

Analytical Review of Body Damage Compensation Fund in Article 10 Third Party Insurance

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Abstract

Body Damage Compensation Fund subject to Article ten of Law for Responsibility of Owners of Motor Vehicles is relatively a new legislative installation in Iran; it has been effective since 1968 in relation to victims under Article ten of the Law. Up to 2008, the Fund had not a significant role in due to lack of sufficient resources the subjects' compensation. With the replacement of Amendment to Law on Third Party Insurance in 2008, the legislators have increased the amount of commitments in addition to paying a particular attention to Fund's sources of income under Article 4 of this law. It resulted in gradual increase in the effective role of the Fund among other installations such as Public Treasury Fund. Despite the passage of about 40 years from the installations of this fund in Iran, the legal community, particularly judges and lawyers and legal experts are still unfamiliar with nature, role, and tasks of the Fund. The legal nature of the fund has not been discussed yet and its position has not been compared to other resources. Due to poor structure, insufficient financial resources, limited obligations, and lack of covering all damaged persons, the compensation fund had not been effectiveness until 2008. Its explanation is not only useful for juridical system and important for issuance of sentences but also it is helpful in the recognition of the obligations. In addition to taking into account the definition of the fund, this article ties to compare the Iranian version to one of the most developed systems in the world, New Zealand. It will show that the fund is responsible for the damages and it is regarded as a complementary means for compensating the damages having been imposed on innocent victims while its place is clear among other institutions.

Keywords: Body Damage Compensation, Third Party Insurance Law, occurrence, compensation, New Zealand, fund

1. Introduction

Bearing the burden of civil responsibility by individuals is compulsory and according to general rules of civil liability, very person is responsible for compensating the damages he has imposed on others. In many cases, the parson may not be able to compensate for the damages; for instance, a diver may not be able to pay paying million Tomans of Blood money because he has not an insurance policy. In other cases, the legislator may intend to increase compensation guarantee in cases such as usurpation and wasting property in the next hands. The legislator may also try to increase the sense of attention to surveillance tasks in relation to supervised persons like children and insanes as well as workers and employees. Contrary to the principle of compensation by the loss agent, in each of these cases, the responsibility is targeted to a third party. One instance of such a third party in the Iranian legal system is Body Damage Compensation Fund. This institution has been resulted from the mechanized system and increasing the risks of automobiles. Its rules and provisions are significantly different from the general rules of civil liability in civil rights.

2. Definition of Body Damage Compensation Fund

This Fund has not been defined in neither law on compulsory insurance of civil liability of owners of Motor Vehicles in relation to third party (1968) nor its amendment (2008). Article 10 of the law states:

“In order to support the victims of traffic accidents, physical damages caused to third parties due to absence or expiration of insurance policy, nullity of the insurance contract, suspension of insurer's support, escaping or inability to recognize accident charge, bankruptcy of insurer, or physical damage outside the terms of the insurance policy (except those mentioned in Article 7) will be compensated by a sovereign fund called ‘Body Damage

Compensation Fund.'

With respect to numerous and varied experience of developed countries in establishment of such funds, legal experts pay much attention to its definition. The aims of establishing Body Damage Compensation Fund is paying an amount by the government or a third party to the victims of crimes (Van Ness and Strong, 1997). The amount will depend on the nature and extent of victims' injury.

Victim's Compensation Fund is designed as a payment supplement for restoration of the status by the agent of loss when he is not able to compensate for the loss imposed on victim. Many agents of loss will never be captured, convicted, or prosecuted; they may not have enough private insurance. In this regard, compensation fund is a means to compensate the damages resulted from a crime (WWW.restorative justice.2014 / 15/2). It decreases its difficulties by decreasing financial hardships caused by crime (Karmen Andrew. 1990, 307). Some have said that compensation is important for relief because compensation relates to the victims' need for social acknowledgment about the criminal event and social forgiveness responsibility for the community (Daniel, Yael, 1992).

In relation to different arguments to support body damage compensation funds, one has said that some are advocates of these types of funds as a part of extensive program of social insurance because every person may commit a crime. Hence, all should participate in its risk so that compensation funds insure victims for harmful effects and severity of the offense.

In welfare perspective, government is obligated to support the injured part of the community because most crimes are targeted to poor people and compensation funds are providing welfare security network for the needies (WWW.Restorativejustive, 2014.2.15).

Following Marie Gray's activities, most supporters of compensation plans argue that the government must support offenders because individuals are ignoring their own rights to implement justice; hence, crime reflects the government's transgression of its responsibilities. Thus, it should act to compensate the losses. Some state that compensation of losses by community and state is directly related to social justice. The government must support the injured people, especially when the offenders are unofficially enjoying the benefits of social services and rights.

On the contrary, compensation plans have also been questioned by some experts (Karmen Andrew, 1990). Criticizing the tariffs and taxes, they believe that compensation by the government increases crimes because offenders assume at the time of committing crime that the losses are compensated by the state. In this manner, the horizons of social insurance will be expanded. Some state that there is no reason for taxpayer citizens to participate in most programs aiming at provision of welfare for poor people in urban areas.

Australia, Canada, Denmark, France, Germany, Ireland, Netherlands, New Zealand, Norway, Sweden, the United Kingdom, and the United States of America have system of compensation. New Zealand has led the system of compensation to comprehensive insurance plan, which covers every injury, accident, etc. therefore, it lacks the basic restrictions observed in the United States for compensation of losses (Karmen Andrew, 1990).

Costs covered by compensation funds are medical and psychiatric losses, losses due to reduced revenues, burial and funeral costs, and supportive due to loss of supervisor and protector (Karmen Andrew, 1990).

However, most compensation funds fundamental features, such as American funds, that covers a variety of selective victims to help and support.

In order to cover the majority by the funds, the victim should be injured of a violent crime, be injured physically, required medical treatment, and have lost his job so that his income is not compensated by social and private insurances; he also must not be guilty of doing the crime. For example, the victim should not participate in the crime. Most plans are operated for the persons affiliated to the victims.

Some compensation programs have moderate criteria. In these programs, the richer persons who can support themselves in the case of non-protection by compensation funds are not included in compensation funds. Some compensation systems receive fewer amounts to avoid covering persons who have participated in the crime while they are a victim. Other compensation funds establish a family exceptional condition so that if the victim is a family of the offender, they are not covered by the fund. In the same manner, the compensation fund request many documents in order to prevent fraud and misuse of funds (Karmen Andrew, 1990).

3. Civil Liability Nature in Body Damage Compensation Fund

Basically, it is axiomatic that the loss agent is responsible for compensation; in other words, every person who causes damage should pay for the losses. It is not logical to oblige another party to compensate for others' misbehave. Exigency may compel us to set a third party for compensation of losses. It is an exceptional but in line

with social interests. In this regard, three following exigency is the basis of liability arising from the act by others:

1) The fear that the victim may confront insolvency and the bankruptcy of guilty; here, the legislator imposes the compensation on the persons having been caused the damage; for example, usurpers' liability partnership on one who has wasted others' assets.

2) Creating a sense of responsibility in person in relation to the behavior of his employees is another case; for example, employer is responsible for the actions of his employee, the supervisor to his supervised, and parent to his child (Katouzian, 1995).

3) The fear that the losses will never be compensated. For instance, the duties of Body Damage Compensation Fund subject to Article 10 of Insurance Law for a third party according to its provisions.

This responsibility in Article 10 of Amendment to Insurance Law is compulsory with respect to legal civil liability due to action by others; but compulsory civil liability provided due to the legislators' fear of the lack of compensation results from another person's compulsory liability as it has mentioned in Article 6 of Amendment to Insurance Law

The liability of Body Damage Compensation Fund is a civil legal commitment due to a third person's action in compulsory responsibility. In this regard, it is said due to its importance and features in relation to car accidents that the conventional rules of commitment are not practicable in this field (Katouzian, 2001). It is mentioned about the difference between systems governing civil liability and car accidents that the traditional scope of tort and civil liability law should be divided in two categories of tort law and accident law. The first, category should discuss about deliberate actions and behaviors while the second group talks about accidents as well as occupational, medical, and driving errors (Harkamp and Hesselink, 1998). It could be said that the responsibility of insurance companies is included either in contractual or legal responsibility due to others' actions in compulsory liability according to Amendment to Insurance Law. In the other words, the liability due to others' behavior is imaginable in both legal and contractual responsibilities.

With respect to civil responsibility of Comprehensive Compensation Fund in New Zealand, the civil responsibility raises not from others' actions but from the law. Regardless of the necessity of proving the negligence of causing agent, the losses are being compensated in a Compensation Committee (1963); it covers compensation for occupational, road, and accident losses according to paragraph 46 of Committee Report about absolute liability. It is not true for an accident insurance to cover individuals injuring by motor vehicles. It is not fair to introduce a plan to cover only victims of accident in which the causing agent is not clear due to misfortune; for example, the relatives of a man who has died due to sudden crash or cardiac arrest.

The main feature of the New Zealand legal system relates to its legislation on compensation for accidents under the title of accident compensation law. Compensation Law (1972) aimed to increase and enhance safety to recover people who have been damaged from the accidents covered by the program. It provides the ground for compensation of losses imposed on injured persons and their relatives.

By introducing compensation plans, a countrywide basic system is established for persons injured from accidents regardless of whether it has happened in work place, road, or home and it has been happened due to the policyholder's fault or others. Nevertheless, in Iranian legal system, the conditions of Article 10 are not met as long as the driver is not the guilty and the Fund is not responsible for compensation of body damages.

Civil liability has been defined in different ways including "obligation to repair damages to civil liability" (Hosseini Nezhad, 1991), "except in exceptional cases, it is commitment to compensate for civil liability" (Amiri Ghaem Maqami, 1968), "When a person is obliged to compensate for losses of others, the loss is affiliated to him, and he has no legal right for injurious to others, he has civil liability for compensation" (Yazdanian, 2000), "When a person is obliged to compensate for other's losses, it is said that he has civil liability" (Katouzian, 1995).

Civil includes both legal causes and legal actions. It means that civil liability may result from a contractual cause in terms of its source so that the breach of a contract brings civil liability. It also may result from a legal event; in this case, the person has no will; but the responsibility is imposed on him due to law (Yazdanian, 2000, 35; John Bell & Sophie Boyron, 1998).

Contractual liability is not ever due to breach of a commitment but a person may be committed contractually because of others' behavior; sometimes, it is due to the actions of persons or objects under his supervision (John Bell & Sophie Boyron, 1998).

With regard to the significance of attention to the implications of 'accident' and body damage', which has a direct relationship to the responsibility of the Fund, they are discussed in the following.

3.1 Accident Subject to Body Damage Compensation

As it is inferred from Article 10 of Law on Third Party Insurance, victims are subject to receiving body damage compensation if they have been injured due to an accident.

Accident has different meanings. In Moein Persian Dictionary, it is defined as a new emergence, event, or happening. Amid Dictionary defines it as event, incident, crash, occurrence, problem, issue, adventure, tragedy, trauma, injury, and calamity. Considering the multiplicity of meanings and even the contradictory meanings of the word, insurance laws, and legislations has defined it exactly in order to prevent dispute at the time of a claim for damages. Note five of Article 1 of Third Party Insurance (2008) stipulates, "Accident refers to any type of happening such as collision, crash, collapse, overturning, fire or explosion of vehicles and the subject of this article is damages imposed on third parties by cargoes of such devices."

Body Damage Compensation Fund subject to Article 10 is responsible for the victims when the other conditions of the article are met; losses caused by accident are defined in Note 5 to Article one.

This method has been observed in New Zealand and Section 25 of Accident Compensation Act defines accident as:

A. Particular event or series of events that differs from gradual occurrence of adverse matters; it is accompanied by severe force to human body as well as external pressure.

B. Inhalation or entrance of any object, liquid, gas or external things into the stomach so that it does not contains inhalation or entrance of viruses, bacteria, protozoa cells or fungal disease due to criminal activities.

C. Having been burnt or having been exposed to radioactive rays.

D. Absorption of any kind of chemicals by skin so that it does not exceeds more than one month.

E. Having been exposed to objects and heat that causes disability or death within maximum one month.

According to this definition and with respect to second part of Section 25 of Accident Compensation Act, accident does not include any event results to medical treatment injuries. In addition, noise pollution and illness obtained from animals are not included.

Common accidents such as car crash and its overturning are covered by Accident Compensation Act. In general, the covered body injuries that are caused by others are called accident. Status, conditions, and thought quality of the doer has nothing to do with its title. The covered items are widespread; but the events resulted from gradual causes are not called accident. Damage caused by accident should be proportional to the effective force. The effective force should be powerful enough to cause the injury; not any sort of physical force. In this regard, fetal alcohol syndrome in the womb due to alcohol use during pregnancy, a child's cerebral palsy due to external pressure to the mother before birth, and damage caused by passive smoking are not regarded as an accident. Strain and twisting are injuries when it is due to external force or Rresistance (Todd, 201).

3.2 Body Damage Compensation

In addition to attention to the concept of accident, it is important to pay attention to the concept of body damage compensation. Thus, Note 3 of Article 1 of Third Party Insurance Law (2008) states:

"Body damage compensation includes all types of atonement because of trauma, injury, mutilation disability (partial or total, temporary or permanent), or blood money of a third party due to accidents subject to this law. The cost of treating, if not covered by another law, is included in the commitments of insurance subject to this law."

According to numerous changes and amendments in the law on compensation of accident damages based on comprehensive model of covering all non-guilty persons, New Zealander version of this law has increased during these years. It is divided to 12 items. These 12 items are briefly categorized in four groups including: (1) body injury due to accident, (2) body injury due to medical treatment, (3) body injury due to occupational disease or infection, and (4) body injury by brain damage caused by physical factors or victims of certain sexual offenses and works (Accident Compensation Act, 2001).

Where law insists on coverage of damage and the right for compensation is also available so that victims are authorized to receive compensation when people require treatment, need recovery, have been deprived of income, or have suffered a permanent injury, family of a victim of an accident. According to parts 69, 75, and 96 of Accident Compensation Act, the institution is responsible for paying for physical losses, cost of medical treatment, and restoring the professional or social condition of an individual.

The purpose of the cost of returning to the community is helping the independency of claimant to maximum as well as benefits such as aid and measures, household help, childcare, help with transportation, and skill for independent life.

Vacational rehabilitation is compensation for weekly damages to person entitling receive of compensation according to law so that he maintains his power and ability and keeps his professional independence.

Compensation related to income has been introduced since the governance of Common Law. According to parts 69 and 100 to 106 of Accident Compensation Act, it is still regarded as a major loss. It is compensation for persons who have income at the time of accident and the accident causes the loss of their income because the injury is related to his job and employment practices. Accident Compensation Act is not only for employed people but it covers employed and self-employed persons with low income or potential income. The amount payable is 80% of the claimant's weekly earning; it is calculated by formula and adjustable based on average increase in revenues.

Under section 69 of the Compensation Act, when an accident causes death, law stipulates compensation fees for the beneficiaries of the death or persons dependent on the dead person; it covers burial and funeral costs, and supportive fees for the remainings, and compensation of weekly earning for relatives.

According to sections 119, 120, and 121 of the Compensation Act, a person who deserves receiving compensation may be deprived of his right (partially or totally) due to a reason related to public order as following:

- 1) The claimant commits wilfully self-inflicted personal injuries and suicide.
- 2) The claimant is convicted to the murder of the beneficiaries as partner or relatives of the dead person.
- 3) The claimant is imprisoned and he is injured during the course of committing a crime so that the maximum imprisonment is two years.

4. Civil Liability of the Fund in Comparison with Other Sources

Rulers and governments have always been concerned with the coverage of damages to people and compensation for these damages. In addition to appealing to public funds leverage, tools like civil liability insurance for practitioners and so on are new tools. When it is not possible to impose insurance on policyholders according to legal and contractual restrictions, or when the responsibility faces some gaps, the governments try to fill the gaps using complementary institutions. If the civil liability is not developed by insurance, civil liability insurance cannot play its role in the absence of complementary plans (Shoja Pourian, 1994).

Body Damage Compensation Fund is regarded as a complementary unit in relation to schemes complementary to compulsory insurance. Complementary plans are not limited to funds like Body Damage Compensation Fund in compulsory insurances. Like other countries, Iran has insurances titled life, accident, and health complementary insurances, which are included in complementary insurances based on their targets.

The same as other civil liability insurances, compulsory civil liability insurance for owners or motor vehicles is not enough for full compensation of victims of an accident. As noted in Article 10 of Compulsory Insurance Law, some items are not covered by compulsory insurance; in many cases, the victim remains in the post-accident situation and his recovery is not possible. Thus, Body Damage Compensation Fund has been predicted for this condition.

It is clear that why the Fund covers body injuries rather than non-physical financial losses. The importance of physical damage is not comparable to financial losses. However, financial losses may be very important in some cases. It acts conventionally in relation to financial losses.

One may asks whether the victim is allowed to refer to the causing agent despite the availability of civil liability fund. Third Party Insurance Law has is silent in this regard. In any case, there are some solutions in this regard:

- (1). Selective solution: the victim can refer to every one he likes.
 - (2). Combined solution: the victim can refer to both solutions.
 - (3). Refund: the victim refers to the fund, but the fund receives the money from guilty.
 - (4). Reducing the liability of damaging agent: the liability of the guilty reduces proportional to the amount of his payment to the fund (Cane, 2006).
 - (5). Disclaimer of damaging agent: it is governed in New Zealand; the damaging agent has no liability and the compensation is provided merely through funds (Leigh West, 1994, 248).
- As a preferred solution, compensation by system of civil liability is a base and its fulfillment through companies affiliated to social institutions is a secondary way (Badeini, 2008). Therefore, the victim has the right to refer to the agent regardless of the fund's responsibility; in the case of insolvency and inability to obtain compensation, he can refer to the fund. Article 14 of Amendment to Third Party Insurance (2008) has made possible the direct referring to the fund; since it is necessary in Iranian judicial system to ascertain the guilty of criminal accidents leading to physical injuries in legal authorities, it should be proposed in court at first. If there is no possibility of attaining from the cause of damage, one refers to the fund. In the system of civil liability, if one bears a damage due to fault of some persons, he can request for compensation proportional to their share; an institute or organization cannot request for more compensation (Taheri, 1997). According to Paragraph C of Article 11 of Amendment to Third

Party Insurance, the fund can refer to the damaging agent; hence, the ultimate liability is set for the damaging agent.

It should be stated that double insurance is prohibited in Insurance Law; then, the insurer cannot receive more than one policy in return for one risk (Babaei, 2003). Some believe that enjoying social security benefits is not included in double insurance (Badeini, winter, 2008). Since healthcare reduction is a subcategory of restitution (not compensation), a victim cannot receive more than its certain amount.

The main problem of Amendment to Compulsory Third Party Insurance Law with respect to Body Damage Compensation Fund relates to lack of determining the situation of the Fund in the hierarchy of compensation. This term had been predicted in Article 12 of Regulations for Body Damage Compensation Fund (1969). According to Article 12 of this regulation, the Fund is placed at the final chain of this hierarchy; if it is possible to compensate the losses from other sources, the Fund has no responsibility for it. Therefore, since the payments by other organizations are commutative and commutative payments are prior to distributive payments, there is no reason for referring to the Fund in the case of paying by other sources. In the same way, considering the existence of significant resources to Body Damage Compensation Fund, in the competence of both the Fund and Treasury to pay, the responsibility of payment is set for Body Damage Compensation Fund (Yazdanloo, 2008).

In compulsory third party insurance law, Fund commitments are subject to some conditions. Some are related to the victim, some are related to the nature of damage, and others are related to the agent of the damage.

4.1 Conditions Related to the Agent of Loss

A. Agent has not insurance policy.

B. Insurance policy has been revoked or expired.

Article 10 of Iran Third Party Insurance Law indicates that the financial status of the agent is not relevant in paying compensation for the damage. In case of confirming injured party is entitled to receive compensation, financial ability of responsible for the incident does not prevent paying compensation by the fund.

C. Insurance contract of the agent has been suspended.

In Article 10 of Iran Third Party Insurance Law, the legislator has regarded the suspension of insurance contract as an obligation for the fund. Suspension of an insurance contract is a financial-legal-contractual enforcement by the insurer; it is executed in the event of non-payment of premiums and installments. During this period, the insurer is not obligated to pay damages (Ruze, 1999, 98).

D. The damage agent is not identifiable.

E. the agent has committed recklessness or carelessness.

It means that if the agent has intentionally harmed another party, the subject is excluded from the obligations of the fund; here, he is prosecuted according to Islamic Penal Code on charges of first-degree murder or mayhem. If the perpetrator does not identified, suffered damages will be paid from the public treasury fund pursuant to Article 487 Islamic Penal Code (2013).

F. The action is attributed to the agent of damage.

In this manner, if the damage is not attributed to the causing agent (it may be due to the victim's action or a forcible strength, no compensation will be paid because forcible strength and the victim's interference prevent responsibility realization and assignment and it rules compensation out (Khoda Bakhshi, 2014, 195).

G. Accident caused by a motor vehicle on the earth.

According to Article 1 of Third Party Compulsory Law, insurance coverage includes cases when motor vehicle moving on the earth causes damage. If the loss has been by something rather than motor vehicle moving on the earth (such as animals - bikes - air vehicles and water vehicles), the loss is not included in the coverage of Body Damage Compensation Fund.

4.2 Conditions Related to the Victim's of Loss Characteristics

A. The victim shall be humankind.

B. The victim shall be damaged from an accident in the territory of Islamic Republic of Iran either he is a citizen or a foreigner. The principle of Rules Territoriality confirms this point.

C. The victim shall be third party.

D. The injured party has no fault.

If the victim is involved in the operation of the damage (to the extent regarding him/her as a cause), he loses the compensation as much as his interference (Katouzian, 2014, 501).

4.3 Conditions Related to the Damage

- A. The damage shall be physical.
- B. It shall occur due to traffic accidents.
- C. It has not been compensated in another way.
- D. The damage is out of the terms in the insurance policy.

Non-observation of the policy terms brings no obligation to pay compensation for the insurer. For example, carrying a passenger in the load part of a vehicle is out of the terms mentioned in the policy. In this situation, according to Article 10, the compensation is paid from Body Damage Compensation Fund. In this regard, Branch 9 of Hamadan Court of Law has not regarded relevant the lawsuit by Parsian Insurance Company in suit No.: 89000956 due to failure to comply with the terms of Insurance policy.

- E. Damage is in excess of the insurer's obligations.

5. Legal Status of the Fund

According to Article 10 Amendment to Compulsory Insurance Law on Civil Liability, Body Damage Compensation Fund is an independent fund. In other words, it has a separate legal personality from other persons' personality including both natural and legal. However, the intervention of government and governmental institutions and organizations such as Central Insurance is evident for advancing the objectives contained in Article 10. Article 10 stipulates:

“The fund's manager is appointed by the suggestion of Chairman of the Central Insurance of Iran, General Assembly's approval, and order of the General Assembly President. The General Assembly session is holding once a year by membership of Ministers of Economic, Financial and Trade Affairs, Labour and Social Affairs, Justice and Chairman of the Central Insurance; budget, balance sheet, and policy of the Fund are adopted by the Assembly.”

Given the expression of 'fund's independence' in legal personality of the Fund, there is no doubt about its separate personality from other legal or natural personalities. According to Article 10 of Compulsory Insurance Law on Civil Liability of Motor vehicles' Owners (1968), the Fund is run by Iran insurance; afterwards, it was assigned to Central Insurance pursuant to paragraph 6 of Article 5 of Law on Establishment of the Central Insurance of Iran (1971). Pursuant to Article 1 of Regulations for Body Damage Compensation Fund (1969), the Fund is officially a part of the Central Insurance of Iran; it is run by the Central Insurance of Iran. Nevertheless, Articles 10 and 11 of Amendment to Compulsory Insurance Law (2008) added the liabilities as well as sources of income for the fund. Moreover, it allowed the Chairman of the Central Insurance of Iran to assign the Fund's manager by predicting the General Assembly.

When the Fund is an independent legal personality, it is important to recognize whether it is a public or non-public personality. Since these two types are very different with respect to their responsibilities and tasks, it has drawn the attention of legislators. One distinctive feature in this regard is described by Article 32 of Civil Procedure Code of Iran (2000): “Ministries, government and state-affiliated agencies, state-owned companies, public and non-governmental institutions, Islamic Revolution institutions, municipality, and banks can employ legal representative in addition to attorneys for any claim, defense, and prosecution from the legal department...”

At the same time, Iranian law has predicted some specific rights for citizens as long as they are recognized as legal persons; these rights need no evidence (Safaei, 2015, 131).

If Body Damage Compensation Fund is one instance of this rule, it can introduce a legal representative for participation in judicial proceedings under article 22 of the Law unless it should use an attorney (Khodabakhshi, 2009). Thus, using legal agents instead of lawyers is apparently predicted to avoid paying honorarium to them according to Article 32 of Civil Procedure Code of Iran (Shams, 2001).

Pursuant to Note 3 paragraph (c) of Article 11 of Third Party Insurance Law (2008), the Fund is exempted from litigation costs. Based on Note 4 of this article, documents on demands and payments of the Fund are regarded as binding documents. Therefore, the status of the Fund had not been determined by legislators until recently before approval of Amendment to Compulsory Insurance Law for owners of motor vehicles (2008). According to single article of budget (2011), Body Damage Compensation Fund has been added to the list of non-governmental institutions and organizations (1994); hence, the doubts were eliminated.

6. Financial Resources of Body Damage Compensation Fund in Iran

As mentioned, the legislators have increased the Fund's commitments in 2008 Third Party Insurance Law in comparison to 1968 Law; therefore, it requires more financial resources to cover the liabilities determined in Article 10. Article 11 determines the financial resources of Body Damage Compensation Fund as following:

- (A) Five percent of premium of compulsory insurance under this law.
- (B) The equivalent of up to one-year compulsory contributions that will be received from owners of vehicles refraining to implement the insurance of this law. The way to receive, installment amounts, and other provisions of this paragraph is adopted by suggestion of Central Insurance of Iran at the General Assembly of the Fund.
- (C) The amounts received from the guilty person after paying to the victims.
- (D) Income from investment by the fund.
- (E) Twenty percent of the fines of traffic crimes in the whole country.
- (F) Twenty percent of total cost of hearing and fine receipt by Judiciary.
- (G) Offenses under Article 28 of this law.
- (H) Contributions granted by different persons.

Note 1- In case of shortage of financial resources in the Fund, the state shall provide the Fund deficit in the annual budget of the next year.

The high income of the Fund show that the legislator employs all his efforts to fix the problem of people under Article 10 of Insurance Law so that the income of the Fund becomes several times greater despite the low number of insurance companies in the country. Some prominent points in this regard are:

- 1) Why legislators have set five percent of premium of compulsory insurance as one of the sources of income? Why third person policyholders shall compensate for violation of offender, negligence, and escaped drivers or insolvent insurers? Why this paragraph allows the insurer to increase premium, what are the privileges of people to the third party insurers? With regard to the increased rate of inflation and blood money, many cars owners are not able to buy car insurance; due to lack of car insurance for a large number of cars, violations and fraudulent acts increase day by day. It is necessary for Central Insurance and legislators to invent new strategies in car insurance portfolio management.
- 2) As already mentioned, except in the case of bankruptcy, other payment of the Fund is not gratuitous; but it refers to guilty as deputy of the victim according to Paragraph (C) because the Fund's responsibility in Iran (unlike New Zealand) is not based on absolute liability; every person is responsible for his actions, thus, the Fund has been established to help innocent victims to compensate their damages in the case of guilty's escape and inability to pay fines as well as insurers' insolvency.
- 3) According to Article 15 of Third Party Insurance Law (2008), insurer shall compensate for the damages within a maximum period of 15 days after receipt of the necessary documents while it is silent about the duty of the Fund to expedite the action. With respect to the staggering income of the Fund from different sources, and even inadequacy of state budget, the delay in payment is not justifiable.
- 4) in many accidents, the guilty drivers are imprisoned due to lack of insurance policy, lack of sufficient insurance obligations, suspension of insurance, or insurer's bankruptcy; the Fund refuses to pay for compensation until the deposit of collateral. Most guilty drivers lack enough collateral. A sociological approach reflects that most caught drivers are in low-income classes; if they were rich, they would observe precautions before the accident. According to Article 16 of Third Party Insurance Law (2008), the Fund is obliged to compensate body injuries while taking collateral is not condition for payment. Consequently it is not legal terminate the philosophy of Fund by delay in payments.
- 5) In Note 1 to paragraph (H), "In case of shortage of financial resources in the Fund, the state shall provide the Fund deficit in the annual budget of the next year." One should ask is not the next year annual budget from the Treasury? Why the legislator does not combine the management of Treasury with Body Damage Compensation Fund and both are not managed and controlled by the same management to reduce the administrative costs by integration of payments? One may assert that Body Damage Compensation Fund belongs to driving accidents according to Article 10 of Third Party Insurance Law while the Treasury covers different items. In response, if Body Damage Compensation Fund has not been established, most liabilities would be covered by the Treasury and the financial shortage of the Fund is clarified by the Treasury according to Noe 1. Therefore, there is a close relationship between the two funds and it is necessary to run them under a single management to avoid parallel

activities. Both funds can be combined into one by a correct management. It is argued that the Treasury pays for stipulated items and it is not allowed to expand its inclusions based on people's expediency. In response to the researcher's question from Judicial Education and Research Institute of Qom (The main development of the new Islamic Penal Code) under number 40-23.1.1393 about the equality of blood money for men and women in Article 551 the Islamic Penal Code, it is stated that it is justifiable by secondary rules of Islam. In response to the question about why Body Damage Compensation Fund is responsible for the difference of blood money, it is said that 'because the Treasury pays only for stipulated cases while according to Article 10 of Third Party Insurance Law, the items included in Body Damage Compensation Fund are actuarial. In brief, there is no difference to pay for shortage of Body Damage Compensation Fund from the public budget (or the Treasury) or to expand the commitments of Body Damage Compensation Fund through approval of the note to Article 551 Islamic Penal Code or Article 14 of supporting initiatives of enjoining good and forbidding wrong from the Treasury. This process stops the staggering squandering managerial costs. Note 6 of paragraph H in Article 11 of Third Party Insurance Law (2008) emphasizes that the Fund's incomes should be consumed only in the stated items in the law; its violation equals unlawful possession of public funds, especially according to Article 471 of Islamic Penal Code about crimes committed by faults of legal religious minorities in Iran; the state is responsible for its payment. Both are supervised by The Guardian Council. It is not clear why the Body Damage Compensation Fund must pay for the subject of Article 551 of Islamic Penal Code while the state is responsible for it according to Article 471 of the same law as both follows the belief.

7. Conclusion

Compared to other institutions, Body Damage Compensation Fund is a new established institution. It has not been analyzed despite the passage of about 40 years from the installations. Definition of the Fund showed that it has been established to compensate the physical losses imposed on victims of driving accidents. According to the reasons mentioned in Article 10 of Third Party Insurance Law, it is not possible for the insurers to pay all or part of the loss. Unlike Car Fund in some of the leading countries in providing welfare such as New Zealand, losses and damages are not paid free of charge. According to Article 11 of Insurance Law, the third party has the right to refer to the causing agent as much as payment amount. Indeed, the responsibility of the Fund results from liabilities to other's action in driving accidents. The surrogate right to refer to the causing agent has been observed by legislators. Compensation is not subject to the permission or authorization of causing agent and general rules of civil code are not effective in relation to the need to obtain a permission to pay damages or to seek transfer. It follows the pattern of other insurance regulations in which the insurer refers to the causing factor as the deputy of victim. As a complementary plan in governments believing in social welfare, it is useful to compensation for physical injuries of innocent victims. As long as the payments are payable by different insurances or social security, Body Damage Compensation Fund will never pay an amount.

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