

## **Understanding Modified Comparative Fault in Texas Personal Injury Claims**

### **Know your legal rights if you're found partially at fault for your injury**

Some personal injury cases are clearly one person's fault, and when that happens, the liability aspect of a claim is usually straightforward. However, many accidents have shared fault between multiple parties. Consider these scenarios:

- A motorist is following another car too closely and causes a collision when the front vehicle turns without signaling.
- A customer in a store looks down at their phone while walking and slips on an unmarked hazard.
- A pedestrian darts into the road unexpectedly and is hit by a car traveling well over the speed limit.

In each of these situations, multiple parties may share liability for the injuries sustained. These situations are resolved through the legal principle of comparative fault or comparative negligence.

### **When multiple parties are at fault, damages are assigned proportionally**

Let's take the first scenario we mentioned as an example: one motorist is following too closely, and another makes a maneuver without signaling, causing a wreck. Suppose the first motorist is found to be 60% at fault for tailgating, and the second is found 40% at fault for making a dangerous maneuver without signaling.

A third party involved in the accident who doesn't share in the fault (for instance, a passenger in one of the vehicles) could take legal action to get compensation for their losses, with 60% of the damages awarded coming from the first motorist and 40% from the second motorist. If that passenger had \$10,000 in damages, then the first motorist (and thus their insurance company) would have to pay \$6,000 and the second would pay \$4,000.

This is straightforward enough, but what happens to the drivers of the two vehicles who are themselves partially at fault for their injuries? That's where the "modified" comparative negligence rule kicks in.

### **Texas allows you to recover as long as you aren't *more* at fault than the other party**

In Texas, you can recover compensation for a personal injury for which you are partially at fault unless your percentage of fault is greater than the percentage that's not your fault. This is also known as the 51% rule – if you are 51% or more at fault for the accident, you can't get compensation. If you're less than 51% at fault, you can still get compensation, but it will be reduced by your percentage of fault.

To return to the previous example, the driver who is 40% at fault could still recover compensation from the other driver, but his damages would be reduced by 40%. If that

motorist had \$50,000 in damages, they would be reduced by 40%, for a final award of \$30,000. However, the driver who is 60% at fault would not be able to recover at all.

### **In cases where fault is disputed, you need strong legal representation**

Whenever the phrase “comparative fault” comes up in a personal injury claim, you know you’re in for a complex legal battle. The insurance company knows that if they can argue you were 51% or more at fault, they can deny your claim entirely – and even if they can’t get to the 51% bar, any percentage of fault will reduce the amount they have to pay. Their investigators, adjusters, and representatives will look for any details they can exploit to protect their bottom line.

That’s why you need to be cautious about talking to an insurance company (even your own) about what happened in the accident. It’s also why you need strong legal representation. Your attorney can investigate your accident and build a case for the maximum compensation possible. We can give you a candid assessment of your options, with the good, the bad, and the ugly – and if you decide to move forward, we have the experience and legal knowledge needed to build strong, compelling cases.

If you’ve been hurt in an accident and fault is disputed, it’s especially important to get an attorney on your side who knows the system and knows Texas law. Contact us today for a free consultation with an experienced personal injury lawyer at Smith & Hassler.