

Workmen's Compensation - Accident Distinguished from Occupational Disease

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not hold himself out as ready to carry all who requested transportation he was not operating a common carrier. *Brown v. Pacific Mutual Life Insurance Co. of Calif.*, 8 F. (2d) 996 (C.C.A. 5th, 1925). And since the contributions were voluntary he was not under a contractual duty to the passengers and therefore was not a private carrier. *Marks et al. v. Home Fire and Marine Insurance Co. of Calif.*, 285 Fed. 959 (App. D.C. 1923).

The question whether he was carrying for hire or compensation offers more difficulty. In deciding whether the Board of Railroad Commissioners had jurisdiction over a motor vehicle as being operated for hire, the words "for hire" were held to mean "for remuneration of any kind, paid or promised, either directly or indirectly." *Murphy et al. v. Standard Oil Co. of Indiana*, 49 S.D. 197, 207 N.W. 92 (1926). When the owner of the car himself contributed his proportionate share of the gas, oil, and garage expenses for a trip, it has been held that there was not a carrying for hire or compensation so as to make the driver exercise a higher degree of care. *Askowith v. Massel*, 250 Mass. 202, 156 N.E. 875 (1927). Requiring the passenger to pay the cost of the gas and oil used on a trip has been held not a carrying for hire. *Armistead v. Lenkeit*, 230 Ala. 155, 160 So. 257 (1935). But where students agreed to pay the amount of gas and oil used on a trip plus a small sum to the driver for the use of the car, it was held a carrying for hire within the provisions of defendant's insurance policy because of the slight sum given in addition to the cost of the gas and oil. *Gross et al. v. Kubel*, 315 Pa. 396, 172 Atl. 649 (1934).

Where plaintiff's car was used for hire on two or three occasions to carry passengers to fair grounds during a county fair, it was not such a carrying for hire as would enable an insurance company to avoid liability on its policy, the court holding that in order to make a carrying for hire or compensation result in a forfeiture of the policy it must be shown that the automobile was used continuously for that purpose, or that the owner made a business of it. *Commercial Union Assurance Co. of London v. Hill*, 167 S.W. 1095 (Texas, 1914). If there is a carrying for hire it makes no difference that the compensation was never in fact paid. Thus, where the plaintiff made an agreement to carry for a certain sum and the passenger stole the car, recovery for the value of the car was refused by the court since the car was being used in violation of the provisions of the policy. *Mittet et al. v. Home Insurance Co.*, 49 S.D. 319, 207 N.W. 49 (1926).

ROBERT P. HAMM.

Workmen's Compensation—Accident Distinguished from Occupational Disease.—The plaintiff operated for one day a motor truck which emitted excessive quantities of fumes. These were inhaled by the plaintiff, who contracted pneumonia as a result. Held, that pneumonia thus acquired was not an injury by "accident" within the New Mexico Workmen's Compensation Act, since the victim was "conscious of no mishap, hazard, or—misadventure." *Stevenson v. Lee Moor Contracting Co.*, 9 U.S.L. WEEK 2242 (N.Mex. Sup. Ct., Sept. 21, 1940).

The subjection of an employee to extraordinary strain, or unusual conditions and definite as to time and place, causing injury, is an "accidental" injury, under the compensation acts. *Esmonde v. Lima Locomotive Works*, 51 Ohio App. 454, 1 N.E. (2d) 633 (1937). Where the disability results from continual breathing of iron dust, and the employee can point to no particular occurrence or time

as the beginning of such disability, it is not an accidental injury, but is an occupational disease and not compensable. *Peru Plow and Wheel Co. v. Industrial Commission*, 311 Ill. 216, 142 N.E. 546 (1924). Where the plaintiff contracted tuberculosis from inhaling hydrogen sulphide gas discharged from an oil well in an unusually heavy volume, while performing a certain job, it was held an "accident" within the Workmen's Compensation Law, since it was an injury coming "unexpectedly," resulting at a definite time and place, and from a definite cause, as distinguished from an occupational disease. *Barron v. Texas Employers' Ins. Ass'n.*, 36 S.W. (2d) 464 (Tex. Com. App., 1931). An unusual and excessive exposure inducing a certain physical condition was held to be unexpected and occasioned by "accident" within the meaning of the Workmen's Compensation Act. *Hallenbeck v. Butler*, 101 Colo. 486, 74 P. (2d) 708 (1937).

But where a plasterer worked for two days in a place where it was necessary to get his feet and legs wet, and as a result contracted lobar pneumonia from which he died ten days later, the pneumonia was not an "accident" within the Workmen's Compensation Act, because the disease resulted from exposure in the ordinary course of the employee's work. *Joyce v. Luse-Stevenson Co.*, 139 S.W. (2d) 918, (Mo. 1940). An employee engaged in cleaning machines while the floors of the plant were still damp and muddy after a flood, contracted pneumonia as a result of the conditions under which he had been working. This was not an "accident" within the compensation laws, for there was no sudden, intense exposure; and this protracted labor was engaged in voluntarily. *Parks v. Miller Printing Mach. Co.*, 336 Pa. 455, 9 Atl. (2d) 742 (1939). An employee of a packing house, in the performance of his employment, had to go back and forth from a high temperature in the smoke house to a near freezing temperature in the cooling room, and got wet through a defective apron, catching a cold which resulted in fatal pneumonia. This was held not to be an "injury" compensable under the Texas Workmen's Compensation Law. *Lux v. Western Casualty Co.*, 107 F. (2d) 1002 (C.C.A. 5th, 1939). It was held not to be a compensable "injury" where the plaintiff, doing heavy and fast work in a very hot room, became nauseated and developed a fever, followed by pneumonia. Proof of these conditions merely conducive to developing a disease causing disability is not sufficient proof of a compensable injury. *Maryland Casualty Co. v. Clark*, 140 S.W. (2d) 890 (Tex. Civ. App., 1940).

However, even where an employee engaged for a long period of time in work during which he was exposed to coal dust and gas fumes, became suddenly and violently ill, the injury was held compensable because the employee had reached the limit of his endurance at a specific time. "An 'accident' as contemplated by the Workmen's Compensation Law," said the court, "is distinguished from an occupational disease, in that it arises by some definite event the date of which can be fixed with certainty, but which cannot be so fixed in the case of occupational diseases." *Johnson Oil Refining Co. v. Guthrie*, 167 Okla. 83, 27 Pac. (2d) 814 (1933).

And similarly where an employee, in the course of his employment, was subjected to great changes of temperature, and began feeling pain and constriction in his chest, resulting in his death eight days later from pneumonia, the injury was held to be compensable for it was an "unusual, sudden" and "unexpected" happening, at a "particular" time, resulting in physical injuries accidental in origin and cause. *Johnson v. Industrial Commission*, 63 Ohio App. 544, 27 N.E. (2d) 418 (1939). Likewise, where there was expert testimony that the trauma caused by a fall was likely to result in pneumonia, pneumonia so contracted is compensable as following a definite injury. *A. Breslauer Co. v. Indus-*

trial Commission, 167 Wis. 202, 167 N.W. 256 (1918). Decedent, on an emergency call, got his feet wet when his car stalled, and immediately operated on his patient, because of necessity, in the basement dispensary, which was extremely cold. This was an unusual procedure, but necessary. Following a chill he got pneumonia and died. This was an "accident" within the Workmen's Compensation Act, as establishing a "mishap or untoward occurrence." *Roth v. Locust Mountain State Hospital*, 130 Pa. Sup. 1, 196 Atl. 924 (1938). Where pneumonia was caused by the inhaling of chlorine gas released by a sudden explosion, the illness and death were held a "personal injury" within the meaning of the Texas Workmen's Compensation Act. *Traveler's Ins. Co. v. Smith*, 266 S.W. 574 (Tex. Civ. App., 1924). Where decedent contracted military tuberculosis as a result of a gas explosion, the disease, as proximately caused by the explosion, was an accident within the Workmen's Compensation Act of Wisconsin. *Heileman Brewing Co. v. Industrial Commission*, 161 Wis. 46, 152 N.W. 446 (1915). Where the plaintiff suddenly and unexpectedly inhaled a quantity of carbon monoxide gas while under a car to repair it when the engine was running suffering serious injury to his heart and permanent disability, it was stated that though inhalation of the gas lasted for more than an hour it was a compensable "accident." *Commercial Standard Ins. Co. v. Noack*, 45 S.W. (2d) 798 (Tex. Civ. App., 1931). Death of double lobar pneumonia caused by the forced inhalation of large quantities of sulphur dioxide gas, due to defects of a pipe on which deceased was working for two days, was a compensable injury, for here there was inhalation of an unusual amount of gas, assignable to a time, place and cause. *Maryland Casualty Co. v. Broadway*, 110 F. (2d) 357 (C.C.A. 5th, 1940). Where an automobile mechanic inhaled an extra large amount of exhaust fumes while repairing an automobile when the garage doors were closed, the inhalation continuing for one-half day, pneumonia which resulted was an accident within the Workmen's Compensation Act of Colorado as being traceable to a definite time, place and cause, and was an unexpected occurrence. *Columbine Laundry Co. v. Industrial Commission of Colorado*, 73 Colo. 397, 215 Pac. 870 (1923).

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