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[Review]

## Case Study on Driver's Liability in Cargo Transit\*

Young-Arm Kwak\*\*

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### Abstract

**Purpose** - This study examines car accidents that occurred in South Korea territory, and analyzes criminal liability of the offender and certain issues of driver's insurance, but a civil liability to the injured is excluded as civil liability belongs to auto insurance.

**Research design, data, and methodology** - With carrying out this research, case study of driver's liability and literature review were adopted throughout. For this, car accidents that occurred in South Korean territory were examined and then criminal liability of the offender and certain issues of driver's insurance were analyzed.

**Results** - From this case study on driver's liability it was found that the offender cannot receive insurance money from the insurer irrespective of the valid drive insurance, if there is no 'bill of agreement of criminal consensus'. This study suggests some ideas, offers suggestions of convenience and assistance of qualified claim staff to overcome a hurdle of drive insurance.

**Conclusions** - As long as the accident is not a fraud and scam by the parties concerned, advance payment of agreement of criminal consensus is required to the insured, the policy holder within the limit of liability of driver insurance, on condition that the drive insurance is valid.

**Keywords:** Driver's Liability, Driver Insurance, Car Accident, Criminal Consensus, Legal Liability.

**JEL Classifications:** L93, K33, G22.

### 1. Introduction

Physical distribution means actual and physical movement of goods, source and material. For successful physical distribution, a lot of people such as seller, buyer, carrier and customer involve transportation process to the various places such as factory, warehouse, cargo terminal, port, airport and house in order to observe any sales agreement, sales note and purchase order etc.

It is no doubt that seller must deliver goods to the buyer

within the date of delivery on the basis of the said sales contract or agreement. If any accident of the goods for delivery to the buyer took place in transit, many parties concerned, carrier, sub-carrier, bank, seller, buyer and customer have a big trouble of non-delivery in view of timely transportation. Under above circumstances, this paper examines car accidents and analyzes criminal liability of the offender.

One who drives a car on road has to do safety driving. Whoever drives a car has a duty of safe drive, regardless of owner of the car in South Korea. Everybody can expect that car accident make a big loss or damage to people and property. At car accident, a offender takes a civil liability, crime liability and administration liability, and then a victim has a type of dead, injury and severe disability forever his life. By this reason, almost counties do operate a system of compulsory (mandatory) insurance of auto insurance, because almost counties wants to protect a good and innocent people on the road. Also South Korea is not

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\*\* Professor, Department of Global Trade Management, Shinhan University, Korea.  
Tel: +82-31-870-3542, E-mail: [yakyak@shinhan.ac.kr](mailto:yakyak@shinhan.ac.kr)

except to adoption of compulsory (mandatory) insurance system, so 'bodily injury liability1' (upto Korean won 150,000,000) of civil liability on auto insurance is a compulsory (mandatory) insurance, and property damage liability (upto Korean won 20,000,000) is a compulsory (mandatory) insurance for the protection of victim in Korea.

Concerning a case of claim, this paper is dealt with criminal liability, criminal consensus and driver insurance of a cargo trucker who has driven for international transit in Korea. In particular, issues and suggestions of criminal liability, practice of criminal consensus and insurance money of driver insurance are mainly focused.

This study examines car accidents occurred in South Korea territory, and analyzes criminal liability of the offender and certain issues of driver's insurance, but a civil liability to the injured is excluded as civil liability belongs to auto insurance.

## 2. Theoretical Background

### 2.1. Current Status of Traffic Accident

<Table 1> shows that current status of traffic accident in South Korea, as types of accident, quantity of accident, death, injury and quantity of accident per 10,000 car in turn.

<Table 1> Current Status of Traffic Accident in South Korea

Type/Year	2011	2012	2013	2014	2015
Accident	221,711	223,656	215,354	223,552	232,035
Death	5,229	5,392	5,092	4,762	4,621
Injury	341,391	344,565	328,711	337,497	350,400
Quantity of accident per 10,000 car	2.4	2.4	2.2	2	1.9

Source: Statistics Korea (2017).

In the meantime, quantity of accident per 10,000 car in main developing countries is as under, 2.0 person of accident per 10,000 car in South Korea is very high comparing with OECD average 1.1 person.

<Table 2> Quantity of accident per 10,000 car (year 2014, unit: person)

Type	South Korea	USA	France	Japan	OECD average
Death	2.0	1.2	0.8	0.5	1.1

Source: Statistics Korea (2017).

### 2.2. Overview of Driver Insurance

Driver insurance differs from auto insurance as follows points(<Table 1>). Driver insurance is a insurance goods

that covers the risks which are excluded from auto insurance. Driver insurance is a insurance contract that expenses in car accident compensate to the insured. Auto insurance is a short term, one year period and extinguished the effect of insurance, but driver insurance is a endowment policy over 3 years at least.

<Table 3> Legal liability incurred from traffic accident

Classification	Applicable law	Insurance mode
Civil liability	Civil law	Auto insurance
Crime liability	Crime law	Drive insurance
Administrative responsibility	Road traffic law	Drive insurance

As a whole, civil liability, crime liability and administrative responsibility occurs simultaneously to driver on car accident. Just civil liability out of three kinds of liability is covered under auto insurance as mandatory insurance in Korea. On the other hand crime liability and administrative responsibility out of three kinds of liability is not covered under auto insurance. To compensate these two liabilities of uninsured risks, drive insurance is needed to every driver for neither worry nor concern of the car life.

<Table 4> Special agreement on drive insurance

Classification	Special agreement
Crime liability arising from death of victim, heavy injury and heavy traffic offense of law	Penalty, defense cost(lawyer fee), criminal consensus(traffic accident aid), imprisonment daily wage
Administrative responsibility arising from car accident	Consolation money for drive license pause, consolation money for drive license cancellation
Expenses arising from car accident	Emergency towing cast, auto insurance additional premium aid, rent a car aid, consolation money for car losses
With regard to heavy traffic offense of law, driver insurance does not cover the loss or damage causing hit-and-run car, driving while intoxicated and unlicensed driving of the driver. But auto insurance on driving while intoxicated and unlicensed driving compensates indemnification of Bodily injury liability and Property damage liability as civil liability.	

### 2.3. Comparison between Driver Insurance and Auto Insurance

People does not distinguish drive insurance from auto insurance and confuse the said insurances. Auto insurance and drive insurance is quiet different on roll and contents. Main difference of them is a covered risks, that is to say, drive insurance covers the risks excluded from auto insurance. Drive insurance does cover a criminal liability, such as penalty, defense cost(lawyer fee), criminal

consensus(traffic accident aid) and imprisonment daily wage. Also, expenses are covered such as consolation money for drive license pause, consolation money for drive license cancellation, emergency towing cast, auto insurance additional premium aid, rent a car aid, and consolation money for car losses as shown <Table 3>.

Concerning a mandatory insurance, auto insurance is a mandatory insurance, but drive insurance is not, and just optional insurance.

<Table 5> Comparison between Driver Insurance and Auto Insurance

Classification	Drive insurance	Auto insurance
Civil liability arising from car accident	Not covered	- Death, injury (bodily injury liability I, II, self bodily injury) - Property damage (property damage liability, car damage)
Crime liability arising from car accident	Death, injury (criminal consensus), defense cost(lawyer fee), penalty	Not covered
Administrative responsibility arising from car accident	Consolation money for drive license cancellation and pause	not covered
Expenses arising from car accident	Covering expenses (emergency towing cast, auto insurance additional premium aid, rent a car aid, consolation money for car losses)	Not covered
Unlicensed driving and driving while intoxicated	Not covered	Risk covered under deductible. Unlicensed driving is not covered on bodily injury liabilityII.
Mandatory	Not mandatory insurance	Bodily injury liability I and Property damage liability are a mandatory insurance.

## 2.4. Literature Review

Cho (2012) studied several issues associated with ‘money of agreement to reduce criminal responsibility’ in compensation for damages on personal injury. Choi (2009) studied the necessity and Legitimacy of the offense not to respond to taking a drunkometer test. Chung (2012) studied The Criminal Consideration on the DUI Forced Blood Gathering. Chung, Choo, and Cha (2011) studied Criminal Responsibility of DUI Passengers. Kang (2009) studied the Criminal Responsibility of Driver Who Bring on Serious

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Studies in the field of drive, insurance and transportation duly showed in the vast literatures, that is to say, Aiman and Amina (2015) studied Energy Efficiency and CO2 Emissions of the Transportation System of Kazakhstan. Arsalan, Habibollah and Ramona (2017) studied Determining the Relationship between the Effective Factors of Strategic Behavior: A Case Study for Social Insurance Company of Tehran. Cho and Lee (2012) studied the Logical Reclassification of Parcel Service Tariffs. Chung and Choi (2016) studied Optimization of Transportation Problem in Dynamic Logistics Network. Coo (2017) studied Trucker Recognition in Korean Cargo Distribution O2O Business Model. Erzhan, Zhatkanbaev, Mukhtar, and Suyunchaliyeva (2015) studied Innovative Mechanisms in the Procurement Logistics of Kazakhstan. Hwang and Choi (2014) studied The Influence of Low Cost Airline's Flexible Fare Policy on Consumers' Perceptions of Price Fairness. Joo (2017) studied The Impact of Corporate's Attributes on Corporate Pension Insurance Products & Type Preference. Jung and Yoon (2013) studied The Effect on Logistics Cost of Incompatible Packaging Sizes in T-11 and T-12 pallet systems. Kim, Cha, and Park (2017) studied The Effect of Customer Orientation on Perceived Referral Risk and Referral Intention. Kim (2006) studied the Korean Current Status and Strategy Directions of International Logistical Transport Route: With the Case of Trans Korean Peninsula Railway. Kim and Park (2013) studied An analysis of the operational efficiency of the major airports worldwide using, DEA and Malmquist productivity indices. Kim (2014) studied Lessons from the Policy Implications of Green Logistics in Europe. Kim (2009) studied Improving Scheme and An Investigation into the Actual Condition about Components of Physical Distribution System. Kim, Kang, and Lee (2017) studied Surface Acting, Emotion Exhaustion and Turnover Intention: Moderating Roles of Social Support. Kim and Cho (2010) studied the Revitalization Strategy for Inter-Korean Railway by Building the Railway Logistics Depot – Focused on the Donghae Line. Kim, Byun, and Ryu (2011) studied the Current Fire Insurance Subscription and Solutions for Ensuring the Safety of the Traditional Market. Lee and Choi (2015) studied Brand Equity and Purchase Intention: The Fashion Market in China. Lee, Kim, and Lee (2016) studied

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### 3. Case Study of Driver's Liability

As mentioned before in chapter 2, in Korea, civil liability, crime liability and administrative responsibility occurs simultaneously to driver on car accident. At this, crime liability and administrative responsibility out of three kinds of liability is not covered under auto insurance.

A case of criminal liability, criminal consensus and driver insurance of a cargo trucker who has driven for international transit in Korea is examined as follows.

For discussion of the driver's liability of criminal case, this case is a virtual case under very usual accidents in South Korea. There is no difference both virtual case and actual case.

#### 3.1. Case of Criminal Liability and Issue

Driver, Park mon-su(hereinafter referred to as "Park") has a small sized cargo truck, 2.5 ton, and has been working for carrying customer's goods, exporting, importing cargoes, personal effects and furniture. At the time of traffic accident, there is no difference between self-employed and company employee in point of punishment of criminal offense arising from car accident, because criminal punishment is charged to driver not company and owner.

Driver, Park did drive to the local area as usual on 8 July 2016. He drove his cargo truck, Porter 1 ton, from in the vicinity of Gyeongchung-daero, Chowol-eup, Gwangju-si, Gyeonggi-do, South Korea to the direction of Yeosu-si, Gyeonggi-do 02:00 hours on the same date.

On the local road with single 1 and round lanes and moderately listed hill, it was very difficult situation of safe driving due to midnight on 02:00 hours to take a good

views to things all around on the road.

At that time, driver Park felt any rolling and shocking during transit by 40 km speed, thus he got immediately off cargo truck, checking surrounding truck. After this checking, he found anybody collapsed on the road, and called and reported this case. Ambulance arrived at site, and carried/dispatched the injured to near university's hospital. However, parties concerned in hospital noticed the death of the injured, what we call 'dead on arrival'.

From the investigation of policeman, the offender, driver, Park did drive as usual, but he did not recognize the victim due to severe dark on the road. The offender, driver, Park is a only driver and was not a 'driving while intoxicated' at the material time. Also the victim did not eat/take any drinking. However, there was no saying, wording and proof as the victim was died at that time from the accident.

As usual, 'funeral' was taken place after 3 days from the accident, and driver, Park visited funeral parlor and then duly apologized his accident to the bereaved, but driver, Park's action was very polite, in consideration of other offender's behavior of traffic accident in South Korea.

In most car accident in South Korea, the offender does not visit and meet the bereaved and does not contact the bereaved for an apology, because the most offender, driver considers his duty to report the accident only to the insurance company, and because they think auto insurance can terminate all matter of car accident on behalf of the offender, driver, as might be expected.

It is very common custom in South Korea that qualified staff of auto insurance on behalf of the offender, driver strives to negotiate settlement of traffic accident with injured and the bereaved, even though the injured and the bereaved are so upset from this custom and the offender.

The offender, Park tried to settle this case with the bereaved, after long tedious negotiation they reluctantly agreed to receive korean won 25,000,000 in final. The offender already prepared/borrowed korean won 10,000,000 from the near friend after car accident. However the offender was in big trouble for the short of Korean won 15,000,000 notwithstanding his all efforts.

The offender bought the driver insurance including auto insurance, and maintained two insurance in spite of his difficult economic status in consideration of his income level. Limit of liability for criminal consensus from traffic accident on his driver insurance is korean won 30,000,000 to pay to the insured from the insurer.

Driver insurance at present is a base of 'compensate actual expense', however under this base, all insured of drive insurance must submit several documents such as a. Report of traffic accident issued by police, b. Certificate of death, c. Bill of agreement of criminal consensus to the insurance company for the purpose of receiving the insurance money at stake.

Under the above circumstance, the offender can not receive insurance money from the insurer irrespective of the

valid driver insurance, if there is no 'bill of agreement of criminal consensus'. Besides, insurance company with firm stance demands to submit the same several documents to the insured in order to pay insurance money, saying the insured must settle and pay for amount of criminal consensus.

Regardless of simple step, the insured was in big trouble due to temporary financial twist, and in turn the bereaved was angry not to receive amount of criminal consensus. If the bereaved abandons the criminal consensus, agreement of criminal consensus will be null and void. In general if the offender does not submit letter of criminal consensus to the court, the offender can be faced imprisonment instead of fines, which causing his family under big economic pressure due to unemployment.

Under the above circumstances, finally as long as the accident is not a fraud and scam by the parties concerned, advance payment of agreement of criminal consensus is required to the insured or the policy holder within the limit of liability of driver insurance, on condition that the driver insurance is valid.

It is unfair and indifferent for their customer that the insured bought their driver insurance because of rigid interpretation of insurance clause(provision).

No wonder that the insurer may pay advance payment of agreement of criminal consensus needed through amending internal policy, because the same of advance payment of agreement of criminal is a debt to the insured, merely time gap and problem.

### 3.2. Suggestion

In the light of the above issue, this study suggests some ideas as follows to overcome a hurdle of driver insurance.

#### 3.2.1. Offer of finance convenience

Driver insurer may give a loan within limit of liability under valid driver insurance to the insured(the offender) and the bereaved who have been under physically and mentally severe pressures of criminal consensus, provided valid contract of driver insurance exists.

From a traffic accident, period of criminal consensus is about 2 or 3 weeks prior to reporting to prosecution as a procedure of police investigation. Loan period of finance convenience needed to the insured(the offender) is the same period. Hence, the driver insurer can make an effect of the loan of insurance money to the insured within limit of liability, provided valid contract of driver insurance exists.

This kind of loan within limit of liability is more safer because driver insurer has a guarantee of limit of insurance money for criminal consensus under valid driver insurance to the insured(the offender), which means that there is no worry of non-payment from the insured(the offender).

The royalty of the insured who has been gotten 'finance

convenience' from the driver insurer will be definitely increased, also the said insured will not leave their driver insurance company and will not buy competitor's insurance goods.

#### 3.2.2. Assistance of qualified claim staff

Assistance of qualified claim staff in driver insurance must be applied like as auto insurance, at the time of criminal consensus from time of reporting accident to time of close a file with a view to calculating exactly all kind of insurance money such as criminal consensus and defense cost, etc, which can eventually lead to the benefit of the driver insurance.

Giving much confusion and inconvenience of payment type of insurance money between 'Actual Cash Payment' and 'Advance Payment designated', it is more important that driver insurance should furnish real and actual convenience with the insured and the potential customer in consideration of insurance's social function in South Korea.

Like as auto insurance, even though expansion of qualified claim staff will be required a lot of budget in terms of organization, by this reason, the policy-holder including the insured are willing to take over minimal increasing insurance premium.

Receiving assistance of qualified claim staff at the time of criminal consensus through approximately 20% increasing insurance premium for the insured is welcomed to the potential customer in Korea

Everybody can be always the offender on driving and can be the injured and victim on the road. Meanwhile increasing insurance premium in driver insurance has to fully consider many aspects such as influence of price fluctuation, profits and loss of the insurer and customer's premium ability through a tight evaluation of government authorities.

## 4. Concluding Remarks

### 4.1. Summary

Concerning a case of claim, this paper is dealt with criminal liability, criminal consensus and driver insurance of a cargo trucker who has driven for international transit in Korea. In particular, issues and suggestions of criminal liability, practice of criminal consensus and insurance money of driver insurance are mainly focused.

This study examines car accidents occurred in South Korea territory, and analyzes criminal liability of the offender and certain issues of driver's insurance, but a civil liability to the injured is excluded as civil liability belongs to auto insurance. Driver insurance at present is a base of 'compensate actual expense', however under this base, all insured of driver insurance must submit several documents such as a. Report of traffic accident issued by police, b.

Certificate of death, c. Bill of agreement of criminal consensus to the insurance company for the purpose of receiving the insurance money at stake.

Under the above circumstance, the offender can not receive insurance money from the insurer irrespective of the valid drive insurance, if there is no 'bill of agreement of criminal consensus', whilst the insured gets in big trouble due to temporary financial twist by his difficult economic status. Besides, insurance company with firm stance demands to submit the same several documents to the insured in order to pay insurance money, saying the insured must settle and pay for amount of criminal consensus. In the light of the above issue, this study suggests some ideas to overcome a hurdle of drive insurance, that is to say, offer of finance convenience and assistance of qualified claim staff. Finally as long as the accident is not a fraud and scam by the parties concerned, advance payment of agreement of criminal consensus is required to the insured or the policy holder within the limit of liability of driver insurance, on condition that the drive insurance is valid.

#### 4.2. Limitation and Future Research

It suggests strategic implications to driver's liability with cargo accident that this study does analyze issue raised constantly of criminal liability on drive insurance to the third parties, the bereaved and then do suggest ideas to overcome hurdle of drive insurance, because there has been being a need and recall of the said issue of drive insurance. This study is a single case study that shows driver's liability and cargo accident which causes troubles to seller, buyer, carrier and parties concerned, and this study did not analyze any data of the driver's liability and cargo accident. Therefore results of this study have the same results irrespective of quantity of case. Notwithstanding this point, it is clear that lessons of the case study and suggestions of ideas will be contributed towards academic aspect.

Meanwhile further research on this paper will be followed whether revised payment type of drive insurance money has any issues or not, in other words if there is any problem of revised payment type during policy execution, verifying any problem of which is one of the topic of further research.

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