

Workman's Compensation: Municipal Corporation: What Constitutes Premises of Employer

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and then the landlord, without her knowledge and without any warning to her, changed the condition of the cover so that it would not stay up as before. The plaintiff had been lured into a danger that was not necessarily obvious to her.

This case is distinguished from what is known as the "pinch-bar" case," and the "step-ladder case."⁶ In those cases the plaintiffs had used the mentioned instrumentalities and were injured. The court points out that in those cases neither of the plaintiffs were lured into using the contrivances, and such instrumentalities were being used for the first time, and a simple inspection would have disclosed the defects, and it would not be natural for the plaintiffs to assume that such contrivances were safe. The question of negligence and contributory negligence under the facts, presented a jury question.

GEORGE J. UHLAR

Workman's Compensation: Municipal Corporation: What Constitutes Premises of Employer.¹

Caravella, a Milwaukee street cleaner, while on his way to work and actually traversing a street on which he would have worked later during the day, was struck and killed by an automobile. His widow, Frances Caravella, brought this action to recover compensation for the death of her husband.

The Court held: that the death of an employee, while on his way to work on the employer's premises, but not growing out of the services incidental to his employment, is not compensable under the Workmen's Compensation Act.

A master is liable for the injuries to his employee occurring within the scope of his employment and while the employee is under the actual and constructive control of the employer.² The relation of Master and Servant must be in existence at the time of injury or death, although the duty to protect the servant is not "necessarily confined to the precise period during which services are actively rendered."³

The relation of Master and Servant may also exist by custom.⁴

It had been customary for the deceased to go to work much earlier than was necessary, and on his way to work he often picked up refuse from the street and collected it in a pile which he would move after reporting for work. If these had been the circumstances on the morning when the accident occurred, it is likely that the court would have been justified in allowing compensation for the death, because it would have occurred on the premises of the employer and during the rendering of "service growing out of and incidental to his employment."⁵ On this particular morning, however, deceased was on the street as

⁵ *Holt v. C. M. and St. P. R. Co.* 94 Wis. 596.

⁶ *Borden v. Daisy Roller Mill Co.* 98 Wis. 407.

¹ *Caravella v. City of Milwaukee*, 215 N.W. 911; —Wis. —.

² 171 Ala. 188.

³ 184 S.W. 159.

⁴ 140 Wis. 440.

⁵ 163 Wis. 31; 102.03 (2) Statutes.

a pedestrian only and not as an employee on the premises of the employer.

Likewise, no compensation was allowed in *Hills v. Blair*,⁶ where a section hand, while walking on the track on his way home for his mid-day meal, was killed by an oncoming train, because there was no relation between the accident and the decedant's duties to his employer. Also, in the case of *DeVoe v. New York State Railroad*,⁷ no compensation was allowed for the killing of a motorman employee while he was on his way taking his watch to be tested after his day's work was over. The Wisconsin case of *Hornburg v. Morris* held:⁸ "that the use of the streets of a city by one of the firemen while going to and from work, and while not discharging any present duty to the city, did not come within the statute."⁹

From the rulings in the above cited cases it would appear that there was no relationship of Master and Servant between the deceased and the employer at the time of the injury. As that relation is essential to recover compensation under the Workmen's Compensation Act, the Court upheld the Industrial Commission in their refusal to allow compensation to the widow.

J. S. FORNARY

⁶ 182 Mich. 20.

⁷ 155 N.Y.S. 12.

⁸ 163 Wis. 31.

⁹ Used by Eschweiler J. in deciding the case.