1972

Inga-Lill Elton v. Utah State Retirement Board, An Agency of the State of Utah : Appellant's Petition For Rehearing

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

INGA-LILL ELTON,

Plaintiff-Respondent,

vs.

UTAH STATE RETIREMENT BOARD, an agency of the STATE OF UTAH,

Defendant-Appellant.

Case No. 12809

APPELLANT'S PETITION FOR REHEARING

Appeal from a judgment of the Third District Court
for Salt Lake County
Honorable Ferdinand Erickson, Judge

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Defendant-Appellant respectfully petitions the court, in accordance with Rule 76 (e) of the Utah Rules of Civil Procedure, to reconsider its opinion in this case, to grant a rehearing, and upon said reconsideration and rehearing to vacate its prior decision, reverse the judgment of the District Court of Salt Lake County and remit the case with directions to enter judgment for the defendant-appellant.

The decision should be reconsidered and a rehearing granted for the following reasons:

1. The Present Decision Conflicts With All Of The Workmen's Compensation Cases Decided By This Court In The Past.
2. There Are No Findings Of The Trial Court Which Support Its Decision.
3. The Decision As Issued Runs Counter To Well Established Concepts Of Workmen's Compensation Law.

ARGUMENT

1. THE PRESENT DECISION CONFLICTS WITH ALL OF THE WORKMEN'S COMPENSATION CASES DECIDED BY THIS COURT IN THE PAST.

Of the many workmen's compensation cases decided by this court one case, and only one, is cited in support of the decision on the merits (paragraph 4, Slip Opinion). The claim that that case, *Powers**, is precedent for this decision will not bear scrutiny.

Mr. Powers was a combat fireman. When the incidents in question in his case arose, he was on a swing shift filling in at various fire stations for other men who were off duty. A fire alarm was received at the station where he was working, the overhead lights went on automatically and a loud gong began to ring. He then and shortly afterward noticed symptoms consistent with a heart attack. The medical panel found no causation, and the Industrial Commission denied the claim. This court reversed and said:

> The law is well settled that the aggravation or lighting of a pre-existing disease by an industrial *acci-*

*Powers v. Industrial Commission, 19 U.2d 140, 427 P.2d 740 (1967).

> *dent* is compensable and that an internal failure brought about by exertion *in the course of employment* may be an accident within the meaning of the act. (emphasis added)

Thus it is clear that the *Powers* case was decided on the ground that the employee was in the course of employment and that an *accident* occurred at that time.

Judge Elton was at his home in his bedroom when the fatal stroke occurred. He was not in the course of employment. The inescapable question is, Would the *Powers* case, a 3-2 decision, have been decided differently if the symptoms had occurred while he was at home in his bedroom?

No decision ever rendered at any time by this court affords support for the result reached in this case. The result here is contrary to law and under no state of the facts or of the findings can it be made to fit either the letter or the spirit of the statute nor be made to fit any judicial precedent.

2. THERE ARE NO FINDINGS OF THE TRIAL COURT WHICH SUPPORT ITS DECISION.

The court's opinion in this case states that "The issue presented by this appeal is therefore simply whether the findings of the lower court are supported by competent evidence" (paragraph 2, Slip Opinion). Findings? There are no findings. What pass for findings 1 through 3 simply recite uncontested, prosaic facts which no one ever disputed. The heart of the case is glossed over in "finding" No. 4, which is no finding at all, but the ultimate conclusion. The astounding part of that finding is the "or" in the middle! Come on, District Court, what's this "or" business in the middle? Either

you find it or you don't. Since when are findings done in tandem? That's like the home plate umpire saying, "You're either safe or you're out."

There is no great enlightenment in that finding of the lower court. What did the court find happened to the judge? It doesn't even find that he had a stroke, although the Slip Opinion says he did. Did the accident which took him occur on the job or at home? Where is the finding on this point? What was it, anyhow, the accident which took him? What did the court find caused the stroke? Was whatever caused the stroke an "accident" within the prior decisions of this court? If so, what does the language of *Redman*[1] at page 285 mean when it says:

> "In other words the claimant has not met the onus of proving an 'accident' in the course of his employment that 'caused' the 'injury' of which he complains, which burden is his."

and what did *Pintar*[2] mean, saying:

> "It is, therefore, a prerequisite to compensation that his disability be shown to result, not as a gradual development because of the nature or conditions of his work, but from an identifiable accident or accidents in the course of the employment."

and *Carling*[3] mean with this language, referring to the definition of "accident":

> "However, such an occurrence must be distinguished from gradually developing conditions which are

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[1]Redman Warehousing Corp. v. Industrial Commission, 22 U.2d 398, 454 P.2d 283 (1960).

[2]Pintar v. Industrial Commission, 14 U.2d 276, 382 P.2d 414 (1963).

[3]Carling v. Industrial Commission, 16 U.2d 260, 399 P.2d 202 (1965).

classified as occupational diseases and which are not compensable except as provided in Chapter 2, of Title 35 (Sections 35-2-1, et seq.), U.C.A. 1953."

Mr. Carling was on the job engaged in his employer's business, pounding air pipes with an air gun. Judge Elton was at home in his bedroom.

There are no underlying findings of the trial court, findings on matters in serious contention between the parties, which support the legal conclusion that there was an accident, or that if there was one, it arose out of the employment, or arose in the course of the employment. The language of the Slip Opinion (paragraph 4), states: "This court has previously determined that aggravation of a pre-existing disease by an industrial *accident* is compensable and that an internal failure brought about by *exertion in the course of employment* may be an accident within the meaning of the Utah Workmen's Compensation Act." It is respectfully suggested that the court erred in the assumption that there was any exertion in the course of employment or any accident in this case.

3. THE DECISION AS ISSUED RUNS COUNTER TO WELL ESTABLISHED CONCEPTS OF WORKMEN'S COMPENSATION LAW.

This case involves directly only the claim of a judge's widow. However, the controlling language is the language of the Utah Workmen's Compensation Statute and this decision, sets a far-reaching precedent.

One can hardly forebear turning to the language of this court in *M & K Corporation, v. Industrial Commission,* 112 U. 488, 189 P.2d 132 (1948), in which this court said,

"However, where a disease is involved, even under the liberal provision of our statute, we have refused to open the door to a recovery for all injuries, without any causal relationship between the employment and the accident, . . .". Does not the present decision not only open the door but carefully remove it from its hinges and place it over in the corner?

SUMMARY

The decision issued by the court in this case is a departure both from judicial precedent and the clear language of the statute. In the interests of justice it should be reconsidered and a rehearing should be granted.

Respectfully submitted,

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