages caused to third parties and were required to insure this liability and the insurer was considered their successor in paying the damages, today owners have no civil liability or obligation to compensate for damages, so we consider the insurer's liability subordinate to it and consider it difficult and unjustifiable for the insurer to pay damages to the owner. Rather, the insurer's liability can be considered vicarious only in relation to the liability of the driver who caused the accident, hence the driver who caused the accident is not considered a third party; because the driver himself is responsible and cannot have an obligation to compensate for damages for himself, so that the insurer is responsible for it on his behalf and in his place.

Conclusion

In the Iranian legal system, following the Imamiyyah jurisprudence, in order to identify the effect of each legal entity, its nature is searched for at the beginning, and then the effects are determined. The tradition of jurists is that when they come into contact with any phenomenon, they have made an effort to

understand its structure and rulings by applying its adaptation to existing institutions. This tradition has been prevalent in statutory law, especially our law. It is this traditional thinking that compels scientists to explain the legitimacy of insurance as an emerging phenomenon, to justify and apply it in the form of known contracts. If we accept this method and try to identify liability insurance, then we will encounter two justifications in its essence. First, liability insurance will be the insurer's guarantee to pay damages attributed to the insured and protect his property, and second, liability insurance is the same guarantee for the benefit of a third party. Accepting each of these justifications will naturally lead to the identification of different effects.

Given the important concern of legislators in compensating for physical harm and consequently compensating for related financial and non-financial damages and accepting the principle of the necessity of full compensation for damages, in the event of the incapacity of the person causing the damage or his/her failure to be identified, governments have also assumed a share in compensating for damages. This share of the government's responsibility in our rights can be paid in the form of blood money from the Treasury. In criminal laws regarding bodily and personal injuries, an amount is determined as blood money according to the type and severity of the damage caused, and in civil laws, the Civil Liability Law recognizes compensation for bodily harm and loss in a wide range of damages (moral damage, disability damage, and damage resulting from treatment). However, given that in some cases blood money does not cover all damages and medical expenses, it does not seem logical to fix the amount of damages in the form of blood money; which justifies the claim for damages in excess of blood money. However, it seems that the combination of blood money and damages faces a legal obstacle, and therefore it is believed that the victim should be granted the right to choose between receiving one of the two types of blood money and the amount that the judge determines as damages after consulting an expert. Obviously, if the type of damage claimed by the victim is physical damage, all damages, including physical damage, moral damage, disability damage, and damage resulting from treatment, can also be covered under this title.

The basis of the insurer's liability in compulsory insurance is ostensibly the insurance contract, but in reality, it is the distribution of damages. All damages resulting from automobile accidents are calculated in a certain period and distributed among all car owners based on reasonable criteria, and insurers are ordered to collect them through compulsory insurance contracts, and then provide part of it to medical centers for the treatment of victims of these accidents; and to hand over the other part to the physical damage fund to compensate the losses of the unsupported victims; and to provide part of it to the police to use as a deterrent (Article 27 of the 1387 Law); and with the remaining funds collected, compensate the victims for physical language and a certain amount of financial damage. This process, whose regular and self-sufficient function is called the "collective civil liability system," and the insurer's liability is based on it. On this basis, the criterion for the insurer's liability is the "customary realization of the automobile accident." It does not matter whether the accident is caused or not. The type of liability is "absolute." Provided that the harmful accident is conventionally considered a car accident, the insurer is liable even if the Cairo force caused it. Including termination, suspension, or conditions that harm the rights of third parties is prohibited in the compulsory insurance contract.

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