DEATH RESULTING SOLELY FROM MENTAL AND EMOTIONAL STRAIN HELD A COMPENSABLE INJURY UNDER WORKMEN'S COMPENSATION LAW

Klimas v. Trans Caribbean Airways, Inc.
10 N.Y.2d 209, 176 N.E.2d 714, 219 N.Y.S.2d 14 (1961)

Plaintiff's husband, a director of maintenance, died from a heart attack while investigating the repair work on one of his employer's airplanes. Decedent had been worried because he was blamed for the corroded condition of the plane by his employer, and also had been greatly disturbed with the repair bill of $266,000.[1] After receiving the bill, he had worked for three days trying to reduce the amount. Plaintiff received death benefits from the Workmen's Compensation Board. The appellate court reversed and dismissed the claim, holding that in the absence of a showing of any physical strain a compensable industrial accident can not be established.[2] The Court of Appeals of New York reversed and reinstated the award stating that a heart attack caused solely from mental strain and tension was compensable.[3]

Prior to this case the New York courts have allowed claims where no physical impact was involved. Compensation was paid for physical injuries resulting from fright, mental, and nervous shock.[4] Recovery has been allowed for a heart attack caused by overexertion and arduous work[5] and for a heart attack caused by the pressure and strain of extraordinary work.[6] Another award was upheld when decedent, called as a witness in his employer's behalf, became nervous and suffered mental stress which caused a heart attack that resulted in death.[7] Compensation was also allowed when decedent suffered from shock after witnessing a fight between two employees of a hotel.[8] These cases indicate the New York courts have allowed recovery where the injury was caused by physical effort or emotional shock resulting

1 Klimas v. Trans Caribbean Airways, Inc., 10 N.Y.2d 209, 176 N.E.2d 714, 219 N.Y.S.2d 14 (1961). At a party the employer made an issue of decedent's negligence in the presence of a number of people and decedent became quite upset. While at the repair firm, decedent had written his wife and stated in the letter that his employer was going to "blow his stack" because of the high bill. The chief pilot also testified that decedent was "very white" when "hit with the bill."

2 Klimas v. Trans Caribbean Airways, Inc., 12 App. Div. 2d 551, 207 N.Y.S.2d 72 (1960).

3 Klimas v. Trans Caribbean Airways, Inc., *supra* note 1.

4 Pickerell v. Schumacher, 242 N.Y. 577, 152 N.E. 434 (1926); See also Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729 (1961).

5 Furtardo v. American Export Airlines, 274 App. Div. 954, 83 N.Y.S.2d 745 (1948), *motion for leave to appeal denied*, 298 N.Y. 933, 83 N.E.2d 866 (1949).

6 Anderson v. New York State Dept. of Labor, 275 App. Div. 1010, 91 N.Y.S.2d 710 (1949), *motion for leave to appeal denied*, 300 N.Y. 759, 90 N.E.2d 901 (1950).

7 Church v. County of Westchester, 253 App. Div. 859, 1 N.Y.S.2d 581 (1938).

8 Krawczyk v. Jefferson Hotel, 278 App. Div. 731, 103 N.Y.S.2d 40 (1951).

from particular upsetting experiences. The principal case extends the scope of the New York law in that this injury, caused solely by the worry of employment and without physical exertion or emotional shock, was held compensable.

A New York court in *Lesnik v. National Carloading Corp.*, a case similar to *Klimas*, stated, "To affirm this award we must be ready to hold that if a man increases the tension of his administrative work and later suffers a heart attack while at rest, this is a compensable accident. We are not ready to go that far in the case before us."[9] The court of appeals noted the substantial proof in *Klimas* contrasted with the uncertain medical proof in *Lesnik*. Both the appellate division and the court of appeals distinguish *Lesnik* from the present case because the decedent in *Klimas* was in the midst of the problem which caused the attack, and the claimant was at rest in *Lesnik*. It would seem inconsistent, though, to award benefits to a worker who has an attack while at work, and then deny recovery when the attack occurred while at rest if both attacks are shown to result from the same cause and the proof in both cases is conclusive.

The dissenters in *Klimas* attack the holding by asserting that the court is stretching the Workmen's Compensation Act to cover what is essentially the result of the customary stress and strain of life. Another argument set forth by the dissent is that if an award is made for injuries resulting from nervous strains, it will make workmen's compensation the equivalent of life and health insurance.[10] However, a causal relationship must be established, and with modern medical techniques, there is no longer an excuse to deny recovery on grounds of evidentiary difficulties.[11] Other jurisdictions have made awards for mental stimulus causing physical injury.[12]

In Ohio, the question whether worry and anxiety alone constitute an injury which is compensable under the Workmen's Compensation Act was

[9] Lesnik v. National Carloading Corp., 285 App. Div. 649, 140 N.Y.S.2d 907 (1955), *aff'd* 309 N.Y. 958, 132 N.E.2d 326 (1956). Claimant was an executive who for five months had been under great tension in attempting to build up the company revenues which had fallen off and of which he was in charge. The heart attack occurred while claimant was entertaining customers at the race track.

[10] Goldberg v. 954 Marcy Corp., 276 N.Y. 313, 12 N.E.2d 311 (1938); Davis v. Goodyear Tire & Rubber Co., 168 Ohio St. 482, 484, 155 N.E.2d 889, 890 (concurring opinion) (1959).

[11] 1 Larson, Workmen's Compensation Law § 42.21 (Supp. 1960, at 221).

[12] Insurance Dept. of Mississippi v. Dinsome, 233 Miss. 569, 102 So. 2d 691 (1958). Majority stated that it seems unthinkable that, if hypertension may be aggravated either by physical or mental and emotional exertion, courts should be willing to accept the physical as causative, but reject as not accidental, a disability proximately resulting from mental and emotional exertion. Dissent stated that it is stretching the act beyond bounds to say that emotional traits or mental attitudes towards one's employment acting on the physical body is an injury arising out of the employment; Fireman's Fund Indem. Co. v. I.A.C., 241 P.2d 299, *aff'd* 250 P.2d 148 (Cal. App. 1952); Miller v. Bingham County, 79 Idaho 87, 310 P.2d 1089 (1957); Eagan's Case, 116 N.E.2d 844 (Mass. 1954); Reynolds v. Public Service Co-ordinated Transp., 21 N.J. Super. 528, 91 A.2d 435 (1952); Aetna Ins. Co. v. Hart, 315 S.W.2d 169 (Tex. 1958).

before the Ohio Supreme Court in *Toth v. The Standard Oil Co.*[13] Plaintiff was subjected to investigation by police on suspicion that a truck driven by plaintiff had injured a pedestrian. Plaintiff subsequently suffered partial paralysis from a cerebral hemorrhage claimed to be caused by anxiety and worry as a result of the investigation. The Ohio Supreme Court disallowed the award stating: "The connection with his employment was remote, but, even if it had been immediate, worry and anxiety does not under the Ohio Workmen's Compensation Act constitute an injury."[14] The court held that "injury" as used in the act contemplates physical or traumatic damage or harm accidental in character. This judicial limitation seemed to be based on the definition of the word "injury" in the statute which at the time of the *Toth* case included "any injury received in the course of, and arising out of, the injured employee's employment."[15] Thus, the Ohio courts require a physical exertion before they will consider an injury compensable,[16] and have refused to extend the law to include non-physical factors like the New York courts and other jurisdictions.[17]

The interpretation of the word "injury" in the Ohio Workmen's Compensation Act has not been consistent.[18] Because of the confusion, the 1959 General Assembly amended the definition as follows:

> Injury includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, arising out of, the injured employee's employment.[19]

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[13] Toth v. Standard Oil Co., 160 Ohio St. 1, 113 N.E.2d 81 (1953).

[14] *Supra* note 13. Dissent stated that a cerebral hemorrhage with its attendant disabilities induced by worry and excitement over an unusual incident connected with and growing out of an employee's work constitute an injury within the meaning and intent of the statute.

[15] Ohio Rev. Code § 4123.01(c) (1953).

[16] McNees v. Cincinnati Ry., 80 N.E.2d 498 (Ohio C.P. 1948), *aff'd* 84 Ohio App. 499, 87 N.E.2d 819 (1949), *rev'd and remanded* 152 Ohio St. 269, 89 N.E.2d 138 (1950), 90 Ohio App. 223, 101 N.E.2d 1 (1951). An award was finally made to plaintiff when decedent, a bus driver, suffered a coronary thrombosis and died from severe strain of operating his bus. The appellate court concluded that it was prejudicial to the right of the plaintiff in charging the jury that mere mental strain or worry is not an injury within the meaning of the Workmen's Compensation Law. Indeed, this decision is hard to reconcile with Toth.

[17] 1 Larson, Workmen's Compensation Law § 42.21 (1952); 58 Am. Jur. Workmen's Compensation § 255 (1948).

[18] In Malone v. Industrial Commission, 140 Ohio St. 292, 43 N.E.2d 266 (1942), the court held that injury should include accidental injuries not only in cause and character but also in result. In Dripps v. Industrial Commission, 165 Ohio St. 407, 135 N.E.2d 873 (1956), the court held that injury comprehends a physical or traumatic damage or harm accidental in character and as a result of external and accidental means in the sense of being a sudden, unexpected chance mishap, and that effort and strain of a workman by themselves were not sufficient. This decision in effect overruled Malone and two concurring judges urged this. Two dissenting judges urged that the term injury embraces injuries accidental in character and result as well as those produced or caused by accidental means. See Davis v. Goodyear Tire and Rubber Co.,

As a result of this amendment unusual mental stress and strain should become recognized as an important factor.[20] The Workmen's Compensation Act, in view of its remedial character, is to be construed to favor the injured workmen.[21] Certainly excessive mental strain resulting from the employment experience can be just as harmful to an employee as a physical injury and should be justly compensated. It is submitted that the Ohio courts should now follow the principal case and grant relief for an injury caused by nonphysical factors.

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168 Ohio St. 482, 155 N.E.2d 889 (1959); Toth v. Standard Oil Co., *supra* note 13; Maynard v. Goodrich Tire & Rubber Co., 144 Ohio St. 22, 56 N.E.2d 195 (1944); Workmen's Compensation in Ohio, 19 Ohio St. L.J. 537, 554 (1958); Survey of 1959 Ohio Legislation, 20 Ohio St. L.J. 570, 601 (1959).

[19] Ohio Rev. Code § 4123.01(c) (1959).

[20] Survey of 1959 Ohio Legislation, *supra* note 18.

[21] Bowling Green v. Industrial Comm'n, 145 Ohio St. 23, 60 N.E.2d 479 (1945); 42 Ohio Jur. Workmen's Compensation § 5 (1936).