

# Study on the Damage Compensation Liability Problems of Luxury Car Accidents

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**Abstract:** With the increase of the number of luxury cars in China, the road risks are climbing inevitably. The luxury car accidents are reported in the newspapers frequently and the high price claims arouse the heated debate of the public. The focus of the damage compensation liability problems of luxury car accidents is the distribution of the liability of damage compensation, that is to redistributed the rights which cause the conflict of both sides. The distribution of the rights just adjusts the conflict of interest between individuals, and how to disperse the damage compensation from the transfer between individuals to the society, which depends on the establishment and improvement of the commercial automobile insurance system. For the shortcomings existed in the current situation of luxury car insurance market, some countries have the relative mature experience to draw on.

**Keywords:** Luxury Car Accidents; Damage Compensation; Distribution of Liability; Risk

## 1. Introduction

Recently, a news report with the title of “Beware of the luxury cars! A female driver hit the Maserati and was scared to cry on the spot” causes the heated debate on “how to make compensation when hitting the luxury cars” once again. For this matter, Some netizens believe that it is not fair to led to the bankrupt of the perpetrators, even “take into their next life” because of an ordinary traffic accident.<sup>1</sup>

In accordance with the stipulation of the Treatment Approaches of Road Traffic Accidents, after a traffic accident, the traffic accident responsibility of the parties should be affirmed by the traffic management department of the public security organs. And the party who is responsible for the accident should bear the corresponding damage compensation liability. In the above accident, the taxi driver should bear full responsibility for the accident, then it is legitimate to make the taxi driver to undertake the consequential damage compensation liability of the other party. But from the sense, because of the carelessness of the perpetrator, he may be forced to make compensation until bankrupt and heavily in debt. What is more, someone has to bear the criminal responsibility because of enable to compensate the economic losses of the other party. The judicial results are legal, but against the sense. The idea of “simple” justice expressed on this issue by the netizens also shows that the application of this law has not been accepted and recognized by the

public widely. There is a certain gap between the judicial result and public opinion.

Recent years, with the increase of domestic per capita vehicle occupancy and the increase of income, the automotive consumer escalation phenomenon led to the surge in the number of luxury cars in China. According to the forecast of China Industry Research Network Automotive Research Report 2, to 2016, China will surpass the United States to become the world’s biggest luxury car market. With the surge in the number of luxury cars, the risks of road also increase. And the root that causes the risk of road is that the magnates don’t hide the valuable antiques in the closet or shelf, but release them on the road, potentially increasing the risk of the general public on the road. And this increased risk like a “economic bomb”, not only causes the great psychological panic to the general public, but also make the buses who have the road priority become vulnerable group. In order to avoid hitting luxury cars, a bus company put up a Sign Recognition Map of Luxury Cars in the office to let the drivers to identify the logos of luxury cars, just for “ they can not afford the luxury cars, but which can avoid them”.<sup>3</sup> More worrying is that the occurrence of the event that “the compensation of hitting the luxury cars is more expensive than hitting a person and the drivers rather to hit the buses than hit them” force people must to make a deep reflection for the wrong value orientation caused by the distribution problems of luxury car accidents damage compensation liability.

For the social and economic problem that luxury cars increase the road risk sharply, resulting in excessive prevention and attention of the public, and ultimately affecting the equal passage of the public roads, some people advocate that the luxury cars should be forbidden in the road. But the private property rights are protected by the Constitution equally, and the rich are no exception. So, how to solve the distribution of the damage compensation liability problems of luxury car accidents will be the topic discussed in the passage.

## 2. Analysis of the Status of Domestic Related Systems

The main liability of vehicle transportation accidents is damage compensation liability. Based on Article 48 of Tort Liability Act, paragraph 1, Article 76 of Road Traffic Safety Law, if there are the traffic accidents between motor vehicles, the compensation should be paid by the motor vehicle compulsory liability insurance ("mandatory vehicle insurance" for short) to implement the principle of priority of insurance. The part which is not paid by the motor vehicle compulsory liability insurance should be processed in accordance with fault liability principle and damage compensation principle of the Tort Law.<sup>5</sup>

In road traffic accidents, although the mandatory vehicle insurance may pay the compensation at first, it just focuses on the compensation to personal injury, the maximum compensation amount for property loss is only 2,000 yuan which is a drop to reduce the perpetrators damage compensation liability. However, if the compensation of the perpetrators do not pay up to a certain amount, they may face the criminal liability. According to the stipulations of Article II and Article IV of The explanation of Supreme People's Court to the specific legal issues on the trial of criminal cases of traffic accidents, "if the traffic accidents cause direct losses of the public property or property of others, the perpetrators should be responsible for the whole or primary liability, the perpetrators who is incapable to compensate more than 300,000 yuan, three years imprisonment or criminal detention; who is incapable to compensate more than 600,000 yuan, more than three years and less than seven years imprisonment or criminal detention.

In the daily life, car owners often buy some additional commercial insurance to spread the risk, including car damage insurance, third party liability insurance, irrespective of percentage and other insurances. Among them, most of the maximum limit amount of the third party liability insurance is in the range from 200,000 to 300,000.<sup>6</sup> From the insurance status of the third party liability insurance, the insurance level of most people can not cover the amount of compensation of hitting a luxury car. From which, it can be seen that the road risk of the general public can be partially dispersed by commercial

insurance, but how much is reasonable on earth to cover the third party liability insurance?

In contrast, it seems that the luxury car owners is more worried than the others. Given the insurance companies have no the appropriate insurance for the luxury cars, the cars which are worth hundreds of thousands or millions have the car insurance to cover, but because the luxury cars' auto parts are rare, the change of the currency exchange rates, the repair costs are high and other reasons, the majority of insurance companies turn them away with the reason that they do not meet the law of large numbers of actuarial sciences.

## 3. Distribution of Liability

The focus of the damage compensation liability problems of luxury car accidents is the distribution of the liability of damage compensation. That is the conflict generated between the free dispose right of the rich' property and equal driving rights on the roads of the general public. Then, should we protect the former or the latter? The theory "mutuality of the rights" of New Institutional Economics originator Ronald H. Coase believes that the problems we are analyzing have interactivity, that is to avoid damage to the former will suffer the latter. Thus, the real problem we must decide is: do we allow the former to continue to enjoy the privileges of road driving to damage the latter's equal driving rights? Or allow the latter to limit the former' property free dispose right?<sup>7</sup> According to the theory of Coase, the root of the conflict of rights is the right mutuality. Due to there is a part of cross or overlap in the rights between the rich and the public, so the exercise of both rights are violated by the outside. So, what does we distribute the rights of overlapping part to the former or the latter?<sup>8</sup> If only from the point of legal, both sides can put forward their claims in accordance with law. Attributed the right to the former, in line with the principles of property equity and free dispose; attributed the right to the latter, also in line with the principles of no right abuses and must not harm the public interest.

From the point of economics, the vehicle on the road has the potential risk to harm others' personal and property safety, and therefore people think that such behavior has an external effect. Accordingly, one can imagine that both luxury cars and ordinary vehicles on the road will result in externalities. For this problem which has the externality and rights conflict, the best solution should to maximize the social welfare, that is on the one hand, to achieve the goal of reducing the risk of accidents; on the other hand, it requires to distribute and disperse the risk of loss when occurring the traffic accidents to make those risk-averse party needn't to bear all or part of the related losses target.<sup>9</sup>

In the current luxury car accident damage compensation system, because the property owned to general drivers

might have to face high car accident risk, it is undeniable, to a certain extent, it stimulates the enthusiasm of the public to reduce the risk, such as drive carefully to reduce the accident rate as far as possible, or purchase high third party liability insurance or other insurances to improve their ability to provide compensation in the event of uncertainty. But can such a solution maximize the social welfare under the premise of protecting the substantial justice? This paper holds a negative point of view, for the following reasons: First, in accordance with the compensation liability principle of "run domination and run benefits", due to the luxury cars have high safety performance which can reduce the risk of injury of the passengers, but it can increase the risk of injury of other vehicles' passengers that hitting them. Thus, as the caster of the luxury cars' risk, the owners enjoy the run benefits of the luxury cars and they can manage and control the risk more easily, so it is reasonable to make them to bear the increased road risk. Secondly, according to the law of fortune "two eight", one can imagine that the number of people who own the luxury cars, after all, is a minority. In the ordinary life, in order to avoid the 20% risk, the method that the 80% public by raising purchase insurance coverage to spread the risk is practical. But obviously, at the same time that the system seems to be equally implemented, it contains the injustice, and not enough to ensure the substantive justice. Thirdly, even if distribute the risk of the luxury cars to the general public, due to the values of the luxury cars are different, one can not determine a reasonable limit coverage for the third party liability insurance to avoid risks. In summary, the paper argues that the current luxury car accidents damage compensation system makes the general public to bear too much risk, and the prevention level that the public taken is excessive. Therefore, the paper recommends to implement the damage compensation liability limits system for the luxury cars' traffic accidents. That is in the event of the traffic accident with a luxury car, for the damage compensation within the limits of liability, it should be dealt with by both the owners in accordance with the principle of the priority of insurance and the principle of fault liability; the part exceed the limits of liability should be dealt with by the owners themselves and to implement the principle of hitting each other and pay by themselves. From the perspective of fault liability, "without fault is without liability". If the other party take full responsibility, the side of luxury car has no fault and it has to bear the infringement consequence caused by the victimization behavior, so that the legitimacy of such a system is questioned. 10 This paper argues that the liability dealt with by the owners themselves and to implement the principle of hitting each other and pay by themselves is not purely based on the property status or the utilitarian considerations of sharing the damage of victims, a very important factor to attribute the liability is that the side of

luxury cars open the risk of the luxury cars has the a certain degree of possibility to control this risk. Therefore, the risk casters bearing the corresponding results liability could induce them to control the risk as possible as they can and reduce the occurrence of the damage. Moreover, the compensation system does not deviate from the requirements of the code of ethics, and at the same time, it could have a deterrent effect for the both parties.

#### 4. Problems about Liability Risk Dispersion

Whether the luxury car damage compensation liability is paid by which party, in the end it is the transference between individuals and it can not play an effective role in dispersing and transferring the risk. Currently, the most effective way to disperse risk is the insurance, which transfers and disperses the risk between individuals to the society. However, due to all the disadvantages of the current auto insurance system, Chinese auto insurance system lacks the regulation of luxury cars' insurance, the protection function of auto insurance is not yet fully reflected. Therefore, many experts suggest that from the third party liability insurance and luxury cars special insurance to disperse the luxury cars risk. 11 On the one hand, it can reform the existing insurance. For the third party liability insurance, it can increase the third party insurance amounts or increase the special agreement provisions, mainly having the ordinary vehicle as the insured object. For caustic danger, it also can increase the special agreement insurance or design special car damage insurance, mainly having the luxury car owners as the insured object. On the other hand, it can try to develop new types of insurance, that is to design luxury cars' private insurance. As the old saying in China goes "Stones from other hills may serve to polish the jade of this one", experience of others may help one overcome one's difficulties. In fact, when the domestic insurance market is still in the initial stage, some foreign countries have a relatively mature experience which can be used for reference. And at first, the foreign insurance industry will be briefly introduced.

##### (1) The United States

So far, the United States has experience of automobile insurance which is more than one hundred years. In order to improve the efficiency of traffic accidental insurance claims, the United States becomes the first to apply the principle of liability without fault into the auto insurance, establishing the legal system of no - fault auto insurance. The so-called no - fault auto insurance, refers to the insured buys auto insurance in the way of buying property insurance. Then no one is responsible for the accident, and the insured's own auto insurance will compensate for the car damage and personal injury caused by the accident. Under the legal system of no - fault auto insurance, the confirmation of the accident liability based on tort law is canceled, and the right of the victim to sue the

infringer is eliminated. The amount of compensation received by the insured is generally determined by the amount of the purchased insurance. Without doubt, no - fault auto insurance is the insured's own insurance.

In addition, auto insurance types which has referring meaning in the auto insurance system of the United States are: Uninsured and underinsured motorist coverage which refers to in the accidents such as where the other party in the accident has no insurance or sufficient insurance, or runs away, the insurance can make up their own medical, rehabilitation or property damage;

Collision and comprehensive insurance: usually refers to the combination of insurances such as collision and comprehensive insurance. The collision insurance compensates the car damage for the insured in the collision accident. And the comprehensive insurance claims to, in addition to the cause of the accident, cover all the losses of the insured vehicle the comprehensive insurance which include any accidents or destructions such as fire, theft, natural disasters, animal damage, etc., excluding those are the man-made with intention.

#### (2) Germany

Auto insurance in Germany mainly includes the third party liability insurance, vehicle self insurance (including its All Risks and Part Risks), passenger accidental insurance and litigation expense insurance. Among them, the third party liability insurance in Germany is mandatory statutory insurance.

German auto insurance carries out the principle of awarding and penalty, the premium level is directly linked to the risk level. For example, the premium of the green hand driver is usually calculated by 260%. And if it can maintain to have no insurance accident, the annual premium will reduce one level, and then reduce year by year. And the minimum can be reduced to 35%. But if an insurance accident happens, the premium of the second year will be raised three levels with the premium rate increasing about 50%. German auto insurance implements the "liability penalty" principle while settling a claim. That is, no matter how much the compensation for each claim is, the insured must bear 325 euros to remind the insured to minimize the occurrence of insurance accident.

#### (3) Japan

Auto insurance in Japan is divided into two major systems, namely compulsory auto liability insurance (CALI) and voluntary auto liability insurance (VA I). Due to the limited claims of the compulsory liability auto insurance and only being applies to physical injury liability, the Japanese car owners generally will, based on their own need, choose to buy some voluntary auto liability insurances. Many insurance companies have "insurance for non-ordinary vehicles" mainly aiming at the luxury cars which values more than 900000 Yuan and all kinds of Engineering vehicles. If the ordinary car, which is cov-

ered by this insurance, runs into a luxury car, 60% of the repair costs will be taken by the insurance company.

In addition, since September 1997, Japan refines the risk of auto insurance, and liberalizes the insurance rate. The insurance companies gradually make more scientific premium standard according to the gender, driving years, car models, violation records, driving habits, dispatch frequency and other factors of the car owner. In Japan, the basic premium rate is divided into 20 different levels according to whether the insured has accident before. The initial phase of the contract is set at level 6, and if there is no accident in one year, it will upgrade one level. On the contrary, if there is an accident, it will be reduced by 3 levels. With a higher level, the discount will be larger and the premium will also be cheaper.

If you said that the lack of luxury car insurance in the insurance market results in the effect insurance difficult of luxury cars. Then, the disadvantages existed in the auto insurance rates is the deep-leveled reasons that causing the loss of the accept insurance luxury cars. Due to the design of automobile insurance rates mainly observe the principle of "follow the cars", in determining the auto insurance rates, it mainly regards the purchase price of the new cars as an important pricing factor, the correlation between premium and risk is not very high, the rate differences between the vehicle which have car accident frequently and which have the low accident frequency rate are not obvious, which causing the injustice phenomenon that the latter carrying out rate "subsidy" to the former. But the good news is that China Insurance Regulatory Commission is actively promoting the commercial auto insurance reform. It scheduled to introduce the prevailing car types pricing model in international insurance market in the pilot areas in June 1, 2015. According to the different types of cars, designing the rate standard to instead of the extensive mode of domestic insurance pricing model to make the auto insurance ratemaking more accurate and scientific.

From the insure to the car types pricing, despite there is a significant progress, but this is just the starting point for the reform of rates rationalization. Looking at the countries that the development of insurance industry is relatively mature currently, such as the US, Britain, Germany, Japan and other countries, the design of auto insurance rates mostly followed by the principle of "follow the people". They not only classifies and refinements the risk, but also directly links the risk with the auto insurance rates. In determining the rates, the insurance company not just consider the type of case, the driving regions, historical payment records, driver's age, occupation, gender, the years of driving, education level, credit records and so on are the risk factors for pricing. Therefore, taking into account the factors of people and cars, and gradually establishing a auto insurance rates floating

system of “follow the people” is the necessary of the development of China's automobile insurance system.

## 5. Conclusion

For the damage compensation liability problems of luxury car accidents, the paper argues that the priority is to establish damage compensation liability limits system. While reducing the financial liability of the perpetrators, guiding the road risks regression. As for how much is appropriate to set the liability limit, people can in accordance with the economic development level of the local conditions. In this paper, the preliminary proposal is 300,000 yuan. First, according to incomplete statistics, most people's choices about the maximum limit of the third party liability insurance is in the range of 200,000 to 300,000. Second, according to the Criminal Law and the stipulations of Article II and Article IV of The explanation of Supreme People's Court to the specific legal issues on the trial of criminal cases of traffic accidents, “if the traffic accidents cause direct losses of the public property or property of others, the perpetrators should be responsible for the whole or primary liability, the perpetrators who is incapable to compensate more than 300,000 yuan, three years imprisonment or criminal detention”. For damages within the liability limit of 300,000 yuan, compensations are made by both owners in accordance with their respective responsibilities. Damages beyond the limit are on car owners based on principle of collision excess. Besides, a sound legal system of auto insurance is to be established gradually. The distribution of liability for damage in luxury car accidents deals with the issue of risk transfer leaving the issue of luxury car risk dispersion untouched. The efficient way to disperse the risk is nothing but insurance. But since the development of China's insurance industry is still at an early stage, its insurance system has many disadvantages. As a result, the insurance business for luxury cars faces a long term loss, and many insurance companies are very cautious on it, which leads to the poor dispersion of risk for luxury cars. Therefore, the dispersion of risk for luxury cars depends on the implementation of the present commercial auto insurance reform and the gradual estab-

lishment and improvement of auto insurance legal system in the future.

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