

1975

Kennecott Copper Corporation v. Industrial Commission of Utah and Irene W. Peay, Widow of Justin W. Peay, Deceased : Unknown

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

13676

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STATE OF UTAH DEC 9 1975

KENNECOTT COPPER CORPORATION,

BRIGIAM YOUNG UNIVERSITY
J. Reuben Clark Law School

Plaintiff,

vs.

Case No.
13676

THE INDUSTRIAL COMMISSION
OF UTAH and IRENE W. PEAY,
Widow of JUSTIN W. PEAY, De-
ceased,

Defendants.

BRIEF OF DEFENDANT

Original Proceeding to Review an Award
of the Industrial Commission of Utah

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FILED
- 1974
Supreme Court, Utah

TABLE OF CONTENTS

| | Page |
|---|------|
| STATEMENT OF NATURE OF CASE | 1 |
| DISPOSITION BY THE INDUSTRIAL COMMISSION OF UTAH | 2 |
| RELIEF SOUGHT ON REVIEW | 2 |
| STATEMENT OF FACTS | 3 |
| ARGUMENT | 3 |
| POINT I. SECTION 35-2-15(10), UTAH CODE ANNOTATED 1953, AS AMENDED, GRANTS THE INDUSTRIAL COMMISSION OF UTAH THE LEGAL AUTHORITY TO MAKE AN AWARD OF BURIAL EXPENSES TO THE DEFENDANT, AS WIDOW OF JUSTIN PEAY, DECEASED, WHO DIED AS THE RESULT OF AN OCCUPATIONAL DISEASE CONTRACTED WHILE IN THE EMPLOYMENT OF THE PLAINTIFF | 3 |
| A. THE CLEAR LANGUAGE OF SECTION 35-2-15(10), UTAH CODE ANNOTATED 1953, PROVIDES AN EXCEPTION TO THE LIMITS AND RESTRICTIONS OF SECTION 35-2-13(b)(3), UTAH CODE ANN. 1953, GIVING THE INDUSTRIAL COMMISSION THE POWER TO AWARD BURIAL EXPENSES TO THE DEFENDANT IRENE W. PEAY | 3 |
| POINT II. SECTION 35-2-15(10), UTAH CODE ANNOTATED 1953, AS AMENDED, ALLOWS THE INDUSTRIAL COMMISSION TO MAKE AN AWARD OF \$1,000.00 INSTEAD OF THE \$450.00 THE COMMISSION AWARD- | |

TABLE OF CONTENTS—Continued

| | Page |
|---|------|
| ED TO DEFENDANT IN THE AMENDED ORDER ENTERED ON FEBRUARY 22, 1974 | 10 |
| A. UTAH SUPREME COURT DECISIONS SUPPORT DEFENDANT'S POSITION THAT THE 1971 AMENDMENT TO 35- 2-15(10), U. C. A. 1953, WHICH ALLOWS \$1,000.00 FOR BURIAL EXPENSES IS THE CONTROLLING STATUTE IN THIS CASE RATHER THAN THE LAW IN EFFECT IN 1956 AT WHICH TIME THE DEFENDANT'S DECEASED WAS LAST IN THE EMPLOYMENT OF THE PLAINTIFF | 10 |
| CONCLUSION | 13 |

CASES CITED

| | |
|---|---------|
| Barber Asphalt Corporation v. Industrial Commission, et al., 103 Utah 371, 135 P. 2d 266 (1943) | 9 |
| Henrie v. Rocky Mountain Packing Corp., 113 Utah 415, 196 P. 2d 487 (1948) | 7 |
| Kennecott Copper Corporation v. Anderson, 30 Utah 2d 102, 514 P. 2d 217 (1973) | 6, 7, 8 |
| Masich v. United States Smelting, Refining & Min- ing Co., et al., 113 Utah 101, 191 P. 2d 612 (1948) | 8 |
| Pacific States Cast Iron Pipe Co. v. Industrial Com- mission, et al., 118 Utah 46, 218 P. 2d 970 (1950) | 7 |
| Pettersson v. Kennecott Copper Corporation, Case No. 2U5-OD-140, The Industrial Commission of Utah (1969) | 5 |

TABLE OF CONTENTS—Continued

| | Page |
|---|-----------|
| Silver King Coalition Mines Co. v. Industrial Commission, et al., 2 Utah 2d 1, 268 P. 2d 689 (1954) | 7, 10, 12 |

STATUTES CITED

| | |
|---|-------------------------------|
| Section 35-1-44(6), U. C. A. 1953 | 7 |
| Section 35-1-66, U. C. A. 1953 | 6 |
| Section 35-1-68, U. C. A. 1953 | 9 |
| Section 35-2-12(b), U. C. A. 1953 | 6 |
| Section 35-2-13(b) (3), U. C. A. 1953, as amended.... | 4, 5, 8 |
| Section 35-2-15(e), U. C. A. 1953, as amended | 3, 5 |
| Section 35-2-15(10), U. C. A. 1953, as amended | 3, 4, 5, 6, 8, 10, 11, 13, 14 |

DISPOSITION BY THE INDUSTRIAL COMMISSION OF UTAH

On January 8, 1974, the Hearing Examiner of the Industrial Commission of Utah, in Claim No. 2U5-OD-148 issued Findings of Fact, Conclusions of Law and Order in favor of Kennecott Copper Corporation and against applicant, Irene W. Peay, Widow of Justic W. Peay, deceased. Irene W. Peay, on January 10, 1974, filed with the Commission a Motion for Review and on February 22, 1974, the Industrial Commission of Utah issued an Amended Order in favor of Irene W. Peay, as widow of Justin W. Peay, deceased. Kennecott Copper Corporation, plaintiff herein, filed with the Industrial Commission of Utah, on March 13, 1974, a Motion for Review of the February 22, 1974, Amended Order. Irene W. Peay, on March 14, 1974, filed, with the Industrial Commission of Utah, a Motion for Review of the February 22, 1974, Amended Order, with respect to the amount of burial benefits awarded. The Motions for Review were denied by Order entered by the Industrial Commission of Utah on April 15, 1974. Plaintiff filed this action with the Supreme Court of Utah on April 25, 1974.

RELIEF SOUGHT ON REVIEW

Defendant, Irene Peay, widow of Justin Peay, deceased, upon this review, seeks to have affirmed so much of the Amended Order issued by the Industrial Commission on February 22, 1974, as grants burial benefits to defendant and seeks to have reversed so much of the same order as grants only \$450.00 burial expenses.

STATEMENT OF FACTS

Defendant agrees with plaintiff's statement of the facts, but would add the following:

1. Defendant, Irene W. Peay, made application to the Industrial Commission, seeking payment of burial benefits, pursuant to Section 35-2-15(10), Utah Code Ann. 1953, the 1971 Amendment of Section 35-2-15(e), Utah Code Ann. 1953.

2. The occupational disease, silicosis, was found, on the evidence by the Hearing Examiner of the Industrial Commission, to be a substantial factor contributing to the death of Justin Peay.

ARGUMENT

POINT I.

SECTION 35-2-15(10), UTAH CODE ANNOTATED 1953, AS AMENDED, GRANTS THE INDUSTRIAL COMMISSION OF UTAH THE LEGAL AUTHORITY TO MAKE AN AWARD OF BURIAL EXPENSES TO THE DEFENDANT, AS WIDOW OF JUSTIN PEAY, DECEASED, WHO DIED AS THE RESULT OF AN OCCUPATIONAL DISEASE CONTRACTED WHILE IN THE EMPLOYMENT OF THE PLAINTIFF.

A. THE CLEAR LANGUAGE OF SECTION 35-2-15(10), UTAH CODE ANN. 1953,

PROVIDES AN EXCEPTION TO THE LIMITS AND RESTRICTIONS OF SECTION 35-2-13(b) (3), UTAH CODE ANN. 1953, GIVING THE INDUSTRIAL COMMISSION THE POWER TO AWARD BURIAL EXPENSES TO THE DEFENDANT, IRENE W. PEAY.

The Hearing Examiner for the Industrial Commission found, from the evidence, that silicosis was a sufficient cause of the death of Justin Peay, that he was compensable under the Occupational Disease Act. This was sufficient for the Industrial Commission to later make an award of burial expenses under Section 35-2-15(10), Utah Code Ann. 1953. That section reads, in part:

The benefit to which a disabled employee or his dependents shall be entitled under this act . . . are to be limited as follows: * * *

(10) In case death results from such occupational disease the employer shall pay not to exceed \$1,000 burial expenses.

The only requirement for an award of burial expenses in the Occupational Disease Act is that the employee die from the specified occupational disease.

It is the position of the plaintiff that the Industrial Commission erred in awarding burial expenses, because of the language of Section 35-2-13(b) (3), Utah Code Ann. 1953, which reads:

(b) There is imposed upon every employer a liability for the payment of compensation to the dependents of every employee in cases where death results from an occupational disease, subject to the following conditions: * * *

(3) No compensation shall be paid for death from silicosis unless the death results within three years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except: (a) in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded, or (b) in those cases where death results from silicosis complicated by active tuberculosis and such silico-tuberculosis is evidenced by positive laboratory sputum tests and X-rays and other clinical findings, and in such cases compensation shall be paid if such death results within five years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

The plaintiff relies heavily on the phrase "no compensation," in the above statute, as including the burial benefits provided for in Section 35-2-15(10), but it is the contention of the defendant that compensation, as used in Section 35-2-13(b) (3), does not include burial benefits.

The Industrial Commission stated, in the *Carl E. Pettersson* case, No. 2U5-OD-140, Commission Order of July 9, 1969, that reference to compensation in Section 35-2-13(b) (3) is not synonymous or applicable to the term burial expense, as used in Section 35-2-15(e), which

is now Section 35-2-15(10). With regard to administrative interpretations such as these, the Utah Supreme Court has held them to have significant persuasive weight in administrative appeals. *Kennecott Copper Corporation v. Anderson*, 30 Utah 2d 102, 514 P. 2d 217 (1973).

It is true that Section 35-2-12(b) defines "compensation" as the payments and benefits provided for in the Act, but according to *Anderson*, supra, this is not a final determination as to the use of the term "compensation" in a given section. In that case, Anderson was injured on May 5, 1959, while in the employ of Kennecott, suffering third degree burns on his legs, requiring extensive grafting and hospitalization. On January 28, 1961, he was given a lump sum award of 20% loss of bodily function. In September of 1962, the case was reopened, and he was awarded additional compensation and medical expenses covering from March 7, 1963, to May 12, 1963. In 1968, five years after the foregoing treatment and nine years after the original accident, because of ulceration on his left leg, he applied for further compensation and medical expenses. Kennecott interposed the defense of the statute of limitation of six years set forth in Section 35-1-66, Utah Code Ann. 1953. The Supreme Court affirmed, in part, and reversed, in part. It held that the statute that imposed a six-year limitation on "compensation" did not affect the payment of medical and hospital expenses after the six-year period. Yet, the definition of "compensation" for Section 35-1-66, Utah Code Ann. 1953 (the Workmen's Compensation Act), is the

same as quoted above for the Occupational Disease Act and is found in Section 35-1-44(6), Utah Code Ann. 1953. Therefore, the precedent is that these general statutes of limitations, which speak generally of compensation, do not include all instances where benefits are paid.

The plaintiff cites *Pacific States Cast Iron Pipe Co. v. Industrial Commission*, 118 Utah 46, 218 P. 2d 970 (1950), where burial expenses were not allowed in a decision that disallowed all death benefits because the employee's death occurred after the statutory limit. We would distinguish that case on the grounds that the present issue was not argued before the court, nor did the court comment on the difference between the statutes which are in issue here. In addition, the principles of *Anderson*, discussed herein, overruled any authority on this issue from the *Pacific States Cast Iron Pipe* case.

Anderson also overrules the plaintiff's reasoning that medical, hospital, and burial benefits always are included within the term "compensation", as the plaintiff argued from *Silver King Coalition Mines Co.*, 2 Utah 2d 1, 268 P. 2d 689 (1954), and *Henrie v. Rocky Mountain Packing Corporation*, 113 Utah 415, 196 P. 2d 487 (1948).

It is true that the *Anderson* case is an interpretation from Workmen's Compensation Laws, but the Utah Supreme Court has held the Workmen's Compensation Law and the Occupational Disease Act to be closely related; and that language from the Workmen's Compensation Act was used in the Occupational Disease Act, making it possible to rely on interpretations of similar language

in the Workmen's Compensation Laws for a determination of the intents, purposes and objectives of the Occupational Disease Act. *Masich v. United States Smelting, Refining & Mining Co., et al.*, 113 Utah 101, 108, 191 P. 2nd 612 (1948).

The Utah Supreme Court has also stated in *Anderson, supra* at 105, that:

It is often said that it should be assumed that all of the words used in a statute were used advisedly and were intended to be given meaning and effect. For the same reasons, the omissions should likewise be taken note of and given effect. *Anderson, supra*, at 105.

Therefore, it is significant that Section 35-2-13(b) (3) omits the phrase "burial expenses", and Section 35-2-15(10) expressly uses the phrase. It is clear that the legislature intended to provide this as an exception to the limitation placed on death benefits in Section 35-2-13(b) (3). Also apparent is the omission of any time restriction in Section 35-2-15(10), Utah Code Ann. 1953.

The Supreme Court of Utah indicated, in the *Anderson* case, at 106, that one of the reasons for extending medical benefits past the limitation period was the likelihood that Mr. Anderson would need medical and hospital benefits after the 6-year period. By awarding burial expenses in the Occupational Disease Act, without a time limitation, the legislature is using the same reasoning to indicate that it is likely that the employee will die

from the occupational disease; and, if he does, burial benefits will be provided.

There is an opposite assumption for the Workmen's Compensation Laws. If the employee does not die from the injury within a given period, the presumption is that he will not die from the injury; and, as a result, burial benefits are denied after the statutory period (Section 35-1-68, Utah Code Ann. 1953).

The Supreme Court of Utah has stated that the purpose of the compensation laws is:

“To substitute a more humanitarian and economical system of compensation for injured workmen or their dependents in case of death which the more humane and moral conception of our time requires,” and that such acts are “intended to afford injured industrial workmen or their dependants simple, adequate, and speedy means of securing compensation, to the end that the ‘cost of human wreckage may be taxed against the industry which employs it’ and that society be relieved of the support of unfortunate victims of industrial accidents.” It is further stated that “If there is any doubt ‘respecting the right to compensation, such doubt should be resolved in favor of the employee or of his dependents as the case may be,’” citing *Chandler v. Industrial Com.*, 55 Utah 213, 184 P. 1020, 8 A. L. R. 930. *Barber Asphalt Corporation v. Industrial Commission, et al.*, 103 Utah 371, 378-379, 135 P. 2d 266, 270 (1943).

It is far better that the cost of injury from occupational

disease be paid as provided by compensation laws rather than denying benefits to those in need and transferring the burden to other forms of social legislation, such as public welfare. It is oppressive to place the burden of burial expenses on an employee's surviving dependents, when his death results from an occupational disease.

We submit that the purposes of the Occupational Disease Act, the plain language of Section 35-2-15(10), the particular problems facing families whose members contract an occupational disease and the Utah Supreme Court's rule that the "Workmen's Compensation Act should be liberally construed in favor of the employee or his dependents, (citing cases)" — *Silver King Coalition Mines Co. v. Industrial Commission*, 2 Utah 2d 1, 7, 268 P. 2d 689 (1954) — support the order of the Industrial Commission of February 22, 1974, awarding burial benefits to defendant, as widow of Justin W. Peay, deceased.

POINT II.

SECTION 35-2-15(10), UTAH CODE ANNOTATED 1953, AS AMENDED, ALLOWS THE INDUSTRIAL COMMISSION TO MAKE AN AWARD OF \$1,000.00 INSTEAD OF THE \$450.00 THE COMMISSION AWARDED TO DEFENDANT IN THE AMENDED ORDER ENTERED ON FEBRUARY 22, 1974.

A. UTAH SUPREME COURT DECISIONS SUPPORT DEFENDANT'S POSITION

THAT THE 1971 AMENDMENT TO 35-2-15(10), U. C. A. 1953, WHICH ALLOWS \$1,000.00 FOR BURIAL EXPENSES IS THE CONTROLLING STATUTE IN THIS CASE RATHER THAN THE LAW IN EFFECT IN 1956 AT WHICH TIME THE DEFENDANT'S DECEASED WAS LAST IN THE EMPLOYMENT OF THE PLAINTIFF.

The Industrial Commission of Utah awarded Irene W. Peay \$450.00 burial benefits for the death of her husband Justin W. Peay. It did so because that was the law in effect at the time the deceased left the employment of the plaintiff on disability. It is the position of the defendant that the Industrial Commission erred in restricting its award to the law in effect in 1956, and should have made the award of burial benefits as provided by the 1971 amendment, which was the law in effect at the time of Mr. Peay's death.

The Supreme Court of Utah has accepted the rule that the law in effect at the time of death is controlling with respect to death benefits. Quoting 58 Am. Jur., Workmen's Compensation, § 73, the court said:

“With respect to time, the right to compensation for an injury, under the workmen's compensation acts is governed, in the absence of any provision to the contrary, by the law in force at the time of the occurrence of such injury. This

rule is applicable to the rights of relatives or dependents of a deceased employee, in so far as they are predicated upon the survival of the rights of the employee. But where the statute confers upon the dependents a new and independent right to compensation on account of his death, it is generally held that the right to such compensation is governed by the law in force at the time of death rather than at the time of injury, when the two events are separated in time." *Silver King Coalition Mines Co.*, supra, at 4.

In that case an amendment which increased the opportunity of dependents to apply for death benefits was passed during the period between the time the decedent left employment on disability and the time of his death. The court held (p. 4) that there were two rights of action created by the Occupational Disease Act, one in the employee and one in his dependents, (pp. 5 and 6) that the right of action in the dependents did not occur until the death of the employee, and (pp. 4-6) therefore the statute in effect at the occurrence of the contingency creating the right of action was controlling. The court awarded death benefits, giving effect to the new amendment.

Likewise, by a 1971 amendment, burial benefits were increased to \$1,000.00, and since Mr. Peay died in 1973 after the effective date of the statute on July 1, 1971, his award should not have been restricted to \$450.00, which was the statutory amount in 1956.

Further, the court reasoned that (p. 5) giving effect to an amendment in that case was not making the law retroactive, and that (p. 6) the duties of the employer are not frozen at the time of last employment or injury.

The purposes of compensation laws would also require the more recent amendment to be given effect. As quoted earlier, that purpose in brief is to relieve the burden caused by an employee's injury or death. Of the expenses at death, burial expenses can be the most burdensome, and the legislature has recognized this by not only providing a special section establishing burial benefits, as argued earlier, but also increasing the amounts regularly to meet the needs of increasing expenses in this area. Mr. Peay was buried in 1973, at 1973 expenses. It is only reasonable and just that the more recent statutory amendment be given effect to meet the burden caused by the death of Mr. Peay.

CONCLUSION

Defendants respectfully submit that the award of burial expenses to defendant Irene W. Peay, widow of Justin W. Peay, deceased, issued by the defendant Industrial Commission of Utah in its Amended Order of February 22, 1974, was justified by the provisions of 35-2-15(10), Utah Code Annotated 1953, as amended.

The defendant Irene W. Peay further submits that the proper award for burial expenses should be controlled

by the 1971 amendment to 35-2-15(10), Utah Code Annotated 1953, and the Industrial Commission should not have been restricted to the law as it was in effect in 1956.

Respectfully submitted,

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