

Transport of children with chair lifts during ski instruction

1. Introduction

Ski and snow sport instructors normally don't discuss problems of ascending devices and their risk, but mainly problems of ski and snowboard techniques. Today I will present the problem of transportation of children during ski lessons. The item may seem to be banal, but the consequences of an accident in the domain or in relation with transportation may become quite serious. The main causes are mostly related to small ascending devices' as tow lifts for children with a low-lying cable or chair lifts. I noticed numerous cases with partially serious injuries: as an example the fall of two girls in Mayen-de-Riddes of a chair lift¹, the fall of two children of a chair lift in Oberiberger und two accidents in relation with conveyers in France and Austria, where persons were seriously injured or even killed.

I will mainly limit my presentation to chair lifts and only explain the problems of conveyers in chapter 7.

2. Problems

For some years, at least in Switzerland, a trend may be observed, which shows that ropeways and ski lifts are replaced by aerial ropeways of various conceptions, in most cases to chair lifts². The success of snowboarding, together with the possibility

¹ NZZ, 22 of March 2004, Page 11.

² This is also due to the fact that the crossing of pists and ski lifts is no forbidden for new ski lifts (IKSS information)

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to include protection from bad weather conditions (hoods) and a better comfort, may explain this trend. With this change (especially in the area for beginners), ski schools and instructors miss the possibility to use a safe and easy transport for young children and beginners (when leaving the children's area), for their first longer down-hill course. This problem is especially increased for classes of seven to ten children. Considering the fact that even just 4 to 5 years old youngsters are reasonably technically prepared for their down-hill runs, the ski school is confronted to an increased liability and methodical problem.

3. Types of ropeways

Various ropeways are known, as: a) aerial cableways with closed cabins³, b) revolving cableways with fixed or automatic clutches⁴. As far as we know, no problems aroused from closed cabins⁵. On the contrary problems are well known from small cabins (cabin lifts) and chair lifts (chair lifts)⁶. The fact that more and more large ski arenas give access to the slopes with chair lift of high performance, with automatic clutches, increases the problems. Children are confronted with numerous additional difficulties (mass transportation). The Swiss ropeway association has identified these additional risks.⁷

³ The cable moves the cabins up and down: see Hans-Kaspar Stiffler, Swiss snow sport legislation, third edition, N. 224.

⁴ The revolving cable moves the cabins from one station to another with automatic clutches, Stiffler, a.a.O., N. 225 or fixed clutches, Hans-Kaspar Stiffler, a.a.O., N. 226.

⁵ Carlo Portner, legal problems: Bergführer-, Skilehrer- und Bergrettungswesen, S. 13.

⁶ Carlo Portner, a.a.O., points out that the use chair lifts should be avoided!, when ever possible

⁷ Internal note of Swiss cableways,, 2/2003, children on chair lifts, risks and responsibility.

4. Legislative relations between passenger (child) and carrier

a. Contract of transport

Each passenger concludes a contract with a carrier when buying his ticket (single ticket or day pass or week pass). The transportation contract is only regulated for the transport of goods but not for passengers, as far as Swiss legislation (OR = Code of Obligation)⁸ is applicable.

The licensed Swiss cable ways are regulated in the transportation bill (Federal law: [BG] regulating public transportation, 4th of October 1985, SR 742.40).

For cable ways without a license,⁹ the **Mandatory Law** is applicable, according to OR (Art. 394 ff.). The carrier is legally bounded to transport passengers in a correct way and all passengers have to comply with the conditions of transport.

b. Transport of children

aa) Carriers liability in case of transport of children

The chair lifts and cable ways, with a federal license are regulated by federal law (EHG) concerning the liability of railway and steamship companies, which fixes its liability for exposures to danger¹⁰. Licensed cable ways are strongly regulated in Switzerland and it must be assumed that the carriers have the obligation to strictly observe and control the transport conditions when transporting children. In Switzerland children less than 6 year old child must normally be accompanied by adults (in charge of the child). Neighbouring countries rather fixes the height (Italy and Austria) or school age (Germany) as criteria. For employees of the carrier it is difficult to apply or control the observance of one or the other criteria – age or height - just by visual estimation.

⁷ Hans-Kaspar Stiffler, a.a.O., N. 254

⁹ In few words this concerns the category of small installations (Transport for alpine pasture and non commercial transportation etc.) and ski tows.

When controlling how the transport of children is regulated in the strongly regulated sector of Swiss cable ways, we realise that this problem has been forgotten in its ordinances, implementing regulations and model regulations of more than 100 pages. In paragraph 705.1 the implementing regulations of the ordinance for revolving cable ways (with automatic clutches), just fixes that the chairs must be designed (including the safety frame) in a way to avoid normally behaving passengers to fall out (!). Concerning children, it is just mentioned that the safety frame (paragraph 705.4.1) must be easy to handle also for children¹¹. The precise wording of the hint regarding the transport of children in the model operation regulation of the federal office for transportation (BAV), is given in paragraph 3.2.1:

The transport of children, less than 6 year old, is only allowed, if they are accompanied by adults. Exception may be allowed, if the children are previously instructed how to behave in the vehicle and especially warned about the inherent dangers of chairs. The responsibility of persons, accompanying groups of children, has to be pointed out.

The model regulation also prescribes, that employees must close the safety frame, when children or pedestrians (without skis) are transported. The staff must pay a special attention when children take or leave a chair. A reduction of speed, or even a short stop, may be necessary¹². For adult skiers, only surveillance of staff is required¹³. These regulations make clear that the carrier has an obligation to pay due care for the transport of children. It is not specified in paragraph 3.2.1, if the instruction has to be given by the staff, or by a third person. Undoubtedly the snow sports schools are in a good position, as it is their duty to instruct their young guest as it is normally done by routine. On the other side the help of the staff is mandatory. They have to close the safety frame and must adapt the speed (if not automatically done), in any case of occurring difficulties.

¹⁰ According to the draft of the new federal law for cable ways transporting passengers (Art. 2 i.V.m. Art. 22) this will also be valid for I lifts licensed by the cantons.

¹¹ Explanatory regulations of the federal law regarding revolving lifts

¹² Paragraph 4.6.4.3 of the model regulation 1990 BAV

¹³ Model regulation: BAV 1990 Paragraph 4.6.5.3.

As a first intermediate conclusion, we may notice that the carrier has a special obligation, to pay due care (according to Swiss regulations) in case of transport of children. The details are given by regulation.

bb) Responsibility of the parents or other persons in charge

In cases, where children without disposing capacity¹⁴ are transported, the transport contract is concluded between the carrier and the adult in charge, who buys the ticket. According to article 296 of the Swiss Civil Code the parents as holder of the parental custody are responsible for their children. Without going into details, the same holds "grosso modo" for Germany and Italy. It is evident that the responsible person doesn't just have to pay the ticket, but has to make sure that the child behaves in a correct manner, in conformity with the transportation regulations.

For snow sports instruction this responsibility and custody is transferred from the parents to the snow sports school and its instructors. We will not go into details concerning problems occurring when the contract is concluded with the snow sports school. The person taking care for a child, for a given time and from its parents, is clearly responsible for it¹⁵.

What happens if a person takes care of a child by coincidence? That may often happen for main transportation. It is normally admitted that an adult sitting by coincidence next to a child on a chair, has no further responsibility than the legal basic duty to help in case of emergency (guarantor duty), except if he has agreed explicitly¹⁶ to take care. From the point of view of the ski school, especially for those with a separate entry to the lift, accompanying adults taking a chair by chance and just by coincidence, are normally not aware that they might could have to go up with a child.

On my point of view, it may therefore well be left open, if the unknown adult, voluntarily taking a child on the same chair, takes over a responsibility and a duty or custody.

¹⁴ Incapacity to act assumes majority (18 for CH) and a person having disposing capacity for the action to be undertaken

¹⁵ The Canadian Ski Instructors Alliance declares: The instructor must be prepared to undertake the care and supervision of children under his or her responsibility in the same manner as would a careful or prudent parent in similar circumstances. (Skiing and teaching methods, Canadian Ski Instructors Alliance, Kanada 2000, Ziff. 5.3).

¹⁶ The same goes for Jürg Schröttner, Legal problems in transportation of children with cable lifts, paper presented the 9th of October 2002 during the OITAF Seminars, page 5.

Swiss legislation, according to its tendency, will agree as long a clear voluntary decision has been taken. So it is evident that the ski or snowboard instructor must ask explicitly the unknown accompanying adult: “*Do you agree to take along one of my pupils with you?*” Only if the answer is a clear YES, the accompanying adult takes over more responsibility than the classical duty to help in case of emergency.

As a second intermediate conclusion we may notice, that an accompanying person (by coincidence) only takes over the responsibility and custody from the ski instructor for the transport of a child, if he has explicitly accepted to do so.

5. Responsibility of the instructor

a. The snow sports instructor and the extend of care he takes over

According to the rules of employment contract, the snow sports instructor is responsible for his guests, as far as the accurate and correct carrying out of his assigned function and the care to be observed is concerned¹⁷. A perfect lesson includes the instruction of the guest how to use a ski, chair or cabin lift¹⁸. The instructor therefore has to take into account the missing maturity, the lack of understanding and the high spirits of children and youngsters and to prepare his lessons accordingly¹⁹. It is evident that the instruction how to use transportation in today’s mass transport is an important responsibility²⁰. Neither the specific literature, nor the administration of law deals with this problem. This represents a positive point for them. Very few cases of relevant judicial problems in the domain of snow sports schools, children’s instruction or transportation are known. Since 1977 no new case has been published in Switzerland.

As a third intermediate conclusion, we may notice that correct and careful instruction (careful execution of work) includes the instruction of a correct use of tourists’ transportation. The same goes for Austria, Canada²¹ and Switzerland.

¹⁷ Hans-Kaspar Stiffler a.a.O. N 659.

¹⁸ Hans-Kaspar Stiffler a.a.O. N 666.

¹⁹ Hans-Kaspar Stiffler a.a.O. N 665, and Portner a.a.O, S. 8ff.

²⁰ I found no mention in the specialised literature; it seems that all authors still live in the ski lift period. The same goes for the newest book for ski instruction (Teaching aids for the instruction of children 2003).

²¹ Canadian Ski Instructors Alliance: Skiing and Teaching Methods, 2000, 5.2

c. Insertion in teaching

How is this responsibility to be embedded in teaching? A first condition request that the instructor is aware of the transportation conditions of lifts his guests will have to use. For local and experienced instructors this may represent no problems, but it enhances the responsibility for ski schools to prepare new instructors, especially auxiliary ones, regarding local uses and regulations. The head of ski schools has therefore a special responsibility.

As a first point the instructor must present the lift, with its characteristics to his pupils, in order to avoid surprises when they use it for the first time. The explanation of the transportation, or even of the technical background for interested children, must be understandable for kids and increase their comprehension. Having done this, the practical use of the lift must be shown. I recommend taking two classes together in order to guarantee that two persons may interfere, if needed. It is also recommended to avoid daily overcrowded periods for the first ride. Before going on with the transportation problems, I'd like to say a word concerning the responsibility of the carrier.

d. First up-hill ride with a group of children

Underway the instructor is normally alone with his class²². Special measures have to be taken for the first transport with a chair lift. Taking account of both responsibilities (teachers and carrier ones), an agreement has to be found with the lift employees, in order to ensure a safe way to get onto and out of the chair. The needed reduction of speed of a lift with fixed chairs is well precised. According to Swiss legislation the regulations request the support of carrier and its employees. It is quite obvious this support can not be requested the 26th of December at 11 o'clock. A calm period should be chosen together with the carrier. The Swiss statistics show that most incidents are due to unclosed safety frame, or other safety devices, when getting onto the chair or shortly afterwards. The constant supervision of children, getting on or of chairs, is mandatory for carriers. Therefore the wish of ski schools and instructors for

²² In Canada classes are mostly accompanied by two instructors. I don't know if this is due to the degree of preparation of the instructor or to most severe liability problems in North America.

a special supervision of children, using the lift for the first time, should be welcomed by the carrier.

What about the instructor: shall he go as the first or the last one? For the up-hill ride his duty to supervise personally that children leave immediately the zone of arrival when arriving, as well as the duty of the carrier to supervise the departure, ask him to start as the first one²³. If he decides to go as the last one, the employee of the zone of arrival must be informed about the arrival of inexperienced children. He has to leave his small hut, to closely supervise personally the children leaving the chairs. Additionally the instructor must inform the children that they have to leave the arrival zone immediately and to wait out of it. This clearly is part of the instruction how to use a chair lift.

A general recommendation cannot be given; the right choice depends of the type of lift and the topography of the arrival zone. Ideally the best choice is to let two instructors guide a class on its first ride, often by putting temporarily two classes together.

5. Result

Assembling our intermediate conclusions, we realize that on one hand the accompanying person is obviously responsible in place of the parents and has the duty to assume it carefully. On the other hand, the carriers must take special care when transporting children. In Switzerland it is a legal rule that the carriers employees have to supervise the children getting onto the chairs and especially to make sure, that the safety frame is correctly closed (fully automatic systems excluded).

So finally we get a precise conclusion from imprecise facts and dates. Only the cooperation of both, ski instructor and carrier brings a positive result: Only a child carefully supervised by the ski school and the carrier will keep his first ride on a chair lift in fond remembrance. And this child will certainly come back with pleasure.

²³ In all cases where the arrival is only video controlled, he must start as the first one.

7. Special lifts: Mini-lifts and conveyers for kids

These mini-lifts and conveyers are mostly placed in the children area. They are mostly temporarily installed during the winter season by the ski school and have a cable very close to the snow surface, with or without hand grips. Normally no governmental control is required.

The conveyers for children are meanwhile well known and installed in nearly all countries, of various lengths and often joined together. Both devices present identical problems. They are mostly installed by unskilled persons, the necessary safety devices carelessly mounted and the periodical control or adjustment are mostly missing (for instance after a heavy snow fall).

Most accidents happen at the end of the lift or conveyer; where the risk exists for children and cloths to be clamped in the guide roller, provoking heavy injuries due to the acting forces. This mostly happens when the safety stop line is not or incorrectly mounted, or the emergency stop is disconnected. For conveyers, we know similar accidents with clothes or parts of them, clamped in the return pulley, leading to heavy injuries, even to strangulations²⁴. As far as I know, the cause was mostly inherent to boarding devices wrongly arranged, allowing parts of clothes to be clamed in. Some problems also occurred by missing supervision, essentially when the conveyer may be started out of presence of employees.

The basic liability for children and parents is given by the contractual liability of the ski school, if the accident happens in its area with an additional penal liability, based on the regulation of risk²⁵ and also a work liability, depending of the connection with the soil. In Switzerland such a case has recently been judged²⁶ (article 58 of the code of obligation OR). Last but not least a child may enter an action against the manufacturer (especially for conveyers for children) on the base of the product liability.

²⁴ Accidents in Albertville 2004 and Schruns 2003

²⁵ Persons crating dangerous situations must take all measures in order to avoid occurrence of the danger..

²⁶ BGE 126 III 113.

Due to the heavy risk known from registered accidents and their increased number, snow sports schools and their directors should be very careful when such small lifts and conveyers are installed, and operated on their site. A correct and careful instruction of the persons in charge for their operation (by the manufacturer if needed) is absolutely necessary. The mounting must conform in every point to the written instructions of the manufacturer. If such lifts are connected with the soil, the manufacturer's liability is also engaged, which in Switzerland is organized as a very strict causal liability. So, the best way to solve this problem is to entrust skilled persons with the mounting and to assume the maintenance with a high priority. Additionally the liability insurance must cover this type of incident.

Finally I would like to insist on the fact, that a careful perception of the activity as ski instructor for children guarantees the transmission of fun and safety. Much harm may be avoided, if we all pay the necessary attention to this fact. With the increasing number of artificial installations, including the small lifts in our superb ski arenas for children, we as operators of these facilities must realize our responsibilities. This includes the checking of the correct design and also to take care very seriously of all safety and liability problems. Insurance companies may certainly support us in our duty. The recognition of the problem is a first step to solve the problem.

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