

# *Research on the Principle of Liability for Motor Vehicle Traffic Accidents from the Perspective of the Civil Code*

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**Abstract:** With the rapid increase in the number of motor vehicles, there are more and more traffic accidents and infringement disputes caused by motor vehicles. However, the principle of attribution and constituent elements of the tort liability of the Civil Code for motor vehicle traffic accident liability are simply invoking the relevant provisions of the Road Traffic Safety Law. Facing the related problems in theory and practice, this paper introduces traffic accidents and their basic elements, analyzes the problems existing in the application of the principle of liability for motor vehicle traffic accidents, and puts forward and further improves the relevant suggestions on the basis of other scholars' research. It is controversial for the theoretical circle to apply the principle of no-fault liability or the principle of presumption of fault in the event of a traffic accident between a motor vehicle and a non-motor vehicle or a pedestrian. [1] This paper supports the view that the principle of no-fault liability is applied.

## 1. Introduction

Traffic accidents can be divided into broad and narrow sense. Traffic accidents in a broad sense mainly refer to incidents that cause death and damage to property such as aircraft, railway locomotives, ships, and road vehicles; traffic accidents in a narrow sense mainly refer to motor vehicles and non-motor vehicles such as cars, tractors, and motorcycles. Incidents that cause death and damage to property by motor vehicles or pedestrians on public roads can also be called road traffic accidents. This paper mainly studies road traffic accidents.

Based on the provisions of the Road Traffic Safety Law on the elements of traffic accidents, the following summary is made: First, vehicles. Vehicles are an indispensable element in road traffic accident liability. Vehicles are the general term for motor vehicles and non-motor vehicles.

Second, the road. Road as the basic condition of traffic accident. Roads include highways, urban roads, and places within the jurisdiction of the unit where social vehicles are allowed to pass. [2]

Third, traffic. Traffic should be studied in a broad sense. Any motor vehicle maintenance on the road, loading and unloading goods, getting on and off passengers or falling objects on board belong to the scope of "traffic".

Fourth, traffic participants. As the main element, human is the practitioner of traffic accident behavior and the bearer of responsibility. In practice, there are mainly motor vehicle occupants, motor vehicle drivers, non-motor vehicle drivers, pedestrians and passengers as traffic participants.

## **2. Problems in the Application of the Principle of Liability Fixation in Motor Vehicle Traffic Accidents**

### **2.1 Confusion of Accountability System**

Only by clarifying the attribution of a state of affairs can the disputes caused by the uncertainty of responsibility be reduced, and the social order can be truly maintained. The imputation principle of motor vehicle traffic accident liability that is being applied in my country follows Article 1208 of the Tort Liability of the Civil Code, but this clause does not clearly stipulate the imputation principle of motor vehicle traffic accident liability, and only uses a separate eight The article specifically stipulates the circumstances of traffic accidents caused by leasing, borrowing, affiliation, theft, and robbery of motor vehicles, as well as the relevant circumstances of the sale and transfer of motor vehicles. The general imputation principle for motor vehicle traffic accident liability is only to invoke the Road Traffic Safety Law and the provisions related to this law. This provision has great ambiguity and greatly reduces the characteristics of the general imputation principle. Practical function. Since the “Road Traffic Safety Law” has the color of administrative law in its attributes <sup>[3]</sup>, the focus of its protection is not on civil liability, but more on the maintenance of road traffic order. Based on the above analysis, since the tort liability of the Civil Code replaced the Tort Liability Law, the Civil Code can be said to be a specimen of our daily code of conduct. Obviously, the simple quotation of Article 1208 in the tort liability of the Civil Code cannot replace the clear legal provisions, which has indeed caused confusion in the motor vehicle liability system to a certain extent.

The confusion of the attribution system is also reflected in the provisions on the subject of damages. The Tort Liability Section of the Civil Code does not clearly stipulate the general liability subject for motor vehicle traffic accidents, and it only makes specific restrictions on special traffic accidents, and the general liability subject that should be universal is still mainly quoted Article 76 of the Road Traffic Safety Law, but it does not clearly define the liability subject, but it only applies the “motor vehicle party” vaguely “. Even in practice, the main body of accident compensation liability is often “the wrong party” and “the driver”. <sup>[4]</sup> In our real life, the words “the wrong party” and “the driver” are very uncertain. Especially when we face some complicated situations, we use them indiscriminately.

### **2.2 Liability Attribution Mechanism is Not Conducive to Settling Disputes in Practice.**

First of all, it lies in the unreasonable setting of the attribution mechanism. The unreasonable setting of the imputation mechanism is not conducive to the realization of fairness and justice. Although the total number of traffic accidents shows a downward trend, traffic accidents caused by motor vehicles and non-motor vehicles are still increasing. Behind this increase, we do not rule out the influence of other factors, but the ambiguity of the imputation principle is one of the reasons for the growth of data, which is mainly reflected in the fact that the legislative distribution of rights and obligations has not achieved fairness. <sup>[5]</sup> On the one hand, we believe from the traditional concept that the motor vehicle side is in an advantageous position in the economy, and if a traffic accident occurs, there will be compulsory traffic insurance as a comprehensive safeguard measure; on the other hand, the motor vehicle is no longer a luxury for a few people, and it has become an indispensable means of transportation in daily life. However, the principle of imputation of liability for motor vehicle traffic accidents has not been adjusted with the reduction of the dominant position of motor vehicles.

Secondly, the regulation of non-motor vehicles in the imputation mechanism still needs to be improved. In the current relevant laws of our country, the regulations on traffic accidents are mainly

regulations on motor vehicles. In practice, the handling of disputes over non-motor vehicles is too confusing. Relevant data show that from 2019 to 2021, the number of suspected non-motor vehicle cases reached 81.9%, 89.7% and 91.5% respectively. We can see that this is an increasing trend year by year. On January 20, 2022, the Yucheng County People's Court notified three typical non-motor vehicle traffic accidents. There are cases of pedestrian deaths caused by electric tricycles, cases of motor vehicles causing death of tricycle owners, and cases of tricycle owners being hit and killed across the road. In the face of so many non-motor vehicle related traffic accidents, if the law has been not clear enough to regulate non-motor vehicles, it will undoubtedly make the traffic accidents caused by non-motor vehicles in a state of continuous growth.

### 2.3 The Principle of Imputation Neglects the Protection of “Real Victims”

Under the premise that the tort liability of the Civil Code does not clearly stipulate the principle of liability for motor vehicle traffic accidents, there is no doubt that the theoretical circle applies the principle of fault liability to traffic accidents between motor vehicles; and for motor vehicles There have always been disputes about traffic accidents between non-motor vehicles and pedestrians, mainly because of the vacillation between the principle of presumption of fault and no-fault liability. <sup>[6]</sup>

1) Analysis from the application of the principle of presumption of fault.

The reasons for supporting the principle of presumption of fault are: First, with the popularization of motor vehicles, motor vehicles are not a source of danger, and the operation of motor vehicles is not a dangerous behavior. Therefore, the principle of no-fault liability is applied It is unnecessary; second, because there are many factors that cause traffic accidents, even if it causes damage to pedestrians or non-motor vehicles, but it cannot be ruled out that unless the motor vehicle or pedestrian is at fault. In such cases, the party to the motor vehicle may be reduced or exempted from liability. Therefore, the principle of no-fault liability is not applied, but rather supports the application of the principle of presumption of fault liability.

2) Analysis from the application of the principle of no-fault liability.

Through the introduction of legislation in this area in various countries, it can be seen that as long as no-fault liability is adopted in the principle of liability for traffic accidents between motor vehicles and non-motor vehicles or pedestrians, there will often be a strong liability insurance system behind it. <sup>[7]</sup> Today, our insurance system has been gradually improved, and the establishment of a limit compensation system in the insurance system has made it possible that even if the principle of no-fault liability is applied, it will not lead to excessive liability of the responsible person, and it can be said that it basically has the basis for linking up with the principle of no-fault liability. This also shows that when applying the principle of no-fault liability to deal with traffic accident disputes, the rights and interests of the victims are protected to the greatest extent. At the same time, it also reflects the original intention of the legislators to increase the punishment of offenders, which is conducive to the personal and property rights of the real victims. protection.

Through the above analysis, the author is more inclined to apply the principle of attribution of no-fault liability. Although in most cases, the protection of the principle of presumption of fault and the principle of no-fault liability is similar, because in most cases, although the non-motor vehicle and pedestrian party are at fault, the motor vehicle party is also at fault. Even if the principle of presumption of fault is applied, it is difficult for the motor vehicle party to overturn the presumed responsibility. However, from the perspective of exemption, there is still a difference between the principle of no-fault liability and the principle of presumption of fault. In the case of applying the principle of presumption of fault, even if it is difficult for the actor to overturn the presumed responsibility, there is still the opportunity to prove that he is not at fault and exempt from liability;

and the principle of no-fault liability does not have such a possibility. <sup>[8]</sup> This makes it impossible for the victim to get the greatest degree of protection if he relies on the principle of presumption of fault.

### **3. Suggestions on the Correction of Liability Attribution of Motor Vehicle Traffic Accidents**

#### **3.1 Improve the Relevant Provisions on the Principle of Liability Fixation for Motor Vehicle Traffic Accidents**

##### **1) Improve the imputation system of motor vehicle traffic accident liability**

First of all, the revision of the Tort Liability Law in the Civil Code is unreasonable. On the basis of the proposal of relevant scholars, analogy with the relevant provisions of the Tort Liability of the Civil Code on other tort liability is mainly reflected in medical liability. Article 1218 stipulates that the principle of fault liability shall be applied to medical institutions or medical personnel. Motor vehicle traffic accident liability and medical accident liability are neck and neck in terms of danger to society and individuals; there is uncertainty in the subject of harm involved, this is reflected in the fact that the motor vehicle may be borrowed, leased, etc., and the doctor who has a medical accident may be operated by multiple people, so there are varying degrees of complexity in determining the subject of the illegal act. To sum up, as an equally important tort liability for motor vehicle traffic accidents, the author suggests that on the basis of Article 1208 of the existing Civil Code, the relevant funds should be added to clearly define the principle of liability for motor vehicle traffic accidents.

Secondly, because the existing basic law, the tort liability of the Civil Code, does not clearly define the principle of liability for motor vehicle traffic accidents, the principle of liability for motor vehicle traffic accidents in practice is mainly to apply Article 76 of the Road Traffic Safety Law. In order to make the existing laws better serve practice, based on the research of relevant scholars, the author believes that Article 76 of the current Road Traffic Safety Law should be improved as follows: First, the law should be more clearly stated It should be that the insurance company should bear the relief responsibility in accordance with the principle of no-fault liability, so that the injured party in a traffic accident can receive timely and effective treatment; second, the relevant legislation should be further clarified, the traffic management department of the public security organ should not consider irrelevant factors such as civil law and civil policy. It only needs to objectively review whether the party's behavior has a causal relationship with the damage result; third, the principle of compensation should be based on the principle of imputation, even if the traffic management department The responsibility confirmation is also based on the principle of imputation, but the two cannot be regarded as the same relationship, which needs to be restricted by relevant documents.

##### **2) Improve the provisions of the subject of compensation for damages in motor vehicle traffic accidents.**

With the development of society, the disputes caused by traffic accident infringement are becoming more and more complicated, which also increases the difficulty of determining the subject of damage compensation to a certain extent. However, the "Civil Code" tort liability does not deal with motor vehicle traffic accident infringement The general liability subject is clearly defined, and it only stipulates the liability subject in the form of provisions. For example, when a traffic accident occurs due to leasing or borrowing a motor vehicle, when the user and the guarantor are not the same person, if it is determined that one party of the motor vehicle is responsible, the user shall bear the responsibility. Similar regulations include the sale and transfer of motor vehicles between the parties, affiliated motor vehicles, and driving other people without the consent of others. The definition of the subject of responsibility in the event of a traffic accident is actually simply the exception of the subject of responsibility <sup>[9]</sup>. Accordingly, in order to form a complete

standard system of the subject of responsibility for motor vehicle traffic accidents, the relevant departments can issue corresponding judicial interpretations on the determination of the subject of responsibility for motor vehicle traffic accidents on the basis of the relevant provisions of the tort liability of the Civil Code. Play a perfect and supplementary role.

### 3.2 Strengthen the Application of Accountability Mechanism in Practice

#### 1) Expanding the exemption of liability for motor vehicle traffic accidents

The best result of a system is that it can play an effective role in practice. Traffic should not only attach importance to our personal safety, but also give consideration to efficiency and freedom. In practice, there have been many cases in which non-motor vehicles or pedestrians violate traffic rules without corresponding penalties. What is reflected behind this phenomenon is that the perpetrator does not abide by the traffic order and disrespect the freedom of other traffic participants, but the deep level is the lack of exemption in the part of the Civil Code concerning the liability for motor vehicle traffic accidents. Even if the second paragraph of Article 76 of the Road Traffic Safety Law clarifies the provisions to reduce the liability of one party of the motor vehicle, the Road Traffic Safety Law with the color of administrative law is ultimately the basis for the traffic management department to issue relevant documents. It cannot be confused with civil liability.

For better analysis, I will further explain the exemption. The traffic lights installed on the crosswalk can solve the normal right of way disputes. However, if the non motor vehicle and the pedestrian violate the traffic rules, the party of the motor vehicle gives way to the pedestrian out of moral consideration of personal safety, which shows that it has done enough duty of care. That is to say, when a pedestrian or a non-motor vehicle party has gross negligence, such as running a red light, entering a motor vehicle lane in a closed area, etc., at this time, depending on the specific situation and excluding other factors that affect the responsibility, it should be reduced The responsibility of the motor vehicle party. <sup>[10]</sup> According to this, on the basis of supporting the application of the principle of liability for no-fault liability in the event of traffic accidents between motor vehicles, non-motor vehicles and pedestrians, it is hoped that the exemption from liability in motor vehicle traffic accident infringement in the Civil Code will be listed in detail.

#### 2) Improve the relevant norms of “non-motor vehicles”

Under the social background of advocating dual-carbon energy conservation and emission reduction, various places have introduced relevant policies to reduce private car outings and limited number travel; and the prevalence of shared bicycles on various platforms has made the impact of non-motor vehicles on us more and more far-reaching. Therefore, it is necessary to strengthen the mandatory regulations for non-motor vehicles. The comparison here with the mandatory penalty for dangerous driving is based on the same practical needs. According to the data issued by relevant platforms, the traffic accidents caused by drunk driving and chasing racing are increasing year by year, which is extremely harmful. However, the existing laws at that time mainly rely on administrative penalties for regulation. However, the punishment mode of the Administrative Law is too light and slow., Can not play a good role in protecting the injured party. Similarly, for the regulation of non-motor vehicles, the “Road Traffic Safety Law” belongs to the “Administrative Law” and cannot replace the distribution function of civil liability in the punishment mode. Then there is the problem of different standards when punishing non-motor vehicles as motor vehicles in current practice. The mandatory constraints of the law will also play a very good role in propaganda, making it widely concerned in public opinion. So that people really pay attention to it ideologically. The successful case of the formal punishment of the crime of dangerous driving is expected to establish a “non-motor vehicle liability mechanism” in the tort liability section of the

Civil Code.

### 3.3 Improve the Decentralized Mechanism of Motor Vehicle Tort Compensation

This is mainly manifested in strengthening the role of the compulsory liability insurance system for motor vehicle traffic accidents, because the application of the principle of no-fault liability attribution needs a strong compulsory insurance system for motor vehicle traffic accidents to support. In practice, there is a certain lag in China's compulsory insurance system for motor vehicle traffic accidents. Therefore, further improvement is needed to strengthen the protection of the real victims.

First of all, for the relevant provisions that are contradictory in practice, such as the insured's unlicensed driving, drunk driving and other malicious accidents are not exempted from liability, and the victim's request to increase the compensation limit, etc., it is necessary to make the law protect the vital interests of the victim. Under the circumstances, we must also respect the rights enjoyed by the perpetrator.

Secondly, in Article 1213 of the Civil Code, only one order of compulsory insurance indemnities is stipulated, which is still a loophole for traffic accidents that occur when motor vehicle commercial insurance is not insured. Although the social assistance fund system for traffic accidents implemented in 2022 mentioned that when the party without insurance is responsible, the social assistance fund for traffic accidents will be paid first, but I think this is ultimately based on the protection of human rights and the consideration of social morality. Therefore, the existing compulsory liability insurance system for motor vehicle traffic accidents should clearly stipulate the insurance obligation of the insured and the legal liability that the insured should bear because of the violation of the relevant legal provisions of the insurance obligation. For example, in the United Kingdom, there is a “penalty for not purchasing motor vehicle traffic accident liability insurance”, which to a certain extent increases the cost of the perpetrator's violation of the law, and at the same time increases the driver's vigilance and plays a certain preventive role. This is where we should learn from it.

## 4. Conclusion

Based on the major change in the “Civil Code” tort liability series instead of the “Tort Liability Law”, motor vehicle traffic accident infringement, as one of the tort liability series, is unclear in the relevant provisions, which has caused a series of problems in the distribution of liability. After the above analysis and evaluation, the author believes that the principle of fault liability should be applied to traffic accidents between motor vehicles; the principle of no-fault liability should be applied to traffic accidents between motor vehicles, non-motor vehicles and pedestrians. As the “Road Traffic Safety Law”, which is closely related to the principle of liability attribution for motor vehicle traffic accidents, also has a certain ambiguity in the definition of related concepts, and its unique administrative attributes cannot completely replace the principle of distribution of civil liability. The author hopes that the specific responsibility allocation principle of traffic accident liability can be reflected in our basic law, the Civil Code.

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