South Carolina Law Review

Volume 3 | Issue 3 Article 8

3-1951

Recent Cases

Melvin K. Younts

R. E. Grayson

Malcolm E. Rentz

RECENT CASES

HIGHWAYS – INSURANCE – Right of Indemnified Claimant to Sue Highway Department. Plaintiff attempted to transport some heavy road machinery across the Inland Waterway on a ferry operated by the South Carolina Highway Department. The machinery was damaged when submerged due to alleged defects in the ferry. Plaintiff was indemnified by an insurance company and now brings suit against the Highway Department under Section 5887 of the 1942 Code of Laws for South Carolina. Defendant contends that plaintiff is barred from bringing this action because he has been indemnified by the insurance company and is not the real party in interest. A demurrer to the defenses was sustained. On appeal, HELD, affirmed. One whose property is damaged by defects in the highway system may maintain an action against the Highway Department even though he has been indemnified and the action is prosecuted merely for the subrogee's benefit. *Jeff Hunt Machinery Co. v. South Carolina State Highway Department,* 217 S. C. 423, 60 S. E. 2d 859 (1950).

It is elementary that a statute must be construed to effectuate the intent of the legislature. *Sanders v. Aetna Life Insurance Co.,* 95 S. C. 36, 78 S. E. 532 (1913); *Pickens v. Maxwell Bros. & Quinn,* 176 S. C. 404, 180 S. E. 348 (1935). Any legislative act in derogation of a state's sovereign right of immunity from liability and suit are to be strictly construed, but not to such an extent as to defeat legislative intent. *Rushton v. S. C. State Highway Dept.,* 207 S. C. 112, 34 S. E. 2d 484 (1945). From this strict interpretation the court has long stated that a surety, after settling with the insured under the terms of a policy for injuries received due to defects in the state highway, could not sue the State Highway Department in its own name under the theory of subrogation, since Section 5887 of the S. C. Code of 1942 limits such actions to a "person, firm or corporation who may suffer . . . damage to his . . . property . . ." *U. S. Casualty Co. v. State Highway Department,* 155 S. C. 77, 151 S. E. 887 (1929). In the ordinary case where an insurance company pays a claim under a policy and becomes subrogated to the rights of the insured, the insurer may still bring the action against the party causing the injury in the name of the insured since an indemnified insured is regarded as trustee for the insurer. *Mobile Insurance Co. v. Columbia Ry.,* 41 S. C. 408, 19 S. E. 858 (1894). The insured still remains the real party in interest

despite the fact that he has been compensated by the insurance company. S. C. CODE OF LAWS § 397 (1942); *People's Oil Co. v. Charleston Ry.*, 83 S. C. 530, 65 S. E. 733 (1908). A payment by an insurance company for part or all of a loss suffered by the injured party does not reduce the liability of the party causing such damage. *Farmers Mercantile Co. v. Seaboard Air Line Ry.*, 102 S. C. 348, 86 S. E. 678 (1915). It is no defense in an action against a wrongdoer that the party seeking recovery was insured against the loss and recovered the amount of such loss in whole or in part. *Lyons v. Freeborg*, 3 Wash. 2d 308, 100 P. 2d 1041 (1940). Recovery was recently allowed an insurance company who brought suit in its own name against the United States upon a claim arising under the Federal Tort Claims Act to which it had become subrogated by payment to the insured. *United States v. Aetna Casualty & Surety Co.*, 338 U. S. 366, 70 Sup. Ct. 207, 94 L. Ed. 171 (1950).

The holding in the principal case is the only feasible way that would sustain justice. Had it ruled otherwise it would have prohibited a citizen from exercising his rights granted by the state merely because the citizen was prudent and had foresight enough to protect his property by insurance. The plaintiff fulfilled all requirements necessary to entitle him to recover and the state is absent of right to say what can or can not be done with the money after recovery. If the court had rejected the claim, it would have been in violation of the Constitution as an interference with a lawful contract between individuals. A contract existed between the insurer and insured whereby the insured granted the insurer the right to recover from a wrongdoer who harmed him if the insurer would pay for the insured's injury. This situation would be unquestioned if an amendment to Section 5887 of the Code would allow the subrogee to sue.

MELVIN K. YOUNTS.

WORKMAN'S COMPENSATION — CURIOSITY. — Employee Injured by His Own Curiosity Entitled to Compensation. Claimant, a garage employee, during working hours, but while he had nothing to do, was sitting in the front seat of a police automobile upon which another employee was working. Claimant opened the glove compartment and took a tear gas bomb therefrom. Not knowing what it was, he pulled the cotter pin releasing the contents which exploded, injuring claimant's eyes and impairing his eyesight. The Industrial Commission denied compensation on the ground that the in-

jury did not arise out of and in the course of employment; the circuit court affirmed the commission's award. On appeal, HELD, affirmed. Where an employee, while awaiting a work assignment during working hours at his place of employment in idle curiosity tampers with a strange object which is present by reason of the nature of the employer's business, and is injured thereby, he is entitled to compensation as a matter of law. *Jordan v. Dixie Chevrolet, Inc.*, ...S. C. ....., 61 S. E. 2d 654 (1950).

The primary problem facing the court in the instant case is whether there can be any liability on the employer when the injury was caused solely by the employee's curiosity, at a time when the employee was not furthering the employer's business except by being on the job. An injury arises in the course of employment within the meaning of the Workman's Compensation Act when it occurs within the period of employment at a place where the employee reasonably may be in performance of his duties and while he is performing those duties or engaged in doing something incidental thereto. *Schrader v. Monarch Mills,* 215 S. C. 357, 55 S. E. 2d 285 (1949). The employee's claim is not defeated by contributory negligence or assumption of risk. *Johnson v. Merchant's Fertilizer Co.,* 198 S. C. 333, 17 S. E. 2d 695 (1942). Defenses against the claim are intoxication of the employee, or willful intention to injure himself or another. *Reeves v. Carolina Machinery & Foundry Works,* 194 S. C. 403, 9 S. E. 2d 919 (1940). There is some division of judicial opinion as to the nature and degree of the relation of the injury to the employment. The more conservative view being that the causative risk or danger must be inherent in, or essentially connected with, the employment itself. *Dallas Mfg. Co. v. Kennemer,* 243 Ala. 42, 8 So. 2d 519 (1942). While according to the liberal view, an injury may be regarded as arising out of the employment if it results from a risk or danger to which the workman is exposed by reason of being engaged in the performance of his duties, although such danger is not inherent in and has no necessary or essential connection with the particular employment. *Gonier v. Chase Co.,* 97 Conn. 46, 115 Atl. 677 (1921). Deviation from duty, caused by the curiosity of the employee, would not bar compensation under the latter or more liberal view. *Derby v. International Salt Co.,* 233 App. Div. 15, 251 N. Y. S. 531 (1931). On the other hand there would probably be no compensation allowed under the conservative view. *Cennell v. Oscar Daniels Co.,* 203 Mich. 73, 168 N. W. 1009 (1918). There have been no cases in this state involving curiosity, however, the Court has more or less committed itself to the liberal

view; "The words 'course of employment' as used in the Workman's Compensation Act should be broadly construed so as to avoid denial of awards for any period when the employee is actively engaged in working for the employer or while doing something reasonably incidental to his employment". *Palfrey v. Oconee County,* 207 S. C. 433, 36 S. E. 2d 297 (1945). Also, the court in speaking of injuries which arise because of employment, in order to find the scope of employment says, "The act should be construed with reasonable liberality". *Eargle v. S. C. Electric & Gas Co.,* 205 S. C. 423, 32 S. E. 2d 240 (1944). In many curiosity cases there is, at least, an implied condition that to deny compensation, there must have been knowledge by the employee that the situation was definitely dangerous. *Bernier v. Greenville Mills, Inc.,* 93 N. H. 165, 37 A. 2d 5 (1944). However, the case which is heavily relied on in the instant case does not mention knowledge, but states that an injury arises out of the employment if it arises out of the nature, conditions, obligations, or incidents of the employment; in other words, out of the employment looked at in any of its aspects. *Caswell's Case,* 305 Mass. 500, 26 N. E. 2d 328, 330 (1940).

To one accustomed to tort actions against the employer, the instant case looks illogical. However, when one looks at the fact that the employer, under the Workman's Compensation Act, is actually an insurer and that liability is not based on any fault of his own, then the results of the case will appear to be more in keeping with justice. The trend in the past several years has been to allow compensation in similar cases, and to call this a liberal view does not seem to be a proper usage of language. The Act was designed to protect workmen while on the job, and to say that this man was not on the job would not be a true statement by any means. Curiosity is one of the most natural characteristics and the exercise of one's curiosity can by no means be called a willful intention to injure himself or another, especially when there is no knowledge of danger. Since there is nothing to establish that the employee was not in the course of employment and there is no defense which will negative an award, as the Act now reads, there could unquestionably be no other decision than that at which the court arrived.

R. E. Grayson.

WILLS – COMPROMISE OF WILL CONTEST. – Validity Where Minors Are Involved. Testator by his will left the bulk of his estate to his second wife and her children to the exclusion of his own children and heirs at law. The heirs at law moved to have the will proved in solemn form and contested it on the grounds of undue influence and mental incapacity. A compromise agreement was entered into between the heirs at law and the beneficiaries under the will which set forth the exact rights, properties and benefits which would come to all devisees or beneficiaries under the will and to all the heirs at law. This action was brought in equity to confirm and enforce the agreement since minors are interested in the estate. The lower court sustained the compromise agreement and the guardians *ad litem* of the infants appealed to submit the interests which they represent to the court of last resort. HELD, Affirmed. The compromising of a *bona fide* will contest is valid and binding on the parties to the agreement; and if minors are involved, a court of equity will confirm and enforce such agreement provided they are before the court and their rights and interests are not injuriously affected thereby. *Peoples National Bank of Rock Hill v. Rogers,* ....S. C. ...., 61 S. E. 2d 391 (1950).

A compromise is an agreement made between two or more parties as a settlement of matters in dispute. *Durham v. Wadlington,* 2 Strob. Eq. 258 (S. C. 1848). The compromise of any matter is valid and binding, not because it is the settlement of a valid claim, but because it is the settlement of a controversy. *Smith v. Farra,* 21 Ore. 395, 28 Pac. 241 (1891). The beneficiaries under a will and the heirs at law of the testator have the authority to compromise a contest involving the validity of the will and it is binding on the parties. *Seaman v. Colley,* 178 Mass. 478, 59 N. E. 1017 (1901). A *bona fide* agreement by one interested in the estate of a testator, to refrain from contesting the will, is valid. It is not void as against public policy, since it lessens litigation; and the forbearance to sue, being a detriment to the promisee, is a sufficient consideration to support the promise. *Utermekle v. Norment,* 197 U. S. 40, 25 Sup. Ct. 291, 49 L. Ed. 655 (1905). Whether the litigant would have succeeded is not the test in determining the validity of a compromise agreement. *Seaman v. Seaman,* 12 Wend. 381 (N. Y. 1834). The only elements necessary to a valid agreement of compromise are the reality of the claim made, and the *bona fides* of the compromise. *Grandin v. Grandin,* 49 N. J. L. 508, 9 Atl. 756 (1887). Mutual promises have been held to be sufficient consideration for an agreement of compromise. *Ford's Estate,* 185 Pa. St. 420, 39 Atl. 1106

(1898). Love and affection and the preservation of family harmony among other things, were stated to be a consideration for a family agreement. *Bunn v. Bartlett,* 54 Hun. 639, 28 N. Y. 239 (1889). Compromise agreements have been held to be valid when made before the will was read. *Brakefield v. Baldwin,* 249 Ky. 106, 60 S. W. 2d 376 (1933). The court has power to sanction compromises in the settlement of estates, or litigations generally, in which the property rights of infants are concerned, and if court approves a compromise after an examination of the facts, the judgment or decree is binding upon the infant. *Metzner v. Newman,* 224 Mich. 324, 194 N. W. 1008 (1923). A court of equity is bound to see that infants' rights and interests are not injuriously affected by a contract of compromise. Infants must be represented by guardians *ad litem* and must have their day in court. *Reynolds v. Brandon,* 50 Tenn. 593. A court of equity will not decree specific performance unless the compromise contract is fair, just and equitable, or if it fails to express the true agreement of the parties by fraud, accident, or mistake. *McChesney v. Smith,* 105 S. C. 171, 89 S. E. 639 (1916). Where an attorney acted upon an erroneous opinion of the law in signing a compromise agreement, the devisee cannot have the agreement set aside on the ground of mistake. *Kirkland v. Moseley,* 109 S. C. 477, 96 S. E. 608 (1917). Where a compromise of a doubtful right is fairly made between the parties, whether the uncertainty rests upon a doubt of fact, or a doubt in point of law, if both parties are in the same ignorance the compromise is equally binding, and cannot be affected by any subsequent investigation. *White v. Hewitt,* 86 S. C. 576, 68 S. E. 820 (1910).

A compromise may seem harsh upon its face if one only looks at what the takers under the will would have received. But it is the common sense and the equities involved, the saving of time and expense, and the preservation of family peace and harmony that make a compromise bearable to the conscience. The case at hand offers for consideration the delicate question of an agreement of compromise where minors are involved. Surely their interests must be studied and passed upon with care. They must be protected against those who in the gratification of their own selfish desires would sacrifice the rights of those not in the realm of knowing. The courts should never treat this matter lightly by affirming a compromise merely because interested adults think the compromise agreement is to the best interests of the minors. It should take into consideration what the minor will receive under the agreement, what he would have received

under the will, and whether there *actually* was grounds for declaring the will void. Here rights have been cut down on the one hand and increased on the other. Our sense of justice is sometimes harsh, sometimes liberal; the court seems to have chosen the latter.

MALCOLM E. RENTZ.
