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In the field of Workmen's Compensation during the survey period, there have been no tremendous changes in the law either by statute or judicial decision. In fact, the session of the General Assembly convening in January 1954 did not enact any laws directly affecting Workmen's Compensation. The trend to holding the status quo extended to the Industrial Commission whose rules of procedure were last amended by the adoption of Rule 29, filed with the Secretary of State on April 8, 1952. This rule requires a full hearing "in every case involving a claim for death benefits."

Perhaps one reason for this period of quiescence, at least in so far as legislative enactment is concerned, is the adoption in recent years of the increase in maximum benefits and the inclusion of occupational diseases, two long-standing objectives of labor representation. Moreover, the law of Workmen's Compensation is by its nature not a static thing and, even in the absence of new statutes or revolutionary decisions, judicial interpretation of old rules and their application to new sets of facts provide a respectable vitality. Decisions of the Supreme Court during this period illustrate again how near this field of law is to the people and their livelihood and how unlikely to become monotonous.

Injury While Going to or Returning From Work

During the survey period, one decision was handed down by the Supreme Court on the troublesome question of coverage of the Workmen's Compensation Act of injuries incurred as an employee is going to or returning from work. This decision, *Troutman v. Williams Furniture Co.*,[1] dealt with the death of an employee returning from lunch at home. The deceased parked his automobile on a public street, 180 feet from the entrance gate to the plant of the employer, walked to the gate, then walked to a store a block away to purchase tobacco. While returning to the gate, he was struck at the intersection of public streets by an automobile of a co-employee, also re-

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1. 224 S.C. 353, 79 S.E. 2d 374 (1953).

turning to work. The automobile had collided with a truck. Neither of the vehicles was owned or operated by the employer, but the truck contained a load of lumber which was being delivered to the employer, a fact which the Court referred to as "irrelevant."

The Court reversed an order of the lower court reinstating an award of the hearing Commissioner. The basis of the opinion of the Court is summarized in the following language:

> It will be observed from the foregoing that Mr. Troutman was killed while on a public highway and about his own business, was not performing any duty for his employer, the appellant, and at a time when he was not paid for the performance of any duty for his employer.

The Court did not find relevant the fact that the employee, after being struck by the automobile, was thrown some distance against another automobile parked on a vacant lot owned by the employer and used by the employees and the general public for parking, although not maintained by the employer as a parking lot.

The first case cited in the Court's decision, *Gallman v. Springs Mills*[2] seems to be the landmark in the field of Workmen's Compensation in South Carolina. It stated and adopted the general rule that an injury sustained while going to or from the place of work is not compensable, with two universally recognized exceptions:

> (1) Where in going to and returning from work, the means of transportation is provided by the employer, or the time thus consumed is paid for or included in the wages.
> (2) Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment.

A third exception recognized by some courts was listed as follows:

> (3) Where the way used is the sole and exclusive way of ingress and egress, or where the way of ingress and egress is constructed and maintained by the employer.

This third exception was modified in the *Gallman* case by the requirement that there must be some showing of "inherent danger in the use of such exclusive street or way."

2. 201 S.C. 257, 22 S.E. 2d 715 (1941).

A fourth exception was set out in *Eargle v. South Carolina Electric & Gas Co.*[3] as follows:

> (4) That an injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer, but in close proximity thereto, is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work.

In the *Troutman* case, these exceptions were not discussed at length, but the Court did assert that the employee was not performing any duty for the employer at the time of the injury and that he was not being paid for the time in question, thus eliminating the first two exceptions. Obviously, the third exception, as defined and restricted in the *Gallman* case, was ruled out because of the public nature of the street and of the vacant lot upon which the employee was thrown, and the absence of special hazard.

The *Troutman* case does not add anything new or definitive, but does emphasize the fact that each case in this category, on its own facts, must bring itself within one of the four recognized exceptions.

Injury on Premises But Not in Course of Employment

Closely akin to the case discussed under the preceding heading and further illustrating the infinite variety of claims under Workmen's Compensation, is the case of *Crawley v. T. G. Griggs Trucking Co.*[4] A truck driver, who was employed to make a trip from Greenville via Landrum to Ruby for the employer later in the morning, was found dead from burns at approximately 5 a.m. in his own automobile, the motor of which was running. The automobile was parked on the employer's premises.

Evidence was adduced to show that the deceased had been drinking and driving around the city until the early morning hours. During this period, the employee and a friend had discovered a fire in the upholstery of the automobile but thought that it had been extinguished. His wages would have begun at 7 a.m. at which time he was expected to leave on the trip, although agents of the employer testified he could

3. 205 S.C. 423, 32 S.E. 2d 240 (1944).
4. 81 S.E. 2d 41 (S.C. 1954).

have left earlier if he so desired. The truck had been left outside the terminal, which would not have opened until 8 a.m., for the driver's use.

The Court reversed an award for employee's dependents and held that the employee's attempt to spend the night or the last part thereof in the parked automobile on employer's premises had no connection with the employment; that the employee was in the same position as if he had parked on the street or elsewhere.

It was contended that the case came within the rule of *Owens v. Ocean Forest Club*,[5] favoring an employee who is injured at a time and place when and where his employment may have required him to be, and as a consequence of, his employment. The Court held that the facts of the case at hand did not warrant the presumption but, if so, the presumption was immediately rebutted by the obvious cause of death.

The case was also distinguished from *Mack v. Post Exchange*,[6] where an employee had arrived in the building of the employer and was "apparently securing the tools of his work within a few minutes of the time it should begin when he (or another employee) accidentally set his clothing afire." The injury was held to be compensable but the subsequent death of the employee to be without causal connection. Compensability, in that case, was based on the securing of the tools as being incidental to the employment.

In the *Crawley* case, the Court does not repudiate the presumption recognized in the *Owens* case but rather affirms it for application to the appropriate set of facts. Referring to the requirement that compensable injury is one "arising out of and in the course of employment," it reiterates the language of the *Eargle* case[7] which held that "No Court or Commission can with certainty do more than decide whether a particular case upon particular facts is or is not within the meaning of the quoted phrase."

Heart Attack in Course of Employment as Compensable

An interesting study of the compensability of death resulting from heart attack in the course of employment is contained in the case of *Price v. B. F. Shaw Co.*[8]

5. 196 S.C. 97, 12 S.E. 839 (1939).
6. 207 S.C. 258, 35 S.E. 2d 838 (1954).
7. 205 S.C. 423, 32 S.E. 2d 240 (1944).
8. 224 S.C. 89, 77 S.E. 2d 491 (1953).

The majority opinion denied coverage where the employee had an attack before reporting for the day's work as a pipe fitter or plumber and died from another attack on the job without being subjected to any strain not usually incidental to his work. The principal opinion adhered to what it termed, "the unusual exertion or strain theory," as defined in *Raley v. City of Camden*:[9] "We have held in many cases, that in order to obtain an award for any accidental injury resulting from aggravation of heart trouble, there must be a sudden, unusual exertion, violence or strain."

The minority of the Court (Justices Stukes and Taylor dissenting) argued that nothing in the Workmen's Compensation Act and its definition of "accident" justified such a conclusion and that if such rule were desirable, it would be a matter for legislative enactment. The dissenting opinion claimed to be in line with the general rule and weight of authority as expressed in the following quotation from 25 Harvard Law Review 340:

> Nothing more is required than that the harm that the plaintiff has sustained shall be unexpected. . . . It is enough that the causes, themselves known and usual, should produce a result which on a particular occasion is neither designed nor expected. The test as to whether an injury is unexpected, and so, if received on a single occasion, occurs 'by accident,' is that the sufferer did not intend or expect that injury would on that particular occasion result from what he was doing.

Medical Treatment

(1) Refusal to submit:

In the case of *Ward v. Dixie Shirt Co.*,[10] the Supreme Court decided that where medical opinion was divided as to the effect of spinal myelogram and claimant was willing to submit to such test by an Atlanta physician but not by a Spartanburg physician of employer's choice, her refusal to submit to treatment by the latter did not suspend her right to compensation under Section 72-307 of the 1952 Code.

The Court distinguished this case from that of *Wardlaw v. J. G. Ridgeway Construction Co.*,[11] where an uneducated em-

9. 222 S.C. 303, 72 S.E. 2d 572 (1952).
10. 223 S.C. 448, 76 S.E. 2d 605 (1953).
11. 212 S.C. 116, 46 S.E. 2d 662 (1948).

ployee refused to allow a spinal puncture because he was afraid "to be worked on in the spinal part anywhere at all."

(2) Selection of Non-Resident Physician:

In the same case the Court held that the Commission was empowered to order examination by non-resident (Atlanta) physicians but intimated that ordering examination or treatment by non-resident physicians in some cases would impose undue hardship on employers or insurance carriers and constitute an abuse of discretion.

Incidental Procedural Matters

(1) Formal Entry of Judgment Not Necessary.

The Supreme Court in the case of *McCants v. West Virginia Pulp & Paper Co.*[12] held, in interpreting Section 72-357 of the 1952 Code of Laws, that when the Circuit Court affirmed an award of the Industrial Commission by order and the employer served notice of appeal to the Supreme Court but did not perfect the appeal within thirty days, the employer was not excused by the fact that judgment for the employee had not been formally entered, and that the appeal had been properly dismissed.

(2) Effect of Evenly Divided Commission.

An unusual situation arose in the case of *Gurley v. Mills Mill,*[13] where a review of the full Commission was participated in by five members but one vacated his office after the hearing on review but prior to the rendering of a decision. Attorneys for the claimant argued that an even decision of the remaining members amounted to affirmance of the award, seeking to invoke the rule prevailing in regard to affirmance in the Supreme Court, but the Court upheld the Commission's action in ordering the case to be reviewed again, whereupon the award had been set aside. An ironic aspect of the case was the probability that the Commissioner who resigned, being the hearing Commissioner, would have voted for affirmance. The Court held that the question of how he would have voted if the decision had been rendered before his resignation was a matter of speculation but that, regardless of how he would have voted, his power to act terminated with his resignation.

12. 223 S.C. 467, 76 S.E. 2d 614 (1953).
13. 225 S.C. 46, 80 S.E. 2d 745 (1954).

Determination of Average Weekly Wages

In *McCummings v. Anderson Theater Co.*,[14] a bricklayer worked one day per week for a theater averaging $6.00 per week from that source to supplement his average weekly income of $55.00 to $60.00 at bricklaying. He received an injury from a fall in the theater. He claimed his entire average earning at the theater and bricklaying should apply so that he would receive the maximum weekly benefit of $25.00. The employer-carrier contended that the average weekly wage should be based solely on the $6.00 per week received in the employment in which he was injured.

The Court held that the Commission did not err under these exceptional circumstances in basing the average weekly wage on the combined earnings in both employments so as to allow the maximum benefit of $25.00 per week. Section 72-4 of the Code[15] sets out five methods for ascertaining average weekly wages, the first four having reference to the earnings of the employee or a person in the same class of employment in the same locality or community, and the fifth reading as follows:

> But when for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

It was under the authority of the latter that the award in this case was upheld. The purpose of the prescribed methods and the guide-rule in the choice of methods was thus expressed by the Court: "Such method is to be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury. . . ."

14. 81 S.E. 2d 348 (S.C. 1954).
15. CODE OF LAWS OF SOUTH CAROLINA, 1952.