Automobile Negligence Lawsuits

Who Is Sued?

Driver—the driver is the person whose negligence gives rise to the liability. The person suing must prove that the driver negligently operated the motor vehicle.

Owner of the motor vehicle—the owner of the vehicle is vicariously liable, which means the owner is not liable because of his or her own conduct, but rather because of his relationship to the wrongdoer (i.e., the driver). There are two legal theories by which the driver's negligence is imputed to the owner of the vehicle. Both are based on agency principles, in other words that the driver is the agent of the owner-principal and the principal is liable for the agent's negligence.

- Family purpose doctrine—impute the negligence of the driver to the owner if

  Driver was negligent;

  Driver was a member of owner's family or household and was living in owner's home;

  Vehicle was owned and maintained for general use and convenience of owner's family; and

  Vehicle was being so used by a member of the family at the time of the accident with the express or implied consent of the owner.

- Proof of agency—owner-consent statute.

  G.S. 20-71.1.

  Proof of ownership of a motor vehicle involved in an accident is prima facie evidence that the motor vehicle was being operated with the authority, consent, and knowledge of the owner in the very transaction out of which the lawsuit arose. (Prima facie means that evidence of ownership is sufficient to find agency and hold the owner liable, but that the owner may offer evidence tending to show that no agency existed.)

  Proof of registration in the name of a person is prima facie evidence of ownership.

Person authorized by the owner to drive a vehicle does not have authority to permit another to drive in the absence of express or implied authority by the owner or emergency.

So owner is not responsible for negligent operation of his vehicle by a driver other than his agent.

Exception is that owner is liable if agent had express or implied authority to let others drive or agent confronted with emergency, which made it necessary for him to let other person drive.

Insurance company covering owner's vehicle: proper defendant only when insured is suing own insurer on basis of uninsured coverage because operator or owner of other vehicle cannot be determined (in other words, hit and run accident).

Who sues?

Real party in interest usually is the person injured by accident; that is the person who must be named as a plaintiff. This is true even if the person's insurance company has already paid him.

When is the insurance company a proper plaintiff?

Most of the time, an insurance company does not fully reimburse the insured, who is typically responsible for at least paying the deductible. In such a case, the insurance company, having incurred a loss because of its payment to plaintiff, is a proper plaintiff and *may be joined* as such. *St. Paul Insur. Co. v. Rose Supply Co.*, 19 N.C. App. 302 (1973). The insurance company *is not required to be named as a plaintiff*, however, and generally does not wish to be a formal participant in the action, because having the insurance company as co-plaintiff might prejudice the jury against the plaintiff's case.

If plaintiff collects on judgment against defendant when own insurer has paid part of it, insurance company is entitled to be repaid by plaintiff for amount it paid to plaintiff.

When is the insurance company the real party in interest?

If insurance company has paid the insured the entire damages (meaning no deductible was paid by insured), lawsuit must be brought by insurance company because it then becomes the real party in interest. *Phillips v. Alston*, 257 N.C. 255 (1962).

Relationship between insurer and insured.

Motor vehicle liability policy is merely a contract to pay damages if insured is held liable.

The contract usually includes a provision that the insurance company will provide an attorney for insured.

NC requires motor vehicle liability policies to include *uninsured motorist coverage*, which is a provision under which the insured's own insurance will pay for any damages suffered as a result of an accident with a negligent, uninsured motorist. (G.S. 20-279.21)

- In order to collect against own insurance company under the uninsured portion of the policy, the insured must serve a copy of the complaint and summons against the negligent driver and owner on the insured's own insurance company.

- The insured's own company may end up defending the defendant and trying to prove that the defendant was not negligent.
- Insured may sue own company directly for uninsured coverage when identity of operator or owner of vehicle that caused accident cannot be ascertained.

Many motor vehicle policies also include a separate provision requiring the insurer to pay its insured's medical costs arising out of any accident. This provision is called "*med pay provision.*" Essentially, a "med pay" provision is like health insurance for automobile accidents.

Damages allowed in motor vehicle negligence case

Property damage.

- Measure of damages is difference between the fair market value of the property immediately before it was damaged and its fair market value immediately after it was damaged.
- Evidence of estimates of cost to repair or of the actual cost of repairing the damage to plaintiff's property may be considered in determining the difference in fair market value before and after the damage occurred.

Loss of use of the vehicle.

- If the damaged vehicle *can be repaired*, owner entitled to damages for loss of use; measure of damages is cost of renting a similar vehicle during a reasonable period for repairs whether or not owner actually rented a vehicle.
- If vehicle is *damaged beyond repair,* damages are in the amount of the fair market value of the vehicle immediately before the accident. Additional damages for renting a vehicle are available only when a new replacement vehicle is not immediately obtainable; measure of damages is cost of renting a similar vehicle during such period reasonably necessary to acquire the replacement.

Personal injury.

- Medical expenses—all hospital, doctor, chiropractor, or other health care providers, and drug bills reasonably paid or incurred as a consequence of injury.
- Loss of earnings—fair compensation for loss of time from employment or reduced capacity to earn money because of injury. (Although this can get complicated when talking about a loss of earning capacity, for purposes of small claims cases, this measure of damages generally will be proven by loss of work for several days without additional loss of future earning capacity.)
- Pain and suffering—fair compensation for the actual physical pain and mental suffering experienced by the plaintiff because of the injury.

    No fixed formula for evaluating pain and suffering.

Determine fair compensation by applying logic and common sense to the evidence.

- Other allowable damages include damages for scars and disfigurement, loss of use of part of the body, and permanent injury. However, they are unlikely to arise in a small claims case.

Punitive Damages

Purpose is to punish "egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts". GS Ch. 1D.

Punitive damages can be awarded only when defendant is liable for *actual damages* and plaintiff proves by *clear and convincing evidence* that defendant acted with fraud, malice, or willful or wanton conduct. GS 1D-15.

Amount of punitive damages is within discretion of magistrate, based upon consideration of factors set out in G.S. 1D-35:

- the reprehensibility of defendant's motives and conduct;
- the likelihood, at the relevant time, of serious harm;
- the degree of the defendant's awareness of the probable consequences of its conduct;
- the duration of defendant's conduct;
- the actual damages suffered by plaintiff;
- any concealment by defendant of the facts or consequences of its conduct;
- the existence and frequency of any similar past conduct by the defendant;
- whether the defendant profited from the conduct;
- the defendant's ability to pay punitive damages.

Punitive damages **may not** be ordered against a defendant who is liable based solely on *vicarious liability*. G.S. 1D-15(c). So, owner of vehicle cannot be required to pay punitive damages awarded against the driver of a vehicle unless owner is found to have acted negligently as well.

Attorney Fees and Costs

General rule is that parties do not have a right to recover attorney fees.

To award attorney fees, there must be a specific statute that allows the award of fees in the particular case. If there is a statute that allows the award of attorney fees, the party requesting fees must have been represented by the attorney during the case.

G.S. 6-21.1 allows a court to award a reasonable attorney fee in cases involving personal injury or property damage where recovery is less than $25,000. Award of fees is discretionary, and additional requirements (set out in statute) must be met. Note: statute seems to require that judgment be entered by a court of record.

Costs are the fees paid by plaintiff at time action was filed (court filing fee and service of process fee). Costs in a negligence action can be allocated to either party by magistrate. G.S 6-20.

Parties are not allowed to recover for other costs of litigation such as time lost from work to come to court, cost of parking to attend court, or cost of a babysitter while they come to court.

Collateral source rule.

The fact that the medical expenses were paid by the plaintiff's employer, medical insurer, or some other collateral source does not deprive the plaintiff of the right to recover the expenses. (*Cates v. Wilson*, 321 N.C. 1 (1987); *Fisher v. Thompson*, 50 N.C. App. 724 (1981)).

Plaintiff sues for and is entitled to recover the full amount of damages from the defendant.

If the plaintiff's health insurance or his "med pay" policy pays all or part of plaintiff's medical expenses, plaintiff generally is not required to reimburse the insurance company from his recovery.