

Establishment of Strict Liability for Motor Vehicle under Ethiopian Law: Issues of Concern

Fikerabinet Fekadu*

Abstract

Due to frequent happening of accidents and their severe impact on the victims, court disputes pertaining to liabilities for motor vehicles are not only considerable in amount but also ever increasing in number. Unfortunately, some provisions governing strict liability for motor vehicles are either silent or vague or too general. These factors led to disparities in the application of laws governing strict liability for motor vehicles, particularly on issues related to the establishment of strict liability. This paper, thus, inter alia, raises the following questions: What is the scope of the law governing strict liability for motor vehicles? How the advent of a law on third party insurance against motor vehicle victim affects the scope of strict liability law? Who can be plaintiff and defendant under strict liability law? To address these issues, qualitative research approach which employs legal analysis, interview, and literature and case reviews is used. The finding concluded that laws governing establishment of strict liability for motor vehicles are neither adequate to regulate current dispute nor be able to anticipate possible future developments. Hence, for uniform and proper application of laws governing establishment of strict liability for motor vehicles, amendment of relevant provisions needs to be made, until then, the Federal Supreme Court Cassation bench shall provide guidance through interpreting vague and general provisions in light of theories of strict liability.

Key Terms: Motor Vehicle, Strict Liability, Owner, Holder, Insurer, Claimant, Defendant

Introduction

Tort could be defined as an “event arising out of an action or omission of another party, which causes injury to the human body, personality, property, or economic interests, in circumstances where the law deems it justified [to require] compensation from the one who acted or fail to act.”¹ Tort law² consists

* LL.B., LL.M; Lecturer in Law, School of Law, Bahir Dar University. The author can be reached at: fekerab@gmail.com.

¹ Marshall S. Shapo, Principles of Tort Law, 2nd ed., Thomson West, (2003), p. 3.

² A law that governs non contractual civil disputes basically through compensating the victim has different nomenclature. Under the common Law legal System it is identified as Tort Law, while in Civil law Legal System it is interchangeably named as Non Contractual and Extra Contractual Liability

of “body of rules determining the circumstances, and conditions under which harm suffered by a victim will be borne by another person...”³ During 19th century, two forms of tort liability laws were developed; fault based and non-fault based liability laws.⁴

Although there are many structural differences, most of the common law countries adopted fault-based liability for motor vehicles,⁵ while most civil law countries alongside fault-based liability adopted strict liability for motor vehicles.⁶ However, the distinction between the two systems is insignificant as those systems that limit themselves to fault-based liability accord a more stringent standard of care, which in practice equates strict liability.⁷

Ethiopia belongs to civil law tradition⁸ that adopts strict liability for motor vehicle alongside fault liability. While fault-based liability is the principle, strict liability is an exception. Thus, as a matter of general rule of legal interpretation, exceptions are construed narrowly in contrast to principles.⁹ This intern poses the question of how narrow the interpretation should be. In addition, the presence of legal gaps, the general and/ or vague stipulation of legal provisions¹⁰

Law. As the Ethiopian Law used the named Extra Contractual Liability Law, so does the author of this article in referring the Ethiopian Law.

³ Walter Van Gerven, et al., *Common Law of European Casebooks Tort Law*, Hart publishing, oxford and Portland, Oregon, (1998), p. 13.

⁴ Helmut Koziol, The Aims of Tort Law: Chinese and European Perspective, *Wien Jan Sramek Verlag*, (2017), P. 193, available at <https://www.worldcat.org/title/aims-of-tort-law-chinese-and-europeanperspectives/oclc/1000314237?referer=di&ht=edition>, last accessed on 22 May 2020. No fault-based liability represents two types of liabilities: strict liability (liability for property and activity one engaged in) and vicarious liability (liability for the action of another person). In both cases, the responsible person is not at fault.

⁵ Pierre Widmer, Comparative Report on Fault as a Basis of Liability and Criterion of Imputation (Attribution), in Pierre Widmer (ed.), *Unification of Tort Law: Fault*, Kluwer Law International, (2005), p.332, available at <http://www.aspenpublishers.com/>, last accessed on 22 May 2020.

⁶ Jean-Sebastien Borghetti, Extra-Strict Liability for Traffic Accidents in France, *Wake Forest Law Review*, Vol.53, No. 2, (2018), p. 266.

⁷ Cees Vas Dam, *European Tort Law*, 2nd ed., Oxford University Press, (2013), p. 413.

⁸ George Krzeczunowicz, Code and Custom in Ethiopia, *Journal of Ethiopian Law*, Vol.2, No.2, Faculty of Law, Haile Sellassie I University, Addis Ababa, p.434. Particularly, substantive codes of Ethiopia are adopted from France and Switzerland, which are civil law countries. However, the procedural part is arguable as it holds some features of the common Law Legal System. For example, through Proclamation No. 454/2005 Ethiopia introduced binding interpretation of law made by the Federal Supreme Court's Cassation Division where it is rendered by a panel of not less than five Judges.

⁹ ንጋዩ ተስፋዬ፣ ከወል ውጭ ኃላፊነትና አላግባብ መበልፀግ ሀገ፣ አርቲስቲክ ማተሚያ ድርጅት፣ አዲስ አበባ፣ 1996 ዓ.ም, pp 117-118

¹⁰ Interview with Mahider Tamiru, Federal First Instance Court Kolfe Branch Civil Bench Judge, (25 January 2020); Interview with Khalid Kebede, Lecturer at Bahir Dar University School of Law, (10 January 2020). Preliminary discussion with legal professionals and practitioners revealed that some strict provision of the Civil Code are either vague, general or silent as to some elements required to constitute a case having strict liability nature. For example, see *Netherland Development Organization v Wubet Adbaru*, Federal Supreme Court Cassation Bench, File No.21296, [April 2009; reported in የሰበር ውሳኔዎች፣ ቅፅ 05፣ 2001 ዓ.ም፣ ገፅ 113-117]. In this case, the definition given for disinterested party under article 2089(1) of the Civil Code is interpreted in different ways by the ANRS Supreme Court

as well as the existence of other laws on similar areas possibly create problems on the establishment of cases having strict liability in nature. For example, in *Kalkidan Abebe v Nile Insurance SC et al.*¹¹ the ANRS Supreme Court rejected compensation claim brought by daughter of the deceased against the insurance company for death of her father due to car accident for which the defendant insurance company gave insurance coverage. The Court stated that the claimant could only bring her claim as per article 2081 against the owners of the car not against the insurance company. This is against article 17(2) of Proc. No. 799/2013 that allows victims to claim compensation directly from the insurer.¹² Furthermore, where various persons are involved in disputes arising out of motor vehicle accidents,¹³ confusion may arise as to who can be legal claimant and defendant and what things need to be considered to constitute a claim under strict liability provisions of extra contractual law.

Therefore, in this article, the writer aims to analyze and assess pertinent laws and assesses the practice of ascertaining elements used to establish a strict liability case on motor vehicles. More specifically, this paper analyses issues related to the scope of application of laws governing strict liability arising from motor vehicles, factors needed to constitute a strict liability case concerning motor vehicles and parties thereto. In addition to an in-depth analysis of pertinent laws and relevant documents, the writer conducted interviews with legal professionals to corroborate the legal analysis and reach a sound conclusion. As the interview aimed to get expertise opinion and explanations on the laws and the practice of the issue, purposive sampling was employed. Moreover, for a better understanding of the research problem and for the purpose of drawing lessons, pertinent laws of other countries having strict liability regimes concerning motor vehicles were reviewed.

This paper is organized into five sections. The first section makes an overview of strict liability law for Motor Vehicles. The Second deals with the scope of

and the Federal Supreme Court Cassation Bench. The former defines disinterested party only as a person who personally control the vehicle for his own benefit while the latter defines it as any person who sustained damage while he was getting any benefit from the thing caused damage.

¹¹ *Kalkidan Abebe v Nile Insurance SC et al.*, Amhara National Regional State Supreme Court, File No. 0151951/2019. [Hereinafter *Kalkidan Abebe v Nile Insurance SC et al.*].

¹² Vehicle Insurance against Third Party Risks Proclamation No. 799/2013, *Negarit Gazetta*, 2013, article 17(2) [hereinafter Proc. No. 799/2013]

¹³ For example, a motor vehicle may cause injury while it was operated by an employed driver at the time when the motor vehicle was under custody of a person other than its owner. Adjudication of cases having such attributes is not a simple task. Different factors such as, the identity of the persons, the type of relationship between or among persons with respect to the vehicle, the manner how the damage was caused and other factors should be considered to identify a person who can be plaintiff and defendant. For example, see the discussion on *Abrar Sabir v W/ro Alemtsehay Wesene & Tibebe Construction PLC*, *infra* note 121.

application of laws governing strict liability for motor vehicles. The third section sets out the impact of third-party motor vehicle victims' insurance law on the application of strict liability law. The fourth one presents who could be claimants and defendants in a case similar to the concern of the paper. The last section states some concluding remarks.

1. Overview of Strict Liability Laws for Motor Vehicles

Thought fault is the principal source of tort liability elsewhere, in some scenarios a person is still held liable irrespective of any fault on his/her part. Accordingly, extra contractual liability provisions are not confined in a single category; rather they are classified in to different sections depending on their bases for establishing extra contractual liability.

In Ethiopia, sources of extra contractual liability are classified in to three. Namely fault-based liability, strict liability (liability irrespective of fault) and vicarious liability (liability for the action of others).¹⁴ The first source of extra contractual liability is fault based extra contractual liability. It is the cardinal source of extra contractual liability while the other two categories are exceptions in the sense that liability arises only in specific grounds stipulated by the law. A person who caused damage to another by his fault is responsible for making it good.¹⁵ If it is not him, who else should bear? This position is based on the concept of moral responsibility.¹⁶ Making a person responsible for his own wrong deed will also have a deterrent effect.¹⁷

The second source of extra contractual liability is strict liability, which is an exception for fault.¹⁸ Deviating from the principle of extra contractual law that basis itself upon fault, in some legally stipulated scenarios, a person is liable to compensate injuries caused by his/her activities or properties irrespective of his/her fault.¹⁹ Motor vehicles are among lists of properties for which owners or holders are strictly liable.²⁰ This poses a question of why a person is liable

¹⁴ Civil Code of the Empire of Ethiopia, 1960, *Negarit Gazeta*, Proclamation No. 165 /1960, 19thYear, No. 2, Article 2027 [hereinafter Civil Code].

¹⁵ Id., article 2028.

¹⁶ Gerven, *supra* note 3, p. 14.

¹⁷ Id., p. 19.

¹⁸ Civil Code, *supra* note 14, article 2124-2136. The third ground of tort liability is vicarious liability, liability for the action of other. Here, the person become responsible not because he commits fault; rather because, he is related to the tortfeasor. Only some legally stipulated bonds create such liability. For example, in Ethiopia parents and custodians are responsible for the act of minors and employers for their employees provided that employees caused the damage while performing their job.

¹⁹ Civil Code, *supra* note 14, article 2071-2085. Under these provisions only animals, buildings, Motor vehicles, machines and products are numerated as sources of strict liability.

²⁰ Id., article 2081 et. Seq.

without committing any fault. Some of rationales for strict liability are discussed in the following paragraphs.²¹

Economic and moral consideration: a person who drives benefit from certain property should also bear the risk of the damage inflicted by that property.²² This rationale is based on a simple theory of fairness; if you benefited from something, you have to also bear the cost where it caused damage. Unlike fault-based liability that ascribes for its ethical consideration²³, strict liability relies on the idea that someone who is permitted to use a particularly dangerous thing for his/her advantage should equally bear the associated risks.²⁴

Loss shifting/spreading: employers and owners have the opportunity to spread the loss through the price of the products or insurance.²⁵ They could do this by adding small prices on their product or by claiming on their liability insurance. In contrast to fault liability, which is attributable to corrective justice, strict liability is attributable to distributive justice.²⁶

Deep pocket theory: the base for this rationale is capacity. It presupposes owners have a better economic capacity to redress the damage, than the injured victim, so they should bear it.²⁷ For example, given the cost of a motor vehicle, owner is presumed to have better economic capacity than an injured pedestrian.

*Difficulty to proof fault:*²⁸ a person who caused damage against another person upon fault may be accused for strict liability. This happened when it is difficult to prove existence of fault on the part of the defendant. For example, it may be

²¹ Those rationales for strict liability discussed under this article are used to establish liability of the owner or other persons identified by tort law to compensate the injury sustained by motor vehicle irrespective of any fault on their part. They may not use to decide who shall bear the cost of compensation among persons in the defendant side. Regarding the later issue, countries adopt different rules using different parameters. For example, the French tort law used actual control as a parameter while the Ethiopian law employed economic gain.

²² Simon Deakin *et al*, *Tort Law*, 6th ed., Oxford, Clarendon Press, (2008), p. 665.

²³ Helmut Koziol, *Basic Questions of Tort Law from Germanic Perspective*, Fiona Salter's Translation, (2012), P. 171, available at https://www.jan-sramek-verlag.at/fileadmin/user_upload/KoziolBasicQuestions_e_PDF_HighResOpen_FINAL.pdf, last accessed on 23 May 2020; Widmer, *supra* note 5, p.331.

²⁴ Koziol, *supra* note 23, pp. 249-50

²⁵ Morbide Nicholas and Roderick Bagshaw, *Tort Law*, 2nd ed., Pearson Longman, (2005), p. 640

²⁶ Widmer, *supra* note 5, p. 334

²⁷ Nicholas and Bagshaw, *supra* note 25, P.638.

²⁸ Civil Code, *supra* note 14, General reading of article 2086(1).

too technical for the layman to prove the nature of the fault;²⁹ in such a case, the victim should be permitted to claim based on strict liability.

The aforementioned rationales may jointly and separately serve as grounds for establishment of strict liabilities for motor vehicles. However, this does not mean that fulfillment of one or more of the above justifications suffice to impose strict liability. Establishment of strict liability against persons potentially responsible to compensate injury caused by motor vehicles is also dependant up on other factors. These factors are addressed in the subsequent sections.

2. The Scope of Strict Liability for Damage Caused by Motor Vehicles under the Ethiopian Extra-Contractual Liability Law

The presence of various types of motor vehicles with differences in purpose, efficiency, medium of operation, and special laws governing them create pressing need to define the phrase “motor vehicle”. Defining the phrase is essential to determine the scope of the law governing strict liability for motor vehicles. The transportation industry is also at the verge of introducing new forms of non- motored but highly efficient and sophisticated vehicles.³⁰ Nonetheless, there is no special laws aim to regulate anticipated extra contractual liabilities arising there from. This situation also urges further contemplation of the meaning and scope of “motor vehicle” under the Ethiopian Extra Contractual Liability Law.

Article 2081(1) of the Civil Code imposes strict liability on the owner for any damage caused by his motor vehicle.³¹ However, in addition to establishing strict liability upon the owners of motor vehicles, the Civil Code does not define the phrase “motor vehicle”. Absence of the legal definition for “motor vehicle” invite arguments on the scope of applying legal provisions governing strict liabilities for damages caused by motor vehicles. For example, one may argue that motor vehicle only refers to road vehicle powered by an engine- literal

²⁹ Edward A. Tomlinson, Tort Liability in France for the Acts of Things: A Study of Judicial Law Making, *Louisiana Law review*, Vol. 48, No. 6, (1988), pp. 137-38 available at <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=5129&context=lalrev>, last accessed on 23 May 2020.

³⁰ Magnetic levitation train, https://en.wikipedia.org/w/index.php?title=Magnetic_levitation_train&oldid=906440119, last accessed on July 23, 2020; Hyper Loop, <https://en.wikipedia.org/w/index.php?title=Hyperloop&oldid=967525604>, last accessed on July 23, 2020; Interview with, Fikeresendek Fekadu, Mechanical Engineer, (10, March 2020). In Europe and China, Mechanical Engineers are already inventing non- motored trains operated by magnetic system. These newly crafted trains are better than the existing rail system interns of operation cost, efficiency, and speed. Similar improvement inventions are also on the process for other types of motor vehicles.

³¹ Civil Code, supra note 14, article 2081(1) decreed “[t]he owner of a machine or motor vehicle shall be liable for any damage caused by the machine or vehicle, notwithstanding that the damage was caused by a person who was not authorized to operate, handle or drive the machine or vehicle.”

meaning of the phrase. This definition is confined to ordinary motor vehicles moving on road.³² Some Ethiopian legal scholars accepted the above narrow interpretation by saying ‘motor vehicle’ stands for what in Amharic commonly known as “mekina”³³ The theoretical base for this interpretation is the general rule of legal interpretation, which dictates narrow interpretation of exceptions.³⁴ Adoption of the ordinary meaning of the phrase, *inter alia*, bars application of strict liability law of the Civil Code on other motored vehicles, such as airplane, vessel, boat, train and others.

On the contrary, the second argument follows wider interpretation and extends the meaning to any conveyance powered by an engine and used for transportation on land, water, or air.³⁵ Hence, a person responsible to compensate damage caused by aircraft, vessel, and train is subject to article 2081 *et seq.*,³⁶ in the absence or gap of special legislation governing thereof. This argument overrides the first one in two perspectives. First, rationales for strict liability that basis on better financial capacity of owners and dangers nature of the vehicles are more strongly applicable for non-ordinary motor vehicles.³⁷ Secondly, there are some gaps in special laws governing extra contractual liability arising out of non-ordinary motor vehicles. Particularly, special laws governing liability for aircraft and vessels.³⁸

A broader interpretation of article 2081 of the Civil Code is essential to extend the protection of strict liability law up to victims of train, aircraft, and vessels in absence of similar remedy in other laws. There are some gaps in special laws governing strict liability arising out of non-ordinary motor vehicles particularly aircraft and vessels.³⁹ For example, the Maritime Code has some provisions having strict liability nature; however, their application is limited to vessels going on the sea with the exclusion of inland waterways.⁴⁰ In aircraft case too,

³² The Concise Oxford English Dictionary, s.v. “motor vehicle” equated with a road vehicle powered by an internal combustion engine. Similarly, Longman Advanced American Dictionary, s.v. “motor vehicle” the dictionary defines it as car and similar road vehicles.

³³ ገጽ 117, supra note 9, p. 115

³⁴ *Id.*, pp. 117-118

³⁵ Black’s Law Dictionary, 8th ed., s.v. “vehicle” means “any conveyance used in transporting passengers and things by land, water or air.”

³⁶ Krzeczunowicz, G., *The Ethiopian law of Compensation for Damage*, Commercial Printing Enterprise, Addis Ababa, (1977), pp. 170- 238

³⁷ For more on this see the discussion under section one of this article from page 5-6.

³⁸ Hailegabriel F., *The Scope of Article 2081 of the Civil Code: A Comment on Negist Mekonnen et al. v. Ethiopian Airlines, Inc.*, *Bahir Dar University Journal of Law*, Vol.2, No. 1, (2011) p.156.

³⁹ *Id.*

⁴⁰ Maritime Code of the Empire of Ethiopia, 1960, *Negarit Gazeta*, Proclamation No. 164 /1960, 19th Year, No. 1. From general reading of Maritime Code it is possible to conclude that similar to most of the shipping nations, the scope of application of our Maritime Code is limited to shipping activities on seawaters only. The general framework and the preface of the 1960 Maritime Code infer such

until the adoption of the Civil Aviation Proclamation in 2008,⁴¹ Ethiopia did not have any domestic law that regulates extra contractual liability for damage caused by an aircraft.⁴² That is, unless the phrase “motor vehicle” had been interpreted broadly to include aircraft, there had no law that could redress victims who sustained damage caused by aircraft until the adoption of the Civil Aviation Proclamation.⁴³ The advent of this proclamation did not also shatter the application of article 2081 *et. Seq.* since its scope of application is limited to non-state owned Crafts.⁴⁴ Moreover, to the best of the writer’s knowledge, despite antiquity of railway in Ethiopia, neither the railway nor a special law governing strict liability aspects of the railway is developed. If it is so, what is the way out to address damages caused by trains and state-owned Crafts?

In the opinion of the writer, article 2081 *et seq.* should be an applicable law for liabilities arising from trains and state-owned crafts too. It could also serve as a residual provision that called upon in case of any gap in the Civil Aviation Law. Generally, the aforementioned theoretical and practical justifications enable to conclude the precedence of liberal but careful interpretation of the phrase “motor vehicle” over the literal meaning of the phrase. Therefore, owners and holders of vehicles could be strictly liable under article 2081 *et. Seq.* provided that the vehicles are moved by motor.

Issues of the scope are not solved only by extending its application on all motor vehicles. Limiting strict liability only on motor vehicles, in exclusion of all other non-motor vehicles, renders the law not to cope up with the existing technological dynamics. The justifications for excluding non-motor vehicles could be derived from the limited understanding of non-motor vehicles in their traditional scope, which is simple and manual. The most commonly known traditional non-motored vehicles are cart and bicycle. The damage they caused is not comparable to the damage caused by motor vehicles. Hence, no special

assertion. Under article 1 the Maritime Code defines ship as: “...any sea going vessel...” This definition also substantiates the above assertion as to the non-applicability of Maritime Code on vessels moving on domestic water ways.

⁴¹ Ethiopian Civil Aviation Proclamation, *Negarit Gazeta*, No. 616/2008, year 15, No. 13, (2008) [hereinafter, Civil Aviation Proc. No. 616/2008].

⁴² Of course, in Ethiopia, since its accession in 1950 to the 1929 Warsaw Convention that unified certain rules relating to international carriage by air regulates liability for international air carrier, and adoption of the 1960 Commercial Code regulates domestic liability. These legal documents regulate only liabilities arising out of contractual agreements. They are not considerate for tort liability arising thereof.

⁴³ Civil Aviation Proc. No. 616/2008, *supra* note 41, article 70(1). Any aircraft operator, while the aircraft is in flight, shall be liable for damage caused by the aircraft or the operation thereof, or caused by the fall of any person or object aboard the aircraft or attached to the aircraft, which results in the death, personal injury or damage to property of a third party on the ground.

⁴⁴ *Id.*, article 2(2) reads: “This Proclamation shall not apply to state aircraft unless otherwise provided by a regulation issued hereunder.”

provision is needed as the damage caused by them could be sufficiently regulated by other provisions of Extra Contractual Liability Law. For example, the provision governing liability for animal⁴⁵ could be applied for damage inflicted by cart and personal action of injury⁴⁶ for the case of a bicycle.

In the contemporary world's transportation system, there is a move towards non-motored but highly sophisticate, swift, efficient, and expensive vehicles which also tend to be more dangerous. Particularly, in the area of railway, we are on the brink of non-motored trains moved by magnetic system.⁴⁷ Of course, unequivocal scenery of the phrase “motor vehicle” and its exceptional nature as source of liability preclude the inclusion of non-motor vehicles. However, the aforementioned justifications used for liberal interpretation even fit better for new generation non-motored vehicles. As per rules of legal interpretation, clear law may also be subject to interpretation where its literal application become unfair or jeopardize the basic theme of the law.⁴⁸ Hence, provisions governing strict liabilities for motor vehicles should be applicable for the case of modern non-motored vehicles, which shared the above-mentioned similar attributes with motor vehicles.

Moreover, since law is a normative prescriptive tool,⁴⁹ it should anticipate possible future occurrences. Therefore, article 2081 of the Ethiopian Civil Code needs to be either interpreted or amended in a manner that can incorporate non-motored vehicles that share the justifications provided for motored vehicles. Recent developments in other countries, for example, France, underpin the appropriateness of the liberal interpretation of article 2081, as it extends the scope of strict liability to properties other than stipulated under article 1384 of the French Civil Code,⁵⁰ which has a similar stance with article 2081 of the Ethiopian Civil Code.

⁴⁵ Owners of animals have similar liabilities with motor vehicle owners for any damage caused by their animals. See article 2071 *et. seq.*

⁴⁶ Article 2066 of the Civil Code can be applied for damage caused by riding a bicycle, as it dictated damage against a person by personal action can be made directly or indirectly using things. The rider who caused the damage may not be an owner; he may rent or borrow it. In such a case owner's liability should not be raised. This is because, saving the luxury one, a bicycle is not an expensive vehicle to implicate the owner's deep pocket or their capability to spread the loss. Hence, it is better to confine the liability issue under article 2067, where the damage sustained in the absence of fault on the part of the tortfeasor.

⁴⁷ Magnetic levitation train, *supra* note 30; Fikeresendek, *supra* note 30.

⁴⁸ Paranjape, N.V., *Studies in Jurisprudence and Legal Theory*, 3rd Edition, Central Law Agency, (2001), pp. 214-218

⁴⁹ Vago Steven, *Law and Society*, 7th Edition, New Jersey, (2003), p. 9

⁵⁰ Michel Channarsa, *Compensation for Personal Injury in France*, (2003) P. 7, available at <http://www.jus.unitn.it/cardoza/review/2002/cannarsa.pdf>, last accessed on 15 May 2020; Esmain P., Liability in French Law for damages Caused by Motor Vehicle Accidents, *The American Journal of*

3. The Law on “Vehicle Insurance against Third-Party Victims” and Its Impact on the Scope of Strict Liability Law

The severity and high frequency of damage caused by motor vehicles everywhere in the world, justify the development of a special type of compulsory third-party liability insurance.⁵¹ Consequently, in the majority of jurisdictions, Extra Contractual Liability Law is ceased to be the sole mechanism to redress non-contractual damage;⁵² it is supplemented or replaced with different loss distribution instruments, such as mandatory or voluntary third party insurance and social security.⁵³ In almost all legal systems, a statutory scheme of liability insurance has been established with obligatory minimum insurance sums for traffic accidents.⁵⁴ The aim behind taking such steps is to achieve a greater degree of distributive justice through overcome actual or supposed deficits of the extra contractual system.⁵⁵

Mandatory liability insurance serves interests of triple parties: the victims, tortfeasors, and the public. Primarily, victims are benefited from full compensation regardless of the economic means of the tortfeasor and from its efficient and cost-effective compensation process. In effect, the law permits victims to claim directly from the motor vehicle insurer in addition to the tortfeasor.⁵⁶ This procedural rule saves victims from settling their claims out of court for a meager sum due to their pressing economic needs. The tortfeasor also

Comparative Law, Vol. 2, No., 2, PP. 157-158. Previously, article 1384(1) of the French Civil Code was read in tandem with article 1385 and 1386 to establish strict liability only when harm was caused by animal or dangerous buildings under his control. However, in the landmark *Teffaine* decision, the *Courde cassation* ruled that Article 1384(1) has to be considered as a general stand-alone provision and construed it as it could include liability where damage is caused by things of whatever sort. Irrespective of the nature of the property, the court uses this article to impose liability on the sole basis of the "use, direction and control" by the defendant of the thing which caused the damage. Since then, article 2084(1) serves as the principal contrivance for the application of strict liability in tort.

⁵¹ Bernhard Gomard, Compensation for Automobile Accidents in the Nordic Countries, *The American Journal of Comparative Law*, Vol. 18, No. 1, Oxford University Press, (1970), p. 81, available at https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/amcomp18&id=105&men_tab=srchresults, last accessed on 14 May 2020; Margaret Chan, WHO, *Global Status Report on Road Safety*, Foreword to Tami Toroyan, (2015), p. vii

⁵² Karner, Ernst., A Comparative Analysis of Traffic Accident Systems, *Wake Forest Law Review*, vol. 53, no. 2, (2018), p. 367, available at https://heinonline.org/HOL/Page?public=true&handle=hein.journals/wflr53&div=16&start_page=365&collection=journals&set_as_cursor=1&men_tab=srchresults, last accessed on 25 May 2020; Gomard, supra note 51, p89

⁵³ Id.

⁵⁴ Olga Shevchenko, Motor Third Party Liability after CJEU Interpretation of the Directive 103/2009/EC in Vnuk Judgment, *Teisė*, Vol. 111, Vilnius University Press, (2019), p. 131

⁵⁵ Wagner G., Tort Liability and Insurance: Comparative Report and Final Conclusions, in Wagner G. (ed.), *Tort Law and Liability Insurance, Tort and Insurance Law*, Vol 16. Springer, Vienna, (2005), pp. 348-52, available at https://doi.org/10.1007/3-211-30631-5_14, last accessed on 15 May 2020

⁵⁶ Europe Economics, Retail Insurance Market Study, *Final Report by Europe Economics*, (2009), p. xxii <https://ec.europa.eu/info/system/files/retail-insurance-market-study>, last accessed on 18 May 2020

benefited from an unprecedented economic burden through spreading the cost of compensation among premium payers.⁵⁷ All in all, the above-mentioned dual functions also mitigate the inconvenience caused to the society through loss of production, increased social expenses, and strain on the capacity of hospitals and other institutions.⁵⁸

However, the insurance system is not self-sufficient to redress claims of victims for two reasons. The first is presence of a maximum limit on the amount of compensation given for victims.⁵⁹ The second reason is existence of the practical challenge of insurers to cover the insured liability, particularly, where the injury was caused in breach of terms of the agreement by the insured.⁶⁰ These factors render the insurance system incomplete to redress victims and demand presence of the extra contractual law as a backup.

In Ethiopia, there are two separate legal documents: Extra Contractual Liability Law and Vehicle Insurance against Third Party Risks Law (Proc. No. 799/2013) in regulating civil liability for motor vehicles. This could pose a problem of choosing the applicable law, which cannot be simply determined by the principle of “the later prevail over the previous” or “the special prevail over the general”. Their disparity in the amount of compensation and nature of beneficiaries further aggravate the confusion.

Proclamation No.799/2013 is introduced for enabling victims to get quick compensation either where the defendant is insolvent or the vehicle causing the damage is unknown.⁶¹ Besides, it broadens beneficiaries of compensation for a fatal accident by enabling all dependents of the victim to claim material compensation.⁶² Under Extra Contractual Liability Law, only children, parents,

⁵⁷ Wagner G., (Un)insurability and the Choice between Market and Public Compensation Systems, in Willem H. van Boom & Michael Faure, (ed.), *Shifts in Compensation Between Private and Public Systems*, (2007), 1st ed., Springer, p. 87

⁵⁸ Daniel Rubin, Conclusions, in Attila Fenyves *et. al.* (eds.), *Compulsory Liability Insurance from a European Perspective*, (2016), P. 431; WHO, *Global Status Report on Road Safety*, p. vii

⁵⁹ Van Boom & Faure, *supra* note 57, pp. 106-108

⁶⁰ See the discussion under section 4.2.2 page 28 of this paper. Contrary to the law that declares the unconditional right of victims to bring compensation claims directly against the insurer, Sometimes the practice went otherwise.

⁶¹ *Id.*, article 20(1)

⁶² *Id.*, article 20(1)(c), cumulative reading with article 2(13). Article 20(1(c)) stated that compensation for the deceased's family members as one among the aims of the law. For the proclamation, article 2(13) defines family members to mean spouse, child, father, or mother of the insured person or any person under the support of the insured person. Contrary to tort law, this proclamation enables dependents to claim compensation for the loss they sustained due to the death of the victim as far as they prove their dependency on the livelihood of the victim. Dependents' that are denied to bring compensation claim under article 2095 of the Civil Code can bring their claim based on Proc. No. 799/2013.

and spouse of a victim are legitimate claimants of compensation provided that they were dependents of the victim.⁶³

Regarding the amount of compensation, fixing the roof of compensation given for third-party victims is a common practice almost in all jurisdictions having vehicle insurance against-third party victim law.⁶⁴ In Ethiopia, for all damages and expenses due by motor vehicle accident, the total amount of compensation given for a victim under the proclamation is limited to the maximum of 40,000 *birr*.⁶⁵ This stipulation may have two contrary implications on the interests of claimants. For dependents of a fatal accident, it is more beneficial, as it entitled them to get compensation in a lump sum, unlike the extra contractual law that state payment in the periodical base.⁶⁶

On the other hand, as the proclamation limits total compensation to the maximum of 40,000 *birr*, it disobeys the principle of compensation that demands commensurability of damage and compensation. Hence, the indemnity given under this proclamation would not be satisfactory for victims where material damages they suffered are beyond 40,000 *birr*. However, it may be important for a victim who cannot prove material damage sustained due to death of the victim as it stipulates a minimum of 5000 *birr* compensation in such a case.⁶⁷

Presence of the two laws on similar area, one follows principle of equivalence in assessment of compensation while the other put maximum and minimum limit seems to create confusion in choosing the applicable law. However, the proclamation states a layout by permitting claimants to bring an extra claiming to get additional compensation as per the relevant law;⁶⁸ such relevant law in our case is obviously, the extra contractual law. Hence, the plaintiff can bring his claim for additional compensation as per extra contractual law in the same file, or he can bring his claim in a fresh suit and it should not be subject to the objection of *resjudicata*; since the law permits so.

⁶³ Civil Code, supra note 14, article 2095. The English version state ascendants and descendants contrary to the Amharic version which says children and parent. For further on this point see the discussion on pages 16 under section 4.1.1

⁶⁴ Andrea Renda and Lorna Schrefler, *Compensation of Victims of Cross-Border Road Traffic Accidents in the EU: Assessment of Selected Options*, Centre For European Policy Studies, Brussels, (2017), P. 10, available at <https://www.kolettis.com/downloads/EUCrossBorderVictimCompensation.pdf>, last accessed on 27 May 2020; Gomard, supra note 51, p. 100.

⁶⁵ Proc. No. 799/2013, supra note 12, article 16.

⁶⁶ Civil Code, supra note 14, article 2095(2).

⁶⁷ Proc. No. 799/2013, supra note 12, article 16(1(a)).

⁶⁸ Id., article 16 (3).

The other important point about the two laws is their scope of application. The Proclamation is not applicable where the victims are family or employee of the insured defendant,⁶⁹ while such relations are immaterial to limit the victims' claim as per Extra Contractual Liability Law. Besides, the Vehicle Insurance against Third Party Proclamation is applicable only for road motor vehicles commonly called "*mekina*" strict liability apply for all motor vehicles in absence or gap of special law governing thereof.

Therefore, thought strict liability provisions of Extra Contractual Law and Insurance Law cover similar damages, plaintiffs' dilemma of choosing either of the two laws can be solved based on their differences such as, on their scope of application, identity of the victim benefited thereby, and the nature and quantum of damage they covered.

Once the scope of the law governing strict liability for damage caused by 'motor vehicles' is clarified, the next issue ought to be addressed is identification of parties in a case having strict liability associated with necessary conditions thereof.

4. Parties in a Case Constituting Strict Liability for Motor Vehicles

Determination of parties in a case having strict liability is the other essential issue for establishment of a case having strict liability for damage caused by motor vehicles. However, identification of a person that can be claimant in such a case and a person liable thereof is sometimes a difficult task. Not all persons who are injured by motor vehicles can bring compensation claims based on strict liability law. Their right to claim based on strict liability law is dependent upon their relation with the person having strict liability in respect to the motor vehicle that caused the injury.

4.1. Claimants

Based on their relationship with the person having strict liability for a damage caused by motor vehicle, victims can be classified as contracting⁷⁰ and non-contracting parties.⁷¹ The presence of many differences in the requisites for and consequences of liability in contractual and extra contractual liability laws deters litigants from making an arbitrary choice between them. In this regard, strict

⁶⁹ Id., article 7 (2&3).

⁷⁰ Contracting victims are persons who have a contractual agreement with the owner or holder of a motor vehicle and sustained damage thereof; Such as paid passengers, sender and receiver of carriage for the damage on the carriage, and employees of the owner or holder of the vehicle.

⁷¹ Non-contracting victims are third party victims of motor vehicles such as, pedestrians, relatives of the victim, property owners, and attendants of an atrocious vehicle accident.

liability law is applicable for non-contracting third-party victims while laws governing contractual agreement regulate damage sustained on the contracting party.⁷² Disinterested parties are also excluded from claiming compensation based on strict liability law.⁷³ Determination of disinterested party depends on deferent factors like, the type of the vehicle, and the knowledge and consent of the owner/holder.⁷⁴ For example, non-paying passenger is a typical example for disinterested party. A passenger in a vehicle assigned for a purpose other than public transportation is legally presumed as non-paying passengers. Hence, no strict liability is imposed on the owner or holder of the vehicle where that vehicle caused damage against non-paying travelers.⁷⁵ Even though passengers paid transportation fee for the driver, still owners or holders of the vehicle would not be liable unless proof is made as to their benefit from the payment.⁷⁶ Accordingly, in *Yilikal Bewketu v Siyum Abady*, the Federal Supreme Court Cassation Bench decided that accidental damage sustained on a person traveling by a vehicle for free would not lead to owners or holders' liability, as the party is a disinterested party under article 2089 of the Civil Code.⁷⁷

Claimants under extra contractual liability law in general and strict liability law in particular are classified as *independent* and *derivative* claimants.⁷⁸ However, in the adjudication of tort cases identification of the victim entitled for the compensation is a difficult task.⁷⁹

⁷²Civil Code, supra note 14, article 2037, 2088, and 2147. These provisions limit the scope of Extra Contractual Liability Law in favor of Contract Law. Under article 2037, damage for breach of contractual agreement is regulated as per the contract law. Article 2088 also stated contract law governs a compensation claim, whenever the victim was connected with certain instrumentalities of harm under contract with the person who would otherwise be strictly answerable by tort law. A passenger who paid for his travel impliedly concludes a contractual agreement with the carrier by which the later obliged to take him at his destination safely. Hence, as a cumulative reading of article 1795 of the Civil Code and article 595 of commercial code reveals, the carrier is contractually liable for any damage that happen to the passenger whilst mounting, during the journey and at the time of alighting from the vehicle.

⁷³Civil Code, supra note 14, article 2089. Disinterested person means a person who used the motor vehicle in absence of contract and without giving any benefit for the person having strict liability

⁷⁴Interview with, Ato Biniam Yohanis, Amhara National Regional State Supreme Court Civil Bench Judge, (3 June 2020)

⁷⁵Civil Code, supra note 14, article 2089. This provision is not applicable for employee who traveled by the employer vehicle as they are regulated by Employment law

⁷⁶If the contrary is proved, it will be regulated by the Commercial Code, as if they are concluded contractual agreement.

⁷⁷*Yilikal Bewketu v Siyum Abady*, Federal Supreme Court of Ethiopia, Cassation File No. 24818 [February 2008; reported in የሰበር ውሳኔዎች፣ ቅፅ 5፣ 2003 ፋ. ም፣ ገፅ 125-128]

⁷⁸Abdulmalik Abubeker & Desta G/Michael, *Extra-contractual Liability Teaching Material*, Prepared under the Sponsorship of the Justice and Legal System Research Institute (2009), p. 171.

⁷⁹Interview with Ato Girma Ewnetu, Amhara National Regional State Supreme Court Civil Bench Judge, (3 June 2020); Biniam, Supra note 74.

4.1.1. Independent Claimants

Independent claimants are persons who brought compensation claims on their own behalf. Hence, they are required to prove their vested interest as per article 33(2) of the Ethiopian Civil Procedure Code. From general reading of Ethiopian Extra Contractual Liability Law independent claimants could be classified into two: the victim himself and relatives of the victim.⁸⁰

The victim

The person who directly sustained either material or moral damage could bring a compensation claim against the person strictly responsible for the damage caused by a motor vehicle. In addition to the direct victims, spouse of a victim also could claim compensation for moral damage they suffered due to the bodily injury sustained on their spouses that renders their spouses companionship less agreeable or less useful.⁸¹ A claim of moral compensation by a spouse for the damage he or she suffers due to physical damage sustained on the other spouse is the only exception that enables a person to claim compensation while the direct victim survives the injury.

Relatives of the Victim

Upon the death of the victim, his relatives could be an independent claimant for the loss they sustained due to the death of the victim. However, there is a legal dichotomy among relatives of the victim for moral and material damages. For moral damage, family members of the deceased are entitled to claim the compensation they suffer due to the death of the deceased. For this claim parents, spouse, children, brother, and sister of the deceased are considered as family members.⁸²

On the contrary, comparing with relatives who can claim moral compensation, relatives entitled to bring claim for material damage are limited in scope. There is also discrepancy between the Amharic and the English version on relatives entitled to claim material compensation on their behalf due to death of the victim. The English version states the spouse, ascendants, and descendants of

⁸⁰Abdulmalik & Desta, *supra* note 78, P. 171

⁸¹ Civil Code, *supra* note 14, article 2015(1) “[f]air compensation may be awarded by way of retires; to a husband against a person who, by inflicting bodily injury on the wife, render, her companionship less useful or less agreeable to the husband.” Taking literal meaning of this article exclude the claim of moral compensation by a woman whose husband's compassion becomes less agreeable due to the damage inflicted on his body. However, this is against the principle of equality enshrined in the Ethiopian Federal Democratic Republic Constitution article 25 and article 36 (1 & 2). Hence, article 2015(1) should be construed in a way that confers a similar right for wives too.

⁸² *Id.*, article 2015 in tandem with article 2017

the victim, while the Amharic version only confers such rights on the spouse, children and parents of the deceased.⁸³ The English version serves victims' interest by increasing number of claimants while the Amharic version lightning burden of persons responsible to compensate the damage. However, this inconsistency between the two versions could be solved by applying the law that gives priority for the language of the law maker- *The Amharic version prevails over the English version*.⁸⁴ Hence, only the spouse, children and parents are capable to bring claims for material damage on their behalf in case of fatal accidents.

The other issue worth discussing here is identifying a person entitled to claim compensation where the deceased was in bigamous or heterogamous marriage. Bigamy is prohibited under the revised Federal Family Code⁸⁵ and it is labeled as criminal act under the 2004 Criminal Code⁸⁶. This situation invites two arguments. One may argue that since bigamy is criminal act, those spouses who solemnized bigamous marriage should not be benefited from their crime. Hence, courts should first identify the spouse who had committed bigamy and excluded them from compensation. This argument enables to avoid one's benefit from consequence of his/ her criminal act. It is also used to lightened compensation burden of the person having strict liability, whose liability is based not on fault. However, such restriction on spouses should not be applicable where bigamy is committed inconformity with religious or traditional practices recognized by law.⁸⁷

The other argument focuses on the purpose of extra contractual liability law, which is compensating the victim. As far as existence of marriage and damage sustained on the spouses due to death of the victim is factually proved, compensation has to be given for more than one spouse. The author of this paper supports the second argument for four reasons. First, punishing for crime is not the purpose of Extra Contractual Liability Law. If the act is a criminal one, it has to be decided by criminal bench. Second, the bigamous marriage is voidable marriage. That is, it is valid until invalidated by court. In the case at hand both spouses will have similar status as their marriage is dissolved upon death of the

⁸³ Id., article 2095(1)

⁸⁴ A proclamation to Provide for the Establishment of the Federal Negarit Gazeta, Proclamation No. 3/1995, *Negarit Gazetta*, (1995), article 2(4)

⁸⁵ Revised Family Code of Ethiopia, Proclamation No. 213/2000, *Federal Negarit Gazetta*, (2000), article 11

⁸⁶ The Criminal Code of Ethiopia, proclamation No. 414/2004, *Federal Negarit Gazetta*, (2004), article 650 [Hereinafter, Criminal Code]

⁸⁷ Id., article 651

victim.⁸⁸ Third, identifying the bigamous spouse to exclude from compensation claim demand elongated judicial process which also affects the purpose of the law to give quick compensation. The last reason, thought excluding bigamous spouse lightened compensation burden of the defendant, this argument is sounder in conceptual speaking than practical perspective. This is true because, basically amount of the compensation is determined based on the extent of damage not in number of victim. Since the income of the deceased remains constant, increment on the number of family decreased per capita damage sustained on each member, so does amount of compensation for each of them.

The law is also not clear whether those claimants under article 2095(1) needed to be in a state of necessity to claim the compensation or not. This vagueness of the law leads into controversies as to whether those persons should be incapable of generating their own livelihood or not. Fortunately, article 2095(3) of the code sparks a clue on this dilemma by stating that presence of other relatives from whom they can ask support could not preclude them from constituting compensation claims. The general reading of this provision implicates only two objective facts are required to be proved: the fact that claimants' relation with the deceased falls under one of the categories stated under article 2095(1) and the existence of regular support that ceased due to the victim's death. No additional requirement is stated in the law. Hence, the presence of other relatives they could lean on and their capacity to generate their own livelihood would not preclude them from claiming material compensation.

Contingently, the legal presumption on the incapacity of the deceased for work and support the claimants due to tender age or other grounds did not bar claimants from the claim. In light of the above contention, in *Birhanu Feyisa v Nile Insurance & Solomon Ahmed*, the Federal Supreme Court Cassation Bench decided material compensation for the parent of minor deceased who proved the existence of material support from the deceased minor child that ceased upon the death of the child.⁸⁹ On the other hand, descendants who attain the age of 18 are

⁸⁸ *Aminat Ali v Fatuma Wubet*, Federal Supreme Court of Ethiopia, Cassation File No.45548 [September 2010; reported in የሰበር ውሳኔዎች፡ ቅፅ 13፡ 2005 ዓ. ም፡ ገፅ 167- 170] Even if the author could not find cassation decision on the issue, in *Aminat Ali v Fatuma Wubet*, which is about liquidation of pecuniary property of spouses that involve issue of bigamy, the Bench decided that the second wife to have a share on the common property. This proves that though bigamy is criminal act, it would not deny the bigamous spouses civil rights.

⁸⁹ *Birhanu Feyisa v Nile Insurance & Solomon Ahmed*, Federal Supreme Court of Ethiopia, Cassation File No.38117 [December 2011; reported in የሰበር ውሳኔዎች፡ ቅፅ 11፡ 2004 ዓ. ም፡ ገፅ 423- 425] Ato Birhanu's 11 years old son was killed by Ato Solomon's car that has an insurance cover from Nile insurance SC. Accordingly, Ato Birhanu jointly sued Ato Solomon and Nile Insurance Company before Semen Shewa Zone High Court for material damage he *will* suffer due to the death of his child on the ground that his child will financially support him after attaining the age of 18. However, the court dismissed his

not precluded from claiming compensation. In *Ethiopian Insurance Company v W/ro Zinash Asefa and Mulat Assefa*, the Federal Supreme Court Cassation Bench awarded compensation claim for children of the deceased who attain the age of eighteen but depends on the deceased's income.⁹⁰

Article 2095(1) is close-ended provision; dependents other than victim's spouse, parents and children are not entitled to claim material compensation; even though, they have no one to lean on. For example, a minor sister and brother of the deceased are not benefited from this provision even if the deceased was their only source of livelihood. In this regard, the writer argued that limiting persons who can claim compensation is essential. Nonetheless, exclusion of other dependents, particularly minor brother, and sister of the deceased, from claiming material compensation no matter what they are in state of necessity while they are allowed for moral compensation is illogical and unfair. It is also disregarded the culture of the people which is attributed to the extended nature of the dominant family structure in the country. Hence, the absence of a formal social security scheme in the country coupled with the above justifications require a revision of the provision in the manner that accommodates other dependents' interests, particularly, those having no other means of livelihood.

claim on the ground of uncertainty of the alleged damage. The plaintiff amended his petition and submitted it for the Federal Supreme Court Cassation Bench. In his petition, he stated that he is a farmer and his son had served him by looking after his cattle and supporting him in his farming activity and after the death of the child, he is forced to expend 10 birr per day for such services. The Bench held the case in ex-parte defendants as they failed to appear and decided that parents would not be precluded from claiming material compensation for the death of their minor child as far as they prove the existence of factual support.

⁹⁰ *Ethiopian Insurance Company v W/ro Zinash Asefa and Mulat Assefa*, Federal Supreme Court of Ethiopia, Cassation File No.50225 [December 2010; reported in የሰበርውሳኔዎች፣ቅፅ 10፡ 2003 ዓ. ም.ገፅ 255-256] The case was started in East Shewa Zone High Court, where W/ro Zinash Asefa and Ato MulateAsefa, sued Ethiopian Insurance Company. The plaintiffs sued the insurer for the material damage they suffer due to the death of their father who was killed by a car insured by the company. The advocate of the insurance company opposed the claim on the ground of their age; as both of them are more than 18 years old, they are not presumed to get maintenance support from their father. The Court disregarded the defense and ordered the insurance company to pay 21,000 birr because the insurance company has insurance cover for the owner of the car who is strictly liable for the damage claimants suffer. On appeal, the Oromia Region Supreme Court rejected the claim by affirming the decision of the lower court. Finally, the Insurance Company appealed to Federal Supreme Court Cassation Bench on the ground of basic error of law. The Bench also rejected the petition. The reasoning on which the Bench relay for its decision showed that being attaining majority age should not preclude a person from claiming compensation as per article 2095(1) of the Civil Code. The subjective condition of the claimants should be considered. If the evidence proved their reliance on the livelihood of the deceased, compensation for the material damage they suffered has to be awarded.

4.1.2. Derivative Claimants

Claim for compensation is personal and not allowed to assign to the third person.⁹¹ However, derivative claimants are exceptions for this rule. Derivative claimants are not victims; rather they bring an action for compensation by substituting the victim. These groups of claimants are Heirs and creditors of the victim.

Heirs of the Victim

Upon the death of the victim, testate or intestate successors of the victim may also institute an action for compensation for material damage suffered by the victim.⁹² On the contrary, they can bring a compensation claim for moral damage on behalf of the victim only when the victim constituted such a claim before his death.⁹³ Those persons who could claim compensation for moral damage they sustained due to death of the victim under article 2015 of the Civil Code could also be party under this claim.

Creditors of the Victim

Creditors could subrogate the victim debtor's action for compensation only when the injury sustained after the date when the victim became his debtor and the damage sustained solely on the financial interest of the victim.⁹⁴ In addition, the creditor must apply to the court and be authorized by the court to that effect.⁹⁵ Hence, creditors could subrogate only property damage and financial loss claim of the victim. If the injury had sustained on the debtor's personality, bodily integrity or honor, the creditor could not subrogate.

Compensable Interests and Conditions for Claims

To establish compensation claim under strict liability law, the plaintiff is required to prove the damage he suffered is legally recognized and action of the motor vehicle is an adequate case for such damage.

A contrary reading of article 2081 and 2082 of the Civil Code reveals victims' right to claim for *any damage* they sustained due to motor vehicles. Any damage

⁹¹ Civil Code, supra note 14, article 2046(1). However, once compensation is decided by the court, the judgment debtor can assign the compensation for anyone.

⁹² Id., article 2144(1).

⁹³ Id., article 2144(2).

⁹⁴ Id., article 2045(1 & 2).

⁹⁵ Id., article 1993.

stands for material and moral damage.⁹⁶ Material damage represents any damage that can be quantified in terms of money. Types of material or pecuniary damages are almost similar in every jurisdiction, which mainly encompass property damage, loss of income, medical expenditure, nursing, and related expenses.⁹⁷ Compensability of any pecuniary loss and expenses is universally subject to a test of reasonableness. Moral damage refers to an injury inflicted on a person's honor, reputation, or personal feelings.⁹⁸ The pain, mental anguish, and frustration, which resulted from pain and disability or disfigurement of his body parts due to vehicle accident, caused moral damage.

To claim compensation for the aforementioned injuries, the plaintiff is required to prove a cause and effect relationship between the motor vehicle and the damage sustained.⁹⁹ However, the Ethiopian Extra Contractual Liability Law did not set the standard used to determine the causal link. However, the standard for causal link could be measured by appealing to judicial common sense or by analogy to article 24(4) of the Criminal Code¹⁰⁰ that state adequacy of the cause as a standard.¹⁰¹ Interviewed judges also unanimously asserted that *adequate cause* could commonly be an adopted standard in the determination of causal link for extra contractual liability cases too.¹⁰²

Accordingly, the damage whether it is material or moral or both, the action of the vehicle should not be a remote cause for the damage sustained, rather it has to be a legal cause or adequate cause. The adequacy of the cause is ascertained by proving that the damage would not happen had it not been for the action of the vehicle. Establishing legal nexus between action of the vehicle and the damage sustained is not a simple task. The difficulty aggravated when concurrent causes are there. In such cases, many jurisdictions such as England adopted *but for* test.¹⁰³ i.e., the plaintiff is required to prove that he would not

⁹⁶ Id., article 2090. To limit the scope of this article within the required space the writer would not indulge in an in-depth analysis on types of compensable interests.

⁹⁷ Renda and Schrefler, supra note 64, P. 11.

⁹⁸ Krzeczunowicz, supra note 36, pp. 258-259.

⁹⁹ Civil Code, supra note 14, article 2028; Michael John, *A Text Book on Torts*, 3rd ed., Blackstone Press, (1996), p. 190.

¹⁰⁰ Criminal Code, supra note 86, article 24(1) stated that "[T]his relationship of cause and effect shall be presumed to exist when the act within the provisions of the law would, in the normal course of things, produce the result charged."

¹⁰¹ Krzeczunowicz, G., *The Ethiopian law of Extra-Contractual Liability*, Commercial Printing Enterprise, Addis Ababa, (1970), p. 136.

¹⁰² Biniam, Supra note 74; Girma, Supra note 79; Mahider, Supra note 10. The legal or adequate case is not defined in the Civil Code. As tort law and criminal law covers similar offenses with deferent remedy customarily, the meaning given for legal cause under article 24 of the 2005 criminal code is applicable for appraisal of cause and effect relation in a dispute having extra contractual liability nature.

¹⁰³ Harpwood V., *Law of Torts*, Cavendish Publishing, (1993), p. 86.

have been injured in the way he was but for the damage caused by the vehicle.¹⁰⁴ Accordingly, the defendant is not liable for remote damage, which is unforeseeable consequence, based on reasonable person's perception.¹⁰⁵ This standard sets the limit of the legal accountability of the defendant for the damage sustained.¹⁰⁶ Since Criminal Code standard used by analogy for civil cases, similar standard is also adopted in Ethiopia as per article 24(2-3) of the Criminal Code:¹⁰⁷

(2) Where there are preceding, concurrent or intervening causes, whether due to the act of a third party or to a natural or fortuitous event, which are extraneous to the act of the accused, this relationship of cause and effect shall cease to exist when the extraneous cause in itself produced the result.

If, in such a case, the act with which the accused person is charged in itself constitutes a crime he shall be liable to the punishment specified for such a crime.

(3) Relationship of cause and effect shall be presumed to exist between each cause specified under sub-article (2) above and the result achieved, when the result is the cumulative effect of these causes, even though each cause cannot independently produce the result.

Hence, in Ethiopia the defendant is only liable for the normal consequence of his act not for the whole damage unless the damage is caused by intentional tort.¹⁰⁸ That is, a third-party victim of a motor vehicle accident can bring a claim for material or moral compensation under strict liability law as far as he proves adequacy of the causal link thereto.

4.2. Persons Strictly Liable for Damage Caused by Motor Vehicles

4.2.1. Owners and Holders

Owners are strictly liable for any damage caused by their motor vehicle.¹⁰⁹ In addition to owners, holders¹¹⁰ of the motor vehicle for personal gain have also

¹⁰⁴ Nicholas and Bagshaw, *supra* note 25, p.530.

¹⁰⁵ Richard Kinder, *Case Book on Torts*, Oxford University Press, (2002), p.68.

¹⁰⁶ Alan J. Pannet, *Law of Torts*, Pitman publishing, (1995), P.72.

¹⁰⁷ Criminal Code, *supra* note 84, article 24(2-3).

¹⁰⁸ Civil Code, *supra* note 14, article 2101.

¹⁰⁹ *Id.*, article 2081.

¹¹⁰ Krzeczunowicz, *supra* note 101, pp. 43-44. The caption of Article 2082 says *keeper*. However, to differentiate *keeper* from persons who attend vehicles for a person's sake, George Krzeczunowicz translated it to mean *holder*.

strict liability for any damage attributed to the vehicle.¹¹¹ Agents or employees in charge of the vehicle for the owner or holder's account are not subject to strict liability.¹¹²

The presence of different accountable persons creates a question of what share of responsibility is imposed on whom or issue of ultimate liability. Regarding the first question, the Ethiopian Strict Liability Law did not have provisions that apportion liability between owner and holder of motor vehicles.

Ultimate liability presupposes the presence of transitive liability. This means, there should be different persons responsible for compensation but only one or some of them have ultimate liability. Hence, those persons who have transitive responsibility could recourse against persons having ultimate liability after paying compensation for the victim. In some jurisdictions there is no such issue as the law only imposed strict liability on the person who should bear the cost of compensation ultimately. For example, in the USA, after the enactment of the 2005 transportation equity act, lessors of motor vehicles are relieved and only lessees have strict liability for the damage caused by the motor vehicle they leased.¹¹³

On the contrary, the Ethiopian Extra Contractual Liability Law recognizes two types of strict liabilities: transitive and ultimate liability. This dichotomy is functioned when the damage sustained while the motor vehicle is under custody of a person other than its owner. Article 2083 of the Civil Code reads the owner of a motor vehicle who has paid compensation to the victim may recover from the holder. This provision creates two types of liabilities, i.e., transitive liability on the owner and ultimate liability on the holder. A cumulative reading of article 2081, 2082, and 2083 of the Civil Code extends compensation option of the victim. Accordingly, a victim can claim against either of the owner or holder, or

¹¹¹ Civil Code, *supra* note 14, article 2082(1).

¹¹² *Id.*, article 2082(2). Though article 2066 of the same code imposes strict liability on a person whose action caused damage, as an exception to it, agents or employees in charge of the vehicle for owner's or holder's account are not subject to strict liability. This is because, the rationale behind article 2066 is that even though the author is not at fault, in most cases, he is direct beneficial of his action which is missed in case of innocent employees or agents who act for the sole interest of the employer or the principal.

¹¹³ Harry Stoffer, Pump It Up: Finance Companies are Expanding Incentives on Balloon Loans to Minimize Risk from Vicarious Liability Laws, *Automotive News*, (31 March 2003), p. 12; Kenneth J. Rojc and Karoline E. Kreuser, End of the Road for Vicarious Liability, *The Business Lawyer*, Vol. 64, No. 2, American Bar Association, (2009), p. 617, available at <http://www.jstor.com/stable/41552811>, last accessed on 01 June 2020. Before enactment of the 2005 transportation equity act, lessors were strictly liable for damage caused by their leased vehicle merely because the lessor is the registered or titled owner of the motor vehicle. The act repealed such liability of lessors to insulate motor vehicle lessors from exposure to one of the most significant risks of leasing or renting a motor vehicle.

both. Hence, the victim can bring a compensation claim from the owner irrespective of the vehicle is under the custody of the holder while causing the damage. In such cases, the owner cannot defend the claim; what he can do is compensating the victim and recourse against the holder. This stance of the law that imposes ultimate strict liability on a holder leads to a question of who the holder is.

In this regard, there are practical disparities in understanding a holder as ultimate bearer of the liability. For example, whether it is the owner or holder should bear ultimate liability for damage caused by vehicle under use of the holder, while the driver was employed by the owner has been argumentative. Until the issue was solved by the Federal Supreme Court Cassation Bench,¹¹⁴ different courts entertained the issue contrary to the true intent of the law by using *factual control* as a base to determine the issue. In *Abrar Sabir v W/ro Alemtehay Wesene & Tibebe Construction PLC*, Arsi Zone High Court employed *factual control* as a parameter to determine a person responsible for damage caused by motor vehicle irrespective of fault. Accordingly, the Court imposed ultimate liability on the owner on the ground that he employed the driver.¹¹⁵ Hence, in the determination of strict liability for vehicle under use of the holder but operated by third party employee, liability rests upon the person who employs the driver.

Finally, in its judgment on the above case, the Federal Supreme Court Cassation Bench decided that ultimate strict liability for damage caused by motor vehicle move on land should be borne by the holder. And, the Bench defines holder as a person who was benefiting from that vehicle at the time of damage; rather than a person who had factual control on the motor vehicle.¹¹⁶

Besides its binding nature,¹¹⁷ the interpretation made by the cassation bench is proper in light of the law because, although the Ethiopian Civil Code is adapted from the French Civil Code, its conception of the holder is different from the custodian (*gardien*) under the French Civil Code.¹¹⁸ In France, strict liability for motor vehicles is imposed on custodian, a person who has controlling power

¹¹⁴ *Abrar Sabir v W/ro Alemtehay Wesene & Tibebe Construction PLC*, infra note 121, pp. 416-419.

¹¹⁵ Id. As explained in the decision of the Bench, the Oromia Regional State Supreme Court and the Federal Supreme Court held similar stand with Arsi Zone High Court as they affirm the latter's decision in the given case.

¹¹⁶ Id.

¹¹⁷ Federal Courts Proclamation Re-amendment Proclamation, No. 454/2005, *Negarit Gazette*, (2005), article 2(4) reads: "interpretation of law rendered by the Federal Supreme Court cassation bench with not less than five judges have a binding effect on all federal and regional courts, saving the power of the bench to render a different legal interpretation some other time."

¹¹⁸ Krzeczunowicz, supra note 101, p.43; Borghetti, supra note 6, p. 274.

over the vehicle. In contrast to factual controlling power stated under French law, the Ethiopian law only requires the establishment of some economic or juridical elements enumerated under Article 2072(2) of the Civil Code.¹¹⁹ The juridical element implies the legal bond between the vehicle and the person as a holder and the economic element is to mean the holder received the vehicle for his benefit.¹²⁰

Another question worth mentioning here is, in what circumstances the owner held responsible for the damage and entitled to recourse against the holder given that the holder is ultimate bearer of strict liability? On this issue one may argue that since holders are the ultimate bearer of the burden, to shorten the path, victims should bring legal action against the holder, given the holder is known and solvent. Owners should be obliged only when the holder is not ascertained or insolvent. Though it is not overtly stated, the decision rendered by the Federal Cassation Bench on *Abrar Sabir v W/ro Alemtsehay Wesene & Tibebe Construction PLC* supports this assertion.¹²¹ In this case, the plaintiff claims for compensation against the owner of the vehicle. Nonetheless, the Bench did not impose transitive liability by obliging the owner to make compensation and later recourse against the lessee (holder) who shall bear the ultimate liability.

¹¹⁹ Civil Code, supra note 14, article 2072(2) stated that: “provisions of sub-article (1) shall apply where a person has hired or borrowed the animal or has taken possession of it to take care of it, or for any other reason.” Under Ethiopian strict liability law liability arising from animal and motor vehicles are similar. A keeper of a motor vehicle is equivalent to a holder of animals. Hence, the elaboration stipulated under article 2072(2) is applicable in both cases.

¹²⁰ Krzeczunowicz, supra note 101, p. 43.

¹²¹ *Abrar Sabir v W/ro Alemtsehay Wesene & Tibebe Construction PLC*, Federal Supreme Court Cassation Bench, File No.55228, [January 2011; reported in የሰበር ውሳኔዎች፡ቅፅ 11፡ 2003 ዓ.ም፡ ገፅ 416-419] [hereinafter *Abrar Sabir v W/ro Alemtsehay Wesene & Tibebe Construction PLC*]. Ato Abraham Aklil, husband of W/ro Alemtsehay Wesene, while traveling by car, seriously injured and later died due to collision of the car, he embarked on, with a tree. Consequently, W/ro Alemtsehay Wesene brought suit for compensation before the High Court of Arsi Zone against Ato Abrar Sabir, who is the owner of the car. Ato Abrar appeared before the Court and argued that he should not be liable for the car was leased to Tibebe Construction PLC and by the defendant's request; *Tibebe Construction PLC* (the lessee) joined the litigation on the defendant's side. However, in the final verdict, the court held the owner liable for the damage as per article 2081 of the Civil Code; based on the fact that *the driver is employed by the owner*. On appeal, the Supreme Court of Oromia Regional State affirmed the decision of the lower court as regards liability. The Federal Supreme court also rejected the appeal made by Ato Abrar and affirms the lower Court's decision. Finally, Ato Abrar submitted a cassation petition to the Federal Supreme Court Cassation Bench for lower Courts' judgment review on the grounds of the fundamental error of law. In its decision, the Bench explained that thought holders' have ultimate strict liability for motor vehicles. The parameter used by lower courts for identification of the holder is erroneous as they used *controlling power*. For article 2082 of the Civil Code, the holder is not a person who controls the vehicle rather it is the person who received the vehicle for his benefit. Hence, the owner who had controlling power on the car, for the driver is employed by him and responsible for him, is not a holder. On the contrary, the holder is the lessee who used the car at the time of damage. Accordingly, the Cassation Division repealed the lower Courts' decisions and imposed liability of compensation on the lessee, holder of the car, during the accident.

This decision of the Bench wrongly infringed victim's right to bring compensation claim jointly and separately against the owner and the holder. The reading of article 2083, particularly the Amharic version,¹²² seems in all circumstances the choice is left for the victim. The law is clear and its content is not absurd to demand interpretation.

The above argument that state solvency and certainty of the holder as a precondition to determine victim's right to choose his defendant conceptually seems logical. However, practically, ascertaining identity and solvency of the holder might be difficult and time taking, which is against the motive of the law that aims to provide a quick compensation scheme.

Exceptions for Rules Stipulated under Article 2081et. Seq.

Extra contractual provisions governing strict liability for motor vehicles are not always applicable. Their application is subject to the contrary contractual agreement and special laws for non-ordinary motor vehicles, particularly, vessels and aircraft.

The graveness of motor vehicle accidents associated with its substantial impact on victims as well as persons responsible for the damage urges a person to engage in contractual agreements involving motor vehicles that give due focus on the liability issue. The content of the agreement concerning their liability for third party victims may be contrary to the stipulation of article 2081 *et.seq.*¹²³ This questions the legality of such agreement in a sense that terms of agreement are contrary to article 2082 and 2083 of the Civil Code. For example, say X (the lessor) and Y (the lessee) make a car lease agreement that imposes strict liability solely on the lessor or on the contrary on the lessee. Could contracting parties, the lessor in the first scenario and the lessee in the second, raise their agreement against a third-party victim contrary to article 2082 and 2083? If not, what would be the effect of their agreement?

Answering these questions requires due consideration on the nature and purpose of strict liability provisions on one hand and basic principle of contract and impacts of the agreement on the victim on the other.

For employing terms having obligatory nature, apparent looking of article 2082 and 2083 of the Civil Code seems mandatory provisions that preclude any

¹²² Civil code, supra note 14, article 2083(1). The authoritative Amharic version of this provision reads: “የመኪናው [ወይም] የባለሞተር ተሽከርካሪው ባለቤት ተበዳዩን ተገዶ ከካስ በኋላ ጠባቂ የነበረውን ሰው በኪሳራ አከፋፈል ሊጠይቀው ይችላል፡፡”

¹²³ Tatek Tasew & Tana Beles Project, *Construction Equipment lease contract*, on file with the author.

contrary undertakings. However, strict liability provisions of extra contractual law do not have any punitive motive. Their purpose is only compensating the victim, where there is no person to be blamed for their injury, by imposing a cost of compensation, *mutatis mutandis*, on the owner or holder. The concern of the law is not to make holders and owners pay for what they did rather save victims from material and moral distress. Hence, article 2082 and 2083 could be derogated by contractual agreement as far as it does not affect the victims' interest.

The principle of freedom of contract dictates persons' legal right to conclude an agreement as between them to create, vary or extinguish obligations of a proprietary nature, provided that they comply with validity requirements of the law. However, this contractual freedom is not absolute. For example, the privity nature of contract precludes making of contract that bestow any right or impose any obligation against the third party, saving those exceptions exhaustively provided under the Civil Code.¹²⁴ For the case at hand, the privity nature of the contract does not bar agreement of parties as to their strict liability for motor vehicles, as far as their agreement does not jeopardize victims' right for compensation in any way. Hence, their agreement should be limited to the issue of *ultimate liability*. It could not preclude the victim from claiming compensation from both or either of them; otherwise, their agreement breaches the privity nature of contract. Thus, where a victim of a motor vehicle brought compensation claim against the lessor, he should not raise a contractual agreement that relieved him from liability as a defense. Rather, he should be compelled to pay the victim and recourse against the lessee as per their agreement.

Therefore, even though the law governing strict liability missed contrary agreements between the owner and holder as to ultimate liability as an exception, article 2082 and 2083 should not be applied where there is a contrary agreement between the owner and the holder.¹²⁵

There are also special laws that restrict the application of article 2081 *et seq.* in some types of motor vehicles. For example, Article 2081 or 2083 is not *prima facially* applicable for liabilities arises from vessels or aircraft as they are

¹²⁴ Civil Code, *supra* note 14, articles 1953- 2000. Exceptions for the privity nature of the contract are exhaustively listed under six categories in the above subsequent provisions.

¹²⁵ Hailu Gelan v Jifara Ngeso, *Car Lease Agreement*, on file with the author. In this Contract, strict liability is imposed on the owner. The lessee is liable only for fault.

governed with a standardized contract of a lease that puts strict liability on the party who has *actual control* on the ship or on the aircraft.¹²⁶

4.2.2. Insurer

Almost in all jurisdictions, third party victim liability insurance is mandatory. To shorten the path, according to many jurisdictions, for instance, European countries entitle the victim to claim compensation directly from the insurance company. Particularly, in France and Nordic countries, this right of the victim is unconditional.¹²⁷ Similarly, in Ethiopia, the legislator bestows such rights upon victims of a motor vehicle accident.¹²⁸ On this point *Ato Yenew Bitew* noted that although insurers sometimes challenge the unconditional nature of the claim, the practice usually goes in line with the law.¹²⁹ That is, any defense the insurer may have against the insured would not rise against the victim. Instead, after compensating the victim, the insurance company may recourse against the insured. However, in *Ethiopian Insurance Company v Ato Tsigabu Gebru et. al.*, the Federal Supreme Court Cassation Bench denied victims' right to bring compensation claimed directly from the insurer, by saying there is no provision in the Civil Code that entitle third party victims to bring direct compensation claim to the insurer.¹³⁰ This decision is against the clear stipulation of Article 17(2) of proclamation No. 799/2013. In this decision the Bench did not recall presence of the above proclamation. Thus, it shall not have binding nature in subsequent similar cases. However, in *Kalkidan Abebe v Nile Insurance SC et al.*¹³¹ the ANRS Supreme Court repeats the same mistake by rejecting compensation claim brought by daughter of the deceased against the insurance company for similar reason. Therefore, in Ethiopia, as the law held insurers strictly liable along with holders and owners of motor vehicles, judicial practices that deviate from the governing law need to be corrected.

¹²⁶ Hailegabriel F., A Legal Appraisal of the Liability of the Actual Air Carrier under Ethiopian Law, *Bahir Dar University Journal of Law*, Vol.2, No.1, (2011), pp.94-97. For article 2083 as it defined in tandem with article 2072 holder is defined only as a person who receives vehicles for his benefit. This implies that controlling power is not necessarily follow the holder. Hence, ultimate strict liability for damage sustained on third party victims by aircraft or vessels rests on the person having controlling power, that person may be an owner, holder, or third-party operator.

¹²⁷ Gomard, supra note 51, p. 97; Cannarsa, supra note 50, p. 28.

¹²⁸ Proc. No. 799/2013, supra note 12, article 17(2).

¹²⁹ Interview with AtoYenew Bitew, Attorney of Nile Insurance at Bahirdar Branch, (7 July 2020).

¹³⁰ *Ethiopian Insurance Company v Ato Tsigabu Gebru et.*, Federal Supreme Court of Ethiopia, Cassation File No. 104544 [May 2017; reported in የሰበር ውሳኔዎች፡ ቅፅ 20፡ 2009 ዓ. ም፡ ገፅ 328-332]

¹³¹ *Kalkidan Abebe v Nile Insurance SC et al*, supra note 11.

Conclusion

Clearly stated scope of the law governing strict liability for a motor vehicle, grounds used to constitute the claim, and parties to the claim are essential prerequisites for establishing a case having strict liability nature for the damage caused by motor vehicle. However, Ethiopian strict liability law in this regard is inadequate. Some provisions of the law are vague, general, or silent as to the above elements; accordingly, there is a heterogeneous stance on the same issues among legal professionals.

Regarding the scope, the writer concludes that scope of application of the law governing strict liability for motor vehicles is not and should not be limited to ordinary motor vehicles commonly called “mekina”; rather it encompasses all motor vehicles in absence or gap of special provisions governing similar liability. Furthermore, given the ongoing technological transformation, the phrase motor vehicle should be construed to include or to be amended in a way of incorporating non-motored vehicles, which share the justifications provided for imposition of strict liability for motored vehicles. Vehicle insurance against third party risk proclamation is the other important point worth considering in relation to scope of strict liability law. Although introduction of Proclamation No. 799/2013 seems to jeopardize application of strict liability law (as they have differences in the scope of application, identity of the victim benefited therein, and nature and quantum of damage covered by them), the two laws complement each other than contradict.

In case of fatal accident, only the spouse, children and parents of the deceased who used to receive regular material support from the deceased are entitled for material compensation. A spouse in bigamous marriage should also have similar right in this regard. Accordingly, age or other subjective traits of the victim or his dependents are irrelevant for the determination of their capacity as claimant. In this regard, the law is criticized for excluding dependents other than spouse, children, and parents of the deceased, particularly helpless minor sisters and brothers, from claiming compensation for material damage suffered due to the death of the victim while they are entitled to claim compensation for moral damage as its position is illogical and unfair.

Coming to causation, though the standard is not stated by Extra Contractual Liability Law, by way of analogy, the Criminal Code standard should be used. Hence, the plaintiff should prove the vehicle is adequate cause for the damage sustained.

Concerning parties having strict liability for damage caused by motor vehicles, owners and holders are strictly liable for damage caused by motor vehicles while ultimate liability is destined on the holder who uses the vehicle for his benefit. Nonetheless, presence of holder or other person responsible for ultimate liability would not outrightly release the owner from liability. Instead, what the owner is entitled to is to recourse against the person responsible for the damage after compensating the victim. However, such stipulations are subject to contrary provisions in special laws governing strict liability for motor vehicles and contractual agreements. In the latter case, the presence of contractual agreement between the owner and holder or another person concerning their liability is valid only for the determination of ultimate liability; otherwise, it will transcend the privity nature of the contract and the aim of Extra Contractual Liability Law.

In addition to owners and holder, insurer of the vehicle could be jointly and severally liable for the damage caused by the motor vehicle under its insurance cover. Hence, victims have unconditional right to bring an action for compensation directly from the insurer.

