

What Can The Jury Consider During An Automobile Injury Trial?

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Clients generally have no real understanding, when I discuss their upcoming trial, of what a jury is permitted to consider as evidence during a trial. What makes a horror movie more compelling is when the telephone call from the psychotic killer comes from *inside* the house to the victim. That is the “wow moment” of the horror movie. A jury trial is no different from a movie. The trial attorney wants to show the jury that “wow moment,” that critical piece of evidence that is the fulcrum upon which the case may turn. But trial judges are like football referees seeking to ensure that the players or trial attorneys are playing by a set of rules that supposedly make things fair to both sides. Thus, our courts have created rules of evidence that limit or exclude certain kinds of evidence from being heard by juries. Often, it is the evidence that an experienced trial attorney keeps a jury from hearing that wins the day. The rules of evidence are designed to limit juries from hearing certain kinds of evidence that might overly inflame or be prejudicial to one side.

There was a time before the rules of evidence when juries and trial judges, conscientiously performing their duty in ascertaining the facts, were allowed to use their common sense and appreciation of what is fair and just. An easy example might be if a jury was deciding what is obscene and what is not obscene. That day is vanishing because recently courts have been fighting windmills over the definition of the simplest words. As a reflection of our society, what is obscene has become blurred. Any reasonable person on the street will tell you the meaning of the word “obscene.” But there are courts that still cannot define or describe obscenity without employing polysyllabic words enmeshed in complicated verbiage of unending modifications and nuances, which finally leave the juror quite confused.

Therefore, a trial attorney must understand that each juror may have a different understanding of a word such as “obscenity” used by way of example above, and present evidence that will illustrate without offending a particular juror. This philosophy is no different in automobile accident cases, and the rules of evidence act as a screening mechanism for what used to be plain common sense. A jury will be able to consider the details of an accident, causation, and the injuries caused by an accident, all while a judge limits what is presented to a jury. The following are some examples of evidence that a jury will never hear during an automobile injury trial.

Evidence could not be presented to a jury that the at-fault driver had automobile insurance, or that the lawyer defending him is being paid by the insurance company, or that anything that the jury might award would be paid by the insurance company of the defendant. New Jersey Rule of Evidence 411 states, “evidence that a person was or was not insured against liability is not admissible on the issue of that person’s negligence or other wrongful conduct.” The rule recognizes that a person having procured liability insurance has virtually no relevance to the question of whether he was negligent or guilty of wrongdoing on a particular occasion.

As a matter of fact, in New Jersey, the lawsuit that is filed on behalf of the injured plaintiff is not filed against the insurance company at all and names only the at-fault defendant as a party. In my opinion, this gives the improper illusion that the plaintiff’s attorney is attempting to solicit money from the poor old lady who accidentally rear-ended his client in an automobile accident. Therefore, in actuality, the entire trial becomes an exercise in the plaintiff’s attorney attempting to persuade a jury to compensate his client monetarily, and that money would be paid entirely by the defendant, without the plaintiff’s attorney ever informing the jury that it is the insurance company that is responsible for paying the verdict.

It can be argued that Evidence Rule 411 is exploited by insurance defense lawyers, providing an unfair advantage for their side. By way of example, a defense lawyer may argue that his client agrees that he caused the crash but that “his client” is being asked to pay an exorbitant amount of money for plaintiff’s alleged injuries. This acts to distort the jury’s view point by misleading the jury into thinking that the at-fault driver would be responsible to pay the verdict. It is my humble opinion that the fact that the

insurance company will have to pay the verdict should be honestly revealed to the jury, but courts and trial judges have reasoned that if a jury is told this, it might award exorbitantly higher verdicts out of disregard or dislike for insurance companies.

Another example of what a jury cannot hear is that the at-fault driver has a prior bad driving record, and that after the crash he had several more speeding tickets and additional car accidents. New Jersey Rule of Evidence 404 prevents a jury in a typical car crash case from knowing anything about a defendant's prior driving record. Further, New Jersey courts rule with regularity that any moving violation or car crash in which a defendant is involved subsequent to the particular car crash at issue is irrelevant. As such, a jury will never be told about any prior or subsequent driving offenses by the defendant during the trial. Once again, insurance defense lawyers tend to exploit this by telling a jury that their client has never been involved in anything like this before which may be untrue.

A third example of what a jury may never consider or hear is that the plaintiff filed the lawsuit only after the insurance company offered a nominal amount to settle. New Jersey Rule of Evidence 408 states, "when a claim is disputed as to validity or amount, evidence of statements or conduct by parties or their attorneys in settlement negotiations, with or without a mediator present, including offers of compromise or any payment in settlement of a related claim shall not be admissible to prove liability for, or invalidity of, or amount of the disputed claim." The basis for Evidence Rule 408 is to encourage settlement discussions between the parties without any concern that what is said during those settlement negotiations would be used against them at a later date if the case proceeds to trial. Therefore, a plaintiff's attorney is not permitted to tell a jury about any offers or any discussions related to settlement negotiations.

Finally, a jury will generally not be allowed to consider evidence concerning the at-fault driver's reckless driving that caused the accident, such as driving while intoxicated. New Jersey Rule of Evidence 402 states that all relevant evidence is admissible and excludes irrelevant information from being introduced to a jury. In an aggravated case of outrageous driving on the part of a defendant, such as driving while intoxicated, the insurance defense attorney generally will admit liability, such that the jury will never be able to hear that the defendant was driving while intoxicated. Evidence of intoxication would no longer be relevant if liability is admitted and its prejudicial effect would outweigh

its probative value under New Jersey Evidence Rule 403.

At times, the Rules of Evidence seem to be unsupportable in logic and elementary justice.

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