

PERSONAL INJURIES: MOTORCYCLE ACCIDENTS

INTRODUCTION

In a strict legal sense motorcycle cases are no different to other road traffic accident cases in that the Claimant has to prove that a duty of care existed, that that duty was breached, that the breach resulted in a loss and that loss was foreseeable.

In *Davies v Swan Motor Co (Swansea) Ltd* [1949] 2 K.B. 291 Lord Denning stated "speaking generally, the questions in road traffic accidents are simply these: What faults were there which caused the damage? What are the proportions in which the damages should be apportioned having regard to the respective responsibilities of those in fault?" These issues remain the pertinent ones in motorcycle accident cases.

There are, however, a number of issues which attain a particular relevance in motorcycle cases and these are set out below. Understanding these issues are of particular importance because motorcyclists are more likely to be involved in accidents than other road users and the consequences of those accident are likely to be more severe when they do occur. The number of motorcycles (including scooters and mopeds) licensed in the UK was nearly 950,000 by the beginning of 2003. In 2004, 25,641 motorcyclists were injured (6,063 seriously) and 585 killed. Motorcyclists represent 1% of traffic yet account for up to 20% of the deaths and serious injuries on our roads. Motorcyclists involved in accidents are 40 times more likely to be killed than car drivers.

OVERVIEW

1. This article deals with some of the issues facing practitioners involved in this area of law starting with a statistical look at motorcycle accidents, then it looks at the relevance of the Highway Code, common and frequently encountered scenarios involving filtering, overtaking, speed and the apportionment of contributory negligence and case law pertaining thereto and finally touching on motorcycle accidents not involving other vehicles.

KEY ACTS

Law Reform (Contributory Negligence) Act 1945

Occupiers' Liability Act 1957

Highways Act 1980

Road Traffic Act 1988

KEY SUBORDINATE LEGISLATION

None.

KEY QUASI LEGISLATION

None.

KEY EUROPEAN LEGISLATION

None.

KEY CASES

Davies v Swan Motor Co (Swansea) Ltd [1949] 2 K.B. 291

Harding (An Infant) v Hinchcliffe Times, April 8, 1964

Powell v Moody (1966) 110 S.J. 215

Farley v Buckley [2007] EWCA Civ 403; (2007) 104(21) L.S.G. 27

Ringe v Eden Springs (UK) Ltd [2012] EWHC 14 (QB)

Woodham v JM Turner (t/a Turners of Great Barton) [2012] EWCA Civ 375

Hillman v Tompkins (1995) CA Unreported

Buchan v Whiting [2008] EWHC 2951 (QB)

Davis v Schrogin [2006] EWCA Civ 974; (2006) 150 S.J.L.B. 891

Heaton v Herzog [2008] EWCA Civ 1636; [2009] R.T.R. 30

McGeown v Northern Ireland Housing Executive [1995] 1 A.C. 233

Mott MacDonald Ltd v Department of Transport [2006] EWCA Civ 1089; [2006] 1 W.L.R. 3356

Holling v Yorkshire Traction Co Ltd [1948] 2 All E.R. 662

Dabinett v Somerset CC

O'Connell v Jackson [1972] 1 Q.B. 270

KEY TEXTS

None.

DISCUSSION OF DETAIL

Motorcycle specific risks and injuries

1. Motorcyclists are particularly vulnerable to injuries due to the lack of protection that a motorcycle affords when compared to a car (seatbelt and bodywork/crumple zones). Around 80% of motorcyclists killed as a result of road accidents suffer major head injuries and although there are serious injuries to other body areas in some of these cases many do die from their head injuries.
2. Head injuries can be caused in very low speed accidents and motorcycle helmets offer good protection against such injuries (although they do not guarantee protection). It is believed that helmets reduce the risk of fatal head injury by around 50%. Spinal cord injuries are also more prevalent in motorcycle accidents than any other category of personal injury claim.
3. Leg and arm injuries are also common and leg injuries in particular can be serious and often cause permanent disability. Leg protection is one area of design that should be further addressed by motorcycle manufacturers. Leg amputations (either traumatic or later through choice following unsuccessful treatment) are fairly common as are fractures to the pelvis and testicular injuries.

4. The failure of car driving motorists to detect and recognise motorcycles in traffic is the predominant cause of motorcycle accidents.

Contributing factors

1. Factors that contribute to motorcycle accidents are:
 - a. the speeds that they can reach;
 - b. their acceleration rate (high power to weight ratio);
 - c. their relative lack of stability (single track) when compared to 4 wheeled vehicles; and
 - d. the fact that they are relatively inconspicuous.
2. In particular, motorcycles are smaller than other vehicles and thus more difficult to see. They are also less common and their presence is also less anticipated by other road users. Motorcyclists can make themselves more conspicuous by utilising day lights, by distinctive vehicle colouration and by wearing clothing that contains fluorescent and reflective material.
3. The road environment can be hazardous to motorcyclists irrespective of other vehicles. For example, changes in the level of friction of road surfaces, pot holes, uneven surfaces, poor surface repairs, spillages (especially diesel) drain covers, debris and road markings. Diesel and gravel can be especially hazardous on bends in the road when the surface area of the tyre in contact with the slippery road surface is reduced by the banking vehicle.

The Highway Code and Motorcycle cases

1. Motorcyclists, as road users, are subject to the provisions of the Highway Code in the normal way. The failure of a road user to observe the Code does not necessarily mean that they have been negligent. Likewise, the fact that a road user has observed the Code does not mean that they cannot have been negligent. A party may however rely on a failure to observe the Code as "tending to establish or to negative any liability" (s.38(7) of the Road Traffic Act 1988).
2. There are a number of Rules which are of particular relevance in motorcycle claims (and rr.83 - 88 are specific to motorcycle claims). In particular:
 - a. motorcyclists and pillion passengers are to wear regulation compliant helmets (r.83)
 - b. motorcyclists are to position themselves where drivers can see them in their mirrors (r.88)
 - c. motorcyclists should take care and keep their speed low when filtering in slow-moving traffic (r.88)
 - d. speed limits are absolute maximums and do not mean that it is safe to drive at those speeds. Drivers should reduce their speed when sharing the road with motorcyclists (r.125)
 - e. Drivers should be aware that motorcycles have greater stopping distances (r.126)
 - f. consideration may need to be given to lines and lane markings some of which MUST NOT be crossed or straddled unless safe to do so and

others which must not be crossed or straddled unless in an emergency (rr.127 - 132)

- g. In slow moving traffic drivers should be aware of cyclists and motorcyclists who may be passing on either side (r.151)
 - h. drivers should be aware of other road users, especially cycles and motorcycles who may be filtering through the traffic. These are more difficult to see than larger vehicles and their riders are particularly vulnerable. (r.160)
 - i. road users should take extra care to look out for motorcyclists at road junctions (r.170), when turning right (r.179), at crossroads (r.181), and when turning left (r.182), and at roundabouts (r.187).
3. The Code goes on to identify Motorcyclists to be road users who require extra care and sets out the following summary (r.211): It is often difficult to see motorcyclists and cyclists, especially when they are coming up from behind, coming out of junctions, at roundabouts, overtaking you or filtering through traffic. Always look out for them before you emerge from a junction; they could be approaching faster than you think. When turning right across a line up of slow-moving or stationary traffic, look out for cyclists or motorcyclists on the inside of the traffic you are crossing. Be especially careful when turning and when changing direction of lane. Be sure to check mirrors and blind spots carefully... It is often difficult to see motorcyclists and cyclists, especially when they are coming up from behind, coming out of junctions, at roundabouts, overtaking you or filtering through traffic. Always look out for them before you emerge from a junction; they could be approaching faster than you think. When turning right across a line up of slow-moving or stationary traffic, look out for cyclists or motorcyclists on the inside of the traffic you are crossing. Be especially careful when turning and when changing direction of lane. Be sure to check mirrors and blind spots carefully.

Liability

1. The same points tend to appear time and again in accidents involving motorcycles and other vehicles. Commonly the root cause of such accidents is the failure of other road users to keep a proper look out on the road or to anticipate the presence of motorcycles (who are often carrying out manoeuvres which larger vehicles would not be engaged in). It is for this reason that motorcycle accidents usually result in some finding of primary liability against the other vehicle involved. On the other hand, reductions for the contributory negligence of the motorcyclists are common. Those reductions are often because either the motorcyclist was travelling at excessive speed or they were engaged in a dangerous manoeuvre at the time of the collision (e.g. filtering or overtaking - although both of these can be safe and whether they result in a finding of contributory fault will depend upon all of the circumstances - see below). Liability disputes in motorcycle cases often end up being arguments on how to apportion liability.
2. Further areas of particular relevance to accidents involving motorcycles are:
 - a. accidents involving a motorcycle filtering past traffic and/or overtaking;
 - b. speed;

- c. accidents caused by the poor condition of the highway;
- d. accidents caused by things left on the highway;
- e. failure to wear a helmet.

Filtering accidents and overtaking

1. "Filtering" accidents are peculiar to motorcycle cases and deserve a separate mention here. Filtering refers to a form of overtaking or undertaking very commonly engaged in by motorcyclists. Motorcyclists are permitted to filter along the side of stationary or slow moving traffic and are even required to filter in order to pass their motorcycle test. They do, however, need to exercise a high degree of caution when doing so. Accidents involving filtering and overtaking commonly result in a split in liability. Relevant factors in determining the basis of such a split include:
 - a. the speed of the filtering motorcycle;
 - b. the speed of the traffic being filtered passed;
 - c. whether the filtering is being done on the offside or onside of the line of traffic;
 - d. the presence of a junction in the road;
 - e. whether anything could have indicated to the motorcyclist that it was not safe to be filtering (such as a gap in the line of traffic suggesting a car had been flashed to pull into it, or a car indicating to turn right down a side road, or a car positioned towards the middle of the road with a junction to its right, etc.);
 - f. a party's knowledge of the road lay out and the direction from which they could expect vehicles to be coming;
 - g. whether the other vehicle involved had seen the motorcycle prior to the collision (commonly they have not - an indication of negligence).
2. Although every case must be decided on its own facts, some assistance can be obtained from consideration of the way that the courts have dealt with filtering cases in the past.

Vehicle turning out of side road into collision with filtering motorcycle

1. *Harding (An Infant) v Hinchcliffe Times*, April 8, 1964 : C was riding his motorcycle along a main road following a bus. The bus indicated to turn left down a minor road. C began to overtake the bus to continue going straight on. At the same time, D turned right out of the minor road. C and D collided. It was found at first instance that D had watched the bus for 150 yards prior to the turning and that C had been hidden by the bus for that entire distance. The Trial judge found that D had not been negligent because he could not reasonably have anticipated C being hidden by the bus for that distance. The Court of Appeal overturned that decision and found 100% in C's favour. The basis of that finding was that in turning on to a major road from a minor one the obligation was on D to ensure that it was safe to make his turn and there was always the possibility that a vehicle could have been in C's position.

2. Powell v Moody (1966) 110 S.J. 215 : This is probably the most well known motorcycle case. A queue of traffic was stationary in a main road. M, driving a car from a side road, was invited by the driver in the stationary queue to pass through a gap. As M inched his way through the gap P, driving a motorcycle along the offside of the queue, collided with him. The Court of Appeal did not interfere with the finding of the trial judge's finding of an 80:20 split in favour of M. Although Powell v Moody remains good law, filtering is probably now a more accepted practice than it was when Powell was decided and there is a question mark over whether a case on the same facts would be decided in the same way today. It may be advisable to place greater weight on cases more recently decided on this point.
3. Farley v Buckley [2007] EWCA Civ 403; (2007) 104(21) L.S.G. 27 : F was riding a scooter along a main road behind a long refuse wagon. The wagon indicated to turn left down a side road and commenced that turn. As the wagon approached the turning F began to overtake it. B was waiting to turn right out of that side road and began that turn as the wagon slowed down prior to turning left. As B turned right F overtook the wagon and there was a collision between B and F. The trial judge found that B had been continuously driving out of the side road at 5-8mph (rather than "nose-poking") and that F had been travelling at a speed (30mph) that was reckless, especially having regard to the overtaking manoeuvre and the lack of visibility to his left and behind the wagon. Somewhat surprisingly the trial judge found against F 100%. The Court of Appeal did not interfere with this finding (although they made it clear that in doing so they were not intending to lay down any point of principle).
4. Ringe v Eden Springs (UK) Ltd [2012] EWHC 14 (QB) : R was riding his motorcycle along a single carriage way road with a speed limit of 40mph when a van belonging to E emerged from a side junction intending to turn right. There was a collision. Prior to the collision R had been overtaking an articulated lorry by riding into the hatched area bordered by broken lines that was between the carriageways. The Judge found E to be liable for the accident because their driver should have waited until he had a clear view of the road to his right before attempting to make his manoeuvre. R's contributory negligence was assessed at 80% because: 1) he was an experienced motorcyclist who was familiar with the road and that there were junctions and that the hatched area was not to be used as an overtaking lane; and b) he was travelling at excessive speed (probably between 60-70mph).
5. Woodham v JM Turner (t/a Turners of Great Barton) [2012] EWCA Civ 375 : This is a case involving similar facts to Powell v Moody . One of T's coaches had been driving along a minor road and stopped at a T-junction, intending to turn right into a single carriageway A road. There were road works and temporary traffic lights to the left of the junction. On the A road to the coach's right hand side a tractor with a large trailer had stopped leaving a gap through which the coach could pass to turn right onto the far carriageway. W was filtering passed the tractor on his motorcycle as the coach turned right and there was a collision. The trial Judge found that the coach driver was at fault in moving forward into the gap when she was not properly able to see whether a road user was overtaking the tractor. The Judge made a 30% reduction for W's contributory negligence in that he was familiar with the road and had

known about the T-junction and that the tractor had left a gap through which there was a real possibility that a vehicle could emerge into his path. The Judge also found that W's speed (20mph) had been excessive. In their appeal T argued that the apportionment was manifestly wrong and that the greater share of the blame should rest with W. The Court of Appeal replaced the Judge's decision with a 50:50 split on liability.

Vehicle in traffic turning right into filtering motorcycle

1. Hillman v Tompkins (1995) CA Unreported : T was in a line of stationary traffic when she turned right into H's motorcycle as he filtered passed. The trial judge found: 1) T had been indicating prior to commencing her turn; 2) T had not been positioned on the crown of the road such that H could have seen the indicator prior to T commencing her turn or that he should have anticipated her intention to turn right; 3) that H had been travelling at up to or "maybe even exceeding" 30mph at the time of the collision; 4) T had not seen H prior to the collision. The trial judge concluded from these facts that the T failed in her duty to check that it was safe before commencing her turn but that H was travelling too fast given that he was approaching a junction overtaking a line of stationary traffic. The Court of Appeal did not interfere with the trial judge's decision to apportion liability 50:50.
2. Buchan v Whiting [2008] EWHC 2951 (QB) : W's car collided with B's motorcycle as W turned right to turn down a side road as B was overtaking him. The Judge found that, at the time W began to turn, B had been there to be seen in W's mirrors (about 75 - 100metres behind him where B had his lights on and visibility was good). W had not seen B because W had not looked well enough or long enough before commencing his turn. W was held to be liable for the accident but there was a reduction of 50% for B's contributory negligence because of the speed at which he was driving which was 60mph and reckless.

Vehicle making u-turn into filtering motorcycle

1. Davis v Schrogin [2006] EWCA Civ 974; (2006) 150 S.J.L.B. 891 : S was stationary in a traffic jam when he decided to execute u-turn to get out of the jam. In doing so, he collided with D who was filtering passed. S had only checked for traffic in the opposite carriageway and therefore did not see D prior to the collision. The trial judge found that once S began his turn D's proximity meant that the collision was inevitable such that liability should rest 100% with S. The Court of Appeal did not interfere with that decision.

Speed

1. The speed of the parties is a relevant consideration in every road traffic accident case and often takes on particular importance in motorcycle cases. In 5 of the 8 cases set out above a finding of contributory negligence was made because of the excessive speed of the motorcyclist. Even where the motorcyclist is not in the process of filtering or overtaking, reductions for contributory negligence simply for the speed of the motorcyclist are not uncommon (see for example Heaton v Herzog [2008] EWCA Civ 1636; [2009] R.T.R. 30).

Accidents caused by the poor condition of the road

1. Roads that are in poor condition can be particularly dangerous for motorcyclists. An accident caused by the poor condition (e.g. a pothole) of a public road (i.e. one maintainable at public expense) can lead to a claim against the relevant highway authority (see: s.41 and 58 Highways Act 1980). In order for a Claimant to succeed in a claim against the highway authority he will need to prove that the highway was not reasonably safe due to a failure to maintain and that the accident was caused by that dangerous condition of the highway. If the Claimant gets over those hurdles, the highway authority will be able to defeat the claim if they can show that they had taken "such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous" (s.58 Highways Act 1980). For more information on actions arising from the condition of the highway see: Accidents in public places . Accidents caused by the poor condition of private roads may result in a claim under the Occupiers' Liability Act 1957 although a landowner owes no duty to maintain a public right of way over his land (McGeown v Northern Ireland Housing Executive [1995] 1 A.C. 233).

Accidents caused by substances or objects on the road

1. Motorcyclists are particularly vulnerable to substances and object left in the road. The success of claims in those circumstances will depend upon the substance in question and by whom it was left. The following general points can usefully be made:
 - a. Ice & snow - the duty to maintain upon a Highway Authority includes a duty to ensure "so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice" (s.41(1A) Highways Act 1980).
 - b. Water - the duty to maintain the Highway includes a duty to provide an adequate drainage system such that accidents caused by water on the road can give rise to a potential claim (Mott MacDonald Ltd v Department of Transport [2006] EWCA Civ 1089; [2006] 1 W.L.R. 3356). Although it is important to remember that the fact that there was water on the highway is not sufficient to show liability. It must be shown that the presence of the water was the result of a failure to maintain. It is useful to know that an accident caused by an escape of water from a pipe vested in a water undertaker will result in strict liability against that undertaker (see s.209 Water Industry Act 1991 and subject to some limited exceptions).
 - c. Gravel - accidents caused by loose gravel or debris on the surface of the road may lead to a claim against the Highway Authority in negligence if the gravel was a result of a road that was negligently laid down by them or their subcontractors (e.g. Dabinett v Somerset CC). It may also be possible to bring a claim under the Highways Act subject to the usual tests under s.41 and s.58 Highways Act 1980 and provided that it can be shown that the gravel was present as a result of a failure to maintain the highway.

- d. Where an accident is caused by a substance on the Highway for whom an identifiable person is responsible that person may be liable in negligence and/or nuisance. For example, in *Holling v Yorkshire Traction Co Ltd* [1948] 2 All E.R. 662 the Defendant operated coke ovens 50 yards from the road. Smoke from those ovens caused a reduction in visibility on the road which resulted in an accident. The Defendant was held to be liable in nuisance and in negligence for the accident.
- e. If the substance had been present on the highway for some time, and it was reasonably foreseeable that it would present a danger to road users, a highway authority can be concurrently liable with those responsible for the substance for failing to remove the substance (subject to the s.58 defence in the normal way).
- f. Where it can be shown on the balance of probabilities that a substance (for example a diesel spill) is on the road because of the negligence of an untraced road user, there is the possibility of bringing a claim against the MIB under their untraced drivers' agreement for accidents caused by that substance.

Failure to wear a helmet

1. Motorcyclists (unless they are members of the Sikh religion wearing a turban) are legally obliged to wear crash helmets. A failure to wear a helmet may result in a reduction of contributory negligence. The extent of the reduction will depend upon the extent to which the injuries would have been reduced had a helmet been worn. See for example *O'Connell v Jackson* [1972] 1 Q.B. 270 where contributory negligence of 15% was found where wearing a crash helmet would probably have reduced the gravity of the head injuries sustained by the Claimant.

ANALYSIS

KEY AREAS OF COMPLEXITY OR UNCERTAINTY

None.

LATEST DEVELOPMENTS

None.

POSSIBLE FUTURE DEVELOPMENTS

None.

HUMAN RIGHTS

None.

EUROPEAN UNION ASPECTS

None.

FURTHER READING

None.