

The Determination of Legal Liability in the Infringement of Online Ride-Hailing Service

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Abstract. In recent years, with the gradual rise of "Internet +", the sharing economy based on the Internet is flourishing and the online ride-hailing service is a typical and representative product under this background. Online ride-hailing services are apps that connect passengers and local drivers using their personal vehicles. There are numerous companies in China performing online ride-hailing platforms, and the main examples are Didi, Caocao, T3, Shouyue and Meituan. A mature industry though it is, there are still some controversies about the responsibility of traffic accidents involving hailed cars. As an intermediary providing ride-hailing service, whether and how the ride-hailing platform should be held responsible in traffic accidents involving the hailed cars is of great concern. In this paper, the authors divide the various forms of online ride-hailing services into different cases based on the relationship between drivers, passengers and platforms. Based on this classification, the authors discuss the legal responsibility in the tort of online ride-hailing services.

Keywords: online dating, infringement, determination of primary liability.

1. Introduction

Online ride-hailing service (aka. online taxi service) is a useful attempt at "Internet + travel", which not only solves the problem of people's difficulty in taking a taxi, but also effectively relieves the pressure of social employment. As a prominent representative of the sharing economy, the "green" concept of ride-hailing has brought great benefits to the country in terms of reducing carbon emissions and revitalizing idle resources in society. However, the existence and contradictions of this new form of transportation have also brought about many legal problems of civil tort [1-4].

At present, there are omissions in the law in dealing with the determination of civil liability subjects of traffic accidents of online vehicles, and the lack of provisions in the principle of distribution, which leads to contradicted verdicts in judicial practice [5,6]. The "dedicated service" model and the "express service" model are the main modes of operation of ride-hailing, based on the criteria of "operational dominance and operational interests". Based on the criteria of "operation domination and operation benefit", the ride-hailing platform company has become a real transportation service provider (i.e., a motor vehicle insurer) [5,7]. The online ride-hailing platform company has sufficient risk control capability in the management of online ride-hailing services, including reviewing drivers' operation qualifications, training and improving drivers' operation capability, and quickly finding and dealing with abnormal situations [8].

In this case, it is valuable to discuss how the company can effectively play its due role to achieve regulation, maintenance and other purposes. Such a discussion should be based on the original foundation, combined with the characteristics of the e-commerce industry and through a profound analysis of the whole process of ride-hailing. On one hand, a reasonable solution to the current stage of the tort liability of the ride-hailing can give full play to the "ride-hailing" social value, economic value and environmental value. On the other hand, it also contributes to the modernization of the national governance system and governance capacity, promotes social and economic development, improves the people's sense of well-being, and effectively protects people's lives and property security.

2. The Legal Responsibilities of Ride-hailing Platforms

Broadly speaking, ride-hailing service refers to the operating vehicle with a legal operating license that is jointly certified by the taxi platform and the government for transporting passengers and completing order booking and payment mainly through mobile devices. Online ride-hailing service mainly includes express service, dedicated service, hitchhiking service and taxi services [5, 9, 10,11].

The current legislation in China is still not clear enough, and so far, the country has not issued any law about online ride-hailing. Only the Interim Measures for the Administration of Networked Rental Car Operation and Service jointly promulgated by multiple departments of the State Council, as a State Council departmental regulation, provides for the situation related to online vehicles [9]. It stipulates, among other things, what conditions are required to become a platform and driver of a ride-hailing service, what form of labor contract or agreement the two parties need to analyze according to the actual situation, and the relevant penalties for violating the Measures. The Measures also mention that the platform needs to sign a contract or agreement with reference to the driver's working hours, work intensity and a series of other relevant information, and the platform also needs to provide the driver with training on laws, safety, operation and so on so that the driver can better carry out his work. Although the Measures consider that labor contracts or agreements should be signed, platforms generally only sign cooperation agreements in order to maximize their own interests. This leads to difficulties in identifying the relationship between the drivers - platform - passengers [9,11]. It also stipulates that three certificates are required to engage in the operation of an online taxi: network reservation cab business license, network reservation cab transportation certificate and network reservation cab driver's certificate [9,10]. As long as the car and driver meet the relevant provisions in the measures, they can apply for the transportation certificate and driver's certificate, and the introduction of the provisional measures allows drivers to get rid of the dependency model and break the virtual form of the agreement, so as to obtain the legal qualification to operate. This provides a legal and clear way for drivers to enter the platform, and can reduce the legal gray area where the platform and drivers wander in the form of dependency.

Article 18 of the Provisional Measures stipulates that the platform company shall ensure that the drivers who provide services have legal qualifications and, in accordance with relevant laws and regulations, sign various forms of labor contracts or agreements with drivers according to the characteristics of working hours and service frequency, so as to clarify the rights and obligations of both parties. According to the law, the legislature has some reservations when making legislation [1,3,4]. But it does not generalize the relationship between the platform and the driver as a labor relationship or labor service relationship, and the provision of signing various forms of labor contracts or agreements leaves some room for local legislation and exploration of the relationship between the driver and the platform under different models. Accordingly, the authors can analyze according to different modes of ride-hailing service operation.

2.1. Dedicated Service Mode

Under the dedicated service mode, the platform owns the vehicles in the ride-hailing services and the drivers are mere employers [10,11]. In this case, the platform should bear the tort liability caused by traffic accidents. Explicitly, the ride-hailing platforms and the car drivers form a relationship of employment. So a specific car traffic accident caused damage to people, actually belongs to the field of tort liability for the adjustment of the liability of the user. The liability of the user, or the driver in our case, belongs to the liability of substitution [2,4]. And after determining the tort liability of the employer, it should also be clear that this kind of liability belongs to the no-fault liability. That is, the platform should bear the tort liability without any fault. However, after the ride-hailing platform assumes external responsibility, it has the right to pursue responsibility internally in accordance with the contract signed by both parties.

2.2. Express Service Mode

Under the express service model, the drivers and platforms should both take responsibility. At present, the relationship between car drivers and the express mode ride-hailing platform is mostly dependent on cooperation [10,11]. As now the most frequently used Didi in the "special express car platform service agreement" stressed that the Didi and all drivers engaged in ride-hailing services are only under a dependent cooperation relationship but not any labor relations. This legal document signed by the drivers is only an agreement to register as a Didi driver but not a contract of employment. With the consent of this agreement, the Didi drivers acknowledge the special dependency relationship with the Didi platform. Under the agreement, the drivers have the obligation to deliver the passengers to the designated place and ensure safety. If the driver violates these obligations, he will be liable for damages if the passengers suffer damages. Through the Consumer Rights and Interests Protection Law, it can be determined that the ride-hailing platform is the operator and dominates the service behavior. Passengers are consumers, whose rights and interests are infringed, and passengers can request for damages based on the Consumer Rights Protection Law [3]. In real life, most people have experience consuming an express ride-hailing service. So it will be known that the quality of the drivers and cars varies much. The high-quality ones make passengers feel comfortable while the low-quality ones make passengers palpitate. State administrative organs should regulate the ride-hailing market. In a traffic accident involving an express car-hailing service, insurance is not enough to compensate for the damage caused. So, the passengers usually ask for compensation from the ride-hailing platform company first, in which case the platform company will later fill the inefficiency from the responsible parties.

2.3. Hitchhiking Service Mode

Under the hitchhiking service mode, tort liability of traffic accidents should be held responsible by the driver. Different from the other three modes of ride-hailing, the hitchhiking driver and hitchhiking passengers share the cost of travel [9]. Under such a legal relationship, it can be found that the private establishment of a passenger transport contract between the hitchhiker driver and passengers. So when a traffic accident tort liability is involved, the hitchhiker driver should play the main compensation responsibility [9]. As for the car riding platform, the passengers' hailing information is matched with the driver's information, and then the platform is pushed. The hitchhiker driver uses the online platform to receive. The driver receives the rider's hailing information and picks up the passenger one after another to the destination. People can find that the online hitchhiking platform is an intermediary status. According to Article 962 of the Civil Code, intermediaries in their provision of intermediary services should do their duty to truthfully inform; otherwise, they should also be liable for compensation for the damage caused [2,3].

2.4. Cab Service Mode

The cab driver itself is a practitioner specializing in passenger service, and has no affiliation or labor relationship with the online taxi platform, but has a labor contract relationship with the cab company [6]. If the cab driver is an employed staff, the provisions of Article 9 and Article 11 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Cases of Compensation for Personal Damage can be invoked in this situation, i.e., the cab company is liable for the tort if a traffic accident causes personal damage to others during the period when the driver is employed [2,3]. When the relationship between the cab company and the driver is contracted, after a traffic accident, the cab company cannot claim exemption from liability because the cab company contracts out the cab and makes a certain amount of revenue as a draw on the driver's income. The cab company and the driver are, to some extent, "benefit-sharers" and the cab company and the driver should be jointly and severally liable.

3. Problems in the Determination of Legal Liability of Ride-Hailing Services

The following problems exist: Firstly, the legal relationship between the subjects of the ride-hailing service is not clear [5,6,7,8]. Because of the varieties of ride-hailing service, which involves the legal relationship between multiple subjects such as ride-hailing service platform, drivers and passengers, the relationship between each subject is different. So the existing laws and regulations can not clearly delineate this. Secondly, the legal responsibility between the subjects of the ride-hailing service is not clear. In the event of traffic accidents or tort cases, it is difficult for the injured party or the infringed party to pursue responsibility. Thirdly, the rights protection of the legal subjects of ride-hailing services is weak. At present, China's existing ride-hailing service platform registered ride-hailing service driver is generally through the applicant himself online self-registration, and the ride-hailing service platform only this simple written review, resulting in the ride-hailing service access threshold is not high. This contributes to a certain extent to the possibility of social transgressions [9,11]. At the same time, the online taxi platform also has a certain degree of infringement by leaking users' personal information. Here the individuals, that is, including passengers' also include the online taxi platform drivers [10,11]. Their personal information is operated through this Internet platform of the online taxi, if the online taxi platform does not keep the personal information properly. At the same time, there is a risk of leakage of personal privacy information.

4. Recommendation

In the process of providing ride-hailing services, the tort disputes caused by the driver's behavior are increasing day by day. The court usually determines the platform's responsibility based on the legal relationship between the platform and the driver. It inevitably leads to confusion in the application of the law and inconsistent court decisions.

Regarding the refinement of the safety and security obligations of the ride-hailing platform, the authors give the following suggestions.

Firstly, the abuse of the dominant market position by ride-hailing platforms is prohibited and the regulatory system for the platform is improved. The ride-hailing service platform to obtain the dominant market position behavior is not illegal in itself, but must be clearly opposed to the ride-hailing service platform's abuse of field position behavior illegal. The government as well as relevant authorities should establish a sound monitoring mechanism to regulate and prevent the formation and occurrence of abusive market dominance, improve the evaluation and complaint system for passengers, establish channels for reflecting passengers' opinions, and establish an inspection, supervision and penalty system to improve users' riding experience.

Secondly, the company should encourage eligible private cars to enter the field of services. This is to integrate resources for idle vehicles in society on one hand, and to reduce the occurrence of black cars carrying passengers on the other hand. Therefore, relevant policymakers should study the necessary conditions for private cars to operate legally as well as strengthen the effective regulation of private cars. In order to protect the legitimate rights and interests of consumers, other interested parties and private car owners, it is necessary to clarify the condition of the car, the condition of the driver and the insurance policy.

Thirdly, clarifying the responsibility of the platform is the key to liability determination. The ride-hailing platform uses its own advantageous conditions to integrate information and resources, but is often unwilling to take responsibility as an intermediary. In this regard, it is necessary to clarify the important responsibility of the platform. The ride-hailing service platform must become the primary responsibility of the ride-hailing service accident compensation. The ride-hailing service platform company will certainly strengthen the safety supervision conditions of the vehicle and improve the entry conditions of the driver, such as the presence of criminal records, and social credit. The basic facilities of the vehicle and driver qualifications will become the content of the platform's own initiative to master, and the purpose is to reduce the risk of platform responsibility.

Fourthly, the platforms should enhance their own regulatory capacity. The government, as a state public authority, has a certain lag in remedying social problems that occur. And at the same time the emergence of this new thing, the ride-hailing service, is often accompanied by uncertainty, and government regulation sometimes lags behind, while the ride-hailing service platform is different. It holds the most advanced information and resources of the whole platform, and has an innate advantageous condition, and should make full use of this advantage. It is also unrealistic for the government to arrange all unknown matters properly. Instead of relying on the government to strengthen laws and regulations to improve, it is better to stipulate the basic principles and framework first. Besides, the platform should be encouraged to give full play to its own advantages, comply with the country's industrial development policies, disclose necessary information in a timely manner, and continuously improve the level of service. The government should focus on its macro-regulatory functions and prior prevention of necessary matters, and timely disclosure of government information.

Some judges differentiate the cases according to the type of ride-hailing service mode when determining the liability accident. Some of them simply identify the platform company as the carrier status based on the provisions of Article 16 of the Interim Measures, thus making it responsible without considering other relationships. Some of them directly identify the driver as at fault and judge the responsibility by not obtaining the relevant administrative license. There are also some differences in the relationship between the platform and the driver, with some considering that there is an interlocutory relationship and some considering that it is only a labor relationship. Moreover, some ride-hailing companies even judge their liability directly based on the revenue. These companies fail to protect passenger safety and operational safety, resulting in also the failure to ensure the realization of passenger interests. Therefore, it is necessary to distinguish the different legal relationships under each service mode of the online taxi, to clarify the responsible parties, and to protect the rights of all parties.

5. Conclusion

As a new travel mode product in the Internet era, online taxi is a new era creation that uses network technology to reform and innovate the traditional industry. Its emergence realizes the docking of information between drivers and passengers, which not only satisfies passengers' demand for rides, but also reduces the empty cost of drivers. Passengers can choose their travel time and drivers can choose whether to take orders according to their wishes, which has improved the degree of autonomy of the industry and reflected the development progress of our society.

Ride-hailing industry is in its development process, but due to the lag of laws, there are some legal problems, which can not be ignored. However, the authors can still use the basic legal principles of jurisprudence rules to analyse such emerging modes of operation. From the platform and the driver, passengers and the platform, and the driver and the passenger, these three relationships can be combined with the traditional tort law theory. Under this analysis, the ride-hailing emerging model becomes "standardized". The relevant parties should improve the relevant mechanisms, strengthen the guidance and regulation, focus on solving the current problems faced, and promote the long-term healthy development of the transaction system of all kinds of transaction modes of ride-hailing.

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