

MOTOR ACCIDENT CLAIM GUIDE

Strict time limits
apply. Act now!

Crossing the Road in the Dark -
Pedestrian or Driver at Fault?

Crossing the Road in the Dark - Pedestrian or Driver at Fault?

Generally speaking, compensation for those injured in a motor vehicle accident is only available where the driver is at fault (there are now several exceptions to this concept and you should refer to our other articles or seek our advice as to those exceptions).

The tort of negligence consists of three separate elements which must be satisfied for a claim to succeed.

They are:

- ☑ the existence of a duty of care owed by the Defendant to the Plaintiff at the time the loss was sustained;
- ☑ negligence by the Defendant so as to breach the duty; and
- ☑ damage in consequence which is not too remote.

The existence of the duty of care is strictly a question of law, as is the standard of care expected by the Defendant, but whether the Defendant's conduct falls below the requisite standard is a question of fact.

There is no doubt that a driver on a public road owes a duty of care to other users of the road, including pedestrians. The duty however only extends to taking reasonable care. A driver will not be found to be at fault where there was no opportunity to react and take steps to avoid the accident. Frequently, where there is an issue as to what steps the driver could have taken, that issue will be resolved by determining the length of time the driver had to observe the danger and take evasive action. That analysis will usually include a reconstruction by a traffic engineer.

Our Location

Level 18, 201 ELIZABETH ST
Sydney NSW 2000
☎ 02 8280 6900
📠 02 8280 6999
✉ info@bpclaw.com.au

Contributory Negligence

Where a driver is found to be responsible for an accident but the pedestrian is also held to be partly responsible, the damages assessed will be reduced in the same proportion that the pedestrian is found to be liable for the accident.

The leading case in respect of contributory negligence is *Prodrebersek -v Australian Iron & Steel Pty Limited*, where the Court said:

“An apportionment between a Plaintiff and a Defendant of their respective shares in the responsibility for the damage involves a comparison both of culpability, ie of the degree of departure from the standard of care of the reasonable man ... and the relative importance of the act of the parties in causing the damage ... it is the whole conduct of each negligent party in relation to the circumstances of the accident which must be subjected to comparative examination.”

Whilst there is some tension in the way the appellate courts are currently resolving the issue of contributory negligence (see our article, “Contributory Negligence in a Blameless Motor Vehicle Accident”), historically the courts have recognised that the assessment of culpability must include the notion that the pedestrian's conduct posed no danger to anyone but the pedestrian whilst the driver is capable of doing great damage to any pedestrian who got in the way of the motor vehicle.

bpclaw.com.au

Facts:

The fact that a motor vehicle is being driven in the dark does not relieve the driver of responsibility to other users of the road. The ability of the driver to observe a pedestrian may however be compromised because of the absence of light.

The driver is only responsible to take reasonable steps to avoid a collision. It may, for example, be that the vehicle may be expected to be driven at a slower speed particularly in, say, built up areas, to enhance the driver's ability to observe and assess what is going on around the vehicle.

Similarly however, the liability of the Plaintiff is dependent upon all of the circumstances. For example, it is often argued that a pedestrian who wears dark clothing at night is, in part, guilty of contributory negligence.

Summary:

A pedestrian crossing the road in the dark does not affect the driver's obligation to take reasonable steps to avoid colliding with the pedestrian. The consequences of the darkness however will be a factor in the mix of determining whether the driver was responsible for a breach of a duty of care that is owed to the pedestrian and secondly, whether the pedestrian was also partly at fault in all of the circumstances.

Getting legal advice as soon as practicable after your accident is imperative, as very strict time limits apply.

At BPC, we are renowned for successfully representing hundreds of people injured on the roads and offer a free, initial, no-obligation consultation and offer our services on a no win-no fee basis.

Our Location

Level 18, 201 ELIZABETH ST
Sydney NSW 2000

☎ 02 8280 6900

📠 02 8280 6999

✉ info@bpclaw.com.au

bpclaw.com.au