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Automobile Injury

Why Is N.J. Protecting Dangerous Drivers?

By Evan J. Lide

It is well known that driving under the influence of alcohol impairs perception, judgment, motor skills and memory, all of which are critical skills needed for safe driving. Too many innocent victims are killed on our highways by drunk drivers, and society has acknowledged that the need to deter this dangerous behavior is great. Legal sanctions, including punitive damages, are central to the deterrence of impaired driving. Even though the enormity of this problem has been addressed by both the New Jersey State Legislature and our courts, New Jersey law still protects these dangerous drivers and, conversely, limits the rights of innocent victims who are injured by drunk drivers.

Historically, New Jersey courts have refrained from holding drunk drivers strictly responsible for the happening of a motor vehicle accident and the resulting damages, as the mere fact that the driver of an automobile was intoxicated is not in and of itself negligence. In *Roether v. Pearson*, 36 N.J. Super. 465 (1955), the plaintiff contended that since the defendant pleaded guilty to a criminal charge of drunken driving, he should have been held solely responsible for the happening of the collision. At trial, the jury returned a verdict of "no cause of action" in favor of the drunk driver, and the plaintiff filed a motion to set aside the verdict as against the weight of the evidence. The trial judge denied the motion, and the Appellate Division affirmed and recognized that the jury could conclude that the defendant's intoxication was not a proximate cause of the accident, and therefore there was no civil responsibility.

Since New Jersey courts have declined a strict liability approach, a plaintiff is required to show that the defendant's intoxication affected his ability to drive, and was a proximate cause of the motor vehicle accident. While this approach does make sense in light of the rationale expressed in the *Roether* case, its unfortunate result is that most competent defense attorneys will strategically decide to stipulate to liability in an attempt to keep evidence of intoxication away from the jury. In this situation, where liability is now admitted, the fact that the defendant was intoxicated does not become relevant to what injuries, if any, the plaintiff sustained in the subject motor vehicle accident. By hiding the defendant's intoxication from the jury, the deterrence effect of holding drivers accountable for their bad decisions becomes limited.

Therefore, in order to introduce evidence of a defendant's intoxication to a jury in a civil lawsuit, a plaintiff typically needs to seek punitive damages against the defendant. Punitive damages are not only intended to punish a wrongdoer, but also to serve to deter both the wrongdoer and others from similar intolerable behavior. It has been said that the purpose of punitive damages is to serve an expression of society's disapproval of this outrageous conduct. See *Fischer v. Johns-Manville Corp*., 103 N.J. 643, 657 (1986).

Punitive damages are typically seen in dram-shop and social-host liability claims, and since evidence of intoxication is a necessary proof in these cases, juries are able to hear testimony on this subject. But what if the drunk driver became intoxicated at his own home, and then caused a rear-end collision? In this type of situation, where the only defendant is the drunk driver, a claim for punitive damages is frequently the only way a jury will be told the truth about the happening of the accident. The defense will almost always automatically admit liability in such a case, and therefore it is absolutely necessary to have a punitive-damage claim in order to explore the issue of intoxication before a jury.

Generally, a defendant's conduct must be particularly egregious to support an award of punitive damages. To warrant a punitive-damage award, the defendant's conduct must have been wantonly reckless or malicious. There must be an intentional wrongdoing in the sense of an "evil minded act" or an act accompanied by a wanton and willful disregard of the rights

Lide is an associate with Stark & Stark in Lawrenceville, and a member of the firm's personal injury group.

of another. See *Nappe v. Anschelewitz, Barr, Ansell, & Bonello*, 97 N.J. 37, 49 (1984) (citing *DiGiovanni v. Pessel*, 55 N.J. 188, 191 (1970). Prior to 1986, there were no reported opinions in New Jersey as to whether punitive damages were available in an automobile accident where the defendant driver was intoxicated.

In *McMahon v. Chryssikos*, 218 N. J. Super 571 (Law Div. 1986), decided nine years before the adoption of the Punitive Damage Act, N.J.S.A. 2A:15-5.9 to 5.17, Judge Conley examined decisions in nearly every jurisdiction regarding the imposition of punitive damages against a drunk driver. He found that some states adopted a per se rule, which allowed punitive damages based on intoxication alone, while other states required an additional showing of aggravated circumstances. Judge Conley determined that the per se rule was not consistent with New Jersey's existing punitive-damage jurisprudence. He noted that the per se approach was criticized as coming too close to imposing strict liability. Since intoxication was typically viewed as not more than gross negligence, the allowance of punitive damages where intoxication was the sole aggravating factor ignores the necessity for willful and wanton misconduct which, of course, are necessary factors in determining whether there is sufficient evidence to support a claim for punitive damages. Accordingly, the court determined that mere alcohol intoxication cannot in and of itself support an award of punitive damages. Therefore, the question became: what aggravated circumstances were necessary?

A few years after *McMahon* was decided, the legislature codified the common-law principles of the various elements needed to prove punitive damages and passed the New Jersey Punitive Damages Act (PDA), N.J.S.A. 2A:15-5.9 to 5.17, which set forth the factors that a trial court must consider in determining whether there is sufficient relevant evidence to support a claim for punitive damages, including, but not limited to, the following:

(1) The likelihood, at the relevant time, that serious harm would arise from the defendant's conduct;
(2) The defendant's awareness of reckless disregard of the likelihood that the serious harm at issue would arise from the defendant's conduct;
(3) The conduct of the defendant upon learning that its initial conduct would likely cause harm; and
(4) The duration of the conduct or any concealment of it by the defendant.

N.J.S.A. 2A:15-5.12b.

While it is true that "mere intoxication" will not support a claim for punitive damages, the legislature's recognition of drunk driving as particularly reprehensible, when accompanied by an aggravating factor, is reflected in the fact that the legislature has excluded from the statutory punitive damages cap of $350,000, cases in which the defendant has been convicted of violating N.J.S.A. 39:4-50, i.e., "Driving While Intoxicated." See N.J.S.A. 2A:15-5.14(c).

With regard to a punitive-damage claim against a drunk driver, the Appellate Division, in *Dong v. Alape*, 361 N.J. Super. 106 (App. Div. 2003), clearly establishes that, in order to have a prima facie claim for punitive damages, a plaintiff does not have to have a long list of aggravating factors beyond proof of intoxication. In fact, the Appellate Division stated that one or more separate aggravating circumstance is enough. The *Dong* court provided several examples of sufficient aggravating circumstances, including: the defendant's history of alcoholism and unsuccessful treatment; the defendant's admission that he was drinking on the day of the accident and does not remember how much alcohol was consumed; the defendant's admission of self-medication with alcohol; the defendant's erratic driving; and the defendant's unexplained inability to remember anything about the accident. While these listed factors are clearly meant to be examples, the *Dong* court reiterated the earlier holding in *McMahon,* which stated that aggravating circumstances should be evaluated by a case-by-case basis.

As observed from our existing case law regarding the application of punitive damages in a drunk driving case, it can be difficult to obtain the necessary proofs in order to submit a prima facie case to a jury. In a situation where a drunk driver has already made the dangerous decision to get behind the wheel, shouldn't the law benefit the rights of potential victims as opposed to protecting unsafe drivers? It is for this reason that many have advocated that a drunk driver should not receive the benefit of the limitation-on-lawsuit threshold, which was established in the 1998 Automobile Insurance Cost Reduction Act (AICRA), N.J.S.A. 39:6A-8a. AICRA exempts a defendant from tort liability to a plaintiff who has chosen the no-fault option, unless the plaintiff's injuries result in "death; dismemberment; significant disfigurement or significant scarring; displaced fractures; loss of a fetus; or a permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement." N.J.S.A. 39:6A- 8a.

The legislature, in enacting AICRA, did discuss certain situations wherein the defendant would not be entitled to assert the limitation-on-lawsuit defense. See N.J.S.A. 39:6A-7. The legislature is certainly empowered to preclude an intoxicated driver from benefiting by the verbal threshold; but, for whatever reason, it has failed to do so. Instead, the legislature has limited N.J.S.A. 39:6A-7 to apply only to a defendant who, in connection with an accident, has committed a "high misdemeanor or felony"; was "seeking to avoid lawful apprehension or arrest by a police officer"; or was "acting with specific intent of causing injury or damage to himself or others." N.J.S.A. 39:6A-7a(1)&(2).

It is perplexing that the legislature did not choose to include drunk drivers in this statutory bar. While there are statutes that limit a drunk driver's ability to pursue a cause of action to recover damages (see N.J.S.A. 39:6A-4.5b), it seems that the rights of innocent victims are unfairly limited by the application of the limitation on lawsuit defense to their claim for pain and suffering. Unfortunately, until either the legislature or the courts bar drunk drivers from benefiting from the limitation-on-lawsuit defense, these dangerous drivers who commit punishable acts are essentially receiving a "free pass," while the victims who are harmed do not have an appropriate remedy. ■