

Liability issues in motorcycle collisions

Key issues and tips on overcoming juror bias against motorcyclists

By Scott Adrian

Motorcyclists are 28 times more likely to die and four times more likely to be injured in vehicle collisions when compared with their counterparts in cars or trucks. (Bieber, Christy, *Motorcycle Accident Statistics and Numbers for 2024*. Forbes, 2/15/2024.) Adding insult to injury, motorcyclists are also likely to suffer juror bias when seeking justice in court. In a recent focus group, one individual remarked, "When you get on a bike, you should *expect* to get injured," before answering that a motorcycle *passenger* shared some comparative liability despite no evidence supporting such a position.

With motorcyclists being the most hurt on the road, and suffering the most bias in the courtroom, it is up to their advocates (us) to know and do more than in other cases.

What motorcyclists are allowed to do

Everyone knows the usual rules of the road (or can figure them out). The following rules apply to motorcyclists specifically:

Effective January 1, 2017, Vehicle Code section 21658.1 defined lane splitting as "driving a motorcycle, […] between rows of stopped or moving vehicles in the same lane, including on both divided and undivided streets, roads, or highways." The law codified what many Californians already knew: Motorcycles could legally lane split (aka "lane share"), when done safely.

Lane splitting is also knowns as "lane sharing, filtering, or white-lining." (*Lane Splitting General Guidelines* California Motorcyclist Safety Program, California Highway Patrol.) (We should pick the least offensive language – typically "Lane sharing or filtering" instead of "lane splitting" or "white lining.")

The Vehicle Code calls on the California Highway Patrol to "develop educational guidelines relating to lane splitting in a manner that would ensure the safety of the motorcyclist and the drivers and passengers of the surrounding vehicles."

The California Motorcyclist Safety Program (CMSP), an educational program of the California Highway Patrol, put out an informational guide titled "Lane Splitting General Guidelines," which recommended the following practices when splitting lanes:

- a speed differential of 10 miles per hour allows an alert, competent rider enough time to identify and react to *most* dangerous situations
- typically, it is safer to split between the #1 and #2 lanes than between others
- consider the total environment (width of lane, size of vehicles, roadway, lighting, etc.)

Rules other drivers should know that affect motorcyclists

It is easy (and best) to point to how another driver violated the actual Vehicle Code or CHP guideline instead of just relying on a jury to find that they drove "negligently."



In the California Motorcyclist Safety Program brochure published by the California Highway Patrol, the department has a section called "Messages for Other Vehicle Drivers." This is a great resource to reference by name when trying a case against a car or truck that hit a motorcyclist. This section states:

1) Lane splitting by motorcycles is not illegal in California […].
2) Motorists should not take it upon themselves to discourage motorcyclists from lane splitting.
3) Intentionally blocking or impeding a motorcyclist in a way that could cause harm to the rider is illegal (CVC 22400).
4) Opening a vehicle door to impede a motorcycle is illegal (CVC 22517).
5) Never drive while distracted.
6) You can help keep motorcyclists and all road users safe by
   a. Checking mirrors and blind spots, especially before changing lanes or turning
   b. Signaling your intentions before changing lanes or merging with traffic

Sections in the Vehicle Code that are applicable (especially between cars and motorcycles) and support the guidelines suggested by CHP include:

§ 21658: Whenever any roadway has been divided into two or more clearly marked lanes for traffic in one direction, the following rules apply: (a) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until such movement can be made with reasonable safety. (Use for crashes wherein a car strays right or left and side-swipes or comes into the path of a motorcyclist.)

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§ 21703: The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway.

§ 22107: No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement.

§ 22108: Any signal of intention to turn right or left shall be given continuously during the last 100 feet traveled by the vehicle before turning.

§ 23123: A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving.

Get the judge to say the rules

Citing the California Vehicle Code gains more credibility than when we just try to espouse what people should or shouldn't be doing on the road. But, when a judge cites the relevant sections of the Vehicle Code that supports our positions and theories of liability, especially after we've just elicited testimony which shows the defendant violated such a rule, that's when we're really winning credibility and liability in front of the jury. Judicial notice is an often-overlooked tool to use.

Evidence Code section 451 states: Judicial notice *shall* be taken of the following:
(a) The […] public statutory law of this state […].

Section 452 states: "Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451 […] the statutory laws of any state of the United States."

Cite those relevant Vehicle Code sections that the Defendant inevitably broke, and that caused this crash, and have the judge take notice of those code sections, immediately after the testimony, that state the Defendant broke those laws to add weight and emphasis to the points the jury just heard.

Squash pesky, often ill-developed comparative-fault arguments

It's widely known that motorcycles are capable of faster acceleration than most passenger vehicles. If we argue that point, we're bound to lose credibility. It's best to gain credibility first, by accepting that motorcycles *can* be faster, then pivot to case-specific facts, where you can argue that in this case, the motorcyclist was *not* going faster than another vehicle would be in the same or similar situation.

Ways to argue that speed is not an issue (which is the usual assumption by the average juror against a motorcyclist) is arguing how motorcycles are different:
- Just because a motorcycle might have been louder, doesn't mean it was faster.
- Motorcycles are smaller – and thus, what might seem to have been a bike far away, that closed the distance from initial sight to the location of the crash, just might be a mistake in perception.
- Looking fast and bright-colored paint jobs or graphics don't mean that a motorcycle *is* going faster.

Experts

Of course, even if all the above makes sense, we can't testify to it. You should hire an "accident reconstruction" expert to help prove your case. The average accident reconstructionist will do, but having someone that can speak to the intricacies of motorcycles from a personal level will translate better to the jury.

Lucky for us, the resources abound. There are many retired police officers who go into the CHP approved California Motorcycle Safety Program to work as instructors. Others were motor-patrol officers while on the job. A lot of them have similarly gone into accident reconstruction, and achieved the other necessary credentials to analyze speed, direction, and other physics-related topics that come into play in a collision.

Your accident reconstructionist should know the different types of motorcycles (sport bikes, cruisers, adventure), and the types of safety aids found on those motorcycles (anti-lock braking systems, traction control, signals, etc.).

Gaining even more credibility for your client – show them wearing gear

Almost every juror coming in to sit on a car or truck vs. motorcycle case will wonder: "Was your client wearing a helmet?" Pictures go a *long* way.

In recent focus groups, any time I've shown clients in pictures from before the crash wearing a helmet, (and hopefully more), the focus group participants always commend the riders for wearing appropriate safety gear.

It's more than just the thought by the juror that the client wore appropriate safety gear: In different focus groups for the *same case*, where the *only* fact that I've changed was whether I've shown the client's picture in helmets, focus groups treated the clients more favorably when I showed pictures of them in helmets versus not. The focus groups that saw clients in helmets always remarked that the rider was safer, probably following rules, etc. All other things being the same, the focus groups that did not see clients in helmets, attributed more fault to the motorcyclist and did not mention that the riders were probably following the rules.

These steps will weaken the argument that a motorcyclist was reckless or disregarded safety. Minimally, show your client wearing the helmet. More points if you can show them in helmets and pants. Even more points if you can show a jacket, gloves, and closed-toed shoes.

Protecting against bias – motions in limine

Aside from finding out which jurors are comfortable expressing their bias, it's best to protect against language that

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"motorcycle," "motorbike," or "bike," and the actual make/model of the vehicle. When appropriate, also make the motions to exclude lay opinion on speed of motorcyclists based on sound, or even lack of sight.

Getting more from your client

Motorcyclists are usually tough people. After all, it takes a certain amount of confidence to jump on a motorcycle versus getting into a car. They can easily forget about injuries if you don't ask them to remember – and better yet – take pictures.

Too many times I've seen a motorcyclist say they're fine because they didn't break a bone, meanwhile, their skin looks like they slid down an active volcano because they slid hundreds of feet on the asphalt. Or, a motorcyclist will say they're fine simply because they didn't break a bone, meanwhile, they have bruises over half of their body. Or, a motorcyclist will say they're fine, and forget to tell you that they blacked out at the crash, and woke up in the hospital.

Don't rely on your motorcyclist client to relay all their injuries. Ask those questions about road rash, bruises, and/or blacking out. When it comes to pictures, don't just ask – tell – the client to take pictures of any and all ways they've suffered road rash or bruises. A motorcyclist is usually thrown from their bike and/or slammed on pavement after a collision – the injuries are there if you know where to look.

Ultimately

There's no replacement for hard work. To properly argue liability in a motorcycle case, you must know the motorcycle (what type), know the safety features (ABS, traction control, maneuverability), know the rider, the gear he, she, or they were wearing, their experience riding motorcycles, their experience with *this* motorcycle, and then the common issues in every crash: speed, direction, line of sight, signals, and rules of the road.

You must also know the duties of the defendant: duty to keep a proper lookout, looking before moving, signaling, staying in their lane until appropriate to move out of it, duty to yield, and then the common issues in every crash: speed, direction, line of sight, signals, and rules of the road.

After liability, you must also know the proper way to keep bias out. Gain credibility for your client by showing them in gear, and even bringing the battered gear to the courtroom.

After those two hurdles, to properly argue damages, you *must* work with your client to get a full picture of every way they were hurt. Not just what stood out to them, because they'll often overlook many injuries. Demand they take pictures, ask them the probing questions, and do the homework. Visit them to see how being thrown from their motorcycle impacted their lives at home, at work, etc.

Motorcyclists are tough, but not immune to suffering like everyone else after a traumatic crash or collision. It's our job to do our best for them.

Scott Adrian is an avid motorcycle and car enthusiast. His practice centers around the riding/driving experience: advocating for victims of carelessness on the road. He also represents recipients of unjust traffic tickets.


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