

PJI 2:76 Motor Vehicle Accidents—Pedestrian Walking Along Roadway

As you have heard, the plaintiff AB claims that [state plaintiff's contentions] [add where appropriate: that the defendant CD violated section 1146 of the Vehicle and Traffic Law by (state plaintiff's contentions)], and that CD thereby caused injury to AB. CD claims that [state defendant's contentions] [add where appropriate: and that AB violated section 1156(b) of the Vehicle and Traffic Law by (state defendant's contentions)].

AB and CD were each under a duty to use the same degree of care that a reasonably prudent person would have used under the same circumstances. As a driver, CD was required to keep a reasonably careful lookout for pedestrians, to sound the vehicle's horn when a reasonably prudent person would do so in order to warn a pedestrian of danger, and to drive the vehicle with reasonable care to avoid hitting anyone on the road. As a pedestrian, AB was required to use reasonable care for (his, her) own safety, to keep a reasonably vigilant lookout for vehicles, and to avoid placing (himself, herself) in a dangerous position.

AB and CD were also required to obey the laws governing traffic and each was entitled to assume that the other would do so. Section 1146 of the Vehicle and Traffic Law provides:

“... every driver of a vehicle shall exercise due care to avoid colliding with any ... pedestrian ... upon any roadway and shall give warning by sounding the horn when necessary.”

Section 1156(b) of the Vehicle and Traffic Law provides [Caution: VTL § 1156 does not apply in the City of New York]:

“Where sidewalks are not provided any pedestrian walking along and upon a highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction. Upon the approach of any vehicle from the opposite direction, such pedestrian shall move as far to the left as practicable.”

If you find, by a preponderance of the evidence, that CD failed to give warning by sounding (his, her) horn when a reasonably prudent person would have done so, or failed to maintain a reasonably vigilant lookout, or failed to use reasonable care to avoid the accident, you will find that CD was negligent. If you find, by preponderance of the evidence, that AB failed to use reasonable care for (his, her) own safety, or failed to keep a reasonably vigilant lookout for cars, or failed to avoid placing (himself, herself) in a dangerous position, then you will find that AB was negligent. Additionally, if you find, by a preponderance of the evidence, that AB failed to walk on the left side of the road or on its shoulder facing oncoming traffic although it was practicable for (him, her) to do so, or that while AB was walking on the left side it was practicable for AB to move further to the left out of the way of the vehicle and AB failed to do so, then you will find that AB was negligent.