

**IX/24-13 MOTOR VEHICLE STOP SIGN COLLISION BETWEEN AMBULANCE AND PICKUP TRUCK IDENTITY OF TRUCK DRIVER AT ISSUE LIABILITY ONLY MULTIPLE FRACTURES SUSTAINED BY AMBULANCE OCCUPANTS WRONGFUL DEATH OF PASSENGER IN TRUCK**

Grace and Melissa Schoonmaker and Stephen Howe v. Tracey Byrne and the Est. of Richard Sohni 1816/89 and 1817/89 / Byrne v. Sohni and counterclaim 1982/90  
2-week trial Verdict 11/6/91

**Judge:** Howard Miller, Orange Supreme

**Verdict:** Liability: Sohni 51%; Byrne 49% negligent (5/1). Settled during jury selection for the damages trial for the following amounts: Grace Schoonmaker, \$16,000; Melissa Schoonmaker, \$13,000; Stephen Howe, \$ 11,000. The Est. of the ambulance driver settled before trial for \$50,000 . The Est. of Sohni settled for \$65,000. Jury: 3 male, 3 female.

**Pltf. Atty:** John J. Tackach of Finkelstein, Levine, Gittelsohn & Tetenbaum, Newburgh  
Alex Smith of Gurda, Gurda, Lynch & Smith, for Byrne as Pltf.

**Def. Atty:** Eric M. Kurtz of Cook, Tucker, Netter & Cloonan, Kingston, for Byrne as Def.  
Barry S. Kantrowitz of Kantrowitz & Goldhamer, Chestnut Ridge, for Sohni

**Facts:** The accident occurred in the early morning hours of 6/27/87 at the intersection of Rte. 17K and Rock Cut Rd. in Newburgh. It was raining at the time. Pltfs. were traveling east on Rte. 17K in an ambulance which was struck by a truck owned by Def. Richard Sohni (51% liable). Pltfs. claimed that Def. failed to stop at a stop sign controlling his entrance to the intersection. The ambulance overturned and its driver was killed (settled for \$50,000 before trial). Sohni, age 21, one of the occupants of the truck, was also killed. Def. Byrne, age 17 (49% liable), was the other occupant of the truck. Pltf. Melissa Schoonmaker, age 18, was a patient in the ambulance. She had cut herself while working the night shift at her factory job. Melissa was accompanied by her mother, Pltf. Grace, age 42, and Pltf. Howe, a 28-year-old volunteer fireman, who was the ambulance attendant.

Def. Byrne claimed that she was a passenger in the truck and that decedent Richard Sohni was the driver. Byrne and Sohni were returning from a concert in Poughkeepsie at the time of the accident. Byrne claimed that Sohni was drunk. His blood alcohol level was .19%. Evidence indicated that the truck was hit on the right side. Sohni's injuries, which included ten fractured ribs, a lacerated liver, and a punctured lung, were all on his right side. Byrne sustained two compression fractures in her neck. Def. produced a friend of Byrne who testified that Byrne admitted to her that she was driving the truck when the accident occurred, although she claimed that Sohni stepped on the gas as she was driving. Both the responding police officer and the coroner stated that Sohni was driving the truck. The jury found that Def. Byrne was the driver of the truck, although they found that Sohni was 51% comparatively negligent.

**Injuries:** (not before the jury settled before damages trial) Grace (\$ 16,000 settlement) carpal tunnel syndrome requiring surgery; Melissa (\$13, 000 settlement) post-traumatic headaches; Howe (\$11,000 settlement) grade II separation of the acromioclavicular joint of the left (non-dominant) shoulder. Sohni, age 21 on the date of his death, was single and was employed as a laborer. He was killed instantly and there was no claim for pain and suffering.

**Pltf. Expert:** Richard Hermance, accident reconstruction, Rosendale.

**Def. Expert:** William Burrill, accident reconstruction, Albany.

**PERSUASIVE TRIAL EVIDENCE HELPS A WOMAN PROVE THAT HER SON WAS NOT THE DRIVER WHO CAUSED A FATAL CAR CRASH.**

# **Spotlight**

*Estate of Sohni v. Byrne*, N.Y., Orange County Sup. Ct.,  
No. 1982/90, Nov. 7, 1991.

*Believe one who has proved it. Believe an expert.*  
-Virgil, 70-19 B.C.

While Sohni, 21, and Byrne, 17, were traveling down a roadway in Sohni's pickup truck, they ran a stop sign and were struck on the passenger side by an ambulance that was on its way to a hospital. The pickup truck rolled over on impact. Sohni and Byrne, who were not wearing their seat belts, were ejected from the truck. Sohni was killed instantly, and Byrne sustained a fractured neck vertebra.

Police who investigated the accident determined Sohni had been driving. This conclusion was based on Sohni's ownership of the truck and statements made by Byrne at the scene of the accident. Tests conducted after the accident revealed that Sohni had been intoxicated.

Believing that her son had not been driving at the time of the accident, Sohni's mother retained ATLA member Barry Kantrowitz of Chestnut Ridge, New York, to represent Sohni's estate in a suit against Byrne. Plaintiff alleged that Byrne, not Sohni, had been driving the truck at the time of the accident and had caused the collision by running through a stop sign. Byrne counterclaimed against the estate contending that Sohni had been driving his truck while intoxicated and was therefore responsible for causing the accident.

In the Liability phase of a joint bifurcated trial, Kantrowitz faced the difficult task of convincing the jury that Byrne, not Sohni, had been driving. Kantrowitz stated that the movement of the vehicles and occupants during the initial milliseconds of the collision was the key to determining who was driving the truck. Whoever was seated on the passenger's side, Kantrowitz argued, would have contacted the passenger door and sustained injuries on their right side.

To prove that Sohni's injuries were consistent with plaintiff's contention that Sohni had been a passenger, Kantrowitz presented testimony from Mary Ellen Wright, a county medical examiner and registered nurse who visited the accident scene and was present at Sohni's autopsy. Wright testified that in the accident, Sohni had sustained fractured ribs, damage to his internal organs, lacerations, cuts, and abrasions, all of which were on his right side. She concluded that Sohni's injuries were consistent with a blunt trauma to the right side. In addition, emergency records and doctors' reports

presented to the jury by Kantrowitz showed that Byrne's injuries were substantially on her left side and were consistent with the estate's claim that Byrne had been sitting on the drivers side. To bolster his argument, Kantrowitz presented police photographs depicting extensive damage to the passenger side of Sohni's truck.

Kantrowitz also presented testimony from Richard Hermance, an accident reconstruction expert from Tillson, New York. He testified about the movement of the vehicles at impact and how it affected both passengers. Hermance explained to the jury that the injury patterns to vehicle occupants in these types of accidents were a function of Newton's law of motion. He testified that according to this theory, in the accident at issue, the right side passenger in the truck would have remained still while the right side of the truck crushed inward and made contact with the passenger's body. Therefore, he concluded, it was only logical that Sohni was seated in the passenger's seat because he sustained fatal injuries to his right side in the crash.

In rebuttal, Byrne's accident reconstruction expert, William Burrill of Albany, New York, testified that because (1) Sohni and Byrne were both ejected from the truck and (2) the truck had rolled over several times after impact, it was impossible to determine who had been driving based on the injuries. He maintained that no conclusion could be drawn from the evidence.

On cross-examination, Burrill admitted that he had relied on Byrne's deposition description of the accident and that he had not reviewed the medical records or spoken with the investigating officers or the coroner. Furthermore, when pressed, Burrill acknowledged that if he had to choose which passenger would be most likely to sustain the greater injuries, it would be the one seated on the passenger side.

The jury found that Byrne had been driving the truck. However, after the jury's decision on the liability issue, the judge then asked the jury to determine if Sohni had either assumed the risk or been contributory negligent in traveling with out a seat belt with an inexperienced driver. Kantrowitz objected to this instruction on the grounds that Byrne (1) had not raised the issue of contributory negligence at trial and (2) had not proven the elements of this affirmative defense because she had claimed that Sohni had been driving.

The jury found Sohni 51-percent contributorily negligent for his own injuries. Rather than endure an appeal, Sohni's estate then settled for \$65,000.