Drivers, Bicyclists and Pedestrians: What Duty Does Each Have? Appellate Division Sheds Light

July 8, 2020 | by Amanda Clark

Under New Jersey law, bicyclists, pedestrians and drivers of a motor vehicle have certain responsibilities and duties with respect to using a roadway and in relation to one another. The extent of those responsibilities and duties were examined in the recent, unpublished case of *Mariano Simota Bailey v. Jacqueline Hennessey.*

In this case, the Defendant was driving a motor vehicle, and the Plaintiff was riding a bicycle along a bike path and crossing the road in a marked crosswalk. The Plaintiff was struck by the Defendant, and sustained severe and permanent injuries, including several weeks in a coma, facial fractures and a brain aneurysm.

Video surveillance of the incident revealed that the Plaintiff-biker had disregarded a stop sign along the bike path as he entered the crosswalk.

The Court Instructed the Jury to Extend Duty to Stop for Bicyclists as well as Pedestrians

At trial, the judge gave the jury instructions for their deliberation of the case. In prior cases, the jury charge would state, in essence, that a person operating a motor vehicle has a duty to stop for a pedestrian in a marked crosswalk at an intersection. The judge in this matter, however, instructed the jury using a modified jury charge which applied the duty to stop for a bicyclist as well.

The Driver's Objection, Denied by the Court

The Defendant-driver objected to this modified charge, arguing that the duty to stop applied only to pedestrians, not bicyclists. Further, the Defendant requested that the judge also instruct the jury that a bicyclist has a duty to make reasonable observations and yield the right of way to vehicular traffic at an

intersection. The judge denied this request on the basis that the proposed instruction would conflict with a driver's obligation to make reasonable observations of other vehicles or anything that may come into the driver's path.

The Jury's Verdict Allocated Fault Primarily to the Driver

The jury returned a verdict of $1,000,000, which allocated 65% of the responsibility for the accident to the Defendant and 35% to the Plaintiff. This resulted in a final award of $650,000 to the Plaintiff.

The Driver's Appeal and the Definitions of "Driver"

On appeal, the Defendant argued that a bicyclist on a roadway has the same responsibilities and duties as a driver of a motor vehicle. More specifically, the Defendant argued that the trial judge erred by failing to instruct the jury that a bicyclist has a duty to make reasonable observations and yield the right of way to a motor vehicle. The Defendant also argued that the trial judge improperly instructed the jury utilizing a modified jury charge since the charge did not apply to bicyclists.

The Appellate Division agreed with the Defendant's arguments. The Court first looked to New Jersey law and the definitions of pedestrian and driver. The Court reasoned that the New Jersey Legislature specifically defined pedestrian as "a person afoot" and driver as "the rider or driver of a horse, bicycle or motorcycle or the driver or operator of a motor vehicle, unless otherwise specified." Based on these definitions, the Appellate Division held that the trial judge had erred in its jury instructions, and that the judge should have instructed the jury that New Jersey law requires a bicyclist to proceed into the crosswalk only after yielding the right of way to traffic on the intersecting street.

With regard to the verdict, the Appellate Division concluded that the trial court's errors could have affected the jury's determination as to whether the Defendant was negligent as well as the jury's allocation of fault. As such, the Appellate Division reversed the judgment entered by the trial court and remanded for a new trial. The Appellate Division also instructed the Clerk of the Court to provide a copy of the opinion to the Supreme Court's Committee on Model Civil Jury Charges and requested that the Committee consider new or modified instructions in accordance with the opinion. The case is therefore an important decision in that jury charges in the future may be different. And the takeaway

for plaintiffs and defendants is that pedestrians, bicyclists and drivers all have a duty in relation to each other, whether that is to stop, yield, or otherwise observe traffic before proceeding into an intersecting street.