

1962

Oscar Hackford v. The Industrial Commission of Utah : Brief of Respondent

Utah Supreme Court

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

FILED

NOV 21 1962

OSCAR HACKFORD,

Plaintiff, Clerk, Supreme Court, Utah

vs.

Case No.

9749

THE INDUSTRIAL COMMISSION
OF UTAH,

Respondent.

BRIEF OF RESPONDENT

Review of Industrial Commission Award

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

OSCAR HACKFORD,

Plaintiff,

vs.

THE INDUSTRIAL COMMISSION
OF UTAH,

Respondent.

Case No.

9749

NATURE OF THE CASE

This is a Workmen's Compensation claim filed before the Industrial Commission.

DISPOSITION BELOW

The hearing was had before Referee, Roland G. Robinson. His proposed Findings of Fact and Conclusions of Law were adopted by the Commission, finding a 15% loss of bodily function of the claimant and awarding 30 weeks of compensation at the rate of \$35.00 per week, totaling \$1,050.00.

RELIEF SOUGHT ON REVIEW

Claimant contends that he is totally disabled and the evidence so supports such contention, and the Commission and its Referee erred in refusing so to find.

STATEMENT OF FACTS

Plaintiff-appellant's Statement of Facts is in essence correct, with the exception of his second paragraph therein regarding evidence that, prior to the accident, claimant was "strong, healthy and performed his work without difficulty or complaint". These assertions are not substantiated by the evidence in the record.

ARGUMENT

POINT I

LOSS OF BODILY FUNCTION IS THE CRITERION UPON WHICH COMPENSATION AWARDS ARE TO BE MADE IN UTAH, AND THE COMMISSION COMMITTED NO ERROR, THEREFORE, IN MAKING THE AWARD IN ISSUE.

The entire tenor of plaintiff-appellant's argument is to the effect that the report of the medical panel adopted by the Commission relates to loss of bodily function rather than the question as to whether or not the claimant was disabled. Appellant further argues that the test should be whether or not the claimant is able to resume gainful employment following an industrial accident.

The Respondent does not concede that claimant has met any proposed burden of showing that he is unable to work as the sole and proximate result of the injuries sustained in December, 1957, giving rise to this action. That matter, however, is immaterial, in view of the expressed language of our statute, Section 35-1-66, Utah Code Annotated 1953, as amended, which provides as follows:

“For any other disfigurement or the loss of *bodily function* not otherwise provided for herein, such period of compensation as the commission shall deem equitable and in proportion as near as may be to compensation for specific loss as set forth in the schedule in this section but not exceeding in any case two hundred weeks.” (Emphasis added.)

This particular section construing the phrase “bodily function” was ruled upon by this court in the case of *Markus v. Industrial Commission*, 5 Utah 2d 347; 301 P. 2d 1084 (1956). In that case, the petitioner claimed that the Industrial Commission had erred in using as a criterion loss of bodily function rather than the economical or vocational loss suffered. This in essence is the claim of petitioner now before the court.

In construing the statute the court held in the opinion rendered by Justice Henriod:

“* * * Nor is the fact that the petitioner may be vocationally or economically injured in excess of 25% a controlling factor since injury under the statute is compensable on a basis of *percentage loss of bodily function* and not on percentage of vocational or economic loss suffered. In many cases vocational or economic loss obviously far exceeds

any maximum compensation provided for under the statute.” (Emphasis added.)

The cases cited by appellant to the contrary view, it is noted, are all from neighboring jurisdictions construing statutes not similar to the Utah Act and, therefore, are not in point.

Appellant further contends that he should be entitled to a \$900.00 award to pay for future operative procedures. However, the record discloses that such future operative procedures were not recommended either by the panel or by the medical witnesses examined at the hearing. There appears in the record, Part 2, on pages 31 and 32 in the examination of Dr. Holbrook, Chairman of the Panel, testimony which indicated that, should future surgical procedures be followed, the cost would be approximately \$900.00, but the doctor said specifically: “Our panel did not feel that there were enough findings, at the time of our examination, to recommend surgical treatment.” The medical panel report adopted by the Commission states: “(1) No further treatment or study is indicated.” At another point: “We further find that any disability over and above the 15% loss of bodily function was caused by degenerative arthritis not related to or aggravated by the injury of December 31, 1957” (R. 62, Pt. 2). Accordingly, there is no showing in the record either that operative procedures are desirable or that they are justified as arising from the accident in issue.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the award of the Industrial Commission was proper in all particulars and should, therefore, be affirmed.

Respectfully submitted,

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