



1. Statutes of Limitation

- **Bodily Injury:** A cause of action for bodily injury and property damage based on negligence must be filed within two (2) years from the time of the injury.
- **Property Damage Claims:** A cause of action for property damage must be filed within six (6) years from the time of injury.

2. Negligence

In general terms the operator of a motor vehicle must exercise such reasonable care and caution for his own safety as an ordinarily prudent man would exercise under like circumstances. He must exercise such amount of care as is commensurate with the risk of harm involved. *Ambrose v. Cyphers*, 29 N.J. IBS, 144 (1959). This standard requires motor vehicle drivers to use reasonable care in the control and operation of their vehicles. They must make observations of traffic and road conditions and exercise such judgment as a reasonably prudent person would in the circumstances so as to avoid collision or injury to others. The duty of reasonable care between drivers upon the highways is mutual and drivers may assume that others will observe the proper standard of conduct.

3. Negligence as Matter of Law

Proof of a violation of a statutory duty is not the same as proof of negligence, although it is evidence to be considered by the jury. Where, however, a statute specifically incorporates a common-law standard of care, a jury finding of statutory violation constitutes a finding of negligence.

The Careless Driving statute is an example of the principle because it provides that a person is guilty of careless driving if a person drives a vehicle carelessly or without due caution and circumspection, in a manner so as to endanger or be likely to endanger, a person or property. Since the statute contains a standard of care, a violation is negligence per se. Further under New Jersey common law a vehicle that rear ends another vehicle is negligent as a matter of law. *Dolson v. Anastasia*, 55 M.J. 10 (1969).

4. Comparative Fault

- **Type of Comparative Fault System**

The modified comparative negligence statute will not bar recovery if plaintiff's negligence was not greater than the negligence of the defendants. Therefore, plaintiff may recover damages only if plaintiff is found to be less than 51 percent at fault. Any damage award received by plaintiff will be reduced by plaintiff's percentage of negligence, if any.

- **Status of Joint and Several Liability**

A recovering party may recover the full amount of its damages against any party determined to be responsible for 60% or more of the total damages. If a party is found to be less than 60% responsible for total damages, it can be held responsible only for payment of that percentage of damages directly attributable to its negligence.

5. Respondeat Superior

The doctrine used to hold an employer liable for the torts of its employees when the employee was acting within the scope of employment. The employee's action will generally be deemed to be within the scope of employment if it is the kind of action that the employee is employed to perform, it occurs within the authorized time and space limits, and it is activated, at least in part, by a purpose to serve the employer.

New Jersey has adopted the "dual purpose" rule which states that when a trip serves the employee/driver's private affairs and is also in furtherance of the master's business, the master is subject to liability for the employee's actions.

Those engaged in the business of leasing or renting vehicles, however, are not liable as the actions of the driver or lessee absent an employment or agency relationship with the lessor.

6. Negligent Hiring, Training and Retention

New Jersey recognizes a cause of action for negligent hiring, supervision, and training. An action for negligent hiring or retention of an employee, requires proof that the employer knew or had reason to know of the particular unfitness, incompetence, or dangerous attributes of the employee and the employer could reasonably have foreseen that those qualities created a risk of harm to other persons. Additionally, the employee's unfitness or dangerous characteristics must have proximately caused the injury.

7. Negligent Entrustment

New Jersey recognizes a cause of action for negligent entrustment based on the ownership and use of a vehicle. An owner of a vehicle who loans or rents a vehicle to another is not vicariously liable for the borrowee's negligence unless that individual is an agent or employee of the owner. The owner of a motor vehicle may be liable to a third party only if there is an agency relationship between the owner and the driver. Moreover, neither an accommodation signer nor co-lessee of a vehicle has any duty to determine the competence or fitness of a lessee to operate the vehicle, and neither may be held liable for injuries caused by a lessee's incompetence as a driver.

8. Loading/Unloading Doctrine

All motor vehicle insurance policies must include coverage (omnibus coverage) for an individual, other than the named insured, who uses the vehicle with the consent of the insured. The omnibus clause extends coverage to any person using, operating or riding in the insured vehicle if done with permission. The term "use" has been given a broad interpretation, including, but not limited to, encompassing the "loading and unloading" of the insured vehicle.

Under the “loading and unloading” doctrine, a trucking company may be held to defend and indemnify other parties involved in the loading and unloading of its truck. The Courts have begun to create exceptions to this doctrine such as where the accident occurs after the completion of the loading and unloading of the freight or where the cause of the accident is not necessary to the loading and unloading of the freight.

9. Buses

Owners and operators of some buses are exempted from tort liability for non-economic losses as a result of bodily injury unless the plaintiff has sustained a personal injury which results 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. An injury is considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment. However, the threshold limitation does not apply to passengers on New Jersey Transit buses and other buses not eligible for bus-PIP benefits [e.g. school buses] who are not named insureds electing the verbal threshold.

10. PIP Subrogation

Insurers paying PIP benefits for medical expenses have the right to recover the amount paid from any tortfeasor which was not, at the time of the accident, required to maintain personal injury protection or medical expense benefits coverage, other than for pedestrians, under the laws of New Jersey, including personal injury protection coverage required to be provided in accordance with Section 18 of P.L.1985, c. 520 (C.17:28-1.4), or although required, did not maintain personal injury protection or medical expense benefits coverage at the time of the accident. This does not represent a lien against plaintiff’s recovery from a third-party; but instead a direct claim which may be asserted by the PIP insurer. The insurer’s right to recover must be asserted within two years from the date of receipt of the PIP application and must be submitted to arbitration. A PIP reimbursement claim must await resolution of any release of bodily injury claim before any payment on a liability policy can be made.