



Law & People

Traffic Accidents – concerns

by Zelina Rodrigues
C&C Lawyers

In recent years the number of traffic accidents in Macau has increased to an all time high. Minor or not, there is concern with the alarming number that Macau, with an estimated population of 544,200 at the end of June 2009, has to deal with.

Information from the Macau Statistics and Census Service indicated that the total number of licensed vehicles was 184,642 at the end of June 2009, of which 54 percent (99,413) were motorcycles and 39 percent (71,877) were light vehicles.

With the increasing number of vehicles on the roads of Macau each year, accidents have unfortunately become a very common sight.

All over the world people die as a result of road traffic accidents and many more in number suffering critical injuries, leaving victims and families devastated.

According to Macau Statistics and Census Service, in the first half year of 2009, the total number of traffic accidents was of 6,065 cases, resulting in 2,093 victims, five of which died subsequently.

Road safety continues to be one of Macau's most serious public issues as it affects everyone, whether you're a driver, pedestrian or cyclist.

Although several innovative campaigns have been arranged to avoid traffic accidents, accidents still occur frequently, mainly due to careless driving.

The majority of traffic accidents could be avoided if only drivers would behave with more responsibility by paying attention to driving and less to other activities such as eating, drinking, putting on makeup, talking on mobile phones or to other passengers or watching DVD's on the back of the front seat! Driving over the speed limit and driving under the influence of alcohol or illegal substances are clearly causes of serious traffic accidents.

These accidents could also be avoided by following the traffic rules and regulations. Wearing seat belts is annoying for many people, and seriously reduces the chance of getting hurt when an accident occurs. Even with mandatory seat belt wearing, a vast majority of people choose to disregard this safety precaution and end up facing consequential accidents because of it.

A person who is hurt by an inattentive or careless driver is entitled under the Macau laws to recover damages and compensation for injuries sustained in the accident, by making a compensation claim.

All vehicles are required by law to be insured. The liability insurance will pay for personal injuries up to a policy's limit and also for the property damage of another vehicle, if applicable.

A traffic accident should be reported immediately to the police. The victim should seek medical assistance and should be capable of collecting the maximum evidence at the accident spot so as to support his claim.

Should the victim intend to initiate criminal proceedings against the person responsible for the accident the case will be followed up by the Macau Public Prosecutor, the entity responsible to present criminal charges. Then, the victim may submit a claim for damages in the same criminal proceedings against the insurance company. If the claiming amount for the victim damages exceeds the driver insurance policy's limit, the victim should also sue the driver.

Any judicial inquiry conducted for a criminal case is confidential during the investigating stage. The involved parties do not have access to the police reports and witness statements, until the inquiry has been concluded. In some exceptional circumstances, access is granted to certain documents in the file. In the cases where a conviction is not obtained, the victim may initiate a separate civil action to claim for damages against the insurance company and the driver as well, should as referred above, the claimed amount for victim's damages exceeds the driver insurance policy limit.

The statute of limitation to file a civil action for traffic accident is of three years from the date of the accident.

For valid person injury claim, providing negligence is the first step. The law does not allow the victim of a traffic accident to be compensated for his own fault. Therefore, it is the victim who must prove that the accident was caused due to the driver's fault and negligence and that the injury is a direct result of the traffic accident.

If liability can be established, the victim may be entitled to compensation for personal injuries and other expenses, such as medical expenses incurred in the treatment of the injury, any future medical costs, compensation for actual loss of wages, loss of future wages, compensation for loss of enjoyment of life, damages for mental pain and anguish, cost of a nurse that may be required after the accident, etc.

In order to make a successful claim for personal injuries in the event of a traffic accident the claim submitted should be substantiated with proper evidences supporting the cause of the victim proving his innocence and at the same time proving the negligence of the driver.

The burden of proof in a traffic accident claim is on the victim as plaintiff. This means that the plaintiff must go forward with the evidence at trial of the accident, and must present evidence that the driver, as defendant, was negligent, that the defendant's negligence proximately caused the traffic accident and that the plaintiff's injuries are causally related to the accident.

The burden of proof in case of negligence can be met by testimony from anyone who has witnessed the defendant speeding or crossing the centre line or through any other evidence (documental, video, etc).

In case, during the trial, there is evidence that the victim was injured in part due to his own negligence, the injured party would not be entitled to receive all the compensation from the insurance company and the driver who supposedly caused the accident.

If the victim and the driver are both partially re-

sponsible for the accident, then the victim might only be able to receive part of his compensation for damages, but not in full. The sum that the victim would be entitled to receive from the driver insurance policy depends on the amount of damages and how much the victim is at fault, considering his contribution for such damages.

To avoid traffic accidents it is important that people know how to take care of themselves and respect others on the road.

If you are a driver, there are several ways you can act in order to avoid negligent accidents. First, pay attention to the law, follow the speed limit, heed warning signs and pay special attention to areas that have kids, elderly people, etc. Be more careful around school areas and pay attention to what is going on around you. Also remain attentive to the road. Avoid talking on the phone and sending messages while driving. If the weather is bad, like heavy rain and thick fog, pedestrians might be more difficult to see. In times of intense traffic, double your attention and do not drive recklessly, as you may hit another motorist or run into a person between cars.

The driving schools also have an important mission on accident prevention. It is common for all of us to observe how some beginners are wrongly thought of, for instance, to drive on the right side, when under Macau law everyone should drive on the left side except, for example, in case of overtaking manoeuvres.

As a pedestrian, you must also pay attention to your surroundings. Avoid walking, cycling or jogging along busy roads that do not have sidewalks. Wait for the walk signal and be sure to cross on crosswalks rather than just in the middle of the street.

If you are jogging or riding a bicycle at night, it could be a good idea to wear white or bright clothing and include reflective stripes or hold lit devices to make you more obvious to cars.

Let's join efforts for a better road safety!

