



A Comparative Study of the Injured Party Effect in the Iranian and Egyptian Law

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ABSTRACT

If the injured party fault intervenes in the event of damage to him, this will result in his deprivation of compensation for that portion of the damage. One of the issues that has long been raised in civil liability and compensation for the loss is the subject of the injured party negligence and its effect on the liability of the damage agent. By injured party negligence, we mean his negligence towards himself, i.e. a person carries on his own life and his own property with imprudence and improvidence, and thus, to some extent, it is different from the concept of negligence in the ordinary sense. Considering the importance of this issue, it is very useful to study the effect of the injured party on the rights of our beloved Iran and its comparison with Egypt. So the researcher has addressed this issue in this article

Keywords: *injured party, negligence, civil liability, Iranian law, Egyptian law*

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INTRODUCTION

There is no explicit mention in Iranian law regarding the effect of the injured party; considering that most Iranian laws have been adapted from jurisprudence, and in accordance with Article 167 of the Constitution, in the event of the reticence or brevity of the law to determine the sentence, the reference should be made to the jurisprudence. It can be said in the case law also the injured party negligence, if it is not the exclusive cause of the loss, does not result in his full limitation of the loss compensation. Meanwhile, it should be noted that in the case where the injured party negligence intervenes another negligence in the damage imposed to him, it is in fact a matter of interference of several causes of damage to the victim and it follows the general rules of interference of several causes in damage occurrence. Therefore, regarding the importance of this issue, the researchers have conducted the current study titled "a comparative study on the injured party negligence effect in the jurisprudence and civil liability on the Iranian and Egyptian law" and have precisely investigated the subject of negligence and its effects. In doing so, the researchers have considered the theory of causality in this subject and hope that this article can be effective in correct and appropriate determination of the individual's own negligence effect in damages imposed to him. Meanwhile, the researchers hope that the comparative view to this subject and comparing it with the Egyptian law lead to further research and investigation.

1- Concepts

1-1- Injured Party

By the injured party, we mean the one who has suffered a damage, loss, or harm, or is misguided (Dehkhoda, Dictionary, 1998).

1-2- Civil Liability

In the dictionary, responsibility means the possibility of interpellation of someone and it is often defined as the duties and obligations and what the person is responsible for (Moein, 1983). Some people have also defined responsibility as being responsible for being committed and obligated to do something and taken responsibility as a guarantee (Dehkhoda, Dictionary, 1998). Some Iranian jurists, according to the mentioned lexical meaning, consider responsibility as a person's obligation to respond to their acts and behaviors towards the people whose criterion of manifestation is actions and behavior that cause damage or crime (Validi, Public Penal Law, 1993). The new civil law of Egypt, adopted in 1945, has allocated more articles (Articles 163, 178) to civil liability. The law, in spite of incorporating the evolution of domestic courts and the opinions of law scholars, has also maintained Western theory of civil liability. Although, the Egyptian legislator has not sufficed solely to the adoption of French civil law, this cannot be considered a reference to traditional Islamic jurisprudence. In fact, the legislature has this time broadened the circle of Western laws that they have used, and the Law of Commitments of Switzerland, the German Civil Code, and the judicial process of France and the views of the scholars of the law of that country have also been considered and this way, the new theories accepted in the Western countries have been introduced in Egyptian civil law; the new Egyptian law has also taken into account the internal procedures of the courts in the application of these new theories; you can also find reminders of Islamic law and accidental similarities to it in this law, however, totally the Egyptian civil law has practically disconnected from the past, and this law can be represented by what it calls "Western-Georgian rights", the rights constituting a branch of the Roman-German family (Ghulami, civil liability in Iraq and Egypt and Tunisia, 2013).

1-3- Negligence

Different opinions are given about the definition of negligence. Among the notable definitions is the violation of an obligation that a person has committed to. Among other definitions, doing something that a person should avoid, or refraining from doing what he has to do, according to the convention or contract, can be noted. It should be noted that this definition is also deduced from Articles 951 to 953 of the Civil Code.

2- The Existence of a Causal Relationship between the Injured Party Negligence and the Realization of the Damage and its Examination in the Rights of Iran and Egypt

The solely commitment of a negligence by the injured party is not enough for realization of the contributory negligence and its impact on civil liability of the damage cause, however there must be a causal relation between the injured party negligence and the created damage. The same factor that justifies the existence of a causal relationship in the realization of civil liability, in this case also makes it necessary and essential because logically, everyone is solely responsible for his actions. In Egyptian law, therefore, the solely commitment of the negligence by the injured party, without harming the others. So, when the negligence of the injured party reduces the liability of the causative agent, the concept is that the injured party is responsible for that part of the loss and since the fulfillment of liability requires the fulfillment of all the necessary elements for it, including the relation of causality, then there must be a causal relation between the lost fault and the loss (Al-Sanhuri, 1988). The causal relationship is the pivotal and essential element of civil liability and indemnity.

2-1- The Result of the Injured Party Negligence not being the Damage Cause in Iranian and Egyptian Law

Another condition which is required for the effectiveness of the injured party negligence on the damage cause liability is that the injured party negligence should not be the result of the negligence of the cause of the damage. In other words, the damage cause should not be the motive and cause of his negligence. When the injured party is in hazardous situation due to negligence of the damage cause and has to choose one of several risks and suffer the damage as a result of it, the occurred damage cannot be attributed to him even if his mistake is later proven (Khadem Sarbakhsh, 2005).

2-2- Different Forms of the Injured Party Negligence and its Effects in Iranian Law and the Comparative Study with Egyptian Law**2-2-1- The Loss is Attributed to one of the Two Negligence**

According to the fact that the injured party and damage cause negligence are equal, there are two modes: one of the two negligence cover the other and cut the causal relationship between the damage and the negligence and make it ineffective; the both negligence factors are deemed effective on damage and it is attributed to both of them.

2-2-2- Damage Factor negligence Eliminates the Injured Party negligence.

The cases that may eliminate the damage cause negligence and the injured party negligence, or make it ineffective are:

- 1- The damage cause negligence is more severe than the injured party negligence.
- 2- The damage cause negligence led to the injured party negligence (the injured party negligence is the result of the damage cause negligence).

2-2-3- The Injured Party Negligence Eliminate the Damage Cause Negligence.

In this assumption, since the injured party negligence covers the damage cause negligence, in fact the main cause of the damage is the injured party own act and he himself is responsible for the damage to him and does not have the right to refer to the defendant (the cause of the damage).

3- The Effect of the Former Status of the Injured Party in Civil Liability of the Damage Cause and its Evaluation in Iranian and Egyptian Law**3-1- Former Status of the Injured Party**

By the former status of the injured party we mean that this abnormal situation affects the severity or reduction of the liability of the damage cause. This subject is arose when the injured party has an abnormal status before the damage, however we do not mean the former status of someone whose physical status is good, but he has mental and psychological complications. It can be said that the source of this division is stemmed from the remoteness and proximity of the cause and the theory of the necessity of examining the existence or absence of a causal relationship between the former status of the injured party and the intensification of the incurred damage. Obviously, the effect of this division appears in determining the amount of damages to be recovered, by the court (Shushi Nasab & Mirshekari, 2013).

4- The Comparison between the Former Status of the Injured Party and Similar Institutions**4-1- The Rule of Action and its Investigation in Iranian and Egyptian Law**

The rule of action is one of the most important rules of jurisprudence which can be seen in Iranian law, especially in the civil liability issues. However, this rule has been less of a concern for the legists and jurists, and it has been less discussed and investigated. The rule of action has been used in two ways: one as the guarantor and the other as the guarantee terminator. The subject of being the cause of the guarantee is raised in the corrupt reciprocal contracts in which the non-owner takes action against the owner however being the guarantee terminator is about the owner taking action against himself (Bargrizane, 2007). In the Egyptian law, although in most cases the majority of the jurists has used the action in the positive sense, but there is no obligation for the action to include leaving it as it cause the guarantee termination (Jafari, 2015).

5- The Effect of the Injured Party Negligence and its Position in Iranian and Egyptian Law**5-1- Awareness of the Damage Factor of the Injured Party Previous Loss**

It should be noted that in cases where the status of the injured party is effective in the liability of the damage cause, and he or she is discharged of the liability, in whole or in part, if the cause of damage is, with knowledge of a physical condition of the injured party or deliberately, commits an act leads to this condition to be effective and the eventual occurrence of the damage, the damage cause has liability (Babaei, 2002).

2-5- Exacerbation of the Injured Party Damage or Changing its Nature

It is better to distinguish between the physical and mental conditions of the injured party on one hand and his social and economic status on the other hand in a way that the effects of the injured party physical and mental state on the damage cause are denied and on the other hand, the effects non-physical state of the injured party on reduction of the damage cause liability are considered. The only reason that can be sated for this division is that the injured party non-physical state is unpredictable for the imperative cause. Therefore, this typically affects the damage cause liability and leads to the reduction in his liability. Prevention from the irregular extension of the civil liability scope also requires the damage due to the injured party social and economic state not to be included in law and should be compensated by other legal leverage such as first person insurance (Khadem Sarbakhsh, *ibid*). sometimes, the social or economic state of the injured party in the society can also exacerbate the damage; although such situation can discharge one from the liability, this rule is taken as type of defense for the damage cause and there is no partial exception to it; however, under some conditions, such injured party situation may lead to liability of the damage cause (Babaei, 2002).

6- The Effect of the Injured Party Negligence in other Claims

6-1- Effect of the Injured Party Action in Occurrence and Extension of the Incurred Damage

The injured party action can be studied in two states:

- 1- Prior to damage occurrence
- 2- Post damage occurrence

An action that has been committed by the injured party and is effective in causing damage may be associated with the negligence or without it. The first assumption would lead to division of the responsibility between him and the defendant from both legal system and jurisprudence views, unless the injured party action is associated with characteristics such as being deliberate or unexpected for the defendant or it is opposed to public order or law. Under these conditions, the incurred damages are totally upon the plaintiff and the defendant will be totally exempt from liability. In the second assumption, the injured party action is effective in occurrence or extension of the damage without committing the negligence unless he is vulnerable physically or economically in specific situations. In such situations, most French lawyers do not consider his condition to lead to the total exemption of the damage cause however in terms of partial exemption of the defendant in this country, there are scattering opinions and ideas (Asadi, 2004).

7- Monopoly of Liability and its Cases in Compensation of Damages due to Injured Party Negligence in the Iranian and Egyptian Law

7-1- Monopoly of Liability in Compensation of Damages due to Injured Party Negligence

There are cases in which even the legal systems such as those of Iranian and Egyptian law which believe in division of the damages consider only one party as the responsible for compensation of the loss. These cases are mostly based on the good faith, injured party consent, and public order. Most of these cases include: intentional or heavy negligence; injured party consent and acceptance of danger; public order; the negligence of one party being caused by the other, the rule of the last obvious opportunity to avoid losses, and the defendant liability being generic. In brief, in terms of the above cases, it should be noted that the heavy negligence theory is the abusive behavior

of a person who must foresee that whether his actions will harm others. In terms of the injured party consent and acceptance of the risks also the damage to the property should be separated from the damage to the people. The public order is also a well-known concept in law and jurisprudence. Limitation of the conventional freedom rule based on the public order and preventing the contract execution in opposition to public order, is a certain case to which, many articles have been allocated in the legal texts (such as Article 10 and Article 975 of the Civil Code of Iran). However, the obligation to transaction and forcing people into a contract by the courts based on the public order, in the absence of law, is a matter to which the legal process and doctrine have not yet given a proper and solid answer. In the author's opinion, this matter can be achieved by a, though imperfect, induction in the rules and obtaining the causes and basis of the principles established in this regard. In some cases, regardless of the presence or absence of any explicit or implied agreement by the injured party for forbearance of the risk or one-sided cancellation of the rights, the public order prevents any methods of damage compensation. For example, if one of the two thieves who are destroying a safe is injured because the other one is not skilled, in some legal systems, the injured thief cannot claim the damage from his partner, even if he has clearly rejected the condition of non-liability (non-liability based on negligence). We also witnessed that in jurisprudence, the action of the lender of wine or pigs is considered to be a debt relief, and despite the invalidity of the transaction, they have denied the possibility of returning the banned subject (shahbaziania *et al*, 2013).

Sometimes, the negligence or mistake of one party is totally due to the negligence of the other party. This assumption basically arises in the traffic accidents and the cases in which someone takes an emergency action to eliminate the dangerous effects of the negligence by the other driver. If this emergency action is at the same time a cautious one, then there is no problem, but at least in some cases where the action is not reasonable, the action should be exempted from liability since he has not actually committed a mistake, but has been caught by in a dangerous situation due to someone else's negligence and has not been able to find the best way to escape. This subject, in the common-law judicial system based on the criterion theory, makes the caution in the emergencies so easy and flexible. In this regard, the person who unreasonably escapes a moving car due to possibility of car overturning, is discharged of negligence. Also, in the common-law judicial system, there is special rule named the "last obvious opportunity to avoid losses" whose effect is liability of the defendant for the whole damage if he has the last opportunity to avoid the incidence of the damage source. Finally, about the defendant liability being generic, it was believed that in conflict between the generic liability and the liability based on the negligence, due to principality of the latter, the one who holds the generic liability should be exempted. In this regard, in the above assumption, (the generic liability of the cause and the injured party negligence), the cause was considered exempted. Nevertheless, it is appropriate to take into account this liability in determining the effect of the injured party negligence in the cases in which the damage cause is solely responsible (Shahbaziania *et al*, 2013).

7-2- Effect of the Injured Party Negligence in His Claim and Loss Demand

Different legal systems also differ in terms of the criteria for sharing responsibilities and eventual division of damages. At one end are the legal systems that, by choosing the most flexible criteria, issue the responsibilities sharing entirely to the discretion of the judge, and on the other end are the legal

systems in which the legislator completely intervene and by choosing firm and inflexible criteria, issue the responsibilities sharing entirely to the discretion of the judge, justice and fairness; the degree of negligence; the degree of influence and, finally, the equality. In terms of loss compensation, it should be noted that one of the most important rules is the damage reduction principle based on which the injured party is obliged to, on damage incidence, take any conventional action that is required to reduce the damage and prevent the extension of losses, otherwise, he will not be entitled to claim all damages. Although some of our rules and Islamic laws are indicative of this rule, there is no independent evaluation of the conditions and obstacles of this rule. It should be noted that injured party obligation for reduction of the damage is not limitless and the conditions for such an assignment should be taken into account. There may also be obstacles to the execution of the assignment, which eliminates the obligation to reduce the loss by the injured party. Although the mentioned rule has not been adopted as an independent rule the Roman-German legal system, it is explicitly laid down in important international instruments relating to contract law. The injured party or obligee's obligation to reduce the damage is not absolute and limitless, but he is committed to reduce the damage when it is possible to prevent it. Therefore, if a breach of obligation occurs and the injured party becomes aware of it, but there is no possibility of preventing the extension of damage to him, the plaintiff cannot rely on the rule of reduction in the amount of damages and pay less damages to the injured person. By the possibility of preventing the extension of damage we mean that it is possible to reduce the incurred damage through the reasonable and conventional measures. Thus, if the reduction of damage is tough and difficult, the injured party has no obligation to reduce the damage and is not obliged to take unconventional and difficult actions to reduce the incurred damage. In other words, the law does not expect courage from the injured party, but it expects him just to take reasonable actions. The Article 205 of the Criminal Code can also be helpful in this regard; it should be mentioned that if a person, facing the threat (reluctance), can eliminate it without difficulty, it is not considered abominable (Shoarian & Molaei, 2013).

Conclusion

For the injured party negligence to be effective on the liability of the damage cause, and to reduce his liability or exempt him from it, first of all, the losses incurred must be attributable to the injured party negligence; In other words, there should be a causal relationship between the injured party negligence (or his action) and the incurred damage, and it should be one of its components; secondly, the injured party negligence should not be the result of the damage cause negligence, i.e. the damage cause negligence should not be the source and motive of the injured party action (his negligence). In term of liability sharing between the injured party and the damage cause, the degree of effectiveness of each of the causes, the sharing criterion has been introduced. However, in Islamic jurisprudence and in the rights of a country such as Egypt, sentence is the equality of the liability, and if it is proven that the injured party is involved with the damage cause in the event of damage, each of them is equally responsible for the incurred damage. Therefore, the injured party is deprived of the claim for half of the damage. Meanwhile, it should be noted that for the injured party negligence to be effective on the damage cause liability, and lead to the reduction in his liability or his exemption from it, firstly the incurred damage should be attributable to the injured party negligence and secondly, the injured party negligence should not be the result of damage cause negligence, i.e. the damage cause negligence should not be the source and motive of the injured

party action (his negligence). Nevertheless, if it is proven that despite the negligence by the injured party, the damage cause negligence is the main and exclusive cause of the damage, he is the responsible for the loss compensation and the injured party negligence is not effective on his liability. Also, whenever the injured party is in a hazardous situation due to the negligence of someone else, and his action is conventional for that situation, it does not affect the defendant's liability and it is not reduced, since the action taken by the injured party is a reasonable and conventional one. Finally, it should be said that the injured party negligence in Iranian and Egyptian law, if it is not exclusive, does not lead to his total deprivation of the damage compensation.

Suggestions

Among the suggestions made in this study can be the fact that negligence is effective in loss compensation, i.e. if the defendant commit a forgivable negligence, the court, based on the article 4 of the civil liability law, can reduce the damage for him. Therefore, for obviation of the apparent conflict between the some rules, it is suggested that the liability basis should be determined by the law and it seems that he best was is the stability of the liability based on generic negligence. Also, the presence of negligence for liability of the defendant is not enough and the causal relationship between the damaging action and the incurred damage should be proven. In Iranian law, for the purpose of establishing a causal relationship, it is necessary to look for a factor that is effective in the occurrence of an incident while the common-law principle is looking to eliminate the factors that do not have any effects on the damage incidence.

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