

Hit by a Tesla on "Self-Driving"? You May Have a Claim Against Tesla Itself

If you were hurt by a Tesla that was driving itself, the driver may not be the only one responsible. Tesla may be too.

Think of people on the other side of a crash: pedestrians, cyclists, drivers and passengers in other cars, and passengers in the Tesla who didn't own it or choose its settings. You never bought the car, never agreed to Tesla's terms, and never picked how aggressively it would drive. That matters, both legally and practically.

"Self-driving" that is designed to speed

Tesla sells Autopilot and a more advanced package it calls Full Self-Driving. FSD lets the owner choose how the car drives. In October 2025, Tesla reintroduced a setting called "Mad Max," its most aggressive speed profile, which Tesla said brings higher speeds and more frequent lane changes than its "Hurry" setting. Within a day of release, owners posted videos of cars in Mad Max rolling through stop signs and driving more than 15 mph over the limit.

Federal regulators took notice. The National Highway Traffic Safety Administration contacted Tesla about Mad Max while separately investigating about 2.9 million FSD-equipped vehicles over reported traffic-law violations and crashes, including cars running red lights and crossing into oncoming lanes.

Why Tesla, not just the driver, can be held responsible

Tesla's standard defense is that the human driver is always in charge. But a manufacturer can be liable when its product is defectively designed, when it fails to warn about known dangers, or when it oversells what the product can do. A car that knows the posted speed limit, displays it on screen, and is still built to exceed it — raises exactly those questions.

A Miami federal jury has already held Tesla accountable in a case like this. In *Benavides v. Tesla*, a Model S on Autopilot struck a parked SUV in 2019, killing a young woman standing beside it and seriously injuring her boyfriend. In August 2025, the jury found Tesla 33% responsible even though the driver was also at fault, and it added \$200 million in punitive damages against Tesla alone. In February 2026, the judge refused to overturn the verdict, finding that the trial evidence more than supported it. (Tesla has appealed to the Eleventh Circuit, so the case is not final.)

Why non-owners may have a case

If you didn't own the Tesla, several of Tesla's usual arguments don't apply to you:

- **You never agreed to Tesla's terms.** Tesla's purchase and software agreements are contracts with the buyer. As a rule, a stranger to those contracts isn't bound by their fine print, including clauses that push owners out of court and into private arbitration.
- **You didn't choose the settings.** Tesla can argue that an owner who selected Mad Max assumed the risk. You made no such choice.
- **You may have more than one source of recovery.** A driver's insurance policy may not come close to covering a serious injury or death. A claim against Tesla can make a full recovery possible.

Every case turns on its facts, and Tesla will fight hard. But victims who never touched the controls are often the most sympathetic plaintiffs in these cases.

The car remembers what happened, but the evidence can disappear

Teslas record far more than a typical car. Besides the standard crash "black box," the Autopilot computer logs whether the driver-assistance system was engaged and what the driver was doing. It also creates a "collision snapshot" that includes camera video from the seconds before impact, and it is designed to send that snapshot to Tesla.

That data can make or break a case, and it can be hard to get. In *Benavides*, Tesla told the victims' family it didn't have the key crash data. An independent expert later recovered the collision snapshot from the car's computer, where it had been marked for deletion, and the evidence showed Tesla had received it right after the crash. The judge found no intentional withholding, but she ordered Tesla to pay the family's costs of recovering the data.

Timing matters. Wrecked cars are repaired, sold at salvage or scrapped. Even powering up the damaged computer can trigger a software update that erases stored data. The sooner a lawyer demands that Tesla and the owner preserve everything, the better your chances of proving what the car was doing.

What to do if a Tesla hit you

1. **Get medical care first.** Some injuries show up hours or days later, and your medical records will document them.
2. **Make sure the police report says it was a Tesla.** If the driver says the car was driving itself, ask the officer to note it.
3. **Collect what you can.** Take photos of the scene and vehicles, get witness names and phone numbers, and note any nearby businesses or homes with cameras.
4. **Don't give a recorded statement** to Tesla or the driver's insurance company before you talk to a lawyer.

5. **Call a lawyer quickly** so preservation demands go out to Tesla and the vehicle's owner before the data or the car is lost.

Deadlines are short

The law limits how long you have to sue. In New York, most personal injury claims must be filed within three years (CPLR 214(5)), and wrongful death claims within two years (EPTL 5-4.1). In New Jersey, both personal injury and wrongful death claims generally must be filed within two years (N.J.S.A. 2A:14-2; N.J.S.A. 2A:31-3). Shorter deadlines can apply in some situations, so don't wait.

How we can help

Pollock Cohen LLP handles complex litigation against large, well-funded defendants. If you or a loved one was injured by a Tesla that may have been running Autopilot or Full Self-Driving, contact us for a confidential consultation at (212) 337-5361 or nyc@pollockcohen.com.

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