Analysis of Legal Attributes about Online Hitchhiking

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Keywords: Gefalligkeitsverhältnis, Civil partnership, Occasional partnership, Non-operational behavior.

Abstract. The legal attributes of the online hitchhiking may be different from the traditional hitchhiking or carpooling. Based on the protection of the trust interest of the passenger, the online hitchhiking should be civil legal behavior, not be Gefälligkeit. The legal relationship between the network platform, the owner of the car, and the passenger can be regarded as a civil partnership. The positive externality of the online hitchhiking should be fully affirmed. As long as the charge of the owner of the vehicle does not exceed the direct and the reasonable indirect cost of the ride, the owner of the vehicle should not be considered as a business operator. So the government should encourage online hitchhiking, ensuring the security and sustainable development of it as possible when necessary.

Introduction

With the rising of the number private car, private carpooling has developed in China's transportation field. One is the gefalligkeitsverhältnis that usually occurs between acquaintances; the other is private car-paid carpooling, that are often identified as illegal business operations. The development of mobile Internet and big data technology has led to the private car-paid carpooling behavior, that is, online hitchhiking, has a dramatically development, and finally shows a stable development in large-scale, which has become a considerable important component of urban traffic. Online hitchhiking refers to the ride of a private car that is carried by a mobile Internet information platform. The judgment of the legal nature of the online hitchhiking is directly determined by the government's regulatory approach and its future development trend. Based on the analysis of the relationship between the online hitchhiking and the online platform, this paper aim at analyzing the rights and obligations of the participating parties of the online hitchhiking, and then defines the legal relationship among the subjects, for the wish of doing some help to theoretical research and judicial practice.

Online Hitchhiking Should Not Be Gefalligkeitsverhältnis

Traditional hitchhiking is often happened between identity relationships which is gefalligkeitsverhältnis. Gefalligkeitsverhältnis is factual act outside the scope of legal adjustment. It differs from the legal acts for the absence of a detectable meaning bound by law [1]. The subjective intentions often expressed as gefalligkeitsverhältnis must be objectively for people to discover. The most typical external feature of gefalligkeitsverhältnis is unpaid altruism, so unpaidness is viewed as an important criterion for judging gefälligkeit. Therefore, some scholars believe that the behavior which the non-carrier carrying others in non-operating activities is a typical Good Will Pick-up [2]. A small charge is not equal to the value of the services it provides, so it is not profitable and does not establish economic benefits, so such online hitchhiking doesn’t have compensable. From this point of view, the online hitchhiking seems to be gefalligkeitsverhältnis, should be a Good Will Pick-up.

We believe that the online hitchhiking is not gefalligkeitsverhältnis. Traditional hitchhiking are based on acquaintances such as relatives, friends, fellow villagers, and colleagues, for the trust of the
driver, including the safety performance of the car and driving skills of the driver. When it occurs to a traffic accident or other disputes, the existence of identity relationships will make disputes resolved by ethical negotiation. The situation of the online hitchhiking is different, and the passenger and the owner of the car are usually strangers. They establish contact through the network platform, lacking of personal trust between each other. The passenger rely on verification on the car and the driver of network platform, and all the public information of the hitchhiking, including the previous user's evaluation of the hitchhiking to establish trust on the owner of the car. However, relying on this information only, the safety of the passengers on the online hitchhiking is not fully predictable.

Although the passengers have not enough expected for the safety of the hitchhiking, but based on the trust on the network platform, the owner of the car, and the conviction of paying a certain fee according to the habit, they still put their personal safety on the operating of the hitchhiking. It should be noted that even if the passengers only pay a small fee, the sharing of travel costs under the common route should result in a trustworthy legal risk to the driver. Based on the protection of trust interests, it is worthy of recognition that the relationship between the litigants rather civil legal acts than gefalligkeitsverhaltnis. The traditional moral obligation of the car owner delivers the passenger safely have converted to the legal obligation of the owner of the car based on mutual assistance and mutual trust to guarantees the safety of the operating. It was the Internet + era, and the large scale developing of the hitchhiking, that law should be keeping improving to adapt to social development and guarantee the right of related litigants. Henry Mein summed up: "The progressive social movement to date is a movement from identity to contract.” [3] The Good Will Pick-up based on identity and morality have gradually evolved into a “Good Will Pick-up” based on legal conviction.

In addition, the good and evil of morality itself is indistinguishable. In the current situation of the large-scale development of the hitchhiking, if the disputes about traffic accident involved in the case are only taking gefalligkeitsverhaltnis as the criterion, it has an innate conflict with the order, exposing the weakness in the distribution of benefits and responsibilities. "The legal relationship is a state created by the law. The content of the legal relationship has little difference to the factual relationship. The factual relationship will charge into a legal relationship, according to the power of the law. It is said that the legal requirements are completed, once a certain factual relationship up to the extent of legal relations" [4]. There is an essential difference between online hitchhiking and the gefalligkeitsverhaltnis about legal elements. This was confirmed in the 38 cities’ private car sharing regulations that have been introduced in Beijing, Shanghai, Tianjin, Guangzhou, etc., and 38 cities have identified the online hitchhiking as a civil act without exception.

The Legal Relationship between the Network Platform, the Owner of the Car, and the Passenger Can Be Regarded as a Civil Partnership

Whether the network platform charges or not does not determine the legal status of the platform in this transaction. As far as several online hitchhiking platform appearing on the market, there are extracted a small fee to take about a passenger or vehicle owner, or free of charge. We believe that it is not possible to determine the operational benefits of the network platform based solely on the amount directly charged by the network platform, and thus easily identify the rights and obligations and responsibilities of the network platform. The network platform charges a small amount for the ride, so that there is no corresponding equivalent price for a series of services of the passenger and the owner. The legal status of the network platform can not be defined according to the difference of the charge process and the amount of fees.

By providing digital transactions, the network platform internalizes the binding of users into the technical rules or transaction specifications of its design, affecting and governing the behavior of passengers and riders by means of access rules and trading rules [5]. The network platform provides comprehensive service for verifying the access and information disclosure, ride-sharing matching and transaction evaluation of the online hitchhiking. The network platform not only controls the opening of the online hitchhiking, but also maintains control over the hitchhiking transportation process. It is
represented by the management of the bus fare by the network platform, such as the platform first charges the ride fee and then pays the owner, the owner cannot withdraw cash at any time, and other security measures of the online hitchhiking. Therefore, the network platform does not provide simple intermediation services, and should not be considered as brokers.

Whether the owner of the car still maintaining an independent subject status under the strong control of the network platform, and is still a independent party in the transaction of online hitchhiking? Although the Interim Measures provide a brief stipulation on the legal relationship between the network platform and the owner of the e-hailing taxi, it does not apply to the online hitchhiking. Moreover, due to the limited interest space of the online hitchhiking, the network platform and the owner of the vehicle are often not labor or employment relations. Therefore, in terms of the legal status of the parties, the owner of the car is still a independent party in the transaction of online hitchhiking.

In terms of the owner and the network platform, the two parties all have the common purpose of delivering the passengers to destination safely. For this reason, the network platform create the transaction by attracting owner of the vehicle and the car access to firstly that it comes with some risks, so as to increase the users number of platform and stimulate the potential commercial value of the platform gradually. Later on, the owner of the vehicle start trading and control the risks according to their professional skills, and at the same time obtain a certain fee to reduce the cost of the trip. The two sides share a common purpose and work together and have made joint efforts to this end.Although the difference of passengers in each shipment, the relationship between the network platform and the owner is continuous. And they always serves the common purpose of transporting passengers safely[6].

In terms of the owner of the vehicle and the passenger, the owner of the vehicle and the passenger establish a contact based on the common route, and share the cost for the common purpose of the trip, in order to deliver the passenger to the destination safely that is a underlying consensus between the two sides. The owner of the car spends extra time on pick-up and drop-off, and may detours appropriately, which will take a certain cost, and gets a small amount of compensation for trip expenses. The passenger pays a small fee for this, and enjoys a quick and comfortable service like a taxi, eliminating the burden of crowding. The two sides have corresponding benefits and contributions. And there is also a clear consensus: self-interest and aiming at energy conservation, environmental protection, and multi-win by cooperation. In the German civil law theory, such agreements are expressly or implicitly agreed to achieve common purposes, including spiritual purposes, and assume obligations for the purpose of common cause, including funding, benefit-sharing, risk-sharing agreements classified as ordinary Civil partnership[7]. It should be noted that the agreement between the owner and the passenger is often one-off. This short-term agreement, which is temporarily formed for a single appointment, can be considered as an occasional partnership[8]. The owner and the passenger are occasional civil partnerships. According to the “Report on the Development of Private Cars in Major Cities in China in 2017” issued by the Research Institute of the Ministry of Transport and the Institute of Information Technology of the Ministry of Transport,a total of 17 million pairs of fixed form carpools have been produced by the use of online hitchhiking. For the formation of the fixed-multiple relationship, the owner and the passenger shall be deemed to be a civil partnership.

On the basis of the owner, network platform and passenger level, the three parties take the arrival of the passengers safely as the basic consensus, and help each other to achieve multi-win by cooperation with a common spiritual goal. The platform provides information matching and data technology to enhance user’s dependency and stickiness, increasing the value of the platform or charging a small fee at the same time. The owner is responsible for transporting and charging a certain travel cost to the passenger. And the passenger pays far less than the taxi to avoid the congestion and enjoys the comfort of a taxi. All three parties have made a certain contribution to the ride sharing, and they also have certain gains, mutual benefit and cooperation. Of course, since the transportation may be a
one-time transaction, that is accidental, so the relationship between owner, the network platform, and the passenger is an occasional civil partnership.

The Online Hitchhiking Is Generally Not Considered as a Business Operational Act

Specifically, the external manifestation of hitchhiking is to charge for the operation, but it is non-profit. The rights and obligations of the participating parties have their own characteristics and should be distinguished from the for-profit e-hailing taxi. When the owner of the vehicle takes a passenger, it is usually paid by the passenger to the cost of the trip which is significantly lower than the taxi service price. And the owner do not have a profitable purpose. It is worth noting that at this time, the objective result of the service is meager profit for the owner, which is often caught in the above-mentioned misunderstanding of profit-making. Because the corresponding travel expenses of the owner of the trip on the established route have been expected. The meager surplus of the owner of the car has the nature of compensation, which is not the subjective will of profit. It is almost impossible for the owner of the hitchhiking to have no return of funds in the process of transportation service, whether the performance is a subsidy or a payment of fare. If not, it will be difficult to make up a hitchhiking, because it will inevitably take the result of the time delay and detours. If the profitability is defined only by the representation of the owner charges or not, this is putting the cart before the horse [9]. In a word, about the passengers whose paying for the travel service is not equal. And the owner has not received the consideration fees for the transportation service. The hitchhiking has no ambition in profit or even got profit as objective results. Therefore, it is should not to include the owner of the hitchhiking in the list of business operators. And in principle, it is not appropriate to regard the hitchhiking as a business operation.

However, the trip fare paid by the passenger shall be calculated on the basis of the distance, and the time shall not be considered, and the fuel cost, toll fee and reasonable vehicle loss generated by the multiplication process shall not be exceeded. Specifically, it can also refer to a certain percentage of the cost of a taxi at the same distance, such as 50%. The range of the cost of the ride should be reasonable, which will stimulate the increase in the number of cars available for the transportation, without causing a surge in potential demand for travel. It should be noted about the extent of the parties for the ride on the way is an important criterion for judging whether or not the hitchhiking. While stimulating the supply side to participate in the supply, it should be guaranteed that the contact can be established only when the repetition degree of the road reach a certain percentage between the passenger and the owner. It is strictly forbidden to breed the alternative travel price phenomenon in the name of tips and etc. The high repetition degree of the road in hitchhiking transaction can reduce the road resources occupied by the car bypass, controlling the risk of traffic accidents on the unfamiliar road, and can reduce the negative externalities.

We should adopt a prudent and inclusive attitude towards the innovative green economy travel mode of online hitchhiking. The red line should be that the fees of the hitchhiking should not exceed the operating costs, and the exception space for illegal operation should be expanded. We should implement the rules of online hitchhiking rigidly in every city and hinder the development of the online hitchhiking.

Summary

The online hitchhiking should be regulated by civil law. The traffic management administration should not be easily punish the car owner or the platform for the operation of the online hitchhiking, neglecting the amount of the ride fees, which substantially decides whether the online hitchhiking is a business operating act. Our government should be positive to the online hitchhiking.

Acknowledgement

This research was financially supported by the Fundamental Research Funds for the Central
Universities “Legal Issues about Traffic Accident of E-hailing Taxi” (2018YJS188) and Beijing Social Science Funds “Research on the Synergy of Beijing-Tianjin-Hebei Traffic Integration Rule of Law” (17XB011), Tianjin University of Science and Technology College Students Innovation and Entrepreneurship Training Program “Research on Legal Issues of Online Hitchhiking Traffic Accidents” (201810057106) Foundation.

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