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Personal Injury

Consider all options in unusual MVA injury claims: Paciocco

By Tony Poland, AdvocateDaily.com Associate Editor



Never assume a personal injury case is not worth pursuing despite how unusual the circumstances, says Windsor personal injury lawyer [Gino Paciocco](#).

Paciocco, a founding partner with [Paciocco & Mellow](#), cites a [case](#)— where a pedestrian filed a claim after being struck in the eye by an egg thrown from a car — as a good example of why it makes sense to seek legal advice.

“The law is very technical, and it is always best to speak to a lawyer if you have been injured. They can help you understand any complexities in your case, and whether it is worth pursuing,” he tells [AdvocateDaily.com](#).

The Ontario Superior Court was told a woman was walking on a sidewalk when several eggs were thrown at her from a car exceeding the speed limit. She was struck in her right eye and lost central vision.

The car left the scene, and its occupants were not identified, so the woman, who was covered under her father’s motor vehicle insurance, filed a claim on his policy, the court heard.

The insurance company, looking to have the case dismissed, argued the injury “did not arise directly or indirectly from the use or operation of an automobile by an inadequately insured motorist, but by an egg being thrown by a passenger in the car.”

“Many cases are argued on small details that change how the analysis of pre-existing jurisprudence is conducted,” says Paciocco, who was not involved in the matter and comments generally. “In this case, the argument was fairly effective. If only the passenger had acted negligently, the outcome of the case might have been different. For example, the court looked at a drive-by shooting where only passengers in the car fired, and in that case, the court found it was an intervening act.

“If the driver had not been speeding, the court might have found that the passenger’s action of throwing an egg was an intervening act.”

The woman’s lawyer told the court that “the incident occurred in the course of the ordinary and well-known activity of motor vehicles.”

Court was told, “the added velocity of the egg imparted by the speeding motor vehicle rendered the involvement of the motor vehicle the dominant feature that caused her injury.”



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In the end, Justice Alexander Sosna directed the matter to trial saying, “The driver was independently negligent in failing to stop his vehicle, or slow it down to the point of eliminating the effect of the vehicle upon the egg when he knew or ought to have known that the use of his motor vehicle would contribute to the impact of the egg about to be thrown in the direction where pedestrians may be present.”

The outcome of this case and the reasoning behind it is not surprising, says Paciocco.

“The judge’s view that transporting people and eggs is in the ordinary use of a motor vehicle, and that a passenger throwing an egg from the speeding car was an unbroken chain of events linking the operation of the car to the plaintiff’s injury, is directly in line with the developing case law in this area,” he says.

Paciocco says knowing what is covered by automobile insurance may not always be a simple matter.

“Our firm has dealt with various cases where insurers denied that an accident was in the use or operation of a motor vehicle,” Paciocco says, adding that claims such as the one involving an egg thrown from a car can be challenging.

“Unusual or novel cases certainly take longer to litigate, which can be frustrating for clients,” Paciocco says. “If you have to argue a summary judgment motion, assuming you are successful, that will delay your case, and then you still have to have a trial, the end result of which can also be uncertain. Just because your claim survived a summary judgment motion does not guarantee that you will be successful at trial.”

Paciocco says he doesn’t believe that claiming the incident did not arise out of an ordinary use of a vehicle “would be a strong argument to make.”

“The courts have been very clear in the past, and this decision adds to the case law, that if the accident occurs while the vehicle is being driven, it is in the ordinary use of a vehicle,” he says. “The only time this argument will still be viable is if the car is being used for something other than driving and injury results.

“There are cases where a truck’s tailgate has been used as a diving board, and the court found that to be in the ordinary use of a vehicle.”

Paciocco adds that the court “was correct in assessing that the car contributed to the injury.”

“An egg thrown from a standstill likely would not have caused such a severe injury,” Paciocco says. “Throwing it from a speeding car is really what caused the plaintiff’s injury in this case.”

However, it “would be unreasonable to classify the car as a weapon in this instance,” he says.

“To call the car the weapon and the egg the ammunition may be reading far too much into the court decision,” Paciocco says. “While intentionally hitting someone with your vehicle can be considered assault with a weapon, it would be a stretch to extend that analogy to throwing an egg out the window of a moving car.”

He says, even though the driver did not throw any eggs, he still bears responsibility in the injury.

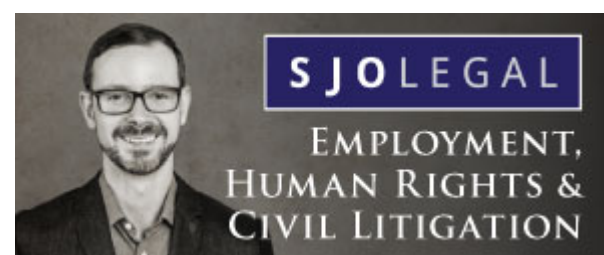
“I would argue that the driver would be negligent in this scenario. The driver either did not know or ought to have known that the passengers in the vehicle were intent on throwing an egg out of the window,” Paciocco says. “Given this knowledge, the driver should have ideally refused to let the vehicle be used for this purpose, or at the very least, slowed the vehicle down.

“The driver would be negligent for speeding, and should have realized that by speeding, he would exacerbate the injuries from being hit by an egg.”

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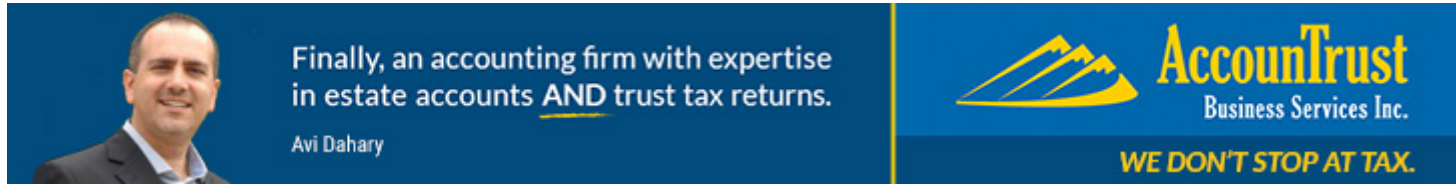
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