South Carolina Law Review

Volume 20 | Issue 4 Article 12

1968

Workmen's Compensation

James R. Honeycutt

Follow this and additional works at: https://scholarcommons.sc.edu/sclr

Part of the Law Commons

Recommended Citation
Workmen's Compensation, 20 S. C. L. Rev. 678 (1968).

This Note is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact digres@mailbox.sc.edu.

WORKMEN'S COMPENSATION

I. ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT[1]

In *Grice v. National Cash Register Co.*[2] the claimants sought death benefits under the Workmen's Compensation Act. While in Dayton, Ohio, where he was sent by his employer for job training, the deceased, acting on his own, planned a picnic for the 4th of July holidays. He was killed in an automobile accident on his return to the motel from the picnic. In affirming the circuit court's reversal of the Industrial Commission's award, the supreme court held that the accident did not arise out of or in the course of employment. The claimants urged the principle

> that where an employee is sent to a distant place by his employer to perform duties in connection with his employment and sustains an injury after working hours, while engaged in reasonable activities in seeking to satisfy his physical needs, including relaxation and recreation, or while returning to his quarters after having engaged in reasonable recreational activities, he is entitled to the protection of the act.[3]

While recognizing that this principle is supported by authority,[4] the court refused to adopt it, noting that the benefits from the picnic were too general to establish coverage under the act.[5]

In *Thomas v. South Carolina Highway Department*,[6] A. Lester Thomas, a mechanic for the respondent, was fatally injured while traveling alone in his personal car, after regular working hours and in the direction of his home. The Industrial Commission awarded benefits, but the circuit court

1. S.C. CODE ANN. § 72-14 (1962) provides in part: "Injury and personal injury shall mean only injury by accident arising out of and in the course of the employment . . . ."
2. 250 S.C. 1, 156 S.E.2d 321 (1967).
3. Brief for Appellants at 6, Grice v. National Cash Register Co., 250 S.C. 1, 156 S.E.2d 321 (1967).
4. Cavalante v. Lockheed Electronics Co., 85 N.J. Super. 320, 204 A.2d 621 (1964), *aff'd*, 90 N.J. Super. 243, 217 A.2d 140 (1966); *see* 51 A.B.A.J. 280 (1965).
5. *See generally* 1 A. LARSON, WORKMEN'S COMPENSATION LAW §22 (1966) (discussion of when recreational or social activities are within the course of employment).
6. 250 S.C. 221, 157 S.E.2d 169 (1967).

reversed for lack of competent evidence to support the award. There was evidence that Thomas was en route to repair a bus as well as testimony that he refused to take the call. In restoring the award the supreme court held that the circumstances were such as to lead an unprejudiced mind reasonably to infer that the accident occurred while Thomas was in the course of his employment.

Zeigler v. SLED,[7] presented the court with issue of whether or not death was occasioned by the wilful intention of one employee to injure or kill another.[8] Zeigler died from gun wounds inflicted by a fellow servant in a personal argument. The Industrial Commission had found that Zeigler's death resulted from an accident arising out of and in the course of employment and was not occasioned by any wilful intent on his part to injure another. The circuit court affirmed. The supreme court reversed, holding that the evidence required the conclusion that

> [t]he fatal altercation was voluntarily entered into, and the conduct of the deceased was of such a grave or serious nature as to evidence a wilful intent on his part to injure his fellow employee, thereby barring any right to benefits under the Workmen's Compensation Act.[9]

II. NOTICE OF THE ACCIDENT[10]

In *Dawkins v. Capitol Construction Co.*[11] the claimant injured his ankle and verbally reported this to his supervisor. A written report was not made until several months later. The Commission, in awarding the claimant benefits, made no finding with respect to whether his failure to file written notice within 30 days was excusable, nor did it state facts to sub-

7. 250 S.C. 326, 157 S.E.2d 598 (1967).
8. S.C. CODE ANN. § 72-156 (1962) provides: "No compensation shall be payable if the injury or death was occasioned by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself or another."
9. 250 S.C. at 331, 157 S.E.2d at 600.
10. S.C. CODE ANN. § 72-301 (1962) provides in part:

> Every injured employee or his representative shall . . . give . . . a written notice . . . but no compensation shall be payable unless such written notice is given within thirty days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the Commission for not giving such notice and the Commission is satisfied that the employer has not been prejudiced thereby.

11. 158 S.E.2d 651 (S.C. 1967).

stantiate its conclusion that the appellants were not prejudiced by this failure to file. The circuit court affirmed. The supreme court reversed and remanded for the Industrial Commission to take such testimony on the issues of reasonable excuse and prejudice as the parties might offer.

Mize v. Sangamo Electric Co.[12] divided the supreme court on the notice issue. The claimant was injured but continued on the job. Later that same day she showed the visible effects of the accident to her supervisor and told him the details. Written notice was not given. The Industrial Commission found that there was reasonable excuse and that the employer could not claim prejudice because it had full notice in fact through its supervisor. On appeal to the circuit court, the award was affirmed. The supreme court, in affirming, held that "the employer had quite as full knowledge of the facts which would have been disclosed by a written notice . . . as did the claimant herself."[13] The majority stated that the Commission found as a fact that there was reasonable excuse for not giving written notice. However, no excuse was offered. The dissenters contended that the effect of the majority opinion was to amend the statute and to approve a finding of excusable failure to give notice when there was no semblance of an excuse offered.

In *Green v. Raybestos-Manhattan,*[14] the supreme court reversed and remanded when the Industrial Commission had taken unsworn testimony and relied on it as a basis for its finding of fact.

III. FAILURE TO FILE WITHIN ONE YEAR[15]

In *Altman v. Williams Furniture Co.,*[16] the claimant fell and injured his back but did not file a claim until more than a year later. The employer denied liability on the ground that the right of the respondent to compensation was barred by his failure to file within one year. The Industrial Commission awarded compensation and the circuit court affirmed.

12. 161 S.E.2d 846 (S.C. 1968).
13. *Id.* at 850.
14. 250 S.C. 58, 156 S.E.2d 318 (1967).
15. S.C. CODE ANN. §72-303 (1962) provides in part: "The right to compensation under this title shall be barred unless a claim is filed with the Commission within one year after the accident . . . ."
16. 250 S.C. 98, 156 S.E.2d 433 (1967).

South Carolina Law Review, Vol. 20, Iss. 4 [2020], Art. 12

The supreme court, in affirming, held that the employer was estopped from taking advantage of claimant's failure to file. The court felt the claimant was misled into believing that he had no compensable injury. Persistent representation by the company that nothing was wrong with him and its concealment of important X-ray findings were held to estop the employer from asserting as a defense the employee's delay in filing.

In *Oglesby v. Greenville YWCA*,[17] the claimant urged that the following from a letter by her attorney constituted filing: "I represent a person employed at a YWCA. Is this organization under the Acts?"[18] The supreme court held that since the claimant was not named, the Greenville YWCA not indicated, and the date of the accident not shown, the filing was not sufficient.

IV. Compensable Injury

In *Shealy v. Algernon Blair, Inc.*[19] the claimant fell from a scaffold, sustaining a mild concussion and a sprained neck. Ten days later he was discharged for unsatisfactory service antedating but not connected with the injury. The Commission awarded compensation at the maximum rate for total disability. Seemingly ignoring the statutory language,[20] the Commission did not determine the average weekly wages which the claimant was able to earn after his injury. The circuit court affirmed. Reversing, the supreme court held that the medical testimony did not even indicate a compensable disability. The claimant's own doctors testified that he was able to work and that he did, in fact, do other work after his discharge at pay not less than he had received before the injury.

---

17. 158 S.E.2d 907 (S.C. 1968).
18. Record, Exhibit I, at 43, Oglesby v. Greenville YWCA, 158 S.E.2d 907 (S.C. 1967).
19. 250 S.C. 106, 156 S.E.2d 646 (1967).
20. S.C. Code Ann. § 72-152 (1962) provides in part:

> Except as otherwise provided in § 72-153, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such disability a weekly compensation equal to sixty per cent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than thirty-five dollars a week.

> Under the terms of the act, an award of compensation must be based upon the claimant's *"incapacity* because of injury to earn the wages which (he) was receiving at the time of the injury in the same or any other employment."[21]

V. Issue of Law or Fact

The perplexity of this issue is exemplified by *McDonald v. Kenneth Cotton Mills.*[22] The Industrial Commission found that the claimant's injury did not arise out of and in the course of employment. The circuit court reversed, concluding that claimant had sustained a compensable injury. Relying upon *Dennis v. Williams Furniture Corp.,*[23] the circuit court determined that the commission's finding of facts were only conclusions of law and therefore reviewable. The supreme court reversed, holding that since there was testimony of previous statements by the claimant disclaiming that he was injured while at work, the case was controlled by the statutory mandate that the judgment of the commission shall be conclusive and binding as to all issues of fact.

In *Polk v. E. I. duPont de Nemours Co.,*[24] the claimant received an award because of an injury to his neck and back. The appellant appealed the circuit court's order reversing the award. The supreme court affirmed the circuit court and held that all the medical evidence showed that Polk suffered from advanced degenerative arthritis of the cervical spine and that his disability was in no way connected with the accidental injury.

> Where there is a conflict in the evidence, the findings of fact by the commission are conclusive. It is only where the evidence gives rise to but one reasonable inference that the question becomes one of law for the court to decide.[25]

---

21. 250 S.C. at 112, 156 S.E.2d at 649, *quoting* S.C. Code Ann. § 72-10 (1962) (emphasis by the court).
22. 250 S.C. 51, 156 S.E.2d 324 (1967).
23. 243 S.C. 53, 132 S.E.2d 1 (1963). There was no competent evidence of any causal connection between the disputed injury and claimant's disability in the *Dennis* case.
24. 158 S.E.2d 765 (S.C. 1967).
25. *Id.* at 766.

South Carolina Law Review, Vol. 20, Iss. 4 [2020], Art. 12

VI. THIRD PARTY ACTIONS

In *Sauls Construction Co. v. Newson,*[26] the plaintiff sought recovery for disability payments made to its employee, George C. Knight. Knight, injured one year earlier, had received benefits and was approaching full recovery. At this point he was injured in an automobile accident with the defendant. The accident aggravated his compensable condition and the plaintiff was called upon to pay $4,000 over and above what it would have been required to expend if the injury had not been thus aggravated. The plaintiff then brought this subrogation action under section 72-124 of the Code.[27] In reversing the trial court's overruling of the defendant's demurrer, the supreme court held that the subrogation provision of the statute was to be limited to injury by accident arising out of and in the course of employment.

JAMES R. HONEYCUTT

26. 161 S.E.2d 244 (S.C. 1968).
27. S.C. CODE ANN. § 72-124 (1962) provides in part:
Subrogation of employee's claim against third person. The acceptance of an award under this Title against an employer for compensation for the injury or death of an employee shall operate as an assignment to the employer of any right to recover damages which the injured employee or his personal representative or other person may have against any other person for such injury or death and such employer shall be subrogated to any such right and may enforce, in his own name or in the name of the injured employee or his personal representative the legal liability of such other person.

https://scholarcommons.sc.edu/sclr/vol20/iss4/12