Changes in Liability Law and Insurance in Japan

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1. Introduction

The liability insurances which were introduced in the Japanese market for the first time as independent classes of insurance are compulsory automobile bodily injury liability insurance which was started in 1956 on the basis of the Automobile Liability Security Law of 1955 and general liability insurance which was started in 1957. Though the bodily injury and property damage liability

coverages under voluntary automobile insurance, the passenger liability and third party liability coverages under aviation insurance and the collision liability coverage under marine hull insurance have been written in the Japanese market since many years ago, the business volume of these coverages was rather small at that time.

The reason for the delay in advent in Japan of the liability insurances as independent classes of insurance as above was that the Japanese people traditionally respected the social community since ancient age, considering it a virtue not to claim for compensation for damage caused by other persons and it was considered by them to be against natural virtue to bring a lawsuit in order to recover their losses. This thought still remains partly in the Accidental Fire Liability Law under which a person who caused a fire without his wilful act or gross negligence is discharged from liability to compensate for loss or damage suffered by neighboring people in consequence of spreading fire.

The above traditional thought of the Japanese people has, however, greatly been changed since after the end of the World War II. Along with the rapid recovery and development of the Japanese economy, the number of accidents causing liability problems has rapidly and remarkably increased. As a result, the claim consciousness has been much enhanced among the public and they have become to consider it to be natural to file claims for compensation against the injuring parties. What brought about the above change of thought was a great many number of road traffic accidents. Though the victims of automobile accidents were rather modest in pursuing the liability of the injuring parties until 1950's, they have become very severe in pursuing such liability since 1960's when the benefit system under the compulsory automobile bodily injury liability insurance was completely established. Nowadays, it is usual that victims file claims against the injuring parties not only in automobile accident cases but in other cases and it can be said that the traditional concept to consider it a virtue for victims not to file claims against injuring parties has completely been overthrown. The sensitiveness of the general public to protection of their rights by filing claims for compensation for their losses is now surprising.

In 1983 there were two law cases to show the above circumstances, which attracted a great deal of public attention. One was the case where a child who was placed under the care of the neighboring person was drowned to death in a pond and the parents of the child filed an action for compensation against the neighboring person (Tsu District Court, February 25, 1983)[1], and the other was the case where a child was drowned to death in a river while he was participating in an organized hiking of children and the parents of the child filed an action for compensation against the leader of the organized hiking (Tsu District Court, April 21, 1983)[2]. In spite of the gratuitous acts and good will of the defendants in both cases, the judgments were given against the defendants. It seems that no liability insurance was effected in both cases.

There are two kinds of legal liability covered under the liability insurance, i.e. liability for default of an obligation (Article 415 of the Japanese Civil Code)

and tort liability (*infra* Article 709 of the Japanese Civil Code). In the judicial precedents in Japan, the theory of coincidence of the above two kinds of liability in a case has been adopted by the courts (Supreme Court, November 5, 1963)[3] and, therefore, victims may claim damages on the base of either of these two kinds of liability, whichever is more favorable to them, in case of such coincidence, though most scholars are of opposite opinion.

The tort liability law incorporated in the Japanese Civil Code consists of only 16 articles (Articles 709 to 724). These articles do not provide for principles applicable to respective types of tort but for general principles regarding constituents and effects of tort in general. The constituents of tort in general are provided for in Articles 709 to 713 and 720, which can be summarized as below, though, in the opinion of some scholars, they are provided for only in Article 709.

(1) There has been wilful act or negligence of a legally responsible person.
(2) He has caused loss or damage to an other person.
(3) Such loss or damage is considered to be a result of illegal infringement of right or interests of such other person.
(4) It is considered to be reasonable from the social point of view to cause the responsible person to pay damages for such loss or damage.

The modern tort theory is in the midst of upheaval world-wide. Roughly speaking, (a) shift from negligence liability system to no-fault liability system, (b) tendency of development of such systems as to distribute private losses among the public society and (c) social distortion brought about by unlimited increase in damages under the development of no-fault liability system or insurance system can be seen.

The tort theory in Japan is also in the midst of the above current of the present age. The basic tort theory including the theory of joint tort committed by two or more persons has now been the subject of controversy among the academic circle in Japan and the traditional tort theory is now being overthrown.

The above circumstances can be said to have been brought about mainly by the past lawsuits regarding traffic accidents and environmental disruption. The "environmental disruption" is defined in the Countermeasures against Environmental Disruption Basic Law of 1967 to mean damage to human health or living circumstances due to seven kinds of cause, i.e. air pollution, water pollution, soil pollution, noise, vibration, land subsidence and offensive odor (paragraph 1 of Article 2), but damage caused to a broad extent to human health by such products as medicines and foods is also often called environmental disruption. Not only such disruption has given a shock to tort theory but it has aroused big social and political problems.

Though it seems to be common in the world that lawsuits of traffic accidents are the subjects of the science of law and the society, as the development of motorization in Japan was very rapid, the problem has come up more conspicuously than in other countries. The number of lawsuits regarding traffic

accidents rapidly increased in the past and the people of insurance companies were involved therein, which resulted in the remarkable development of tort theory. Moreover, many lawsuits regarding environmental disruption accelerated the above development, giving a strong impetus to the academic circle to such extent as to cause them to change their traditional tort theory.

In this report, the recent tendency of legislations regarding no-fault liability will first be dealt with and then the recent judicial precedents and the recent tendency of tort theory mainly in respect of traffic accidents and environmental disruption including damage caused by medicines or foods will be explained later.

2. Legislations regarding no-fault liability

The modern society which is based on the systems of mass production, mass sales and mass consumption has brought about various new types of tort. In such society the traditional negligence liability principle is no more sufficient for the purpose of relief of victims, and in order to protect the social life of the people, no-fault liability principle should necessarily be introduced.

2–1. Legislations regarding no-fault liability in a strict sense

2–1–1. The Japanese Civil Code

In the Japanese Civil Code, no-fault liability in a strict sense is provided for only in Article 717 regarding liability of owners of buildings or other structures. This article provides that, in case where an other person has suffered loss due to a defect in construction or maintenance of a building or other structure, though the occupant of the building or other structure is primarily liable for the loss, if it is proved that sufficient care was taken by him to prevent occurrence of loss, he is discharged from liability and in his place the owner of the building or other structure is liable for the loss.

It is, however, noteworthy that in recent lawsuits the owner of rental building has sometimes been deemed to also be the occupant of the building. In a lawsuit in 1983 regarding the case where eleven persons were dead by fire which occurred at dog-legged narrow stairs connecting the first floor and the second floor of a three-storied building consisting of residential part and store part, and the cause of death was that, as there was neither broad window on the second floor nor any other stairs available for going down to the first floor, they could not escape from the fire, the judgment was given that, as the female owner of the building was also the occupant of the walls of the building and there were the above defects in construction and maintenance thereof, she was liable for the above loss jointly with the tenants as co-occupants (Niigata District Court, June 21, 1983).

2–1–2. Special laws

(1) Labor Standard Law

The first legislation in Japan regarding employers' liability for labor accidents was Article 15 of the Factory Law of 1911, under which no-fault liability was imposed on the owners of factories for labor accidents or diseases suffered by their employees. The above legislation was succeeded by and incorporated in the Labor Standard Law of 1947 (*infra* Article 75), under which, in case of a employee suffering labor accident or disease, the employer is liable to pay to the employee the necessary medical expenses and permanent disability benefits and, in case of the employee's death, solatium for his bereaved family, funeral expenses, etc. also. On the other hand, the Labor Accident Assistance Liability Insurance Law was enacted in 1931 in order to secure the employers' financial responsibility for labor accidents, and this law was succeeded by and incorporated in the Workmen's Compensation Insurance Law which was enacted in 1947 along with the Labor Standard Law. The compulsory insurance business under this law is operated by the national government as a kind of social insurance and the premium of this insurance has to be borne by the employers. Though this insurance is formally not liability insurance, in case the benefits are paid under the above insurance, the employer is discharged from his liability of compensation imposed by the Labor Standard Law and also from his liability under the Civil Code to the extent of the amount so paid, and, therefore, it can be said to be a kind of liability insurance in its substance.

(2) Mining Law

The general tort liability principles had been applied to environmental disruption by mining until 1939, but by revision in 1940 of the old Mining Law of 1939, special provisions for environmental disruption by mining were incorporated in Chapter 5 of the above law, and new systems were introduced by Article 74–2 of the law, such as (a) mining companies' no-fault liability for such disruption, (b) deposit of money or securities by mining companies with the national government for the security of their financial responsibility, (c) presumption of causal relation in case of plural mining companies being involved, (d) arbitration system for simple and speedy settlement of liability claims, and so on. These systems were succeeded by and incorporated in the new Mining Law of 1950.

The above law is worthy of note as the first special law providing for no-fault liability in Japan, but the cases to which the above law was applied are not so many in number. As a famous case in recent years, the many sufferers of so-called "itai-itai" disease caused by mine pollution brought a lawsuit against the liable mining company for compensation of their losses and in a judgment in 1972 won the suit pursuant to the above law (Kanazawa Branch of Nagoya High Court, August 9, 1972).[4] This case is said to be one of the four biggest cases of environmental disruption in Japan.

Incidentally, it is provided in Article 113 of the above law that (1) in case where the victim is also partly liable for occurrence of his damage, the court

may take such circumstance into consideration in deciding the existence and extent of the alleged injuring party's liability for the damage and (2) this shall also apply in case where an act of God is partly liable for the loss. Thus, by the provision (1) above, a reduction in damages by reason of the victim's negligence may be admitted. The provision (2) above cannot be seen in the Japanese Civil Code, and with this provision in the Mining Law as the precedent, the similar provision was thereafter included in Article 11 of the Washing Coal-Mining Industry Law, Article 25–3 of the Clean Air Law and Article 20–2 of the Clean Water Law.

(3) Antimonopoly Law

The first paragraph of Article 25 of the Antimonopoly Law of 1947 provides that an enterprise which monopolizes business, restricts the trade unreasonably or employs unfair way of trading is liable for losses caused to other persons by such acts, and the second paragraph thereof provides that such enterprise is not discharged from the liability for any reason. Such no-fault liability does not, however, arise unless and until the Fair Trade Commission has finally decided that the action is against the above law. There is so far no case of payment of damages being ordered by the above Commission under the above law.

(4) Law concerning Liability for Nuclear Damage

Article 3 of the Law concerning Liability for Nuclear Damage of 1961 provides that the nuclear operater is liable for losses caused to third parties by operation of nuclear installations or similar activities, channelling the liability to the nuclear operator only. The nuclear operator is, however, discharged from such no-fault liability in case where the losses are caused by any extraordinarily big natural disaster or social disturbance.

It is mandatory, under Chapter 3 of the above law, for a nuclear operator to establish financial responsibility for third party liability by means of either effecting nuclear liability insurance with private insurers or making a deposit with the government, in the amount of ten billion yen per nuclear reactor or premises (as a matter of fact, the nuclear operators are invariably covered by the Japan Atomic Energy Insurance Pool.). Chapter 5 of the law provides for establishment of the Investigation Committee of Disputes of Nuclear Damage Liability to intermediate in amicable settlement of such disputes.

(5) Laws concerning environmental disruption

The second paragraph of Article 21 of the Countermeasures against Environmental Disruption Basic Law of 1967 provides that the government shall take necessary measures for establishing systems for relief of victims of environmental disruption. Based on this law, (a) the Clean Air Law and (b) the Clean Water Law were enacted in 1968 and 1970 respectively.

The first paragraph of Article 25 of the Law (a) above and the first paragraph of Article 19 of the Law (b) above provide respectively for no-fault liability of the enterprise for damage caused to human health by (a) discharge into the air of any substance which is injurious to health and (b) discharge of filthy water or waste liquid containing such injurious substance, in connec-

tion which business activities of the enterprise. The no-fault liability under the above two laws is not applied to (1) injury to health caused by any other entirely new type of environmental disruption than due to such injurious substances as prescribed in the laws and (2) property damage. As regards damage caused by environmental disruption to harvest or fish catch, the Civil Code applies.

Article 25–2 of the Clean Air Law and Article 20–2 of the Clean Water Law provide for a special rule regarding the first paragraph of Article 719 (joint tort) of the Civil Code. Under this special rule, in case where the extent of contribution to the damage of one of the liable enterprises is considerably small, such enterprise may not hold joint liability as provided for in the above article of the Civil Code but several liability according to the extent of its contribution to the damage.

Next, as stated in (2) above, in case of any act of God being partly liable for the damage, the court may take such circumstance into consideration in deciding the existence and extent of the alleged injuring party's liability for the damage.

To our regret, however, there is, for the present, no bodily injury liability insurance available for environmental disruption because of nature of such liability and possible enormous amounts of claim if it is written.

(6) Other laws

The similar provisions to those of the Mining Law as stated in (2) above can be seen in the Washing Coal-Mining Industry Law which applies to such industry as gathering of coal by way of washing waste coal digged from coalmine or washing of coal.

Apart from the above laws providing for liability of enterprises, the Special Measures Law concerning Relief of Injury to Health caused by Environmental Disruption was enacted in 1969, and this law was subsequently replaced by the Injury to Health by Environmental Disruption Compensation Law of 1973.

2–2. Legislations regarding quasi-no-fault liability

2–2–1. The Japanese Civil Code

Under the Japanese Civil Code it is the general principle that the burden of proof of the injuring party's wilful act or negligence lies on the victim. As the exceptions to the above general principle, Articles 714, 715, 717 and 718 of the Civil Code provide for shift of the party who bears the burden of proof from the victim to the injuring party as will be explained below. As a matter of fact, as it is very difficult for the injuring party to have the court admit his assertion that there was neither wilful act nor negligence on his part in a particular case, it can be said that the above articles provide for quasi-no-fault liability of the injuring party.

(1) Liability of supervisor of legally irresponsible person

Article 714 provides that, in case of damage caused by a legally irresponsible person to a third party, the supervisor of such person is liable for the loss unless he proves that there was no negligence on his part in performing his duty of supervising such person. His assertion of innocence is, however, usually not admitted in the court.

(2) Employer's liability

Article 715 provides that, in case of damage caused by an employee to a third party while being engaged in his employer's business, the employer is liable for the damage unless he proves that he exercised due diligence in selecting and supervising the employee. In the past there was hardly any case in which the employer's assertion of innocence was admitted in the court.

(3) Liability of occupant of building or other structure

The above liability provided for in Article 717 has already been explained in 2–1–1 above. The occupant's assertion that sufficient care was taken by him to prevent occurrence of loss is also hardly admitted in the court.

(4) Liability of caretaker of animal

Article 718 provides that the caretaker of an animal is liable for damage caused by the animal to a third party unless it is proved that he exercised due diligence in taking care thereof. This provision is also that for quasi-no-fault liability as those of (1) to (3) above.

2–2–2. Automobile Liability Security Law

There is at present no special law providing for quasi-no-fault liability except the Automobile Liability Security Law of 1955.

Owing to rapid development of motorization in Japan in 1950's, the numbers of road traffic accidents and the deaths and injuries showed remarkable increase. Such situation gave rise to a serious social problem, and the above law was enacted in 1955 in order to relieve, as quickly and easily as possible, the victims suffering bodily injury caused by traffic accidents by way of modifying the negligence liability principle under the Civil Code and enforcing the holders of automobiles to take out automobile bodily injury liability policy with the prescribed insured amount. The outline of this law is as stated below.

(1) The law does not apply to property damage liability but to bodily injury liability only.

(2) The holder of an automobile is liable for bodily injury caused to other person by operation of the automobile, unless he proves all of the following three facts: (a) both he and his driver exercised due diligence during the operation, (b) there was a wilful act or a fault on the part of the injured or a third party other than his driver and (c) there was neither structual defect nor functional disorder in the automobile (Article 3). As it is hardly possible for him to prove all of the above facts, his liability under the law can be said to be quasi-no-fault liability.

(3) It is compulsory for the holders of automobiles to effect automobile bodily injury liability insurance with the insured amount prescribed by the law

(*infra* Article 11).

(4) The insurers of the above compulsory insurance are private non-life insurance companies and the agricultural co-operative associations (Articles 6 and 54–3). The insurers are, in principle, prohibited from declining any application for this insurance (Article 24).

(5) In order to facilitate relief of a victim, he is entitled to file a claim directly with the insurer of the injuring automobile (Article 16).

(6) In view of the social nature of this insurance, the indemnity amounts to be paid under this insurance are standardized (Article 13).

(7) There is the government compensation system for relief of victims suffering bodily injury caused by uninsured car, hit-and-run car or stolen car, and under this system such victims can recover the same amount of loss from the government as that under the compulsory insurance (*infra* Article 71).

2–2–3. Other systems for relief of victims

There are also the following systems for relief of victims: (1) compensation system for injury to health caused by environmental disruption, (2) relief system for accidents caused by vaccination, (3) relief system for injury caused by harmful after-effects of medicines, (4) relief system for accidents in schools and those caused by domestic consumption goods and (5) compensation system for victims suffering bodily injury caused by criminals, etc.

3. Problems involved in compensation for automobile accidents

3–1. Situations of traffic accidents

As already mentioned, the motorization in Japan showed a rapid development in recent years. The number of automobiles in Japan increased from about 8.1 million in 1965 to about 48.3 million in 1985 or more than 5.9 times.

On the other hand, though the number of traffic accidents which was about 567,000 in 1965 reached the peak in 1969 showing about 722,000, it showed subsequently downward tendency thank to the joint efforts of government and people for prevention of the accidents and was about 55,300 in 1985 which represents 77% of that in 1969 being the year of the worst record in the past.

The number of deaths by traffic accidents which was about 12,500 in 1965 reached the peak in 1970 showing about 16,800, but it showed continuous decrease thereafter and was about 9,300 in 1985 which is less than that in 1965 and represents 55% of that in 1970 being the year of the worst record in the past. As regards the number of injuries by traffic accidents, it increased from about 426,000 in 1965 to about 981,000 in 1970, but it also decreased in subsequent years and was about 681,000 in 1985 which represents 69% of that in 1970.

3–2. Tendency of the number of lawsuits regarding automobile accidents

The number of ordinary lawsuits accepted by the courts of the first instance increased from about 128,000 in 1974 to about 327,000 in 1984 or about 2.6 times, and the share in the above number of that of lawsuits regarding pecuniary matters increased from 69% in 1974 to 84% in 1984.

Notwithstanding the above tendency, the number of lawsuits regarding damages remains almost unchanged since 1974 (17,300 in 1974 and 17,400 in 1984) and in particular the number of lawsuits regarding traffic accidents remarkably decreased from about 8,200 in 1974 to about 4,200 in 1984 or from 6.4% in 1974 to 1.3% in 1984 in terms of the share in the number of ordinary lawsuits as mentioned above.

It may be said that the undermentioned facts have contributed to the above decrease in the number of lawsuits regarding traffic accidents.

(1) The number of traffic accidents has, roughly speaking, decreased as stated above, though it has slightly been increasing since 1983.

(2) The respective limits of insurer's liability for death, permanent disability and injury under the compulsory automobile liability insurance have successively been raised. The current maximum limit of insurer's liability is 25 million yen per person for death and serious permanent disability.

(3) Under the voluntary automobile bodily injury liability insurance which is usually effected by the public as the excess insurance of the compulsory insurance, it has been the general practice in recent years for the insurers to make negotiation or compromise with the victims on behalf of the insured.

(4) It takes about two years on the average from the time of filing an action regarding traffic accident to the time of a decision of the court, and there are many victims who are reluctant to lose time by being involved in the action for such long period.

(5) The amounts of compensation for victims of traffic accidents have been standardized by many judicial precedents, and it has become easier than before for a victim to judge beforehand whether or not the filing of action is more favorable to him.

(6) The Center for Settlement of Traffic Accident Dispute was established in 1974 as a foundation and offers free service of arbitrating not only troubles between the insurer and the claimant but also civil troubles between the parties involved in a traffic accident. The Center has offices in eight principal cities and many people have been availing themselves of the Center's service.

3–3. Requisites to occurrence of liability under the Automobile Liability Security Law

(1) As already mentioned in (2) of 2–2–2 above, the holder of an automobile is, in principle, liable for bodily injury caused to other person by operation of the automobile. As regards the interpretation of the word "the

holder of an automobile", delicate problems from legal and practical points of view are involved therein and, therefore, there are many judicial precedents in this respect. For example, if a bodily injury accident is caused to a third party by a person while he is operating an automobile which was left on the road or in the garage easily accessible to any person, leaving the engine key in the automobile and the car doors unlocked, without permission of the holder of the automobile, there arises the problem whether or not the holder of the automobile is liable for such accident. There are different opinions, affirmative and negative, on this problem among the judicial precedents and scholars, but the affirmative opinion is prevailing.

(2) As regards the interpretation of the "other person" who is injured by an automobile accident and has the right of claim for compensation under the above law, it is established in the judicial precedents that the wife who is injured by the automobile operated by her husband while she is riding thereon is the other person under the above law and, therefore, the insurer is liable to pay for such damage to the wife under the compulsory insurance effected by her husband (Supreme Court, May 30, 1972)[5], though such insurer's liability is expressly excluded under the voluntary automobile liability insurance. However, a problem arises in the case of joint holders (A) and (B) of an automobile. According to the judicial precedents, in case where (A) is injured by the automobile operated by (B) while (A) is riding thereon, if the controlling power of (B) over the automobile is more direct, obvious and concrete than that of (A), (A) is deemed to be the other person under the above law and is entitled to file a claim under the compulsory insurance effected on the automobile (Supreme Court, November 4, 1975[6], Supreme Court, May 2, 1977).

4. Advent of new problems regarding tort damage

4–1. Features of lawsuits regarding damage caused by environmental disruption

Many lawsuits of large scale regarding injury to health caused by environmental disruption, medicines or foods have successively been instituted in Japan in 1970's and 1980's. The examples of these lawsuits are for (a) "itai-itai" disease (refer to (2) of 2–1–2 above) in Toyama Prefecture caused by cadmium discharged from a mine, (b) "Yokkaichi" asthma caused by smoke discharged from the big industrial area in Yokkaichi City, (c) "Niigata Minamata" disease in Niigata Prefecture caused by filthy water containing organic mercury which was discharged from a fertilizer plant into a river and sea, (d) "Kumamoto Minamata" disease in Kumamoto Prefecture due to the same cause as (c) above (the above (a) to (d) are called the four biggest lawsuits regarding environmental disruption), (e) SMON (subacute-myelo-optico-neuropathy) caused by taking

medicines containing quinoform, (f) disease caused by taking medicines containing chloroquine, (g) poisoning caused by arsenic which was discharged from an arsenic mine at Toroku in Miyazaki Prefecture, (h) disease caused by cadmium, zinc, sulphide, etc. which were discharged from a mine at Annaka in Gunma Prefecture and (i) "Kanemi" oil disease in Kyushu District caused by rice oil manufactured and sold by Kanemi Warehouse Co., which was contaminated with the P.C.B. (polychlorinated biphenyl).

The features of the above lawsuits were as follows.

(1) They were class actions filed by great many victims.

(2) The stress was put on the new problems of damage, that is, (a) uniform and package claim for compensation, (b) punitive damages for solatium, (c) inclusion of the factor of inflation in the calculation of damages, etc.

(3) By the above actions the victims aimed at not only recovery of their losses but enforcing the government to take necessary measures for prevention of recurrence of such damage, involving concerted actions by the residents, consumers' movement and movement for the protection of environment.

4–2. Problem of prevention of recurrence of tort

The leading idea regarding tort in the past was to relieve the victims of tort and, therefore, the problem of the requisites to constitution of tort was much studied and discussed, which contributed to development of theories on negligence, illegality, causal relation, etc. regarding tort.

However, only the above theories are not enough, because the victims also wish earnestly for prevention of recurrence of such damage. Here the problem of prevention of occurrence of tort has arisen anew and will be seriously discussed in the future.

4–3. Advent of new problems regarding tort damage

The idea of tort system is to make the parties involved in a tort bear the burden of damage equitably, and in order to materialize this idea and to realize the social justice, it is necessary that (1) the damages are paid to as many victims as possible and (2) the amount of damages is reasonable from the viewpoints of the extent of injury caused by the liable person and that suffered by the victims. So far, the problem (1) above has been much discussed among the academic circle, but they seem to have had no interest in the problem (2) above, leaving it to lawyers and courts.

As regards the problem (2) above, there are two methods of assessment of the amount of damages, i.e. individual assessment as in the case of automobile accident and package assessment as in the case of environmental disruption.

4–4. Problem of uniform and package damages

In the case of a class action regarding environmental disruption, if the amount of damage of each item, such as medical expenses, loss of earning, loss of future earning capacity, solatium, etc., of each victim has to be proved by

the parties concerned and also by the court, the legal proceedings may take as long period as 10 or 20 years or more. In such actions, it is usual, for the purpose of facilitating the legal proceedings, for the court to admit the group of plaintiffs to file a uniform and package claim without showing particulars of damage of each plaintiff. Such idea is now adopted in class actions regarding injury to health by medicines or foods also.

5. Conclusion

As mentioned above, (1) the study and discussion on the problem of requisites to constitution of tort and (2) those on the problem of tort damage have rapidly been developed respectively in lawsuits regarding traffic accidents and those regarding injury to health caused by environmental disruption, medicines or foods. As regards (2) above, in the case of automobile accidents, though the courts and insurers still maintain the principle of assessing the amount of damage in each case individually, there is increasing tendency toward standardization of the amounts of damage in view of time and troubles involved in individual assessment of the great many number of automobile liability claims. On the other hand, the system of uniform and package damages in class actions is now being accepted by the academic circle also.

The circumstances as stated in the opening sentences of this report have much contributed to the rapid development of the business of general liability insurance (meaning all types of liability insurance other than those classified in such special kinds of insurance as mentioned before) in the Japanese market, and the number of various types of general liability insurance available which is now as many as about 30 will further increase in future. There is, however, no bodily injury liability insurance available for environmental disruption because of the nature of such liability and possible enormous amounts of claims if it is written, as already mentioned in 2–1–2 (5) above.

Before closing, the main types of general liability insurance in Japan, which are written under the General Liability Insurance General Conditions with respective endorsements attached, are exemplified as below.

(1) Premises liability insurance

This insurance is available to movie theaters, playhouses, department stores, stadiums, zoos, recreation grounds, shops, offices, schools, cable cars, ski lifts, gas tanks, T.V. towers, signboards, advertisement pillars, etc. and covers liability for bodily injury or property damage caused to a third party by structural defects or insufficient management of the premises which the insured owns, uses or maintains, or by carelessness in performance of work, such as production, storage, sales, etc. on or off the above premises.

(2) Hotelkeepers' liability insurance

This insurance covers comprehensively (a) premises liability (see (1) above), (b) elevator liability (see (6) below), (c) bailees' liability (see (8) below) and (d) products liability (see (12) below) of hotelkeepers for their guests or

any other third party, which may arise from their hotel business activities.

(3) Garagekeepers' liability insurance

This insurance is bailees' liability insurance available to bailees of automobiles, such as garagekeepers, auto-repair shops and gasoline service stations.

(4) Gasoline service stations' liability insurance

This insurance covers comprehensively (a) premises liability, (b) bailees' liability and (c) products liability of gasoline service stations.

(5) L.P.G. (liquid petroleum gas) dealers' liability insurance

This insurance covers premises liability and products liability of L.P.G. dealers. L.P.G. dealers are required by law to maintain a certain degree of financial responsibility for liability claims caused by their negligence in supplying L.P.G., and this insurance has been introduced to enable them to meet the above legal requirement.

(6) Elevator liability insurance

This insurance covers liability for bodily injury or property damage to a third party caused by or arising out of ownership, use or maintenance of elevators (including escalators) by offices, department stores, hotels, hospitals, warehouses, factories, etc..

As there are demands by owners of premises for coverage of the above liability only, leaving all other premises liabilities uninsured, and as there are many cases where the controller of elevators is different from the owner of the premises, this insurance is written as an independent type of liability insurance separately from premises liability insurance, in spite of the fact that elevators are a part of premises.

(7) Contractors' liability insurance

This insurance is available to contractors of such works as construction, civil engineering, installation of machinery, cleaning of glasses and outer walls of buildings, stevedoring, scavengering, etc. and covers liability for bodily injury or property damage to a third party caused by or arising out of (a) performance of the work undertaken by the insured or (b) premises which the insured owns, uses or maintains for his performance of the work undertaken, such as lodges for workers, depositories of building materials, etc.

(8) Bailees' liability insurance

This insurance is available to bailees, such as sponsors of art exhibitions, baggage depositaries, furriers, laundrymen, warehousemen, repairers or processers of articles consigned, etc. and covers liability for loss of or damage to entrusted goods or property occurring while they are kept in the specified facilities or temporarily outside of the facilities.

(9) Oil pollution liability insurance

This insurance is available to oil refineries, thermal power plants, oil tanks of oil companies, petroleum chemical companies or gas companies, etc. and covers the following liabilities and expenses due to water pollution caused by accidental discharge of oil from the above facilities or equipment into sea, river or lake: (a) liability for damage or stain to property owned by third parties,

(b) liability for fishermen against their losses of decrease in catch or deterioration of quality of catch due to the water being polluted by oil and (c) expenses incurred for cleaning the water.

(10) Professional liability insurance

This insurance is available to physicians, certified public accountants, architects, lawyers, judicial scriveners, etc. and covers liability for bodily injury, property damage or financial loss according to the kind of profession, which is caused to others due to lack in professional care in executing their duties.

(11) Travel agents' liability insurance

This insurance is a kind of professional liability insurance and covers professional liabilities of travel agents which are not limited to liabilities for personal injury and property damage.

(12) Products liability insurance

This insurance is available to manufacturers, wholesalers, retailers, restaurants, contractors, etc. and covers liability for bodily injury or property damage caused to a third party by defects in the products manufactured, sold, distributed or served or in the works completed by them.

(13) Umbrella liability insurance

This insurance covers comprehensively various third party liabilities of multi-national enterprises which may arise in their world-wide business activities.

(14) Personal liability insurance

This insurance covers liability for bodily injury or property damage caused to a third party by (a) accident arising out of ownership, use or maintenance of a dwelling house or room or (b) accident occurring in the daily life of the insured.

(15) Golfers' liability insurance

This insurance covers liability for bodily injury or property damage caused to a third party while the insured is playing or practicing golf or coaching a golfer in a golf course or any other place.

In writing the above insurance, it is usual to additionally cover (a) bodily injury suffered by the insured, (b) loss of or damage to the insured's golf goods and clothes and (c) expenses incurred in case of the insured having achieved "hole-in-one".

(16) Hunters' liability insurance

This insurance covers liability for bodily injury or property damage caused to a third party by (a) accident arising out of the use or carrying of a gun by the insured for the purpose of hunting or shooting practice or (b) accident caused by a hound brought with the insured for the purpose of hunting.

In writing the above insurance, it is usual to additionally cover (a) bodily injury suffered by the insured, (b) loss of or damage to hunting goods and (c) death of a hound as a direct consequence of injury caused by an accident.

Notes

1) *Hanrei Times*, No. 495, p. 64.
2) *Ibid.*, No. 494, p. 156.
3) *Minshu* (Supreme Court Civil Law Reports), Vol. 17, No. 11, p. 210.
4) *Hanreijiho*, No. 674, p. 25.
5) *Minshu*, Vol. 26, No. 4, p. 898.
6) *Ibid.*, Vol. 29, No. 10, p. 1.

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[2] Masao Tode, *Shikkahōnorirontojitsumu*, Hokenkenkyūsho, 1986.
[3] Nissankasaikaizyōhokenkabushikikaisha, *Baishōsekininhokennorirontojitsumu*, Kaibundō, 1973.
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[5] Sōmuchō, *Kōtsūanzenhakusho* (1965 ed., 1976 ed. and 1986 ed.), Ōkurashō Insatsukyoku.
[6] Takanori Gotō, *Gendaisongaibaishōron*, Nihonhyōronsha, 1981.
[7] Takao Yamada, Kashitsusekinintomukashitsusekinin, *Gendaisongaibaishōhōkōza*, Vol. 1, Nihonhyōronsha, 1976.
[8] Takehisa Awaji, Songaironnoatarashiidōkō, *Jurist*, No. 764-793.
[9] Tōru Ikuyo, *Fuhōkōi*, Chikumashobō, 1963.
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[11] Yoshio Hirai, *Gendaifuhōkōirironnoichitenbō*, Ichiryūsha, 1980.; *Songaibaishonoriron*, Tōdaishuppankai, 1979.
[12] Minori Ishida, *Songaibaishōhōnosaikōsei*, Tōdaishuppankai, 1980.
[13] Jidōshahokenryōritsusanteikai, *Zenkokuchisaikōtsūjikoniyorujinshinsongaibaishōseikyūjikensongaitōkei* (1980 ed.).

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