

1941

# General Mills, Inc. et al v. Industrial Commission of Utah and Olgan Lassen Hansen : Brief of Plaintiffs

Utah Supreme Court

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# In the Supreme Court of the State of Utah

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GENERAL MILLS, INC., a corporation of the State of Delaware, doing business under the trade name of SPERRY FLOUR COMPANY, Western Division General Mills, Inc., and ZURICH GENERAL ACCIDENT & LIABILITY INSURANCE COMPANY, LTD.,

*Plaintiffs,*

vs.

INDUSTRIAL COMMISSION OF UTAH  
and OLGA LASSEN HANSEN,

*Defendants.*

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## PLAINTIFFS' BRIEF

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**FILED**

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*Plaintiffs,*

VS.

INDUSTRIAL COMMISSION OF UTAH  
and OLGA LASSEN HANSEN,

*Defendants.*

Case No. 6382

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## PLAINTIFFS' BRIEF

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### STATEMENT OF THE CASE

This case has been before this court on a prior occasion, *General Mills, Inc., et al., v. Industrial Commission, et al.*, 99 Utah 293, 105 P. (2d) 340, decided September 13, 1940, wherein the former award of the Industrial Commission to Mrs. Hansen was set aside.

This present matter is an original proceeding for the purpose of reviewing the second award made by the Industrial Commission. After the annulment of the former award by this court, the Industrial Commission on its own motion held a further hearing at Salt Lake City, Utah, November 27, 1940 (R. 1 and 3 T). At the further hearing additional testimony was introduced on behalf of Mrs. Hansen, the applicant therein and the defendant herein, and it was stipulated between the parties that a deposition of the witness C. W. Stratton might be taken in Los Angeles, California. This deposition was taken and is a part of the files in this matter. In due time the Industrial Commission entered its findings and conclusions and awarded the applicant compensation. Petition for rehearing was duly filed and before it was acted upon, the Commission on its own motion amended its decision, and to the amended decision proper application for rehearing was filed. Both applications for rehearing were denied by the Commission. Within the time allowed by law, the plaintiffs applied for and were granted writ of certiorari by this court, to which writ return has been made to this court.

## STATEMENT OF FACTS

The case involves the same question as the former case—whether Olga Lassen Hansen, the widow of Marius Hansen, is entitled to compensation by reason of the contention that he was injured in an accident arising out of and in the course of his employment, from which injuries

he subsequently died. In the former case there were three hearings held and the testimony is set forth substantially in the decision of this court. That testimony also appears in the record herein in two volumes, one numbered 22 and the other numbered 30, in the Commission's file sent to this court for this hearing. All proceedings before the Industrial Commission are numbered 4133 and entitled, "Mrs. Olga Lassen Hansen, widow of Marius Hansen, deceased, on behalf of herself and June Hansen, minor daughter of deceased, Applicants, v. Sperry Flour Company and Zurich General Accident & Liability Insurance Company, Ltd., Defendants." If it becomes necessary to refer to the transcript of evidence in the first hearing, we shall refer to No. 22 as 1 T. and No. 30 as 2 T. The testimony in the last hearing, No. 3 in the Commission's file, as 3 T. The remainder of the record will be designated by the letter "R." All of the former evidence and records are part of the present record by stipulation (3 T. 5).

It would seem unnecessary to repeat the evidence of the first hearings leading up to the decision of this court, since the decision itself states the material facts. A brief summary, however, may be helpful.

Marius Hansen was an employee of Sperry Flour Company (trade name for Western Division of General Mills, Inc.) Some time in March, 1938, he sustained some injuries from which he died a little over a year later. There was a stipulation that he was injured on March 17, 1938, in the course of his employment while driving

south of Payson, Utah, on Highway 91. This stipulation was later found to be erroneous and was withdrawn. This court held that the stipulation was properly withdrawn and it thus left the record with no evidence of any accident or injury to Mr. Hansen on March 17, 1938.

Direct evidence shows, however, that he *was* injured on Sunday, March 20, while on a venture of his own and not in the course of his employment. The former record shows, according to the testimony of Miss Peterson (2 T. 26-30), that on Thursday or Friday, March 17 or 18, she drove with Mr. Hansen from Centerfield to Richfield; that at that time he complained of no disability; that he showed no signs of injury; that on Sunday evening, March 20, about 7:00 or 8:00 in the evening, she was riding with him near Sigurd, between Richfield and Gunnison, and that he had a terrific collision with another car; that his car left the road and that he said he received a terrible jolt, complained of a terrible lump in his stomach, and pains in his chest; that he drove on to Gunnison and stayed there that night. The first time he ever complained of any disability or injury was after this accident on March 20 and this court says as to that accident, at page 296:

“There was evidence to sustain the finding that the death of the decedent resulted from injuries received in an accident occurring some time in March of 1938 but no substantial evidence that the accident occurred while the deceased was in the plaintiffs’ employment. The evidence, as the record stands, is all to the contrary. The admissions being expunged there is no evidence that

the accident occurred on March 17, 1938, but only that it occurred on March 20, 1938.”

Thus we have it judicially determined that there could be no compensation for the accident of March 20.

Then the Commission held its further and last hearing and took the deposition. The deposition will be referred to as 4 T. The third hearing and deposition were devoted entirely to March 17, 1938. The record was left undisturbed as to the accident of March 20, which accident has already been judicially declared to be non-compensable.

Even now there is no evidence in the record that on March 17 Mr. Hansen was engaged in the course of his employment. He himself made out the records as to where he was (3 T. 8, 9) and he himself gave the information as to the report of injury as appears from the preceding case, which does not bind plaintiffs in this case at all, as this court has already pointed out in that case. Mr. Thompson, the Manager of Sperry Flour Company at Ogden, testified that from the 14th of March to the 20th of March he was in Denver and he doesn't know what Mr. Hansen was doing, except as he gleaned it from the reports of Mr. Hansen in Mr. Hansen's handwriting (3 T. 18).

Even should we concede, which we do not, that there is circumstantial evidence from which it could be adduced that he was in the course of his employment, there is nothing in the record that he suffered injuries on March



17 or, if he did, that these injuries resulted in his death. The deposition is the only evidence of any accident on March 17. The deposition is brief and shows that on March 17 at about 11:00 A. M. Mr. Hansen was driving slowly on the Juab dugway going south (4 T. 5) and that his car sort of zig-zagged across the road and ran into a pit on the east side of the road, came to a stop against an embankment at an angle of 45 degrees with the rear wheels about five feet off the east side of the pavement. The witness Stratton testified that he didn't notice anything unusual about the condition of Mr. Hansen; that there was no bleeding or cutting; that he didn't notice any damage to the car; that he and a number of other spectators assisted in pushing the car back on the road; that Hansen sat at the wheel and drove as they pushed the car back on the road, and after they got the car back on the road, with Hansen's assistance at the wheel, he drove off himself (4 T. 14, 15, 16). This witness did say that Hansen did say something about being shaken up and that he looked like he was either scared or hurt (4 T. 9, 10), but he did say he was all right and he didn't say he was hurt (4 T. 9). There is no evidence whatever that he was hurt or that his car was damaged and he had no difficulty in assisting in getting the car out of the pit and driving off himself.

In this state of the record the Industrial Commission has made the present grant against these plaintiffs, granting compensation to Mrs. Hansen for the death of her husband.

## STATEMENT OF ERRORS

The Industrial Commission was without jurisdiction to award compensation to Mrs. Hansen.

## ARGUMENT

There seems to be little room for argument under the evidence in this case. Even should we assume that Hansen was in the course of his employment on March 17, which we contend can not be assumed under the evidence because all there is to support it are his own reports, from which the company records are made up, there is still no evidence that he suffered any injury. The mere fact that his automobile ran off the road is no evidence of injury to him and the only testifying witness to the accident says he saw nothing wrong or unusual, no damage to the car, no cuts or wounds, and Hansen had no difficulty in driving his car out of the pit and off on his way.

Even should we assume, which we can not, that he suffered injuries on March 17, there is no evidence that these are the injuries from which he died. There is direct evidence that he suffered severe injuries on March 20 when not in the course of his employment, so even had he been injured on March 17, it is impossible for anyone to determine which injuries were responsible for his death. In fact, the greater probability is the accident of March 20 because after the accident of March 17 and until March 20 he showed no signs of injury and after

the accident of March 20 he complained of serious injuries and on the next day after arriving home, told his son that he had been injured the day before. This appears from the record of the first hearing (1 T. 21). The deceased's son said he saw his father in Ogden the day after the accident and that it was either Sunday or Monday (1 T. 27). It could not have been Sunday because as we have shown by the testimony of Esther Peterson, he spent Sunday night in Gunnison (2 T. 30).

In addition to the decision already made in this case that the accident of the 20th did not occur while deceased was in plaintiff's employment, and there is no further evidence in the record on that question, this court has frequently held that an award of the Commission can not be based on conjecture or surmise. In *Aetna Life Ins. Co. v. Industrial Commission of Utah*, 64 Utah 415, 231 P. 442, at page 420 of the Utah Reports, this court says:

“A finding of a material fact cannot sustain an award, unless the finding is supported by substantial evidence. The evidence need not be direct or positive; it may be by circumstances or other facts from which the fact found may be inferred. But in the latter case the inference must be a legitimate one. There must be a reasonable theory which leads to the conclusion reached. A finding cannot be predicated upon mere surmise or conjecture.”

In *Spring Canyon Coal Co. v. Industrial Commission*, 58 Utah 608, 201 P. 173, this court held that the Commission can not choose between two inferences where

the probabilities are equal, and that the burden is on the applicant. This court said at page 613 of the Utah decision:

“The mere fact that the Commission arbitrarily chooses one inference rather than the opposite where the probabilities are equal, still leaves the fact to be established without any substantial evidence.”

In the present case the probabilities are not even equal. The probabilities are all to the contrary of the Commission's findings.

Again in *Diaz v. Industrial Commission*, 80 Utah 77, 13 P. (2d) 307, this court held that the evidence was that the injuries, if any, were only slight and that there was only a possibility that they had anything to do with the employee's death; that in such a state the record did not support an award.

There isn't even slight evidence in this record that he sustained any injuries on March 17, from which he died.

In *Higley v. Industrial Commission*, 75 Utah 361, 285 P. 306, at page 368 of the Utah Reports, the court said that in order to sustain his burden it is not enough for the applicant to show a state of facts which is equally consistent with no right of compensation as it is with such right. Surmise, conjecture, guess or speculation is not sufficient to justify a finding in the plaintiff's behalf.

See also *Chief Consolidated Mining Co. v. Salisbury*, 61 Utah 66, 210 P. 929; *Maryland Casualty Company v. Industrial Commission*, 74 Utah 170, 278 P. 60.

To summarize, the only evidence that the deceased was in his employment on March 17 are his own reports. There is no evidence that he was injured on March 17. There is positive evidence that he was injured while not in the course of his employment on March 20, that up to that time he had showed no evidence of injury and the overwhelming probabilities and direct evidence are that the injury of March 20 caused his death. The findings and award of the Commission are made upon pure speculation, surmise, and conjecture and are against the competent evidence. The award should be annulled.

Respectfully submitted,

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