

# The Rights to Claim for Industrial Injury Compensation and Tort Compensation are Applicable to the Law: Taking *Fu and Li v. a Passenger Transport Company* as an Example

Li Guo\*

Sichuan Minzu College, Kangding 626001, Sichuan Province, China

\*Corresponding author: Li Guo, HLZHLZ1234567@126.com

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**Abstract:** In the case of third-party tort, due to the lack of clear and detailed provisions on the treatment of employee's industrial injury insurance payment and tort damage compensation, the judicial theory and practice have brought many disputes. Through combing the current relevant laws and regulations, it can be found that the application of the two systems will lead to the overlapping of industrial injury compensation. This paper analyzes the problems arising from the concurrence of industrial injury compensation and tort compensation using the case of *Fu and Li v. a passenger transport company*, and puts forward some ideas and suggestions on how to improve the settlement measures of such cases.

**Keywords:** Industrial injury compensation and tort compensation; Double indemnity

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## 1. Introduction

With the development of the social economy, workers' work-related accidents are an unavoidable problem. Among them, the compensation for industrial accidents caused by the third-party tort involves the competition and cooperation of the industrial injury compensation system, and the application problems brought by the ambiguity of legal provisions have caused many disputes<sup>[1]</sup>. In this paper, the typical cases involving third-party infringement and conjoint work injury insurance liability handled by labor dispute arbitration committees and people's courts in judicial practice are taken as the starting point, combined with relevant basic theories, the case evaluation and analysis of the dispute focus of different handling methods advocated by both defendants, and some thoughts and suggestions on the application of law are put forward.

## 2. Brief introduction and focus of dispute

### 2.1. Brief introduction

Plaintiff: Fu (the daughter of Fu who died in a car accident, a minor), Li (the wife of Fu)

Defendant: A passenger transport company <sup>[1]</sup>

At 17:38 on July 17, 2020, Fu collided with the Sichuan R heavy warehouse grid truck driven by the driver Zhang on the way to transport passengers and the daughter of Fu died after being rescued in hospital. On December 21, 2020, the Human Resources and Social Security Bureau of a county made a work-related injury determination: “Agreed to identify the injury suffered by Fu on July 17, 2020 as a work-related injury.” On February 20, 2021, Fu and Li filed a labor arbitration with a county labor dispute arbitration committee, requesting the passenger transport company to compensate a one-time worker’s death subsidy of 727,920 yuan, a funeral subsidy of 37,207.5 yuan, and a pension for supporting relatives of 560,345.62 yuan, a total of 1325,473.12 yuan <sup>[2]</sup>.

Labor arbitration results: On April 12, 2021, a county labor dispute arbitration committee ruled that the passenger transport company makes up 137,977.5 yuan for Fu and Li; other arbitration claims of Fu and Li shall be rejected according to law <sup>[3]</sup>.

Fu and Li refused to accept the result of the arbitration award and filed a lawsuit with the People’s Court.

Verdict of the first instance: The court of first instance, in accordance with Article 12 of the Interpretation of the Supreme People’s Court on Several Issues relating to the Application of Law in the Trial of Personal Injury Compensation Cases, Article 39 and Article 62 of the Regulations on Industrial Injury Insurance, and Article 8 of the Provisions of the Supreme People’s Court on Several Issues relating to the Trial of Administrative Cases on Industrial Injury Insurance, The provisions of Article 2, Article 3, and Article 4 of the Provisions on the Scope of Supporting Relatives of Employees who die due to Work: A passenger industry limited liability company within 30 days of the effective date of this judgment to pay the plaintiff Fu and Li a one-time worker’s death subsidy of 727,920 yuan, funeral subsidy of 37,207.5 yuan, pay Fu’s dependent relatives pension of 214,140 yuan, a total of 979,267.5 yuan <sup>[4]</sup>.

The passenger transport company refused to accept the judgment of the first instance and filed an appeal.

Verdict of the second instance: The first instance judgment clearly identified the facts, correctly applied the law, rejected the appeal, and upheld the original judgment.

### 2.2. Focus of dispute

The dispute focus of this case is whether industrial injury compensation and tort compensation can be double compensated.

## 3. Case analysis

### 3.1. A case of third-party tort and work-related injury compensation concurrence

Conjoint refers to the occurrence of a single legal fact, which can be applied to two or more norms at the same time. Since there are multiple bases of applicable claims, the claims are multiple at the same time. In addition, the legal consequences caused by different norms vary, and there are many kinds of legal effects to realize the right of a claim based on different claims. There are also many types of applicable legal responsibilities. It can be seen that competition and cooperation refer to the phenomenon of conflict of legal norms, conflict of claims, and conflict of legal responsibilities <sup>[1]</sup>.

In this case, the death resulted from the tort of a third party in the process of engaging in duties (transporting

passengers), which is in line with the provisions of Article 14 (1) of the Regulations on Industrial Injury Insurance, and the injury suffered is an industrial injury<sup>[5]</sup>. As the death of Fu's daughter is caused by the third person Zhang, it meets the requirements of the tort act, that is, when the worker is injured during the performance of the task, on the one hand, he can request the infringer for damage compensation according to the tort law; on the other hand, he can request the insurance payment according to the Regulations on Industrial Injury Insurance, resulting in the third-party tort and industrial injury insurance compensation.

### **3.2. Double compensation in a limited scope**

According to the provisions of Article 8 of the Supreme People's Court on Several Issues in the trial of Administrative Cases of Industrial injury Insurance: "If an employee suffers a work injury due to a third party, and the social insurance agency refuses to pay the work injury insurance benefits on the grounds that the employee or his close relatives have filed a civil lawsuit against the third party, the people's court will not support it, except for the medical expenses already paid by the third party." Thus, in addition to direct expenses such as medical expenses, workers can obtain double compensation in a limited scope.

## **4. Suggestions**

### **4.1. Realistic dilemma**

Many places in China have formulated relevant local documents according to local conditions, most of which adopt the model of supplementary compensation in order to take into account fairness, such as Sichuan, Yunnan, Xiamen, Tianjin, and other places; while a small number of areas adopt the model of double compensation in order to better protect the interests of workers as vulnerable groups<sup>[6]</sup>. It can be seen that in many places, due to various reasons, there is no uniform standard in the handling of such cases, and the applicable programs are also different. Therefore, there is no "legal" basis in the strict sense of how to deal with disputes in such cases<sup>[7]</sup>.

### **4.2. Model conception**

#### **4.2.1. Legal analysis**

From the perspective of legal attributes, industrial injury insurance compensation belongs to the category of social law adjustment, with mandatory, social, mutual, compensation, welfare, and other characteristics; its legislative purpose is to protect workers to obtain medical treatment and economic compensation, disperse the employer's industrial injury risk, maintain social equity, and promote social harmonious development<sup>[8]</sup>; in nature, it belongs to the category of social insurance. The general tort damage compensation is regulated by civil law, whose legislative purpose is to protect the legitimate rights and interests of civil subjects, clarify the tort liability, and prevent and sanction the tort, which belongs to the private law in nature<sup>[2]</sup>. The purpose of industrial injury insurance is to obtain timely and effective relief in case of industrial injury. Industrial injury compensation itself is based on the principle of no-fault liability. As long as workers meet the conditions of industrial injury treatment, they should get the corresponding industrial injury compensation<sup>[9]</sup>. Tort damage compensation is based on the fault liability principle, the purpose is to compensate the victim and punish the infringer. In the current legislative environment, if only the work injury compensation is supported, the third party's tort will not be punished by law; if only the tort compensation is supported, the legislative purpose of industrial injury insurance will be futile. From the way of calculating the amount of compensation, industrial injury compensation does not include non-property compensation such as nutrition costs and mental damage costs; industrial injury compensation standards focus on the provisions of the coordination area rather than practical rationality<sup>[10]</sup>.

The conjoint of industrial injury insurance compensation and third-party tort compensation is the different recognition of the same tort by different legal departments. As the same legal fact can fall into the adjustment scope of different legal departments, workers can claim two different claims <sup>[11]</sup>.

#### 4.2.2. Judicial application

In accordance with Article 8 of the Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Cases Concerning Work-Related Injury Insurance (Interpretation [2014] No. 9), it is clearly stipulated that workers are harmed by a third party <sup>[12]</sup>. The social insurance administrative department shall not refuse to pay the corresponding industrial injury insurance benefits to the compensation right holder because he has the right to claim for personal injury compensation or has filed a civil lawsuit against a third party or obtained civil compensation. Article 12 of the "Interpretation of Several Issues on the Application of Law in the Trial of Personal Injury Compensation Cases" (Legal Interpretation [2003] No. 20) provides that if a third party other than the employer causes damage to the worker, the right holder of compensation may claim compensation from the third party <sup>[13]</sup>. It can be seen that laws and regulations do not clearly stipulate that workers can only choose between industrial injury compensation and tort compensation if they are damaged by a third party and meet the requirements of industrial injury, nor do they expressly prohibit double compensation. In addition, the judgment opinion of the Supreme People's Court was adopted <sup>[3]</sup>. It can be seen that the mainstream trial practice in our country still supports double compensation.

The author believes that different judgment mechanisms should apply a unified legal basis, so as to better maintain and balance the interests of the parties concerned. Moreover, the participation mechanism of industrial injury insurance should be actively improved, and employers should be urged to participate in the insurance <sup>[14]</sup>, which is more conducive to the sustainable development of the rights and interests of workers and employers.

### Disclosure statement

The author declares no conflict of interest.

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