

交通事故後 伴隨醫療過失之連帶責任

Joint Liability for medical Negligence
after Traffic Accident

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摘要

被告Y1行駛車輛時未注意前方，導致車輛衝向對向車道後與被害者A的車輛正面相撞，A遭受頸部挫傷、頭胸部撞擊等重傷，入院B醫院接受治療。被告Y2醫師投與大量腎上腺素，惟A嗣後出現失去意識、抽搐等症狀，並持續有黑色糞便；惟此時Y2仍未進行內視鏡檢查，只能與抗潰瘍藥物。A之後病發心肌梗塞而轉入C醫院，被告Y3醫師雖先治療心肌梗塞並安排內視鏡檢查，惟檢查前A已休克而無法再進行檢查。A之遺屬起訴肇事者與兩位醫師，法院認為Y1明知投與大量腎上腺素有消化道出血可能，且A因車禍而有壓力性胃潰瘍之可能，且當時狀況非進行內視鏡檢查將有危害A生命之情形，故Y1有過失。A轉院時已有休克症狀，已不

關鍵詞：車禍（car accident）、共同侵權責任（joint tortfeasor liability）、內視鏡檢查（endoscopy）、醫療過失（medical malpractice）

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具進行內視鏡檢查之條件，故Y2無過世。法院探掘Y1之未及時檢查行為與Y1車禍行為，乃是A權利損害的具有接續性之共同原因，故成立共同侵權責任。

Defendant Y1 didn't pay attention to the front of his vehicle, causing his vehicle to cross into the opposite lane and collide head-on with victim A's vehicle, who sustained serious injuries, including neck contusions and head and chest impacts, and was admitted to hospital B for treatment. The physician as defendant Y2, administered a large amount of epinephrine, but A then suffered unconsciousness, convulsions and continued to have black stools; however, at this time, Y2 had not yet performed an endoscopic examination and was only able to administer anti-ulcer medication. A then suffered a heart attack and was transferred to hospital C. Although the physician as defendant Y3, initially treated the heart attack and arranged for an endoscopic examination, he was unable to do so because A had already gone into shock before the examination. A's bereaved family accused defendants Y1, Y2 and Y3. The court found that Y1 was negligent because he knew that the large amount of epinephrine injected into A could cause gastrointestinal bleeding and that A had pressure sores as a result of the car accident, and that the endoscopy was not performed in circumstances that would endanger A's life. The court found that Y2 was not at fault because A was already in shock when he was transferred to hospital. The court found furthermore that Y1's failure to conduct a timely examination and Y1's car accident were the common successive causes of A's damages, and thus established joint tort liability.

壹、事實概要

一、事件概要

本件交通事故肇事者（被告Y1）行駛車輛時未注意前方，導致車輛衝向對向車道後與被害人A（當時63歲）的車輛正面相撞，A遭受頸部挫傷、頭胸部撞擊等重傷，入院B、C兩醫院接受治療，於住院期間不幸再發生消化道出血，並疑因延誤治療引起出血性休克死亡。遺屬們依日本民法第709條及自動車損害賠償保障法第3條，對肇事者Y1及B、C醫院的負責人（被告Y2和Y3）請求人身損害賠償。本件主要爭點在於兩間醫院是否有過失，是否與A死亡間具因果關係，及本件交通事故與醫療事故是否構成共同侵權行為。

A入院B醫院後為治療傷勢，接受腎上腺素Solu-Medrol（Methylprednisolone）大量投藥，在死亡前日（後稱當日）早上6點的血壓高達160/97mmHg，9點急速下降到103/76mmHg，下午2點為117/80mmHg，下午4點30分左右在醫院內倒下，從當日上午至此時共出現7次黑色便。下午6點10分出現意識消失、抽搐、呼吸困難、無法觸摸脈搏、呼吸狀呼吸等症狀，下午6點15分排出大量黑色便，此時血壓110/81mmHg、脈搏69次／分尚具備接受內視鏡或止血治療的條件，且於下午6點30分時的血壓已穩定在129/85mmHg，但B醫院醫師並未進行內視鏡檢查及止血處置，僅給予抗潰瘍藥物治療和禁食指示，並持續觀察。下午8點40分A併發急性下壁心肌梗塞，B醫院醫師決定隔日將A轉送至C醫院。

A緊急轉送至C醫院後，C醫院醫師確認其尿布中有黑色柏油樣糞便，於是立即要求該院消化科醫生進行緊急內視鏡檢查，在等待消化科醫師到達前持續輸血並迅速從右鎖骨下動脈固定靜脈鞘，以治療併發的心心肌梗塞。此時A的血壓已降至50mmHg左右，投與白蛋白輸液但效果不充分，再投與血管