

STATE OF TENNESSEE

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Opinion No. 13-68

Requirement that Drivers Exercise Due Care under Tenn. Code Ann. § 55-8-136

QUESTIONS

1. If a motorist strikes a bicycle operating in a marked bicycle lane, is the accident itself evidence of lack of due care pursuant to Tenn. Code Ann. § 55-8-136?
2. If a motorist strikes a bicycle operating lawfully, is the accident itself evidence of lack of due care by the motorist pursuant to Tenn. Code Ann. § 55-8-136?
3. If a motorist strikes a pedestrian lawfully crossing a crosswalk, is the accident itself evidence of lack of due care by the motorist pursuant to Tenn. Code Ann. § 55-8-136, provided that the pedestrian is not in violation of Tenn. Code Ann. § 55-8-134(b)?
4. During periods of low visibility, such as conditions of fog, mist, and rain, must motorists adjust their driving habits to ensure that they can timely see pedestrians and bicyclists in order to comply with the due care requirement imposed by Tenn. Code Ann. § 55-8-136?

OPINIONS

1, 2 & 3. No. The fact that such accidents occur does not automatically mean that a motorist breached his or her duty of due care under Tenn. Code Ann. § 55-8-136. An accident is evidence of the motorist's lack of due care only if the motorist failed to act as a reasonably prudent person would have acted under the existing circumstances.

4. Even during periods of low visibility, a motorist's duty of care is governed by the reasonable-person standard. If a reasonable person would adjust his or her driving habits in order to meet the requirements of Tenn. Code Ann. § 55-8-136, the motorist must do the same. However, the adjustments necessary to meet the minimum level of reasonable care will vary depending upon individual circumstances.

ANALYSIS

1, 2 & 3. The fact that a motorist collides with a lawfully operating cyclist or pedestrian is not conclusive evidence that the motorist has breached his or her statutory duty of due care as set out in Tenn. Code Ann. § 55-8-136. Rather, it is the reasonableness of the motorist's actions

under the circumstances that determines whether a motorist has breached his or her duty of care under the statutory standard.

All motorists in Tennessee have a duty to exercise reasonable care under the circumstances. *See McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995). This duty is a motorist's legal obligation to act as a reasonably prudent person to protect others against unreasonable risks of harm. *Id.*; *Hickman v. Jordan*, 87 S.W.3d 496, 499 (Tenn. Ct. App. 2001). In order to establish minimum standards of due care for motorists, the General Assembly enacted rules of the road, one of which is found in Tenn. Code Ann. § 55-8-136, which provides in pertinent part:

(a) Notwithstanding the foregoing provisions of this chapter, 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, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

(b) Notwithstanding any speed limit or zone in effect at the time, or right-of-way rules that may be applicable, every driver of a vehicle shall exercise due care by operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control and by devoting full time and attention to operating the vehicle, under the existing circumstances as necessary in order to be able to see and to avoid endangering life, limb or property and to see and avoid colliding with any other vehicle or person, or any road sign, guard rail or any fixed object either legally using or legally parked or legally placed, upon any roadway, within or beside the roadway right-of-way including, but not limited to, any adjacent sidewalk, bicycle lane, shoulder or berm.

Tenn. Code Ann. § 55-8-136.

Accordingly, every motorist has a duty to take reasonable and necessary steps to maintain a "safe" lookout and speed, to keep proper control of the vehicle, and to give full attention to driving "under the existing circumstances" in a manner designed to avoid a collision with people, other vehicles, or surrounding property. The General Assembly further made clear that this duty controls, regardless of what conduct may be permitted by a posted speed limit or statutory right of way. Thus, it is the motorist's failure to exercise reasonable care that establishes a breach of duty, not the mere fact that the accident occurs in a crosswalk or designated bicycle lane. *See Hickman*, 87 S.W.3d at 499; *Norman v. Prather*, 971 S.W.2d 398, 401 (Tenn. Ct. App. 1997) (rejecting the plaintiff's argument that the phrase "[n]otwithstanding the foregoing provisions" in Tenn. Code Ann. § 55-8-136 when read with Tenn. Code Ann. § 55-8-135 creates a presumption that the driver is primarily at fault in any pedestrian/vehicle collision). There is no one specific type of accident that alone establishes a breach of the motorist's duty as a matter of law. *See Hickman*, 87 S.W.3d at 499 ("[N]egligence is not presumed from the mere fact of an accident or injury").

Moreover, what conduct constitutes a “safe” speed and lookout, proper control, or full attention to driving under the reasonable-person standard may vary with the circumstances. In fact, the degree of care required may even be heightened if the circumstances demand, such as when children are present. *See Kim v. Boucher*, 55 S.W.3d 551, 558 (Tenn. Ct. App. 2001) (recognizing a motorist’s heightened duty of care to take precautions for “childish behavior”). *But see Russell v. Anderson County*, No. E2010-00189-COA-R3-CV, 2011 WL 486900, at *5 (Tenn. Ct. App. Feb. 11, 2011) (discussing the diminished duty of care when children are present but accompanied by an adult). Again, the determinative factor is the reasonableness of the conduct under the circumstances.

4. The motorist’s duty of care during periods of low visibility is likewise governed by what a reasonable person would do under the same or similar circumstances to meet the minimum standards of due care in the statute. Accordingly, a motorist is required to adjust his or her driving habits to the extent that a reasonable person would find it necessary to make adjustments during a period of low visibility.

The precise nature and/or extent of any adjustments would depend on weather conditions, visibility, road conditions, time of day, other pedestrians or traffic present, or any other circumstance that could affect the motorist’s ability to timely see pedestrians and cyclists in compliance with his duty of care under the statute. For example, in cases involving collisions at railroad crossings, courts have required motorists to take extra precautions to meet their duty of care during inclement weather. *See, e.g., Nashville C. & St. L. Ry. v. Barnes*, 177 Tenn. 690, 694-97, 152 S.W.2d 1023, 1024-25 (1941) (holding that occupants of a car did not exercise due care when they failed to take additional precautions under dark, rainy, and foggy conditions, such as stopping the car, cutting off the motor, and opening the windows to look and listen for oncoming trains); *Francis v. Atlantic Terminals, Inc.*, 244 A.2d 415, 418 (R.I. 1968) (holding that a motorist failed to exercise due care when he did not take additional precautions during a heavy snowfall to look and listen for trains before crossing the track).

As a practical matter, lowered visibility would likely require some adjustment for the motorist, although exactly what adjustment, if any, would be needed is a question for a court or jury based upon “their knowledge of mankind and of how persons of reasonable prudence usually deport themselves in relation to their surroundings.” *Grady v. Bryant*, 506 S.W.2d 159, 162 (Tenn. Ct. App. 1973).

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