1963

Joseph Pintar v. The Industrial Commission of Utah et al : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT
of the
STATE OF UTAH

JOSEPH PINTAR,
Plaintiff-Appellant,

vs.

THE INDUSTRIAL COMMISSION OF UTAH AND COLUMBIA GENEVA STEEL DIVISION, UNITED STATES STEEL CORPORATION,
Defendants-Respondents.

Case No. ~~9468~~ 9864

APPELLANT'S BRIEF

Appeal from the Judgment of the Industrial Commission

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STATEMENT OF THE KIND OF CASE

This case involves a claim under the Workmen's Compensation Act by Joseph Pintar for medical expenses and temporary disability compensation resulting from a back injury suffered by Pintar on or about March 29, 1961, and again on or about July 25, 1961, while working for Columbia Geneva Steel Division, United States Steel.

DISPOSITION BEFORE THE INDUSTRIAL COMMISSION

The case was heard by a Referee and rulings of the Referee were affirmed by the Industrial Commission. From a verdict and judgment for the defendant, plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the judgment and judgment in his favor as a matter of law, or that failing, a new hearing.

STATEMENT OF FACTS

On March 29, 1961, while working at the Columbia Coal Mine Diviison of Geneva Steel, claimant, Joseph Pintar, suffered the first of two injuries involving his lumbar (back) spine. Pintar was helping two other men do some timbering. At the time of his injury he was on a platform in the process of lifting a heavy timber into place—"into the shuttle buggy." As he was lifting this timber he felt a sharp pain go down his back, especially in the lower portion of his back. He was swung around and was bent over by the pain. He was eventually able to straighten up by hanging with his hands onto the side of the buggy and dropping himself. He was then taken out of the mine to the hospital. After 4 days in the hospital, where he was kept flat on his back in bed, Pintar was returned to work. He was

able to do only light work, however, as he had considerable pain and distress in his back. (R. 1, 2, 8, 11, 16, 24).

On July 25, 1961, while working at the Columbia Coal Mine Division of Geneva Steel, Pintar had another accident. At the time of this accident he was standing near a drilling machine, which stands on a hydraulic jack. The jack broke and moved the machine back against him, pinning him between the machine and the wall of the coal mine. In this accident he hurt his ribs, neck, back and shoulder. He was taken out of the mine and given only two physical therapy treatments. X-rays were taken which indicated that there was nothing broken. The next day Pintar returned to light work and managed to get along, having considerable pain and distress until October 2, 1961, at which time he was placed on a roof driver. This caused considerable pain and distress and re-aggravated his chest and shoulder complaint, incapacitating him to the extent that he was no longer able to work. (R. 2, 14, 16, 24).

On August 28, 1961, at the request of Columbia Geneva Steel, United States Steel Corporation, Pintar was examined by Dr. B. J. Larsen, their Medical Director for Utah Operations, with respect to the back injury suffered by him on March 29, 1961. It was the opinon of Dr. B. J. Larsen that Pintar's back complaint was the result of an arthritic condition, which had no connection with the March 29 injury. (R. 8).

On October 17, 1961, Pintar, without permission

from the defendants, consulted Dr. Burk M. Snow, an orthopedic surgeon in Salt Lake City, who diagnosed his complaint as a typical degenerative arthritic lumbar spine seen in coal miners and other people doing heavy work, aggravated by the injuries of March 29 and July 25, 1961. X-rays were taken which showed a rib fracture on the left. Dr. Snow advised Pintar not to do any heavy lifting and to wear a chair-type lumbosacral brace and rib belt. (R. 4).

On December 26, 1961, as the result of an "Application to Settle Industrial Accident Claim" filed by Pintar, the Industrial Commission appointed a medical panel to investigate the medical aspects of said claim and report its findings of fact and conclusions to the Commission. (R. 18).

On February 16, 1962, said medical panel found and concluded that there was no connection between the injuries of March 29 and July 25, 1961, and any permanent disability now existing with Pintar. (R. 24).

As the result of an "Application for Adjustment of Claim" filed by Pintar, a hearing was held before a referee of the Industrial Commission on September 4, 1962. The referee recommended that the report of the medical panel be adopted and that Pintar's claim be denied, except that Columbia Geneva Steel, United States Steel Corporation, should be ordered to pay for brace purchased for Pintar's back. (R. 46).

On December 12, 1962, the Industrial Commission adopted the recommended findings of fact and conclu-

sons of law of the referee and entered its order accordingly. (R. 45).

Within thirty days thereafter Pintar filed an application for rehearing, which was denied by the Industrial Commission on February 6, 1962. Pintar then filed a petition for a Writ of Certiorari on March 5, 1962. (R. 51).

ARGUMENT

POINT I

THAT THE CONCLUSION OF THE INDUSTRIAL COMMISSION THAT THERE WAS NO CAUSAL CONNECTION BETWEEN THE INJURIES OF MARCH 29 AND JULY 25, 1961, AND ANY DISABILITY NOW EXISTING IS DIRECTLY CONTRARY TO THE EVIDENCE AND ERRONEOUS AS A MATTER OF LAW.

It is an undisputed fact that Pintar was involved in two accidents while employed by the defendant, Columbia Geneva Steel Division, United States Steel Corporation. (R. 1, 2, 8, 9, 12, 14). There is substantial evidence that prior to these accidents Pindar worked for the defendant steel corporation for eleven years without any lost time accidents and without being off work due to his arthritic condition. (R. 2, 5). Also, there is substantial evidence that Pintar was capable of doing heavy work and was employed to do such work

until the time of the first accident. (R. 2, 8, 9). There is little doubt that either of these accidents could have and did light up or aggravate Pintar's arthritic condition for which defendant steel corporation would have been and is liable. (R. 4, 32, 33, 39).

The Commission in its conclusions chose to ignore the well-established rule of law that aggravation of a pre-existing condition by an industrial accident is compensable under the act. This rule is stated in *Utah-Idaho Cent. R. v. Industrial Commission,* 71 Utah 490, 267 P 785, where the court said:

> "It is no longer an open question in this state that, other necessary conditions being present, a pre-existing disease or other disturbed condition of the physical structure of the body, when aggravated or lighted up by an accident is compensable under the act."

POINT 2.

THAT THE COMMISSION ACTED ARBITRARILY AND CAPRICIOUSLY IN REJECTING THE CONCLUSIONS OF DR. BURK M. SNOW.

The Commission ignored the conclusions of Dr. Burk M. Snow, Orthopedic Surgeon, as stated in his letter of October 17, 1961.

> "CONCLUSIONS: From the available history given by the patient it seems that the only conclusion one can come to is that this patient

> received an aggravation of a previously existing degenerative process in the lumbar spine. The conditions were present and he had been daily on a regular basis with no back complaints prior to his injury. The rib complaints certainly are industrial." (R. 4).

These conclusions were ignored for no other reason, it would appear, than the misconception that an employee does not have the legal right to consult a physician on his own without permission of his employer or the Industrial Commission, in *Gunnison Sugar Co. v. Industrial Commission,* 73 Utah 535, 275 P. 777, the court said:

> "If injured employee himself employs a physician to attend him, and he is not negligent in seeking or employing such physical, but due to erroneous diagnosis, employee has all of his teeth unnecessarily extracted, he may recover therefor as being attributable to the accident or injury, and not due to an independent and intervening cause."

POINT 3.

THAT THE ORDER OF THE INDUSTRIAL COMMISSION NOT REQUIRING DEFENDANTS TO PAY ALL MEDICAL EXPENSES IS CONTRARY TO THE LAW AND TO THE FACTS OF THE CASE.

In the absence of an Apportionment Statute, which Utah does not have, the general rule is that the employer becomes liable for the entire disability resulting

from a compensable accident. Therefore, if an employee already had only one eye or leg or hand, the employer becomes liable for total disability upon the loss of the remaining eye, or leg or hand. See *Marker v. Industrial Commission,* 84 Utah 587, 37 P.2nd 785, where the court said:

> "The principle is not limited to cumulation resulting in a total disability but may apply to a permanent partial award made up in part of a pre-existing disability."

There is no question that each of these accidents was compensable. This fact was conclusively established by the Commission itself. In its order, the Industrial Commission required the defendant steel company to pay for the brace purchased by Pintar for his back upon recommendation of Dr. Snow. (R. 45).

POINT 4.

THE REPORT OF DR. BURK M. SNOW IS COMPETENT AND ADMISSIBLE EVIDENCE.

It is respectfully submitted that there is nothing in the record which intrinsically discredits the evidence provided by Dr. Snow, which evidence is competent and admissible. See *Hackford v. Industrial Commission,* (Utah) 358 P.2d 899, where the court said:

> "In a proceeding to determine disability, the Commission properly received into evidence the reports of a physician even though they were hearsay."

POINT 5.

THE INDUSTRIAL COMMISSION WAS NOT BOUND BY THE FINDINGS OF THE MEDICAL PANEL.

Section 35-1-7 U.C.A., 1953, states the Commission is not bound by the findings of the medical panel if there is other substantial conflicting evidence which supports a contrary finding by the Commission. Such evidence is available in this case. (R. 4, 32, 33, 39).

CONCLUSION

It is submitted that the decision of the Industrial Commission is clearly arbitrary and capricious, not supported by the facts and contrary to law and should be reversed.

Respectfully submitted,

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