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The Role of Injured Person's Fault in Compensation for Traffic Accidents in Iranian and French Civil Law

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ABSTRACT

One of the important reasons that led to a comparative study between Iran and France in the field of civil liability for traffic accidents is that Iranian law is derived from France law, but, in terms of implementation, some laws and regulations are different from each other. One of the issues that have been raised in civil liability law in the past is the injured person's act and his fault in causing damage to himself and its impact on civil liability lawsuits. The problem is that whenever the injured person has committed a fault in the occurrence of the damage on himself, and his fault is effective or has a role in the occurrence of the damage, the question that arises is what effect does this has on the responsibility of the perpetrator of the harmful act? And does the injured person's fault deprive him of full compensation? Or does it lead to the division of responsibilities? In the law of Iran and France, it doesn't cause the injured person to be completely deprived of compensation and also doesn't cause the irresponsibility of the perpetrator of the damage, but it also reduces the liability of the perpetrator of the harmful act, so that in Iranian law, the perpetrator of the harmful act and the injured person share equally in the occurrence of damages, but in French law, the extent of the impact of each cause on the occurrence of damages is the criterion.

Introduction

According to statistics provided by the World Health Organization on traffic accidents, about 1.2 million people are killed, and more than 20 to 50 million are injured in traffic accidents worldwide each year, a situation that is more complicated in developing countries because there are 48% of vehicles in developing countries, but they account for 90% of the death toll from traffic accidents, and in fact, about 1 to 2% of gross national product in developing countries is lost in traffic accidents, whenever a factor causes damage or loss to another, compensation must be sought, that is, in the case of the injured person in line with the damage to himself from another area has committed a fault. In the past, French law was such that whenever the injured person committed a crime, he was generally deprived of compensation, but this is not the case now, and the cause and extent of its impact must be examined and determined. But in Iranian law, although there is a textual fault, Iranian jurisprudence always recognizes the owner of the vehicle as responsible. and also, the legal enforcement guarantees to determine

the liability of the drivers of the guilty vehicles states the amount and manner of compensation, but do not mention the factors that cause damage, such as the vehicle and the road.

1. Research Methodology

The research method is library-based and uses available writing resources such as books, articles, dissertations, etc. The author has also used reliable internet resources when it is necessary. The type of research method is research-descriptive, and the collection of materials will be done through classification in library form sheets and observation.

2. Findings

The role of the injured person can be in the form of an injured behavior or an injured state. Injured behavior is presented as an act or omission of the act, while the injured status is defined as the fault of the injured person or the lack of effect of the injured person, and in most legal systems, the injured status has no role in reducing the liability of the perpetrator of the harmful act. Injured fault includes two concepts of duty or obligation to reduce damages and common fault. There is a difference of opinion among jurists on the common fault and duty to reduce damages, but what can be deduced from their views is that the two terms are so different that in order to understand them, the two words are placed opposite each other, and the relation of these two words with the public and private injured fault is absolute and can be said as a subset of the injured fault. In the duty of reducing the damage, if the person does not take action to reduce his loss, the amount of damage will be reduced, but in common fault, the amount of the plaintiff's interference in the amount of damage is taken into account, and the amount of the plaintiff's participation is taken into account.

In Iranian law, there is a difference between the concept of common fault and the obligation to reduce damages, such as paragraph 3 of Article 4 of the civil - penal code, which states: When the injured person in some way facilitates the creation of damage or help to aggravate the loss or the situation of the importer of loss. Facilitating refers to the common fault, and adding loss refers to the duty of reducing the damage. For example, when a motorcyclist has an accident without a helmet and is injured, he has committed a common fault here, but in the case where he has not committed a fault and is wearing a helmet, and he has an accident and is injured, but he doesn't take any measures to treat the injuries. Here, he didn't fulfill his duty, which was to reduce the damage (Kazemi, 2005).

In the contractual principles of Europe, the separation of these two concepts has been mentioned (Shaarian and Molaei, 2011). For example, person A is travelling on person B's ship, due to a defect that occurs in the lighting of the upper floor, person A is injured. Here person B and person C, who are responsible for controlling the lighting, are held liable, and it isn't just person C's negligence that blames him and puts all the damage on him, but B and C person are both responsible for paying the damages to person A, but if it is proved in court that the damage was inflicted in such a way that the injured person could have reduced the damage to himself or prevented the damage to himself, but he did not do these things and lead to his injury, and in such a way that the damage is attributed to him, in which case the number of damages to be paid to him will be reduced and this action is called common fault in the law (Harpwood, 2009).

Injured behavior will always be part of the pillars of civil liability and the injured interference is not always the fault and, in some cases is considered damaging. It is the same in the legal system of Iran and France, that is, they differentiate between liability with fault and absolute liability. For example, a driver is driving at a safe speed and suddenly, a pedestrian comes to the middle of the street and changes his direction in order not to hit the pedestrian and cause him to hit a tree. Here, the driver will be considered an injured person. In general, individuals have a duty to reduce the damage that may be inflicted on them, and if a person can reduce or prevent damage to himself but does not take any action in this direction, he cannot claim compensation. In all legal systems except the Common Law legal system, non-interference of the injured person in order to reduce or minimize the damage is considered as a kind of injured person. An injured person will be effective when the loss is considered as a key element of civil liability. If there is a causal relationship between the fault of the injured person and the loss, as well as the fault that originates from the injured person and is not affected by the injured person, that is, the injured person does not commit the fault on the part of the injured

person. Otherwise, the perpetrator will be found guilty (Juneidi, 1999).

3. Injured person's Criterion

The fault of the injured person, like the fault of the perpetrator of the harmful act, is the behavior of a normal and reasonable human being who, if he is in the same situation as the injured person, will do what the injured person does. The criterion of fault in the fault of the injured person and the fault of the perpetrator of the harmful act is a typical criterion. The fault of the injured person can be imagined as follows:

3.1 The injured person's duty to take care of himself

If there is a relationship between non-observance of precaution and damages to the injured person, then people should take the necessary precautions to prevent harm to themselves or others. That is, if they do not take care of themselves, they will be at fault and should compensate for the damages, whether civil or criminal, and if the person himself has a role or involvement in the damages, in this case, he will be deprived of general or partial damages. In general, one should protect oneself from the perpetrator of a harmful act in a normal, orderly and reasonable manner and pay attention to the behavior of others, and this issue is mentioned in Iranian law as a duty. In some cases, the fault of the injured person will endanger others as well; for example, if a person enters the street carelessly and suddenly, and a car has to change direction in order not to collide with other cars or brake suddenly, which may overturn due to a sudden brake or even collide with other cars. Therefore, whenever a person injures or damages another person due to a lack of self-care, then the injured person can file a lawsuit against him.

3.2 Injured Low Effort in Preventing the entry of losses

If a harmful act has been accomplished and the injured person (by failing to take a series of actions that lead to his recovery) leads to more severe damage to himself, the criterion is based on the behavior of a normal human being. In France, for example, the injured person is not expected to engage in dangerous behavior, but in the case of non-hazardous treatment, it is considered a behavior that causes the causal relationship between the injured behavior and new losses to disappear. For example, in the case of treatment that requires complete anesthesia, it will not be considered a fault if the patient does not consent in accordance with paragraph 3 of Article 4 of the civil liability and Note of Article 355 of the Islamic Penal Code and Article 15 of the insurance law, whoever acts according to a reasonable and normal human being in order to reduce or prevent the entry of losses, and while commits a mistake in order to reduce or prevent the entry of losses because it will lead to the severance of the causal relationship between the act of the harmful perpetrator and the losses incurred. Thus the injured person will not be compensated, or if it is compensated, the compensation will be reduced, as well as the costs that the injured person pays to prevent and reduce the losses and the duty of the perpetrator of the harmful act. In French law, it is silent as to whether the fault arose from the injured person before, during or even after the occurrence of the accident and uses the judicial procedure to resolve the issue. In practice, it refers to the behavior of the injured person after the loss, and it is related to the time when a loss has been done to the person and can be treated, but the person refrains from receiving treatment and will suffer other losses which is due to the perception that he has committed himself and he will be deprived of receiving the second loss that results from his negligence, and receiving the first loss remains in force. In general, if the behavior of the injured person is normal and reasonable to prevent and reduce the loss, but the result is not what the injured person intends to happen, or even worse, in which case the injured person has not only committed the fault but the perpetrator of the harmful act is obliged to compensate the loss. For example, a Swiss court has ruled that a person's leg was broken as a result of an accident. In this regard, he will not receive compensation, but if the perpetrator of the harmful act causes the initial loss to be lost, then the perpetrator of the harmful act will be obliged to pay compensation.

3.3 The duty of reducing the loss and its basics

3.3.1 Assignment to reduce the loss

The duty to reduce losses can be defined in such a way that whenever another person inflicts a loss on another due to an error, so that any normal and reasonable person if he is in that situation, takes such an action to prevent losses. Otherwise, he could not claim compensation for the losses that he could have prevented but incurred (Kazemi, 2005). The plaintiff can only receive compensation if he has prevented the loss by taking conventional and rational actions. and in fact he cannot claim compensation that

results from his own negligence (Mckendrick,2000), that is, where the injured person could have taken measures to prevent or reduce the loss of the damage but did not take any action in which case he will not be compensated. Also, in some cases, such as the example below, the injured person can limit the amount of damage or loss he or she suffers, for example, person A has asked the company to reserve a room which cost 100 Euros on August first, but person A realizes after a while that the reservation has not been made and has to book the same room for 150 euros; here, he can only sue the company for a new 50 euros. In Iranian law, the negligence of the injured person means the fault of the injured person and in such a way that whenever the injured person fails to prevent the loss of himself, then the person himself will be responsible for the losses and damages inflicted on himself (Ebadi Bashir, 2011). In French law, the division of losses is stated either in the judicial proceedings or in the law of that country; (Juneidi, 1999), which means that whenever a person commits a crime against another in such a way that both parties have a role in causing the loss, then the French jurisprudence orders the division of liability between the two (Kazemi, 2005).

3.3.2 Basics of duty to reduce damage;

3.3.2.1 The causal relationship

Whenever a person is able to prevent a lot of loss to himself but does not take action in this regard, because the causal relationship between not doing the act and the loss is gone, so he is solely responsible for the loss in which the injured person himself was involved. The duty of reducing loss includes two bases of logic and legal principles and economic and social interests, followed by a causal relationship on a logical basis (Kazemi, 2005). Some believe that the duty of reducing damage is part of the common fault because they believe that both have a common result but are different in terms of application and the basis for reducing loss is not only the causal relationship but an economic basis (Shaarian and Molaei, 2011). And the opinion of others is that there is a causal relationship in abandoning the act. For example, when a person throws someone into the fire, but the person who was thrown into the fire can save himself from the fire but does not do so; in this case, the person who set the other on fire has no liability, because not doing anything on the part of the person caught in the fire will cause severance of the causal relationship between the person who set him on fire and loss. There are two causal relationships in the field of contracts, which are not doing anything on the part of the plaintiff to reduce losses as well as breach of contract's defendant. In this case, the plaintiff, because it is the main and close cause of damage to himself, so he cannot receive compensation in this regard, for example, if the carrier does not fulfill the provisions of the contract and the goods are perishable goods and the owners of the goods don't take action to transport the goods by another operator in this case, because the owner of the goods is the main cause of loss to himself, so he will be responsible for this loss (Kazemi, 2005).

3.3.2.2 The rule of causation

Another basis for reducing loss is causation, that is, an action performed by a person that directly causes the loss of another's property (Mohaghegh Damad, 2011). In order for causation (tasbib) to be achieved, there must be two conditions: first, according to Articles 333 and 334 penal code, there must be a fault, and second, the abandoning of act can be considered part of tasbib; like someone who refuses to give water to a thirsty person (Kazemi, 2005). In general, whenever a person causes harm to himself or others, he will be considered responsible, except in cases where it is not caused by a strong manager (Kazemi, 2005). And even if a person is exposed to losses due to another action, but deliberately does not take action to reduce the loss, he will also be guilty and will be held responsible (Kazemi, 2005).

3.3.2.3 No Harm Rule

One of the oldest foundations of civil liability is the no-harm rule and also forms the basis of a coercive guarantee (Katozian, 1995). In general, the rule of reducing loss is the cause of the sentence, while the No harm rule forbids the harmful sentence, of course, it cannot be said that the No harm rule always negates the harmful sentence because in some cases, a non-existence matter can be turned into an existential matter, for example, lack of guarantee, which is the innocence of the obligation. It seems that these two rules are not very related to each other, but in this regard, there are different opinions among experts, and we will mention a few of them (Mohaghegh Damad, 2011).

Some, like Sheikh Ansari and the Naini believe that the No harm rule cannot prove a guarantee, and also the writer of Riyaz has an opinion contrary to both of them (Mohaghegh Damad, 2011). Therefore, if the duty of the

No-harm rule is to prove the sentence, then failing to take action to prevent the loss will be effective in inflicting a loss on himself, in which case the receipt of loss will be reduced (Kazemi, 2005). In general, according to the rule of no harm, as soon as the person is not obliged to prevent the loss or reduction of loss, this, in turn, causes loss to the person (MohagheghDamad, 2011).

4. The fault of injured in traffic accidents

Accidents related to the French driving law formed in 1985, according to the views of Andre Tune, one of the leading lawyers in France, this law applies to all land motor vehicles except road trains and trams that move on special roads (Ghamami, 2006). This law does not seek to state the rules of civil liability and investigate the causes of the loss but rather seeks to fully compensate the injured and establish an independent compensation system. Regarding the role of the fault of the injured, we will examine different situations. In general, according to Article 3 of the Penal Code, whenever the injured people's personality is damaged by the driver of the vehicle, his fault cannot be invoked, except for an unforgivable fault that is the sole cause of the accident. From the jurists' point of view, such a method of compensation is called the system of all or nothing because they are either generally deprived of compensation or receive all their loss, and also the legislator has stated in Article 3 that if injured persons who are less than 16 years old or more than 70 years old, or who are permanently disabled or have a physical disability of more than 70% at any age at the time of the accident, must be compensated in any case. But the loss done to the personality of the people can no longer be compensated if the injured person intentionally seeks it. According to the insurance law, if the loss is caused by an injured person intentionally, in this case, even the compensation guarantee fund cannot be compensated. Regarding financial loss, the fault of the injured person regarding the loss to the property reduces and even completely deprives him of compensation, so it can be said that the loss to the property is subject to the general rules of liability. In the case of a collision between two vehicles, each of the owners is responsible for full compensation of the other party, this is not acceptable for insurance but for the benefit of the injured person (Letourneau,2003).

4.1 The fault of injured in traffic accidents in Iranian law

There are two categories of law in Iranian subject law:

1. The general rules of liability in the Islamic Penal Code and Penal Code are related to the personal liability of the driver.

2. Compulsory insurance rules approved in 1968 are related to the typical liability of a holder and are based on the theory of risk, and there are insurance protection rules in it.

4.1.1 Injured interference and personal liability of the driver

According to the general rules, if the injured behavior is the sole cause of the loss, the total loss will be imposed on him, but if the loss is attributed to both parties, the loss will be halved, and also in the event of a collision between two people or two cars and the like, each party guarantees half of the other party's loss.

4.1.2 Injured interference and compulsory insurance law

It can be argued that if the injured person is the sole cause of the loss, all loss will be imposed on him and in this case, the liability and guarantor of the car owner cannot be invoked. This article is in accordance with the general rules of liability and can include paragraph a because, in the case of the monopoly of causation, all losses are imposed on the monopoly cause; in this part and according to the rules of insurance, the injured person is deprived of losses only when the fault of the injured person is the sole cause; otherwise, it is the typical liability of holder, but in practice, basically the degree of fault reduces the injured person's loss. The various situations that can be considered to the car accident when the loss can be attributed to both are:

4.1.2.1 Article 6 of the Compulsory Insurance Law regulations has divided the losses based on the degree of fault, which is in conflict with some jurists and even with the Constitution and the Islamic Penal Code.

4.1.2.2 Divide the liability into equal parts

But in general, according to the law of compulsory insurance and also according to the opinion of some law professors, the owner of each device is responsible for all losses to another. Here are some examples of votes: In the accident of an ambulance and a truck, it turns out that the cause of the accident was only the carelessness of the truck driver. Therefore, the entire loss is imposed on the truck driver. Or in an accident that occurred between a dump

truck and a minibus in which the minibus overtook to the left of the dump truck, the result is that all loss will be imposed on the dump truck driver. Or, for example, in the vote of the procedural unity dated 7/6/92, it is stated: If the murder is a mistake and the person to whom the murder was attributed has not committed any crime, and the murder occurred only in terms of the victim's offence, the driver is not responsible and ... However, the Iranian jurisprudence tends toward the theory of fault and also, the Legal Department of the Judiciary believes that the law of compulsory insurance of owners of land motor vehicles against third parties is based on fault (Khodabakhshi, 2000). But in practice, the separation between the holder and the driver and the sum of different rules is not implemented. And 1383, 1384, 1385 and 1386 Articles of French civil law, which are related to civil liability resulting from the crime, the sole basis of these articles is fault, but over time the interpretation of paragraph 1 of Article 1384 French civil law, they had faced by declining of fault theory, particularly in traffic accidents. For example, from Torno's point of view, fault has been shaken, but it must be re-examined and the harmony between ethics and economics considered (Jacob,1974).

In general, it can be said that it is true that the law has moderated the enforcement of the injured person's fault rule, but it has not completely eliminated it. From Andre Tunc's point of view, it is true that motor vehicles create a dangerous environment and in some cases even lead to damage and even death, there are reasons that all victims of traffic accidents must receive all loss. Also, in most European countries, the car owner is accepted the liability that is based on the appearance of events and danger, and in this regard, it is necessary for the driver to insure his car, which is detrimental to the benefit, but at the same time, most of the regulations, refuse to compensate the injured person who is at fault and has been injured as a result of this fault. From Jusran's point of view, fairness dictates that loss be inflicted on the one who did and created it, not on the one who has no role and has accidentally received the loss (Katouzian, 1999). But if we have defined the fault in such a way that a kind of behavior that the good father of the family does not do, then we can say things like; Numerous mistakes, inadvertent behavior, etc., which are considered to be real, should not be called fault because the fault occurs only in 5% of accidents between motor vehicles and 10% with other obstacles, and if the driver is presumed to be the victim of the accident, he will be punished more severely than he has committed (Tunc,1988).

In Article 2 of the 1985 French Law on Accidents of Driving, only one factor is considered to be the cause of exemption from the person responsible, and that is the fault of the injured person, of course, when the cause is exclusive, so it can be stated that the basis of liability in traffic accidents in this country is closer to the theory of danger and absolute liability. Legal changes that have taken place in various legal systems have led to a decline in faults in the realm of traffic accidents and typical liability imposed on motor vehicle owners.

5. Division of liability between common causes and injured person's fault in Iranian and French law

The division of liability in Iranian law between common causes is conceivable in various ways, which are:

5.1 Divide into equal parts

That is, all that causes loss are equal to each other because each of the causes alone is not capable of inflicting loss, and the existence of all causes and conditions is necessary for the loss to occur. This theory was proposed in the 1860s and 1885s by Fan Bury, a German specialist in criminal law, and gained a lot of fans in France and Germany. According to this theory, among the various causes, only a cause is considered to be a loss, which, according to the normal and conventional course of events, causes a loss, and circumstances that accidentally lead to a loss are not considered as causes (Safaei, 1971). In general, the fault, which includes negligence and violence, will be considered the basis of liability. Of course, it should be noted that harmful events that are customary and predictable are called fault, but if the accident is not considered harmful in terms of custom, it happens to cause damage, in which case it is not considered a cause and does not create liability. But the criticism that can be made is that in some cases, the factors that cause the damage are so complex and ambiguous that it is very difficult to distinguish between the original cause and the conventional cause, and therefore makes, the courts do not have a constant way in the face of similar events in front of them (Katozian, 2008).

5.2 Division based on priority in impact

This kind of division is conceivable in two ways:

5.2.1 The theory of precedent cause in impact

This means that whenever several causes play a role in the occurrence of an accident in terms of precedence and latency, then the liability lies with the cause that has affected it sooner than other causes. For example, someone digs a well, and another puts a stone next to the well and causes a third person to fall into the well by hitting the stone, in which case the person who placed the stone next to the well will be the guarantor, and if one acts aggressively and the other is non-aggressive, only the person who committed the aggressive act is the guarantor.

In conclusion, it can be said that this theory is not a definite and valid criterion for the liability and irresponsibility of individuals.

5.2.2 Near or Last Cause Theory

It is one of the oldest theories used to identify the responsible cause. In 287 BC, Roman law only compensated for losses resulting from the direct and material action of the perpetrator of the harmful act to people who owned slaves or animals that were killed or wounded or whose belongings were lost or damaged. But this is not the case in French law; according to Articles 1382 and 1383 of the French civil law, any damage must be compensated, but in the Iranian penal code, it is the case that first, a general rule for compensation is introduced and then it counts its instances (Droudian, 2020). The opinion of jurists in this regard is that if the last cause occurs because there is no damage, then everything is in its normal state, but as soon as the last cause is applied and Loss is incurred, the fulfillment of liability is also achieved (Katouzian, 1998) and this has a great impact on the decision of judges because usually, the last cause has a greater impact than the precedent causes, but there is an exception in terms of causation, and that is that if the precedent cause is stronger than the last cause, then the precedent cause will be considered responsible, so it can be concluded that the distance or proximity of the cause is not so important in recognizing the liability for people, but the main and important criterion in determining the cause responsible for citing and customary attribution of losses to the cause. For example, whenever the last cause is committing the fault and the near cause is performing an authorized activity, but it leads to damage to the people; Here, the near cause is not responsible because it isn't the perpetrator of the fault, but the last cause is responsible.

5.3 Division based on the degree of fault

According to some law professors, the liability should be divided according to the amount of contribution that each person has to the damage. This view is more consistent with the legal principles of Iran because joint and several liabilities in Iranian law are contrary to the principle, and the principle is that each person is responsible for damages from his action, and the division of damages is equally accepted in Iranian law. This article does not contradict the mentioned theory, and the mentioned theory can be used and cited at a time when the effect of each of the causes cannot be proved.

5.4 Division of liability based on the extent of the impact of the fault on the damage

Proponents of this theory believe that each cause is responsible based on the extent to which it has an impact on the loss. But there are drawbacks to this view because some of the losses cannot be properly decomposed, such as injury, death, damage to reputation, and it is also possible that the percentage of the impact of each item is greater than the total losses that incurred, in this case, there is no balance between cause and effect (Katozian, 1998). But the perception that we can have from this theory is justice and fair division of liability. For example, one of the laws of the civil law on usurpation confirms the above text and states that the liability of each of the various usurpers is determined in proportion to the degree of impact of each of them in the occurrence of the incident, Article 14 of the Civil, penal code states that the extent of each individual's liability is determined by the court based on how they intervene in causing the damage. In general, jurists have not reached an independent and unified result in the field of solutions related to the causal relationship, but some jurists have introduced the theory of conventional and main cause as the theory that they accept (Safaei, 1971), but still, it is not possible to reach a general rule from this theory, and it should be noted that judges, in any case, that they refer to it, should consider the circumstances of the harmful incident because each of the theories alone is not accountable, but what plays an important role in determining the responsible cause in all theories is a fault, and it can be said that customary attribution is the main and important factor to determine the responsible cause which is consistent with the theory of fault (Katozian, 1998).

6. Division of liability between common cause and injured fault in French law

In some cases, both the injured and the defendant are at fault, meaning that each of them has a role in causing the damage, in which case two situations are conceivable:

In the first case, each of the two faults is independent of each other. In the second case, one of the two faults overshadows the other fault. For example, if the fault of the defendant covers the fault of the injured person, the defendant is responsible, and the fault of the injured person does not reduce the amount of liability of the defendant. Two cases are conceivable, the first is that one of the two faults originated from the other fault, and the second is that one of the two faults is heavier than the other fault, and only in two cases does the heavy fault cover the light fault:

6.1 One of the two faults is intentional

6.2 *one of the two parties (whether injured or defendant) has a deliberate intention to damage the other (intentional fault), and the other fault is unintentional*:

In this case, the person who committed an intentional fault must be fully compensated, even if the unintentional fault of the injured person plays a role in the damage, for example, if a driver intends to undermine a blind pedestrian crossing the street and to avoid liability, he cannot point out that the injured person is blind. In this case, the injured person will be responsible because the injured person's fault covers the defendant's fault so that the defendant's liability is lost due to the lack of casual relationship or, for example, a person intends to commit suicide and for this purpose stands on the side of the road and waits for a car that is moving with an unauthorized speed to throw himself in front of it, in which case he or his heirs cannot invoke the driver's fault. In another case, the injured person is satisfied with damage to himself, and this injured person's satisfaction has different dimensions: (Sanhouri, 2011).

6.2.1. The injured is satisfied with the loss but has not wanted it, Lke athletes who compete in martial arts such as boxing or wrestling because they both agree to be injured or even die but do not want to.

7.2.2. The injured person is aware of the damage but is not satisfied with its entry; For example, the example given above is true that a person who fights a battle is aware of its potential and conventional dangers, but this does not mean that he is satisfied with the loss.

7.2.3. The injured person is aware of the damage and is also satisfied with it, but this does not mean that the damage will be inflicted on him more than he intended. For example, a hunter who hunts wild animals is both aware of the damage and satisfied with it. But what can be accepted as a rule is that if the injured person is satisfied with the damage to himself, it does not mean that the characteristics of the fault are removed from the defendant's action, but the defendant will still be held liable even with the satisfaction of the injured person; for example, when the surgery is not necessary for the patient from the doctor's point of view, but he performs surgery, even if the patient is satisfied with the operation, the doctor is found guilty, but in some cases, the satisfaction of the injured person to damage, is considered the fault itself. In this case, as in the case of common fault, the amount of liability of the defendant is reduced, for example, a person who consciously agrees to ride in a defective car or is satisfied to ride in a car whose driver is drunk while driving or allows to the driver to drive at an unauthorized speed that reduces the driver's liability if an accident occurs in these examples; Because the satisfaction of injured person is considered to be the fault. Now, if the patient agrees to do a surgery that is dangerous following the doctor's advice, this satisfaction is not a fault and does not reduce the doctor's liability; Of course, in some cases, the injured person's fault for being satisfied with the loss may be so severe as to cover the defendant's fault. In this case, the defendant is not liable for the lack of a causal relationship. For example, if the car owner is aware of carrying weapons and seized by police, in this case, the owner cannot go to the owner of the smuggled goods for loss.

7. Criteria for division of liability in vehicle collisions in Iranian and French law

7.1 Criteria for division of liability in vehicle collisions in French law:

When two vehicles collide with each other and both drivers are at fault, then both will be responsible for compensation, but regarding the division of liability, we must consider some cases in Iran and France. We first turn to French law, in which there are four theories regarding

the division of liability in the collision of two vehicles, which are:

7.1.1 Conflict of liability statistics and their fall and reference to general rules

In French law, statistics or assumption of liability in liability arising from objects under human protection is accepted. (stark, 1972) it means that the liability is not based on fault, but the cause of the damage is responsible and liable for compensation unless it is proven that an unpredictable and unavoidable external factor caused the damage. Regarding the collision of two vehicles, due to the conflict between the two statistics, both statistics are eliminated and must be acted according to Article 1382 of the French Penal Code, which is related to liability based on fault, and if one of the drivers has committed a fault in a collision between two vehicles, he is responsible, and in addition to compensating the damage caused to himself, he must also compensate the other party, and when both parties are found guilty, the liability should be divided according to the severity and weakness of the fault. And if the accident is caused by force majeure (unexpected events) or its cause is unknown, or the fault of either party is not proven, then each party must bear the losses. Today this view is abandoned in France. However, in some courts of appeals, as well as in the vote of the French State Council on 28 June 1946 and Article 2 of the Law of 7 July 1967 concerning marine accidents and the law of July 5, 1934, on river collisions is mentioned and accepted.

7.1.2 Division of liability based on the number of risks caused by the two vehicles

This means that the protector of a more dangerous vehicle must bear more liability, meaning that each vehicle must be held accountable for the danger it poses, a view accepted by many French jurists and courts, and this is similar to what states that the division of liability should be done in proportion to the impact of the action of one of the many causes on the amount of damage, a view that is less popular in France

7.1.3 Simultaneous application of two statistics of liability

That is, whenever two vehicles collide with each other, the owner or the driver, each of them is responsible to the other for full compensation of damages unless the accident is caused by fault and the fault is proven so that it is inevitable and unpredictable for him and also play an inactive role in the accident. (This concept has been reflected in the rulings of the French Court of Cassation since 1940, especially in the Rde passif de la chose of the Civil Branch's vote, dated 23 January 1945, It has been argued that when a motorcycle collided with a car which was moving normally and regularly to the right that the court considered the role of the car to be inactive and ruled that the holder was not liable. In some votes, the concept of Normal is mentioned (meaning that if the object is under normal protection, the holder is not liable). Also, the Supreme Court of France has established this view as a consistent judicial procedure and is considered a case law. This procedure is to the advantage of light vehicles versus heavy vehicles and to the detriment of cheap vehicles in the event of a collision with an expensive vehicle. The reason why the French court accepted this theory is that its purpose is to help the injured person, and the insurer will compensate the parties, and no imposition will be imposed on the importers of the losses and the owners of the cheap vehicle, and this point should be added that the mentioned procedure is related to the liability of the driver and the owner of each of the two vehicles towards the other and damages to third parties, both parties have a joint and several liabilities to them.

7.2 Criteria for division of liability in vehicle collisions in Iranian law:

Iranian law follows some of the theories that have been quoted in France regarding the division of liability in vehicle collisions, but some of these theories have a wider scope than the collision of two vehicles, which are:

7.2.1 Liability in proportion to the severity and weakness of the fault

According to Article 165 of the marine law adopted in 1964, if two ships that are both at fault collide with each other, the division of liability will be proportional to the importance of the fault, and whenever the fault of both parties seems to be the same or it is impossible to recognize the importance of the fault; in this case, the parties will be equally responsible and also for the damages to the objects, cargo of the ship and the property belonging to the passengers and crew of the ship, the damages will be divided according to the importance of the fault, and this view is same with the regulation that accepted by the laws and courts of France, but today it is abandoned. Of course, in this regard, Article 165 of the

marine law follows the 1967 French law on marine accidents, given that today the purpose of civil liability is the compensation of the injured person, not that anyone who commits a more serious offence has a greater share of liability, which is why Article 165 of the marine law and Article 526 of the Islamic Penal Code seem outdated.

7.2.2 Joint and Several Liability

Today, in the juridical procedure, the issue of joint and several liabilities to third parties is seen, and jurists agree with it. And in paragraph c of Article 165 of the marine law, there is a reflection of it regarding damages resulting from death and bodily injuries of third persons and states that the ships are responsible for damages to third parties individually and jointly and severally and also any of the officials can refer to the responsible person or other officials if the amount paid is more than the amount that is allocated to the share of his liability, and this is a joint and several liabilities, and the exception of paragraph c of Article 165 is to provide more protection to the physically injured. Therefore, it can be said that if individuals and ships suffer bodily damage, joint and several liabilities are raised, but regarding the reference of each of the officials to each other, the fault is divided according to the severity and weakness of the fault. Therefore, it can be said that joint and several liabilities are in the interest of the injured person, but it is against the principle because each person must bear the liability resulting from his action or fault as much as he has damaged the other. In any case, joint and several liabilities against third parties have been introduced in accordance with the first part of Article 14 of the Civil Penal Code, but in the second part of the same article, another rule has been established regarding the division of responsibilities between different officials.

7.2.3 Division of liability in proportion to the impact of the action

Article 14 of the civil, penal code that was approved in 1960 states: “Whenever several people cause damage to each other, they are responsible for compensating the damages.” The degree of liability of each of those individuals is determined by the court in terms of how each of them intervenes, which this view also has supporters in France. Joint and several liabilities for the injured person mentioned in this article are related to damages caused by several employees and workers of a factory and are not a general rule, but the second part of Article 14 states that the theory of division of liability is based on the effect of each individual action on the loss that is, it actually refers to the division of liability between the perpetrators of damages, such as workers and employees of an enterprise, which has the potential to be accepted by the legislature as a general rule because it seems a logical and fair rule, because it holds each person responsible for the damage he has caused to another as a result of his actions, no less and no more, but it is a little difficult to implement the theory that is the extent of each interference is causing damage and has received less attention, and the theory of the division into equal has received more attention as the first principle.

7.2.4 Divide into equal

This type of liability is accepted both in Iranian law in Articles 337, 365 and 366 of the previous Islamic penal code and the Articles 526, 528 and 533 of the new Islamic penal code and it is accepted in French law.

8. Discussion and conclusion

In Iranian law, in some cases, the injured person can prevent the damage as well as the spread of the damage, but in this regard, he is negligent, so he certainly does not have the right to claim damages, In the past in French law, the fault of the injured person or his involvement in the entry of the loss caused the person to be completely exempted from claiming damages, but now in almost all legal systems of the world, the fault of the injured person does not relieve the liability of the perpetrator and it does not deprive the injured person of compensation, but, depending on the case, reduces the liability of the person who caused the damage, which is accepted in Iranian law, and whenever it is proved that the damage caused according to the rule of causality can be attributed to each of the perpetrator or injured person, both will be held liable and the liability of the perpetrator of the damage will be deducted from the liability of the injured person to the same extent, and also if it is proved that despite the fault of the injured person, the perpetrator has committed a fault which is the main and exclusive cause of the damage, so the person responsible for the damage is responsible for compensating the damage, and the fault of the injured person does not affect his liability.

The injured person’s fault is a defense in which the defendant takes civil liability to remove or reduce his liability and bears the burden of proving it, but in order for

the defence to be realized, the following three conditions must be met:

- *The injured person must have committed a fault so that the result of the fault is not the perpetrator of the damage, but in a legal system based on no-fault, the injured person's behavior is sufficient.*

- *The injured person commits a fault or behavior.*

- *There is a causal relationship between the fault or behavior and the damage inflicted on the injured person*.

There are different provisions in Iranian law regarding the division of damages, but what is more popular is the theory of equal division of responsibilities, and the injured person is deprived of claiming half of the compensation. In French law, the juridical procedure was initially based on the criterion of the division of liability according to the degree of fault, but over time and now, the compensation is divided based on the extent to which each item has an impact on the damage. In general, people have a duty to take care of themselves in a reasonable and normal way against others, and if it is violated, it is considered a fault, and if the fault affects the damage, it will also affect the amount of compensation. In fault-based liability, the injured person must commit a fault in order to affect the defendant's liability and exempt him from part or all of the compensation, but in fault-free liability, only the damage should be attributed to the behavior of the injured person in order to be effective in the amount of liability, But in French law, it does not mention citing the fault of the injured person against the damage done to the person, i.e. it is possible that the innocent person will have to be compensated, and it seems immoral and irrational that the fault of the injured person against the driver cannot be invoked, but in the case of people under 16 years or more than 70 years and people with disabilities 80%, because these people have low decision-making, understanding and reaction power, and there is a possibility of error or injury in them, this view of the legislature regarding such people has reduced traffic accidents. In French law, in 1985, on traffic accidents with pedestrians, the laws of traffic accidents were formulated and approved, and there is no need to review the other laws, such as civil liability law, which will reduce the length of proceedings and also compensate for damages as soon as possible. But in Iranian law, there are no laws specific to traffic accidents, and they use several sources, including the Islamic penal code, the Road and Railway Safety Law, and the Law on Investigation of Traffic Violations.

- In order to create a culture in the passage of pedestrians and to correct the behavior of traffic users, it is better to amend the law in such a way that if the fault and the role of the injured person are intentional and unforgivable, he should be deprived of all or part of the compensation. However, if his role is normal, the law ignores the fault of the injured person and removes him from the insurance relationship because he is only concerned with compensating the damage, in which case the right of the injured person and deceased is guaranteed, and the mentioned rule applies to "roads that are dedicated to pedestrians, signs, equipment and special routes, and "marked lines, non-level crossings and special routes." According to this rule, whenever pedestrians pass through the mentioned places, but their normal negligence leads to an accident, then the legislator does not ignore the civil liability of the driver or the operator but only removes his criminal liability, and the injured person (pedestrian) is entitled to compensation, while there is no connection between the two responsibilities.

- In some cases, one of the two parties has committed a serious offence, and the other has committed a minor offence. In this case, only the person who committed the serious offence is held liable, while according to the rules and regulations, both parties must be held accountable for the amount of damage they have caused, so the traffic experts blame anyone who commits a serious offence. This approach is not the right method, and the courts should not follow it because when only one of the parties commits a mistake, they place the entire liability on him.

- Accident experts should be trained in the legal rules of liability, for example, Article 26 of the Law on Investigation of Violations, Article 333 of the Law on Investigation of Traffic Violations and Article 4 of the Law on Road and Railway Safety, because when a vehicle accident occurs, according to the traffic regulations and related professional and technical information determine the cause of the accident, but in practice, accident experts do not pay attention to the legal rules and regulations to determine civil liability and the causal relationship between the driver's violation of traffic laws and the accident. And they act solely in accordance with the traffic regulations, which determine the maintenance of the duties of vehicle drivers, and determines the cause of accidents, which is the legal cause of the driving accident, and in this

regard, their comments will be to taste, and to solve this problem, it is better to develop special rules for driving accidents so that when dealing with accidents, they use a specific source or authority to resolve the dispute and prevent delays in the proceedings.

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