

與有過失及 醫療過失責任

Mutual Negligence and Obligation
of medical Negligence

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摘 要

病患因車禍重傷，經送醫救治仍告不治，醫院急救小組有延誤診斷及治療之疏失，應視醫方與車禍肇事者導致病患傷害範圍論斷其賠償責任。且就醫方與車禍肇事者應負同一損害，無論二者是否基於同一法律關係負責，似應得適用或類推適用連帶債務關於內部求償之規定。

If an emergency team of a hospital was negligent in delaying the diagnosis and treatment of the patient which was injured in a car accident seriously and was sent to there for the treatment but still died, the obligation of the compensation shall depend on the extent of the injury caused by the physicians and the perpetrator of the car accident. Additionally, in respect of that the physician and the perpetrator of the car accident should bear the same

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關鍵詞：不真正連帶債務 (unreal joint debt)、內部求償 (internal compensation)、求償權 (claim right for compensation)、過失相抵 (contributory negligence)、與有過失 (mutual negligence)

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damage, regardless whether they were responsible based on the same legal relationship, it seems to be applicable or analogous to the provisions on the internal claims for the joint and several debts.

壹、案例

甲騎腳踏車遭乙駕駛自小貨車撞及，受有左胸鈍挫傷、肋骨骨折併氣血胸、顏面骨折、骨盆骨折、腹部鈍挫傷與內出血等傷害，送至丙醫院急救，由A醫師檢查判斷後啟動急救小組，但該小組中僅胸腔科B醫師到場處理並任組長，另二位外科C醫師、骨科D醫師未到急診現場，丙醫院於B醫師處置完畢後將甲收治於加護病房，嗣發現甲腹部變硬、血壓驟降、體溫降低等狀況，未反覆追蹤休克原因，遲誤通知B、C醫師到場，甲因內出血致血壓過低，未及手術急救即死亡。

另案認為乙於車禍發生有駕駛車輛未依規定減速慢行及未注意車前狀況之過失，甲亦有騎腳踏車行經路口轉彎未讓多線道車先行之過失，各負50%過失責任；本案醫事審議委員會鑑定意見認為，B醫師已以其專業處置甲之胸部外傷，並無疏失，但丙醫院組成急救小組，未及時聚集具專業能力組員，遇有值班醫師未及到場，未覓求其他替代聯繫管道以資救濟，於甲之急救處理有未確保啟動紀律、因判斷缺口作成錯誤判斷及處置，延誤積極救命步驟之疏失。甲之配偶丁分別於另案、本案向乙及丙醫院求償喪葬費、精神慰撫金合計200萬元，其中150萬元已由強制汽車責任保險賠付¹。

1 本案參考最高法院105年度台上字第136號民事判決，另案參考臺灣高等法院臺中分院99年度訴字第16號民事判決。