Criminal responsibility condition and the nature of the crime caused by the road defect in traffic accident

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Abstract: Transportation and transferring of goods and passengers has always been one of human concerns. How much they tend to the dense life and turned from Tribal life to rural and then to urban life, the issue of transferring home furniture, merchandise, agricultural products an themselves became more important to them. In today's world, the era of speed and communication, vehicles are dramatically changed and many developments has emerged in these devices in order to create speed and also safety. Among vehicles built in current era, an automobile has a special position in the transportation of goods and passengers. By expanding the use of automobiles, accidents and incidents caused by driving has been increased. These incidents is resulting of interaction among various factors such as vehicle, road, environment and human factors.

With respect to this discussion, the issue which we are seeking to answer is the role of road defect in determining the criminal nature and responsibility caused by accidents. This study was conducted using descriptive analytical method and answered to the issue in this way that road defect is a resolver or decrease factor of responsible driver responsibility in accidents and consequently decrease his criminal responsibility.

Keywords: road defect, criminal responsibility, failure to adhere to the principles of road construction, decrease the responsibility, resolve the responsibility

1. Introduction

Accident is one of the most important unintentional events in the world, so that every year about 2.1 million people worldwide lose their lives as a result of these incidents. Deaths caused by traffic accidents in the world in 1998 and in both sexes were about 19.9 deaths per hundred thousand people, which the rate for males was 28.8 and for females 10.8 per hundred thousand people. [1] Now in Iran, accidents are the second leading cause of death in total and the first leading cause of unintended injury. [2] In discussing the etiology of these events, it should be noted that factors associated with these events are very diverse and in different texts there have been different classifications in the area; but in general, the main factors can be classified into four categories:

- Human factors (behavioral),
- Technical factors (road and vehicle),
- Environmental factors and organizational factors which any of them has considerable role in accidents occurrence. [3] While the correct diagnosing and determining the causes of accidents occurrence lead to protect civil rights and prevent the prolongation of procedure, this also leads to show up causes of accident and would be so effective in tracking its resolving in order to prevent future similar incidents. Therefore, according to “note 3, article 14 of the act of dealing with driving offenses of \textsuperscript{3122 /21 /4}” and in order to increase traffic safety and prevent accidents occurrence and its caused physical injuries and increase awareness of organizations officials and experts in accident, negligence items of organizations in carrying out assigned duties should be identified, thus with awareness of them, relevant organizations would take steps to fix defects and while controlling this issue, prevent damage to the people.
2. The first speech: objectives and explaining research

The main objective of the research is studying the traffic safety increase and accidents occurrence prevention and entities or organization's negligence caused physical injuries. Secondary objectives of the study are reckoning causes of accidents caused by the entities or organization's negligence (except the driver), entities (except the driver) and organization being aware of damage compensation responsibility in traffic accidents, identifying defects of road and vehicle and mentioning them in accident adequate cause by experts of accidents, increasing awareness of accidents experts, applying uniform and orderly method to determine the cause of accidents by experts and finally analysis and tracking the role of road and vehicle in accidents occurrence.

It should be noted with regard to newness of the act of dealing with driving offenses and as regards there has not been a comprehensive study so far about responsibility of entities and organizations in traffic accidents in accordance with note 3, article 14 of the act of dealing with driving offenses 2011, it has been appointed that if road or vehicle defect be effective in cause of accident, according to accidents experts' opinions, the relevant operators would be responsible for damage compensation in each case and they will be treated with the law [4]

In accordance with paragraph 94, article 1 of Rahv(traffic police)regulation, any defect or change in the physical and technical condition of the vehicle which causes reduce driving safety coefficient or increasing over limit air pollutants or noise pollution over limit [7] and according to experts’ theory, any deficiency in procedures, shoulder, and protection, vertical and horizontal road signs which leads to driver deviation and lack of correct decision making and directly causes the accident or facilitate its occurrence, has been known as road defect. [8]

3. The second speech: Different forms of road defects in accident occurrence

The road defect is detected in one of the following types and always should be paid attention by organizations officials to resolve it. Also according to the note 3, article 14 of the act of dealing with driving offenses of 2011, while investigating accidents, accidents experts should be familiar with defect types in order to determine the extent of road defect impact on accidents occurrence. They should mention the road defect in their expert comments and if find road defect effective on accident occurrence, should consider relevant organization or entities responsible for the event and compensating the damage. The defect is detected in one of the following forms:

1. Road surface avulsion: this avulsion is partly done by relevant departments for road construction operations, water and wastewater, telecommunication and other departments and is lefted without installing the necessary signs and immunization. Also the avulsion may be done because of worn asphalt surface or precipitation which road maintaining attendant has neglected to repair or immune it, thus these avulsions lead to deviation of the vehicle in the place of accident occurrence. [8]

2. Install and create non-standard speed reducers: Install and create the speed reducers should be in accordance with determined standards, such that the height, layout, and their required signs should be specified. [8]

3. The difference in road shoulder: road shoulder difference with the main level of road and crossing line should be such that exit of vehicle from road surface and enter of it to road shoulder or returning, do not lead to deviations or a reversal of the vehicle. (Usually the maximum difference in level is 5 cm.) [8]

4. The lack of immunization on the roads surface during the operation: defect or not using the way of immunization and standard and installing the required signs which has been published in publication 267-7 road safety regulations issued by the ministry of urban management and planning, would be mentioned in accident adequate cause as a negligence of organization or relevant company. [8]

5. Nonstandard protection: while installed protection on the road edge should have appropriate distance from road shoulder, its resistance, strength extend and protection should be fit the type of heavy vehicles allowed through the road. [8]
6. The lack of warning signs in the eventful places: while according to police announced, a point or section is determined and announced as eventful place, the relevant organization is required to put its reforming in the agenda as soon as possible to resolve and reform the warning signs ((danger announcing, is the point of accident-prone, speed restrictions determining, installing flashing lights)). In case of negligence, it would be mentioned in accident adequate cause. [8]

7. Failure to reform the eventful places: in accordance with the above paragraph, if responsible organization installs warning signs in the eventful places, and still, accidents occur, road police or Rahvar (traffic police) is required to track the issue by doing correspondence, in order to resolve the defect. [8]

8. Being tar of the road surface: Lack of attention to the quality and standard of materials used in asphalt causes relevant components not having the necessary maintenance and causes too slippery road surface for vehicles in summer and winter. In this case, accidents expert officer required to mention the relevant organization negligence in accident adequate cause. [8]

9. Lack of defective lighting in the passage: lack of lightening in the steep uphill, in places which most of the time is misty and inside tunnels, leads to lack of understanding and poor vision for drivers. Police should announce the necessity of providing lighting in the passageto relevant department. In case of negligence and event occurrence caused by lack of proper lighting, it should be mention in accident adequate cause. [8]

The Third Statement: the responsibility of parties (except for drivers) and organizations in redressing based on examining traffic violations law approved in 1389.

The First Clause: Guiltlessly responsibility of organizations in accidents resulted from road defects: based on the script of Note 3 of Article 14, examining traffic violations law concerning the responsibility of related organization, if according to the comments of experts of accidents, road or vehicle defects have an effective role in accidents, according to circumstances, related trustees and conductors are responsible for redress and they must behave to them in a legal way. Based on this Note, when road defects are the cause of an accident the related organizations (city halls in cites and ministry of roads in outside roads) are responsible to redress and there is no need for the lost to prove the negligence of the related organization in retention, immunization and removal of defects. In other words, this Note has considered a kind of guiltlessly responsibility for related organization to redress absolutely. Based on this Note, for redressing a lost there is no need to prove the negligence of an organization. In fact, this law tries to protect the lost in anyway.

The Second Clause:
Lack of need of common time interval between road defects and accident resulted from mentioned road defects: in this Note, the legislator has not considered the responsibility of organizations in accidents resulted from road violations depending upon passing common time interval from the beginning of road defects to the happening of the accident and negligence in the removal of defects by the related organizations. In other words, if an accident happens suddenly and without time interval after the occurrence of a defect, the organization is guilty and responsible for the accident.

The Third Clause:
The responsibility of producers, importers, sellers and mechanics in accidents resulted from vehicle defects: before analyzing Note 3 of Article 14 which is related to examining traffic violations law in relation to the responsibility of producers, importers of vehicles and the responsibility of sellers and mechanics of parts and equipments of vehicles in accidents resulted from vehicle defects, it is necessary to say that the defect of a vehicle can appear in two forms: A) created default and imperfection which refers to defects that the driver is not aware of or we cannot expect from a common driver to be aware of such defects for instance sudden defects such as snapping brake tube or cutting steering wheel or blowing out of new rubber. B) Continuous defects refer to defects which the driver is aware of or we can expect from a common driver to be aware of them. For instance, the awareness of a driver from a defect the initial control of which is the duty of the driver including the initial control of brake and the situation of rubbers. Such kind of awareness is very common. If the driver does not do these duties, he will be considered as a guilty and if he continues driving, his driving will be considered as a violation. So the driver is aware of some defects or must be aware. However, if he drives while he knows that there are some defects, he must tolerate the consequences. For example, it is easy to be aware of head lights and tail lights, steering wheel and windscreen, horn, and Wires for automobiles. So, in
these cases we can expect from a common driver to be aware of them. [11]
The Fourth Speech: Rules to determine the responsible cause and organization responsibility in traffic accidents.
The most important part in traffic accident induced responsibility which identifies the main responsibility of accident expert, is identifying the causal relationship between the loss factor and the damage. Through studying different factors and signs remained of the accident, accident expert should identify the cause and determine the relationship between loss factor and damaging by determining the main cause of accident. [12]
When a factor causes loss and damage, no problem will be in diagnosing the cause; but in cases that different factors are involved in causing damage, it is not easily possible to diagnose which factor causes damage. [13]
Road operators may be effective on damaging the road beneficiaries because of not doing their legal duties properly; thus, they can be recognized as liable to compensate all or part of the damage, based on jurisprudence and legal. On the other hand, in addition to the common reasons, especial rulings are not determined in statute book about responsibility of road operators. [14]

4. Conclusion and Suggestion

There are cases in traffic accidents caused by defect of road and vehicle which road defect is not the only common reason of accident and human error is also effective on it. The cases such as when an arc has not guardrail to prevent vehicles from leaving the road and also has warned the driver by several signs and symptoms of the risk out of the road and driving with permissible speed if the driver be aware of danger of the road, according to the warning signs, and to be careful, accident occurrence would be impossible but if the driver be not enough careful and also lack of guardrail around the arc causes overturning the vehicle off the road, accident responsibility should be divided between road operator and the driver.
The attention of attendants of organizations is unavoidable regarding the issues of visiting and examining the road immunity in a way that actively do some work to do it and in line with this important action, and budget enough money by ministry of road in outside roads and civil halls in the city in order to recognize black spots and to remove and modify them to prevent accidents. Moreover, presenting the suggestion of geometry modification on behalf of traffic police agents to civil half and road offices considering the numbers of accidents and awareness of black spots and enough knowledge of protection basin and having worthwhile service experiences in preventing from accidents resulted from road defects is a very necessary issue. It is important to conduct educational classes for officers who examine the accidents of traffic police in relation to the responsibility of parties (except for drivers) and organizations in car accidents based on Note 3 of Article 14 which is related to examining traffic violations law in a way that in examining the accidents they consider the effect of road and vehicle defects and do not be indifferent toward them and using experts in immunity, traffic, civil and road and building and technical & engineering experts in recognizing the fault of officers, organizations and parties related to the issue.

References

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