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Workmen's Compensation - Benefits - Exclusiveness of Schedule Provision

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WORKMEN'S COMPENSATION—BENEFITS—EXCLUSIVENESS OF SCHEDULE PROVISIONS—Plaintiff received benefits under the schedule provisions of the Michigan workmen's compensation statute for amputation of four fingers and one leg.[1] Upon the expiration of payments the hearing officer awarded additional recovery for plaintiff's total disability resulting from the amputation.[2] After subtracting compensation received for the specified losses, the appeal board affirmed. On appeal to the supreme court, *held,* affirmed by an equally divided court.[3] The legislature intended the schedule provisions to be irreducible minimum awards, not exclusive compensation. *Curtis v. Hayes Wheel Co.*,[4] which construed schedule allowances as barring further recovery for total and permanent disability, is overruled. *Van Dorpel v. Haven-Busch Co.,* 350 Mich. 135, 85 N.W. (2d) 97 (1957).

1 Mich. Comp. Laws (1948) §412.10, allowing payments of two-thirds of the average weekly wage for 100 weeks for loss of the fingers and 200 weeks for loss of the leg.

2 Mich. Comp. Laws (1948) §412.9, allowing payments of two-thirds of the average weekly wage for 750 weeks for permanent total disability.

3 Mich. Comp. Laws (1948) §601.26 states that an equally divided court affirms the lower court ruling. But this does not settle the law for other cases. Le Vasseur v. Allen Electric Co., 338 Mich. 121, 61 N.W. (2d) 93 (1953). However, the composition of the court indicates that the present case will be applied in the future. See note 9 infra.

4 211 Mich. 260, 178 N.W. 675 (1920).

All workmen's compensation statutes classify permanent partial disabilities into "schedule" injuries, which involve the loss of a member of the body and permit specifically enumerated benefits regardless of ability to work, and general "nonschedule" injuries, which allow compensation only insofar as they reduce wage-earning capacity.[5] Statutory provisions that schedule payments are "in lieu of" all other compensation preclude consideration of the issue in the principal case.[6] Most statutes, however, like that in Michigan, allow benefits for schedule losses and permanent incapacity without expressly stating that compensation for either is an exclusive remedy. Under such statutes it is generally held that if the loss of the member results in injury to other areas of the body the schedule allowance does not prevent an award for total permanent disability.[7] For a loss without complications, however, the situation presented in the principal case, all courts except Louisiana[8] and now Michigan limit compensation to the schedule benefits.[9] The *Curtis* case supported this view, declaring that recovery for total incapacity after completion of the specified schedule award amounts to double compensation. In the principal case, however, the Michigan court holds that the legislature intended the availability and extent of benefits to depend upon the ability of the injured workman to obtain employment after expiration of the schedule award. Schedule provisions are not exclusive remedies but merely remove issues from litigation at the time when the injured workman is most helpless, and defer determination of total incapacity until conclusion of the specific compensation. The principal case is illustrative of a general trend in the Michigan court's opinions in workmen's compensation cases since the recent addition to the court of several justices who subscribe to a "liberal" interpretation of the statute.[10]

[5] See "State Workmen's Compensation Laws as of September, 1954," U.S. BUREAU OF LABOR STANDARDS BULLETIN 161 (1955), tables 8 and 9, listing maximum benefits for both schedule and nonschedule disabilities under all state acts.

[6] E.g., Georgia Cas. Co. v. Jones, 156 Ga. 664, 119 S.E. 721 (1923), construing the predecessor to Ga. Code Ann. (1956) §114-406. See 88 A.L.R. 376 at 387 (1934).

[7] Bommarito v. Fisher Body Corp., 273 Mich. 1, 262 N.W. 329 (1935). See cases in 156 A.L.R. 1338 at 1344 (1945). States with "in lieu of" statutory provisions also allow recovery for complications resulting in total disability. Chamberlain v. Bowersock Mills & Power Co., 150 Kan. 934, 96 P. (2d) 684 (1939).

[8] Washington v. Independent Ice and Coal Storage Co., 211 La. 690, 30 S. (2d) 758 (1947).

[9] Coker v. Armco Drainage & Metal Products Co., 192 Tenn. 10, 236 S.W. (2d) 980 (1951). See cases cited in 2 LARSON, WORKMEN'S COMPENSATION §58.20, p. 45 (1952). The only decision relied on by the Michigan court, Cox v. Black Diamond Mining Co., (E.D. Tenn. 1950) 93 F. Supp. 685, is an instance of complications causing total disability. See the distinction in Tibbals Flooring Co. v. Brewster, 196 Tenn. 684, 270 S.W. (2d) 323 (1954).

[10] Justice Smith became a member of the court in 1955, Justices Black, Edwards, and Voelker in 1956. Of course, concurrence by one conservative justice in an opinion was necessary for a conclusive determination of the legal issues. See note 3 supra. However, when Thomas Kavanagh replaced a conservative member on January 4, 1958, the liberals probably became the majority on the court.

Cognizant of criticisms of some previous Michigan decisions,[11] they have not hesitated to reverse "narrow" interpretations where they believe justice and the social purpose of the statute require such action.[12] These justices do not regard stare decisis as precluding re-examination of opinions that are either wrong in principle or out of accord with modern social conditions.[13] The "conservative" justices, viewing the legislature's silence as an indication of acquiescence in the court's previous interpretations, believe the recent series of overrulings to be judicial legislation.[14] Workmen's compensation acts were designed to prevent litigation by establishing strict liability of employers for employees' work-connected injuries and diseases. Consequently, most courts endeavor to construe these remedial, humanitarian statutes liberally and avoid legal technicalities and artificialities.[15] It is encouraging, therefore, that the Michigan court is endorsing a broad, social viewpoint in its workmen's compensation opinions.[16] However, in view of the numerous decisions from other "liberal" jurisdictions which allow schedule benefits only as exclusive awards, the court's interpretation of the statute in the principal case is perhaps questionable.

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[11] See, e.g., Pound, "Comments on Recent Important Workmen's Compensation Cases," 15 NACCA L. J. 45 at 54 (May 1955): "Michigan has attained a bad eminence in narrow interpretation and application of the Workmen's Compensation Act."

[12] See Dyer v. Sears, Roebuck & Co., 350 Mich. 92, 85 N.W. (2d) 152 (1957), and Freiborg v. Chrysler Corp., 350 Mich. 104, 85 N.W. (2d) 145 (1957), both of which, in construing the phrase "arising out of and in course of employment," accepted the dissenting opinion of Justice Smith in Salmon v. Bagley Laundry Co., 344 Mich. 471, 74 N.W. (2d) 1 (1955), and also overruled several other conservative decisions. The statutory term "accident" was broadened by Sheppard v. Michigan National Bank, 348 Mich. 577, 83 N.W. (2d) 614 (1957), and Coombe v. Penegor, 348 Mich. 635, 83 N.W. (2d) 603 (1957), which adopted the dissenting opinion of Justice Smith in Wieda v. American Box Board Co., 343 Mich. 182, 72 N.W. (2d) 13 (1955).

[13] The court professes to follow the philosophy of Justice Cardozo: "But I am ready to concede that the rule of adherence to precedent, though it ought not to be abandoned, ought to be in some degree relaxed. I think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment." CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 150 (1921). Principal case at 150.

[14] "It has been 37 years since the *Curtis Case* was decided. We must assume that the legislature was and is aware of that decision, yet no action has been taken since by the legislature to amend the compensation law to give effect to what Justice Voelker is attempting to do in this case. We must conclude that the legislature is satisfied with our interpretation of the statute as outlined in the *Curtis Case*." Principal case at 158, opinion by Justice Sharpe.

[15] Horovitz, "Current Trends in Basic Principles of Workmen's Compensation," 12 LAW SOC. J. 465 (1947).

[16] ". . . no previous narrow principle of Workmen's Compensation Law is 'well-established.'" Loria, "Workmen's Compensation Trends in the Supreme Court," 36 MICH. ST. B. J. 31 at 35 (Aug. 1957). Notice the short time span between this comment and that of Dean Pound, note 10 supra.