How New York's Comparative Negligence Rules Apply to Bike and Pedestrian Crashes

Your share of fault doesn't have to define your recovery

Getting hurt on a New York street is terrifying enough on its own. But then comes the insurance adjuster's phone call, the carefully worded letter, and the suggestion that maybe you weren't being as careful as you should have been.

Maybe they're saying you crossed a second too early, or rode outside the bike lane, or weren't wearing a helmet. Suddenly the conversation shifts from your injuries to your behavior, and that shift is deliberate.

Insurance companies understand something that many injured New Yorkers don't: in a state that follows a comparative negligence standard, every percentage point of fault they can push onto you is money they don't have to pay. Since 2026, in cases involving motor vehicles, it can also be the difference between recovering something and recovering nothing.

What they're counting on is that you don't understand the law as well as they do. The NYC pedestrian and bicycle accident attorneys at Giampa Law can change that.

What comparative negligence actually means in New York

New York follows a comparative negligence rule, codified in CPLR § 1411. Since 2026, the state has applied a different comparative negligence rule to certain motor vehicle injury claims.

If no motor vehicle was involved, such as a cyclist colliding with a pedestrian, New York still applies pure comparative negligence. A judge or jury assigns each party a percentage of fault, and the injured person's damages are reduced by their own share. They can never be fully barred from recovering. A pedestrian hit by a cyclist who is found 70% at fault can still recover 30% of their total damages.

For certain motor vehicle injury claims, a 2026 amendment to CPLR § 1411(b) applies instead. This modified rule covers personal injury claims subject to Article 51 of the Insurance Law, New York's motor vehicle no-fault law. It applies to lawsuits filed on or after May 26, 2026, according to the New York State Department of Financial Services. Under this rule, an injured person whose share of fault is greater than the fault of the person they are seeking recovery from, or the combined fault of multiple defendants, is barred from recovering. A pedestrian hit by a car and found 70% at fault recovers nothing, even though a pedestrian hit by a cyclist in the same situation would still recover 30%.

Which rule applies depends on whether the personal injury claim is subject to Article 51 of the Insurance Law.

The legal duties that apply to every road user

Before fault can be assigned, it helps to understand what each party was legally required to do. New York law creates specific obligations for drivers, cyclists, and pedestrians, and a violation of any of those obligations becomes a building block in the fault analysis.

For drivers, Vehicle and Traffic Law § 1146 imposes an explicit duty of care toward bicyclists and pedestrians. Every driver must exercise due care to avoid colliding with anyone on foot or on a bike, and must give audible warning when necessary. This statute creates what functions as a rebuttable presumption of driver negligence when a motor vehicle strikes a cyclist or pedestrian.

This means the driver bears the burden of explaining why the collision wasn't their fault. In New York City, the Administrative Code goes further: a driver who fails to yield to a cyclist or pedestrian and causes physical injury can face a misdemeanor charge and up to 30 days in jail.

Cyclists aren't exempt from traffic law, however. Under VTL § 1231, bicyclists are required to follow the same rules of the road that apply to motor vehicles. That includes traffic signals, stop signs, directional rules on one-way streets, and right-of-way obligations. A cyclist who runs a red light or weaves unpredictably into a travel lane and then gets hit can expect the fault analysis to reflect those choices.

For pedestrians, VTL § 1150 requires compliance with traffic-control signals and crosswalk rules. Crossing against the light or mid-block doesn't eliminate a pedestrian's right to recover, but it doesn't go unnoticed in the fault calculation either.

How fault gets assigned after a crash

Fault isn't determined at the scene. It's argued, contested, and ultimately resolved in a courtroom or through settlement negotiations, and the raw materials for that argument are assembled in the days and weeks immediately following a crash. The types of evidence that carry the most weight in New York bike and pedestrian cases include:

- whether either party violated a specific traffic law, which can significantly shift the percentage of fault
- police reports and any citations issued at the scene
- surveillance video, dashcam footage, or helmet-mounted camera recordings
- photographs of the point of impact, skid marks, road conditions, and damage patterns
- witness statements from bystanders who observed the crash from a neutral position

- medical records that document the nature and severity of injuries and connect them to the crash
- whether the injury claim is subject to Article 51 of the Insurance Law, since that determines which comparative negligence rule applies and can mean the difference between a reduced recovery and no recovery at all

What insurance companies actually do with comparative fault

Insurance adjusters don't approach a claim with the goal of fairly evaluating what happened. They approach it with the goal of finding every possible reason to reduce what the insurance has to pay, and comparative negligence is their most reliable tool for doing exactly that. For motor vehicle injury claims subject to New York's no-fault law, that tool now has more leverage than it used to, since pushing an injured person's fault past the halfway mark can eliminate a claim rather than just shrink it.

In bike and pedestrian cases, the arguments used to push fault onto injured parties follow predictable patterns. When the injured party is a cyclist, insurance companies commonly argue:

- **Not wearing a helmet**: Even though New York doesn't require adult cyclists to wear helmets, the absence of one is routinely used to argue that the cyclist contributed to their own head or brain injuries by failing to take reasonable precautions.
- **Riding outside a designated bike lane**: Even when road conditions or parked cars make the lane impractical to use, deviating from it creates an opening for fault attribution.
- **Running a traffic control device**: A cyclist who entered an intersection against a red light or stop sign faces a much harder fault argument than one who had the right of way.
- **Riding with headphones or at night without lights**: Behaviors that suggest a failure to monitor surroundings are framed as contributing causes to whatever followed.

When the injured party is a pedestrian, the common arguments include:

- **Crossing against a signal or jaywalking**: Mid-block crossings and violations of walk/don't walk signals are the first things an adjuster will look for in the traffic light data and police report.
- **Distracted walking**: A pedestrian who was looking at their phone when struck may find that behavior treated as a meaningful contributing factor, even if the driver was running a red light.
- **Visibility issues**: Dark clothing at night or crossing in an area without adequate lighting gives insurance companies room to argue the driver couldn't have seen the pedestrian in time to stop.

For example, suppose a pedestrian suffers $200,000 in documented damages after being struck by a driver who ran a red light. The driver's insurance company argues that the pedestrian was glancing at their phone when they stepped off the curb.

If a jury accepts that framing and assigns the pedestrian 30% of the fault, their recovery drops from $200,000 to $140,000. This is a $60,000 reduction that flows directly from how the comparative negligence argument was handled, not from what actually caused the crash.

When a government entity may share fault

New York's fault-sharing framework doesn't stop at the two parties immediately involved in a crash. In cases where a defective road surface, broken traffic signal, missing crosswalk markings, or negligently designed intersection contributed to the collision, the city, county, or state agency responsible for that infrastructure may bear a portion of the liability.

Identifying government negligence can meaningfully expand the pool of available compensation, but it comes with a hard procedural requirement: a Notice of Claim must be filed within 90 days of the incident to preserve the right to sue a government entity. Missing that deadline typically ends the claim against the municipality entirely, regardless of how strong the underlying facts are.

The no-fault layer and when it applies

When a motor vehicle is involved in a crash with a cyclist or pedestrian, New York's no-fault insurance system provides an initial layer of coverage for medical expenses and lost wages, regardless of who caused the crash. However, accessing the broader damages that reflect the true cost of a serious injury (e.g., pain and suffering, long-term disability, permanent limitation) requires meeting the serious injury threshold defined in Insurance Law § 5102(d).

It's also worth mentioning that no-fault coverage doesn't apply when a cyclist strikes a pedestrian and no motor vehicle is involved. In those cases, the pedestrian's claim runs directly through the cyclist's personal insurance, often a homeowner's or renter's policy, or against the cyclist personally. Since New York doesn't require cyclists to carry liability insurance, the practical ability to collect on a judgment can depend heavily on how thoroughly the coverage landscape was investigated before a claim was filed.

The percentage that changes everything

If you or a loved one was injured as a cyclist or pedestrian in New York, and you're already hearing that your own behavior contributed to what happened, don't let that framing go unchallenged. Giampa Law can thoroughly investigate your pedestrian or bicycle accident and fight to prove what the evidence actually shows, who truly bears responsibility for what happened, and what your recovery should look like.

We proudly represent clients in New York City from our offices in the Bronx and Westchester County. We offer free consultations and handle bicycle and pedestrian accident cases on a

contingency fee basis, which means you pay no attorney's fees upfront if we take your case. To find out how we can help you, **contact us** today to schedule your free case evaluation.