

C2C business model of China's network car platform tort liability research

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Abstract: *With the rapid development of science and technology, in line with the principle of convenience and efficiency, the emergence of a network car this new way of travel. Now the network car business model has B2C mode and C2C mode, compared to B2C mode, C2C mode will appear in the network car platform and the driver's relationship is not clear, the network contract car platform to bear tort liability standards are not clear, drivers and driving vehicle access conditions are not scientific these issues. Therefore, it is necessary to clarify the legal status of the network car platform under the C2C business model, improve the access system of the network car market, strengthen the government's examination and supervision of the platform and formulate insurance to adapt to the network car in order to safeguard the legitimate rights and interests of the victims and maintain the stability of social order.*

Keywords: *Network Contract Car Platform; the C2C Business Model; Tort Liability*

1. Introduction

Network car, is the network booking taxi short, refers to the passenger according to their own travel requirements through the Internet platform to provide mobile phone applications (such as drip travel, Shenzhou special car, Cao Cao travel, etc.) on the reservation of transport services, by the registered vehicles and drivers registered on the platform through independent orders or passive dispatch to provide services a way of travel. On July 27, 2016, the Interim Measures for the Administration of Network Reservation Taxi Business Services (hereinafter referred to as the Interim Measures) were jointly issued by seven ministries, including the Ministry of Transport, the Ministry of Industry and Information Technology, the Ministry of Public Security, the Ministry of Commerce, the General Administration of Industry and Commerce, the General Administration of Quality Inspection and the State Network Information Office, and came into effect on November 1, 2016. In China, there are two main business models, namely, B2C (Business to Customer) business model and C2C (Customer to Customer) business model. C2C business model refers to the e-commerce between individuals, that is, between drivers and passengers of e-commerce, such as: drip travel, Uber, easy access to the car and so on. This model is the most common in the entire network car industry, which not only reduces the cost of finding passengers on the road, increases the additional revenue of drivers, but also saves time and costs for passengers and optimizes resource allocation. Because the platform in this mode does not have its own network car, the role of the platform is mainly to set up rules, provide information and collect commissions.

1.1 Private car and private car owner form

This form refers to the private car owner who owns his own private car on the network contract platform registered as an operational passenger network car, will be registered as a matching vehicle network car driver form.

1.2 Self-renting vehicle and self-renting vehicle driver form

In order to increase the number of online cars, the network car platform has launched a "car rental car purchase compliance join" driver recruitment program. Among them, car rental refers to the form of "self-rented vehicle and self-rented vehicle driver". In this form, the driver in his own name and the network car platform cooperation car rental company signed a car rental contract, so as to obtain the right to use the vehicle, in order to apply to the network car platform to become a network car driver.

1.3 In the form of a lease purchase

In the driver recruitment scheme of "Car Rental Compliance Join", car purchase refers to "purchase by rent", which refers specifically to the rental contract for vehicles that can be entered into by eligible drivers and car rental and sales companies that cooperate with the network car platform. The contract includes a car rental agreement between the driver and the car rental company for a certain period of time in order to obtain the right to use the vehicle. When the driver obtains the right to use the car and then registers through the platform to become a network driver.

2. C2C business model under the network contract car platform tort liability problems

2.1 The legal relationship between the network contract platform and the driver is unclear

Under the C2C business model, the legal relationship between the network car platform and the driver is not clear. If the legal relationship between the driver and the network vehicle platform is labor relations, then the driver's transport service behavior is the duty behavior, the main body providing transport service is the network contract vehicle platform, the legal effect of the transport service behavior can naturally belong to the platform. However, in this mode, the driver according to their own wishes to use their spare time to engage in network car services, operating time is not fixed, which is known as the "zero-industry economic model." Although Article 18 of the Interim Measures stipulates that a network vehicle platform company shall, in accordance with the characteristics of long working hours and frequency of service, sign various forms of legal labor contracts or agreements with the driver to clarify the rights and obligations of both parties. However, this paper thinks that such a provision is too broad to accurately define the legal relationship between the two under the "zero-industry economic model". Under the premise that the legal relationship is not clear, it is not possible to attribute the transportation service provided by the driver and its legal effect to the network vehicle platform alone. Simple and brutal network car platform identified as the carrier, although conducive to the protection of the rights and interests of passengers, but no doubt also to a certain extent ignored the C2C business model of the role of drivers.

2.2 The standard of tort liability of the network contract car platform is not clear

First of all, there are not many specialized laws and regulations on tort liability for network-connected vehicle platforms in China at present, mainly the Guidance on Deepening Reform and Promoting the Healthy Development of the Taxi Industry, the Interim Measures for the Administration of Network Reservation Taxi Operations, the E-Commerce Law, etc., and the newly revised Civil Code also does not provide for it. The provisions of specialized laws and regulations are also imperfect, for example, Article 18 of the Interim Measures only provides for such general provisions as a platform to sign a labor contract or other agreement with the driver. The long working hours and the frequency of services in the provisions lack the corresponding refinement standards, resulting in this provision in the determination of the subject of responsibility, the allocation of the size of responsibility and the way of responsibility has been a great deal of controversy.

Second, the regulations and rules issued by local governments for network cars do not propose substantive solutions. Although Beijing, Tianjin, Shanghai, Hangzhou, Shenzhen and other places have issued government regulations or provisional measures, but for many reality often face the problem of responsibility or there is no uniform provisions, resulting in confusion of the principle of attribution. Moreover, most of the new policies of the network contract vehicles introduced in many parts of our country are issued in the form of normative documents. This has given rise to the "Administrative Punishment Law of the People's Republic of China" provisions, normative documents are not entitled to set any administrative penalties, so even if the local government issued the regulation of the network car platform related rules, law enforcement departments do not have the right to make penalties according to these normative documents.

2.3 Access conditions are not scientific

The new policy of network car has made strict settings on the access system, and put forward strict requirements for vehicles and drivers.

In terms of vehicle access, the vehicles clearly engaged in the operation of network vehicles should

be 7 seats and below passenger vehicles, the installation of vehicle satellite positioning devices with driving record functions, emergency alarm devices, and vehicle technical performance in line with operational safety standards. In terms of vehicle access, restrictions on wheelbases, displacement and fares allow them to reach a higher level than taxis, competing with taxis in a differentiated manner.

In terms of driver's access, the first is to obtain the corresponding quasi-driving driver's license, and has more than 3 years of driving experience. Second, no traffic crime, dangerous driving criminal record, no drug record, no drink driving record, the most recent three consecutive scoring cycle did not record 12 points. Third, there is no record of violent crime. There are also restrictions on drivers' household registration.

3. The suggestion of perfecting the tort liability of the network car platform under the C2C business model

3.1 Clarify the legal status of the network car platform

In the Interim Provisions, the liability of the network contract vehicle platform is currently recognized as the carrier's liability. However, for this provision, not only in the academic circles of various scholars have different views on this, in practice, the practice of courts at all levels are not the same, but also different regions on the network car norms, the C2C business model under the network car platform company responsibility is not the same.

Regarding the legal status of the network contract car platform under the C2C business model, there is a view that the network contract car platform is only the inter-resident, that is, the resident said. According to this view, the platform company is not actually involved in the operation of the network car. The platform only serves to provide and match the appropriate information in the service. This view is only persuasive in theory, in the reality of the operation of the network car there are many unreasonable places. First of all, the network contract car platform is not free to provide information; Secondly, the impact of the network car platform on full-time drivers is very large.

Some scholars also think that the network car platform should be defined as the operator. According to this view, according to the Provisional Provisions, the platform is in fact a company engaged in the operation of a network car. In the Interim Provisions, the conditions of the platform are listed, one of which is that the platform should be an enterprise legal person. The network car platform for each order is pumped into also reflects its identity as an operator. This view is mainly from the point of view of the network car platform and the driver, ignoring the consumer of the ride, in the case of infringement, there is no direct link between the platform and passengers.

Some scholars also think that the network contract car platform should be the carrier. According to this view, the network car service is still essentially a passenger service contract to transport passengers to their destination. This paper agrees with this view, the main reason is that in the network car this new mode of transport, passengers in the choice to ride the network contract car, only with the help of the Internet this new medium. The network car platform is still a passenger service, the price paid by the passenger during this trip should be freight.

3.2 Improve the access system to the network car market

In terms of the access system for vehicles operated by the network contract vehicles. The specifications for service vehicles should be relaxed. Net-a-Porter is the product of the combined power of the Internet and the sharing economy, it is a bright future of emerging industries, but some cities for the specifications of the network car has made too many restrictions, resulting in only some vehicles meet the requirements, which not only reduces the number of internet-connected cars, but also violates the state to encourage the "Internet Plus" industrial development strategy. In terms of access system for network drivers. Requirements for network drivers: First of all, the entry threshold of network drivers should be raised. The driver shall obtain the driver's license of the corresponding quasi-driving motor vehicle and have more than 3 years of driving experience and have no criminal record of traffic accident crime and dangerous driving crime, and may also provide for the administrative penalties imposed on the driver. Secondly, the network car drivers should also be regular training and assessment, for the assessment of qualified people to allow them to continue to engage in the profession.

3.3 Strengthen government oversight of the platform

Network car platform as a carrier, grasp a large number of driver and passenger information, if there is no strict review of the network car platform, then there will be a lot of information infringement cases, not only affect the normal life of passengers, but also affect the stable development of society.

In the specific procedures of the government's platform review and supervision, the government should first review the compliance operation of the platform and strengthen the after-the-fact supervision of the services provided by the platform enterprise, such as from time to time requiring the platform enterprise to hand over the network contract vehicle operation data, passenger feedback information and solutions for the content of passenger feedback. For enterprises that do not submit operational data and passenger feedback in a timely manner, the government may, on a case-by-case basis, force them to submit them by taking measures such as fines or orders to stop operations. Governments, as regulatory platforms, should compile and compile the data and information obtained, make it available to the public on a regular basis in accordance with the law, and protect consumers' right to know.

3.4 Develop insurance coverage for vehicles adapted to the network

In today's increasingly popular network car, the occurrence of infringement incidents are also more and more, in the infringement compensation, whether it is the driver's illegal or improper operation caused by the infringement case, or due to the cause of the passenger caused by the infringement compensation or due to the failure of the driving vehicle caused by the infringement case, the network contract car platform needs to bear the liability for infringement compensation, which is not conducive to the development of the network car platform. And at present, the network car in the occurrence of infringement cases of insurance claims are basically to traffic accident insurance to deal with, insurance claims are not targeted enough. In the real case of infringement, there are many cases in which insurance companies refuse to bear the liability of insurance claims.

Based on this, it is very necessary to develop insurance to adapt to the network car. Setting the insurance type to adapt to the network car is first of all conducive to the operation and development of the network car platform, the amount of infringement compensation borne by the network car can be paid according to the contract with the insurance company, which will greatly reduce the situation of the insurance company refusing to settle the claim. Secondly, different kinds of insurance is targeted, different reasons lead to the infringement case compensation standard is clear, will not produce the same case different compensation standard situation. The establishment of an insurance system to adapt to the network car is not only beneficial to the network contract car platform, but also effectively safeguards the legitimate rights and interests of consumer passengers.

4. Conclusion

China's C2C business model has a large number of network cars, this model perfectly meets the driver, passenger and network car platform in terms of time, efficiency and revenue needs. However, the C2C business model will also make you vulnerable to infringement cases, so the government needs to strengthen the supervision of the network car platform. After determining the legal status of the network car platform, the network contract car platform can be determined in terms of tort liability. After the infringement accident under the C2C business model, the insurance company may refuse to claim insurance liability, which will have an impact on the development of the network car, so it is necessary to set up insurance to adapt to the network car.

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