



# Analysis of compensation for the execution of third party liability insurance for rider's damage to others

Xueying Zhao

Harbin University of Commerce, Harbin, China

e-mail: 862392470@qq.com

**Abstract.** In order to further protect the legitimate rights and interests of the infringed and reduce the difficulty of safeguarding the rights of the infringed. Based on the rapid development of platform economy, this paper understands the contents of third party liability insurance, including the amount of insurance compensation, medical requirements and compensation scope. At the same time, combined with the traffic accident cases of takeaway riders in China Judgment Document Network, this paper analyzes the shortcomings of the third party liability insurance in the implementation of compensation, and provides reasonable suggestions for improving the third party liability insurance. The third party liability insurance can give full play to its advantages when the take-away rider collides with the infringed person, so as to jointly protect the rights and interests of the take-away rider and the infringed person.

**Keywords:** traffic accident of takeaway rider infringed

## 1 Introduction

Third-party liability insurance refers to the commercial insurance in which the third party suffers disability, death or property loss due to the personal negligence or negligence of the take-away rider during the delivery of food, and the insured take-away rider shall bear the accident liability and the insurance company shall be responsible for compensation according to law. Because the behavior of the takeaway rider in an accident will infringe on the third party's right to life, health and other rights and interests, the third party whose rights and interests are infringed is also called the infringed person. Under the background of the rapid development of take-out platform, the personal negligence or negligence of take-out riders during food delivery has seriously threatened the life safety of third parties, and it is equally important to protect the legal rights of infringed persons. Therefore, by analyzing the judicial cases related to traffic accidents of take-away riders, it is of great significance to find out the shortcomings in the implementation of compensation for third-party liability insurance, and put forward reasonable suggestions for improving third-party liability insurance, so as to make the protection provided by third-party liability insurance to take-away riders more practical.

© The Author(s) 2023

Z. Wang et al. (eds.), *Proceedings of the 2023 2nd International Conference on Public Service, Economic Management and Sustainable Development (PESD 2023)*, Advances in Economics, Business and Management Research 273,

[https://doi.org/10.2991/978-94-6463-344-3\\_44](https://doi.org/10.2991/978-94-6463-344-3_44)

China Judgment Document Network was opened in July 2013. It is a standardized and unified website established by the Supreme People's Court in accordance with the principles of authority, standardization and convenience. Except for those cases with special provisions in law, other legally effective judgments, rulings and decisions should be published in China Judgment Document Network. Based on this, this study searches the traffic accident cases of take-away riders published in China Judgment Document Network, and the search date is August 19th, 2023. This paper focuses on the analysis of the cases that the court found to be "takeaway rider infringement", including the relationship between takeaway rider and employer, the division of responsibilities and compensation, etc., and serves as a reference for the infringed to safeguard their legitimate rights and interests.

## **2 Source of information**

Collect judicial cases published by people's courts all over the country in China Judgment Document Network. The inclusion criteria are as follows: (1) Take "take-away rider" as the main keyword of the case, and (2) set the date from January 1, 2023 to July 31, 2023. The exclusion criteria are: (1) the judgment documents of the infringed person as the take-away rider; (2) Labor rights disputes between take-away riders and employers; (3) Repeated cases; (4) Cases with incomplete information; (5) Withdrawal or rejected cases. According to the above inclusion criteria, a total of 169 cases related to take-away riders were found, and 83 cases finally met the inclusion and exclusion criteria.

## **3 Research methods and results**

### **3.1 Research method**

Adopt retrospective research method, using Excel software to 83 cases of rider tort disputes, data collation and analysis.

### **3.2 Research results**

Among the 83 cases included in the research scope, the judgment time of infringement cases caused by traffic accidents of take-away riders was from January 2023 to June 2023, the cases generally occurred from April 2020 to February 2023, and only one case occurred in 2019. Among the 83 cases of rider infringement, they can be divided into 6 categories according to the disability of the infringed: as shown in table 1, there are 3 cases in which the infringed died due to ineffective rescue, accounting for 3.6%, 17 cases in which the infringed was disabled, accounting for 20.5%, and 4 cases in which the infringed needed secondary surgery, accounting for 4.8%. There are 13 cases in which the infringed suffered direct property losses, accounting for 15.66%.

**Table 1.** Classification of injury degree of infringed person

Disability of the infringed person	Number of cases(Piece)	Proportion (%)
Death	3	3.6
Disable	17	20.5
Need a second operation	4	4.8
Property loss	13	15.66
It does not constitute disability but is accompanied by fracture	21	25.3
No serious damage occurred	25	30.12

(Form source: According to the case statistics collected by China Judgment Document Network)

It is precisely because of the personal negligence of the take-away rider during the delivery of food that the infringed person suffers losses or injuries to varying degrees, and when the infringed person negotiates claims with the take-away rider, the employer and the insurance company, the infringed person can only protect his legitimate rights and interests through legal channels, which complicates the original simple compensation problem.

### 3.2.1 Relationship between Employer and Rider in Takeaway Rider Infringement Cases.

In case of disputes between the infringed person and the take-away rider, to judge whether the employer needs to bear the compensation liability outside the insurance scope for the take-away rider, besides whether the employer acknowledges the employment relationship with the take-away rider and signs a written labor or labor contract, the court also needs to make a comprehensive judgment through the subordination and dependence of the take-away rider. As shown in table 2, in these 83 cases, except that the infringed party failed to find the employer, did not take the employer to court as the defendant, or did not explain the relationship between himself and the take-away rider during the trial. A total of 12 cases mentioned that the employer did not think that there was an employment relationship between himself and the take-away rider, and thought that there was no subordination and personal attachment between himself and the take-away rider. Even if there was a relationship, it was only a cooperative relationship, and the contents outside the scope of insurance compensation should be borne by the take-away rider instead of the company, and most of these riders were crowdsourcing riders. In 28 cases, although the employer admitted that the take-away rider was an employee of the company, the employer thought that he had insured the third party liability insurance for the take-away rider, and the liability for compensation should be borne by the insurance company, and the employer should not bear the compensation beyond the scope of insurance compensation.

**Table 2.** Classification of the relationship between employer and rider

Relationship between employer and rider	Number of cases(Piece)	Proportion (%)
The employer believes that there is only a cooperative relationship	12	14.45
The employer believes that the rider is an employee of the company	28	33.73
The employer did not clearly explain	43	51.82

(Form source: According to the case statistics collected by China Judgment Document Network)

### 3.2.2 Division of Liability and Compensation in Takeaway Rider Infringement Cases.

As shown in table 3, among the 83 cases included in the research scope, there is one case that the takeaway rider damaged the infringed person's vehicle due to emergency avoidance during driving, accounting for 1.2%, two cases are the takeaway rider's secondary responsibility after being identified by the traffic police department, accounting for 2.4%, three cases are that both the takeaway rider and the infringed person should bear the same responsibility, accounting for 3.6%, and five cases are the takeaway rider's main responsibility, accounting for 6%.

**Table 3.** Classification of rider responsibility division

Division of responsibilities	Number of cases(Piece)	Proportion (%)
Emergency avoidance	1	1.2
Rider's secondary responsibility	2	2.4
Rider's main responsibility	5	6
Full responsibility of rider	72	86.74
The rider has the same responsibility as the infringed person	3	3.6

(Form source: According to the case statistics collected by China Judgment Document Network)

As shown in table 4, the compensation results of the court judgment can be divided into the following four categories: (1) The compensation amount of 22 cases is within the scope of insurance compensation, and all the compensation is borne by the insurance company, accounting for 26.5%; (2) In a total of 8 cases, because the infringed party did not find the employer, did not take the employer to court as the defendant, or the court ruled that the takeaway rider was not an employee of the company, etc., if the accident met the insurance claims scope, it was shared by the insurance company and the takeaway rider. If it did not meet the requirements, it was borne by the takeaway rider, accounting for 9.6%; (3) There are 53 cases in which the employer recognizes the take-away rider as an employee of the company or determines that the take-away rider is an employee after being judged by the court. If the accident meets the scope of insurance claims, it shall be jointly borne by the insurance company and the employer, and if it does not meet the scope, it shall be borne by the employer itself, accounting for

63.85%. (4) There was only one case in which the take-away rider caused one death and two injuries, and was sentenced to one year and two months in prison, accounting for 1.2%.

**Table 4.** Classification of Liability

Liability for compensation	Number of cases(Piece)	Proportion (%)
All of them are borne by the insurance company	22	26.5
Insurance Company and Takeaway Rider/Takeaway Rider	8	9.6
Insurance Company and Employer/Employer	53	63.85
Takeaway riders bear criminal responsibility	1	1.2

(Form source: According to the case statistics collected by China Judgment Document Network)

## 4 Present situation of third party liability insurance

### 4.1 Current Situation of Third Party Liability Insurance Theory

In order to better provide security for take-away riders, take-away riders can devote more energy to the distribution service of take-away platform. In addition to cooperating with the work of relevant departments and actively carrying out pilot projects of occupational injury protection in some provinces and cities according to the national unified work arrangements, the platform. At the same time, we continue to improve the protection content of commercial insurance such as third party liability insurance, and constantly update and optimize the commercial insurance and claims process.

### 4.2 Implementation status of third party liability insurance

The third party liability insurance in the implementation process mainly includes accidental medical treatment, accidental disability, death and property losses caused by accidents of the infringed person. Moreover, the insurance company stipulates that when the infringed person is injured due to unexpected circumstances, the infringed person should be sent to a public hospital at or above the second level for medical treatment according to the insurance contract. However, the claim scope of third party liability insurance only includes reasonable medical expenses within the scope of medical insurance, compensation according to the corresponding proportion of disability rating and death compensation. The insurance company does not claim other expenses incurred by the infringed person due to treatment.

## **5 Shortcomings in the execution of compensation for third party liability insurance**

### **5.1 "Hiding" the benefits of insurance**

Whether it is the purpose of insurance for take-away riders or the original intention of adding third-party liability insurance to commercial insurance for take-away platforms, it is actually to ensure that when take-away riders collide with other people accidentally during food delivery, someone can take the place of take-away riders to bear the liability for compensation for accidents, so as to prevent take-away riders from returning to poverty due to compensation problems. However, when the insurance company is required to bear the liability for compensation after an accident, the insurance company will always look for various reasons to evade it in order to achieve the purpose of less compensation or no compensation. The addition of insurance companies did not achieve the purpose of introducing commercial insurance into the take-out platform to transfer the employer's responsibility. On the contrary, the addition of insurance companies made the original simple compensation problem more complicated due to evasion, which directly affected the difficulty of the infringed to obtain claims and the amount of compensation, and the benefits of insurance were hidden because of the profitability of insurance companies themselves.

### **5.2 The coverage of third party liability insurance claims is small**

The claims scope of third party liability insurance includes personal disability, death, sudden death and insured medical expenses of the third party. The insurance contract stipulates that the compensation limit for each accident is 400,000 yuan, and the compensation limit for property loss for each accident is 50,000 yuan, and emphasizes that the insurance company is not responsible for compensating any indirect losses. In addition to the official valid invoice, the medical expenses that insurance companies can claim should also be deducted from the corresponding non-medical insurance expenses. The nutrition expenses, nursing expenses and transportation expenses incurred by the third party due to hospitalization are not within the scope of claims of the third party liability insurance. However, due to the lack of objective criteria for judging the relationship between the take-away rider and the employer, judicial decisions are prone to differences [1]. If the take-away rider cannot provide valid evidence to prove that there is personal attachment and subordination between himself and the employer, other compensation beyond the scope of insurance compensation should be borne by the take-away rider. While increasing the pressure of take-away riders, it also highlights the small coverage of third-party liability insurance compensation.

### **5.3 Third party liability insurance claims take a long time**

When the infringed person disagrees with the take-away rider, the employer and the insurance company in negotiating claims, the infringed person will not get compensation in a short time. For example, in the above 83 cases, the traffic accident between the

take-away rider and the infringed person is generally from 2020 to 2022, but the time for the infringed person to get claims is within ten days after the judgment result comes into effect in 2023. If the employer or insurance company feels that the judgment result is unreasonable and makes the above twice, the time for the infringed person to get claims will be delayed for a longer time. However, if the economic situation of the infringed person and his family can't afford to advance the expenses of the infringed person during hospitalization, the third party liability insurance will not only fail to play the role of protection, but will aggravate the economic burden of the infringed person and his family due to the division of compensation responsibilities between the insurance company and the employer.

## **6 Suggestions on Perfecting the Compensation for the Third Party Liability Insurance**

### **6.1 Strengthen the government's management of commercial insurance**

In the process of implementation, commercial insurance will not take the initiative to assume the responsibility of compensation in order to protect the legitimate rights and interests of the infringed person. On the contrary, it will shirk the responsibility that should be borne by the insurance company to the take-away rider or the employer because of profits and other reasons, which not only fails to play the protection function of commercial insurance, but also highlights the shortcomings of commercial insurance. Therefore, in order to protect the legitimate rights and interests of the infringed, the difficulty for the infringed to obtain claims can be reduced by the government's intervention in the commercial insurance management process and claim settlement process, and the government's intervention in various commercial insurance processes has been implemented in the trial measures of occupational injury protection system for employees in Changzhou's new business format. Therefore, when improving the third party liability insurance, it can also be modified according to the advantages and disadvantages of the trial measures in Changzhou during the implementation process.

### **6.2 Optimize the management mode of take-out platform**

The coverage of third-party liability insurance claims is directly proportional to the insurance fees paid by take-away riders. If the insurance benefits of take-away riders are improved only by expanding the coverage of insurance claims, the insurance fees paid by take-away riders will also increase. Therefore, the rights and interests of take-away riders should not only be protected by improving various insurance contents, but also from the perspectives of take-away platforms and employers. For example, the take-out platform mainly encourages the take-out rider to take more orders by making the take-out rider's orders on the same day into a rider list, which leads to the take-out rider increasing his orders in pursuit of higher performance and salary [2]. At the same time, due to the lack of smooth appeal mechanism for take-away riders [3], riders can only choose speeding to ensure that every order can be delivered on time and reduce the

bad review rate[4]. The existing incentive mode and appeal mechanism of take-away platform also indirectly increase the frequency of collisions between take-away riders and infringed persons. Therefore, the take-out platform needs to optimize the incentive mode of "rider list" to reduce the frequency of collisions between take-out riders and infringed persons from the root[5].

### **6.3 Improve riders' personal awareness of participating in insurance**

The current legislation has limitations in implementing the basic right of Social Security for platform practitioners[6]. Takeaway riders can only rely on the employer liability insurance insured by the employer as protection. Although employer liability insurance also includes third party liability insurance, it is far from enough for take-away riders to rely only on a commercial insurance to protect their safety with others during food delivery. Takeaway riders also need to improve their awareness of participating in insurance. Of course, the awareness of participating in insurance should not only include the content of ensuring their own safety, but also include the awareness of participating in third-party liability insurance. Only in this way can we better ensure that the take-away rider has a safe working environment during the delivery of food[7].

## **7 Conclusion**

To sum up, the third party liability insurance plays a weak role in the implementation process, which can not help the infringed person resist the risks brought by the accident in time and effectively. Therefore, it is particularly important to improve the problems in the implementation process of the third party liability insurance for take-away riders and improve the protection treatment of the third party liability insurance. However, blindly improving the protection of commercial insurance benefits will not only fail to achieve the expected results, but will aggravate the instability of third party liability insurance because of the cost problem of commercial insurance companies. Therefore, we can only solve the problems in the implementation of third party liability insurance by strengthening the government's management of commercial insurance, optimizing the management mode of take-out platform and improving riders' personal awareness of participating in insurance.

## **References**

1. Huang Shoubo, Wang Chunmei. Responsibility for damage caused by take-away riders under platform economy [J]. Journal of Heilongjiang Provincial College of Political Science and Law Management Cadres, 2023 (02): 71-75.
2. Chen Long. Challenges and countermeasures of labor rights protection in platform economy-taking rider labor as an example [J]. Social Governance, 2020 (08): 22-28. DOI: 10.16775/j.cnki.10-1285/d.2020.08.005.



3. Zou Kailiang, Wang Xia. Separation, regression and coordination of labor relations of take-away riders under algorithm control [J]. *Journal of Dalian University of Technology (Social Science Edition)*, 2022, 43 (05): 70-79. DOI: 10.19525/J. issn1008-407x. 2022.05. 008.
4. Lee T C, Fee T Y. *Digital Platform Workers: Setting the HRM Research Agenda*[C]//. Atlantis Press,2021.
5. Ren Meihong. Analysis of new business practitioners under the background of odd jobs economy [J]. *Modern Business*, 2022 (19): 133-135. DOI: 10. 14097/j. cnki. 5392/2022.19.018.
6. Céline W. From precarity to the denial of social status in the Belgian legal order: The social security rights of platform workers in question[J]. *International Social Security Review*,2021,74(3-4).
7. He Zhenheng. More workers' rights and interests must be guaranteed in the employment of new business forms [J]. *Human Resources*, 2023 (07): 72-73.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

