Michigan Law Review

Volume 47 | Issue 5

1949

WORKMEN'S COMPENSATION ACTS-DENIAL OF COMMON LAW REMEDY FOR ASSOCIATED INJURIES NOT COVERED BY ACT

Colvin A. Peterson, Jr.
University of Michigan Law School

WORKMEN'S COMPENSATION ACTS—DENIAL OF COMMON LAW REMEDY FOR ASSOCIATED INJURIES NOT COVERED BY ACT—While employed by defendant, plaintiff suffered severe burns and received compensation for a permanent partial disability under the applicable workmen's compensation act.[1] He then brought an action for damages for disfigurement, not compensable under the act, on the theory that acceptance of statutory compensation did not deprive him of his common law remedy for injuries not within the scope of the act. *Held,* the statutory remedy is exclusive; plaintiff cannot recover for associated injuries outside the act. *Morgan v. Ray L. Smith & Son, Inc.,* (D.C. Kan. 1948) 79 F. Supp. 971.

By the great weight of authority, where an injury does not fall within the purview of a workmen's compensation act the common law remedy is not affected.[2] This view is commonly justified on the theory that the legislature could not have intended to destroy common law causes of action without substituting statutory remedies.[3] Conversely, it is generally held that if the injury is covered by a compensation act, the act is exclusive and no common law action remains.[4] Thus, an election to come under the act would seem to preclude any negligence action for a compensable injury.[5] However, when the act provides compensation for only part of the injury sustained, the question arises whether a common law damage action may be maintained for that part of the injury not within the scope of the act. The prevailing view is that of the instant case; the act is exclusive though it grants only a partial recovery.[6] While there is authority otherwise,[7] it is submitted that this

[1] Iowa Code (1946) §85.35.

[2] Barrencotto v. Cocker Saw Co., 266 N.Y. 139, 194 N.E. 61 (1934); 71 C.J., Workmen's Compensation Acts, §1493 (1935).

[3] Donnelly v. Minneapolis Mfg. Co., 161 Minn. 240, 201 N.W. 305 (1924); Cox v. U.S. Coal & Coke Co., 80 W.Va. 295, 92 S.E. 559 (1917).

[4] Most acts are exclusive by express legislative statement. See 1 SCHNEIDER, WORKMEN'S COMPENSATION TEXT, §§102-154 (1941).

[5] "It [the compensation act] does not merely deny a right of action, but abolishes all civil actions and all civil causes of action to which he [employee] might have resorted, as well as the jurisdiction of the courts to entertain such causes." Ross v. Erickson Const. Co., 89 Wash. 634 at 645 and 646, 155 P. 153 (1916).

[6] PROSSER, TORTS, §69 (1941); 71 C.J., Workmen's Compensation Acts, §1493 (1935). Relief has been denied on grounds of (1) res judicata, (2) estoppel and (3) splitting a cause of action. See 1 SCHNEIDER, WORKMEN'S COMPENSATION TEXT, §99 et seq. (1941); Hyett v. Northwestern Hospital, 147 Minn. 413, 180 N.W. 552, (1920).

[7] Boyer v. Crescent Paper Box Factory, Inc., 143 La. 368, 78 S. 596 (1918); Shinnick v. Clover Farms Co., 90 Misc. 1, 152 N.Y.S. 649 (1915). But see Connors v. Semet-Solvay Co., 94 Misc. 405, 159 N.Y.S. 431 (1916).

view is sound and in accord with the legislative policy underlying the compensation acts. The legislative policy is to compensate injured workmen for loss of earning capacity and wages on a theory of strict liability; the statutes do not provide remuneration for associated injuries not impairing earning power, such as pain and suffering,[8] impotency,[9] disfigurement[10] and exemplary damages.[11] Thus, eliminating the common law defenses of assumption of risk, contributory negligence and the fellow servant doctrine as to injuries affecting earning power, they remove the possibility of non-recovery present under common law[12] and assure the employee and his family support during the disability at a minimum outlay of time and money.[13] For this assurance, common law causes of action are relinquished.[14] The employee commonly has the option of accepting the provisions of the act or preserving his common law rights, but the election to come under the act usually must be made before the injury occurs or soon after accepting employment.[15] While it may appear that hardship results in situations typified by the principal case, substantial justice is generally accomplished since in most such cases the employee could recover nothing at common law. If the compensation is deemed inadequate the subject is a proper one for legislative consideration.

Colvin A. Peterson, Jr.

[8] Odom v. Arkansas Pipe Co., 208 Ark. 678, 187 S.W. (2d) 320 (1945).

[9] Hyett v. Northwestern Hospital, 147 Minn. 413, 180 N.W. 552 (1920); Freese v. Morrell & Co., 58 S.D. 634, 237 N.W. 886 (1931).

[10] Connors v. Semet-Solvay Co., supra, note 7.

[11] Stricklen v. Pearson Const. Co., 185 Iowa 95, 169 N.W. 628 (1918).

[12] It is variously estimated that from 70% to 94% of industrial accidents were not actionable at common law. PROSSER, TORTS, §69 (1941).

[13] 1 SCHNEIDER, WORKMEN'S COMPENSATION TEXT, §3 (1941). See Jensen v. So. Pac. Co., 215 N.Y. 514 at 527, 109 N.E. 600 (1915), reversed on other grounds, 244 U.S. 205, 37 S.Ct. 524 (1917).

[14] "The legislative intent was evident to award compensation for all accidental injuries arising out of or in the course of employment . . . and not to divide up such injuries and award compensation for a portion thereof and leave to the injured employe a remedy for the remainder. . . . The compensation provided was intended to be exclusive, and a right of action in the courts therefor was abolished." Adams v. Iten Biscuit Co., 63 Okla. 52 at 61, 162 P. 938 (1917).

[15] Roy v. Mutual Rice Co., 177 La. 883, 149 S. 508 (1933). New Hampshire permits election after the injury. N.H. Rev. Laws, (1942) c. 216, §12. See Robert v. Hillsborough Mills, 85 N.H. 517, 161 A. 29 (1932). Some acts are compulsory as to certain employments and a few are compulsory as to all, permitting no right of election. See N.Y. Workmen's Compensation Law (McKinney, 1946) §§10-11.