1978

the Church of Jesus Christ of Latter-Day Saints v. Industrial Commission of Utah, and Ivan L. Thurman : Reply Brief

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS,

Plaintiff,

vs.

INDUSTRIAL COMMISSION OF UTAH, and IVAN L. THURMAN,

Defendants.

Case No. 15640

REPLY BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Plaintiff respectfully submits the following as a reply to defendant Thurman's brief in this case.

POINT I

DEFENDANT THURMAN HAS NOT ESTABLISHED AN "ACCIDENT" WITHIN THE MEANING OF THE LAW.

A survey of all of the Utah cases in which the question of whether an accident had occurred was the issue confirms that the defendant Thurman has not sustained the burden of proof in this issue. The earliest case on the subject defined "accident" as "the cause of the injury, and it is here used in its ordinary and popular sense, as denoting an unlooked for mishap, or an unthwarted event, which is not expected or designed by the workman himself." Tintic Milling Co. v. Industrial Comn., 60 Ut. 14, 206 P.278, 280 (1922). (Emphasis added.) This is reconfirmed in Bamburger Coal Co. v. Industrial Comn., 66 Utah 203, 240 P. 1103 (1925) where this Court said that there must be "some showing that at a particular time and place something unusual or unexpected or unforseen had occurred, in other words that there had been an accident."

240 P. at 1104. That concept has been reaffirmed recently when this Court said that an accident "connotes an unanticipated, unintended occurrence different from what would normally be expected to occur in the usual course of events." Carling v. Industrial Com 16 Utah 2d 260, 399 P. 2d 202, 203 (1965).

This Court has also agreed that if there is an unusual strain or an overexertion, that that too can be considered an accident. As this Court said most recently, to qualify it would have to be "greater exertion than normally would be required." Nuzum v. Roosendahl Constr. & Mining Corp., 565 P. 2d 1144, 1146 (Utah 1977).

This Court has also discussed cases where someone experienced pain or difficulty on the job. It has uniformly been held that if the employee has engaged in the same work for a long period of time and that the pain is discovered during the performance of the same type of work which the worker has been accu tomed to, the fact that the pain itself is unusual or unexpected does not constitute an accident. Woodburn v. Industrial Commissio 111 Utah 393, 181 P. 2d 209 (1947); Pintar v. Industrial Commissio 14 Utah 2d 276, 382 P. 2d 414 (1963); Mellen v. Industrial Commiss 19 Utah 2d 373, 431 P. 2d 431 (1967); Redman Warehousing Corp. v. Industrial Commission, 22 Utah 2d 398, 454 P. 2d 283 (1969); Pitt vs. Industrial Commission, 558 P. 2d 1322 (Utah 1976). There are many other cases which have held exactly as above, but there is no point in citing them since they uniformly agree with each other.

There is only one case where this Court specifically allowed an award without any evidence of an accident. Purity Biscuit Co. v. Industrial Commission, 115 Utah 1, 201 P. 2d 961 (1949). That case appears to be an aberration and has been subsequently referred to as a "living corpse," Redman Warehousing Corp. v. Industrial Commission, supra, and as a "long and difficult to understand opinion" which has "never been cited by this court or any other court to support the law of that case." Mellen v. Industrial Commission, 19 Utah 2d 373, 431 P. 2d 798 (1967).

In the brief of defendant Thurman, there are two cases cited in support of the proposition that the way in which defendant's injury arose qualifies it as a compensable injury. The interesting thing about these two cases is that neither one of them attempted to define "accident" and both of them are totally out of the main stream of the law as this Court has evolved it as to what constitutes an "accident". In the case of Baker v. Industrial Commission, 17 Utah 2d 141, 405 P. 2d 613 (1965), this Court simply and solely decided that the Industrial Commission cannot ignore all competent and uncontroverted evidence. There was no determination whether or not there had been an accident involved. In Residential & Commercial Constr. Co. v. Industrial Commission, 529 P. 2d 427 (Utah 1974) this Court simply indicated that the Industrial Commission is the body not only to find the facts but to draw inferences as may be reasonable.

Whatever the reasons why this Court ruled as it did in the two aforementioned cases it is clear that neither of those cases outweigh the long list of cases which have consistently defined

"accident" in the terms of an unexpected event or unusual stress which is separate from and precedes the injury itself. Moreover, this Court has consistently required a causal connection between the unexpected event or the overexertion and the injury which is manifested. There have been at least fifteen Utah Supreme Court cases specifically establishing such a requirement. The only case in this Court's history which has given any support to the concept that if the injury suddenly appears, that that is sufficient to constitute "an accident" is the Purity Biscuit case which, as noted above, has essentially been overruled by subsequent cases.

POINT II

THE INDUSTRIAL COMMISSION ACTED IN EXCESS OF ITS POWERS AND CONTRARY TO THE LAW.

Defendant Thurman has argued in his brief that the findings made by the Industrial Commission should be sustained unless they are arbitrary, capricious or otherwise contrary to the law or evidence. Defendant's Brief, page 7. Plaintiff does not argue with that definition but only with the application of that definition to the facts before this Court.

As has been amply demonstrated above, the law in Utah does not permit an award unless there is clear evidence of an accident. As it has been defined in Utah law, there was no accident in the case of Mr. Thurman. Therefore the Industrial Commission was incorrect on the law in deciding as it did in favor of Mr. Thurman.

The testimony in this case, both in the original hearing as well as by the medical panel, is clear as to what happened medically. If the ruling of the Industrial Commission is to the effect that there was overexertion or that the injury to Mr. Thurman occurred as a work-related product, that is totally and completely a misconstruction of the evidence. The evidence is clear that Mr. Thurman's difficulties occurred as he was standing up to answer the telephone. He was not lifting a table or any chairs at the time. In fact, had he been lifting a table or chairs, that would have been part of his normal activity and not accidental. In any case, Mr. Thurman was not doing any work at all when the pain developed.

Since the clear evidence in this case does not show any accident, the Industrial Commission did act contrary to law and evidence.

CONCLUSION

An employer has a difficult time in today's world determining whether a back injury occurring during the time an employee is on the job is compensable. Nevertheless, under the guidelines of the Workmens' Compensation Law of Utah and under the definitions as established by this Court, an employer has been able to weed out those cases where it was clear that there was no accident involved. If the ruling of the Industrial Commission in this case is adopted, however, an employer will become financially responsible every time an employee has a manifestation of pain while he is working, whether or not the employee was engaged in work, was overexerting himself,

had a slip and fall, or whether he simply was experiencing the culmination of a degenerative process which, through its timing, manifested itself at work. If the Industrial Commission's position in this case were accepted, the value of the word "accident" in the law would be eliminated and the definition of the word would be totally emasculated. There would thereafter be no need for the word to even remain as part of the statute. The only question would be not whether there was an accident but whether the injury manifested itself during the working hours, regardless of what the individual was engaged in doing.

It cannot be believed that either the Legislature or this Court intended such a result. Reason and a long line of precedent clearly say that in this case there was no accident, that the Industrial Commission was in error in deciding as it did, and that the award to Mr. Thurman should be reversed.

Respectfully submitted,

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MAILING CERTIFICATE

Mailed 2 copies of the foregoing to the following:

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this 29th day of September, 1978.

Kathy Pickett

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