

The Institute of Law Clerks of Ontario | May 29, 2019

Pedestrian-Motor Vehicle Accidents: Tort & Accident Benefits Law to Know

Presented by:

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Introduction

- Statistics on pedestrian MVAs
- Advice to clients
 - Tort
 - Accident Benefits

Tort Law



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Overview & Relationship to Other Judicial Systems

- 1 MVA can = tort, CC charge & *HTA* charge
- Different burdens of proof
- Onus (generally)
- Impact of charges/convictions in tort

Reverse Onus

- “Pedestrian” under *HTA*
- s. 193 of *HTA*
- Applicable to MVAs on “highway”
- Evidentiary implications:
 - Trial
 - Expert reports

Contributory Negligence



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Contributory Negligence: The Concept

- Liability is not binary
- Reduces damages
- 3 ways to be contributorily negligent:
 1. Caused the accident
 2. Put himself/herself into foreseeable harm
 3. Caused severity of the injury

Contributory Negligence: Accident/Foreseeable Harm

- **Obligations & expectations of motorists**
 - Reverse-onus discharged by showing *no* negligence
 - Higher duty at street crossings, but sharp look-out otherwise
 - Assume pedestrians will behave rationally
 - Near school/playground, drive slowly & lookout for kids

Contributory Negligence: Accident/Foreseeable Harm Cont.

- Duties to kids:
 - Reduce speed
 - Keep proper lookout
- Kids are unpredictable so take precautions

Contributory Negligence: Accident/Foreseeable Harm Cont.

- **Obligations & expectations of pedestrians**
 - No *absolute* right to cross
 - Duty to exercise due care

Contributory Negligence: Accident/Foreseeable Harm Cont.

- **E.g. Circumstances of Contributory Negligence**
 - Dart-out
 - Crossing not at intersection
 - Crossing at night in dark clothes
 - Stumbling onto highway
 - Not keeping proper lookout

- **No default % → Fact based**

Contributory Negligence: Severity of Injury

- Cyclists → helmets
- Proximate cause of injury
- Expert evidence adduced by defence

Tender Years Doctrine

- Concept
- Ages 13+



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Negligent Supervision

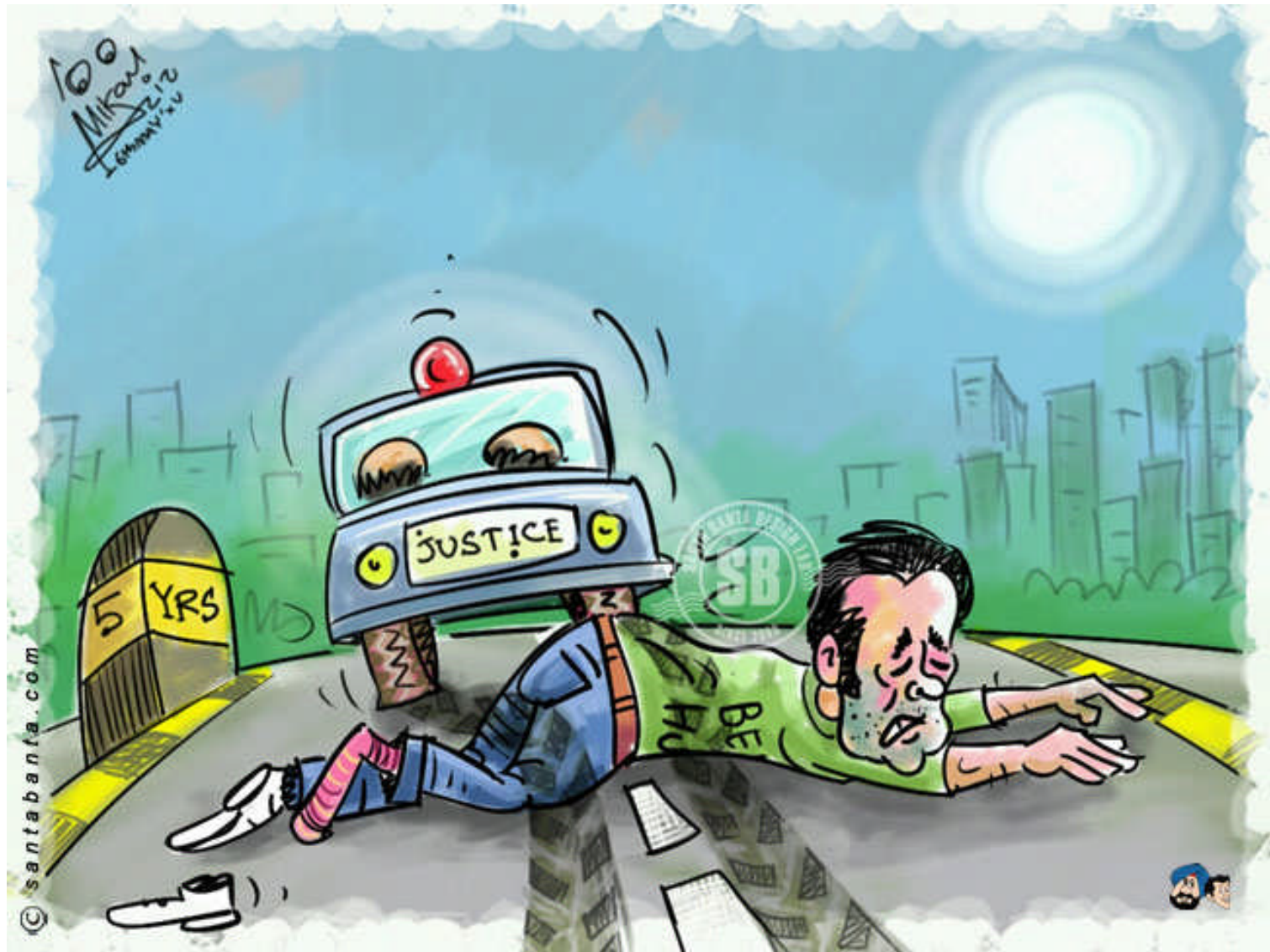
- Concept & allegations
- Ways responsible adult is sued



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Hit and Runs



Hit and Runs: Where Plaintiff Insured

- s. 265(1)(a) requirement for UID coverage
- Sue own insurer: 2 levels
- O.A.P. 1
 - “Insured persons”
 - If “hit by” a UID
 - \$200K limits

Hit and Runs: Where Plaintiff Insured Cont'd

- OPCF-44R
 - “Insured person”
 - If “struck by” a UID
 - Policy limits

- Broad definition → “Walked into”

Hit and Runs: Where Plaintiff Insured Cont'd

- OPCF-44R: Corroborated by “other material evidence”
 - Independent witness evidence
 - Physical evidence indicating involvement of UID
- “Independent” = Extrinsic, not neutral
- Indicating = Sign of
 - Engineering evidence
 - Injuries

Hit and Runs: Where Plaintiff Not Insured

- The Fund
- UID Coverage
- Reasonable efforts to identify
- \$200K limit

Accident Benefits




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Overview

- No-fault
- Main categories of benefits
- Insurer to whom apply

Pedestrian “Accidents”

- s.3(1) *SABS*: Use or operation of automobile directly causes
- 2 part test
 - Purpose test
 - Causation test
- Pedestrian struck by vehicle 
- Pedestrian who fell by vehicle?

Conclusion

- Nuances
- Importance of investigation
 - Obtaining the complete, unredacted police file;
 - Speaking directly with witnesses;
 - Going to the scene;
 - Taking photographs of the scene;
 - Reviewing Google Earth;

Conclusion Cont'd

- Reviewing online news articles and videos;
- Obtaining 911 calls;
- Seeing whether any private retail stores or homes in the area had surveillance that may have captured the area of the accident;
- Obtaining the Defendant's dash cam video;
- Obtaining the defendant's automobile property; damage file;

Conclusion Cont'd

- Downloading the data from the Defendant's event data recorder (AKA the vehicle's "black box"); and,
- Retaining an engineer.

Thank You

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Also, thanks to my summer student, Allahnah, for creating this power point!

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