LIABILITY FOR ACCIDENTS UNDER THE MISSOURI WORKMEN'S COMPENSATION LAW

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I. STATUTORY LIMITATION AND CONSTRUCTION

The rights conferred under the Missouri Workmen's Compensation Law are statutory. No one can recover on account of personal injuries or death except under the exact terms of the law. The right arises because the law provides that "the employer shall be liable irrespective of negligence, to furnish compensation for personal injury or death of the employe by accident arising out of and in the course of his employment."[1] This clause is "declared not to cover workmen except while engaged in, or about the premises where their duties are being performed, or where their services require their presence as a part of such services."[2] Except for the section which states that the act shall be liberally construed,[3] the authority of the Commission and the courts is determined by the provisions to which reference has just been made.

The appellate courts can review only questions of law, and may modify, reverse, remand for rehearing, or set aside the award of the Commission, because the facts found by that body do not support the award, or because there is not sufficient competent evidence in the record to warrant the making of the award.[4] This section of the Act has been construed to mean that in cases in which there is disputed testimony, when the Commission's findings of fact are supported by substantial evidence, the appellate courts are precluded from weighing the evidence on review, because the findings of the Commission have the force and effect of a special verdict.[5] In such cases the

[1] R. S. Mo. (1929) sec. 3301.

[2] R. S. Mo. (1929) sec. 3305 (c).

[3] R. S. Mo. (1929) sec. 3374.

[4] R. S. Mo. (1929) sec. 3342; Jones v. Century Coal Co., et al. (Mo. App. 1932) 46 S. W. (2d) 196, 198.

[5] Hager v. Pulitzer Publishing Company (Mo. App. 1929) 17 S. W. (2d) 578, 579; Leilich v. Chevrolet Motor Co. (Mo. 1931) 40 S. W. (2d) 601, 604; Sawtell v. Stern Bros. & Co. et al. (Mo. App. 1931) 44 S. W. (2d) 264, 267; Bise v. Tarlton et al. (Mo. App. 1931) 35 S. W. (2d) 993, 994; Conklin v.

findings that the accident did or did not arise out of and in the course of the employment are conclusive on appeal. On the other hand, if the evidence is undisputed, the question is one of law and not of fact.[6] In those cases in which the facts are disputed, it is immaterial whether the findings of the Commission that the accident did or did not arise out of and in the course of the employment are called ultimate facts or conclusions of law. In either event, they must be supported by a sufficient amount of competent evidence.[7]

With respect to definitions of the terms which are vital in the scope of the employment clause under the Act, much has been written,[8] but perhaps the most comprehensive statement of the Supreme Court appears in the case of *Wahlig v. Krenning-Schlapp Grocer Co., et al.*

> It has been quite uniformly held that an injury arises *"out of"* the employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury; and that an injury to an employee arises *"in the course of"* his employment when it occurs within the period of his employment, at a place where he may reasonably be, and while he is reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. By declaring in section 7 (c) that injuries to employees arising *out of* and in the *course of* their employment, shall cover injuries to employees "while engaged in, or about *the premises where*

Pub. Serv. Com. (Mo. App. 1931) 41 S. W. (2d) 608, 612; Jones v. Century Coal Co., et al. (Mo. App. 1932) 46 S. W. (2d) 196, 198 (the opinion in this case can be justified only on the theory that there was disputed evidence; Pfitzinger v. Shell Pipe Line Corporation (Mo. App. 1932) 46 S. W. (2d) 955, 958; Lefkomitros v. R. C. Can Co. et al. (Mo. App. 1932) 46 S. W. (2d) 963, 964.

[6] Sawtell v. Stern Bros. & Co. et al. (Mo. App. 1931) 44 S. W. (2d) 264, 267; See also Johnston v. A. C. White Lumber Co. (1923) 37 Idaho 617, 217 Pac. 979, 981; Ybairbarriaga v. Farmer (1924) 39 Idaho 361, 228 Pac. 227, 229; Atchison v. Industrial Commission (1925) 188 Wis. 218, 205 N. W. 806, 44 A. L. R. 1213, 1217; Lefkomitros v. R. C. Can Co. et al. (Mo. App. 1932) 46 S. W. (2d) 963, 964.

[7] N. 5 above.

[8] Smith v. Levis-Zukoski Mercantile Co. et al. (Mo. App. 1929) 14 S. W. (2d) 470; Howes v. Stark Bros. Nurseries & Orchards Co. et al. (1930) 223 Mo. App. 793, 22 S. W. (2d) 839; Cassidy v. Eternit Inc. et al. (Mo. 1930) 32 S. W. (2d) 75, 78; Metting v. Lehr Construction Co. (Mo. App 1930) 32 S. W. (2d) 121; Bise v. Tarlton et al. (Mo. App. 1931) 35 S. W. (2d) 993, 995.

their duties are being performed, or where their services require their presence as a part of such services," the Legislature in our opinion, intended to extend the protection of the law to all employees while in or about *any premises where* they may be engaged in the performance of their duties, and while *at any place where* their services, or any act, task, or mission which forms a necessary part of their services, may reasonably require them to be.[9]

In the recent case of *Leilich v. Chevrolet Motor Co.*, the Supreme Court criticized this definition, saying:

> . . . It is difficult to conceive of an accident arising out of an employment and not in the course of it. . . There is no justification for investing the words "arising out of . . . his employment" with a technical meaning; they are plain, ordinary, and everyday words, and should therefore be given their plain, usual, and ordinary meaning. Every case involving their application should be decided upon its own particular facts and circumstances and not by reference to some formula.[10]

The latest expression of the Supreme Court on this question is fundamentally sound. Its adoption in a very recent Kansas City Court of Appeals[11] case shows a tendency on the part of the Missouri courts to determine each case according to its own merits and upon its own peculiar facts, and not to adopt any abstract formula under which the facts of each case are decided.

II. HOW THE LAW IS APPLIED

A. Accidents on the employer's premises.

In the case of *Smith v. Levis-Zukoski Mercantile Co. et al.*, claimant, the widow of the decedent, Smith, sought to recover for the latter's death under the Compensation Law. Smith was a porter in the employer's building. His duties required him to sweep, dust, run errands, and perform other occasional tasks throughout the building. His regular duties were confined to the second, third, and fourth floors. The evidence showed that Smith met his death by falling down the elevator shaft after

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[9] (Mo. 1930) 29 S. W. (2d) 128, 130-131. See the criticism of the section of the act referred to. Howes v. Stark Bros. Nurseries & Orchards et al. (Mo. App. 1930) 22 S. W. (2d) 839, 844.

[10] (Mo. 1931) 40 S. W. (2d) 601, 605.

[11] Sawtell v. Stern Bros. et al. (Mo. App. 1931) 44 S. W. (2d) 264, 269.

sliding on the cable between the sixth and fifth floors. The Court said:

> . . . It should be particularly noted that the porters had nothing whatever to do with sweeping or cleaning out the elevators or elevator shaft, or cleaning the bottoms of the elevators, all of which work was invariably done by members of the engineering department which had the elevators in charge.[12]

Accordingly, it was held that the mere fact that the employe was killed by accident occurring on the premises near the regular place of service, did not establish liability under the Act and formed no basis for the presumption that the accident arose out of and in the course of the employment.

It was held that the deceased met his death in an accident arising out of and in the course of his employment in the case of *Jackson et al. v. Euclid-Pine Inv. Co. et al.*[13] There the employe was a night worker in a garage. His duties required him to serve as general caretaker and night watchman, to wipe, clean, and wash cars, and to move cars about from place to place inside the garage. The deceased started the engine of an automobile in order to keep warm, and it was one of his duties to dust out this same automobile. Death resulted from carbon-monoxide gas. The deceased was found sprawled out on the back seat of the automobile with a dusting cloth in his hand. The Court held that the facts in the *Jackson* case clearly distinguished it from the *Smith* case on the theory that the risk bore a relation to the employment, and that the exposure to such risk was peculiar to the employment. The rule of law also set forth was that a recovery under the Act will be allowed if the injury is received while the employee is doing something incidental to the employment, though not strictly within the limits of the duties he is obliged to perform, even though the act itself may be primarily personal, as long as it tends ultimately to react to the employer's benefit.

In the recent case of *Ransdell v. International Shoe Company,* claimant, an employe in the trimming department of the defendant's shoe factory, while working near the embossing machine,

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[12] (Mo. App. 1929) 14 S. W. (2d) 470, 471.
[13] (1930) 223 Mo. App. 805, 22 S. W. (2d) 849.

was called by an inexperienced operator and requested to make the machine heat. In testing the temperature the machine tripped, causing it to operate, and injuring claimant's hand. The Supreme Court held that the claimant was entitled to recover on the theory that she was performing a natural service for her employer.[14] The Court referred approvingly to a Connecticut case for the proposition that,

> If a workman depart temporarily from his usual vocation to perform some act necessary to be done by someone for his master, he does not cease to be acting in the course of his employment. He is then acting for his master, not for himself. A rule of law, which puts such an employee outside his usual course of employment, and so deprived him of his right or compensation for an injury suffered, would punish energy and loyalty and helpfulness, and promote sloth and inactivity in employees. It would certainly prove detrimental to industry, and such a spirit of disregard of the master's interest, if carried into all of the work, would, in time, cripple the industry.[15]

It is submitted that the decision of the Court was fundamentally sound. The employe was performing a service for the employer, and therefore was acting in his behalf within the meaning of the law.

In the case of *Stone v. Pipe Co. et al.*, it was held that a fireman who was killed by a falling smokestack caused by a tornado, did not meet his death in an accident arising out of and in the course of his employment, although his work required him to stand in close proximity to the furnace at the base of the smokestack.

The Court said:

> . . . If such accident is the result of a hazard unconnected with the prosecution of the work in hand, then there is a lack of that causal connection which would bring it within the terms of the act. . . The death of the employee in the instant case was due to the force of the tornado, and was not peculiar to the employment that he was engaged in, so that, while his death was occasioned in the course of his employment, it did not arise out of it, and therefore there can be no recovery under our Act.[16]

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[14] Ransdell v. International Shoe Co. (Mo. 1931) 44 S. W. (2d) 1.

[15] *Ibid. l. c.* 2.

[16] Stone v. Blackmer & Post Pipe Co. et al. (Mo. App. 1930) 27 S. W. (2d) 459, 460, 461.

It was held in the case of *Morris v. Dexter Mfg. Co. et al.*, that the claimant, who had one finger frozen while loading spokes on a railroad car for his employer, was not entitled to compensation for the loss of the finger.[17] The court recognized a great diversity of opinions in the several states with respect to the question of whether frostbite or freezing comes within the provisions of the law. After reviewing several cases in other jurisdictions, Judge Cox of the Springfield Court of Appeals concluded:

> In this case, the claimant loaded spokes onto a car in a shed, then pushed them to a car which stood in the open and unloaded them into the car. In this case there were other workmen assisting plaintiff and doing the same kind of work that he was doing, and none of them were frozen. Plaintiff, evidently for some reason not explained, was more likely to freeze than they, but it is clear that the character of the work done by plaintiff did not make him more susceptible to freezing than his companions, or exposed him to the severity of the weather to a greater extent than others, in the same locality working in the open at employment of any kind, were exposed. The commission found in this case that plaintiff was not entitled to compensation, and, since the evidence fails to show that plaintiff's work did expose him to the effects of the cold weather to any extent greater than others in the same locality were exposed, it cannot be said that their finding is not warranted under the evidence.[18]

This case represents a radical departure from the rational and sane approach to the Compensation Act which other courts in this state have made. If a spoke had fallen on the claimant's finger and severed it from his hand, the court would not have reasoned that he was not entitled to recover merely because spokes had not struck all of claimant's fellow workers. The circumstances which resulted in the claimant's finger being frozen, requiring him to work in the cold, were enough to show that the risk resulted from a hazard peculiar to the employment. It is further suggested that all persons required to work under circumstances exposing them to winter weather should come within protection of the Act when frozen while performing services in the course of their employment.

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[17] (Mo. App. 1931) 40 S. W. (2d) 750.
[18] *Ibid. l. c.* 752.

In the case of *Cassidy et al. v. Eternit, Inc., et al.*, the Supreme Court held that a hoisting engineer who was electrocuted while climbing a ladder to the cage of an overhead crane to obtain information concerning his pay check, and acting upon the suggestion of his foreman at the time, was not killed in an accident arising out of and in the course of his employment, since the foreman was not authorized to direct the engineer where to go to receive the check. The court said:

> Cassidy was entitled to pay for his work as an essential part of his contract of employment, and had he been killed accidentally while on his way from the place of his work to a place where he had been directed to go by his employer for the purpose of receiving his pay check, a different case would be presented . . . But the accident under consideration occurred at a place where he had gone, not to receive his pay check, but to get information concerning his pay check, at the instance of one who was not authorized to so direct him. And while the accident occurred within the period of his employment, it did not occur at a place where his services required him to be, nor while he was performing any duty of his employment. Nor was there a causal connection between the conditions under which his work was required to be performed and the accident which resulted in his death.[19]

The rule of law announced by the court is sound, although the case involves a close question. It may be contrasted with the case of *Metting et ux. v. Lehr Const. Co.*, in which the Kansas City Court of Appeals held that a laborer who had been constructing storage tanks and was killed when attempting to slide down a rope in order to leave his employer's premises, was acting in the scope of his employment at the time of the accident. The evidence disclosed that other employees had used the rope, and that some of them were and some were not instructed to avoid the practice. The court said:

> In the case at bar we are of the opinion that the act of the deceased in attempting to leave his work in the manner in which he did was not so wholly unconnected with and beyond his employment as would justify us in saying that it did not arise "out of" and "in the course of" his employment.[20]

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[19] (Mo. 1930) 32 S. W. (2d) 75, 79.

[20] (Mo. App. 1930) 32 S. W. (2d) 121, 124. See in this connection Price v. Kansas City Public Service Co. (Mo. App. 1931) 42 S. W. (2d) 51, 53.

In a recent Kansas City Court of Appeals case, it was held that a machinist employed by a street railway company in one of its shops, who was injured by being struck in the eye with a baseball bat thrown by a fellow employe, while playing indoor baseball in the employer's paint shop, sustained a compensable injury. The evidence showed that the employer knew of and encouraged such games over a period of years. The employees did not receive pay during the noon hour. The court, in effect, sustained the contention of the claimant that by sponsoring and fostering ball games the employer was raising the morale of the employees and kept them on the premises, ready for an emergency, should it arise. It was stated that "where an injury arises out of a settled practice or condition known to the employer, with which there is a causal relation between the injury and the employment, the injury is compensable."[21] The opinion, couched in broad terms, is highly significant and sets a liberal precedent for the courts of this state.

The cases to which reference has been made, seem to show that the appellate courts in Missouri have given the Workmen's Compensation Act a very liberal construction with respect to injuries arising out of and in the course of the employment in accidents arising on the employer's premises.[22] The one exception is the *Morris* case, *supra*,[23] which ultimately may be overruled.

B. Accidents off the employer's premises.

While it is true that technically the employer's premises extend to any place where the employe may be on a legitimate mission for his employer,[24] merely for purposes of classifying cases, as used in this article, the term "premises" is limited strictly to the employer's place of business.

In an interesting St. Louis Court of Appeals case, it was held that a newsboy was entitled to the benefit of the Act for injuries received when he was pushed by a fellow employe while carrying papers to the truck on which he worked, but that he

[21] Conklin v. Public Service Co. (Mo. App. 1931) 41 S. W. (2d) 608, 614.

[22] See also Lampkins v. Copper-Clad Malleable Range Corp. et al. (Mo. App. 1931) 42 S. W. (2d) 941, which relates to a case in which the employe unquestionably was acting within the scope of his employment.

[23] See p. 238.

[24] See p. 233.

was not acting within the scope of his employment when he threw a board at his co-worker by way of retaliation, thereby sustaining additional injuries. The second injury arose in the course of, but not out of the employment.[25] Clearly there was no causal connection between the second injury and the employment of the claimant. The injury resulted from the actions of the employe caused by his anger and not on account of his employment.

Missouri cases follow the generally accepted rule of law that employees traveling to and from work in vehicles furnished by the employer are acting within the scope of their employment until they have arrived at their destination, whether it is the place of employment, the employe's home, or a certain designated stopping place.[26] Although the servant may be injured while he is walking to the vehicle over a public road, after leaving the premises where he has performed his day's work, the hazard of using the highway is peculiar to the employment and the employe in so doing has not departed from the scope of his implied authority.[27] It is immaterial whether the transportation is furnished by a formal agreement or results from a practice in which the employer has acquiesced, as long as the servant is acting under the master's authority, whether or not the transportation is furnished on the employe's time, if it is an incident of the employment.[28]

The case of *Wahlig v. Krenning-Schlapp Grocer Co. et al.* is authority for the proposition that a traveling salesman is acting within the scope of his employment at all times while he is using the public streets to call upon customers, because he is exposing himself to a risk peculiar to people who use public thoroughfares in connection with their business. The rule is aptly set forth in the language of the court.

> . . . the duties of Wahlig's employment necessarily exposed him to the danger of having his automobile struck

[25] Hayes v. Pulitzer Pub. Co. et al. (Mo. App. 1929) 17 S. W. (2d) 578.

[26] Howes v. Stark Bros. Nurseries & Orchards Co. et al. (Mo. App. 1930) 22 S. W. (2d) 839; Sylcox v. National Lead Co. et al. (Mo. App. 1931) 38 S. W. (2d) 497.

[27] Howes v. Stark Bros. Nurseries & Orchards Co. et al. (1930) 223 Mo. App. 793, 22 S. W. (2d) 839.

[28] Sylcox v. National Lead Co. et al. (Mo. App. 1931) 38 S. W. (2d) 497, 500.

> by a train while driving in his automobile on and along public streets and thoroughfares and . . . the injuries . . . were the direct and natural result of a risk reasonably incident to his employment.[29]

In the case of *Bise v. Tarlton et al.*, the St. Louis Court of Appeals decided that a night watchman was engaged in a personal mission when he left the premises he was patroling and crossed the street to cash his pay check, being struck by a passing automobile as he was returning to resume his duties. The court stated that "the accident did not occur either at a place where claimant's services required him to be, nor while he was performing any duties of his employment."[30]

The defendant placed much reliance on the above case, in *Sawtell v. Stern Bros. et al.*, very recently handed down by the Kansas City Court of Appeals. There the claimant, a bond salesman with headquarters in Topeka, sold bonds wherever he could find a customer. His activities were unlimited as to time or place of sale. He came to Kansas City to confer with a prospective customer, and after discussing the bonds, rode out to the customer's house with her husband. A further discussion ensued, but the sale could not have been consummated on account of the customer's absence. For this reason, the claimant walked several blocks to his sister's, intending to return when the customer had arrived at her home. As he was retracing his steps, the claimant was struck by an automobile driven by a hit-and-run driver.

The court held that the cases were clearly distinguishable because Bise had a definite situs where his work had to be performed, and Sawtell did not. The claimants were workers in different categories. The court said:

> To remain in the course of his employment claimant was not required to impose his presence continuously in the house of his prospective customer, nor was he required to sit upon the doorstep or to remain upon the premises as though haunting the trail of a customer, and under the circumstances it was very likely more prudent that he temporarily absent himself. He was confronted by a necessary

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[29] (Mo. 1930) 29 S. W. (2d) 128, 132. See also Nations v. Barr et al. (Mo. App. 1931) 43 S. W. (2d) 858.

[30] Bise v. Tarlton et al. (Mo. App. 1931) 35 S. W. (2d) 993, 995.

> interval of suspended personal contact with a prospective customer, and if he adopted a reasonable and prudent course to reestablish contact his employment was neither suspended nor abandoned. He was not laboring with his hands but he was called upon to exercise all of his faculties as a salesman, and especially employ his mind upon means and methods of promoting his employer's business. . . Under the circumstances, there was no deviation from the work or the performance of any duty which he owed his employer, and if the visit could properly be designated a deviation it was merely incidental and claimant remained in the course of his employment.[31]

It is submitted that the court arrived at a proper conclusion in view of the facts of the case. The court considered the nature of the claimant's business which was periodic, intermittent, and discontinuous. This case is not only one of first impression in Missouri, but sets a precedent for courts of other jurisdictions. While somewhat similar issues have been passed upon *pro*[32] and *con*[33] in several states, the exact point decided in the *Sawtell* case seems never to have been adjudicated.

Another recent case decides that a salesman who operated over an extensive territory, and traveled in his employer's automobile, was acting within the scope of his employment when he was asphyxiated in his own garage while changing a tire preparatory to calling on customers. Speaking for the Supreme Court, Judge Ragland said:

> Leilich was not employed to change tires but to sell autobiles. But clearly the changing of tires in the circumstances shown by the evidence was a task incident to his employment as salesman. Out of the performance of that task the accident arose which caused his death.[34]

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[31] (Mo. App. 1931) 44 S. W. (2d) 264, 268.

[32] See Harby v. Marwell Bros. Inc. et al. (1922) 203 App. Div. 525, 196 N. Y. S. 729; Gibson v. New Crown Market et al. (1924) 208 App. Div. 267, 203 N. Y. S. 355; Kahn Bros. Co. et al. v. Industrial Commission et al. (Utah 1929) 283 Pac. 1054; Parrish v. Armour & Co. et al. (1931) 200 N. C. 654, 158 S. E. 188; Livers et al. v. Graham Glass Co. et al. (Ind. App. 1931) 177 N. E. 359.

[33] See California Casualty Indemnity Exchange v. Industrial Accident Commission (1923) 190 Cal. 433, 213 Pac. 257; Lipinski v. Sutton Sales Co. (1922) 220 Mich. 647, 190 N. W. 705; Southern Casualty Co. v. Ehlers (Tex. Civ. App. 1929) 14 S. W. (2d) 111.

[34] Leilich v. Chevrolet Motor Co. (Mo. 1931) 40 S. W. (2d) 601, 605.

The cases which have been considered relating to the right of claimants to recover for injuries off the employer's premises are more extensive and far reaching in their scope than those touching upon the same right for injuries occurring in accidents on the employer's premises. They show a clear and decisive liberal trend.

III. CONCLUSION

In the case of *Howes v. Stark Brothers Nurseries & Orchards Co. et al.*, it was said:

> It is the manifest purpose of the Compensation Act to compensate all accidental injuries to workmen arising out of and in the course of their employment. Under the Act the employee gives up a very substantial consideration for the limited compensation assured in the Act. . . In view of such substantial consideration yielded by the employee, the Act provides that the employer shall, without regard to negligence, compensate the employee in a limited amount for any injury received by him arising out of and in the course of his employment. The Act should be liberally construed in furtherance of that end.[35]

In the case of *Stone v. Blackmer & Post Pipe Co. et al.*, the court said:

> The purpose of all such acts was to place, as an expense of operation of a business, the loss of efficiency in the usefulness of its employees occasioned by accidents arising as an incident to the conduct of such business just as other costs of operation are chargeable, but such laws were not intended to insure employees against accidents that do not so arise. While it is true that our act commands that it shall be liberally construed . . . that does not authorize the allowance of a claim that lacks some of the essential elements required by the act.[36]

While there are doubtless a vast array of possible fact situations which the principles laid down in the opinions rendered will not suffice to cover, the broad trend of the Missouri decisions is definitely established. The courts of this state, youthful with respect to the construction of a Compensation Law only recently

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[35] (1930) 223 Mo. App. 793, 225 S. W. (2d) 839, 844; approved in Conklin v. Kansas City Public Service Co. (Mo. App. 1931) 41 S. W. (2d) 608, 612, 613.

[36] (Mo. App. 1930) 27 S. W. (2d) 459, 460.

enacted, have placed this jurisdiction in a category with other jurisdictions which recognize that the Act must receive a fair and liberal construction. One or two opinions may appear too confining or unduly broad, but in the main the Missouri Courts have stayed well within the confines of the guideposts they have erected for themselves to determine whether an injury is, or is not, compensable as one arising out of and in the course of the employment.