

To fulfill the civil responsibility of the contractor in Iran's law system

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Abstract: Contractor as owner of the risky profession, has always been subject to various risks, and at any moment may be liable for accidents and incidents that threaten. To fulfill civil contractor's responsibility need the conditions, some of these conditions, as general conditions in all types of civil liability are presented such as losses, and the relationship of committing a harmful act and causation relationship between the harming act and the harmful entry; three elements of the Iranian legal system, and most legal systems, are called to fulfill civic responsibility elements. Aside from this, there are some tools that fulfill specific requirements, are the civil contractor responsibility. These conditions are necessity damage entry during operation, the employment law required on the contractors (employers) and employee adverse action. In this case the civil responsibility of the contractor will fulfill, therefore, in this paper, together with the general and specific terms civil contractor liability, is presented.

Keywords: Civil Liability, Contractor, loss-injured, employee

I. Introduction:

For civil and industrial projects, various types of contracts are in the world that their most important is the contractor contract. The contracting is the meaning of contract. In short, the precise definition of the contracting can be said: "it is the contract between the Employer and the Contractor to execute a project". Contractors and builders of the country have the influencing role in the development of massive national projects so they called as "vanguards development", Because of the tireless effort and painstaking work of this group could convert the country to a large, active, happy and purposeful workshop, and through this noble effort, factories, industries and small and large building complexes make the way for the holy, religious, national and patriotic ideals. Besides this important role, contractors are responsible for the daunting task due to the neglect of their duties and responsibilities that will be realized.

The Contractor responsibility is known in all legal systems and with traffic accidents, medical and industrial production, high volume low but significant level of civil liability issues, the discussion is devoted to criminal law. The Civil Liability is defined in our law, in each case, the person is bound to compensate the other damage, saying, and he has "civil liability".

Civil responsibility of Contractor is known, because the legal system, with its buckle and it has been fatal technical and blows, and to prevent future crises and defeats, often repressive and preventive solutions are presented. According to the general rules of liability for personal responsibility, first, prerequisites for the liability to occur, in some instances, the responsibility of the contractor is the civil liability arising from other action (He's also responsible for the actions of workers), it isn't excluded, and it should provide responsibility for the contractor.

In this paper, we tried to explain the civil responsibility of the Contractor, and to distinguish condition to fulfill this responsibility from its exclusive tools, and also the responsibility of the contractor due to other act.

First section-General conditions of civil liability fulfillment for contractor

To fulfill civil responsibility, all three ingredients are necessary: A) loss, b) commit a harmful act c) causation relationship between the act and the harm that is entered to the person. These three elements are in the same condition that they will remember as the foundations of civil responsibility.

A) Loss:

Loss is the main basis for civil liability, the purpose of the rules on civil liability is to compensate damage. Despite the loss, it will naturally take precedence over compensation. In other words, it must to make loss, to provide responsibility for its compensating. Liability claims can never be made by profit-seeking. So,

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loss must be counted as the basic element of civil liability. This case is advantage of the legal entity on the moral responsibility. The Civil Code is not explicitly stated this rule in any text. The reason for this silence should be considered. Because it is not the loss and the right does not make for him. However, Article 728 of the Civil Procedure Code, the damage knows as the former pillars of the lack of commitment claims: The court ruled that the claim for damages in the event of damage must prove that he was injured. This article has changed. Article 520 of the new Civil Procedure Code provides the same content (Katoozian, 2013). Article 1 of the Civil Liability Act also says necessity of the loss, whoever intentionally and without legal authority, due to the carelessness or property or freedom or dignity or business reputation, or any other rights established under the law to harm people, it causes material or moral damages resulting from their actions that he is responsible. "

II. Concept and types of loss:

The word of loss is applied against profit, lexically it means as decline and damage, and loss is also against the profit, means as the damage. Thus, losses, damage and other similar words are used as synonymy. Some French professors have said: to define loss is not necessary; because in the legal term, this word is used in the lexical and common meaning (Safai and Rahimi, 2011). Legally Loss is defined as: "To make any kind of defect in the property or the elimination of certain benefits and any damage that affects the health and dignity of the person, is called the loss" (Amid Zanjani, 2011).

Loss has long been divided into the material and Spiritual: In addition to the material and Spiritual losses, today law loss speaks from the bodily loss, So it should be said: Laws and legal writers, creates civil liability for damage which may be divided into three distinct groups: 1) material, 2) Spiritual, 3) Physical (Safai and Rahimi, 2011) 2. The purpose of material loss (financial) is loss that resulting in the loss of property (such as burning houses and killing of animals) or decreases the value of the property (such as the construction work that costs decrease neighboring property value) and intellectual property (such as harming to the trade name and industrial mark) or the loss to the industry and the legitimate people is given to them.

Previously they doubted that Loss of profit set into among the losses, but in today's literature "Loss of profit" is also considered as damages, Including in paragraph 2 of Article 9 of the Code of Criminal Procedure has presented among the recoverable losses. In paragraph 1 and 2 of this Article, the recoverable losses have defined as follows: «1 - material losses as a result of the offense commission, 2 - benefit that may have been obtained by the commission of the crime, the private plaintiff is deprived and disadvantaged." But in Clause 2 of Article 515 of the Civil Procedure Code reads: damages resulting from the loss of profit aren't recoverable, late payment damages on legal cases is recoverable. "So, the important thing about these two sentences and is to distinguish the loss of profit concept. It should be added that the strength of the profit rate must be to the extent that in the conventional view, the loss can be presented as "inalienable". No loss of luck and the possibility (Katoozian2012; Mohammadi, 2010). On the other hand, has provided that loss of profit is the damage if where there is the profit for loser (Jafari Langroodi, 2012). Spiritual Loss is a psychological damage and to decrease the dignity of the person, that due to unlicensed practice is found (Emami, 2008).

Physical harm will be the defined: Physical harm is damage to human health which this type of damage may be physical or spiritual (G. M., 2012).

III. Conditions of recoverable Loss:

1. The loss must be definite, if loss is probable, it isn't recoverable.
2. Incurred Loss must be direct, and whenever the harmful act against another occurs, this loss is not direct, because it is possibility that the loss is due to another accident, which was before the harmful act, this loss cannot be claimed.
3. Loss has not been compensated; against the law for any harm that comes only once has the ability to compensate.
4. Loss to be foreseeable, this means that the current loss of the agent be foreseeable for the loser. It is anticipated losses where the "fault" is the basis for civil liability.
5. Loss is not due to the loser act: In this regard, paragraph 3 of Article 4 of the Civil Liability Act enumerate the cases in which the judge has the discretion to reduce the amount of such compensation, it has been said:"When the injured in one way or another, will facilitate the loss, It helps to add or enhance the hurt conditions on importer."

B - Committing harmful act:

The harmful act is an act or commission that is illegal and illegitimate and led to damage. The harmful act is divided to four types in related to direct actor: person act, animal act, object act and others act. (RahPaik, 2011). If person unable to establish the harmful act, its responsibility is on the actor but he has not any responsibility.

The authors' purpose from the second element of the civil responsibility is to distinguish persons as guarantor who enters loss legally whether they are guilty or not. The typical interpretation and to be mere loss is not sufficient to remove this element and in the injurer action (actor) should be hidden illegitimacy and inadmissibility, Otherwise, if the harm is unjust and obscene or act actor to be an illegitimate, there will not be responsibility. Nevertheless, when discuss about the harmful act in civil liability, usually special attention being paid to the undue act of injurer because he is guarantor against guaranty. If a harmful act, such as the loss directly or indirectly, or responsibility for such cases causation action or liability arising from the individuals objects, basically, do not discuss on the responsibility, So losses from external forces, such as floods and earthquakes, there is no liability.

Despite what was said, however, to do the lawful and legitimate things are harmful, Provided that they do not constitute an abuse of rights, civil liability cannot be made. Nevertheless, actions that, in principle, are not legitimate, however, due to the specific causes, the legislation considers it as appropriate, it destroys its esteem and the punishment is not allowed to perpetrator. But civil liability still remains strong. In other words, permit of the legislation in certain cases has no accordance with non-liability (Darab Pour., 2011). In other words, there are cases that although the act is harmful, But the law exempts the perpetrator including legitimate defense, law, order of a competent authority, coercion and duress and... .

C - Causation relation between the harmful act and the loss entry:

To fulfill responsibility should be established that there is a causation relationship between Loss and the harmful act i.e. the loss was caused by the action. Of course, if to cause an accident, the event must be one of the necessary conditions to realize loss, it was proven that the loss is not made actually (consistory, 2011). In this case, this is a loser who should prove that causality relationship exists between the harmful act and the harm, and until causality cannot be established, it cannot say that it is a harmful act.

To establish the causation relationship between the fault and a loss led to make the complex issues that cannot be found the solution for them except by the talent sense and evidences in every case. In the cases that, responsibility is due to the personal action, it must confirmed causation relationship between the defendant fault and Loss entry. On the contrary, in an assumption, there is responsibility due to others action, thus, it is not necessary to establish. However, it must be proved that between the act and fault of the person who his acts responsibility is on defendant and loss entry, there is causality. For example, it is claimed that worker has damaged to another when working and the employer must compensate that. In this case, causation relationship between the fault of the employer and the Loss entry does not need to prove. But it must be established that the loss is resulting from the action of labor. It is also correct about the responsibility of the guardian of minors and the insane on his actions and so (Katoozian, 2012).

Second part: specific conditions to fulfill the civil liability of contractor:

To fulfill the civil liability of contractor, And to apply Article 12 of the Civil Liability Act has considered the contractor as employer under this Article for damages to third parties by the responsible workers, In addition to the conditions mentioned as common issues for all types of civil liability, Other conditions require that is limited to the civil liability of employers and contractors and the contractor's responsibility is fulfilled when they were achieved Including the need to enter damage during labor and to require the employment law to Employers, the terms are seen in Article 12 of the Civil Liability Act.

A - To enter damage during labor or due to it:

Responsibility of the employer (contractor) against third parties on behalf of the staff and workers due to the losses will be realized that when to do labor or resulting it. In justifying this rule can be said that: Employer liability is based on the idea that whenever someone uses the other power to add his income should pay loss resulting from the profit. Furthermore, the employer (contractor) ensure actions that worker does for him. So, it is reasonable that the employer's liability is limited to damages that worker makes for others or the occasion when working. In other words, in the case of damage or an occasion when it occurs, the causation relationship between the worker act and the losses entry is assumed until the injured was exempted to prove this relationship (Katoozian, 2012). Article 12 of the Civil Liability Act has considered the causation relationship between damages and actions in the line of duty or its occasion as sufficient until the employer find responsibility. We can infer the causation relationship in articles 325 to 328 and Article 666 of the Civil Code and Article 1 of the Civil Liability Act be (Ahmad vand, 2006); But on two conditions, "on duty" or "on the occasion of duty" that requires some explanations, is given below.

Article 60 of the Social Security Act passed in 1978, says the definition of work-related accidents: Occupational accidents are the events that occur to the insured while on duty and due to it. The purpose of on duty is all times the insured is working in the workshop or Buildings and facilities or its affiliates or by order of the employer had a mission outside the workshop. Time for a visit to the clinic or hospital or medical treatment,

rehabilitation and sometimes insured Leg and go to home and workshop, provided that the incident happened during leg and go the workshop in normal time. Incidents while attempting to rescue other insured persons and helping to them occurs, are the occupational accidents.

In according to paragraph 8 of Article 2 of the Act: In terms of the Act, unforeseen accident is the event which is influenced by external causes of action that occurs suddenly, and cause damage to the body or mind of the insured."

The ILO Convention Also ratified No. 17, June 10, 1925; The Convention requires signatory states to provide compensation to workers who are injured due to Industrial accidents. Convention No. 19, adopted June 5, 1925 as well as equality of behavior (Compensation for work-related accidents) Commits the signatory states, whenever the citizens of the country to the other member States of the conventions (the affiliates) is accepted, they damage as a result of work-related accidents, In the same manner to enforce as they or their heirs who are the common citizen (Naimi and ..., 2010).

It seems that in Article 60 of the latter Act, two terms "on duty" and "on its occasion" is mixed and can say: Events such as the "go to clinics or hospitals often" or "sometimes leg and go to the home by insurance" is not considered, it is also considered on its occasion.

However, the purpose of "on its occasion" is that: when the damage occurs, Worker is doing something that is not part of their duties, but it is related to his task, then if worker hurts to other in the non-working hours, For example, when working with your own car, The employer (contractor) will not be responsible, But when the worker provides doing the preliminaries, For example, when preparing a ladder to do the job and goes to work, due to the recklessness causes harm to another, the injurer Can to refer for compensation to the employer (contractor) to see (Safai and Rahimi, 2010).

The suddenness of the event is a condition of the work-related accidents, it explains that, condition of the suddenness of the event, separates the event from continuous illness, under this condition, as well as events that are predictable, and worker able to prevent it from happening, they are not considered as the occupational accidents (Naimi and ..., 2010).

B - The inclusion of labor Act related to the employers:

Article 12 of the Civil Liability Act states: Employers, who are covered by labor law, are responsible to Compensate losses that it is entered by the administrative staff and workers during their work or its occasion.... ". Legislator shackles "The inclusion of labor law" for employers, those employers who are not covered by labor law, it is excluded that.

For example, government officials appear as employers which they are acting in order to apply the rule. According to the definition in Article 3 the Labor Law, and paragraph 4 of Article 2 of Social Security Law, The employer is a real or legal person, the employee works based on the employer request and to pay him. Managers and workshops officials are also employer representative; the employer is responsible for all obligations of the representatives against workers. (Ahmad vand, 2006). According to the definition of the employer and Articles 5 and 13 of the labor Act 1369, Contractor as part of employers is certainly subject to labor law and it can be cited as the Civil Liability Act.

C - Labor harmful act:

The contractor as employer under the Labor Code and Civil Liability Act is responsible, Losses from the act or omission the employee is required to be raised, and it has been attributable to the worker's compensation act or omission with regard to causation relationship.

The question that comes to mind is that do you realize the responsibility for civil contractors, just association or causation is sufficient to prove that the fault should be working?

Civil Liability Act (Article 12) in this case is silent that so to answer this question; two possibilities come to mind, first, based on the general rules of liability, In particular, Article 1 of the Civil Liability Act, Contractor is required to prove the fault of the worker to supervisor. Contractor Liability for incident is subordinate liability and, naturally, when he must prove that he is deemed responsible for the actions of workers, and so workers have committed a fault.

Another possibility is to say that in cases where the harm comes from the labor, the injured to go to the contractor (to claim damages) does not require proof of the workers fault, Can go directly to him.

The law refers to the necessity of litigation against worker, and this suggests that he also does not require proof of fault. Typically the fault must be proven to have committed. Additionally, working with the legislative requirement to prove fault condition is incompatible with Article 12 of the Civil Liability Act. This is because all efforts, the injured in such cases are exempted from proving fault, and there is no obstacle in the way of your right, while the requirement to prove workers fault will distract the purpose (Katoozian, 2012).

Due to what expressed it seems that recent comments are more logical and consistent with the purpose of Article 12 of the Civil Liability Act. The injured can go directly to contractor, in this way, workers are not

required to prove fault, from the Elder speech is easily understood and inferred the accepting second view. It should be added that the fundamentals of proving liability and worker's fault is not to fulfill the responsibility of the contractor It just gives him the right to refer the wrongdoer workers.

IV. Conclusions:

In attention to the topics discussed, from the analytical viewpoint must be said, in many cases, contractor civil liability is contrary to the principle of the general rule of responsibility, however, he also explained he is also responsible for his actions in front of the other (workers), Accordingly, in addition to fulfilling the general conditions of civil liability, to create the contractor civil liability, a series of specific conditions must be exist to fulfill this responsibility, According to the rules and regulations associated with the contracting, Contractor is referred to as the employer when the contractor begins operations, and from that moment on he was responsible for all the events that are happening in the workplace, So logically, legal principle that negates any harm to another, he must to offset all losses during the operations which enters into others.

It is quite clear that Contractor for purposes of workers under their own economic interests uses, and the operation of this Treaty, workshops and practices obtains benefit most workers, this is the justification for accepting responsibility for the actions of his employees, Article 12 of the Civil Liability Act, lawmakers have justified the fault is assumed to be the same contractor as employer under the Act. The last part of Article 12 of the law should be kept away from the mind, based on this section of the article, contractor under the terms of compensation for damages must reference to the importer, however, in the case of workers damages of the contractor, at first impose that he should to compensate the incurred workers losses as a guarantor.

Notes:

1. In this article, we read:" The claim for damages, the applicant must be able to prove that direct damages are resulting from delay or failure to perform its obligations and otherwise the court will reject claim for damages. "
- 2-To see other divisions of loss (loss): Shahidi, Mehdi, 2008, contracts and obligations, pp. 69-73; HosseiniNejad, Hosseingholi, civic responsibility, pp. 75-78; Rah payk H., Civil Liability and Compensation for Rights, pp. 48-60; Lovrrasa, Michelle, civic responsibilities, translated by doctor Mohammad Ashtari, pp. 105-110
- 3- Article 15 of the Civil Liability Act in this case provides: Whose physical or financial damage caused in a variety of self-defense is not liable for damages, Provided that the damage is based on the appropriate standard. "
4. Article 325 civil Code: If the customer is own ignorance to usurp and owner refer to his and he could also refer to the vendor in related to the price and damages, although it is wasted by the customer, if owner refer to vendor for price, the vendor will not refer to the customer. Article 326 civil Code: If the financial is given to the owner, the price is a little high, not much recourse to the vendor, but it has right to refer to the price of recourse. Article 327 civil Code: if there is another case to usurp, Sale of seized property on the above-mentioned provisions will be implemented. Article 328 civil Code: Anyone who has wasted other property, he is guarantor, and the like and the price it will be recovered, whether purposely or not purposely, but whether to be principle or interest, if they can guarantee the perfect and imperfect or defective property, Article 666 civil Code: if damage is received on the defendant by the fault of attorney customarily he is considered to be responsible.
5. There are certain rules that are defined in work-related accidents, Clause 2 of Article 1 of the law on compulsory insurance for construction workers and directive dated 12.08.1380 and 21.08.1352 passed into law on pension insurance, death and disability weavers Act 2005.
6. Article 5: "All workers, employers and their representatives as well as workshops, students are subject to the provisions of this Act." Article 13: "In cases where the work is done by contract, the contractor is obliged to conclude a contract so that the contractor must commit to all the provisions of this Act about employees'.
7. Katoozian, N., beyond the requirements of the contract (civil liability), vol 2, pp. 18-15; fun, Seyyed Hossein Rahimi, Habibollah, civil liability (beyond the requirements of the contract), pp. 269-268

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