

# The problems and suggestions of possible improvement of the current car insurance in Korea\*

: Focusing on the compensation of personal injury

한국 자동차보험제도의 문제점과 개선방향  
-인신손해에 대한 보상을 중심으로

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## 국문초록

한국의 자동차보험산업은 최근 신규시장의 정체와 높은 손해율, 감독기관에

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의한 보험료 인상의 통계 등으로 심각한 어려움을 겪고 있다. 뿐만 아니라 한국자동차보험은 인신손해와 관련하여, 피해자에 대한 불충분한 보상, 가해운전자(피보험자)에 대한 부적절한 보상, 보험자에 대한 손해배상청구 소송의 증가와 치료비 등 의료비용의 증가로 불필요한 사회적 비용이 지출되고 있다. 과실책임은 기초로 하는 불법행위법과 자동차책임보험제도의 본질상 나타나는 한계이기도 하다. 기술의 발달로 인하여 더욱 빠르게 달리는 교통수단은 시간의 절약이라는 이익과 동시에 사고시 피해자에게 심각한 상해를 야기하는 무기로서 인식되기도 한다. 교통사고로 인한 상해라는 불행이 교통수단의 이익을 누리고 있는 모두에게 일어날 수 있는 것이라면, 현재의 과실책임에 기초한 보상제도를 '무과실보상(No-Fault)'이라는 '보상 패러다임'으로 전환하는 것도 생각해볼 수 있다. 교통사고로 상해를 입은 자는 과실여부나 가·피해자를 가리지 않고 누구라도 신속한 치료와 충분한 재활을 통하여 빠르게 사회에 복귀하도록 지원하는 것이다. 그동안 한국에서는 교통사고로 인한 인신손해보상제도의 개선을 위하여 많은 연구가 있었고, 보험회사와 감독당국도 다각도로 노력해 왔지만, '무과실 보상제도'에 대한 논의는 본격화되지 못하였다.

한국자동차보험의 인신손해보상제도가 안고 있는 문제점의 개선과 관련하여 저자는 뉴질랜드의 '사고보상기구(ACC)'의 운영경험으로부터 유용한 시사점을 얻을 수 있을 것이라 생각한다. 뉴질랜드는 1972년 사고보상법(Accident Compensation Act)을 제정하면서 자동차로 인신손해를 입은 사람에 대하여 '무과실 보상'을 행하고 있다. 지금부터 40년 전에 뉴질랜드는 이미 사회공동체의 원리에 기초한 무과실보상제도의 필요성을 인정하고 인신손해를 입은 사람에 대한 보상을 사회적 책임으로 수행하고 있다.

교통사고로 인하여 인신손해를 입은 자에 대하여 사고의 원인이나 과실여부를 묻지 않고, 부상의 정도에 따라 즉각적이고 동일한 보상을 행하며, 장기적으로 모든 인신손해를 하나의 전담기구를 통해 단일적으로 보상하고 있는 뉴질랜드 무과실 보상제도를 도입할 필요가 있다. 과실책임원리에 기초한 인신손해보상제도가 뿌리깊이 내린 상황에서 교통사고의 가해운전자에게 대하여까지 무과실보상을 행하여야 한다는 논의는 인신손해에 대한 패러다임의 전환을 요구하는 도전일 수도 있다. 그러나 지금은 피해자는 물론 교통사고

운전자인 가해자도 사회의 구성원으로 바라보는 공생의 관점이 필요한 때이다. 이를 통해 교통사고로 인신손해를 입은 자는 누구라도 신속하고 충분한 치료와 재활서비스를 받을 수 있고 사회복귀를 통한 사회발전에 공헌할 수 있게 된다. 가·피해자간 과실상계나 보상범위를 둘러싼 소송의 제기를 막을 수 있고, 일원화된 의료서비스를 제공함으로써 사회적 비용을 줄일 수 있기 때문이다.

**주제어** : 한국의 자동차보험제도, 인신손해보상, 자동차보험제도 개선, 뉴질랜드 사고보상법, 뉴질랜드 사고보상기구, 인신손해에 대한 사회적 책임

## I . Introduction

Korean general insurance industry has grown fast. However, Korean auto insurance industry has experienced serious difficulties due to market saturation, high loss rate<sup>1)</sup> and price regulations by authority lately. There have been various efforts to overcome the current difficult situation through the improvement and reform of automobile insurance system in Korea.

There is a research proving that the current compensation system that embraces the principle of liability with fault and the liability insurance in relation to the motor vehicle accident which leads to physical injuries has a limitation on fairness, promptness, and efficiency. Firstly, looking from the fairness aspect, under the tort law compensation system, quite a few victims suffered physical injuries from motor vehicle accidents were not compensated at all, and many others who received the compensation were not appropriately compensated. Even sometimes, victims who received a serious bodily injury from motor vehicle accidents were given not enough

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1) [m.asiae.co.kr/view.htm?sec=n1&no=2008042408312091125](http://m.asiae.co.kr/view.htm?sec=n1&no=2008042408312091125) (the last access 2015.10.05.)

compensation to cover their medical treatment. Secondly, looking from the promptness aspect, compensation process under the tort law compensation system is complicated and slow. As a result, victims are disadvantaged from it, this often leads to lawsuits. Thirdly, looking from the efficiency aspect, costs for operating the current compensation system is way too expensive. Younger the victim is and more serious the injury is, more court proceedings will be brought forward and the time for compensation will become even slower. This will later create transaction costs and therefore the compensation becomes inefficient.<sup>2)</sup>

In this context I have a very keen interest in Accident Compensation Act(AC Act) of New Zealand. In my research on the improvement of Korean automobile insurance compensation system I am trying to use AC Act of New Zealand as a model for legislation. So the purpose of this study is to examine the New Zealand accident compensation scheme, so called 'No-fault insurance system'<sup>3)</sup>, focusing the compensation for car accident victims,<sup>4)</sup> and compare it with Korean auto liability insurance system and related laws. Thereby, I want to have useful implications for the reform of Korean automobile insurance system. This article will focus on compensating personal injury caused by car accident.

Currently in Korea, the motor vehicle insurance (liability for bodily injury I) is a compulsory insurance under the law, and also it is operated as a semi no-fault system. That is, if a driver cannot prove that a passenger

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2) Kwon, Teckyeon, "Study on the Performance of the Personal Injury Reparation System from Automobile Accidents and the Recommendations for Future Development : The Implication of No-Fault Reparation Systems in Korea", Sogang University, Thesis of Doctorate Degree, 2000, pp.163~172.

3) But I think ACC is not a kind of insurance but belongs to a social contract.

4) A recent report shows us that public trust and confidence on the services of ACC is 60%, clients' satisfaction is 76%, and levy payers' satisfaction is 69% in June 2015. ("Improve our customers' outcomes and experience", *ACC Annual Report*, 2015, pp.14~15)

had committed a suicide or had an intention to harm him or herself, a driver is liable for the compensation. Therefore, analysis of the New Zealand's Accident Compensation Act and its outcome will become great resources in the future for us to be able to efficiently reform the motor vehicle insurance and the tort law based compensation system. Once Korea implements a one entity system (ACC) like New Zealand, issues like the conflict of compensation between social insurance and private insurance, and the problems arising from different insurance premiums will be resolved. Looking from the victim's perspective, one entity system will provide a prompt compensation. Further, if the relevant costs can be reduced and it is more efficient because the compensation and related processes are handled by one entity only, this can be a great system in reducing the social costs.

## **II. Current car insurance system in Korea**

### **1. History and the relevant laws**

#### (1) History

In 1924, Kyungsung(now Seoul) Branch of Tokyo Marine started to sell car insurance. Thirteen years later, 'Josun Fire (now Meritz Fire)' obtained a license to sell car insurance(1937). It was the first Korean company to sell car insurance. And Korea Transportation Insurance Co. was formed as a mono-line car insurance seller from 1957 to 1961. In 1962, Korea Automobile Insurance Joint Operation formed by 10 General Insurance Companies and this Operation was converted into 'Korea Automobile Insurance Co. Ltd.', which was given the monopoly on car insurance business in 1968. But Korea Automobile Insurance Co.'s monopoly power was resolved and every

general insurance companies can deal with car insurance in 1983.<sup>5)</sup>

In 1963 the Korean government formulated 'Guarantee of Automobile Accident Compensation Act(GAACA), and from that time Car liability insurance for personal injury became compulsory in Korea.<sup>6)</sup> At that time taking a different approach other than tort law based system and fault based system in relation to the personal injury caused by a motor vehicle was a trend. Korea followed Japan's Motor Vehicle Personal Injury Compensation Act. As a result, Korea implemented a system that made the motor vehicle liability insurance compulsory for the purpose of minimum compensation for those injured by a motor vehicle. By contrast, New Zealand implemented a system that provides compensation for all accident injuries and at the same time giving up the principle of liability with fault. Therefore, the two countries made a different choice in 1960s regards to the protection of the motor vehicle accident victims.

## (2) Relevant laws

### 1) Tort liability of Civil Law

By Korean Law any person who causes losses to or inflicts injuries on another person by an unlawful act, intentionally or negligently, shall be bound to make compensation for damages arising therefrom.<sup>7)</sup> That is, a tort law system is also applied to the automobile accident. And any insurer of a contract of automobile insurance shall be bound to indemnify for any loss caused by a peril insured against which has occurred while the insured

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5) Currently 14 General Insurance Companies and 5 cooperatives (bus, chartered bus, truck, taxi, owner-driven taxi) sell car insurance in Korea.

6) Gyu Seong, Cho, "The Investigation on New Direction in Compensation System of Personal Injury from Automobile Accidents: The Implication of No-Fault Insurance System", Pukyung National University, Thesis of Doctorate Degree, 2009, pp.121~122.

7) Korean Civil Law Article 750.

owns, uses or manages an automobile.<sup>8)</sup> Under the traditional negligence law system a person who operates an automobile for personal use transfers to an automobile insurer his/her risk of being held liable for damage or injury caused by automobile operation. Automobile victims are basically required to show a proximate cause relationship between the negligent act and the infliction of damages. A tortfeasor can claim the sharing of financial burden under a comparative negligence rule.

## 2) Guarantee of Automobile Accident Compensation Act

In the case of personal injury caused by car accidents, GAACA is first applied.<sup>9)</sup> This act is a kind of special law enacted in 1963 for the prompt compensation for the automobile victims and the reduction of financial burden of tortfeasors. So any automobile owner shall purchase a liability insurance policy or enter into a liability mutual aid agreement (hereinafter "liability insurance policy, etc.") which covers an amount prescribed by Presidential Decree that shall be paid to a third person<sup>10)</sup> who has died or been injured due to the operation of the automobile.<sup>11)</sup>

This act is distinct from tort liability systems of Civil Law from following points of view. Firstly, an owner and/or driver of automobile may be held almost strictly liable for the injury to others. Further, a claimant's burden of proof is exempted or converted to a tortfeasor. Therefore, a claimant is not required to prove the tortfeasor's willful or negligence. The claimant just need to show his/her injury caused by the accident.<sup>12)</sup> Secondly, The liability insurance for bodily injury is compulsory, so a motorist who does

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8) Korean Commercial Law Article 726-2.

9) GAACA Article 4.

10) referring to a person who has the right to receive indemnification for damage in cases of the death of a victim.

11) GAACA Article 6 and 8.

12) GAACA Article 3.

not have liability insurance shall be fined and his/her license plate shall be kept in custody and not be registered. The compulsory liability insurance covers up to an amount prescribed by Presidential decree.<sup>13)</sup> A tortfeasor can pay the amount exceeding the limit by using a voluntary liability insurance. Otherwise, a tortfeasor should pay individually the amount.<sup>14)</sup> Thirdly, there are some special protection clauses for the victims and his/her dependent family. The Government may render aid to the children and the dependent family members of a person killed due to the operation of an automobile or of a person handicapped with serious sequelae in order to settle the problem of hardship, such as giving up studies, etc. owing to economic difficulties, and to help the person handicapped with serious sequelae to recover. And, in cases of death or injury caused by the accidents by unidentified or uninsured motorists the Government shall, upon the claim of a victim, pay damages to the victim to the extent of an amount coverable by the compulsory liability insurance.<sup>15)</sup> Lastly, an auto accident victim may request a tortfeasor's insurer to pay the certain amount as advance payments of the insurance payouts even if the amount of damages is not fixed.

## 2. The basic structure of car insurance

### (1) Composition of covers

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13) currently KRW100,000,000

14) If a tortfeasor has a voluntary liability insurance with an unlimited indemnification for a bodily injury, he/she shall not be prosecuted in case of a automobile accident by the 'Act on special cases concerning the settlement of traffic accidents'(hereinafter 'Special Act of Traffic Accident:SATA') Article 4. Accordingly, almost all motorists in Korea have both compulsory and voluntary liability insurances. This Act was enacted in 1982.

15) GAACA article 30.



Korean auto insurance is a kind of comprehensive insurance composed of 6 covers as shown in Table 1.<sup>16)</sup>

<Table 1>

Covers	Details of Indemnity
Liability for Bodily Injury I (LBI I)	Indemnifies the insured from damages for another person's death or injury by an auto accident within the maximum prescribed by the Compulsory Motor Vehicle Liability Security Act.
Liability for Bodily Injury II (LBI II)	Indemnifies the insured from excess damages for another person's death or injury by an auto accident, where the damages exceed an amount covered by Bodily Injury I.
Liability for Property Damage (LPD)	Indemnifies the insured from damages, where another person's property is destroyed or damaged by an auto accident.
Insured Person's Bodily Injury (IBI)	Indemnifies the insured for his/her death or injury
Injury by uninsured Automobile (IUA)	Indemnifies the insured for his/her death or injury by an uninsured automobile
Damage to Covered Automobile (DCA)	Indemnifies the insured for damage to the covered automobile

## (2) Compensation for bodily injuries

### 1) In case of a third party's injury

When a victim is the third party, he/she shall be compensated under the compulsory 'LBI I'. If the amount of damages exceeds those covered by LBI I, he/she shall be covered under the optional 'LBI II'. Under the 'LBI I & II', an injured victim can claim compensatory damages for 'medical

16) <http://consumer.fss.or.kr/fss/consumer/flguide>. (the last access 2015.10.15.) FSS means the Korean Financial Supervisory Service which is established in order to conduct the inspection and supervision on financial institutions under the 'Act on the establishment, etc. of Financial Services Commission' Article 24.

expenses, home care expenses, funeral expenses, attorney's fee, lost earnings, and compensation for pain and suffering'. In case of injury the amount of damages is determined by injury grades provided in an appendix to AACA.<sup>17)</sup> And also the provisions for 'reduction for fellow passenger' and 'comparative negligence rule' are applied in determining the amount of damages.

2) In case of insured person's(=driver's) injury

When an insured person, his/her parents, spouse, or children are victims of auto accident, they shall be compensated by 'IPI', not by 'LBI I & II'. Since they belong to the same economic community, the insured person shall not be sued for the damages by family members. Only medical expenses and related expenses shall be compensated under 'IPI'.

3) In case of employee's injury

An employee of an insured person who is liable for damages is not compensated by 'LBI II', if the employee is entitled to compensation for damages caused by an accident under the '(Korean) Workers' Compensation Insurance Act'. However, when injuries inflicted on such employee exceed the limit on compensation under the aforesaid Act, indemnity shall be given for the excess of injuries.

### **III. Problems in compensation system for bodily injuries**

#### **1. The limitation of tort law system and liability insurance**

In Most Country, the tort law becomes a basis for providing compensation

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17) <http://www.law.go.kr>. ACCA appendix 1. (the last access 2015.09.16.)

to victims who suffered a physical injury from motor vehicle accidents. The tort law is defined as a person who intentionally or negligently injures another person, that person's intention or negligence becomes a basis for the victim to claim for compensation. On the other hand, the liability insurance is defined as an insured who injures a third party during a contract period with the insurance company, the burden of compensating the victim is on the insurance company. In this way, the liability insurance exists on the precondition of the tort law, and acting as complementary measures in reducing the tortfeasor's heavy burden for paying a huge amount of compensation especially for those who have financial difficulty.<sup>18)</sup>

Insured(A), who is contracted with the insurance company(B), physically injured a third party(C) by a motor vehicle. In this case, there is a chain of causation created in between A and C. Then C has a burden to prove A's true intention or negligence in committing the accident. Once that is approved C then can claim for the compensation against A. Because A is under a contract with the insurance company B, B is responsible to pay for that compensation on behalf of A. However, before the compensation is paid to C, B must calculate the damage done to C (these can all be done through the court proceeding). After a precise calculation, the insurance company B will pay the compensation to C. In this respect, it is clear that the tort law based compensation system has a limitation in providing an adequate compensation to victims. Therefore, many countries including South Korea using the tort law based compensation system tried to implement a new system, and typically United States of America (USA) and New Zealand (NZ) successfully implemented a new system. In USA,

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18) Deok-Jo Jang, "Tort Law and Liability Insurance as Compensation Systems", *Sogang Law Review*, Vol.9, 2007, p.18. However, if the liability insurance destroys the fundamental principles of the tort law then it would be inappropriate. (Gray T. Schwartz, *Mixed Theories of Tort Law: Affirming Both Deterrence and Corrective Justice*, *Tex. L. Rev.* Vol.75, 1997, 1801.

they implemented a partly no-fault system. That is, the victims are allowed to bring a lawsuit for any damages that exceed the compensation limit. In NZ, on the other hand, they implemented true no-fault system. That is, victims and as well as tortfeasors are entitled to a compensation for their physical injuries in return of giving up their right to sue for any damages.

## 2. Insufficient compensation for the victims (including the drivers)

Tort liability of Civil Law is directly applied to the liability for auto accident victims. Therefore, there have been lots of disputes on negligence ratio, deducting interim interest, amount of solatium, etc. in determining the amount of damages. Under the compulsory 「Liability for Bodily Injury I」 the amount of damages is determined by injury grades provided in an appendix to Automobile Accident Compensation Act and the maximum compensation is limited to KRW 100,000,000 per person. However, in case of victim's death or serious residual impairments the amount of damages easily exceed the limit of compensation. The optional 「Liability for Bodily Injury II」 has several exemptions of insurers from compensation and various reductions on victim's damages.

Auto insurance is to relieve a tortfeasor (insured) of heavy financial burden from liability as well as to provide prompt and sufficient compensation for a claimant. However, the current Korean auto insurance system does not adequately compensate a driver who causes accident and suffers injury for his/her own damages.<sup>19)</sup> This phenomenon could be attributed to the tort liability system which emphasizes the implementation of liability for the claimants. When an insured person, his/her parents, spouse, or children are victims of auto accident, their lost earnings and solatium for pain and

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19) Korean Car Insurance Model Policy (2014.06)

suffering are not compensated by the insurer. Under the current auto insurance systems an insured driver who caused an accident does not have adequate compensation.<sup>20)</sup> Eventually drivers should buy another insurance for their injury protection from auto accidents. Korean auto insurance systems seem to have overlooked one important fact that an accident causing driver is also a member who can contribute to the society if he/she makes a full recovery from injury.

Auto insurance is to relieve a tortfeasor (insured) of heavy financial burden from liability as well as to provide prompt and sufficient compensation for a claimant. However, the current Korean auto insurance system does not adequately compensate a driver who causes accident and suffers injury for his/her own damages. This phenomenon could be attributed to the tort liability system which emphasizes the implementation of liability for the claimants. When an insured person, his/her parents, spouse, or children are victims of auto accident, their lost earnings and solatium for pain and suffering are not compensated by the insurer. Under the current auto insurance systems an insured driver who caused an accident does not have adequate compensation. Eventually drivers should buy another insurance for their own injury protection from auto accidents. Korean auto insurance systems seem to have overlooked one important fact that an accident causing driver is also a member who can contribute to the society if he/she makes a full recovery from injury.

### **3. Increasing social costs**

Auto insurers have been too much stringent in compensation to reduce loss

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20) Kim, Sangmyeong, "A Study on the Liability for Damage Caused by Moto Vehicle in China", *Law & Policy Review* Vol.21 No.2, Institute of Law & Policy Cheju National University, 2015, p.120.

ratios. To pay less they have used various methods such as strictly applying exemption clauses, adding deductible clauses, increasing deductible amounts, actively getting into lawsuits, exaggerating claimant's fault ratio, stretching the interpretation of previous illness, or restricting days of hospitalization.

Victims who suffers a serious injury from a motor vehicle accident are sometimes receiving a not enough compensation. Scrutinizing the reasons and deciding who is at fault for the accident, and calculating the damage to compensate the victim takes too much time and process. The claimants dissatisfied with the compensation frequently take legal actions against stingy insurers.<sup>21)</sup> Younger the victim is and more serious the injury is, more court proceedings will be brought forward and the time that takes to give compensation to victims will become even slower. This will later create transaction costs and therefore the compensation becomes inefficient.<sup>22)</sup>

Further, the Korea medical fees system brings an unnecessary rise in social costs. The charges for medical treatments in Korea are classified into those for National Health Insurance, Industrial Accident Insurance, and auto insurance. Medical fees for auto insurance are highest. Auto accident victims receive medical treatments at the highest level of charges by the guarantees of tortfeasors' insurance companies. However, even after the termination of treatments by insurer's compensation the claimant's additional treatments, if any, are still charged at the same level with auto accidents. The expensive medical fees for auto accidents might be one of reasons for the increase of auto insurance premium.<sup>23)</sup>

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21) Gyu Seong, Cho, op. cit., pp.117~118.

22) Kwon, Teckyeon, op. cit., p.172.

23) Yunho, Lee, "Can't no-fault auto mobile insurance be an alternative : American experience and prospective", *Korean Adjusting Review* Vol.5, No.2, 2013.08, p.76.

## IV. Suggestions of Possible Improvement of the Car Insurance - Lessoning from NZ's experience

### 1. No-Fault Compensation Scheme of New Zealand

I will examine thoroughly the 'Woodhouse Report(1967)'<sup>24)</sup> which recommended a no-fault approach to compensation for personal injury for the first time. Actually the New Zealand 'no-fault compensation scheme' has briefly introduced as a representative no fault insurance in Korea.<sup>25)</sup> I want to grasp the true feature of the New Zealand system by examining reasons for the introduction of a no-fault system, discussion processes, trial and error in implementation and modification, effects of the enforcements of Accident Compensation Act(AC Act), and the role of an exclusive organization, Accident Compensation Corporation(ACC). I will introduce to Korea a successful experience of New Zealand where people have tried to realize communitarian philosophy of symbiotic capitalism 40 years ago.

#### (1) Background of implementation of the accident compensation scheme

Before the Accident Compensation Act 1972 was enacted, New Zealand was also using the traditional tort law liability system just like Korea.<sup>26)</sup> Work-related accidents were managed under the social insurance system

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24) *Report of the Royal Commission of Inquiry: Compensation for Personal Injury in New Zealand*, The Honourable Mr Justice Woodhouse, D.S.C., Chairman, 1967

25) Yunho, Lee, *Ibid.*, p.66; Deok-Jo Jang, "Tort Law and Liability Insurance as Compensation Systems", pp.23~25.; Jang, Deok-Jo, "A New Approach to Indemnification System", *The Korean Journal of Financial*, Vol.6, No.1, 2009, p.202.; Gyu Seong, Cho, *op.cit.*, pp.198~206.

26) Se Don Kim, A New Direction in Compensation system on Personal Damages of Automobile Accident, *Sorabol Review* Vol. 21, 2002, pp.97~98.

and motor vehicle accidents were managed through the compulsory liability compensation insurance system. However, compensation for victims of physical injuries took a while to be actually compensated, and the compensation given was not enough for victims. According to the Woodhouse Report, the tort system was cumbersome, inefficient and extravagant in operation to the point that the cost of administration absorbed more than 40 percent of the total amount of money flowing into the system.<sup>27)</sup> In case of litigation, it was difficult to find proofs, the abilities of advocates affected heavily on the amount of compensation, and therefore the system itself turned into a lottery. Initially the Royal Commission's key objective was to scrutinize just for the problems with compensation related to work-related accidents. However, their objective was extended to include compensations for physical injuries caused by all kinds of accidents. The Commission tried to resolve the issues arising from the basis of tort law compensation system through the principles of community responsibility.<sup>28)</sup>

A system of awarding damages based upon proof of another person's responsibility for causing injury was seen as incapable of dealing with the serious social problem of accident victims needing a secure source of financial support after having been deprived, permanently or temporarily, of their capacity to work. So from the outset the right to recover compensation under the new scheme was based not on any question of liability but simply on the claimant coming within one of the statutory conditions for cover, in which case he or she could make a claim for statutory compensation pursuant to a simple administrative process. At the same time the right to sue in tort for damages for personal injury was barred.<sup>29)</sup>

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27) Stephen Todd, "Forty Years of Accident Compensation in the New Zealand", *Tomas M. Cooley Law Review*, Vol.28, 2011, p.191.

28) O. Woodhouse, *Royal Commission on Compensation for Personal Injury in New Zealand*, Wellington: Government of New Zealand, 1967.



## (2) The Royal Commission's recommendations

A Royal Commission, established in 1967, concluded that accident victims needed a secure source of financial support when deprived of their capacity to work. Skeptical of the ability of a liability-based system to provide such support, the commission recommended no-fault compensation for personal injury.<sup>30)</sup> In the Woodhouse Report: Current personal injury law is failing. It is incomplete as a compensation device, terribly wasteful of legal and other resources, doubtful as a promoter of safety, the probable cause of significant socially and economically undesirable conduct, and generally unsuccessful as a mechanism for doing justice between the injurers and the victim.<sup>31)</sup> From the point of view of the social weaknesses of tort law for accident victims,<sup>32)</sup> The principles of the Woodhouse Report could be summarised as: ①community Responsibility ②comprehensive entitlement ③complete rehabilitation ④real compensation ⑤administrative efficiency. <sup>33)</sup>

In 1974, New Zealand adopted a government-funded system for compensating people with personal injuries (operated by the Accident Compensation Corporation, ACC), replacing its former tort-based system. Tort law was to be swept away for personal injury, Everyone injured by accident, where at work, on the road, at play or anywhere else would be compensated.

A generation of New Zealanders has now grown up knowing the ACC as the primary method of dealing with personal injury claims, including medical

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29) Stephen Todd, op. cit., p.189.

30) O. Woodhouse, *Royal Commission on Compensation for Personal Injury in New Zealand*, Wellington: Government of New Zealand, 1967.

31) Sugarman, "Doing Away with Personal Injury Law: New Compensation Mechanisms for Victims", *Consumers and Business* 211, 1989.

32) Geoffery Palmer, "Accident Compensation in New Zealand: Looking Back and Looking Forward", from the Palmer Collection as *VUWLRPPC (Victoria University of Wellington Faculty of Law Research Papers)* 80, 2015 or *NZLR* [2008] p.84.

33) Doug Tennent, *Accident Compensation Law*, Wellington: LexisNexis, 2013, pp.1~7.

injuries, and avoidance of litigation is widely regarded as a social gain. Reforms in 2005 removed the final fault element from the compensation criteria for medical injuries, making it a true no-fault system.<sup>34)</sup>

### (3) Examining of the outcome of the No-Fault system

New Zealand has reached 40th anniversary since the first Accident Compensation Act came into force in 1972. The founders of the scheme had high hopes that the scheme would provide fair compensation quickly and efficiently to de serving victims at an affordable cost. We need to see whether the hopes have been fulfilled.

The reasons for the introduction of the Accident Compensation Scheme in New Zealand were simply because tort-law based system didn't work. Generally, people want to sue others in order to get high compensation but it is very rare to get high compensation through court process and further even if someone wins in court to get some compensation, that compensation cannot cover costs that are associated with the injury especially in cases of death or permanent impairment. So, one of the main reasons for the introduction of the Accident Compensation Scheme is to generate the "no-fault" system. By just regarding so-called the "end result", immediate support can be provided to all New Zealanders. Therefore, best practice rehabilitation and treatment for the injured person is the fundamental basis for the scheme.

The main advantage of the scheme is that injured has a place to go. That is, an injured person does not have to worry about costs for their injury and loss of earnings because ACC will cover their losses. Further, there are no

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34) Marie Bismark and Ron Paterson, No-Fault Compensation In New Zealand: Harmonizing Injury Compensation, Provider, Accountability, And Patient Safety, *Health Affairs*, 25, No.1, 2006, p.278.

heavy burdens of the injured to be eligible to receive compensations or medical costs. It only requires simple administrative process to get the compensation.

New Zealand's Accident Compensation Scheme is helping to reduce social costs. If someone is off from work for more than 6 months than likelihood of that person ever returning back to work reduces by 50 per cent. This will cause a huge impact on our society and New Zealand at large. Therefore, ACC reduces social costs by funding injured people in New Zealand to make people to add value to the society.<sup>35)</sup>

#### (4) Overview on the motor vehicle injury of AC Act

Under the New Zealand Accident Compensation Act, it is not necessary to determine who is fault and prove negligence. In the New Zealand system, injured patients receive government-funded compensation through the ACC. In exchange, they give up the right to sue for damages arising out of any personal injury covered by the accident compensation legislation.<sup>36)</sup>

Motor vehicle injury is addressed in s 35 of the AC ACT 2001 and refers to: a person injury suffered because of the movement of the motor vehicle or a stationary motor vehicle being struck by another vehicle or some other means of conveyance. Then the section does to list what a motor vehicle injury does not include, as being injuries suffered: ①in the course of loading, unloading, repairing or servicing a motor vehicle, ②when a motor vehicle is being used for something other than a means of conveyance, ③in the course of off-road use of the vehicle unless the vehicle is forced to go off road as the result of being out of control or as the result of an accident,

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35) ACC's management system and its outcome is from the interview with Warwick Thorn, ACC Centre Manager in Wellington.

36) Marie Bismark and Ron Paterson, op. cit., p.279.

and ④a work-related mental injury.<sup>37)</sup>

ACC provides cover for anyone in New Zealand who's injured in or by a motor vehicle on a public road. This cover applies whether you're the driver, a passenger, a pedestrian or a cyclist, no matter who caused the accident or what type of vehicles were involved, eg a car, truck etc. The cost of this cover is met through levies charged on the cost of petrol and the vehicle licensing fee.<sup>38)</sup> The current petrol levy (which applies from 1 July 2015 to 30 June 2016) is 6.90 cents per litre of petrol. And The 2015/16 licence fee levy is averagely \$208.05/\$331.24(non-petrol driven) per ACC Fleet Saver Bronze car.<sup>39)</sup>

## 2. Suggestions of the improvement of the car insurance in Korea

On the assumption that it is highly appropriate for the protection of injured persons to separate the operation of personal injury compensations from the auto insurance system, I will begin a discussion about the related issues. In addition I propose a consolidation of personal injury compensations paid by 4 covers of 「Liability for Bodily Injury I & II」, 「Insured Person's Bodily Injury」, and 「Injury by Uninsured Automobile」 (See <Table 1>.). In this case, the current auto insurance systems are simplified to property damage compensation systems which pay for 「Liability for Property Damage」 and 「Damage to Covered Automobile」. Damages for personal injuries could be standardized and compensated by the 'Organization for Auto Injury Compensation (tentative name)'. Methods of compensation could be a payment-in-kind, replacements, and direct medical services as well as cash

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37) Doug Tennent, op. cit., p.18.

38) <http://www.acc.co.nz/about-acc/overview-of-acc/ABA00012> (the last access 2015.10.16.)

39) [http://www.acc.co.nz/PRD\\_EXT\\_CSMP/groups/external\\_communications/documents/reference\\_tools/wpc138191.pdf](http://www.acc.co.nz/PRD_EXT_CSMP/groups/external_communications/documents/reference_tools/wpc138191.pdf) (the last access 2015.10.16.)

payments.

(1) Paradigm shift for the personal injury compensation system

Injured persons should be promptly and fairly compensated with respect to medical expenses, lost earnings, pain and suffering, residual impairment, and funeral expenses. Compensation for residual impairments depends on the rate of loss of labor capacity. And compensation for lost earnings might be a certain percentage of income with a maximum limit just before the injury. Is this kind of compensation acceptable to people from the perspective of equity?

It is acceptable that a defendant without a fault compensates an injured person with a fault. On the viewpoint of responsibility of society for the injured, it is fair that every injured person have same medical treatments regardless of income level. In that case, we must find that how we can overcome moral hazard problems by delay of return to work or intentional accidents when people feel it better to receive compensation than to work.

Under the constitution it is guaranteed for the injured person to sue the negligent driver to claim actively his/her damages from the auto accident. To restrict the claimant's right to sue a commensurate theoretical basis is desperately required. In fact this point has bothered me since I studied a no-fault compensation scheme. If the claimant's right to sue is not restricted, we are likely to lose the major purpose of auto insurance reform which is to decrease the soaring social costs of tort lawsuits. Then, the claimant's compensation should be the sum of actual damages and cost for lawsuit. Negligence actions were governed mainly by the civil law.

In AC Act, regardless of who caused the accident, the government agency ACC pays damages to the injured persons according to the prescribed schedule but it carries with it the waiver of the right to sue.

Tort law system and its principles in which to protect victims and to prevent a future accidents by away of exercising the liability insurance now needs to be changed and it is about the time to discuss the implementation of a new compensation system. Victims who suffers a physical injury from a motor vehicle accidents should no more be compensated in reliance on the degree of negligence of the tortfeasor but, should now be compensated in reliance on the degree of the injury suffered and the amount of time that will take to fully healed. The purpose of compensation should be focused on the complete rehabilitation rather than just a monetary support. In addition, we must all bear in mind that we could be one of those victims in the near future.

In Korea, the compensation system that provides the compensation only if there is a true intention or negligence is so deeply absorbed into our society. Therefore, a system that equally compensates the victim and the tortfeasor, and abolishing the right to sue may have some trouble to be implemented in Korea. However, once we implement the no-fault system in Korea, a burden for the victim to prove tortfeasor's intention or negligence will no more be required, and both the victim and tortfeasor will be compensated in reliance to their degree of injury. This is because a tortfeasor is also a member of our society who will contribute to the society as a tax payer once he or she is fully healed. Further, prevention of future accidents should be achieved by different methods such as conducting a defence driving course, undertaking regular mechanical checks, or attending safety driving classes rather just simply giving a disciplinary action against the tortfeasor.

New Zealand's Accident Compensation Scheme has been developed from the skeptical views against the tort law compensation system by the Woodhouse Report. In this respect, the Woodhouse Report can be a useful resource for us to establish a new compensation system that benefits both victims and tortfeasors.

(2) Implementation of the no-fault insurance system.

Many countries including South Korea using the tort law based compensation system tried to implement a new system, and typically United States of America (USA) and New Zealand (NZ) successfully implemented a new system. In USA, they implemented a partly no-fault system. That is, the victims are allowed to bring a lawsuit for any damages that exceed the compensation limit. In NZ, on the other hand, they implemented true no-fault system. That is, victims and as well as tortfeasors are entitled to a compensation for their physical injuries in return of giving up their right to sue for any damages.

The no-fault insurance system can be defined as both the victims and tortfeasors of motor vehicle accidents are eligible for compensation regardless he or she was at fault or not in return of giving up their right to sue for damages arising from the accidents.<sup>40)</sup> The main advantages of the no-fault system are firstly, an adequate compensation for the victims; Secondly, prompt compensation; Thirdly, decrease in lawsuit rates.<sup>41)</sup> Since 1970, when Massachusetts in USA first implemented no-fault compensation system, other 24 states followed the same system. However, states like Arkansas, Delaware, District of Columbia, Maryland, New Hampshire, Oregon, South Dakota, Texas, Virginia, Washington and Wisconsin implemented so-called an "additory no-fault compensation system". By contrast, states like Colorado, Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah implemented "limited no-fault system". In NZ, on the other hand, the Government

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40) Lee Seok Ho, "Study on introduction of No-Fault car insurance system", *KIF* Vol.14, No.31, 2005, p.188.

41) Deok-Jo Jang, "Tort Law and Liability Insurance as Compensation Systems", p.27 ; *Mid-Century Ins. Co v Travelers Indem. Co. of Illinois*, 982 p.2d 310(1999)

enacted the Accident Compensation Act in 1972 which demolished fault based compensation system and established a true no-fault compensation system which guarantees a social security to all New Zealanders.<sup>42)</sup>

In 2005, Korea insurance companies and the Financial Supervisory Services in Korea considered implementation of the Accident Compensation Scheme, thereby there are enough reports and researches on this scheme that we could use in the future. However, researches other than Jang Deok Jo's focus just on the analysis of the USA's no-fault system and its possibility of implementation in Korea.

New Zealand's Accident Compensation Act which embraces the true no-fault compensation system suggests a method that could be useful for the improvement of the Korea Motor Vehicle Insurance. The no-fault scheme is to minimize social costs by providing prompt, fair, and efficient compensations to the injured persons and by preventing abusive litigations and to replace tort liability systems. The New Zealand's universal injury compensation scheme might resolve the problems of overlapped compensations by social insurance and private insurance and of different charges for medical treatments. And also it provides prompt compensations for injured persons and operates efficiently because all the processes take place in the one entity. The advantages of a unified social security are great and unquestionable.<sup>43)</sup> In these respects this study on the New Zealand's accident compensation scheme will be meaningful implications for the reform of auto insurance system in Korea.

### (3) Establishing a specific organization and its Funding system

Operations by each auto insurance company or the entity authorized by

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42) Lee Seok Ho, op. cit., p.189.

43) Geoffrey Palmer, "ACC, 40 years on", *New Zealand Law Journal*, No.2, 2013.03



the government can be considered. In case of the latter the existing auto insurance companies deal with only property damage coverages. Although there are a general insurance association funded by non-life insurance companies and Financial Consumer Protection Bureau in Financial Supervisory Services, a separate entity can be established for accident compensations.

If the government involves in the operation, fund raising can be an easy process like social insurances. Although there can exist resistance against collection of money from person who does not own a car, we may secure the stability of funding by adjusting auto registration fees according to driver's loss rate and by receiving a government subsidy. If private insurers are in charge of the operation, they can do agency services for the government on a fee basis.<sup>44)</sup>

New Zealand has a unified accident compensation system for all personal injuries caused by various reasons. Although their accounts are different, a certain amount of money is levied on people of New Zealand. However, in Korea, if personal injuries caused by car accidents are compensated by the government, can we raise a fund from auto registration fees, fuel taxes, and the government subsidies? I think that all the people of Korea, potential claimants, should participate in fund raising. If an employee who participates in the Industrial Accident Insurance Program is injured by a car accident, who should compensate the injured employee? It is difficult problem that how to be secured the equity between two programs.

There are two funding system under the New Zealand's Accident Compensation Scheme. That is, pay-as-you-go funding system and full-funding system. Full-funding system means that the Accident Compensation Corporation

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44) But The Royal Commission recommended "The principal reason is that such a comprehensive and compulsory scheme of social insurance could not reasonably be handed to private enterprise. Directly or indirectly everyone must contribute to it, and clearly it should be handled through an agency of the government." (*Woodhouse Report*, op. cit., at 15.)

(ACC) collect enough money during each year through levies to cover the full lifetime costs of every claim that occurs in that year. Some claims have costs that run for over 30-40 years, so that significant investment reserves are created to fund these ongoing costs. On the other hand, pay-as-you-go funding system means that ACC collects levies only for the claims cost for that year.

The main advantage for the pay-as-you-go funding system is that the costs of the scheme is low so there will be less pressure for the employers or self-employed to pay for their levies. By contrast, the disadvantage is that the system has not enough funds to provide compensation for the long term injury. On the other hand, the advantage for the full-funding system is that it funds on a lifetime basis so if a person gets a serious injury which will last for about 20 years ACC funds this person for long 20 years. The negative side is that because it is lifetime funding system ACC needs to collect more levies from different sources. This is not as easy as it sounds.

The NZ's Accident Compensation scheme is currently working under full-funding system and if the scheme is implemented in Korea, it would be better to choose the full-funding system until the scheme becomes a social insurance in the society.

## **V. Concluding Remarks**

Korean car insurance industry's growth has been stalled by a recent high loss rate and stagnant new business in car insurance. Over the years various attempts have been made to resolve the problems by the insurance industry and regulating authorities.

As mentioned above, the New Zealand's universal injury compensation scheme might resolve the problems of overlapped compensations by social insurance

and private insurance and of different charges for medical treatments. And also it provides prompt compensations for injured persons and operates efficiently because all the processes take place in the one entity. Actually, there have been different approaches over the years between National and Labour to what the appropriate accident compensation policy should be. But the two major parties still agree on the major policy issue, that a return to the tort system would be wrong and should not occur.<sup>45)</sup> In these respects this study on the New Zealand's accident compensation scheme will contribute to social cost reduction of the operation of auto insurance system in Korea. Although it is different from NZ but the study of US about the effect of no-fault system will be referred. All no-fault plans reduce transaction cost, match compensation more closely with economic loss, reduce the amounts paid in compensation for noneconomic loss to less seriously injured people, and speed up compensation.<sup>46)</sup>

Discussions about whether we need alternatives for tort liability system which has effects of punishment and deterrence by imposing heavy financial burden on tortfeasors are closely related to new accident compensation systems which are not based on the law of negligence. From the points of recent social changes and auto insurance reform I will try to resolve problems of the Korean auto insurance system by analysing the New Zealand Accident Compensation Scheme from various angles. Hopefully this study will be an achievement providing basic ideas for discussions on a fair and effective accident compensation system in Korea.

There are two ways in approaching the reform of the current Korean compensation scheme for physical injuries. Firstly, maintaining the framework of the tort law compensation system and the liability insurance in order to

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45) Geoffrey Palmer, "ACC, 40 years on", op. cit, p.78.

46) Stephen J.Carrol/James S. Kakalik, "No-Fault Approaches to Compensating Auto Accident Victims", *The journal of Risk and Insurance*, Vol. 60 No.2, 1993, p.265.

strengthen the social security through social welfare and social insurance. On the other hand, the compensation for a physical injury issues to be handled only by the social insurance process. The compensation system that acclimatized to the principle of liability with fault may be difficult to change it to the no-fault system straight away in the first place. However, it is important to take a step by step. Looking from the long term perspective, those steps will later shift from the fault based compensation system to the no-fault based compensation system: make worker's compensation scheme and the accident compensation scheme unified; and finally it will become one entity system like New Zealand where all accident injuries covered under the ACC which are governed by the Accident Compensation Act.

I think the New Zealand accident compensation scheme standing on the basis of communitarian philosophy can be a new paradigm for the accident compensation scheme in Korea.

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[Abstract]

The problems and suggestions of possible improvement of  
the current car insurance in Korea  
: Focusing on the compensation of personal injury

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Korean auto insurance industry has experienced serious difficulties due to market saturation, high loss rate and price regulations by authority. There have been various efforts to overcome the current difficult situation through the improvement and reform of automobile insurance system in Korea. In this context I have a very keen interest in Accident Compensation Act of New Zealand. New Zealand has an unique compensation scheme, so called 'No-fault scheme', for the injured people by accident including motor

accident. 40 years ago, the New Zealand legislated 'Accident Compensation Act' by operated ACC for accomplishment the responsibility of society for the injured. In this paper, I will analysis the current situation and problems of Korean car insurance and examine NZ's ACC. Thereby, I want to have useful implications for the reform of Korean automobile insurance system. This article will focus on compensating personal injury caused by car accident.

Korean car insurance has several problems related in personal injury compensation. There are: Insufficient compensation for the victims, Inadequate compensation for the insureds, Increasing in lawsuits against insurers and Expensive medical fees.

There are two ways in approaching the reform of the current Korean compensation scheme for physical injuries. Firstly, maintaining the framework of the tort law compensation system and the liability insurance in order to strengthen the social security through social welfare and social insurance. On the other hand, the compensation for a physical injury issues to be handled only by the social insurance process. The compensation system that acclimatized to the principle of liability with fault may be difficult to change it to the no-fault system straight away in the first place. However, it is important to take a step by step. Looking from the long term perspective, those steps will later shift from the fault based compensation system to the no-fault based compensation system; make worker's compensation scheme and the accident compensation scheme unified; and finally it will become one entity system like New Zealand where all accident injuries covered under the ACC which are governed by the Accident Compensation Act.

New Zealand's universal injury compensation scheme might resolve the problems of overlapped compensations by social insurance and private insurance and of different charges for medical treatments. And also it provides prompt compensations for injured persons and operates efficiently because all the processes take place in the one entity. In these respects this study on the

New Zealand's accident compensation scheme will contribute to social cost reduction of the operation of auto insurance system in Korea.

**Key words** : Korean car insurance, compensation of personal injury, reform of Korean automobile insurance, Accident Compensation Act of NZ(AC Act), ACC, the responsibility of society for the injured