

The construction of laws and regulations on the competition between tort compensation and work-related injury insurance under the injury caused by a third party

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Abstract. The problem of the competition between tort compensation and work-related injury insurance in the case of third-party injury is due to the different evaluations and norms of the modern relief system for the same damage. In comparative law, there are four legislative models: choice, substitution, both, and supplementation. China's relevant legislation presents the problems of decentralization, principle, contradiction and localization, which aggravates the complexity of the problem. Focusing on the protection of workers' rights and interests, the current situation of China's social development and the original intention of the design of relevant systems, China should adopt a "limited and beneficial model" in dealing with such competition and cooperation issues in the future.

1 Introduction

The issue of tort compensation and work-related injury insurance competition in the case of third-party injury has attracted considerable attention in theory and practice for two reasons: first, China's current laws and regulations have a vague attitude towards this issue, and even conflict with each other, and there is no clear and effective legal basis; Second, in judicial practice, there are a large number of work-related accidents caused by third parties, and disputes are continuous. The Supreme People's Court has published typical gazette cases on such issues, and at the same time has successively issued a series of judicial interpretations to clarify the application of law, but the effect has been limited. On the contrary, local legislatures and governments have regulated this issue through a large number of local laws and regulations, which has resolved the contradiction in the application of law at a certain level. However, a large number of local laws and regulations have also led to the inconsistency of the overall judicial adjudication and the erosion of legal authority, and even the phenomenon of harming the rights and interests of workers, so it is realistic and urgent to reasonably explore and accurately construct the rules for dealing with the problem of tort compensation and work-related injury insurance competition caused by third parties. Work-related injury insurance originates from work-related accidents, including industrial accidents, occupational diseases, third-party torts, etc.[1], and the responsible subjects include the employer and the third party. The issue of competition and cooperation discussed in this article is limited to work-related accidents caused by third parties, and is hereby defined, and will not be repeated

below.

2 The issue of competition between tort compensation and work-related injury insurance

According to the current standard of dividing the triadic structure of public law, private law and social law, it is generally believed that tort liability for damages belongs to the category of private law, while work-related injury insurance liability belongs to the category of social law, and there is a clear boundary and difference between the two. The former is to protect the legitimate rights and interests of civil subjects, clarify tort liability, prevent and sanction infringement, and promote social harmony and stability; The purpose of the legislation is to ensure that employees who are injured by accidents or suffer from occupational diseases due to work receive medical treatment and economic compensation, promote the prevention of work-related injuries and vocational rehabilitation, and disperse the risk of work-related injuries of employers.[2] However, in reality, there are a large number of cases in which the injury of an employee due to a third party constitutes a work-related injury, and the typical work-related accident caused by the third party's illegal driving of a motor vehicle on the way to and from work is a typical work-related accident. On the one hand, due to labor relations, employees enjoy work-related injury insurance benefits and are entitled to work-related injury insurance compensation; On the other hand, if the personal and property damage of the employee is caused by the infringement of a third party, the employee is entitled to compensation for the tort damages. As a result, the problem of competing liability for tort and work-

related injury insurance has arisen.

Fundamentally, the above-mentioned problem of competition and cooperation arises from the multiple damage relief system established by the modern society. With the development and evolution of society, the remedies for social damage have long been not limited to traditional tort liability. In order to deal with a large number of damage accidents in modern society, many countries have established a diversified and comprehensive damage compensation system based on tort liability, including commercial insurance, compulsory liability insurance, social security, compensation fund, etc.[3] There are multiple ways to remedy damage, which is also in line with the development needs of a risk society and a welfare society. In addition, the modern work-related injury social insurance system has gone through four stages, including civil claims for work-related injuries, employer responsibility system, establishment of work-related injury insurance system, and improvement and development of work-related injury insurance system,[4] realizing the path from the adjustment of a single tort law to diversified development. It can be said that work-related injury insurance itself originated from the development of tort law, [5] and the problem of competition and cooperation is unavoidable in today's coexistence of the two.

Some scholars have raised objections to this issue of competition, arguing that tort liability and work-related injury insurance liability are not a kind of competition and cooperation. Professor Zhang Xinbao pointed out that in the case of competing responsibilities or competing claims, the subject of the obligation is the same person. In this case, the subject of the obligation is the tortfeasor and the work-related injury insurance fund, which is a non-genuine coemption model.[6] Some scholars also agree that the subject of tort liability and work-related injury insurance liability caused by the same accident is not the same, and it is not a real competition of liability.[7] In view of the traditional problem of liability competition, the author agrees with the view of scholars including Professor Zhang Xinbao that tort liability and work-related injury insurance liability are not typical of liability competition. However, although these two kinds of disputes can be filed independently, the results of their handling are mutually restrictive, and the result is that there is an objective competition between work-related injury insurance and injury compensation, but compared with other legal competitions, this kind of competition is only an external competition formed between two different legal relationships, so it has a certain degree of arbitrariness.[8] Therefore, for the time being, the author calls this kind of competition "atypical liability competition".

3 Discussion on the legal solution model of tort compensation and work-related injury insurance

In comparative law, there are four legal models for dealing with the issue of competing liability for tort liability and work-related injury insurance liability.

First, choose the mode. In this model, the employee is given the right to choose between tort damages and work-related injury insurance compensation, and the two types of compensation are mutually exclusive, and if one is chosen, the other will of course be lost. The United Kingdom was once a representative of this model, but has since abandoned it because the choice of this model is a mere formality and it is difficult to protect workers' rights.

Second, replace the model. That is, the replacement of tort compensation with work-related injury insurance, and Germany is a typical representative of this model. This model can greatly reduce the burden of litigation and the cost of rights protection, but it also has the disadvantage of depriving workers of their freedom of choice and the right to full compensation, and may undermine the punitive and preventive functions of tort law.

Third, the both-winning model. As the name suggests, workers can obtain double compensation for tort compensation and workers' compensation insurance, which is currently the case in the United Kingdom[9]. This model can maximize the relief and protection of workers, but it violates the principle that "the victim should not receive a windfall benefit from the abuse"[10] and may induce a moral crisis.

Fourth, the complementary model. Japan is a representative of this model in which an employee can claim both tort damages and work-related injury insurance benefits after a work-related accident occurs, but the final compensation shall not exceed his actual loss. The supplementary model is a modern rule for workers' compensation that has been accepted by the legislation and doctrine of numerous countries. The purpose of establishing the supplementary model is to avoid double benefits for victims on the one hand, reduce the burden of work-related injuries on employers, and save limited social resources. On the other hand, it can ensure that the victim receives full compensation and maintain the disciplinary and preventive functions of the relevant legal system. It is the product of the long-term run-in between the modern tort liability system and the work-related injury insurance system, and the logic is stricter than the above three models. However, this model also has the problem of high operational costs, especially if civil remedies are sought first and then work-related injury insurance benefits are claimed.

The early legislation on the handling of tort compensation and work-related injury insurance competition can be traced back to the Trial Measures for Work-related Injury Insurance for Enterprise Employees promulgated by the former Ministry of Labor of the People's Republic of China in 1996, Article 28 of which stipulates that "work-related injuries caused by traffic accidents shall first be dealt with in accordance with the Measures for the Handling of Road Traffic Accidents and

relevant provisions". In fact, earlier legislation adopted the aforementioned supplementary model, albeit with some restrictions on the order of requests. Since then, China's Law on the Prevention and Treatment of Occupational Diseases in 2001 and the Work Safety Law in 2002 have made principled provisions on this issue. Article 48 of the Work Safety Law stipulates that: "Employees who have suffered damage due to production safety accidents have the right to compensation in accordance with the relevant civil laws in addition to enjoying social insurance for work-related injuries in accordance with the law, and have the right to claim compensation from their employers." Article 59 of the Law on the Prevention and Treatment of Occupational Diseases stipulates that: "In addition to enjoying work-related injury insurance in accordance with the law, occupational disease patients have the right to claim compensation from their employers if they still have the right to compensation in accordance with the relevant civil laws." "These two laws actually continue the practice of the "Trial Measures for Work-related Injury Insurance for Employees of Enterprises".

Article 12(2) of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Personal Injury Compensation Cases promulgated by the Supreme People's Court in 2003 also provides that "if a third party other than the employer infringes upon a personal injury to an employee, and the compensation right holder requests the third party to bear civil liability for compensation, the people's court shall support it." In fact, this interpretation removes the previous supplementary model and recognizes the dual compensation of tort compensation and work-related injury insurance, that is, the adoption of a both-benefit model. Judge Chen Xianjie, the drafter of the judicial interpretation, held that if an employee suffers a work-related injury due to a third party's tortious act, the third party cannot be exempted from civil liability for compensation, and the worker can not only obtain work-related injury insurance compensation, but also require the third party to bear tort compensation liability. Article 42 of China's Social Insurance Law, promulgated in October 2010, stipulates that "if a work-related injury is caused by a third party, and the third party does not pay the medical expenses for the work-related injury or the third party cannot be identified, the work-related injury insurance fund shall pay in advance." After the work-related injury insurance fund has paid in advance, it has the right to recover from a third party. "This provision means that, in the case of medical expenses, if the victim has already received compensation from the work-related injury insurance compensation, the third party cannot be held liable for the medical expenses; Vice versa. The 2014 Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases Involving Work-related Injury Insurance further emphasized the connotation of the previous judicial interpretations, which allows victims to claim work-related injury insurance benefits and tort damages at the same time, without restriction on the order. However, during this period, China's Tort Liability Law and Regulations on Work-related Injury Insurance directly

adopted an evasive attitude towards this issue.

Generally speaking, China has adopted a complementary model, a concurrent model, and a limited concurrent model in the legislation on tort compensation for work-related injuries caused by a third party and the competition of work-related injury insurance. However, the seemingly clear legislative model and norms are actually flawed. It is not only that the law has scattered and incomplete provisions on this issue, but also that the design of its specific rules violates the basic legal principles and the history of legal changes, and at the same time, the existing regulations are in conflict with each other and are difficult to apply.

4 The models and practices that China can consider in the future

In fact, the issue has been debated for many years in the theoretical community. Many scholars have put forward their own views on the handling of the issue of tort compensation and work-related injury insurance competition. For example, Professor Zhang Xinbao supports the alternative model of work-related injury insurance, and Professor Yang Lixin believes that for those workers who do not participate in work-related injury insurance and who insist on choosing to pursue civil litigation in accordance with the Tort Law, the provisions of the Tort Law should be allowed to be applied to handle work-related accident liability disputes.[11] Scholars have expressed their views from the perspective of victim relief, or from the perspective of state management, or from the perspective of fairness and justice. The author believes that the choice of model should not be limited to theoretical analysis, but must focus on China's social reality, and at the same time consider the original intention of the design of the system, in order to be beneficial to the solution of the problem.

First, work-related injury insurance, as part of social insurance, does not have the possibility of full compensation. First of all, social insurance is a social security system in which the state forms a social insurance fund through the compulsory collection of social insurance taxes or fees, and pays certain economic compensation to workers after they suffer losses due to specific reasons, so as to meet their basic living needs.[12] Therefore, the compensatory nature of work-related injury insurance determines that it cannot meet the full compensation needs of employees. Not to mention, China's existing insurance compensation and work-related injury treatment standards are low and the restrictions brought about by layers of administrative procedures.

Second, the core purpose of tort law is to provide redress, but the current judicial status quo is worrying. The beginning of China's Tort Liability Law clearly states that one of the legislative purposes of this law is to protect the legitimate rights and interests of civil subjects. However, in judicial practice, most workers are in a disadvantaged position, and their ability to present evidence and litigate is limited, and considering that the infringed party may not be able to pay or refuse to pay, it is impossible to provide sufficient relief for workers by relying solely on tort law.

Third, not all of the actual damage to workers can be measured in money. The more extreme example is the death of a worker as a result of a work-related injury. Most people emphasize the injustice of multiple compensation based on the principle that the victim cannot "make an unwindfall", but its logical premise is obviously flawed, that is, it believes that all damage can be objectified or monetized. As scholars have pointed out, the law cannot establish an equation between the value of life and the value of property, and life damage cannot be compensated in an equivalent way, but can only be compensated in a way that is closer to the value of life. The creation of a suitable model to calculate the damage to life in order to calculate the damage to the victim can only be an unattainable luxury.

To sum up, considering the disadvantaged status of many workers in China, the current situation of low compensation standards and difficulties in compensation caused by China's social development level, and the original intention of the system design of tort law and work-related injury insurance, the author advocates that China should implement the concept of "people-oriented" social development, fully protect the rights and interests of workers, and adopt a "limited and beneficial model" to deal with the relationship between tort compensation and work-related injury insurance. The "limited bona fiefdom" model means that some of the duplicate items need to be deducted. This part should be limited to the items of direct evaluation of the employee's property damage and available property as far as possible, mainly including labor expenses, medical expenses, transportation expenses and nursing expenses, etc., and the principle of duplicate compensation should be the exception. Considering the basic positioning and function of the Civil Code[13], it is not appropriate to make overly detailed provisions, and the author advocates that the specific deduction items and operational specifications should be reflected by the Supreme People's Court in formulating judicial interpretations or by amending the Regulations on Work-related Injury Insurance.

5 Conclusion

As the saying goes, there is no right without remedy. The rapid development of modern society has a great relationship with the hard work of laborers, and it is inevitable to provide adequate, timely and effective relief for laborers. Due to the continuous improvement of the modern relief system, it is difficult to avoid the competition and cooperation of multiple remedies caused by the same injury, and the law needs to fully consider and evaluate different interests and needs at this time, focus on the current situation of China's social development and the original intention of the system design, and reasonably solve the problem of competition and cooperation.

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