UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 9 | Number 1 Article 29

12-1-1930

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Allen Langston

ute, and, if the cause of action not resulting in death should survive, that the cause of action resulting in death should also survive.[16] This is apparently the view of the court in the principal federal case[17] and it is submitted as correct.

JAMES A. WILLIAMS.

Workmen's Compensation—Measure of Compensation for Loss of Member

In the workmen's compensation laws of various jurisdictions are found provisions for temporary total disability caused by industrial accidents and for specific injuries,—such as loss of fingers. For total disability of temporary or permanent character it is uniformly stipulated that the compensation shall run during such liability, or for the statutory period.[1] The three types of statute dealing with specific injuries are: (1) Those which provide that compensation for specific injuries shall "be in lieu of all other compensation,"[2] or its practical equivalent, that the compensation period shall begin to run from the date of the injury;[3] (2) Those which provide that compensation under one section of the law shall be in addition to other compensation;[4] (3) Those which simply set up a scale of compensation, or indemnity, and leave the court to work out a proper interpretation of the whole statute as best it can.[5]

Court decisions interpreting these provisions of the statutes likewise fall into fairly well defined groups. One group of courts holds that during the healing period while the workman is unable to work, he may recover for total disability, and then, when he has returned to work, he is to receive the full statutory amount for the specific

[16] Prior to the amendment of REV. (1905) §157 (2) by N. C. PUB. LAWS (1915) c. 38, striking out the clause, "where such injury does not cause the death of the injured party," the cause of action for personal injuries abated, and only the cause of action for the wrongful death remained. Bolick v. R. R. Co., *supra* note 7; MCINTOSH, N. C. PRACTICE AND PROCEDURE IN CIVIL CASES (1929) §424.

[17] James Baird Co., Inc. v. Boyd, *supra* note 4.

[1] N. Y. CONS. LAWS (Cahill's 1923) c. 66, §15; IOWA CODE (1927) §1394; N. C. PUB. LAWS (1929) c. 120, §29.

[2] GA. ANN. CODE (Michie, 1926) §3154 (32); KY. STAT. (Carroll, 1922) §4899.

[3] IOWA CODE (1927) §1396.

[4] MASS. GEN. LAWS (1921) c. 152, §36; COLO. ANN. STAT. (Courtright's Mills, 1927) §1853.

[5] N. C. PUB. LAWS (1929) c. 120, §31; N. C. ANN. CODE (Michie, Supp. 1929) §8081 (MM).

injuries sustained.[6] A second group holds that he may recover total disability compensation only until the extent of the specific injury is determined, and thereafter for the full amount provided for such injury.[7] A third rule is that under no circumstances may an employee who has suffered a specific injury provided for by the statute recover more than the bare amount thus stipulated.[8] Still other courts hold that while in the case of such specific injury the statutory period of compensation may not be lengthened, the employee is entitled to total disability compensation until such time as the extent of the specific injury can be determined, the number of weeks such compensation was received to be deducted from the statutory period during which compensation for the specific injury was to run.[9] Thus a man who is disabled for nine weeks before it is determined that amputation of a finger is necessary will, under a statute which provides that compensation for the loss of a finger shall be a certain percentage of his wages for thirty-five weeks, receive compensation for total disability during nine weeks and for the loss of his finger during the remaining twenty-six weeks of the statutory period. The New York Court of Appeals and at least one Federal Court hold that even when there are several injuries arising out of the same accident the employee may recover only for that injury for which compensation runs over the longest period of time.[10]

It is impossible to tell by reading the statute of a given state what interpretation will be given to it by the court. Under identical statutes the holdings of various courts differ radically.[11] Under statutes that are not, on the face of them, at all alike the rule laid down by different courts is sometimes exactly the same.[12] In one instance a

[6] Coca-Cola Bottling Works v. Lilly, 140 Atl. 215 (Md. 1925); Gobble v. Clinch Valley Lumber Co., 141 Va. 303; Western Steel Erecting Co. v. Luckenbill, 287 Pac. 724 (Okla. 1930).

[7] Addison v. Wood, 207 Mich. 319, 174 N. W. 149 (1919); Poast v. Omaha Merchants' Express and Transfer Co., 107 Neb. 516, 186 N. W. 540 (1922); Phillip's Case, 123 Me. 501, 124 Atl. 211 (1924).

[8] Fame Armstrong Laundry Co. v. Brooks, 226 Ky. 25, 10 S. W. (2nd) 479 (1928); Georgia Casualty Co. v. Jones, 156 Ga. 664, 119 S. E. 721 (1923); Moses v. National Union Coal Co., 194 Iowa 819, 184 S. W. 746 (1921).

[9] Jack v. Knoxville Fertilizer Co., 154 Tenn. 292, 289 S. W. 500 (1926).

[10] Texas Employer's Insurance Association v. Sheppeard, 32 F. (2d) 300 (S. D. Tex. 1929); Marhoffer v. Marhoffer, 220 N. Y. 543, 116 N. E. 372 (1917).

[11] Georgia Casualty Co. v. Jones, *supra* note 8; Gobble v. Clinch Valley Lumber Co., *supra* note 6; GA. ANN. CODE (Michie, 1926); §3154 (32); VA. CODE ANN. (1924) §1887 (32).

[12] Hardin v. Higgins Oil & Fuel Co., 147 La. 453, 85 So. 202 (1920); Wirth Lang Co. v. Mece, 211 Ky. 520, 277 S. W. 834 (1925); KY. STAT. (Carroll, 1922) §4899; LA. PUB. LAWS (1922) act 43, §(d).

court modified its former ruling, stating that it did so in order to conform to the rule of another state which had an identical statute. As a matter of fact the rule in that other state was, at that time diametrically opposite to the rule then being promulgated.[13]

The Supreme Court of North Carolina, in attempting to construe an ambiguous statute which merely sets up one scale of compensation for total disability in one section and another scale for specific injuries in another section of the law lays down the rule that the provisions of these sections are not mutually exclusive, and holds that recovery may be had consecutively under each of them.

In a recent case it has held that when an employee sustained a badly lacerated hand, necessitating immediate amputation of fingers, he was entitled to compensation for total disability during the healing period, and to full compensation for the loss of his fingers after the wounds had healed.[14] It is submitted that this is a sound result. Under any other interpretation of the law it is quite possible that in case of a long healing period after the extent of the specific injuries has been determined, the statutory period will have run before the injured man is able to return to work. In such case the employee would not only lose a good share of his earnings over a long period of time but would return to industry without a cent of indemnity for the injury that was permanent in character—a result that could hardly have been within the contemplation of the legislature in passing the act. There is no indication within the statute itself that it was intended that the two sections construed in the principal case should be mutually exclusive. The decision serves well what seems to be the underlying purpose of all Workmen's Compensation Laws.

ALLEN LANGSTON.

Workmen's Compensation—Recovery for Injuries Resulting from Horseplay

The North Carolina Workmen's Compensation Act[1] provides that compensable injuries are only those injuries "by accident arising out of *and* in the course of the employment." An employee was injured by the accidental discharge of a gun in the hands of a fellow-employee. The injured man took no part in the "horseplay," but was

[13] Gobble v. Clinch Valley Lumber Co., *supra* note 6.
[14] Rice v. Denny Roll and Panel Co., 199 N. C. 154, 154 S. E. 69 (1930).
[1] N. C. PUB. LAWS (1929) c. 120, §2 (f); N. C. ANN. CODE (Michie, Supp. 1929) §8081 (i).