

Research on the Liability Identification of "Open Door Killing" Traffic Accidents

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ABSTRACT

In legal practice, there is a great dispute about the liability identification of the "open door killing" accident. Often, the division of responsibility involves multiple parties, including the driver of the motor vehicle, the passenger of the vehicle, and possibly third parties. Therefore, this paper aims to propose a more reasonable liability division and compensation scheme through the analysis of the existing theories. First of all, this paper discusses three legal theories: subjective co-theory, objective co-theory and compromise theory. The subjective joint theory holds that the accident liability should be distributed according to the subjective faults of each party. The objective common theory focuses on the objective behavior and result of the parties in the accident. The compromise theory tries to find a balance between the first two, taking into account both subjective negligence and objective results. Combining these three theories, this paper proposes that in the "open-door killing" accident, the main body of responsibility should include motor vehicle driver and passenger. The driver of a motor vehicle should be responsible for ensuring safety after stopping, while the passenger should ensure that there is no traffic or pedestrians before driving. In addition, this paper also puts forward the shared responsibility of the duty of care, and believes that drivers and passengers should pay attention to the surrounding traffic environment to prevent possible accidents. Finally, this paper discusses the problem of identifying the accident in the accident. In determining whether an accident is an accident, consideration should be given to the degree of control over the accident by the parties. If both the driver and the passenger had sufficient ability to anticipate and prevent an accident, then the accident should not be considered an accident. Through the above analysis, this paper aims to provide a more comprehensive and fair perspective to guide the identification of liability and liability for compensation in practice. It is hoped that through this way, the traffic accidents caused by passengers' driving doors can be fundamentally reduced and the overall safety of road traffic can be improved.

KEYWORDS

Traffic Accident Liability Identification; Joint Infringement; Duty of Care; Identification of Responsibility.

1. THE QUESTION RAISED

With the increasing number of motor vehicles, the traffic accidents caused by motor vehicles also increase. The complexity of traffic accidents is different from other accidents, which often involve motor vehicles, non-motor vehicles and pedestrians. At present, the Road Traffic Safety Law of the People's Republic of China and the Civil Code of the People's Republic of China are mainly applied to the compensation liability between subjects, but different laws have different recognition of accident subjects and their responsibilities.

In the event of a traffic accident, the general handling procedure first involves the traffic police department's investigation and record of the accident scene. The traffic police will conduct a detailed

inspection of the scene and record the specific circumstances of the accident, including but not limited to the location of the vehicle, the extent of damage and possible traffic violations. During this process, traffic police will also collect relevant evidence, such as photos of the accident scene, video surveillance and witness testimony. After the completion of the investigation, according to the statements of the parties and the situation of the accident scene, the traffic police will conduct a preliminary responsibility determination. This liability determination is mainly based on the Road Traffic Safety Law of the People's Republic of China, which aims to clarify the share of responsibility of each party in an accident. The purpose of the identification is not only to deal with administrative fines and other administrative problems for traffic violations, but more importantly to maintain road traffic order and ensure public safety. In addition to administrative processing, if the two parties to the accident have a dispute on the issue of compensation and cannot reach a settlement, the parties may choose to resolve the dispute through legal means and submit the case to the court. Similar to the traffic police department, the judge will also confirm the responsibility for the accident, but the court's decision is based on the tort liability provisions of the Civil Code of the People's Republic of China. In the process of trial, the court will consider more legal factors, such as the fault proportion of the parties, the actual loss and the expected liability for compensation, in order to achieve a fair and reasonable judgment.

Therefore, although the liability identification of traffic police and the liability judgment of the court are aimed at solving the problem of accident liability, they are based on different legal frameworks and processing objectives. Traffic police pay more attention to administrative management and public safety, while the court focuses on civil liability and compensation for rights and interests.

It is well known that the rights and interests of the parties are inevitably harmed when a traffic accident occurs, and the amendment of tort liability in the Civil Code provides a basis for determining the liability when citizens' rights are infringed. When the judge tries the compensation issue arising from the traffic accident, the accident confirmation letter issued by the traffic police department appears in the court as the primary evidence, but the basis and purpose of the identification of the responsible subject and its responsibility by the traffic police department and the judge are different from that of the responsible subject and its responsibility. In the face of the complicated car door collision accident caused by passengers getting off the bus, Under the premise that the collided party is obviously not responsible, the two parties to determine the liability of the passenger and the motor vehicle driver often give different judgments. According to the Road Traffic Safety Law of the People's Republic of China, the traffic police department often habitually ascribe all the responsibility to the passenger or the motor vehicle driver, and is more inclined to ascribe a heavier responsibility to the driver, but in judicial practice, the court often regards the passenger and the motor vehicle as the subject of joint responsibility in the trial, the driver acquiesces that there is a common meaning between them, so there is a dispute over the sharing of responsibility, which needs to be further analyzed.

It can be seen from the above that traffic accidents are usually handled according to the traffic police department's initial investigation and initial judgment, and the court's final judgment, which has different starting points and leads to different basis of judgment. Although the traffic police department's traffic accident identification report will be used as the main evidence in the court's judgment process, the court's judgment results sometimes differ from the judgment of the traffic police department. Then what kind of standard to determine the main body of responsibility and the share of responsibility in the case of "open door killing" needs to be further analyzed.

2. DIFFERENCES BETWEEN ADMINISTRATIVE ORGANS AND JUDICIAL ORGANS IN DETERMINING THE DISTRIBUTION OF RESPONSIBILITIES

Through the sorting and analysis of several traffic accident identification reports caused by passenger door accidents, the traffic police department can be divided into two types when the victim does not violate the law to confirm the responsibility of the main body: the motor vehicle driver as the main body, the motor vehicle driver and the passenger as the joint responsibility of the main body. According to the provisions of the Road Traffic Safety Law, when a traffic accident occurs between motor vehicles and non-motor vehicles and pedestrians, most of the provisions are inclined to safeguard the interests of non-motor vehicle drivers and pedestrians, so the traffic police are more inclined to take one or two parties, including passengers, as the main responsibility when dealing with traffic accidents. For example, in *Chen Jingbin v. Xie Jinzhi* motor vehicle traffic accident liability dispute, The accident was determined by the traffic police department, the non-motor vehicle party is not responsible for the accident, so it is not the responsible subject, and the motor vehicle party bears the full responsibility for the accident is the responsible subject. In this traffic accident, the traffic police department identified the motor vehicle driver as the responsible subject, and the passenger who implemented the door behavior was not identified as the responsible subject. However, in the case of *Yang Mou v. CAI Mou* and other motor vehicle traffic accident liability, the three brigade directly under the Traffic Police Department of Taizhou Public Security Bureau made a road traffic accident identification, identifying that the motor vehicle driver bears the main responsibility for the accident, the passenger in the car bears the secondary responsibility for the accident, and the victim is not responsible for the non-motor vehicle driver.[1].

The traffic police department is the main department that makes the first step to identify the responsibility of the accident. Relying on its existing investigation and other knowledge, the traffic police department divides the responsibility of the parties initially according to the scene and the narration of the parties, but the division of responsibility of the traffic police department is not the same as the division of responsibility of the parties in the Civil Code. When the police department handles traffic accidents caused by passenger door accidents, it is usually divided into three types: First, it attributes all the responsibility of the accident to the motor vehicle driver. For example, in the civil judgment of the second instance of *Chen Jingbin v. Xie Jinzhi* motor vehicle traffic accident liability dispute, the traffic police department determined that the motor vehicle driver *Chen Jingbin* bears all the responsibility for the accident; The second is to ascribe all the responsibility of the accident to the passenger, that is, the driver of the car door accident. For example, in the civil judgment of *Ma Yibo, Bi Shuyuan* and other motor vehicle traffic accident liability disputes, the first brigade of the traffic police branch of *Weihai Public Security Bureau* confirmed that the passenger, that is, the driver *Cui Jingjun*, bears all the responsibility for the accident. The driver, *Ma Yibo*, and the victim, *Bi Shuyuan*, were not responsible; The third is to determine that the motor vehicle driver and the passenger bear the main responsibility and secondary responsibility respectively, for example, in the civil judgment of the second trial of the liability dispute of the motor vehicle traffic accident of the *Linyi Branch of the People's Property Insurance Co., LTD.*, *Luan Jingxia*, *Linyi Public Security Bureau traffic police Division Luozhuang Brigade* identified: *Chen Longfei* car door to obstruct other vehicles, bear the main responsibility for the accident, motor vehicle driver *Xu Yuxiang* illegal parking, bear secondary responsibility for the accident, the victim *Luan Jingxia* no accident responsibility.

In these cases, the identification of the responsible subject of similar passenger door accidents by different traffic police departments is based on the objective situation of the accident. Since the identification of the responsible subject by the traffic police department is based on the Road Traffic Safety Law, and it is only made from the point of order management, it has not made a unified judgment standard for the complicated causes of traffic accidents and the evaluation of accidents, so

that in the face of similar accidents, The traffic police reach a conclusion through the subjective and objective situation of the parties and their own subjective judgment.

From the perspective of judicial practice, the court almost always divides the motor vehicle driver and passenger into a common subject and judges them to bear joint and several liability in the trial of the relevant car door accidents, although different courts have different judgments on the proportion of liability within the responsible subject. However, it is consistent that different courts regard the subject of liability based on articles 8 and 12 in the Tort Liability Series of the Civil Code, that is, they all believe that the subject of liability has joint and several liability. The court held that in the normal drop-off location of the passenger door, the driver's meaning and the passenger's door action reached the same agreement, the passenger should have the duty of safety care when preparing the door, and this obligation should not be limited to the passenger alone, the motor vehicle driver also has the duty of care (remind and stop). It is precisely because the meaning between the driver and the passenger is consistent, it can be judged that there is a subjective joint fault between the two people, so it is necessary to bear joint and several joint responsibility for the victim.

It can be seen that the biggest difference between the traffic police department and the court in determining the subject of responsibility for the same accident mainly lies in the difference in the basis for confirming the subject of responsibility, which also leads to the difference in the subject of their confirmation and the subject's share of responsibility. Traffic police department based on the situation of the accident scene to speculate, so as to preliminarily determine the main body of responsibility, there are different departments to make different conclusions - there are mainly three situations: one is the motor vehicle driver bear the tort liability alone, the second is the driver of the door that the passenger bear the responsibility alone, the third is the motor vehicle driver and passengers jointly bear the responsibility. However, in the judgment of the court on the traffic accident, almost all of the liability is attributed to the motor vehicle driver and the perpetrator. The main reason for the dispute is that the traffic police department determines the responsibility of the parties mainly based on the provisions of the Road Traffic Safety Law when making the traffic accident confirmation, generally according to the role of the parties' fault in the traffic accident and the severity of the fault. Article 1 of the Road Traffic Safety Law clearly stipulates that its legislative purpose is to "maintain road traffic order, not to protect civil rights and interests as the direct goal, but through administrative sanctions to achieve indirect protection of civil rights and interests." On the contrary, tort liability norms belong to the scope of private law, which not only sets the standard of lawful conduct, but also uses it to regulate the liability of those who violate the norm, so as to protect the rights and interests of the infringed. The prevention of this kind of infringement is the indirect effect of the responsibility regulation on the infringer. Although traffic control regulations and tort liability regulations have the same function of preventing and punishing illegal acts, their operation and purpose are still different: Traffic control regulations are formulated based on the purpose of preventing and punishing illegal acts, regardless of whether the acts actually cause rights infringement or damage; The tort liability regulation aims to realize the prevention function indirectly by directly relieving the rights and interests of the victims.

As documentary evidence, traffic accident confirmation plays a crucial role in dealing with traffic disputes. Its role is not only to establish the specific circumstances of the accident, but also to clarify the causal relationship and the degree of responsibility of the parties involved. The document divides the liability of the parties in detail, such as full responsibility, primary responsibility or no responsibility. Based on the collected evidence, and through a series of rigorous analysis and certification process, the traffic management department reveals the cause of the accident and defines the responsibility sharing accordingly, which becomes one of the key evidence to solve the traffic dispute. Although the traffic accident confirmation letter is only used as evidence in legal proceedings, it actually has the effect of a preliminary judgment. In judicial practice, the vast majority of courts tend to directly adopt the factual conclusion made by the traffic management department in the confirmation letter as the factual basis of the case. Therefore, this document is not only the basis for

clarifying the accident and the attribution of responsibility, but also occupies a pivotal position in the judicial trial. In our legal system, the legal effect of documentary evidence is clearly higher than that of private documentary evidence, and it is generally regarded as objective fact unless there is evidence to the contrary to prove that it is wrong. Based on this legal principle, the accident confirmation issued by the public security organs naturally enjoys the legal effect beyond the general documentary evidence.

At the National Symposium on Civil Trial Work in 2003, the Supreme People's Court pointed out that the court should focus on the accident liability confirmation provided by the public security department when trying traffic accident damage compensation cases. After analyzing the causes and consequences of the traffic accident, the public security considers it as an important evidence to determine that the party is responsible or that the victim is also negligent. According to the Provisions on Evidence in Civil Proceedings issued by the Supreme People's Court in 2013, documents written by state organs according to their functions and powers are more powerful than documents provided by other means. It can be seen that in the specific judicial practice, judges tend to take the traffic accident confirmation as a strong persuasive evidence. Unless the opposing party is able to provide sufficient evidence to the contrary, the court will usually decide on the basis of the claim.

In the actual operation of judicial trial, no matter the traffic accident confirmation is presented to the judge as written evidence or other forms of administrative acts, it is mainly regarded as the proof material to record the facts related to traffic accidents. The document usually includes a determination of the accident itself and its allocation of responsibility, both of which are presented as a record without subjective judgment, maintaining its character as a neutral act. In such cases, the judge is often inclined to rely on the letter to determine the liability of the parties.

3. FACTORS TO CONSIDER IN DETERMINING RESPONSIBILITY

In addition to the fact that the occurrence of objective facts will affect the identification of liability between the motor vehicle driver and the passenger who causes the infringement of the car door, the expression of intention between the two parties also plays a crucial role in how they should assume responsibility.

Those who hold this view argue that in a joint infringement case, the parties involved must have some subjective connection in order to satisfy the "commonality" elements that constitute joint infringement. In view of the different requirements of different scholars for subjective connection, there are two different schools of understanding of subjective common.

(1) Theory of Joint Intention

Joint intent theory holds that joint torts can be constituted only when there is a common intention between the actors. Typically, this requires intentional communication and contact between the individuals involved. For example, the Mei Zhong Association has pointed out in this regard that when multiple people jointly infringe on others illegally and there is an intention to do harm through communication between them, these people should bear joint and several liability for damage.[2] There are different understandings of the concept of "meaning connection" in academic circles. Some scholars interpret it as a collusion relationship, that is, meaning contact refers to the tacit understanding or agreement formed between the actors in order to achieve a certain common goal. For example, Wu Zaiyang believes that "in order for the actions of various subjects to be integrated into a consistent common action, the key is that they must have mutual wishes and motives." This consensus-based state of mind may be called 'common meaning association', it may also be called 'complicity' or 'common intent'. [3] This view can be described as a conspiracy theory. There are people who believe that the common understanding between the actors is sufficient, this view can be described as the common understanding theory, taking Zheng Yubo's view as an example, he pointed

out: "meaning contact not only needs a clear common intention, but at least it must be built on the basis of shared understanding." [4].

(2) Contributory Fault Theory

This view is supported by the view that if the actors have the same purpose of injury or common negligence, it indicates that they have common faults and should be treated as joint torts. [5] Therefore, the doctrine of joint fault considers the commonality of both intent and negligence. Its core idea is that the common fault coheres the actions of those involved, which determines the common nature of the damage and the actions. For this reason, it is only moral to hold accomplices jointly liable. If only from the objective act to judge, can not fully explain why to bear joint liability, but also may unduly expand the scope of joint tort, resulting in excessive liability burden to the parties. Moreover, if we limit joint infringement to situations where there is a clear communication of intent, "it becomes difficult to say whether the perpetrator should be jointly and severally liable in a new type of infringement".

Both the common intent theory and the common fault theory focus on the subjective and common characteristics of the subject. According to the former, in the case of "open door killing", the driver and the passenger only have the subjective intention to stop and get off the vehicle, but there is no subjective intention for "open door killing". According to the latter, the driver and the passenger do not have the same purpose of injury, "open the door to kill" is the result that they do not want to see, as for joint negligence, the author believes that if only the improper opening of the door action as the negligence of the passenger, then the driver and the passenger does not constitute joint negligence and does not constitute a joint fault.

(3) Objective Cotheory

Objective commonality theory, also known as joint act theory, argues that in joint torts, there is no need for subjective connection between the actors. As long as each actor is intentional or negligent, and their behavior objectively presents "interrelated commonality". The condition of constituting joint torts is that the illegal acts of each actor must be related to each other objectively and become the cause or condition of the damage. "To form this objective interconnectedness, some views suggest that there should be premeditation or consensus between the agent subjects. However, the concept of joint torts in civil law is not the same as the concept of complicity in criminal law." [6].

(4) The Judgment of The Unexpected

Civil legal fact is an objective phenomenon, which exists in various forms and can be further classified into two types of events and acts according to the relationship between it and human will. An event is a kind of accidental objective phenomenon that has nothing to do with human will, such as natural disaster, which is independent of human will and triggered by natural forces or other non-human factors. As opposed to events, behavior is a manifestation of a person's will, usually involving intention and decision-making processes. In the civil law system, an accident is a special event, which is usually out of the control of the parties because of its contingencies and unpredictability. For example, traffic accidents caused by unforeseen weather changes. Since the occurrence of the accident has nothing to do with the will of the person, therefore, under the principle of fault liability, such a situation is usually not attributable to any party. However, if the actor, under a reasonable duty of care, could have foreseen and prevented the damaging outcome, then the incident might be considered manageable rather than purely accidental.

The collision accident caused by the passenger door usually involves human operation and decision, the action of the passenger opening the door and the permission of the motor vehicle driver are under the control of the will. Such accidents can be avoided if passengers and drivers anticipate potential damage and take appropriate precautions, such as checking the situation behind them. Therefore, it is not an accident, but an incident related to the act of the will of the person, attributed to the failure of the person to exercise due care. Through this analysis, we can see that the classification and

understanding of civil legal facts is of great significance for judging the attribution of responsibility and taking preventive measures. In practice, the distinction between incident and behavior, as well as the clarity of accident controllability and contingencies, is the key to achieving fairness and efficiency. Under the principle of fault liability, for an accident, if the doer fulfils his duty of reasonable care, it can be foreseen that the damage result may occur, and he will take necessary preventive measures in advance, then the damage result can be avoided and overcome. Therefore, the difference between the accident and force majeure lies in the doer's subjective fault. In the collision accident caused by the passenger's door, both the passenger and the motor vehicle driver can foresee the occurrence of the damage result, the passenger's door action and the motor vehicle driver's permission to the passenger's door action are made under the control of the will, and either party can avoid the accident by fulfilling its due duty of care, which is within the control of the parties concerned. Therefore, the accident was not an accident.

4. COUNTERMEASURES AND SUGGESTIONS FOR RESPONSIBILITY IDENTIFICATION

The motor vehicle has certain danger when it runs, and it also appears in the society as a product of promoting economic value, so the civil subject who can gain benefits from the motor vehicle running process should theoretically bear the danger it brings to others.[7] There are two core elements, "operation control" and "operation benefit", which directly affect the identification of traffic accident liability. Through these two standards to delimit the scope of the main liability, and then confirm who should pay for the road traffic accident, the main liability is divided into the following two aspects: first, who directly dominates and controls the vehicle, who is the direct infringer, that is, is the first person responsible for causing the accident; Second, whoever gains operational benefits through the vehicle involved in the accident is the responsible person, because "who benefits, who bears responsibility" is also the due meaning of jurisprudence.

The motor vehicle driver, as the operator of the operation, shall have the duty of care to remind passengers to pay attention to safety, and should promptly stop the passengers' behavior that may cause danger when necessary. Passengers also enjoy the operation benefits and are the direct infringers of the "open door" collision accident, and bear direct and large responsibilities in the accident, so the motor vehicle driver and passengers should jointly assume the compensation liability for the victim as the main body of tort compensation. In addition, according to the "compromise theory", subjectively, passengers and drivers have the same intention of "getting off", but they have no common intention of the time when the "getting off" action occurs, and they have common faults to a certain extent. Objectively, the actions required by "opening the door to kill" can be regarded as the overall actions of the passenger and the driver, because the driver has the duty of prompt attention to the passenger, and when the driver fails to fulfill the duty of prompt to the passenger, the objective behavior of the driver's inaction can be regarded as related to the behavior of "opening the door to kill" of the passenger. The damage caused by the two people's behavior to "open the door to kill" can objectively constitute a whole. Therefore, when the driver does not fully fulfill the duty of care, the driver and the passenger should become the subject of joint responsibility for "opening the door to kill"; As the controller of the motor vehicle, the driver should bear no-fault liability for the damage caused to others during the use of the motor vehicle, while the passenger is the person who performs the action and is directly responsible for the infringement result, and should bear fault liability.

The proposed standards for the identification of the liability of the relevant subject of such accidents are to facilitate the settlement of such disputes, timely safeguard the rights of the victim, and avoid affecting the victim's compensation due to the buck-passing of responsibility, but such disputes can reduce the probability of occurrence to a certain extent. The Dutch invented the "Dutch door method", which means that the person on the left driving position uses the right hand to drive the door, and the person on the right driving position uses the left hand to drive the door.

[8] In this way, the upper body of the actor will also rotate inertia with the hand, so that the head and shoulders will naturally rotate, according to the human body structure, in the process of rotation, its eyes will first observe the situation behind the car through the rearview mirror, and the eyes will naturally look out and back after the actor turns. Through this complete action, the perpetrator can fully see the situation behind the car when driving the door, observe the past pedestrians and other situations, and thus avoid many unnecessary accidents. This door opening method does not require energy and does not require special training, is a very easy to learn action, in daily life, through the media and other channels, to promote this door opening method, fundamentally reduce the occurrence of "door to kill" accidents.

5. CONCLUSION

In the face of tort compensation disputes after the accident, the court and the traffic police department are the two main bodies to identify the responsibility. The reason why the two units make different shares of identification is often because of their different roles, but the traffic accident identification report often plays a role in proving the accident scene, and it is also the link between the traffic police department and the court. Although there are written evidence to prove the situation at the time of the accident, the court's determination of the subject of responsibility in such cases is still inconsistent. Therefore, the compromise theory can be adopted, combining the subjective and objective aspects of the motor vehicle driver and passenger respectively, to infer the state of "opening the door", so as to accurately judge the subject of responsibility, and strive for the most reasonable responsibility for the victim.

In view of the above, in order to deal with such cases more fairly and reasonably, a compromise approach can be adopted. Specifically, the subjective intentions and objective conditions of the motor vehicle driver and passenger at the time of the accident can be considered simultaneously. For example, to assess whether the side that opens the door has enough vision and time to observe the car behind, it is also necessary to consider the reaction time and speed of the driver behind the car. Through such comprehensive analysis, the liability of both parties can be more accurately presumed when "opening the door", which helps the court to make the most just judgment and ensure that the victim can get reasonable compensation. This method can not only reduce legal disputes between the two sides, but also improve judicial efficiency and promote social harmony.

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