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## A Wreck, a Lawsuit And a Record Liability

By RONALD SULLIVAN

In July 1988, four young Americans touring the south of France with their families were returning from an evening out near Cannes when their car swerved to avoid some pedestrians and ran into an oncoming car.

The crash on that darkened highway left one passenger permanently brain damaged and spawned a legal case unusual for its record liability award and its combination of American law and the Napoleonic code.

Last Friday, a jury in Manhattan awarded the 20-year-old victim, Alexandre Penson of 35 Sutton Place, \$58,780,000 for his injuries, the largest motor vehicle accident liability award ever in New York State. But it seems likely that only further legal action will determine how much money Mr. Penson will collect. Wanted to Be a Lawyer

Physicians say Mr. Penson, who attended the prestigious Horace Mann School in the Bronx and wanted to be a lawyer, will require someone to take care of him for the rest of his life.

The award was rendered by a six-member jury in State Supreme Court in Manhattan against 21-year-old Daniel Rosenberg, the driver of the car, who was 17 at the time of the accident, and his parents, Jerome and Julia Rosenberg of 50 Park Avenue.

The suit was filed in New York because Mr. Penson and Mr. Rosenberg live here.

The jury's verdict -- which was solely concerned with the size of the award -- came in response to a finding of liability against the Rosenbergs by State Supreme Court Justice Charles Ramos on May 21, 1991.

Following rules of the Hague Convention, Justice Ramos ruled that the law where the accident occurred should prevail. Under French law, the judge ruled, a driver of a car is liable for the injuries suffered by any occupant, even if the driver is not at fault.

While French law was followed by Justice Ramos in finding liability, Justice Edward J. Greenfield of State Supreme Court, who presided over the separate award proceeding, had the jury follow New York law in deciding the amount of damages.

Justice Greenfield based his ruling on the fact that both parties live in Manhattan and that New York State would ultimately be bound to take care of Mr. Penson if he ended up penniless.

Mr. Penson's lawyer, Theodore H. Friedman, said the jury awarded his client \$1,268,000 million for medical, rehabilitation and custodial care since the accident on July 30, 1988; \$40 million for future care over 53.3 years; \$10 million for loss of earnings over 45 years, and \$7.5 million for pain and suffering. Reducing the Award

Under New York law, Mr. Friedman said the award would be reduced to \$28 million, which invested would yield the total jury award over an extended period of years.

Russell F. Moran, the editor of New York Jury Verdict Reporter, said the award was nearly \$15 million higher than a \$44 million award by a Rockland County jury earlier this year in an automobile accident in which the victim suffered severe brain damage.

Mr. Rosenberg's lawyer, Michael E. Curan, said Mr. Penson was injured while driving through southern France with Mr. Rosenberg and two other passengers, who were together because their parents were vacationing at the same time.

He said the accident occurred when Mr. Rosenberg swerved to avoid several pedestrians and struck another car. He said Mr. Penson was not wearing his seat belt, an omission that he said did not affect liability under French law.

Mr. Curan said both the Rosenbergs and the victim face the obstacle of a French insurer, Preservatrice Fonciere, that refuses to assume any liability.

As a result, there is some doubt whether the victim will ever collect anything near the total amount.

For one thing, Mr. Curan said he was preparing an appeal as well as a request that the award be drastically reduced as "grossly excessive." In New York, such appeals are common.

Moreover, he said he was preparing to sue the French insurer that he said had agreed to provide full coverage to the Rosenbergs when they acquired a car for a month's use. That suit may be filed here rather than in France where courts rarely award more than \$2 million in liability damages.

He said the French insurer has denied coverage because it said the driver was under the legally required age of 18 for coverage, even

though he had a valid New York State driver's license and the policy, according to the Rosenbergs, did not provide such an exclusion.

Unless the Rosenbergs obtain a judgment assigning liability to the insurer, legal experts say the chances of the victim collecting even a small percentage of the award are remote.

But Mr. Friedman, Mr. Penson's lawyer, said there was more than one insurance company involved. He said the Rosenbergs have a \$5 million policy with an American insurance company that would help cover the award.

"This award is totally collectible and will be collected," Mr. Friedman said.

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