1979

McKay Dee Hospital v. Industrial Commission of Utah and Ted Clark Spackman : Brief of Defendants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

McKAY DEE HOSPITAL,

Plaintiff,

-vs-

Case No. 16182

INDUSTRIAL COMMISSION OF UTAH and TED CLARK SPACKMAN,

Defendants.

BRIEF OF DEFENDANTS

ORIGINAL ACTION TO REVIEW THE PROCEEDINGS AND ORDER OF THE INDUSTRIAL COMMISSION OF UTAH

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Webster's Seventh New Collegiate Dictionary. . . . . . .

IN THE SUPREME COURT OF THE STATE OF UTAH

McKAY DEE HOSPITAL, :

Plaintiff, :

-vs- : Case No. 16182

INDUSTRIAL COMMISSION OF :
UTAH and TED CLARK SPACKMAN, :

Defendants.

BRIEF OF DEFENDANTS

STATEMENT OF THE NATURE OF THE CASE

Defendants agree with statement of Plaintiff on "Disposition of the Case before the Industrial Commission.

RELIEF SOUGHT ON APPEAL

Defendants seek an affirmance of the Order of the Industrial Commission.

STATEMENT OF THE FACTS

The Statement of Facts in the Brief of the Plaintiff McKay Dee Hospital is incorrect in the following:

1. The defendant hit a low ceiling with his cast one month after the original cast was applied and not "about two weeks."

2. The pin came out at time of removing the cast and not because of hitting cast on ceiling.

3. Infection in the bone developed during the time original cast was on and not after the ceiling incident.

POINT I.

EMPLOYEE'S INJURY WAS NOT PURPOSELY SELF-INFLICTED.

Section 35-1-45 reads:

> Every employee mentioned in section 35-1-43 who is injured, and the dependents of every such employee who is killed, by accident arising out of or in the course of his employment, wherever every such injury occurred, provided the same was not purposely self-inflicted, shall be entitled to receive, and shall be paid, such compensation for loss sustained on account of such injury or death, and such amount for medical, nurse and hospital services and medicines, and, in case of death, such amount of funeral expenses, as is herein provided. (emphasis added).

The statute is clear on its face that compensation shall be paid unless the injury was purposely self-inflicted. Spackman did things that many would consider foolish, childish or negligent. But this type of behavior does not cause denial under the workmen's compensation law of Utah. The statute prohibits compensation only when the employee purposely self-inflicts injury upon himself. . . such as in a suicide or setting fire to one's gas soiled clothing.

The employee went to the office of his supervisor during "break" (R-25) to inquire about his work schedule. Both parties felt they were right in their opinions (R-1) but words were spoken in disagreement over the work schedule and the employee left in anger. He hit some boxes and garbage cans (R-27) on his way out and then hit a metal door with his fists. The knuckle of his

little finger on his right hand hit the edge or lip of the locked door. (R-28 and 29) and a bone in the little finger was broken.

To deny compensation the statute madates that the injury be "purposely self-inflected." The act of the employee in hitting the door with his fist was an intentional and purposeful act. But it certainly does not follow in anyway from the facts of this case that the employee purposely or otherwise intended to injure himself. The act was intended but not the injury.

The definition of "purposely" is that the act be "with a deliberate or expressed purpose, intentionally. Webster's Seventh New Collegiate Dictionary.

The act may have been negligent. . .but negligence does not destroy the right to compensation under the law of workmen's compensation. Twin Peaks Co. v. Ind. Com. 57 Ut. 589.

There is a vast difference between the purposful self-infliction of an injury such as in a suicide or in deliberately setting oneself on fire when clothing is saturated with gasoline Carland v. Vance, 137 Pa. Super 47, 10 A.2d 114 (1939) and in being injured doing a foolish or negligent act, Buhler v. Maddison, 109 Utah 245, or even a prohibited act or injury caused in play or pranks. Twin Peaks Co. v. Ind. Com.

We agree that our Utah statute 35-1-45 supra provides for a defense where the injury is purposely self-inflicted, but that is not the factual situation in this case. This case is certainly distinguishable from Henry v. Schenk Mechanical Contractors, Inc. 346 NE2 616. In that case the "board" found that the employee

intentionally inflicted injury upon himself. In the present case the Commission found that applicant's injury was not the result of a self inflicted injury.

Utah cases are in complete conformity in holding that where the employee is within the cause of his employment it is immaterial whether he was guilty of negligence or wilful misconduct. M&K Corp. v. Ind. Com. 112 Ut. 488, 189 P.2 132. Larson's Workmen's Compensation Section 30.00 and 30.10 on Misconduct of Employee states:

> §30. GENERAL IRRELEVANCE OF EMPLOYEE FAULT
>
> §30.00 Misconduct of the employee, whether negligent or wilful, is immaterial in compensation law, unless it takes the form of deviation from the course of employment, or unless it is of a kind specifically made a defense in the jurisdictions containing such a defense in their statutes.
>
> §30.10 Statutory background of employee fault rules
>
> Although it is frequently observed that "negligence is irrelevant" in compensation law, this statement is apt to be misleading because it is too narrow. The correct statement is that employee fault of any character is irrelevant, with a few exceptions to be noted presently. Misconduct of the employee, whether negligent or wilful, is immaterial not because it is affirmatively stated to be so in the statutes (although a few contain such language), but because the basic test of coverage is relation of the injury to the employment, with no reference to the personal merits of the parties. The Compensation Act marks out a circle whose boundaries are fixed by the "arising out of" and "in the course of" employment concept. Within that circle there is compensation. Outside there is not. Most acts are simply silent on the entire question of general fault [illegible] employee. There is therefore no occasion to distinguish between negligent fault and [illegible], since fault

itself can have no bearing on the process of drawing the boundaries of compensability.

> The effect of a given act of misconduct by an employee must be judged against a background of three different kinds of statutes: (1) the commonest kind of statute, in which there are no affirmative defenses based on misconduct (except perhaps self-injury (Utah) and intoxication); (2) statutes making wilful misconduct a defense; and (3) statutes making particular kinds of misconduct, such as wilful failure to use safety devices or violation of law, either a complete defense or a ground for reduction of the amount of the award. Thus, the act of deliberately removing safety goggles in violation of regulations may give rise to the contention that this takes the employee out of the course of employment in the absence of any affirmative defense in the statute, or the contention that this act is a clear example of the specific defense of wilful failure to use a safety device.

And Larsen goes on to say in section 36.60 that the defense of intentional self injury, not apart from suicide, has produced no law of significance. (R-52). That section continues: The only cases. . .etc. (R-52).

Surely plaintiff's attempt to place employee's neglgent act of hitting a door in anger as the same as a purposeful self inflicted injury is another of these"fictions" which has had no acceptance and is out of place in the construction of compensation acts.

POINT II.

EMPLOYEE'S ACCIDENT AND INJURY AROSE OUT OF OR IN THE COURSE OF HIS EMPLOYMENT.

"Work connection" is the basic concept of compensation coverage. Larson's Law of Workmen's Compensation, section 6.20. Forty-two states use the phrase "Arising out of and in the course of employment." Utah is the only state according to Larson which uses the

the more broad language of "Arising out of or in the course of employment." Spackman was injured in an accident in the course of his employment. . . an argument arising out of a work schedule.

Plaintiff cites Sullivan v. Ind. Com., 79 Ut. 317, 10 P.2 92 and Calif. Casualty Indem. Exch. v. Ind. Acc. Comm. 21 Cal. 2d 461, 132 P.2d 815. Neither case is relevent. The Utah case involves an employee who was injured while returning his daughter to her school apartment. The California case cites a ruling that has no application to Utah law or cases.

Ted Spackman was injured on company property (McKay Dee Hospital) a few feet from the office of his supervisor, after a dispute on the employee's work schedule. And the Workmen's Compensation Act should be liberally applied in favor of coverage. Askren v. Ind. Com., 15 U.2 275, 391 P.2 302.

Cases cited by Plaintiff hospital as supporting position that there was no "accident" in fact supports position there was an accident. This court has continually held "that for the purpose of the Act, it (accident) should be given a broad meaning. Carling v. Industrial Commission, 16 U.2d 260, and Graybar Electr. Co. v. Ind. Com., 73 Ut. 568, 276 P. 161.

POINT III.

THE PERIOD OF TEMPORARY TOTAL DISABILITY WAS RESULT OF ACCIDENT OF APRIL 5, 1978.

Plaintiff's Brief, page 10, states that employee caused additional injury to his finger when he hit the cast on the ceiling of his room within one week after the initial injury. This incident occurred on May 5, 1978, one month after the original

accident. On that date the doctor related that he was "concerned about infection" and prescribed an antibiotic. The doctor on that date also noted "there seems to be possibly some lysis of the bone." (R-2 & 3).

It therefore appears that osteomyelitis had already started as of May 5, when the cast was replaced because of the incident of hitting cast on the ceiling of his room. This incident likely allowed the treating of the infection faster and more successful than if the incident of May 5th had not occurred.

The doctor also "very strongly admonished him to avoid all trauma to the hand."

The record contains no information that would substantiate a shorter period of temporary total disability.

SUMMARY

The Order of the Industrial Commission granting an award will not be disturbed if there is any substantial competent evidence to support it. The Record completely supports the Order.

Dated this 19 day of March, 1979.

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