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**DIVISION OF MOTOR VEHICLES**

Petitioner,

v.

**WILLIAM W. SKUBA,**

Respondent.

Decided August 19, 1981

**Initial Decision**

**SYNOPSIS**

The Division of Motor Vehicles proposed to suspend the license of William W. Skuba because of his alleged involvement in a fatal accident. At the time of the accident, Skuba was issued a summons for an alleged violation of *N.J.S.A. 39:4-69* which prohibits a motor vehicle operator from knowingly allowing a person to ride on a portion of a vehicle not intended for the conveyance of passengers.

The administrative law judge observed that in order for the proposed suspension to take effect, it would be necessary to prove that the licensee had violated the statute and that the violation was the proximate cause of death of the decedent. The judge determined that *N.J.S.A. 39:4-69*, under which the licensee was charged, must be read in conjunction with *N.J.S.A. 39:4-61* and when so read, an inference may be drawn that it is permissible for an individual to ride in the rear of a pick-up so long as no part of his body protrudes beyond the limits of the vehicle.

With regard to the question of proximate cause, the administrative law judge determined that the cause of decedent's death was not his riding in the rear of the vehicle, but rather the fact that he had climbed from the rear of the vehicle and, thereafter, jumped or fell from the running board. Thus, even if there had been a violation of the statute, it was not the proximate cause of decedent's death.

Accordingly, the administrative law judge ordered that the proposed license suspension be dismissed.

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**Lyle P. Hough, Jr.**, Deputy Attorney General, for Petitioner  
(James R. Zazzali, Attorney General of New Jersey, Attorney)

**David A. Lime, II, Esq.**, for Respondent (Wehling, Lime & Welchman, Attorneys)

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**MONYEK, ALJ:**

This matter concerns the proposed suspension of the driving privileges of the respondent, pursuant to *N.J.S.A.* 39:5-30. By notice of the Director of the Division of Motor Vehicles, dated March 7, 1980, respondent was advised that investigation revealed that he had been "Involved in an accident on August 5, 1979, on Whiton Road, Branchburg Twp., (Somerset County), N.J., while operating a motor vehicle in violation of the Law; Section 39:4-69 (Allowed a person to ride on a vehicle not designed or intended for the conveyance of passengers) resulting in the death of David Zlovinsky of Somerville, N.J."

Respondent requested a hearing and the matter was referred to the Office of Administrative Law for disposition as a contested case. The hearing was conducted on July 2, 1981, at the Office of Administrative Law, Trenton, New Jersey.

The facts are uncontroverted. Respondent was the operator of a 1950 Dodge pick-up truck. On August 5, 1979, at approximately 1:45 p.m., on Whiton Road in the general vicinity of its intersection with South Branch Road in Branchburg Township, two of respondent's friends, Christopher M. Paulsen and David Slovinsky, were riding in the rear portion of the truck. They were seated in lawn chairs which were not affixed in any way to the rear of the truck. After traveling approximately five miles in this fashion and after having just turned the corner at the intersection of South Branch Road and Whiton Road, passenger Slovinsky advised respondent that his hat had blown off and he asked respondent to stop the vehicle so that he might retrieve it. At the time of this request, respondent was traveling approximately 10 to 15 mph and slowed the vehicle down to a virtual stop. During the slow-down process, passenger Slovinsky climbed from the rear of the truck onto the running board and just prior to the vehicle being brought to a complete stop, either jumped from or fell off the running board, as a result of which his head struck the pavement and he suffered a cranial trauma and subdural hematoma, resulting in his death on August 7, 1979.

Christopher M. Paulsen, who testified at the hearing on behalf of the Division of Motor Vehicles, stated that the vehicle was almost at a complete stop at the time that decedent either jumped or fell therefrom, and that it was from the running board and not the rear of the truck from which decedent had fallen or jumped. This rendition of the happening of the accident in question was corroborated by the investigation report of Trooper Roy Weiss of the New Jersey State Police.

Trooper Roy Weiss testified on behalf of the Division of Motor Vehicles that he investigated the aforesaid accident and examined the vehicle in question. He found no skid marks in the vicinity of the accident, and an examination of the vehicle in question revealed that the sides of the rear portion of the vehicle and the tailgate thereof were approximately 24 inches above the floor portion of the rear section. Although Trooper Weiss candidly admitted that he was unfamiliar with the design specifications of vehicles such as the one in question, it was his opinion that, "the accident was caused by passenger carelessness combined with the driver initially permitting his passenger to ride in an unsafe portion of a motor vehicle." Accordingly, he issued a summons to respondent for an alleged violation of *N.J.S.A.* 39: 4-69. Said statute provides:

No person shall ride on, and no operator shall knowingly allow a person to ride on a street car or vehicle, or on a portion thereof not designed or intended for the conveyance of passengers. This section shall not apply to an employee engaged in the necessary discharge of a duty.

At the hearing of the matter it was stipulated by and between counsel for the respective parties that by virtue of the Notice of Proposed Suspension issued by the Director of the Division of Motor Vehicles in the matter herein, in order for the Division to prevail it would be necessary for it to prove that:

1. Respondent violated the above quoted statute, and
2. The violation was the proximate cause of the death of decedent.

With regard to the initial interrogatory, the only witnesses produced by the Division of Motor Vehicles were fact witnesses, Christopher M. Paulsen, a passenger in the vehicle, and Trooper Roy Weiss, the investigating police officer. No competent proofs were produced as to whether the rear portion of the pick-up truck in question was intended for the conveyance of passengers. Furthermore, Trooper Weiss admitted that he was not familiar with the design specifications of 1950 Dodge trucks, but claimed that he issued the summons for the violation of *N.J.S.A.* 39:4-69 because he was instructed at the State Police Training School that a pick-up truck is not intended to convey passengers in the rear portion.

An examination of Section 8, Article XI, chapter 281 of the Laws of 1928, the source of the statute in question, is extremely revealing. Article XI is entitled, "Street Cars." Each of the twelve sections of said Article is directly, integrally and explicitly associated with street

cars and street railways. Section 8 of the original legislation contains the following language:

8. It shall be unlawful for any person to ride on any street car or vehicle, or upon a portion thereof, not designed or intended for the conveyance of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty.

Immediately adjacent to said paragraph is the marginal note, "Position of passengers in vehicles." The language "and no operator shall knowingly allow a person to ride on" was added by virtue of the 1951 amendment to the original act. Other than said amendment, the language of the statute is identical to the street car regulations contained in the Laws of 1928. Accordingly, it is concluded that the statute here in question is not applicable to nor was it designed, promulgated or enacted to apply to pickup trucks. This conclusion is further buttressed by an examination of *N.J.S.A.* 39:4-61, which provides:

No person shall ride upon the rear end of a vehicle, without the consent of the driver, and when so riding, no part of the person's body shall protrude beyond the limits of the vehicle.

It is, therefore, apparent that *N.J.S.A.* 39:4-61 inferentially permits a passenger, with the consent of the driver, to ride in the rear of a pick-up truck, provided no part of his body protrudes beyond the limits of the vehicle. The aforesaid statute is entitled, "Tailboard riding." Its language is identical to that contained in Section 11 of Article VII, chapter 281 of the Laws of 1928. To date, it has not been amended, revised or repealed. Reading the two statutes in *pari materia* leads inescapably to the conclusion that *N.J.S.A.* 39:4-69 was not intended to proscribe, nor does it proscribe, the conduct here in question.

With regard to the question of proximate cause, it is abundantly clear that the competent producing cause of decedent's death was not his riding in the rear of the vehicle in question. He did not fall off or out of the rear of the vehicle. Rather as respondent slowed the vehicle to a virtual stop, decedent climbed from the rear of the vehicle onto the running board and thereafter jumped or fell from the running board. The same result could have been obtained if decedent had been seated in the passenger seat of the vehicle, climbed through the opened window onto the running board and thereafter fell or jumped therefrom.

Therefore, even assuming *arguendo* that respondent's conduct in permitting decedent to ride in the back of his truck was a violation of statute, it would have to be demonstrated that the violation was the

proximate, direct and competent producing cause of the death to be actionable. It has long been held in this State that the violation of a motor vehicle statute is not negligence *per se*, but is a mere incident of negligence. Causation must appear in any case to connect the violation of the statute and the accident. *Moich v. Passaic Terminal and Transportation Co. Inc.*, 82 *N.J. Super.* 353 (App. Div. 1964). Proximate cause has been defined as being a cause which in the natural continuous sequence, unbroken by an efficient intervening cause, produces the result complained of and without which the result would not have occurred. *Fernandez v. Baruch*, 96 *N.J. Super.* 125 (App. Div. 1967). An act or omission is not regarded as the cause of an event if the particular event would have occurred without it. *Kulas v. Public Service Electric & Gas Co.*, 41 *N.J.* 311 (1964).

It is therefore concluded that the direct cause of decedent's death was his jumping or falling from the running board, and not his original placement in the rear of the pick-up truck. In short, there was a competent, efficient and unforeseeable intervening substantial cause for the ultimate accident in question, unrelated causally to decedent's placement in the rear of the pick-up truck. Therefore, even if it were to be assumed that the allowing of decedent to occupy the rear portion of the truck was a violation of statute, it was not demonstrated that the alleged violation in any way proximately caused, contributed to or was causally connected with the happening of the accident in question or with the death of the decedent.

Based upon the testimony heard and proofs adduced, I make the following

*FINDINGS OF FACT:*

1. Respondent was the driver of a motor vehicle on August 5, 1979, which vehicle was a 1950 Dodge pick-up truck.
2. Respondent permitted decedent to ride in the rear portion of said vehicle.
3. Decedent requested respondent to stop the vehicle in order that he might retrieve his hat, which had been blown off.
4. Pursuant to decedent's request, respondent slowed his vehicle to almost a complete stop.

5. Decedent climbed from the rear portion of the vehicle to the running board of the vehicle while the vehicle was in motion and prior to its being brought to a complete stop.

6. When the vehicle was almost at a complete stop, decedent fell from or jumped from the running board, thereby falling onto the pavement, as a result of which he sustained injuries and died two days later.

#### *CONCLUSIONS OF LAW*

1. Neither the pick-up truck in question nor the portion of said vehicle where decedent had been riding prior to his climbing onto the running board were demonstrated not to have been intended for the conveyance of passengers.

2. *N.J.S.A.* 39:4-69 does not prohibit passengers from riding in the rear portion of a pick-up truck.

3. *N.J.S.A.* 39:4-69 is inapplicable to the facts and circumstances herein.

4. *N.J.S.A.* 39:4-61 inferentially permits passengers to ride in the rear portion of pick-up trucks, provided no part of the passenger's body protrudes beyond the limits of the vehicle.

5. There was no violation of the statute in question.

6. There was no causal connection between the alleged violation and the death of decedent.

Neither a violation of the statute nor a causal relationship between the death and the alleged violation having been demonstrated, it is hereby **ORDERED** that the proposed suspension of respondent/licensee's driving privileges be and is hereby **DISMISSED**.

After reviewing this Initial Decision, the Division of Motor Vehicles on October 5, 1981, issued the following Final Decision:

The Division of Motor Vehicles hereby determines the matter of William W. Skuba, who was involved in a fatal accident on the highways of this State on August 5, 1979.

A Notice of Proposed Suspension was sent to respondent on March 7, 1980 charging him with violating *N.J.S.A.* 39:4-69 (allowing a person to ride on a vehicle not designed or intended for the conveyance of passengers) resulting in the death of David Slovinsky of Somerville, New Jersey.

Prior to this final determination, I have reviewed the administrative law judge's initial decision and the exceptions filed by the deputy

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attorney general. I agree with the conclusion of the administrative law judge and the opinion of the deputy attorney general that there is no causal connection between the motor vehicle violation and the death of the decedent. I do not, however, agree with the administrative law judge's conclusion that there was no violation of *N.J.S.A.* 39:4-69 by the respondent in this case.

The administrative law judge concludes in his initial decision that based upon an analysis of the source of law of *N.J.S.A.* 39:4-69, the provision of the aforesaid statute does not apply to pick-up trucks. The administrative law judge opined that since the source law of the statute in question is entitled "Street Cars," the same is not applicable to a pick-up truck.

The deputy attorney general took exception to the administrative law judge's conclusion in this respect and contends that the source law of *N.J.S.A.* 39:4-69 is entitled "Street cars or vehicles," and the word "vehicle" is defined as:

Every device in, upon or by which any person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracts.  
*L. 1982, c. 281, Art. 1 § 32.*

The deputy attorney general, thus concluded that since the source law applied to all vehicles, it applied to pick-up trucks.

I agree with the deputy attorney general's conclusion that *N.J.S.A.* 39:4-69 is not limited in its application to street cars but also embraces pick-up trucks under its generic term of "vehicle." Consequently, I believe that in the absence of any permanent fixtures or seats intended for passengers the bed portion of a pick-up truck is not designed or intended for the conveyance of passengers. Since respondent allowed decedent to occupy the bed portion of the pick-up truck he was operating, respondent's violation of *N.J.S.A.* 39:4-69 has been sufficiently established by a preponderance of the evidence.

In his exceptions, the deputy attorney general did not recommend any period of suspension in view of his concurrence with the administrative law judge's conclusion that there is no causal connection between respondent's violation of *N.J.S.A.* 39:4-69 and the fatality. Consequently, no period of suspension shall be imposed on respondent's driving privileges.

It is, therefore, on this 5th day of October, 1981, **ORDERED** that the case against William W. Skuba be and the same is hereby **DISMISSED**.