

Study on the Compensation Problem of Transactional Depreciation Loss

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Abstract: Due to the lack of specific, substantive civil law regulating transactional depreciation damages of, and the increasing amount of related cases, the appeal of transactional depreciation compensation, including vehicle transactional depreciation compensation and housing transactional depreciation compensation, is booming. It is necessary to study its compensability and constitutive elements in detail. Trading depreciation is an objective damage. It is a direct loss and within the protection of tort law.

Keywords: Vehicle, Transactional depreciation, Damage compensation.

1. Introduction

The current theory of tort law in China mainly discusses the problem of property damage compensation from the principle and scope of damage compensation, and hardly involves the problem of property depreciation loss. But for the transaction depreciation loss, the legal level does not stipulate. Professor Liu Jingjing and Professor Zhang Pinghua also hold the same view. Vehicle transactional depreciation loss of legislative absence of nature is no doubt. At present our country has Civil Code to regulate the disputes in a general sense, but because too abstract, it can not give full play to the role of guidance, evaluation, prediction, coercion and education of civil law itself, which makes the judge's discretion relatively large in judicial practice. Because of this, the phenomenon of different judgment of the same case has appeared in practice. In the specific judicial judgment, the courts at all levels have different methods of handling the compensation for depreciation damages. And sometimes even the case facts are the same, but the judicial judgment is completely opposite, which affects the judicial credibility. In theory, there is no consensus on whether and how the compensation should be compensated. In addition, houses, vehicles and other houses play a very important role in family property, and the related cases are increasing, and the awareness of the general public is also increasing. Therefore, it is necessary to study the compensation for the loss of transactional depreciation to find a reasonable and appropriate explanation path.

2. Concept and Classification

The concept of "transactional depreciation loss" does not appear in the current law of China, but it appears in the theoretical discussion and practice, and the definition is relatively unified. Wang Zejian, Xu Jiangang, Zhang Hong, Yang Jiayuan, Liu Jingjing and other scholars believe that the transaction depreciation loss is the loss of the transaction value evaluation of the damaged object that can still exist after complete repair, and this kind of loss is often caused by people's aversion to the property. However, the specific psychological factors are discussed differently by scholars: some are called disgust; some emphasize distrust; and scholars think it is a conventional negative evaluation.

However, scholar Cheng Xiao believes that its function is damaged after complete repair, so the value in the market will still be lower than the value before the damage.

The classification of transactional depreciation loss is rarely discussed by scholars. Scholar Zhang Pinghua called the trading depreciation loss "inherent depreciation loss", and divided the loss into incidental inherent depreciation and pure inherent depreciation according to whether the target had physical damage in the substantial sense. In the field of automobile, the former refers to the depreciation loss of physical damage; the latter refers to the depreciation loss faced by the victim despite the physical recovery of automobile value.

The transactional depreciation loss corresponds to the technical depreciation loss, which is mainly affected by the market factors, that is, the psychological factors of the traders, which can be the aversion of the traders or the folk culture psychology of seeking good luck and avoiding evil. The transactional depreciation loss starts from the damaged object itself, has the objective reality, takes the psychological state of the general person as the measurement standard, and the fundamental purpose is to compensate the damaged interests of the parties, which should be clearly distinguished from the mental damage compensation of the object and the abstract loss of interest.

According to whether the case mark has suffered physical damage, transactional depreciation loss can be divided into two categories, namely incidental depreciation loss and pure inherent depreciation loss. The former emphasize physical character change influenced by external force, and the latter emphasizes negative social evaluation caused by damage behavior (positive nuisance or negative inaction). The distinction between the two influences damage and compensation scope.

3. Transaction Depreciation Loss Is A Direct Loss

The dispute about the nature of the transactional depreciation loss focuses on whether it is a direct loss. Scholars Li Xin, Liu Jingjing, Yang Lixin, judge Wang Shuai and others put forward the view that the depreciation loss is a direct loss. The reasons mainly include the following points: first, the causal relationship between behavior and damage

result is the key to distinguish direct loss from indirect loss; the vehicle depreciation loss (including transactional depreciation loss) is the decrease of vehicle value caused by depreciation, which has direct causal relationship; second, the direct loss is the decrease of the property value that it already owned, while the indirect loss is mainly the interruption of due benefits caused by infringement. As far as the loss of vehicle depreciation is concerned, the decrease of vehicle value is directly caused by the infringement, which is the decrease of the value of the property already owned by the right owner.

Scholar Shi Hongwei put forward the opposite view, claiming that there are corresponding subjective factors and intangible factors in the loss of trading depreciation, so the trading depreciation is an indirect loss. The scholar Shi Jiwei also holds a similar view, that is, the loss of transactional depreciation refers to the loss of the exchange value of goods, which is the loss of available benefits, that is, indirect loss.

Trading devaluation itself is built on the theory of the balance theory. From the perspective of absolute causality, if there is no previous civil tort, when the physical state of the object is restored to the original state, the value is not underestimated in the process of transaction. From the perspective of considerable causality, the accident of the object itself increases to a considerable extent the risk that the value of the property in the object is evaluated at a lower price in the transaction. Therefore, there is no hidden causal relationship between tort and transactional depreciation. In other words, the transactional depreciation loss is a direct loss.

4. The Transaction Depreciation Loss Is Compensable

For transactional depreciation loss is compensable, both academic and practice did not reach a consensus, the main dispute is whether there is a relevant legal basis, whether belongs to the indirect loss and not compensation, whether the lack of unified judgment and calculation standard, whether after repair and repair value and no longer depreciation, and whether is not conducive to social equity. The main points and reasons are as follows:

4.1. Opinion and reasons against compensation

First, the legal basis and factual basis of transaction depreciation loss are insufficient. Some people in the practical field believe that the "Road Traffic Safety Law of the People's Republic of China" (hereinafter referred to as the "Road Traffic Law") and other laws do not involve the "vehicle depreciation fee". According to the regulations, the party is only responsible for causing the repair of the damaged vehicle, and the compensation claim should not be supported. Second, the nature of transactional depreciation loss belongs to indirect loss and should not be included in the scope of compensation for property loss. Third, there is no loss after the repair of the damaged mark. The price of damaged vehicles after repair is largely affected by market factors, but the market itself is uncertain and uncontrollable. Some vehicles increase the overall value due to the renewal of parts after repair, so they do not depreciate. Fourth, the depreciation loss lacks a unified judgment and calculation standard. At present, there is no unified evaluation agency, and no unified evaluation standard; the maintenance level between professional maintenance agencies varies greatly, and the recovery effect is also different. Fifth, the damaged mark has

been repaired, and there is no loss. The depreciation loss is only the subjective and psychological value evaluation of the parties, and is not objective; the damaged object can be used normally after repair and the restored function shall be deemed to be restored as the original state and the victim has received compensation. Sixth, compensation for the loss of trading depreciation may cause social injustice. If the frequency of vehicle accidents is extremely high, and the number of luxury cars in the current society is gradually increasing, it is unfair and reasonable to impose this cost to ordinary people.

4.2. Opinion and reasons for supporting compensation

Firstly, The compensation for trading depreciation loss has its legal basis. First of all, the principle of compensation for damages followed by China is to emphasize the restoration of the original state, supplemented by compensation for loss, while the depreciation loss itself is irreversible, and the compensation claim of the owner of the automobile is in line with the basic principle of civil law. Secondly, the compensation for the vehicle depreciation loss is in line with the relevant components. Besides, the loss compensation is also protected by the current regulations. Secondly, the transactional depreciation loss conforms to the law of law and economics. The loss of vehicle depreciation should be considered as an objective existence and can urge people's behavior. When the relevant insurance system spreads the compensation risk of vehicle depreciation loss, the costs and expenses borne by the whole society will not rise significantly. Scholars Zhang Pinghua and Shi Cheng analyzed from the perspective of the use effect and risk effect, and affirmed that the depreciation loss has the rationality of compensation. Third, the compensation for depreciation losses is in line with the concept of fairness and justice. It is in line with the expectation of the public to compensate for the loss of transactional depreciation.

Although the current law in China only involves the depreciation loss of ships, it can be applied to motor vehicles, houses and other property. The property damage loss belongs to the original condition and the principle of complete compensation; the transaction depreciation loss is direct loss rather than indirect loss, and the distinction of direct loss or indirect loss will not affect the judgment of the compensability of the transaction depreciation loss. From the perspective of legal economics, although the transaction depreciation loss is a cost for the offender (the obligation of care), such burden can avoid the occurrence of greater damage and can be shared by the insurance, which is the optimal way to minimize the social cost; the implementation of the compensation liability. If the compensation liability is too low, the incentive of the infringer will be insufficient. The appreciation after repair can not deny the compensability of the transactional depreciation loss, but can only have the significance of discussion in the issue of profit and loss offset. Since the current law in China gives judges some discretion, within a certain limit, judges can make a fair ruling on the loss and the scope of compensation based on the relevant laws and their interpretation and social experience. It is inappropriate to oppose the compensation by the lack of judgment and calculation standard. The function of transactional depreciation loss is not fundamentally different from the general damage compensation, that is, to fill the loss of the victim and transfer the risk to the perpetrator, which is not

contrary to the current legislative guidance, and is also the embodiment of social fairness and justice.

4.3. Epilogue

Due to the complexity and changes of social life, legislation always has a certain lag. With the increasingly diversified types of modern social and economic activities, a lot of kinds of new rights emerge at the right moment. Compensation for transactional depreciation losses is also included in this category. Affirmation of trading depreciation loss can compensate, is not to say that the damage must have compensation. It should be noted that the protection of rights and interests should be kept rational. In this point, the system composed of the elements of the scope of damage compensation can serve as a regulator to reasonably limit the scope of damage compensation, and avoid the abuse of power and the waste of judicial resources, so as to safeguard the interests of the citizens who should be protected in the "restraint".

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