Insurance & Personal Injury

Would Failure to Wear Seat-belt Amount to Contributory Negligence?

Introduction

There are seat belt legislations requiring the fitting of seat belts to motor vehicles and mandating the use of seat belts by drivers and passengers. These legislations aim to prevent road deaths and injuries. Therefore, a man of ordinary prudence should take the precaution of wearing a seat belt.

When a passenger, who has not put on the seat belt, is injured in a car accident and claims damages for personal injuries and the Court is required to determine whether there is contributory negligence on the part of the passenger, the question for the Court is “what is the cause of the injury” rather than “what is the cause of the accident”. This article aims to set out the principles derived from cases on whether damages would or would not be deducted, and the importance of expert evidence.

Froom v Butcher - The Leading English Case

In Froom v Butcher, the Plaintiff suffered head and chest injuries which he would not have sustained had he been wearing a seat belt. The Court of Appeal decided that if a person’s injuries were due to his failure to wear a seat belt, he was guilty of contributory negligence and there should be a reduction in the damages awarded to him. The Court suggested that the reduction of damages for failure to wear a seat belt should be:

1. 25% for those injuries which would have been prevented by wearing a belt;
2. 15% for injuries which would have been less severe; and
3. no reduction if the injuries would have been the same even if a seat belt had been worn.

Hong Kong Cases

Froom v Butcher was followed in Ho Wing Cheung v Liu Siu Fung and another CACV 96/1979 and in other subsequent cases.

In Ho Wing Cheung, the 1st Plaintiff was the front seat passenger of a car. She suffered substantial facial injuries. The medical evidence is that she might have suffered some injuries from flying glass, if wearing seat belt, but not more. The Court held that the 1st Plaintiff was guilty of contributory negligence in relation to her injuries though not in relation to the negligence which caused the collision. The 1st Plaintiff’s share of liability was assessed at 20%.
Expert Evidence

If the Defendant alleges that there is contributory negligence on the part of the Plaintiff for not putting on a seat belt, the Defendant bears the burden of proving on the balance of probabilities that had the Plaintiff worn a seat belt his injuries would either have been avoided or been less severe. In order to discharge the burden of proof, the Defendant needs to adduce evidence including expert evidence in certain circumstances in support of his allegation. If the Defendant adduces expert evidence, the Plaintiff may also need to engage expert for proving that the wearing of a seat belt would not have prevented or lessened his injuries.

In *Leung Nai Wing v Hsing Kieng Shing* HCA 8451 of 1984, the Plaintiff was the front seat passenger of the defendant’s car. As a result of the accident, he suffered injuries to his right eye, multiple facial lacerations and bruising to his body. The Plaintiff gave evidence that when the collision occurred he was thrown forward and his head hit the window screen. The Defendant alleged that the Plaintiff was contributory negligent for failing to wear a seat belt but adduced no evidence to prove that the Plaintiff’s injuries would have been avoided or been less severe had seat belts been worn. The Court held that where possible, direct evidence on the consequences of not wearing a seat belt should be called. Since there was no direct evidence, it would be a matter of speculation and not inference for the Court to find that the Plaintiff’s injuries would have been lessened if a seat belt had been worn. Therefore, the Defendant failed on the balance of probabilities to establish contributory negligence on the part of the plaintiff.

Conclusion

The law requires everyone to exercise such precautions as a man of ordinary prudence would observe. Therefore, the passenger should wear a seat belt where it is available. If the injuries sustained by the passenger could have been prevented to some extent by the wearing of a seat belt and the passenger has failed to do so, the Court will reduce the damages to be awarded. Nevertheless, it is for the Defendant to adduce evidence to prove on the balance of probabilities that had the seat belt been worn, the passenger would have suffered either no or less serious injuries. In appropriate cases, parties should obtain expert evidence on the seat belt issue.
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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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