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Personal Injury within the Meaning of the West Virginia Workmen's Compensation Act

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PERSONAL INJURY WITHIN THE MEANING OF THE WEST VIRGINIA WORKMEN'S COMPENSATION ACT

The West Virginia Workmen's Compensation Act,[1] as enacted in 1913, was modeled after the English Compensation Law of 1897.[2] The English act, in defining who should be compensated, included those employees receiving an "injury by accident arising out of and in the course of employment."[3] Relying on the word "accident" the English courts rigidly restricted compensable injuries to those which were unexpected and traceable to a specific time and place.[4] Thus injuries not accidental according to this judicial definition were non-compensable. Most important of these non-accidental injuries were industrial diseases, contracted gradually after continuous exposure over a period of time.

Though most American jurisdictions adopted the English phraseology, "injury by accident",[5] and others omitted the word "accident" but expressly excluded injuries not attributable to a specific and definite event,[6] some states apparently broadened the classification of compensable injuries by omitting the restrictive "accident".[7] Among these was West Virginia.[8]

Among the first of the states to interpret "personal injury" with the word "accident" omitted was Massachusetts. The supreme court of that state in *Madden's Case*[9] pointed out that the legislature, with the English statute before it, had deliberately excluded an important qualifying word. According to the court, this exclusion could not be regarded as immaterial because " 'personal injury' standing alone is materially broader in scope than is 'personal injury by accident'." Following this approach, the Massachusetts court held it unnecessary to trace an injury to a

[1] W. VA. REV. CODE (1931) c. 23.

[2] Archibald v. Compensation Commissioner, 77 W. Va. 448, 87 S. E. 791 (1916). In that case Judge Poffenbarger said: "Its [the West Virginia act's] provisions are based upon the principles of the English Compensation Act which has been construed as giving compensation for accidental injuries . . . ."

[3] 60 & 61 VICT. c. 37, § 1 (1897).

[4] Williams v. Duncan, 1 W. C. C. 123 (1898); Steel v. Cammell, Laird & Co., 2 K. B. 232 (1905); Eke v. Hart-Dyke, (1910) 2 K. B. 677.

[5] Alabama, Arizona, Colorado, Delaware, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, Vermont and Virginia.

[6] Washington, Maryland, Oklahoma, Utah, Montana, Wyoming.

[7] Iowa, Massachusetts, North Dakota, Connecticut, Michigan, Ohio.

[8] W. VA. REV. CODE (1931) c. 23, art. 4, § 1.

[9] Madden's Case, 222 Mass. 487, 111 N. E. 379 (1916); Hurle's Case, 217 Mass. 223, 104 N. E. 336 (1914).

specific time and place in order that it be compensable and concluded that an occupational disease was a "personal injury" within the statute. It is interesting to note, however, that Michigan and Ohio, under statutory provisions similar to those of Massachusetts and West Virginia, determined that "personal injury" meant "personal injury by accident".[10] In the acts of both states there were many references to "accident" and construing the acts as a whole the courts did not believe their legislatures intended to broaden the group of compensable injuries.

Twenty years passed after the adoption of the West Virginia Workmen's Compensation Act before our court was called upon to determine whether or not the omission of the word "accident" in the statute broadened the scope of compensable injuries.[11]

In 1933 the West Virginia court held squarely that "personal injury" meant an injury attributable to a definite and specific event, or an injury by *accident* as it is uniformly defined.[12] In that case, plaintiff's decedent contracted silicosis during the course of his employment in the construction of an underground tunnel. The court held that although a disease attributable to a definite, isolated, fortuitous occurrence, is compensable as a "personal injury" under the workmen's compensation statute, yet a disease attributable to exposure extending through a long course of employment was not. The doctrine of this case has since been twice affirmed.[13]

It would seem that the cause of any disability or death which satisfies the judicial test of being attributable to some definite, isolated, specific occurrence is a personal injury under the statute. It may be disease,[14] heat exhaustion,[15] shock,[16] rupture,[17] or poi-

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[10] Adams v. Acme White Lead Works, 182 Mich. 157, 148 N. W. 485 (1914); Industrial Commission v. Brown, 92 Ohio St. 309, 110 N. E. 744 (1915).

[11] Jones v. Rinehart & Dennis Co., 113 W. Va. 414, 168 S. E. 482 (1933).

[12] *Ibid.* Subsequently, silicosis was expressly made compensable under the Workmen's Compensation Act. W. Va. Acts 1935, c. 79.

[13] Montgomery v. Compensation Commissioner, 116 W. Va. 44, 178 S. E. 425 (1935); Adams v. G. C. Murphy Co., 115 W. Va. 122, 174 S. E. 794 (1934).

[14] Jones v. Rinehart & Dennis Co., 113 W. Va. 414, 168 S. E. 482 (1933).

[15] Collett v. Compensation Commissioner, 116 W. Va. 212, 179 S. E. 657 (1935); Rasmus v. Workmen's Compensation Appeal Board, 184 S. E. 250 (W. Va. 1936).

[16] Montgomery v. Compensation Commissioner, 116 W. Va. 44, 178 S. E. 425 (1935).

[17] Poccardi v. Public Service Commission, 75 W. Va. 542, 84 S. E. 242 (1915).

soning,[18] West Virginia cases have held, and be compensable as a personal injury. And it will not defeat a claim for compensation if the employee suffers from a previously acquired disease or injury which is a contributing cause of the injury for which compensation is asked.[19] The problem here is one of proximate cause.[20]

While the West Virginia cases defining personal injury are for the most part in line with those of most jurisdictions, it may be that West Virginia has unreasonably limited the scope of a broad and humane statute. The distinction which will allow compensation for heat exhaustion to an employee who exposes himself to very high temperatures day after day, as a part of his employment, but will deny it to one who works amid silica dust and contracts a deadly disease would seem to have its only support in the historical application of a different statute in a different century.

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[18] Archibald v. Compensation Commissioner, 77 W. Va. 448, 87 S. E. 791 (1916); Lockhart v. Compensation Commissioner, 115 W. Va. 144, 174 S. E. 780 (1934).

[19] Caldwell v. Compensation Commissioner, 106 W. Va. 14, 144 S. E. 568 (1928); Hall v. Compensation Commissioner, 110 W. Va. 551, 159 S. E. 516 (1931); Poccardi v. Compensation Commissioner, 75 W. Va. 542, 84 S. E. 242 (1915); Conley v. Compensation Commissioner, 107 W. Va. 546, 149 S. E. 666 (1929).

[20] Thus, in Hall v. Compensation Commissioner, 110 W. Va. 551, 159 S. E. 516 (1931), claimant recovered for the loss of two legs which had been amputated below the knee as a result of Burger's disease. The disease had been latent and had not caused trouble until an injury to claimant's toe during the course of his employment. But in Martin v. Compensation Commissioner, 107 W. Va. 583, 149 S. E. 824 (1929) compensation was denied for the death of deceased employee from a heart attack following his exertion in pushing a mine car. Deceased suffered from a serious heart disease; there was no great exertion in pushing the car and in the court's opinion the probable causal relation was not established.