

CONFORMABILITIES AND DISCREPANCIES IN THE OPINIONS OF EXPERTS OF FORENSIC MEDICINE AND ROAD TRAFFIC IN ASSESSING THE CIRCUMSTANCES OF A MOTORCYCLE ACCIDENT

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Two young men had a motorcycle accident. They fell out of a road curve and hit an estate's fencing. One of them suffered an extensive injury of his chest. Consequently, he died on the site of the accident. The other man sustained only minor injuries. The statements of the majority of witnesses testified (but did not prove) that the man who survived the accident was the driver. The court of first instance accepted that version and found the man guilty of causing the accident. As there was an appeal against the sentence of the court, the higher tribunal asked forensic medicine and road traffic experts to determine, on the basis of the available evidence, whether the accused was in fact the driver of the motorcycle. A team of experts was appointed. In the course of the work of the team there appeared serious discrepancies in the evaluation and interpretation of the evidence. In the final conclusions the forensic medicine experts suggested that the man who survived the accident was the driver, while the road traffic experts claimed that the deceased was the driver.

The evidence in the case was the following:

The man who died on the site of the accident suffered the following bodily injuries:

numerous superficial abrasions of his head, arms and legs, as well as an extensive injury of a front surface of his chest with breaking of a sternum and ribs and a tear of a pleura and lungs, which led up to a mortal bleeding. The injuries that led up to the death of the man appeared as a result of him being stuck on a fence post. In the blood of the deceased as much as 2,7‰ of ethyl alcohol was found (in his urine – 2,8‰).

The man who was assumed to be the driver and was accused of causing the accident with a mortal result (constantly describing himself as the passenger) suffered only a compound fracture of his left kneecap with displacement. In his blood 0,8‰ of ethyl alcohol was found.

Below are the other facts:

The motorcycle hit the estate's fencing with its left side and after blocking the front wheel turned back around the fork of the front wheel. The elements of the motorcycle in its front and left part were damaged (the left footrest among others). The deceased hit the top of a 125 cm high steel fencing post with his chest and there his body was found. His shoes were about 9 and 10m away from his body. The man who was accused of causing the

accident was lying near the motorcycle, which moved away from the spot of the first impact as showed on the sketch. The sketch of the site of the accident is enclosed.

In their opinion, the road traffic experts explicitly stated that the deceased was the driver and that the accused was the passenger. Their conclusions were based on calculations made with the data from the sketch of the site of the accident, as well as from the examination of the motorcycle.

The forensic medicine experts assumed with the biggest probability that the accused was the driver and the deceased was the passenger, not excluding categorically that the opposite took place. Their conclusions were based on their judicial – medical knowledge and experience.

In particular their conclusions were drawn from the following arguments:

- During the collision of a motorcycle with an obstacle (with a tangential obstacle as well) the inertial force of bodies of the people traveling on the motorcycle causes the shift of the bodies forward, and the driver is additionally “pressed” by the body of the passenger down and forward. Still, the driver is able, to some extent, to resist these forces by making his arms stiff by leaning against the handle-bar, and also slightly by “resisting” with his legs against the support and by instinctive “gripping” of the petrol-tank with his knees. The passenger, because of his position, higher placement of his footrests and also because of his generally later reaction to the situation, has got no such possibility. The mechanism of forces and their vectors, briefly described above, in practice leads to the fact that the passenger gets thrown out from the motorcycle, while the driver usually stays closer to the vehicle.
- In this particular situation the location of the bodies of the injured after the accident, described in the files of the case, is very suggestive. It seems that in the first phase of the contact of the motorcycle with the obstacle the passenger had been „thrown out” from his seat, while the driver stayed closer to the motorcycle. Thus, after the motorcycle hit the fencing and turned aside, the driver was near the vehicle. It corroborates the fact that after the accident the accused, who survived the accident, was near the motorcycle.
- The theoretical assumptions about acceleration during such accidents, as well as judicial-medical experience, suggest, that most often the person who is “thrown out” from the seat of a one-track vehicle losses their shoes. In this case the deceased lost his shoes; the other man had them on his feet after the accident.
- The small number of bodily injuries of the accused can be explained by the fact that he stayed longer on a motorcycle, and the lack of injuries under his knee by the sheltering of the front elements of the Jawa motorcycle. On the other hand, the widespread injuries of the deceased can be explained by the first phase of a blow against the obstacle, and then by him being thrown out from the seat and hitting the fencing post.
- The height of the fencing post that the deceased man hit does not contradict the course of the events, even if the flight of the passenger after the first phase of the blow against the obstacle is taken into account.
- Additional fact that is important in this case is that in the blood and urine of the deceased a considerable amount of ethyl alcohol has been found. Although such an amount of alcohol in an organism of an adult person does not make it impossible for such a person to start a motor by oneself and then to drive it, it definitely makes it very difficult. Thus, it is even less probable that the deceased man was the driver.

To sum up Although it was impossible to exclude unmistakably that during the accident the accused man was the passenger of the motorcycle, in the light of the available evidence such an eventuality was much less probable than the assumption that he was the driver of the vehicle. Objective data collected in the course of the prosecution, theoretical assumptions about the mechanism and way in which the bodies of the injured behave in road accidents and judicial – medical experience – they all pointed to the accused man being the driver of the motorcycle.

The description of the above case clearly shows that the team of forensic medicine and road traffic experts, which was appointed by the jury, after analyzing the same data, reached completely different final conclusions. Such contradictory opinions were presented to the jury. Although the conclusions drawn by the road traffic experts were rather categorical, the jury accorded with the opinion that the accused man was the driver, represented by the forensic medicine experts.

Conclusions

1. In the case of appointing a team of experts from different fields, one has to take into account the possibility that there may appear discrepancies in their final conclusions.

2. Lack of consistency in the team of experts' opinion is a serious impediment for the jury, particularly if one group of experts presents a categorical conclusion. Yet, the above example shows that the jury can accord with the less definite opinion.

3. Forensic medicine is an applied science. Therefore, in giving opinions judicial-medical experience, gained in everyday work of a forensic doctor, is equally important as the theoretical knowledge.



Teismo medikų ir teismo autotechnikų išvadų sutapimai ir skirtumai vertinant motociklo autoįvykio aplinkybes

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SANTRAUKA

Pranešime nagrinėjamas autoįvykio atvejis, dėl kurio buvo gautos viena kitą paneigiančios ekspertų išvados.

Du jauni vyriškiai važiavo motociklu ir jo nesuvaldę atsitrenkė į tvorą. Vienas žmogus dėl daugybinių kūno, galvos ir galūnių sužalojimų mirė autoįvykio vietoje. Kitam vyriškiui buvo nustatytas tik daugybinis kairės kojos lūžis. Parengtinio tyrimo metu nepavyko vienareikšmiškai nustatyti, kas vairavo motociklą. Likęs gyvas asmuo nuosekliai aiškino, kad jis motociklo nevairavo, nors daugumos liudytojų parodymuose jis nekategoriškai buvo minimas kaip motociklą vairavęs asmuo.

Antros instancijos teismas atsižvelgdamas į esančius prieštaravimus paskyrė kompleksinę teismo medicininę, autotechninę ir trasologinę ekspertizę. Trasologijos specialistai nurodė, kad motociklą vairavo žuvęs asmuo, o teismo medikai konstatavo, kad greičiausiai motociklą vairavo likęs gyvas asmuo.