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Workmen's Compensation - Traumatic Neurosis Without Physical Injury

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WORKMEN'S COMPENSATION—TRAUMATIC NEUROSIIS WITHOUT PHYSICAL INJURY—Appellee and his co-worker attempted to lower a suspended scaffold on which they were standing, whereupon the scaffold gave way and the co-worker fell to his death. Appellee suffered only slight bruises on his leg, but as a result of seeing his fellow employee fall to his death, he sustained severe fright and shock which resulted in a traumatic neurosis preventing him from engaging in the normal duties of his occupation. The lower court awarded appellee judgment for permanent partial disability under the Texas Workmen's Compensation Law.¹ On appeal, *held*, reversed. Appellee's condition was a mental disease and compensable under Texas law only if it resulted from a compensable physical injury. *American General Ins. Co. v. Bailey*, (Tex. Civ. App. 1954) 268 S.W. (2d) 528.

Mental injuries sustained by accident and in the course of employment are compensable under most workmen's compensation statutes even though arising solely from fright and shock, and without previous or accompanying physical injury.² The broad objective of workmen's compensation laws is to compensate

¹ Tex. Civ. Stat. Ann. (Vernon, 1941) art. 8306 et seq.

² 109 A.L.R. 892 (1937). See especially *Klein v. Len H. Darling Co.*, 217 Mich. 485, 187 N.W. 400 (1922) (death from shock due to accidentally causing fellow employee's death); *Moray v. Industrial Commission of Utah*, 58 Utah 404, 199 P. 1023 (1921) (loss of vision from hysteria caused by sight of electric flash); *Burlington Mills Corp. v. Hagood*, 177 Va. 204, 13 S.E. (2d) 291 (1941) (neurosis due to shock of electric flash and shot-like sound); *Hunter v. St. Mary's Natural Gas Co.*, 122 Pa. Super. 300, 186 A. 325 (1936)

workers for injuries arising from the increased risks of modern industrial society. Such objectives, consequently, cannot be effectively carried out if legislatures and courts insist on differentiating between physical and mental injuries in determining compensability. The Texas statute, by virtue of its peculiar language,³ has led the courts of that state to develop just such a distinction. Historically the courts have been reluctant to give legal recognition to mental injuries unaccompanied by "physical" damage,⁴ and have devised the familiar impact doctrine in negligence cases. The reasons underlying such a feeling were twofold. First, the courts were apprehensive of the difficulty of measuring mental damages; second, they feared the possibility of fraudulent claims. In answer, it has often been pointed out that the "physical" pain of a fractured arm, although equally as difficult to measure as mental pain, has long since been recognized as an element of damages.⁵ The fear of opening the floodgates to trivial and fraudulent claims is a real one, but it is not sufficient reason for denying recovery for genuine and serious mental injury.

In the principal case, two findings by the court were crucial to its holding that the injury was not compensable under the Texas statute. First, the court had to, and did, determine that appellee's injury was a disease and not an injury as defined under the statute.⁶ As an injury, appellee's claim would have been compensable since all other requirements were present.⁷ The term "injury," as defined in the Texas statute, has been held to mean damage or harm to the physical structure of the claimant's body, as distinguished from functional injuries which ostensibly affect only the bodily processes.⁸ Medical testimony describing appellee's condition as a mental disturbance or nervous illness led the court to characterize the injury as functional and thus not an injury under the statute. Assuming, as this court did, that the neurosis was not itself an injury, but was a disease, the court must then find that it did not naturally result from appellee's minor physical injuries. Such a finding was made. However, there is considerable doubt as to the court's decision that claimant's injury was not a personal injury per se under the statute. It is believed that a traumatic neurosis,

(dog jumping on decedent's back caused death from fright without physical injury); *Yates v. South Kirkby, Featherstone & Kemsworth Collieries, Ltd.*, [1910] 2 K.B. 538 (shock due to sight of injured fellow employee).

³ Tex. Civ. Stat. Ann. (Vernon, 1941) art. 8309, §1: "The terms 'injury' or 'personal injury' shall be construed to mean damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom."

⁴ For a full treatment of this area, see Prosser, "Intentional Infliction of Mental Suffering: A New Tort," 37 MICH. L. REV. 874 (1939).

⁵ McCORMICK, DAMAGES 315-316 (1935).

⁶ See note 3 supra.

⁷ Tex. Civ. Stat. Ann. (Vernon, 1941) art. 8306, §3b merely requires that the employee sustain an injury in the course of his employment.

⁸ *Southern Cas. Co. v. Flores*, (Tex. Com. App. 1928) 1 S.W. (2d) 260; *Fidelity Union Cas. Co. v. Martin*, (Tex. Civ. App. 1931) 45 S.W. (2d) 682; *Safety Cas. Co. v. Walls*, (Tex. Civ. App. 1938) 117 S.W. (2d) 879.

such as the appellee suffered, is in fact a physical injury and not solely a state of mind, for fright affects the physical organism as definitely and as harmfully as a blow on the body. The physical effects of fright and shock have been demonstrated to include deterioration of body cells, increased thyroid secretion, accelerated circulation, increased respiration and body temperature, altered metabolism, and decreased digestion.⁹ The nervous system is a distinct part of the physical body, and if it is affected by fright to such an extent as to cause damage to the body or its processes, such an injury is in fact physical. It is common medical knowledge today that a sound body is never found with an injured nervous system. By strictly interpreting the statutory language and by ignoring medical knowledge, Texas courts have extended the anomalous impact doctrine to workmen's compensation cases.¹⁰ As stated above, such results stem from a genuine fear of "compensation neurosis" claims.¹¹ However, even this latter type of neurosis, if bona fide and causally related to an accident arising out of and in the course of employment, should be compensated. If the neurosis is in fact fraudulent or non-existent, such facts can be discovered by competent medical observation. The difficulties involved in detecting and measuring bona fide "mental" injuries should not lead the courts to decisions which in effect defeat part of the remedial objectives of this legislation.

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⁹ See Goodrich, "Emotional Disturbance as Legal Damage," 20 MICH. L. REV. 497 (1922).

¹⁰ See *Hood v. Texas Indem. Ins. Co.*, 146 Tex. 522, 209 S.W. (2d) 345 (1948), where compensation was allowed for neurosis related to a minor foot injury.

¹¹ The courts have used this term to denote a genuine neurosis arising from an unconscious desire for compensation and anxiety over pending claims.