

## ●● Motorcycle Justice

**Q** A Texas rider was involved in an accident and had no motorcycle license at the time. The other party was at fault, but that driver's insurance company refused to pay damages (personal injury and property), saying that because the injured rider was unlicensed, he should not have been on the road in the first place.

After the insurer declined to pay, the rider contacted some personal injury attorneys, and they all told him the same thing, that he has no case because he has no license.

Have you ever heard of anything like this? I'm retired from a property/casualty insurance career, but I have never heard of something like this happening.

—Ken Bowen, Dallas, TX

**A** I suspect that the real issue is not Texas law, but rather the language in the insurance policy. Even so, I cannot imagine that it would hold water as to the at-fault driver's insurance. The injured rider should demand that the insurance company respond in writing, telling him why the claim is denied. He should request

*that the insurer reference the facts, the applicable insurance policy provisions, and the Texas laws upon which the claim is being denied.*

*I did a quick Google search of Texas law and saw nothing that removes the liability of the responsible driver when he is at fault for striking an unlicensed motorcyclist. I also checked for liability of unlicensed drivers in Texas and still found nothing that excuses the at-fault driver.*

*Texas is a comparative negligence state. Under the Texas rule, the injured person cannot recover compensation from the other driver if he is 51 percent or more at fault. Beyond that, whatever percentage of negligence is attributed to the injured party will be subtracted pro-rata from the damage verdict of the jury. It would be quite a stretch for the driver's insurance company to contend that the rider's level of fault (negligence) is 51 percent or more based solely upon the fact that he did not have a motorcycle endorsement on his driver's license.*

*On the other hand, if the at-fault driver had no insurance and the motorcycle rider is trying to collect from his own insurance company (uninsured motorist coverage), there might be an exclusion in his policy*

*for riding a motorcycle if the only insurance that he has is an automobile policy.*

*The insurance policy will include language that defines when coverage applies when a crash occurs. Usually, it includes a "newly acquired auto" (for 14 days). I would expect to find a section of the policy that sets forth the definition of a "newly acquired auto" and that definition probably does not include a motorcycle.*

*Based on the information you provided, I suspect that the problem is that there is no insurance that covers the loss. If the driver does not have collectible assets, the absence of applicable insurance explains why the attorneys declined the case.*

—Harry

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