

Judicial Empirical Study of Gross Negligence in Animal-caused Human Damage

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Abstract

Fault is the core content of the tort liability law, the People's Republic of China Civil Code, Article 1249 inherited the original Tort Liability Law, Article 82 of the damage caused by animals, but the degree of fault of gross negligence is not strictly differentiated, resulting in controversy in the judicial decision. Through combing the tort theory, collect the "civil code of the People's Republic of China" after the implementation of the civil judgment involving animal damage to human beings for empirical research found that: in the theoretical research, what is the specific connotation of gross negligence, animal damage to human beings in the judgment of gross negligence standard, the lack of relevant explanations and definitions; in the assumption of responsibility for the parties to the case, the victim, the third party according to the fault synergy, the use of the principle of offsetting fault to reduce the responsibility. In the assumption of responsibility, the parties to the case, the victim, the third party based on the principle of fault offsetting to reduce the responsibility or based on the principle of fairness to share the responsibility, the court has different opinions; In the aspect of the constituent elements, the judicial decision of the understanding is different, resulting in disputes in the court hearing cases. Therefore, this paper through the implementation of the civil code of the People's Republic of China involves animal damage gross negligence judicial focus of controversy for in-depth study, and then on the animal damage gross negligence theory research, responsibility and composition of the elements of the judicial application of the proposal, in order to improve the civil legal system of China's gross negligence system, for the future judicial practice to provide a certain reference.

Keywords

Animal damage, Gross negligence, Case study.

1. INTRODUCTION

The civil code of the People's Republic of China abandoned the no-fault liability of animal husbandry, animal damage to the presumption of fault liability for gross negligence, this provision leads to academic and judicial practice of the judge of the case of animal damage to the gross negligence of the responsibility for the identification of disagreement, through the collection and collation of more than one hundred referee documents is not difficult to find, the judicial decision in the case of animal damage to the gross negligence of the decision of a special tort Has a certain degree of subjectivity, so that the victim's legal rights are not well protected, seriously undermining the authority of the judiciary, so how to determine the subjective and objective aspects of gross negligence is in urgent need of improvement.

2. PROBLEMS WITH THE CURRENT STATUS OF GROSS NEGLIGENCE IN CASES OF ANIMAL-CAUSED INJURY TO HUMANS

2.1. Specific aspects of gross negligence in cases of damage caused by animals

First, the determination of gross negligence. China's theoretical understanding of gross negligence mainly has the following views, if the general public can pay attention to the situation can foresee the consequences of the act, but even the general public's attention can not be achieved, it can be considered gross negligence; the actor with its very unreasonable behavior and negligent attention, and does not do the corresponding preparation for the act, that is, gross negligence (Zhang Min'an, 2021).

Second, the analysis through the division of the degree of negligence. It is based on the degree of the actor's violation of the duty of care, the negligence is divided into major negligence, general negligence and minor negligence (Qiu Congzhi, 2019): according to the degree of the actor's fault, the civil liability is divided into six levels: the actor is responsible only for intent, only for major negligence, for specific minor negligence, for abstract minor negligence, for the usual state of affairs, and for force majeure (Yang Lixin. 2019); according to the difference in the degree of duty of care that should be imposed, negligence is divided into light negligence, heavy negligence, lightest negligence, concrete light negligence and abstract light negligence (Shuyi, 2020).

Thirdly, through the status of the civil legal relationship of gross negligence of the perpetrator in the case of animal-caused damage is divided. It can be divided into gross negligence of the perpetrator, gross negligence of the victim, and gross negligence of the third party (Ye Mingyi, 2021). Article 127 of the General Principles of Civil Law stipulates that if the damage is caused by the fault of the victim, the keeper or manager of the animal shall not bear the civil responsibility; if the damage is caused by the fault of the third party, the third party shall bear the civil responsibility. Mao, Beatrice (2021) divided animals into service animals and non-service animals, and made different provisions according to different kinds of animals.

Clarify the specific connotation of gross negligence in cases of animal-caused damage, many scholars on the specific connotation of gross negligence in cases of animal-caused damage is controversial, judicial practice is also the same, in order to unify the judicial decision, based on the current situation of gross negligence in cases of animal-caused damage to determine the scope of application of the case, and then further clarification through legislation or judicial interpretation is inevitable.

2.2. Constituent elements of gross negligence in cases of damage caused by animals

First, there is "spontaneous" aggression. The infliction of harm should be the result of the animal's own behavior. This behavior of the animal is driven by no external motivation, that is, it is the independent and autonomous behavior of the animal. (Tian Yuzhe, 2019). The key to distinguishing whether aggression is spontaneous or man-made is: whether the animal's aggression is done under the domination of human will. (Wang Minghong, 2022). To determine whether an animal's harmful behavior is "spontaneous" or not, it is more appropriate to refer to the "domination of the animal's will" (Wang Huimin, 2021).

Secondly, there must be the occurrence of the fact of damage. Gao Long (2020) argues that the liability for animal-caused damage is a special tort liability, and the constitutive elements should include the existence and occurrence of the corresponding facts of animal-caused damage. Lin Zhihui (2019) suggests that the premise of pursuing its tort liability is the need to prove the objective existence of damage. Lu Xiaowen (2018) points out that the "damage" in animal-caused damage should include nuisance, and it is necessary to include it in the scope of research on the liability for animal-caused damage. Rabelo (2021) proposes that if the invasion

of domestic animals causes the victim's personal and property damage, the animal keeper, regardless of whether he is negligent or not, should compensate for the damage suffered by the victim. Ma, Jingjiao (2021) makes a study on the liability for damage caused by escaped and lost animals.

Third, there is a causal relationship between the aggravating behavior and the fact of damage. The aggravating behavior of the animal is the cause of the damage to the infringer, and the damage to the infringer's legal rights and interests is the result due to the creation of the animal's aggravating behavior (Wang Liming, 2018). There may also be an indirect causal relationship between the animal's aggravating behavior and the fact that the infringed person has been unduly harmed (Yang Jianing, 2020).

Harmonization of the elements of gross negligence in cases of animal-caused damage, the elements of liability for animal-caused damage is a general condition for animal-caused damage to bear alternative tort liability. Domestic scholars on animal-caused damage gross negligence constitutive element lack of uniform understanding, for animal-caused damage contains nuisance, scholars have different views. Tort law said that the damage that can be remedied, usually can be identified, remediable, should be protected by the law within the scope of the standard to determine whether the damage should be remedied.

2.3. Criteria for determining gross negligence in cases of damage caused by animals

First, the principle of no-fault liability. It means that as long as there is a causal relationship between the behavior of the actor and the damage of the infringed person, and regardless of whether the actor is subjectively at fault or not, he should bear the corresponding tort liability in accordance with the provisions of the Civil Code of the People's Republic of China (Hu Lan, 2020). The general principle of attribution applied in the tort liability of animals kept in China is the principle of no-fault liability (Cao Xing, 2016). Praveen K (2020) includes force majeure, third-party fault, and the victim's self-inflicted risk. G. Edward White (2014) applies the principle of no-fault liability in terms of the principle of attribution in the case of general animals that cause damage to people.

The principle of presumption of fault. The principle of attribution of fault presumption is used when zoo animals cause human damage (Wang Shuang, 2020). Hromnikova (2022) argues that force majeure should be used as an exemption from liability for human damage caused by kept animals. The keeper or manager is the bearer of the liability for animal causing human damage (Wenxia, 2014). "Article 78 of the Draft Law on Tort Liability is amended to read: "If an animal kept by an animal causes damage to another person, the keeper of the animal shall be held liable, but if it can be proved that the damage was caused by the gross negligence of the victim, the keeper of the animal may be mitigated or exempted from liability. " In addition, article 81 stipulates that if an animal causes damage to another person through the fault of a third party, the victim may request the third party to bear the responsibility for compensation, or he may request the keeper of the animal to bear the responsibility for compensation.

Improve the judgment standard of gross negligence in the case of animal causing human damage, the promulgation and implementation of the Civil Code of the People's Republic of China, so that the principle of attribution of responsibility for animal causing human damage in our country from the original single principle of attribution to the principle of no-fault liability and the principle of fault co-existing in the system of mixed attribution principle of dualization.

In summary, although there has been some progress in the study of gross negligence in cases of animal-caused damage, the following three problems remain:

First, the specific connotation. Theoretical research is more, empirical research is less, most of the research is based on gross negligence theoretical analysis, did not put forward substantive solutions, and there is no support for the field of research results of the data,

material evidence. The definition of the specific connotation of gross negligence in the case of animal damage has not yet been unified, which leads to the practice of the court's understanding of different, controversial verdicts. This paper will combine relevant theories to clarify the specific connotation of gross negligence in cases of animal-caused damage, so as to unify the scope of judicial practice.

Secondly, in terms of constituent elements. On the case of animal damage in the elements of gross negligence, most of the research based on the animal "spontaneous" harm, the occurrence of the fact of damage, and harm to the fact of causality between the three aspects of the discussion, the scope of the research is relatively single. Legislation is ultimately applied to the judicial level, combined with the judicial practice of animal damage cases in the rule of gross negligence constitutive elements is also the next legal theory and practice of the focus of the work. Animal damage cases in the application of gross negligence is no fault principle of attribution, do not need to prove that the breeder whether there is fault, as long as the damage caused by the results, and the results of the damage and infringement of the causal relationship between the existence of infringement can be recognized as a violation of the establishment. Therefore, this paper will clearly clarify the case of animal damage caused by gross negligence constitutes the elements of the problem.

Thirdly, the standard of judgment. The academic research and discussion on the liability of gross negligence of animals causing human damage is concentrated in the relevant legal provisions, but there are a series of problems, such as insufficient reasons for the presumption of liability for fault, overly harsh exemptions, and a lack of operability of the liability for human damage caused by animals that have been abandoned or escaped in practice. To combine the specific circumstances of individual cases, improve the judgment standard of gross negligence in the case of animal damage, upholding the principle of fairness. Animal damage cases are on the rise, how to quickly and effectively resolve disputes is also the focus of the specific court trial work. Animal damage cases in gross negligence is the most important thing is to determine whether there is gross negligence, how to determine gross negligence, excessive negligence of the actor, this is the main line, followed by the occurrence of damage to the facts and the causal relationship between the animal and the cause and effect of exemption reasons to prove the exclusion. This paper will combine with actual cases, specifically elaborate on the judgment standard of gross negligence in the case of animal damage.

3. PROPOSALS FOR IMPROVING THE APPLICATION OF THE GROSS NEGLIGENCE RULE IN CASES OF DAMAGE CAUSED BY ANIMALS UNDER THE CIVIL CODE

3.1. Clarification of the specific content of gross negligence in cases of damage caused by animals

Domestic scholars on animal damage cases of gross negligence in the specific connotation of controversy, judicial practice is also so, in order to unify the judicial decision, based on animal damage cases of gross negligence in the judicial application of the status quo to determine the scope of application of the case, and then through the legislation or judicial interpretation to further clarify it is inevitable. Example of Badaling wild zoo tiger injury case, a tourist in the car seat change when the zoo was attacked by the tiger, his mother in the way to rescue her not unfortunately also suffered tiger attack, his husband to the zoo after the zoo management personnel to expel the tiger unsuccessfully, and ultimately the mother was killed, daughter seriously injured. In this case, we believe that the zoo was grossly negligent. First of all, the zoo did not set up a medical room and had no professionally trained medical personnel, so it was unable to provide first aid in case of an emergency. The zoo was not equipped with effective emergency tools such as anesthesia guns. Secondly, after the tiger attack, the zoo lacked

emergency response measures, and concealed the real cause of the injury, did not report to the ambulance the specific location of the injured, delayed the best rescue time. From this, the zoo should bear the corresponding fault responsibility.

3.2. Harmonization of the elements of gross negligence in cases of damage caused by animals

The constituent elements of liability for animal-caused damage are the general conditions for vicarious tort liability for animal-caused damage. Tort law said to be able to remedy the damage, usually can be identified, remediable, should be protected by the law within the scope of the standard to determine whether the damage should be remedied. Badaling wild zoo tiger injury case, the zoo as a security obligation, in the sale of tickets from the moment it is clear that the interests of the security; zoo exists in the risk of infringement from the animal is always there, for large beasts of burden, the intensity of the risk is unpredictable; zoo as a breeding and management of wildlife, in the role of the security obligations The zoo as a party to keep and manage wild animals, in playing the role of safety and security obligations with full and preventive risk prevention ability, did not achieve the goal of risk prevention, is obviously their own negligence fault. ; Ms. Zhao, as an ordinary consumer, visiting and touring the recreational activities of the Badaling Safari Park, obviously inexperienced, even though there is a weak sense of the rules of the problem, but also can not cover up the park there are major security loopholes in the problem. Article 73 of the Judicial Interpretation of the Tort Liability Law establishes a causal relationship between the behavior of the person who violated the security obligation and the consequences. Obviously the Badaling zoo is the case of security obligations, failed to fulfill the security obligations, is the direct cause of the accident, there is a causal relationship between the two.

3.3. Improving the standard for determining gross negligence in cases of animal-caused human damage

The promulgation and implementation of the Civil Code of the People's Republic of China has led to the development of the principle of attribution of liability for damage caused by animals in China from a single principle of attribution to a binary system of mixed principles of attribution whereby the principle of no-fault liability coexists with the principle of fault liability. Therefore, improve the judgment standard of gross negligence is important and important. First of all, the subject capacity of the victim with full civil behavioral capacity is used as one of the basis for the judgment of gross negligence. When judging the victim's ability to act, two aspects are usually considered, namely, age and intellectual status. Secondly, the cognitive element is combined with the subjective element, where the perpetrator should have recognized the existence of the danger in accordance with the duty of care of a person in general in social life, as well as the negligence of over-confidence in recognizing the danger but believing that he or she could have avoided it. In the case of animal damage, the surrounding environment mainly refers to the case occurred in the zoo, field, general residential neighborhood or other places, so as to determine whether the supervisor of the animal into the duty of care, whether the victim is negligent.

4. CONCLUSIONS

The promulgation of the Civil Code of the People's Republic of China has made it possible to better solve the tort cases caused by animals causing human damages, and the law stipulates that different principles of attribution should be applied to different animals to determine the responsible person, which not only caters to the requirements of the General Principles of the Civil Law on the principle of fairness, but also provides concrete guidelines and assistance for the real tort cases. At this time, we should strengthen the study of gross negligence in cases of

animal damage, and further improve the liability system, in order to better protect the legitimate rights and interests of the people, to achieve substantive fairness and justice, and to promote the harmonious development of society. We should stand in the height of perfecting the socialist judicial system with Chinese characteristics, comprehensive understanding and knowledge of the study of animal causing human damage gross negligence legislation, so as to better protect the people's physical health and property safety, constraints on the behavior of the animal keepers, urging them to follow the management of the provisions of the reasonable breeding and management of animals, and improve the case of animal causing human damage gross negligence related to the law on the legislative and judicial level. It also has certain guiding significance to the legislative and judicial levels.

4.1. At the legislative level: enriching the theoretical recognition of gross negligence in special torts

Our country has accumulated a certain theoretical basis and judicial practice experience makes animal damage cases in gross negligence to determine the responsibility to a certain extent to be implemented, but only with a highly abstract general provisions of the law, there is no perfect supporting provisions in the specific connotation of gross negligence, gross negligence of the constitutive elements of gross negligence, gross negligence standards, the application of the principle of tort, tort, liability and compensation for damages and other aspects of the lack of uniform and clear standards. There is a lack of uniform and clear standards on the specific connotation of gross negligence, the constitutive elements of gross negligence, the criteria for determining gross negligence, the application of the principle of attribution of tort, the assumption of responsibility for tort and compensation for damages. Theoretically, through the comparative study of gross negligence of animal-caused damage in different countries, we can have a more comprehensive understanding of the rules of gross negligence of animal-caused damage, and provide suggestions for the improvement of the "Tort Liability of the Civil Code of the People's Republic of China" and the "Judicial Interpretation of the Tort Liability of the Civil Code of the People's Republic of China".

4.2. Harmonization of the civil code system at the judicial level

In practice, compared with foreign countries, China's law enforcement is not quite in place. In this paper, the civil code of the People's Republic of China after the implementation of the animal causing human damage gross negligence judgment as the basis for research, the attribution of responsibility for the problem of targeted solutions, so that animal management into a reasonable and standardized channels.

In judicial practice, the provisions of the gross negligence of animals causing human damage are too abstract, difficult to adapt to complex realities, and too weak in terms of operability. The lack of uniform application of standards, so that the judge's discretion is too large, the facts of the case is difficult to find clear, the application of the law is confusing, the legitimate rights and interests of the infringer in the substantive damage is difficult to get adequate relief. It can provide reference to the improvement of the tort liability system for animal damage caused by zoo animals in China, so that the rights of the victims can be more comprehensive and effective relief and protection.

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