

Research on Legal Issues in Safety Incidents of Ride-hailing and Their Coping Mechanisms

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Abstract: With the rapid development of the "Internet plus" economic model, online car hailing has become an important part of urban transportation, which facilitates citizens' travel and drives economic growth. However, the number of traffic accidents and disputes caused by traffic accidents is also increasing day by day. In practice, in the judgments of various courts on similar infringement cases of online car hailing, the liabilities of online car hailing platforms are divided into supplementary liabilities, joint and several liabilities and independent liabilities, which affect the authority and impartiality of the judiciary. Aiming at network about car caused by traffic accident tort civil liability in the case of the problem, to our country network around the car, car and taxi industry, the express cargo business is classified and discussed analysis parties in different operating modes of the legal status of the subject, the legal relationship between each other, and the corresponding civil liability and the conclusion. Finally, suggestions are put forward for the regulation of the current ride-hailing environment.

Keywords: online car hailing, tort liability, legal analysis

1. Introduction

1.1. Question: What is the legal relationship between the parties in the online car-hailing infringement case

At present, in China's judicial practice, there are differences in the judgment results of online car hailing infringement cases. Regarding the legal relationship between the ride-hailing platform and the driver, the court has identified labor service, labor relationship, affiliation relationship, employment relationship and new cooperative relationship, etc. And network platform about car and driver relationships often determines whether the tort liability and the scope of compensation for the damage, the court for the same type of network at different levels in different areas about car cases are divided: same because traffic accident produces infringement to passengers, a court ruling about car company as the carrier, it shall take several and joint liabilities. B the court ruled that the online ride-hailing company, as an employer, should assume the alternative liability for compensation. Moreover, the court ruled that the online ride-hailing company, as an intermediary, should bear supplementary compensation liability for fulfilling the obligation of qualification examination and honesty reminder. In addition, each court has different legal basis for the case judgment: According to Article 16 of The Interim Measures for the Management of Online Booking Taxi Operation Service, Court A said, "The online booking platform company shall assume the responsibility of the carrier, ensure the safety of operation and protect the legitimate rights and interests of passengers". Party B's court ruled that Didi Chuxing, as the employer, should assume the alternative compensation liability according to Article 9 of The Supreme People's Court's Interpretation of Several Issues concerning the Application of The Law to The Trial of Personal Injury Compensation Cases. C According to paragraph 2 of Article 38 of The E-commerce Law of the People's Republic of China, the court considers that the cargo company should bear supplementary liability for the damage caused to Wang by the accident involved because of its negligence in fulfilling the qualification examination obligation.

1.2. Significance: To clarify the legal relations of all parties in the online ride-hailing service

The Interim Measures for the Management of Online Booking Taxi Service Issued by the Ministry of Transport in 2016 (hereinafter referred to as the Interim Measures) only stipulates that the online booking platform undertakes the responsibility of the carrier in the online booking business. Among

them, the division of responsibility subjects of online car-hailing is not clear and there are no complete provisions. Article 38 of the Interim Measures only stipulates that the relevant provisions of local people's governments should be implemented, and judges are required to make judgments based on the actual situation, leading to differences in the judgment of rights and responsibilities of all parties when disputes related to online car-hailing occur. In the case of online car hailing, it is unclear whether, how and the scope of each party's responsibility should be borne, and there are difficulties in relief, which affects the fairness and authority of judicial judgment. Therefore, it is necessary to analyze the legal relationship among ride-hailing platforms, drivers and passengers, as well as their legal status, and clarify the scope of rights and responsibilities of all parties.

Currently, at the legislative level, although the Interim Measures have made specific provisions on the responsibilities of ride-hailing platforms, in judicial practice, there are differences between courts at different levels in different localities, which directly affect the rights and interests of the subjects of the case and indirectly affect the authority and fairness of the judiciary. Through case analysis, this paper finds out the differences in different cases and their causes. And from the legislative and judicial levels of targeted solutions, better deal with the problems encountered in practice.

2. Literature Review

2.1. Domestic research status

As the second largest economy in the world, Online car hailing emerged earlier in China. Moreover, the online car hailing industry has a huge market, a large number of users and a huge number of disputes, which also promotes the research of Chinese experts and scholars on the division of responsibility in online car hailing cases. For the responsibility of ride-hailing platforms, the mainstream views in China can be divided into the following four categories:

The first view regards e-hailing platforms as carriers. According to the Interim Measures, e-hailing platforms, as carriers in transport services, bear the responsibilities of carriers. The provisions on carrier in the Civil Code also clearly indicate that the ride-hailing platform actually acts as a carrier and should bear the responsibilities of the carrier. Ride-hailing platforms carry out transportation business activities such as positioning and navigation, car insurance payment and other transportation services, while collecting remuneration paid by passengers, which is in line with business characteristics and is obviously a carrier providing operation services.

The second view views ride-hailing platforms as intermediaries. This view is also the practice of the majority of people agree with the view. The platform collects passengers' car demand and then releases it to relevant drivers. Finally, the drivers and passengers reach agreement and sign a contract. In this process, the platform only plays the role of intermediary, without providing both parties with the opportunity to conclude a contract and extracting part of the remuneration.

The third view holds that the online car-hailing platform is the subject responsible for security guarantee. The nature of the online car-hailing platform is similar to the organizer of major events, and it is the organizer in the online car-hailing business. According to Article 1198 of the Civil Code, participants in online car-hailing activities shall assume security obligations. As the organizer of the ride-hailing business, the ride-hailing platform uses its own resources to help the drivers and passengers of the ride-hailing business to carry out ride-hailing activities. Although it does not actually control the vehicle, it provides the possibility of infringement damage and is the initiator of risks. Only by identifying the platform as the subject of infringement can the rights and interests of all parties be protected.

The fourth view is that the ride-hailing platform is an information sharing platform, which delivers users' car needs to the drivers registered on the platform in real time to provide information on both sides. Similar to Taobao, JINGdong and other "exchange" type of network platform, its responsibility is to ensure the content of the contract, fair and open transaction information. The company and the passenger are equal to each other, autonomous and willing to reach an agreement. Ride-hailing platforms shall bear civil liability in accordance with the principle of good faith in Article 7 of the Civil Code and the agreement they have entered into. If they violate the agreement, they shall bear certain liability for breach of contract. Although the agreement is not legally binding, ride-hailing platforms still need to abide by it. This clause is set up by the platform to evade risks and responsibilities, which damages the legitimate rights and interests of users to some extent.

2.2. Foreign research status

There are few studies on online car-hailing in foreign countries. Online car-hailing is not as popular in foreign countries as in China, and some countries even oppose the entry of online car-hailing. California, the birthplace of Uber, is defined as a transportation network company by the state's regulatory authorities. Studies in this area can be roughly divided into three aspects: the relationship between platform companies and drivers, the establishment of online car-hailing insurance, and civil liability in case of traffic accidents.

(1) There are different views on the relationship between ride-hailing platform companies and drivers. Grant E. Brown believes that drivers are employees of ride-hailing platform companies, while Lauren Geisser believes that drivers are independent contractors and the ride-hailing platform companies are equal subjects to conclude contracts.

(2) For the establishment of online ride-hailing insurance system, Rebecca Elaine Elliott believes that online ride-hailing platform companies should provide comprehensive insurance policies for passengers, while some people believe that there is no need for such policies. They only need to determine the insurance amount according to the driver's operating period and adopt flexible insurance means.

(3) Regarding the determination of the subject of liability for the traffic accident of ride-hailing vehicles, Lauren Geisser believes that based on the principle of operation domination and operation interests, ride-hailing platform companies should be identified as the subject of liability and should bear the responsibility for the accident.

In a word, as a new mode of transportation, online car hailing has different development situations in different parts of the country: some are prohibited explicitly, while others are encouraged by policies. Online car-hailing has its own disadvantages and risks are difficult to control, which have become a huge resistance to its development. However, online car hailing, to some extent, sustains people's yearning for the sharing economy and the future state of free work. In terms of the overall trend, it is still progressing.

3. Legal issues caused by typical cases

This section will list and analyze three typical cases and sum up the legal issues: (1) What is the legal relationship between the three parties? (2) What is the legal status of ride-hailing platforms? (3) There are different standards for responsibility division of ride-hailing platforms.

4. Didi Chuxing Technology Co., LTD., Chen motor vehicle traffic accident liability dispute

On August 29, 2017, Wang a (the defendant) of trial driving a small car drops a taxi passengers arrive zhang XXX (the defendant) of trial phase mountain "love m apartment", after stopping in the mountain road "love meter apartment" before the non-motor vehicle lanes, right edge distance from the side of the road is too large, and get off at a so-and-so did not fulfill the duty to remind, zhang x neglect to observe when off the right rear door open, Scrape against driving electric car along the east side of xiangshan Road non-motor lane from south to north Chen, (plaintiff of first instance), causing electric car damage, Chen, injured traffic accident. Chen filed a lawsuit, requiring Zhang, Chen, Didi Company (the defendant of the first instance) to assume liability for compensation.

The first-instance court ruled that Didi was jointly and severally liable for Chen, and Didi refused to appeal, arguing that 1. Didi has not directly infringed on Chen's rights and has no fault for the accident. 2. Smart trapper Ride-hailing drivers are free to register, receive orders and withdraw cash, and Didi has no control, control or management over them. Didi is not liable.

Chen argued that Didi company was in a dominant position in the process of the online ride-hailing driver Wang providing transportation services to Zhang, shared operating interests with Wang, and caused injuries to Chen in the process of operation, so it should share operating risks with Wang and bear joint and several liabilities for Chen Shimin's losses.

The court of second instance supported Chen's opinion. According to article 16 of the Interim Measures for the Management of Online Booking Taxi Operation Service, didi Company should assume joint and several liability for Chen's loss according to the provisions of "Online booking taxi

platform companies shall be responsible for the carrier's responsibility, ensure the safety of operation and protect the legitimate rights and interests of passengers".

5. Li, Didi Chuxing Technology Co., LTD. Motor vehicle traffic accident liability dispute

In July 6, 2017, Hu (the first instance plaintiff) through the drop network about car ride Cheng (joint property insurance Yongkang company first instance defendant) driving a small car and Li (the first instance defendant) driving zhejiang small cross-country bus collision, causing cheng mou, Hu injured traffic accident, after the accident Li abandoned the car to escape. August 29, 2017. Yongkang city public Security Bureau traffic police brigade identified Li mou, Cheng bear the same responsibility for the accident, Hu does not assume the responsibility for the accident. Hu because of the accident caused injuries. Hu filed a lawsuit against Cheng, Li and Didi Chuxing, demanding compensation for Hu.

The first-instance court held that Didi Chuxing, as the carrier, should be liable for compensation, and didi Chuxing, as the carrier, did not commit any breach of contract. Li (the first-instance defendant) and Didi Chuxing (the first-instance defendant) both refused to accept the first-instance verdict and appealed to the Intermediate People's Court of Jinhua city, Zhejiang Province.

Didi Chuxing believes that there is no affiliation between the driver Li and the platform. The driver is not an employee, but a cooperative relationship.² Didi Chuxing has no breach of contract or infringement, and has no fault for the accident. The infringer Li and Cheng shall be liable for compensation according to law.

Cheng believes that the contractual relationship between Cheng and Didi Chuxing is established in this case. Didi Chuxing failed to deliver the passenger, Surnamed Hu, to his destination safely according to the contractual obligations. In the process of fulfilling the obligations, a traffic accident occurred, causing Mr. Hu to be seriously injured. Didi Chuxing, as a carrier, should be responsible for the loss of hu.

The court of second instance held that whether Didi Chuxing, the focus of the case, should be liable for Hu's loss: the two parties actually formed an employment relationship. In this case, Cheng, as an employee, was injured in a traffic accident in the process of transporting a passenger named Hu. In accordance with the provisions of Article 9 of the Interpretation of The Supreme People's Court on Some Issues Concerning the Application of The Law to The Trial of Personal Injury Compensation Cases, Didi Chuxing, as the employer, shall assume the alternative compensation liability.

6. Wang sues Shenzhen according to the time goods lala technology Co., Ltd. traffic accident liability dispute

The court found out: Wang (the plaintiff of first instance) with pedestrian Zhang zhou in November 2018 through mobile phone goods lab APP order, transport goods from Guangzhou to Shenzhen, Shenzhen in accordance with the goods lab company (the defendant of first instance) after receiving the order designated Huang Jian (the defendant of first instance) driving small car carrier. One-way road accident occurred on the way, resulting in Wang was injured and the implementation of craniotomy. Traffic police identified Huang jian did not operate in accordance with the norms of safe driving full responsibility for the accident.

The court of first instance believes that this case is a motor vehicle traffic accident liability dispute, Huang Jian should bear this case compensation liability. The company did not review the relevant qualifications of the driver, increase the probability of accidents when the driver is engaged in operation, so the company should be Huang jian's compensation obligations to assume supplementary liquidation responsibility.

Wang, shenzhen in accordance with the goods of the company are not satisfied with the verdict, appeal.

(1) As an intermediary service provider of cargo transportation information, the cargo company shall bear relevant responsibilities under the legal relationship of intermediary contract.² No legal relationship has been established between the company and Wang, and the company is not liable for compensation or supplementary liability for damage consequences beyond its foreseeable and controlled scope.

Wang argued that the company is affiliated with the goods, rather than freight information intermediary service providers.

The main focus of the second trial of the case is the nature of the legal relationship between the cargo company and the carrier driver Huang Jian and whether the cargo company should bear legal responsibility for the damage to Huang Jian. For focus 1, the shipping company is only the freight information intermediary service provider and not the actual carrier or the operating qualification affiliate. The specific content of the transportation agreement in this case is reached by Zhang Zhou and Huang Jian negotiation, Huang Jian is engaged in operation business with its own vehicles, so it should be identified as the carrier Huang Jian, rather than the goods company, the goods company and Huang Jian form an intermediary contract relationship. In view of focus 2, the failure of the cargo pull company to fulfill the qualification examination obligation is not the direct cause of the accident, but it will produce a potential hazard. Court according to the act of electronic commerce, as prescribed in paragraph 2 of article 38 of the life and health of relationship between consumer goods or services, electric business platform operators within the platform operators did not fulfill the duty to review the qualifications of qualifications, or did not fulfill the duty security protection for consumers, consumers damage, he shall bear corresponding responsibility. Judgment of the cargo company due to neglect to fulfill the obligations of qualification review should be involved in the accident caused by Wang to assume supplementary responsibility.

6.1. The legal relationship between the three parties of online ride-hailing

In case 1, the court held that the online booking platform operator, private car owners or drivers, and passengers are the three basic main elements of this new sharing economy model. The former two are the common and inseparable party subject, providing booking transportation services to the third party, namely passengers. Drivers are assigned by Didi to take orders and operate the vehicles, and share the interests of vehicle operation with Didi. If a driver has a traffic accident in the process of operation, causing injuries to passengers, the ride-hailing platform should bear the corresponding responsibility. In case 2, the court held that the online car-hailing platform and the driver actually formed an employment relationship. Drivers within the network about car platform for registration, the agreements to become a platform to register a driver, and then distributed through the platform of the order to ferry passengers, are platforms such as price, order schedule control, the driver can only complete the services as required, and platform through received the content such as regulatory drivers, rate for driver's access and termination with unilateral decision. The two parties form an employment relationship. In cases 1 and 2, the relationship between passenger and platform is determined to form a transport contract relationship. Passengers send car offers to the platform, the platform answers and dispatches vehicles for services, and the two sides reach an agreement and conclude a transport contract. In case 3, the court identified the relationship between the ride-hailing platform and the driver as an intermediary contractual relationship. According to cargo lesbian APP "goods lala user agreement" and "the consignment intermediary service agreement (users in the use of the APP and need to read and agree to before signing the contract of carriage) terms, users and carriage driver aware of and accept the goods before the signing of the contract, lala company only for the freight information intermediary service providers, rather than the actual carrier or operation qualification of the affiliated parties. In fact, the user is not based on the cargo pull platform is the carrier or the driver of the operation qualification of the affiliated unit to sign a transport agreement, the platform only as a mediator.

6.2. Legal status of ride-hailing platforms

In case 1, the court confirmed that the ride-hailing platform has the liability of the carrier. The platform has the qualification of transportation operation right, and conducts qualification examination and unified management for registered drivers. Contract drivers are operated under the platform. The platform signs the contract of carriage with passengers in its own name, so it shall bear the responsibility of the carrier. In case 2, the court confirmed that the platform was liable to the employer. Ride-hailing platforms issue orders to drivers, and drivers have no right to control the content and price of orders. Drivers provide transportation services to passengers, and drivers' salaries are paid by the platform. In fact, the relationship between the platform and drivers has gone beyond the service scope of carriers or intermediaries and formed an employment relationship. In case 3, the court held that the online car-hailing platform was the responsibility of the intermediary. The platform collects and releases matching information and extracts part of the order remuneration as the information service fee. The platform does not have any fault in traffic accidents occurred in the service process and does not

bear tort liability.

6.3. There are different standards for responsibility division of ride-hailing platforms

Case 1 The court decided that the ride-hailing company was liable in the case. The ride-hailing company believes that it is not at fault for the occurrence of the accident, and does not control or control the behavior of the driver, so it does not require to assume responsibility. However, the court confirmed that the platform and the driver shared the benefits and should bear joint liability according to article 16 of the Interim Measures for the Management of Online Booking Taxi Business Services.

In case 2, the court ruled that the driver's driving behavior was supervised and restricted by Didi, and the relationship between the two parties was actually an employment relationship. According to the provisions of Article 9 of the Interpretation of The Supreme People's Court on Several Issues concerning the Application of The Law to The Trial of Personal Injury Compensation Cases, the online ride-hailing company as the employer shall assume the alternative liability for compensation in the event of a traffic accident. Case three China open about car company as a broker role service on both sides, and all should check prior to login APP has read the agreement, the platform only provides the information stated in the agreement, the car, the driver is the contract between the two sides negotiated, platform does not participate in the process of contract signing, or the actual carrier or the affiliated party, does not involve the driver, vehicle control, etc. Only part of the price will be paid. According to paragraph 2, Article 38 of the E-commerce Law, the court held that the ride-hailing platform did not fulfill the obligation of auditing the access of drivers and vehicles, which infringed on the public's right to know and the right to choose, and therefore assumed the supplementary liability for the damage caused by the traffic accident to the plaintiff.

7. Legal analysis of all parties in online car hailing infringement cases

As can be seen from the issues raised in the case above, the key to the settlement of every dispute is the legal status of the ride-hailing platform in the case. If this problem is solved, the majority of the disputes in the case will be solved and greater progress can be made. China's online ride-hailing platforms are mainly divided into passenger transport and freight transport, and passenger transport services are divided into taxi, private car, express and shunwindmills. Next, the paper will analyze the legal status of ride-hailing platforms in the above categories, the legal relationship and risk taking among ride-hailing platforms, drivers and passengers.

7.1. Legal analysis of all parties of online taxi booking

7.1.1. Ride-hailing platforms

Online taxi hailing platform collects users' car use information and releases it to the registered taxi drivers. The drivers pick up and take passengers offline and charge the fare by meter. The labor remuneration collected by the drivers can be settled through the platform or collected offline. Drivers and passengers all according to their willingness to accept or cancel the order, the two sides reach an agreement about car after the conclusion of the contract net platform through the distance a service charge of part of the information service contents of the evaluation to the driver, in China the whole service process about car platform only play a mediating role, the signing of the contract of carriage are privately negotiated by both drivers and passengers, are pure intermediaries identity.

If the ride-hailing platforms comply with the requirements of the Interim Measures and fulfill the qualification verification obligations for the taxi drivers registered on the platforms, they will not be liable for any compensation for injuries suffered by passengers in traffic accidents. If audit obligations are not fulfilled, supplementary responsibilities should be assumed. For example, in case 3, the goods labrador did not enter the platform to verify the qualification of operators and check customs obligations. Although the company provides free intermediary information, the company profits from the fees charged by the drivers who operate through the platform. Moreover, as a specialized and influential information intermediary platform and trading platform, the company will cause a large number of users to trust the vehicles and drivers who register their platform qualifications. Users generally focus on the condition of the vehicle, the comprehensive evaluation of the driver, price and other contents, rather than the qualifications of the vehicle and the driver, or even ignore. However, the vague reminder of the examination of registered drivers in part of the User Agreement cannot be used as an excuse to exempt ride-hailing companies from the obligation of the examination of drivers and

vehicle qualifications.

7.1.2. Taxi drivers and taxi companies

In the case of online taxi booking, the taxi belongs to a taxi company, and the taxi drivers operate under the transport operation qualification of the taxi company. The salary of the taxi drivers is uniformly issued by the taxi company and supervised and dispatched by the taxi company. The driver and the taxi company are employment relations, and the other party of the contract is the taxi company when the contract is concluded with the customer. When a traffic accident occurs, the taxi company, as the carrier, should assume the liability for compensation. The taxi driver, as an employee of the company, has the obligation to pick up passengers safely. If the taxi driver has a traffic accident on the way of transporting passengers, the taxi company can recover the driver according to the internal regulations.

7.1.3. The passengers

The Civil Code stipulates passenger obligations: passengers should try their best to cooperate with the driver's reasonable transportation arrangements to ensure safety. If the passenger forcibly opens the door or grabs the steering wheel and other dangerous behaviors cause a safety accident, the passenger should bear the responsibility for the accident damage, and the taxi driver and the taxi company are not responsible.

7.2. Legal analysis of all parties involved in online ride-sharing

7.2.1. Ride-hailing platforms

In the case of ride-hailing platforms, the same as in the case of taxis, the platforms do not participate in the signing of contracts, but only serve as intermediaries to promote the signing of contracts. Drivers and passengers privately negotiate the route and starting point of transport services, and both sides can also invite each other to pick up orders. Online ride-hailing platforms charge part of the fees as information service fees. Similar to the taxi mode, online ride-hailing platforms are also intermediaries in the hitch mode and do not bear liability for damages caused by traffic accidents. However, it shall comply with the obligations of good faith and reporting stipulated in the Interim Measures. If the corresponding obligations are not fulfilled, it shall bear supplementary liabilities for the compensation for losses caused by the traffic accident.

7.2.2. Hitchhiker

In the mode of online hitchhiking, the relationship between drivers and passengers is different from that of traditional hitchhiking. The purpose of online hitchhikers is to collect a certain reward for the benefit. In fact, the driver and the passenger have entered into a transport contract. According to Article 820 of the Civil Code, the driver is the passenger carrier, and has the obligation to protect the passengers and undertakes no-fault responsibility. This identification can make drivers more alert, to protect the interests of both drivers and passengers. But goodwill benefits are just out of the kindness of the pick up, without asking for payment. In the traditional hitch mode, drivers are not fully responsible for the compensation and loss of traffic accidents. As for the compensation of passengers, drivers will only undertake the compensation for passengers when they fail to meet the requirements of rational driving or commit intentional infringement.

7.2.3. Hitch riders

Similar to the liability of taxi passengers, according to the Civil Code, it is necessary to cooperate and assist the driver to complete transportation. Passengers should be held liable for any fault (intentional or gross negligence) in the accident, while the driver and the online ride-hailing platform are not liable.

7.3. Legal analysis of all parties of Internet express

7.3.1. Ride-hailing platforms and drivers

The legal relationship between the ride-hailing platform and the driver in the express mode is the de facto labor relationship. Subordination is an important content to judge whether they have labor relations. The traditional labor relationship is that the ride-hailing platform companies issue orders to the drivers of the ride-hailing express. Pricing and other behaviors are not simply required to complete the passenger transport contract, but to supervise the drivers through a series of means. Labor law is met

commonly in practice according to unit of choose and employ persons to laborer the control of working time, working content, working place, supervisory level will judge whether this unit of choose and employ persons and laborer have labor subordinate attribute.0

The labor relationship between the ride-hailing platform and the driver is embodied as follows: 1. The driver complies with the rules and regulations formulated by the ride-hailing company.2. Passengers pay through the platform when they arrive at their destination, and the income is not directly transferred to the account of the express driver, but saved by the ride-hailing company and paid to the driver on time every month. In addition, the salary system of express drivers is composed of basic salary, commission and bonus. Both commission and bonus are determined by the number of orders received by drivers and the favorable rating of passengers to drivers, which is reflected in one of the ways that the platform manages drivers. The operation of ride-hailing companies cannot be separated from the services of drivers, and drivers must abide by the rules and regulations of the platform. All these are manifestations of drivers' subordination to ride-hailing companies. Therefore, the relationship between the online express driver and the platform is labor relationship. In a traffic accident, if the platform cannot prove the driver's intentional or gross negligence, the platform shall be liable for the compensation of passengers. If the driver is intentional or grossly negligent, the online ride-hailing company does not have to bear the compensation liability for the driver's own loss. Moreover, for the compensation of passengers, the online ride-hailing company can recover the driver according to regulations after the compensation, and the driver shall also bear the responsibility.

7.3.2. Make an online appointment with an express passenger

Passenger obligations are stipulated in the Civil Code: Passengers should try their best to cooperate with the driver's reasonable transportation arrangements to ensure safety. If a safety accident is caused by a passenger's dangerous behavior such as forcing the door open or grabbing the steering wheel, the passenger should bear the responsibility for the accident damage, and the online ride-hailing driver and the online ride-hailing company are not liable.

7.4. Legal analysis of all parties of online private hire car

7.4.1. Ride-hailing platforms and drivers

The legal status of the ride-hailing platform is that of the carrier, which shall bear the corresponding responsibilities while making rules and enjoying the benefits brought by its dominant position.0 Private car drivers receive more rigorous training, higher service requirements, more complete supporting facilities, and there is a certain assessment period before they can officially join the job. After they join the job, they not only rely on customers' praise to assess the driver, but also install intelligent traffic recorder on the car to supervise the driver's behavior. For working hours, the company has minimum hours, and its identity has been in the car mode is not a simple match, but must accept the company assigned to complete the task. Unlike hitch rides and taxis, once out of the control of the platform, the operation of private taxis is similar to that of unlicensed taxis, which can be classified as illegal operations. According to the interpretation of Article 9, paragraph 2 of the Supreme Centaur Court on Some Issues concerning the Use of law in the Trial of Cases of compensation for personal Injury, the objective behavior of the staff member is consistent with the task assigned by the employer, which can be identified as the scope of the performance of duties. Therefore, the driver's behavior of picking up and dropping off passengers is to fulfill the transportation contract with customers on behalf of the ride-hailing company, which is an act of performing duties. It can be seen that the relationship between the platform and the driver in the private car mode conforms to the labor dispatch relationship stipulated in the 34th tort Liability Law. If the employee of the employer causes damage to others while performing the work task, the employer shall bear the tort liability. Therefore, the online ride-hailing company, as the employer, should bear the liability for damages caused by the infringement of passengers or third parties in the process of picking up and picking up passengers. If the driver is guilty of intentional or gross negligence, the ride-hailing company can seek compensation from the driver according to internal regulations.

7.4.2. Ride-hailing passengers

Passenger obligations are stipulated in the Civil Code: Passengers should try their best to cooperate with the driver's reasonable transportation arrangements to ensure safety. If a safety accident is caused by a passenger's dangerous behavior such as forcing the door open or grabbing the steering wheel, the passenger should bear the responsibility for the accident damage, and the online ride-hailing driver and the online ride-hailing company are not liable.

7.5. Legal analysis of all parties involved in online freight forwarding services

7.5.1. Ride-hailing platforms

In freight services, ride-hailing platforms have the legal status of intermediaries, providing intermediary services for drivers and passengers. For example, in case 3, the platform collects the vehicle information of the platform users and releases it to the registered drivers of the platform. The drivers and passengers privately agree on the freight content, freight itinerary and other service contents. After reaching an agreement and completing the transportation service, the platform collects part of the remuneration as the information service fee. The agreement that the platform must read before drivers and passengers use the APP already states that the platform provides information intermediary service and is not the subject of any party to the road transport contract. So in the occurrence of traffic infringement accidents should not assume responsibility. Three reference case, if the net about car company by the transgression of integrity intermediary and reporting obligations and did not fulfill the duty security and qualification credentials and indirectly lead to traffic accidents, net about car company will supplement liability for payment obligation, is all supplementary liability or part of the supplement responsibility, according to the actual situation by the court.

7.5.2. Platform registered drivers

In the freight service mode of online ride-hailing, the legal relationship between the driver and the passenger should be the contract of transportation. The driver receives the order from the platform, and finally reaches an agreement with the user on the object of transportation, schedule and freight, and is the actual carrier. According to article 809 and Article 830 of the Civil Code, the carrier should not only fulfill the obligation of transportation according to the contract, but also assume the obligation of keeping the goods and reminding the consignee to timely receive the goods. At the same time, if there is a driver, the safety of the driver should be guaranteed. According to Article 820 of the Civil Code, the driver has the duty of safety protection for passengers and undertakes no-fault responsibility.

7.5.3. With the car

Passenger obligations are stipulated in the Civil Code: Passengers should try their best to cooperate with the driver's reasonable transportation arrangements to ensure safety. If a safety accident is caused by a passenger's dangerous behavior such as forcing the door open or grabbing the steering wheel, the passenger should bear the responsibility for the accident damage, and the online ride-hailing driver and the online ride-hailing company are not liable.

8. Suggestions on clarifying the liability for infringement of online car hailing and reducing the occurrence of infringement incidents

8.1. Improving relevant laws, regulations and judicial interpretations

In case 1 and Case 2, both express cars operated by Didi are liable for tort compensation due to traffic accidents. In case 1, according to article 16 of the Interim Measures, the court ruled that the online car-hailing company, as the carrier, should bear joint and several liability for the loss of the third party Chen who was infringed. In the second case, the court sentenced Didi Chuxing as an employer to assume alternative compensation liability according to The provisions of Article 9 of The Supreme People's Court's Interpretation of Several Issues concerning the Application of Law in The Trial of Personal Injury Compensation Cases. In case 1 and case 2, the online car-hailing platforms were judged to bear different responsibilities and comply with completely different laws and regulations. It can be seen that there are differences in the outcomes of similar cases and different courts. At present, our country to legalize network about car and strongly support the development of a regulatory network law about car, however, only one of the network to make an appointment the taxi business service management interim measures ", and "interim measures" is not a full explanation to the relevant laws, more is according to the rules to regulate the various places, As a result, there is no unified management system and responsibility division rules across the country.

Case 3 involves the definition of legal status and liability of Internet logistics e-commerce operators in freight transactions between shippers (users) and actual carriers (platform registered drivers). In recent years, with the continuous development of the "Internet +" project, the logistics industry relies on the Internet big data, greatly developed, as middlemen, matchmakers freight network car booking platform has also been emerging. As the "Internet + logistics" industry is a rookie emerging in recent

years, the relevant legal norms are not perfect, the legal relationship between the parties is not clear, and there are many differences in practice.

Therefore, strengthening legislation, improving laws and regulations and relevant management regulations is the top priority in regulating the online car hailing environment.

In January 2019, the implementation of the e-commerce law responsibility for electric business platform for the more clearly defined, the method is set forth in paragraph 2, article 38 of the life and health of relationship between consumer goods or services, electric business platform operators within the platform operators did not fulfill the duty to review the qualifications of qualifications, or did not fulfill the duty security protection for consumers, consumers damage, Bear corresponding responsibilities according to law. The provisions of "corresponding liability" in the above articles are vague, and the judicial practice is easy to produce differences in application. The draft legislation of E-commerce Law has gone through the fourth instance, and the above-mentioned provisions have been changed from "joint and several liability" to "supplementary liability" and then to "corresponding liability", indicating that there are disputes and no consensus on the liability for damages of e-commerce platforms in the legislation, and the final decision is to be decided by judicial practice according to specific cases. In this case, local courts at all levels and the Supreme People's Court need to make efforts to be flexible and reasonable in accordance with the actual situation of cases on the basis of existing laws, and strive to select more typical cases to provide case reference for other courts at all levels. The Supreme People's Court should pay more attention to the practice of online car hailing, clearly define the legal relationship between the parties in controversial or major cases, and make reasonable judgments. At the same time, judicial interpretations such as The Supreme People's Court's Interpretation on Several Issues concerning the Application of The Law to the Trial of Personal Injury Compensation Cases were issued to provide more and more detailed judgment basis for lower courts in practice.

8.2. Strengthening platform audit and department supervision

At present, in practice, there are still a lot of traffic accidents caused by unfavorable supervision and examination of online ride-hailing platforms, and they bear joint and several liability or vicariously liability for the infringement of passengers or third parties. The fundamental reason is that the online ride-hailing platforms neglect the examination and admission of drivers and vehicles. At present, when registering the qualifications of online car hailing, only the "three certificates" and the agreement of the platform are required to complete the registration. The review of the vehicle condition is not the key content, and there is no regular check, which leads to substandard vehicles and uneven quality levels of drivers, and raises hidden dangers for safety problems. Ride-hailing platforms should actively implement entity responsibilities, strengthen the audit of vehicles and drivers registered on the platforms, and promote the compliance process of ride-hailing.

All departments should jointly study and formulate a joint punishment and withdrawal mechanism for online ride-hailing. Formulate the policy for controlling the total size of online car-hailing vehicles, improve the working mechanism of enterprises engaged in online car-hailing, and promote the healthy and integrated development of the online car-hailing industry. We will strengthen pricing supervision and improve pricing control schemes to keep prices within a reasonable range. Conduct of disturbing market order shall be jointly punished for breach of trust. We will formulate standards for the quality of ride-hailing services and establish a mechanism for handling passenger complaints.

8.3. Establish and improve the supervision mechanism for the whole people

In reality, many disputes occurred in the process of ride-hailing tend to be solved by themselves or left unresolved. Confucianism thought in Chinese traditional culture advocates the concept have root in the hearts of the people in China, and caused many regulation by platform, not because of weak regulation and even cause disputes so neglected, successful process must be a constant process of trial and error, because the fault was ignored, so can not fill many loopholes in the regulatory system. The public plays an irreplaceable role in regulatory work. Relevant governments can intensify publicity efforts, enhance the enthusiasm of the public to participate in regulatory work, establish and improve service complaint channels, and provide timely feedback. Let the people shine in the supervision of the ride-hailing industry.

Improving the public's awareness of safeguarding rights is the basis of promoting the efficiency of market allocation of resources. Is the government pluralistic governance of all walks of life

guarantee. Only when passengers' awareness of rights protection is improved, can market information be reflected to the maximum extent. In this way, the government can effectively promote the allocation of resources, remedy the defects of market operation and promote the healthy development of the market. Ensure that the supervision of online car hailing is conducted in an all-round and multi-angle manner.

9. Conclusions

As a new business economy, Internet logistics meets the needs of social development, such as resource sharing, building an efficient, convenient and technological logistics and freight platform, expanding consumer market and increasing employment, and should be affirmed and supported. When determining the legal liability of e-commerce platform operators, comprehensive consideration should be given to the protection of the rights and interests of relevant subjects. Only by setting the legal liability of e-commerce platform operators in a reasonable and appropriate range can e-commerce platform operators be effectively promoted to develop healthily on the legal and compliance track. Setting too light responsibility may lead to chaos on e-commerce platforms, and the rights and interests of consumers and other third parties will be difficult to be protected. However, imposing excessive responsibilities will increase the operating costs of e-commerce platforms, inhibit investment and business enthusiasm, and is not conducive to the innovation and promotion of new Internet technologies and the promotion and development of new business forms. E-commerce platforms will also transfer excessive costs to network users, indirectly affecting the rights and interests of consumers. For the governance of online car hailing, there is still a lot of room for efforts. The logical analysis and argumentations of the article are not sufficient, and the suggestions provided are also somewhat inadequate. It is hoped to provide help for the governance of the ride-hailing environment.

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