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WORKMEN'S COMPENSATION

There must be power in the States and the Nation to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs.

—LOUIS D. BRANDEIS.

DEVELOPMENTS IN WORKMEN'S COMPENSATION— 1950–1960

AUGUSTINE J. BOWE AND JOHN D. CASEY

DURING THE DECADE ending in 1960, remedies available to the Illinois working man for injuries sustained in the course of employment have been expanded and made more effective. His remedies under the Workmen's Compensation Act and the Workmen's Occupational Diseases Act have been supplemented by remedies, formerly denied to him, against negligent parties other than his employer, and against violators of the Scaffolding Act.

The most noticeable changes in the Workmen's Compensation Act and Occupational Diseases Act are in the amounts of compensation payable for injuries and deaths. Under the 1949 acts, the maximum rate of weekly compensation for disability of a childless employee was \$22.50; under the 1959 acts it is now \$45.00.¹ Under the 1949 acts the maximum death benefit of a childless widow of an employee was \$6,000.00; under the 1959 acts it is now \$12,250.00²

REVISION OF THE WORKMEN'S COMPENSATION AND OCCUPATIONAL DISEASES ACTS

By 1949 the Workmen's Compensation Act of 1913³ had, by the accretion of biennial amendments, become a complex and nearly in-

¹ ILL. REV. STAT. ch. 48, § 138.8(b) (1959); Ill. Laws 1949, at 869.

² ILL. REV. STAT. ch. 48, § 138.7(a) (1959); Ill. Laws 1949, at 869.

³ Ill. Laws 1949, at 1811.

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coherent piece of legislation. Hence, in 1951, it was considered expedient to revise the verbiage of the statute; the Workmen's Compensation Act of 1951⁴ was the result, and the 1913 act was repealed. No important substantial change, other than increases in the amount of compensation payable, was effected by the 1951 act, the changes being merely a simplification and rearrangement of the language of the 1913 act. The Workmen's Occupational Diseases Act of 1936⁵ was similarly repealed, revised, and re-enacted as the Workmen's Occupational Diseases Act of 1951.⁶

The provision requiring that a claim for compensation be made by the employee within six months from the date of his accident or disablement has, by amendment, been eliminated from both the Compensation and Occupational Diseases Acts. Formerly, in cases where no compensation was paid, the employee could not recover compensation unless he proved that the employer had notice of accident within thirty days and notice that the employee was claiming compensation within six months; the latter requirement has been eliminated, and it is now sufficient if notice of accident is given in forty-five days.⁷

OCCUPATIONAL DISEASES ACT MADE MANDATORY IN THE '50'S

The most significant legislative change in the Workmen's Occupational Diseases Act during the decade was an amendment making it compulsory. As enacted in 1936, it was in two parts: Section 3⁸ provided that an employee contracting an occupational disease in consequence of his employer's negligence could maintain an action at law for damages against his employer; section 4⁹ and the other sections of the act (referred to as the compensation provisions of the act) provided that employers could elect to pay compensation to their employees for disability resulting from occupational diseases, and employers so electing were relieved of the liability for damages provided for in section 3. The compensation provisions of the act provided in general that an employee disabled by an occupational disease should receive approximately the same compensation as he would receive under the Workmen's Compensation Act if he were disabled by an accidental injury. Experience showed that it was often cheaper

⁴ ILL. REV. STAT. ch. 48, § 138.1 (1959).

⁵ Ill. Laws 1949, at 1830.

⁶ ILL. REV. STAT. ch. 48, § 172.36 (1959).

⁷ ILL. REV. STAT. ch. 48, § 138.6(c) (1959).

⁸ Ill. Laws 1949, at 1831.

⁹ *Ibid.*

in the long run for employers to refrain from electing to be bound by the compensation provisions of the act and to defend damage claims under section 3. The courts held that an employee claiming damages under section 3 was obliged to prove that the employer violated some health or safety rule promulgated by the Industrial Commission,¹⁰ and as the Commission promulgated very few rules aimed at preventing occupational diseases an employee suffering from an occupational disease had practically no remedy if his employer had not elected to be bound by the compensation provisions of the act. In 1957, the act was amended¹¹ to provide that the compensation provisions should automatically and without election bind all employers who are bound automatically by section 3 of the Workmen's Compensation Act,¹² which covers practically all employments in which there is an occupational disease hazard.

TORT LIABILITY OF THIRD PARTIES

Industrial accidents frequently occur under circumstances creating a legal liability for damages on the part of persons other than the employer of an employee who has been injured in the course of his employment; for example, when a street laborer is struck by a motor truck and injured, he has a compensation claim against his employer, and he may have a damage claim against the operator of the truck (referred to as the "third party tort-feasor"). In the 1913 Workmen's Compensation Act, the employee's right to collect damages from a third party tort-feasor was governed and limited by section 29, which was incorporated in the 1951 act without substantial change as section 5 (b).¹³ Under this provision of the law, as construed over thirty-five years by the courts, an injured employee bound by the act could not sue a third party tort-feasor who was also bound by the act.¹⁴ Thus in the case of the example of the street laborer mentioned above, the injured man could not sue the truck operator if the operator were also bound to pay his employees compensation under the act, and the injured employee had to be content with the relatively small benefits paid by his employer as compensation. However, if the third party

¹⁰ *Grutzius v. Armour & Co.*, 312 Ill. App. 366, 38 N.E.2d 773 (1941).

¹¹ ILL. REV. STAT. ch. 48, § 172.37 (1959).

¹² ILL. REV. STAT. ch. 48, § 138.3 (1959).

¹³ Ill. Laws 1951, at 1067.

¹⁴ *Petrazelli v. Propper*, 409 Ill. 365, 99 N.E.2d 140 (1951).

was not bound by the act—if, for instance, the truck were operated by a farmer, or a lawyer, or by an employee operating under the law of another state, the injured employee could sue and collect damages from the tort-feasor.¹⁵

In *Grasse v. Dealer's Transp. Co.*,¹⁶ determined in March 1952, a proceeding for common-law damages by an injured employee against a third party tort-feasor bound by the act, the pertinent portion of section 29 was held unconstitutional on the ground that it violated the due process and equal protection of law clauses of the state and federal constitutions by creating an unreasonable classification between employees injured by tort-feasors bound by the act and employees injured by tortfeasors not under the act.

Following the *Grasse* decision, section 5 (b) of the Workmen's Compensation Act (which corresponded to section 29 of the 1913 act) was amended to conform with that decision. As the law now stands, an injured employee bound by the act can sue any third party tort-feasor other than a fellow-employee in the same employment; out of any recovery made the employer is entitled to be reimbursed for the loss incurred in paying the employee compensation and providing medical services, provided the employer has not been guilty of negligence contributing to the employee's injury.

The *Grasse* case not only had the effect of giving injured employees remedies against negligent tort-feasors, but it restored to employees in the building construction and maintenance trades a remedy under the statute commonly referred to as the Scaffolding Act,¹⁷ passed in 1907, a remedy that had been in abeyance since 1913 because section 29 of the Compensation Act prevented employees from suing tort-feasors bound by the act. The Scaffolding Act requires that scaffolds, hoists, cranes, ladders, and other devices used in the erection or maintenance of any building or other structure be erected and operated so as to give adequate protection to persons employed on or about them, and makes the owner, contractor, or other person having charge of the construction work responsible for complying with the act and liable to pay damages to any person injured in consequence of a willful viola-

¹⁵ *Gones v. Fisher*, 286 Ill. 606, 122 N.E. 95 (1919); *Huntoon v. Pritchard*, 371 Ill. 36, 20 N.E.2d 53 (1939).

¹⁶ 412 Ill. 179, 106 N.E.2d 124 (1952).

¹⁷ ILL. REV. STAT. ch. 48, § 60 (1959); Ill. Laws 1907, at 312.

tion. Thus in *Kennerly v. Shell Oil Co.*,¹⁸ the plaintiff recovered a judgment against Shell Oil Company, the owner of a large oil processing structure that was being constructed by an independent contractor who employed the plaintiff. Plaintiff was injured when he fell from a scaffold which was erected by the contractor and which was not constructed as required by the Scaffolding Act.

PROHIBITION OF TORT ACTIONS AGAINST FELLOW SERVANT

A long line of cases on the subject of an employee's right to sue a person in the same employment for tortious conduct was brought to an end by *O'Brien v. Rautenbush*.¹⁹ Involved here was the construction of section 5 of the 1951 Act, and the court concluded that such actions were prohibited. In 1959, section 5 (a)²⁰ was amended to conform with that decision, and more recently the court held that many of the reasons given for its decision in the *O'Brien* case were dicta.²¹ While a majority of persons covered by the act will be unaffected by this change, it does affect office and sales personnel who travel with one another. The flamboyant sales manager who outfits himself with a private airplane and orders his men to fly with him to a convention is given questionable immunity from civil liability. In travel situations there is usually insurance available to cover the liability for tortious conduct. The effect of the amendment is to make liability insurance unavailable to persons in the same employment.

It has been estimated that the additional remedies now available to injured employees account for recoveries upwards of \$5,000,000 per annum in Illinois. This benefits employers as well as employees, since non-negligent employers share in the recoveries, and the burden of paying for the consequences of tortious conduct is properly put upon the guilty parties.

¹⁸ 13 Ill.2d 431, 150 N.E.2d 134 (1958).

¹⁹ 10 Ill.2d 167, 139 N.E.2d 222 (1956).

²⁰ ILL. REV. STAT. ch. 48, § 138.5 (a) (1959).

²¹ *Rylander v. Chicago Short Line Ry.*, 17 Ill.2d 618, 161 N.E.2d 812 (1959).