

1949

Pacific States Cast Iron Pipe Company v. Industrial
Commission of the State of Utah, and Ida D.
Horrocks : Reply Brief of Defendant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

PACIFIC STATES CAST IRON
PIPE COMPANY,

Plaintiff,

vs.

INDUSTRIAL COMMISSION OF THE
STATE OF UTAH, and IDA D.
HORROCKS,

Defendants.

REPLY BRIEF OF DEFENDANT

IDA D. HORROCKS

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Ida D. Horrocks

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IN THE SUPREME COURT OF THE
STATE OF UTAH

PACIFIC STATES CAST IRON
PIPE COMPANY,

Plaintiff,

vs.

Case No. 7289

INDUSTRIAL COMMISSION OF
THE STATE OF UTAH, and
IDA D. HORROCKS,

Defendants.

STATEMENT OF FACTS

The facts out of which this action arises are largely undisputed. There was adequate and sufficient evidence presented upon which the Industrial Commission could base its findings, as set forth at R. 21 and 22, O.D. 77.

LeRoy D. Horrocks, deceased, was employed by the Pacific States Cast Iron Pipe Company during the period between 1932 and January 25, 1946. During his employment he had worked in the cleaning department where there was considerable dust due to the grinding of pipe. He left work on January 25, 1946 and never performed another days work during his lifetime. On that date he suffered from severe hemorrhaging in his lungs, losing a tremendous amount of blood. Dr. Orton's opinion was that the hemorrhaging was brought on and caused by his contact with silica dust over a period of years (R. 2, O.D. 69).

LeRoy D. Horrocks filed an application with the Industrial Commission on the 6th day of March, 1946, for compensation because of the occupational disease of silicosis (R. 1, O.D. 69). Mr. Horrocks' employer, Pacific States Cast Iron Pipe Company, de-

nied liability.

On July 16, 1947, the Industrial Commission of Utah held a hearing on Mr. Horrocks' claim at Provo, Utah (R. 45, O.D. 69).

A second hearing was had at the Utah State Capitol before the Industrial Commission on September 10, 1947 (R. 121, O.D. 69). The application of LeRoy D. Horrocks was taken under advisement by the Commission and was still under advisement on the date of Mr. Horrocks' death, which was February 10, 1948. During the period from the time he left work on January 25, 1946, until his death on February 10, 1948, Mr. Horrocks never performed one days work and was continuously and totally disabled. Until immediately prior to his death there was no medical history of any difficulty whatsoever except the condition of his lungs caused by silicosis. However, shortly prior to his death he developed chronic, and then acute,

bilateral glomerulonephritis, and that, together with the pulmonary silicosis, was the immediate cause of his death.

The only error relied upon by the plaintiff in its petition and brief is that the Industrial Commission failed to give effect to Section 42-1a-13 (b) 3, Utah Code Annotated, 1943.

ARGUMENT

POINT I.

LeROY D. HORROCKS WAS CONTINUOUSLY AND TOTALLY DISABLED AS A RESULT OF SILICOSIS FROM JANUARY 25, 1946, THE DATE HE CEASED WORKING, TO FEBRUARY 10, 1948, THE DATE OF HIS DEATH, AND WAS, THEREFORE, ENTITLED TO COMPENSATION DURING HIS LIFETIME UNDER AND BY VIRTUE OF SECTION 42-1a-13 (b) 3, OF THE UTAH CODE ANNOTATED, 1943.

Counsel, in his brief, states that LeRoy D. Horrocks was only partially dis-

abled during his lifetime. This statement is false. It is in direct conflict with the finding of the Industrial Commission to the effect that LeRoy D. Horrocks during the period of his disability and up to the time of his death was "physically unable to work." The finding of the Industrial Commission is supported by all of the testimony adduced at the hearings and presented for the consideration of the Utah State Industrial Commission. Dr. Orton, Mr. Horrocks' personal physician who cared for him constantly during the entire period of his disability and who attended him at his death, testified positively to that effect (R. 31, 32, O.D. 77).

"A Yes, I observed him and examined him. His condition during all the time was that he was unable to work. He would go out and putter around on the farm.

* * * * *

"Q But up to the time this nephritis condition developed, he was disabled?

"A Yes, he was completely disabled."

In one of his letters Dr. Orton states (R. 20, O.D. 69):

"The prognosis for this man is not good. The destruction of lung tissue is so extensive that no improvement is expected. He is permanently and totally disabled."

This letter was written to the Industrial Commission by Dr. Orton on September 8, 1947.

Dr. Orton, in another letter, stated his opinion regarding the cause of Mr. Horrocks' disability and death, as follows (R. 2, O.D. 77):

"In my opinion, based on his clinical course and on the findings at autopsy, I strongly feel that his general disability began with and resulted from silicosis. * * * The adhesions of the lung tissue to the chest wall, and the nodules of silicosis about the bronchi together with the scarring in the apices of the lungs from the hemorrhages supplies the answer as to why he did not recover afterward.

"There was no tuberculosis found so far as I recollect.

"His terminal illness was that of acute nephritis. The failure of kidney function was followed by coma and death. I feel that it came along much the same as pneumonia in the aged to relieve his suffering."

We, therefore, submit that plaintiff's contention that Mr. Horrocks was only partially disabled while living is not only in direct conflict with the findings of the Industrial Commission which, as counsel for the plaintiff points out, are binding upon this Court, but with the whole of the testimony placed before the Industrial Commission.

POINT II.

NO COMPENSATION FOR SILICOSIS WAS EVER PAID OR AWARDED LEROY D. HORROCKS DURING HIS LIFETIME AND HIS DEATH OCCURRED MORE THAN TWO YEARS FOLLOWING THE COMMENCEMENT OF HIS TOTAL DISABILITY. HOWEVER, IDA D. HORROCKS HIS WIFE, SHOULD NOT BE PENALIZED FOR DELAY ON THE PART OF THE UTAH STATE INDUSTRIAL COMMISSION IN MAKING THE AWARD TO LEROY D. HORROCKS TO WHICH HE WAS ENTITLED DURING HIS LIFETIME.

Section 42-1a-13 (b) 3, Utah Code

Annotated provides as follows:

"(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 be paid for death from silicosis unless the death results within two years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded, 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 strict interpretation of the above Statute contended for by plaintiff is that in order for Mrs. Horrocks to recover compensation one of the two following circumstances must exist:

(1) Mr. Horrocks must have died within the two year period following the last day of his employ; or

(2) Death must have resulted during a period of continuous total disability from silicosis for which compensation has been paid or awarded.

Mr. Horrocks died sixteen days after the two year period had elapsed. While an application had been under the consideration of the Utah State Industrial Commission from the 6th day of March, 1946 to the date of his death, a period of almost two years, nevertheless the Utah State Industrial Commission had not issued a decision thereon. The situation is simply this plaintiff requested the Industrial Commission to view the Statute herein set forth, strictly and by so doing to penalize the applicant for the Commission's own neglect and laches in failing over a two year period to render a decision. We submit that there are adequate and sufficient facts in the record as adduced in the matter of the claim of LeRoy D. Horrocks for the Commission to have granted him an award for total

and permanent disability from silicosis during his lifetime. Plaintiff's contention that the results of the negligence or laches of the Utah State Industrial Commission should be borne on the shoulders of Mrs. Horrocks and her five minor children, cries out of barbaric injustice. No Legislature could ever have intended such manifest injustice from a strict interpretation of the Statute here under consideration.

The purpose of Statutes of Limitations is well stated in 34 Am. Jur. Sec. 14, as follows:

" * * * such statutes are deemed to be in the interest of morals, serving to prevent perjuries, frauds, and mistakes, and to render people attentive to the early adjustment of demands, and prevent the disturbance of settlements which have been made but of which the proof may have been lost."

All Statutes of Limitation are directed against the individual bringing the action. They are directed to the time within which an action should or can be commenced. Mr.

Horrocks filed his petition within two and one-half months after his disability commenced. Mrs. Horrocks had no action on behalf of herself and her five minor children until after the death of her husband. She filed her petition within a short time after his death. Neither she nor Mr. Horrocks, in his lifetime, had any control over the conduct of the Utah State Industrial Commission. The Commission has, and exercises a broad discretion as to the length of time within which it can or may keep a given action under advisement. That discretion is present in all of the courts. Our Utah Supreme Court itself keeps cases under advisement for varying lengths of time, but should the litigants be penalized for the conduct or actions of our courts or of our commissions? Yet, that is the proposition urged on behalf of the plaintiff. We believe that the only fair and just interpretation that can be placed on the Statute is that the Legislature when it used

the words, "for which compensation has been paid or awarded," must have intended also to include the situation where an award was in the process of being made. We cannot feel that such an interpretation would constitute judicial legislation as contended by the plaintiff herein.

Counsel for plaintiff in his brief states:

"42-la-13 creates any liability which can exist for silicosis. 42-la-51 limits whatever liability exists under Section 13."

Section 42-la-13 did create a liability on the part of the plaintiff to LeRoy D. Horrocks, in his lifetime, as a result of his permanent and total disability which was caused by silicosis. His death resulted from a combination of silicosis and acute nephritis. The Commission determined that the silicosis contributed to cause his death in the amount of thirty per cent. We believed at the time this matter was before the Commission that silicosis was the sole

cause of his death and yet from the medical testimony we nevertheless felt that the Industrial Commission could have made the determination which it did and we deemed it inadvisable to contest such finding. The Commission's award was based on the fact as found by the Commission that from January 25, 1946 to February 10, 1948, the date of his death, LeRoy D. Horrocks "was physically unable to work." Therefore, as far as this proceeding is concerned, it has already been determined by the fact finding body that he would have been entitled to an award at the hands of the Commission for his total disability resulting from silicosis had he lived long enough for the Commission to have made an award. This determination is conclusive and final. Section 42-la-40, U.C.A 1943. This being true, we submit that by virtue of Section 42-la-51 the Commission's award was sanctioned by law in the following language:

" * * * the compensation payable under this act shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease as a causative factor bears to all the causes of such disability or death."

CONCLUSION

Defendant respectfully submits that there is only one question before this Honorable Court and that is, whether or not Ida D. Horrocks shall be precluded from the compensation to which she and her five minor children are entitled by virtue of the fact that during the approximate two year period after the decedent's application had been submitted, the Utah State Industrial Commission failed to make the award for total and permanent disability to which LeRoy D. Horrocks, during his lifetime, was entitled.

The manifest injustice of such restrictive interpretation of the Statute

contended for by the plaintiff shocks the conscience and violates every fundamental concept of justice and fairness known to the law.

Defendant, therefore, respectfully requests that this Honorable Court affirm the decision of the Utah State Industrial Commission.

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RECEIVED two copies of Reply Brief of Defendant, Ida D. Horrocks, this 31st day of March, A. D. 1949.

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