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Workmen's Compensation

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Injuries Received While Going To and From Work

The injured employee was a helper on a truck of his soft drink bottler employer, working under supervision of the truck driver. The custom was to load the truck in Columbia, drive to distribution points out of Columbia and return to Columbia with the empty bottles. The employee assisted in loading and unloading in Columbia and at points of distribution, riding with the truck between such places.

On the date of injury the employee overslept, failing to arrive at the Columbia plant prior to loading and departure of the truck for an out of town destination. The employee's brother drove the employee by automobile toward the plant, but several blocks away they met the loaded truck on the street and upon mutual recognition the truck stopped as did the car, about opposite each other on their respective sides of the street. There had been a prior occasion of a similar meeting and stopping and the employee boarding the truck when he was late for work. On this latter occasion, however, the employee was struck by an automobile and injured while attempting to cross the street to the employer's truck.

An award for workmen's compensation benefits to the injured employee was affirmed by the Supreme Court, *Baldwin v. Pepsi-Cola Bottling Company*,[1] Mr. Justice Legge dissented.

The affirmance of the award to the employee was upon several grounds. First: So long as the employee was merely riding to work in a private vehicle he was within the rule excluding compensability of injuries received while going to and from work. But, when the private vehicle stopped on the street opposite the truck on which the employee worked regularly, and the truck stopped for the employee to board the truck, the latter was an implied direction of the employer for the employee to cross the street and board the truck, so

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1. 234 S. C. 320, 108 S. E. 2nd 409 (1959).

that the employee in so doing was under the control and supervision of the employer; the street thereby became a part of his work environment and the status of the employee in effect changed from a member of the public travelling the street to the employee crossing the street incident to his employment. Second: One exception to the exclusionary rule in such circumstances is where the employer furnishes the transportation to and from work. Here transportation was furnished the employee by the employer from the Columbia plant to the out of town distribution point, and it was the duty of the employee to ride the truck provided for that purpose. The opinion states: "He was approaching it to board it when injured which may fairly, under many authorities, be considered to be a part of the employer-provided transportation". Finally, the affirmance of the award of compensability was predicated upon the often quoted rule "that doubts are to be resolved in favor of compensability".

In *Evans v. Jones-Wilson, Inc.*,[2] an award by the Industrial Commission for compensation benefits to the injured employee was set aside. The employee was a mortar mixer on a school construction job; he was required to be on the job by 7:30 A. M. so as to have the mortar ready for the masons who began work at 8 A. M. o'clock. On the morning concerned he drove from his home in his privately owned pick-up truck, arriving at the job site about 7:25 A. M. and parked the truck on the school grounds, off the driveway about three truck lengths from the mortar box; he pulled up the hand brake, got out and was walking behind the truck to the work area when the brake failed and the truck rolled back injuring the employee. The employer did not furnish this employee transportation to work and the employee's truck was not used in the work for the employer. While the place where the truck was parked was on the school premises, such was not under the control of the employer, but other employees used the area for parking their vehicles without objection.

The Court did not pass upon the issue being one on which the previous award of compensability was predicated, that "the defendant-employer adopted the school yard as a part of its work premises", as it was concluded that compensability is not determined by the mere fact of an injury on the em-

2. 235 S. C. 219, 110 S. E. 2nd 851 (1959).

ployer's premises, but that it must also be shown that the injury was related or incidental to the employment duties. It was the unanimous opinion of the Court that there was no causal relationship between the employee's work conditions and his injury and that the risk of injury from the private vehicle's "defective braking system was in nowise connected with or incident to the employer-employee relationship."

Independent Contractor, Casual Employee or Employee as Contemplated by Workmen's Compensation Law

The injured person was the regular employee of a trucking company not licensed in interstate commerce. The defendant in the case of *DeBerry v. Coker Freight Lines*,[3] was so licensed, and for the purpose of delivering freight to an out of state point, leased from the owner a truck with the injured workman as driver. In the course of unloading in New Jersey the workman was injured.

The general rule as to the right or power of control of a person for whom the work is being done as the criterion for determination of an independent contractual relationship was affirmed. It was concluded that such right or power of control was vested in the defendant, so that the relationship of employer-employee existed between defendant and the injured party at the time of injury, so as to establish liability on defendant under the Workmen's Compensation Law for such injuries. The Court rejected the contention that the injured party was a casual employee.

Payment of Benefits Awarded Pending Appeal—Limited Supersedeas

The Workmen's Compensation Law provides[4] that an appeal may be taken from a decision of the Industrial Commission to the Court of Common Pleas, but that such an appeal shall operate as a supersedeas for thirty days only. The Industrial Commission on March 22, 1958 directed the employer to pay compensation benefits to the injured employee from March 22, 1957 for an indefinite period subject to the maximum amount permitted by the statute ($10,000.00). After affirmance by the entire Commission the employer appealed to the Court of Common Pleas and argu-

3. 234 S. C. 304, 108 S. E. 2nd 114 (1959).
4. CODE OF LAWS OF SOUTH CAROLINA § 72-356 (1952).

ments were heard by the Presiding Judge within the thirty days as provided by statute but a decision was not rendered by that court within such thirty day period. After the lapse of the thirty day period, and prior to a decision by the Presiding Judge on the appeal questions, the injured employee applied and obtained from the Resident Judge an order requiring the employer to pay the compensation benefits from March 22, 1957 and to continue therewith pending the appeal.

In *Godfrey v. Mills Mill*,[5] the prior decision of *Bagwell v. Ernest Burwell, Inc.*[6] was confirmed and the order requiring payment of compensation was affirmed.

Burden of Proof

The employer questioned a ruling by the Industrial Commission that the burden of proof was upon the employer to establish that disability had ceased where an injured employee had signed a final receipt and was contending that he had a continuing disability. The evidence was uncontradicted that disability had not ceased so the Court saw no necessity in passing upon the question as to the burden of proof or effect of the final receipt. *Godfrey v. Mills Mill.*[7]

Exclusive Remedy of the Workmen's Compensation Law—Statutory Employee

The case of *Bell v. South Carolina Electric & Gas Company*[8] involved substantially a reaffirmation of sundry decisions by the Supreme Court commencing with *Marchbanks v. Duke Power Company*[9] and concluding with *Adams v. Davison-Paxon Company.*[10] The deceased employee was employed by a construction company which contracted to remove certain transmission lines from poles under control of the defendant and in the course of such work the deceased received injuries from which he died. Workmen's compensation benefits were paid to the dependents of the deceased employee through the construction company by which he was employed. The widow, on behalf of herself and the company paying the workmen's compensation benefits, then

5. 234 S. C. 401, 108 S. E. 2nd 587 (1959).
6. 227 S. C. 444, 87 S. E. 2nd 583 (1959).
7. 234 S. C. 442, 108 S. E. 2nd 832 (1959).
8. 234 S. C. 577, 109 S. E. 2nd 441 (1959).
9. 190 S. C. 336, 2 S. E. 2nd 825 (1939).
10. 230 S. C. 532, 96 S. E. 2nd (1957).

brought action against the defendant as a third party pursuant to the provisions of the statute so enabling.[11]

The pertinent portion of the statute[12] provides in substance that when any person undertakes to perform a part of his own business and contracts with another person for execution of a portion of the work, such former person shall be liable to pay benefits to an injured workman employed in performance of the work as if the workman were the employee of such former person. The decisions referred to previously held that in such cases the injured workman was a statutory employee of the person having the work performed as the latter would be liable to the injured workman if the contractor was unable to respond for such injuries. As the employee, or his dependents, have only one right, and that under the Workmen's Compensation Law,[13] recovery against the defendant in this instance was denied since the deceased would be the statutory employee of the defendant, thus the collection of workmen's compensation benefits, or the liability therefor, was the exclusive remedy available.

Waiver of Exemption by Employers Exempted From the Workmen's Compensation Law

By a three to two decision the Supreme Court denied workmen's compensation benefits in *Carter v. Associated Petroleum Carriers.*[14] Duncan Oil Company (one of the defendants) had only two employees and therefore was not automatically covered by the Workmen's Compensation Law.[15] In order to become subject to the Workmen's Compensation Law such company on October 3, 1955 contacted an insurance agency which accepted an application from Duncan Oil Company for workmen's compensation insurance coverage. The agent informed Duncan Oil Company that it was covered for workmen's compensation purposes immediately. Two days later, October 5, 1955, an employee of Duncan Oil Company was fatally injured. Thereafter a representative of the insurance company which was to provide the workmen's compensation insurance for Duncan Oil Company informed Mr.

11. CODE OF LAWS OF SOUTH CAROLINA § 72-124 (1952).
12. CODE OF LAWS OF SOUTH CAROLINA § 72-111 (1952).
13. CODE OF LAWS OF SOUTH CAROLINA § 72-121 (1952).
14. 235 S. C. 80, 110 S. E. 2nd 8 (1959).
15. CODE OF LAWS OF SOUTH CAROLINA § 72-107 (2) (1952).

Duncan of the Duncan Oil Company that the company would pay workmen's compensation benefits to the widow. However, the insurance company subsequently advised that the application for workmen's compensation insurance had been refused.

By statute[16] an employer exempt from the provisions of the Workmen's Compensation Law may become subject thereto in the manner provided, but after notice of such election is given the election does not become effective until "thirty days after the date of such notice". As the deceased met his death two days after the intention to operate under the Workmen's Compensation Law was manifested, it was held that no recovery could be made as the thirty day provision was mandatory. The court pointed out that in view of the thirty day provision of the statute for effective operation under the Act after notice of intention to so do, the representatives of the injured employee could have maintained a common law action on account of injuries and death and that therefore the thirty day provision should become effective for both the employer and the employee and operation under the Workmen's Compensation Act could not come about until the lapse of that period of time. This was true notwithstanding the verbal agreement of the insurance company to bind itself under the Workmen's Compensation Law along with the employer because the thirty day period of time was considered as written into the contract of insurance just as if the provisions of the law were incorporated therein.

Unusual Exertion or Strain

The deceased employee was a fire tower watchman for the employer, a part of his work consisting of climbing the steps of a fire tower approximately 100 feet in height both morning and afternoon for the purpose of checking on possible forest fires. He suffered from high blood pressure and a possible coronary condition and several months before his death had been hospitalized for such condition. On the day in question he climbed the tower in the morning, climbed the tower in the afternoon and on each occasion was subsequently noticed to be nervous and tired. After supper he complained of exhaustion and retired to bed where he was found shortly thereafter dead. It was contended that his death arose out of and in the course of his employment and while the

16. CODE OF LAWS OF SOUTH CAROLINA § 72-109 (1952).

climbing of the tower was not normally an unusual act on the part of the deceased, such became an act of unusual exertion and strain in the instance of the deceased because of his known physical condition. This contention was rejected by a majority of the court in *Sims v. S. C. State Commission of Forestry.*[17] The court affirmed its prior enunciation in the case of *Price v. B. F. Shaw Company,*[18] which in substance held that for a heart case to be compensable the attack must have been induced by unusual strain or exertion at work. The court said: "Here climbing up and down the tower steps was not unusual in decedent's work; it was usual and the very thing he had been doing for sixteen years and until he became ill. How can it be said that it was an unusual exertion or strain?"

Prejudice of Rights of Employer Against Third Parties

When a cause of action for damages against a third party exists for injuries to an employee, such right of action is assigned to the employer or its insurance carrier so that the employer or carrier is in effect subrogated by statute to any such right which the employee may have.[19] In *Stroy v. Millwood Drug Store, Inc.,*[20] the employee while riding on a motorcycle was involved in an accident with a taxicab. Instead of making claim for workmen's compensation benefits, the employee brought suit directly against the third party and trial of the action resulted in a verdict for the taxicab company. Thereafter the injured employee sought workmen's compensation benefits from his employer through the Industrial Commission. Such benefits were granted by the Commission, but the Circuit Judge set aside such award and rendered judgment for the employer and its insurer. Such action of the Circuit Judge was affirmed on the general basis that the actions of the injured employee in processing the suit against the third party were prejudicial to the subrogation or statutory assignment to the employer and the carrier so that in effect the employee had made an election to pursue the third party and could not thereafter recover workmen's compensation benefits against his employer. The Court quoted with approval from Larson on Workmen's Compensation,[20a]

17. 235 S. C. 1, 109 S. E. 2nd 701 (1959).
18. 224 S. C. 89, 77 S. E. 2nd 491 (1953).
19. CODE OF LAWS OF SOUTH CAROLINA § 72-124 (1952).
20. 235 S. C. 52, 109 S. E. 2nd 706 (1959).
20a. 2 LAISON, WORKMEN'S COMPENSATION § 73-22, at 202 (1952).

"Since the object of third party statutes is to effect an equitable adjustment of the rights of all the parties, it would defeat this objective to allow the employee to demand compensation from the employer after having destroyed the employer's normal right to obtain reimbursement from the third party."

Change of Condition

An injured employee, upon proper notice, may have the Industrial Commission review his case to ascertain if his condition has worsened. Likewise the employer may give notice to have a review of an injured employee's case to determine if his condition has improved. "No such review shall be made after twelve months from the date of the last payment of compensation."[21] *Allen v. Benson Outdoor Advertising Company*[22] involved an employee who received his final payment of compensation on November 7, 1957. On September 29, 1958, he notified the Industrial Commission of a request that his case be reviewed on the basis of an alleged change of condition. The hearing by the Commission pursuant to such request was not held until November 19, 1958, almost fifty-four weeks following the last payment of compensation, although application to the Industrial Commission was made prior to the expiration of one year from the date of such last payment of compensation. It was contended by the employer that the Industrial Commission had no jurisdiction to review the case as such review was not made within twelve months from November 7th of the previous year. This contention was rejected, the court holding that the filing of the application for the review having taken place within one year from the last payment of compensation, the requirement of the statute was met.

Disablement From Occupational Disease

The first case in South Carolina considering the occupational disease provisions of the Workmen's Compensation Law is *Glenn v. Columbia Silica Sand Company*.[23] It was admitted that the deceased employee was was covered by the occupational disease provisions of the Law,[24] the only issue

21. CODE OF LAWS OF SOUTH CAROLINA § 72-359 (1952).
22. 236 S. C. 22, 112 S. E. 2nd 722 (1960).
23. 236 S. C. 13, 112 S. E. 2nd 711 (1960).
24. CODE OF LAWS OF SOUTH CAROLINA § 72-251 (1952).

being as to which of two insurance carriers were liable for the workmen's compensation benefits. The Pennsylvania company insured the employer for workmen's compensation purposes from May 19, 1950 through May 18, 1957. The Dixie company insured the employer for such purposes subsequent to May 18, 1957. The deceased employee worked with his employer until approximately October 1, 1957 when he became disabled from the disease of silicosis, a progressive disease that gradually increases in intensity over a period of years. The court rejected the position of the Dixie company that the liability should be at least prorated between the two insurance companies by reason of the long and progressive nature of the disease, culminating in disability only several months after the Dixie company became the insurer on the risk. The court held that under the specific statute defining "disablement",[25] compensability in an occupational disease of a pulmonary nature accrues when the disability occurs and that as the employee had been injuriously exposed after the Dixie company became the insurer and that as disability did not occur until after such time, the entire liability was that of the Dixie company.

25. CODE OF LAWS OF SOUTH CAROLINA § 72-252 (1952).