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Substantive Law - Private Law: Workmen's Compensation

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absolute freedom of expression. *Waldo v. Morrison*¹⁵ presented a case of rather strong statements by counsel for one of the parties in a controversy over the disposition of a decedent's estate. Attorneys for the daughter had stated in a brief opposing the son's motion for a new trial that the son "did not even have the common decency to take the time to attend his mother's funeral, and yet has months of time to spend squeezing the last penny out of his mother's estate" and had further referred to the son's "niggardly position" in the litigation. Justice Moise reiterated Louisiana's prior position that parties litigant and their attorneys have only a "qualified" privilege, but did not feel that the statements made were "without probable cause" or motivated by malice. Conceding that the statements were "inaccurate," the court concluded that "each was pertinent to the strenuous and bitter litigation between plaintiff and his sister . . . involving their mother's succession. Furthermore, the extrinsic circumstances of plaintiff's actions constituted probable cause for the statements made."¹⁶ In short, while Louisiana does not grant an absolute privilege to parties litigant and their attorneys, false defamatory statements will not be actionable unless they are clearly irrelevant, or obviously unreasonable. Otherwise the propriety of the defendant's motives will be presumed.

WORKMEN'S COMPENSATION

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FAILURE OF INSURER TO MAKE PROMPT PAYMENT OF CLAIM

Over the dissenting opinions of Justices LeBlanc and Hamiter, the Supreme Court held that the penalty provisions of R.S. 22:658 are applicable to workmen's compensation insurers. Writing the majority opinion in *Wright v. National Surety Corporation*,¹ Justice McCaleb found that an *employee* is an *insured* within the meaning of this penal provision of the Insurance Code. In arriving at this conclusion, the court relied heavily upon the section of the Employer's Liability Act² which provides (1) that a workmen's compensation insurance policy shall be "construed to be a direct obligation by the insurer to the person entitled to

15. 220 La. 1006, 58 So. 2d 210 (1952).

16. 220 La. 1006, 58 So. 2d 210, 212.

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1. 221 La. 486, 59 So. 2d 695 (1952).

2. La. R.S. 1950, 23:1162.

compensation, enforceable in his name," and (2) that no workmen's compensation insurance policy shall be issued unless it contain a provision that the insurer agrees to make prompt payment to the person entitled to compensation.

The *Wright* decision makes it clear that a workmen's compensation insurer who arbitrarily, capriciously, and without probable cause, fails to make payment within sixty days after the "receipt of satisfactory proofs of loss," shall incur an additional liability for reasonable attorney's fees and damages in the amount of 12 per cent. A question of course arises as to the sum to be used as a basis in the computation of the 12 per cent damages. In the *Wright* case, the court used as its basis the compensation payments *then due*. But no extensive consideration was given to this problem in the opinion. R.S. 22:658 states that the 12 per cent damages are to be computed on the "total amount of the loss," and of course the answer to the *quaere* here raised must be found in the meaning of the quoted statutory language. It is reasonable to anticipate that future jurisprudence will clarify this interesting point.

It is hoped that this decision will cause insurance companies to make prompt settlement of just claims for compensation. Unless the validity and propriety of compensation claims be quickly and efficiently settled, then much of the *raison d'être* for the salutary workmen's compensation legislation will have been cut away.

When will the failure to pay a compensation claim within sixty days be "arbitrary, capricious, or without probable cause?" The answer to this question must come in part from the jurisprudence surrounding R.S. 22:658, and in part from future decisions dealing with the specific problem of workmen's compensation. Without itself providing a lengthy discussion of this point, the instant case holds that in view of the fact that the medical testimony showed "that the insurer was well aware . . . that plaintiff was still partially, if not totally, disabled," it was "indefensible" for it to summarily stop all compensation payments.

FARM LABOR AS A HAZARDOUS OCCUPATION

In *Griffin v. Catherine Sugar Company*³ the court again considered the effect of a farmer's use of motor vehicles upon the classification of his business as hazardous or nonhazardous.⁴ Like

3. 219 La. 846, 54 So. 2d 121 (1951).

4. For a discussion of the cases involving the use of motor vehicles in farming, see Malone, Louisiana Workmen's Compensation Law and Practice § 96 (1951).

other sugar planters similarly situated, the defendant used a truck-trailer to transport cane cutters back and forth between their homes and the place of employment. Plaintiff, employed as a cane cutter, received injuries when he was en route back to his home.

The court awarded compensation, holding that as a result of defendant's use of the motor vehicles for the transportation of his employees, his business of farming had come within the scope of the act.⁵

Certain language in the opinion might be interpreted as requiring that the use of the motor vehicle be a *necessary incident* to the business. And it was found in the instant case that furnishing transportation was necessary to obtain sufficient help to harvest the crop. It would be very unfortunate, however, if the courts were to undertake to determine what is or is not *necessary* to the operation of a man's business.

The court also held that the transportation furnished by defendant was "incidental to the plaintiff's employment," that plaintiff's employment began when he boarded the truck-trailer at his home, and did not cease until he was returned thereto. Thus the injuries in question arose "in the course of employment," for they were received while he was en route to his home via transportation furnished by his employer.

TOTAL PERMANENT DISABILITY

In *Wright v. National Surety Corporation*⁶ the court applied traditional principles to a problem of alleged total permanent disability.⁷ Plaintiff had been injured while employed as the operator of an asphalt distributor, a large mechanical device used in surfacing blacktop roads. The court found that plaintiff's injuries permanently incapacitated him from performing the duties of this job and the court properly held that plaintiff's total permanent disability status was not destroyed by the fact that he could still drive an automobile or a small truck.

5. But see the dissenting opinion of Justice Hawthorne, 219 La. 846, 857, 54 So. 2d 121, 125 (1951).

6. 221 La. 486, 59 So. 2d 695 (1952).

7. See Malone, Louisiana Workmen's Compensation Law and Practice § 273 (1951).

For another case last term involving a problem of total permanent disability, see *Mottet v. Libbey-Owens-Ford Glass Co.*, 220 La. 653, 57 So. 2d 218 (1952).

PRESCRIPTION

*Mottet v. Libbey-Owens-Ford Glass Company*⁸ presents a liberal application of the prescriptive provisions of R.S. 23:1209.

Plaintiff glass cutter's duties had required him to lift some twenty thousand pounds of glass during the course of an average working day. Over a period of years, plaintiff had had some trouble with his back, but had not lost time from work because of it. On January 27, 1946, he experienced an acute pain in his back. His condition was diagnosed as neuritis by his physician, and he continued work until his regular vacation in September of that year. At that time he was examined by an orthopedic physician at Johns Hopkins Hospital in Baltimore. X-rays were taken and plaintiff was found to have a partial thinning of the fifth lumbar intervertebral space. Upon his return, plaintiff went back to work, and at his request was changed from cutting heavy glass to work on light glass. On March 11, 1947, his condition forced him to give up work altogether, and the court found that ever since this date he had been totally permanently disabled. Suit was filed on August 4, 1947, and defendant pleaded prescription.

The court accepted plaintiff's contention that the following provision in R.S. 23:1209 governed: "Where the injury does not result at the time of, or develop immediately after the accident, the limitation shall not take effect until the expiration of one year from the time the injury develops. . . ." The court found that since the injury in question did not *develop into total disability until March 11, 1947*, the requirements of the quoted provision were met.

Thus the court gives a broad interpretation to the statutory language in question. Although it may have been true that plaintiff was not totally permanently disabled until March 11, 1947, he had been "injured" and was suffering therefrom many months prior to this date. It seems clear in the instant case that plaintiff had done all in his power to retain his job and cure his hurt. From the standpoint of the case at bar, the result reached by the court was certainly desirable. It would have been most unfortunate to have penalized plaintiff for his failure to surrender sooner to his condition and file for total permanent disability.

8. 220 La. 653, 57 So. 2d 218 (1952).

SALE AND RESALE

In *Taylor v. Employers Mutual Liability Insurance Company*,⁹ the Supreme Court followed the pattern laid down by decisions of the courts of appeal with regard to certain practices in the lumbering industry.¹⁰ Deceased had entered into an agreement for the purchase of certain standing timber. With the help of one or more employees hired by him, he felled the logs with his own equipment and the logs were hauled to defendant's lumber mill in deceased's truck. The court found that there was an "understanding" with the lumber mill as to the length and diameter of the logs to be accepted, and in addition that the lumber company was not bound to accept any particular kind, quality, or quantity of logs. The stumpage price of the logs due the landowner was paid directly to him by the lumber company, and the balance was turned over to deceased.

It was contended by plaintiff that deceased was either an employee of the lumber company, or was an independent contractor. The court found that he was neither, that the above transaction was merely a sale and resale of logs, and that hence there was no coverage under the act. In a strongly worded dissenting opinion, Justice Moise points to testimony indicating that the lumber company regarded the payments made to deceased as payments for *hauling* the logs, and regarded the logs hauled as logs *belonging not to deceased, but to the company*.

It seems to the writer that relationships such as the one here presented fall clearly within the spirit of the act. It is hoped that the Legislature will amend the act to provide coverage in such cases as the one here discussed.

9. 220 La. 995, 58 So. 2d 206 (1952).

10. For a collection of cases and an excellent discussion of the problem, see Malone, Louisiana Workmen's Compensation Law and Practice § 123 (1951).