

Death on the Roads - What could I expect?

Piers Norsworthy, Criminal Barrister.

We all hope that it will never happen to us. It is what happens to other people. We put it to the back of our minds believing somehow we are immune. But we are not. For some, the brutal reality is that they will be involved in a road traffic collision that will change the lives of many people. So what, from a legal point of view, could you expect if you are involved in such an event?

Let us assume this simple scenario: you are driving your HGV and you are involved in a collision with a car coming in the opposite direction. Tragically the driver of the car is killed.

There are a number of eyewitnesses. The emergency services are quickly on the scene. It is apparent that the case involves a fatality. The police close the road. If you are over the drink drive limit you will be arrested and taken to a police station to be tested again to establish a formal reading.

Assuming that alcohol has not played a part in this scenario, the police will take initial accounts from you and others. The police will bring in their experts to undertake an assessment of the scene that will be used to produce a detailed plan of the road which will include, amongst other things, the resultant position of the vehicles and debris, tyre marks and road layout.

Both vehicles involved in the accident will be taken away for further examination of the condition of the tyres (including pressure), lights, brakes, steering, seatbelts, suspension; you name it they will look at it.

In many cases CCTV footage will be available particularly if the collision is in a built up area. Tachographs and service logs will be examined. The police may undertake reconstructions, obtain video recordings of the route and sight lines and they will take formal statements from eyewitnesses.

They will want to speak to you. Perhaps you will be asked to visit a police station as a voluntary attender (not under arrest) or you may be arrested on suspicion of an offence. At the police station you will be interviewed under caution. You are entitled to and should be legally represented at that interview. It is a crucial stage.

It transpires, in our scenario, that the evidence that the police have indicates that your vehicle had crossed into the path of the car and that there was nothing the oncoming motorist could have done to avoid the collision.

What offence could you be charged with? There are a large number of potential offences but the most obvious would be causing death by either careless or dangerous driving. The first carries a maximum sentence of five years' imprisonment the second fourteen years inside. So what is the difference? Over simplifying it, (to make the point) careless driving is "bad" driving, dangerous driving is "very bad" driving.

Careless driving can be as little as pulling out at a junction in front of another vehicle, failing to indicate at a junction or ignoring warning signs. It could be said that we have all been guilty of some form of careless driving over our careers.

Dangerous driving could be overtaking on a blind bend or speeding through a red light. We have all seen such examples of dangerous driving many times. However, on those occasions, fortunately a collision rarely occurs and the police do not get to hear about it.

When a collision does occur and an act of careless or dangerous driving has caused that collision resulting in a death, then the driver is likely to be charged with causing death by either careless or dangerous driving.

If you had been over the drink drive limit (or impaired by drugs) you could be charged with causing death by driving whilst unfit to drive through drink or drugs. The maximum sentence is one of fourteen years' imprisonment.

If, in our scenario, you were reaching for your radio and your attention had been taken momentarily from the road that may be said to be careless. If however, you had fallen

asleep, then that is likely to be considered dangerous driving. The logic being that you don't just fall asleep, you know you are tired but have chosen to drive in that state which is therefore potentially dangerous.

There are things that your legal team will want to consider when defending you. What is your account of what happened? Is there a mechanical reason why the collision occurred? I was once involved in a case in which the driver had been given a lorry (new to him) and driven it 50 miles before having a head on collision with a car whilst he was applying the brakes on a hill. The brakes did not work. The collision was captured on the CCTV of an adjacent shop. It was a substantial issue in the case as to whether the brakes had simply failed at the point he applied them, or whether he would have known that there was an issue with the brakes but had chosen to ignore it (rather like in cases of people falling asleep).

This is where experts will be asked to provide evidence on your behalf. Your legal team should seek to obtain evidence to argue why your account is the correct one.

There are other avenues which will be considered including medical conditions, challenging the police's interpretation of evidence at the scene and the account of eyewitnesses which, for obvious reasons, may be unreliable.

There are other offences to be aware of such as causing death whilst uninsured. To be guilty of this offence, the Supreme Court (the highest in the UK) has recently ruled that your driving does not have to be as bad as to be considered careless but that, for example, your tyre tread was insufficient. Even if you were unaware that you did not have insurance you could be prosecuted if you are involved in a collision which results in death. For that, the maximum sentence is 2 years' imprisonment.

Another area, which many people overlook, is that you could be charged with causing death by dangerous driving if the condition of your vehicle and or the load was dangerous. Failing to secure a load properly which falls off killing somebody could land you before the court on such a charge. It is often the first time that otherwise law-abiding citizens find themselves in police custody.

We all hope that it will never happen to us.

Piers Norsworthy

The author is a practicing criminal barrister at Devon Chambers, Plymouth, who has a particular interest in Road Traffic Law cases involving death or serious injury. He holds an LGV (C+E) licence and travels nationally defending those charged with such offences.