

DO LORRY DRIVERS HAVE A CLAIM FOR DAMAGES FOR NOISE-INDUCED HEARING LOSS?

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It was just over 25 years ago that the first claims for compensation for noise-induced hearing loss were made in the UK. The first claim to come to trial is thought to have been Down v Dudley Coles Long Ltd [1] in January 1969, when Browne J. held the defendants were not negligent. Less than 3 years later, the plaintiff succeeded in Berry v Stone Manganese Marine Limited [2]. Since then there have been hundreds of thousands of deafness claims dealt with through the courts, or settled by Union/Insurance agreements.

EXTENT OF THE PROBLEM

The cost of deafness claims has been substantial. By way of illustration, it was said in 1980 that no fewer than 8,661 deafness claims had been made against British Rail[3]; and by 1989 some 16,080 claims had been settled against Harland and Wolff at a cost of almost £17 million [4]. On Merseyside, it was said in 1989 that there were over 22,000 industrial deafness claims pending, and if dealt with individually they would involve the whole of the judiciary and other civil, criminal and family work would be suspended indefinitely[5]. Perhaps the volume of general deafness litigation is now slowing down, but industry could be facing another batch of deafness claims from drivers of commercial vehicles in the 60's and 70's. Since there were over half a million lorries in 1970, the potential cost to industry could be substantial.

VEHICULAR NOISE

It has been known for sometime that lorries could be noisy. The Wilson "Noise Report" concluded that in London, road traffic was the predominant source of annoyance[6]; and Chapter 6 is devoted to vehicular noise. This concern was from the environmental or external point of view, but it is a small step to conclude that if a vehicle could be noisy externally, it was likely to be noisy inside the cab, particularly in the 60's when the engine was positioned inside the cab alongside the driver.

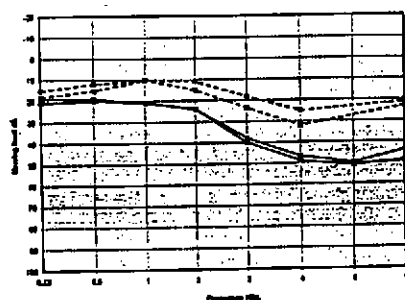
Early research confirmed that vehicles could be noisy. In 1966 Professor Priede [7] reported on internal noise measurements of 15 commercial vehicles of various sizes at maximum rated engine speeds, with noise levels ranging from 87 to 100 dB(A) in modern terms. He found that in two thirds of the vehicles tested, the noise exceeded the deafness risk criterion, and concluded that in some vehicles the noise could be high enough to cause permanent damage to hearing when subjected to it for long periods. Mills and Aspinall also researched the problem for MIRA in the 60's, and concluded that when considering the worst conditions which probably occurred in the cab of a forward control vehicle, there was little doubt that very high sound levels could occur under certain driving conditions, and one must consider the possibility of some reduction in hearing acuity[8].

Precise noise measurements for particular vehicles are rarely available prior to the 70's, and such evidence as there is thereafter suggests that noise levels could vary from vehicle to vehicle and would fluctuate considerably depending on the nature of the journey, type of road, speed, weather conditions etc; but the totality of the evidence suggests that maximum noise levels for the heaviest vehicles could have been in excess of 90 dB(A).

CAN LORRY DRIVING CAUSE HEARING LOSS?

In 1975, a detailed study into the cause and effect relationship of hearing loss and vehicular noise was conducted in America by Nerbonne and Accardi[9], who considered a sample of 81 subjects, screened from 130

drivers having inter alia no significant history of excessive noise other than driving, a minimum of one year's driving experience, and a maximum age of 45 years. In this country in recent years, a number of claims have been brought by lorry drivers, often supported by the T&GWU. A smaller sample of 16 litigated driver deafness claims has been considered, rigorously screened from a population of 32 claimants to exclude any alternative medical explanation for hearing loss other than presbycusis. These results were compared with those of Nerbonne and Accardi, and the averages are shown graphically as follows, Fig.1: -



— Nerbonne & Accardi results mn. age 40.1 years.
 - - - Recent UK study of litigated driver claims mn. Age 55+ years.

The shape of the audiogram in the recent study gives a reasonable fit to that of Nerbonne and Accardi. As one would expect, the increased age and driving experience of the present sample has resulted in lower threshold levels, but there is a slight notch on both studies at 4 or 6 kHz, characteristic of noise-induced hearing loss.

It will be for the plaintiff in any individual case to establish a causative link between his hearing loss and driving. In the early deafness decision of McIntyre v Doulton & Co Ltd [10], the plaintiff was found to be suffering from noise-induced hearing loss, and it was accepted that noise levels in the joinery shop where he worked for a time were of the order of 93 dB(A) for the period he worked in the shop; but the Trial Judge was not satisfied that the plaintiff had established that any part of his hearing loss was due to the noise in the joinery shop.

If the plaintiff succeeds in establishing causation, the defendants could still argue that the hearing loss occurred without negligence on their part. This defence centres on state of knowledge and state of the art arguments, namely that the defendants could not be expected to have known that driving could cause damage to their employee's hearing, not least because of the difficulties in measuring widely fluctuating noise in the 60's; and even if they did have that knowledge, there was nothing they could have done about it until the 70's.

Nevertheless if their evidence is to be believed, some drivers would appear to have suffered from noise-induced hearing loss after a lifetime of driving, sometimes without any other apparent cause, and judges are sometimes reluctant to allow injured plaintiffs to leave the court empty handed.

CONCLUSION

A number of claims by lorry drivers for damages for noise-induced hearing loss have been made in this country over recent years. Some have been discontinued, others have been settled sometimes on a compromise basis, and to date there seems to be a reluctance on both sides to bring these claims to trial.

REFERENCES

- [1] Down v Dudley Coles Long Limited (1969). Noted at 35 Modern Law Review 195.
- [2] Berry v Stone Manganese Marine Limited [1972] 1 Lloyd's 183
- [3] Kirkup v British Rail Engineering Ltd. The Times 21.6.1983
- [4] Baxter v Harland and Wolff Plc [1990] IRLR 516.
- [5] Page v Smith Coggins Limited and Mersey Docks and Harbour Co (1989) Unreported
- [6] Sir A. Wilson (Chairman) "Noise - Final Report". Cmnd. 2056 paras. 100 and 101.
- [7] T. Priede. "Noise and Vibration in Commercial Vehicles." ISVR Southampton University (April 1986) p. 144.
- [8] C.H.G. Mills and D.T. Aspinall. Chapter 10 "Commercial Vehicles - Engineering and Operation". Inst. Mech. Engrs. London (1967) pp. 208-211.
- [9] M. Nerbonne and A. Accardi. "Noise-Induced Hearing Loss in a Truck driver Population" J. Auditory Research (1975) 15 pp. 119-122
- [10] McIntyre v Doulton & Co Ltd (1978). Unreported transcript of judgment.