

E.B. boy hit by driver seeks civil damages Attorney looks to win punitive damages in possible landmark case

Staff Writer

By nicole c. vaccaro

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Vehicle that allegedly struck Kayhan Dong more than two years ago.

Two years ago Kayhan Dong, 19, of East Brunswick, was struck by a car, an accident that robbed him of his senior year in high school and the ability to dance and run.

The man responsible, Michael T. Alape, Piscataway, paid \$222 in fines and served no jail time after securing a deal with the county prosecutor.

Unsatisfied with that ruling, the Dong family decided to file a civil action lawsuit against Alape.

According to attorney William S. Winters, East Brunswick, Dong's attorney, arbitration took place in September, and Dong was offered \$125,000.

However, in compliance with New Jersey law, Alape was given 30 days to appeal the decision and request a full trial, which he did.

Thus, the case will be heard before Judge James P. Hurley in state Superior Court, New Brunswick, on Dec. 15.

At that time, Winters will seek an award for punitive damages against Alape, something that has yet to be achieved in New Jersey.

While New Jersey is often revered as the state with the strictest drunken-driving laws, imposing the stiffest criminal fines and penalties, its courts have yet to impose civil penalties upon drunken or impaired drivers in lawsuits brought by victims, Winters said.

Civil penalties would normally be awarded to victims in the form of punitive damages, which the state has never granted, says the attorney.

Punitive damages, unlike compensatory damages, are generally granted in an attempt to punish a losing party's willful or malicious misconduct.

To date, such intent has been impossible to prove in New Jersey cases involving drunken drivers.

Should Judge Hurley rule in Dong's favor, history would be made, as the case would set a precedent throughout the state.

Nine of the 50 states currently allow automatic punitive damages in accidents involving intoxication. They are: California, Arkansas, Colorado, Florida, Georgia, Minnesota, Montana, Oregon and New York.

The money, if any, that is awarded to Dong will depend upon the jury, as existing state law does not allow damage amounts to be set prior to trial.

"I just want to see him [Alape] punished," said Dong. "The fine he received was too lenient for having run someone over."

Winters added that while there is no concrete evidence Alape was drunk at the exact moment he hit Dong, he was still negligent for not stopping or reporting the incident.

After the accident, Dong was confined to his bed for months and had to undergo painful physical therapy for about five months.

He was held back his senior year of high school, missing out on graduation with all of his friends.

His physician, Dr. David K.P. Tam, said he may never regain full use of his leg and will always walk with a pronounced limp.

"I used to dance a lot. My friends and I formed our own break-dance club," said Dong. "Now I have this constant grinding feeling in my hip, my knees ache and occasionally buckle, and I limp. Nothing will ever be the same."

Dong was crossing Route 514, Edison, during rush hour on Jan. 12, 1998, when a vehicle stopped to allow him time to do so.

According to police reports, Piscataway resident Michael T. Alape swerved around the stopped car, crossing over a double yellow line and striking Dong.

The boy was sent flying into the air; Alape immediately fled the scene without stopping, according to police reports. Police did not apprehend the suspect until later that evening, when they found him at home.

Police said Alape claimed to have a drinking problem and admitted to having been drinking since 11 a.m. that morning until he blacked out.

He also told police in their report that he did not remember being in Edison, let alone hitting Dong. Furthermore, he said he was on medication for depression, which he had taken with alcohol earlier in the day.

In 1998, Alape pleaded guilty in criminal court to charges of careless driving and failure to report an accident, rather than the charge of leaving the scene of an accident that was originally lodged against him.

Alape's attorney in this case, Robert Helwig, could not be reached for comment.

Also, calls made to the Alape residence were not returned as of press time yesterday.

"The prosecutor agreed to drop the leaving the scene [of an accident] charge, which resulted in a sentence amounting to a slap on the wrist for this guy," said Winters. "Had he been found guilty of this charge, it would have been a much stiffer sentence."

The national office of Mothers Against Drunk Driving (MADD) has gotten involved in this litigation, submitting written legal arguments to Judge Hurley. The organization recognizes the importance of this issue and acknowledge its potential national impact.

William M. Dellicato, victims' rights attorney for MADD, plans to attend the trial next month to lend his support as well.

"We [MADD] are only asking for New Jersey law officials to do what's already being done in other states," said Dellicato. "We need to send a message to people who drink too much and drive that they will not get away with it.

"The fact that Alape's attorneys are trying to hide behind DUI [driving under the influence] technicalities is ludicrous," he added. "The fact is that he [Alape] was drunk, admitted he was drunk to police, then hit a child and ran off without reporting it."

Added Dellicato: "This is not about punishment, but rather about letting drunk drivers know there will be severe consequences for their actions if they choose to get behind the wheel.

"MADD strongly believes that awarding punitive damages will have a deterring effect and keep the number of drunk driving accidents and fatalities down.

"Because the criminal system let this man [Alape] go free, he could do it again. That's why it's imperative to let him and other future offenders know they won't get away with it the next time."