

**7.13 NEGLIGENCE – INTOXICATION** (Approved 5/91)

**A. In General**

A person who voluntarily has become intoxicated is required to act with the same care as a person who is sober. So long as such a person who is voluntarily intoxicated acts with the same degree of care for her/his own safety which an ordinary careful and sober person would exercise under the same or similar circumstances, then the intoxicated person is not comparatively negligent. But if you find that, by reason of her/his own voluntary abuse of intoxicating liquor, the plaintiff exposed herself/himself to a dangerous situation and sustained bodily injuries which a sober person in the exercise of ordinary foresight and care would have avoided, then you find that the voluntary intoxicated person has acted negligently.

***NOTE TO JUDGE***

It has been held that negligence is not necessarily to be inferred from proof of intoxication and that a drunken person may be careful. *Bageard v. Consolidated Traction Co.*, 64 N.J.L. 316 (E. & A. 1900).

**Cases:**

*Petrone v. Margolis*, 20 N.J. Super. 180, 188 (App. Div. 1952); *Bowman v. C.R.R. of N.J.*, 27 N.J. Super. 370 (App. Div. 1953).

**B. Riding with Intoxicated Driver**

A passenger in an automobile must act with appropriate care for her/his own safety as the demands of the situation reasonably require. To determine whether or not the plaintiff was negligent by voluntarily riding in a motor vehicle which was operated by an intoxicated person, you must decide whether an ordinary cautious and careful person, under the same or similar circumstances, would have risked riding with the driver. You must consider three factual issues:

1. Did the plaintiff voluntarily ride in an automobile operated by a person under the influence of intoxicating liquor/drugs after the plaintiff knew, or, in the exercise of reasonable care, should have known, of the driver's condition?
2. Would a reasonably cautious and careful person have avoided the risk of riding with such a driver under the same or similar circumstances?
3. Was the intoxication of the driver a substantial contributing cause of the incident and the resulting injuries?

If the answer to the three questions is yes, then the plaintiff was comparatively negligent. If you answer any of the three questions no, then the plaintiff was not comparatively negligent.

**Cases:**

*Petrone v. Margolis*, 20 N.J. Super. 180, 188 (App. Div. 1952); *Bowman v. C.R.R. of N.J.*, 27 N.J. Super. 370 (App. Div. 1953).