

Liability in road accidents

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Personal Injury analysis: Shaun Ferris, barrister at Crown Office Chambers, explores *Horner v Norman* and argues that this case shows that, despite a tendency to apportion a larger share of blame to a motorist, the courts may still hold the pedestrian significantly at fault.

Original news

Horner v Norman [2015] EWCA Civ 1055, [2015] All ER (D) 216 (Oct)

The claimant was knocked down by a car driven by the defendant. As a result of the collision, the claimant suffered significant injuries, which led him to bring proceedings against the defendant. His claim was dismissed. The Court of Appeal, Civil Division, in dismissing the claimant's appeal, held that the judge had been entitled to hold that the defendant was not liable to the claimant.

What key issues did this case raise?

The main issue was the judge's discretion to prefer the lay witness evidence to the evidence of the experts on accident reconstruction, and the need to resolve tensions between the evidence as presented by the lay witnesses and the experts' reconstruction. A key element in the judge's approach was the fact that the experts had little objective evidence or material with which to work, so that any expert analysis was obliged to rest upon a series of assumptions.

The second feature of the case was the finding that, had there been any liability on the defendant, the claimant would have been guilty of contributory negligence (for running out into the defendant's path) and a deduction of 75% would have been made.

The Court of Appeal upheld the trial judge's approach to the evidence and, obiter, indicated that they would not have interfered with his findings on contributory negligence had liability been established.

What are the common issues in relation to evidence in motor accident cases?

The main feature is the use of expert evidence where there is little objective forensic material for the experts to use when applying their expertise to reach conclusions. If there is little or no such material then they will be either analysing the factual evidence (which is not their role) or making a series of assumptions (that may or may not be supported by the factual evidence).

It is unusual for a pedestrian, crossing a road and being struck by a motorist, to be found to be more at fault for the accident. The impact of cases such as *Eagle v Chambers* [2003] EWCA Civ 1107, [2003] All ER (D) 411 (Jul) and *Lunt v Khelifa* [2002] EWCA Civ 801, [2002] All ER (D) 352 (May) have emphasised the greater potential for motor cars to cause injury--thus there has been a tendency to apportion a larger share of blame to a motorist than to a pedestrian. This decision shows that it does not automatically follow that a motorist is always at least as much to blame and that a pedestrian can be held significantly at fault.

What are the lessons to be learned from this case?

There are various lessons that we can learn from this case. These include:

- o permission for expert evidence should only be sought if there is enough material for the experts to use in reaching proper conclusions
- o do not ignore the importance of the factual evidence in establishing what actually happened, even if the expert evidence tends to go in a different direction
- o pedestrians can be held significantly to blame for running out into the road and a finding of contributory negligence of up to 75% is possible

- o ensure that any expert instructed considers all of the factual evidence and not just those aspects of the evidence that fit his conclusions

Are there any detectable trends in this area of law? What are your predictions for the future?

There is a tendency to rely on expert accident reconstruction evidence in large value cases, especially in cases where the claimant may not have any independent recollection of the accident. The case might lead to a closer focus on whether such evidence can be justified and whether there is sufficient material for an expert properly to work with in preparing his report and reaching his opinions.

Defendants might be more ready in future cases to hold out for a high degree of contributory negligence in appropriate cases where a pedestrian has run out into the road into the path of an approaching motorist.

Shaun Ferris is a Barrister with Crown Office Chambers and his practice is based on product liability work and a broad range of personal injury work including, in particular, catastrophic injury claims, industrial disease claims (particularly asbestos and stress claims) and sports injury cases. He is experienced in clinical negligence and professional negligence work.

Interviewed by Janine Isenegger.

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