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Workmen's Compensation—Sufficiency of Causal Relationship between Accident and Death

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DUTY TOWARD TRESPASSSERS: OBJECTIVE TEST

Plaintiff, a six year old boy, entered defendant's railroad yard and climbed onto a ladder attached to one of the boxcars of a train. As the train began moving, one of defendant's employees ran toward the plaintiff, and while about three or four cars away from him, shouted to the lad to get off the train. Immediately thereafter, plaintiff fell from the car and was injured by the moving train. The question presented, in an action to recover for the youth's injuries, *Lo Casto v. Long Island R.R.Co.*,[66] was whether the actions of this employee constituted a breach of the duty owed to plaintiff-trespasser. The Supreme Court entered judgment on verdict for plaintiff, but was reversed by the Appellate Division. The reversal was affirmed by the Court of Appeals.

Generally, one's only duty to trespassers is to abstain from inflicting intentional, wanton or wilfull injuries.[67] Two prior decisions of the Court seem to lay a frame of reference upon which to assess the instant decision. In *Ansteth v. Buffalo Ry. Co.*,[68] a conductor came onto the car platform on which a youth was standing and reached for the boy. In allowing recovery, the Court held the acts of the employee improper and unnecessarily dangerous, and therefore a breach of defendant's duty to a trespasser. In so holding, the Court said the boy was justified in believing violence to his person was imminent. In *Ralff v. Long Island R.R.Co.*,[69] however, on facts similar to those of the instant case, except that plaintiff did not see the person who was shouting at him, though he heard the shouting, recovery was denied. Mere calling to a plaintiff to get off the train, said the Court, cannot constitute the wilfull conduct required.

Although fear of violence to his person may well have caused the injury producing incident in the instant case, the Court makes it clear that the test of breach of duty to the trespasser is judged by an objective standard. Fear resulting from acts occuring three or four cars away from the plaintiff cannot, as a matter of law, operate to sustain a verdict requiring expectation of imminent violence.

WORKMEN'S COMPENSATION

SUFFICIENCY OF CAUSAL RELATIONSHIP BETWEEN ACCIDENT AND DEATH

Plaintiff, a sixty year old truck driver, was operating his employer's truck when it was struck by another vehicle. The impact caused him to be thrown to the pavement and rendered unconscious for several minutes. A medical examination revealed that he had suffered various abrasions, bruises and soreness throughout his shoulders and chest area. Plaintiff made no complaints of a cardiac nature and the doctor found no evidence of any cardiac ailment.

66. 6 N.Y.2d 470, 190 N.Y.S.2d 366 (1959).
67. Carbone v. Mackchil Realty Corporation, 296 N.Y. 154, 71 N.E.2d 447 (1947).
68. 145 N.Y. 210, 39 N.E. 708 (1895).
69. 266 A.D. 794, 41 N.Y.S.2d 620, *aff'd* 292 N.Y. 656, 55 N.E.2d 518 (1944).

Within two weeks he returned to work and continued in his normal employment for about three weeks, when he died of a coronary occlusion and coronary thrombosis during his sleep. There is no evidence of any injury or probable cause of death other than the accident described.

The Workmen's Compensation Board made an award in favor of the claimant. The Appellate Division affirmed,[1] and this appeal was taken. The Court of Appeals held that the evidence sustained a finding that the workman's fatal coronary attack was causally related to injuries he sustained in the work-connected automobile collision.[2]

The difficulty in this case was presented by the sharp dispute in evidence of the two physicians who testified on the issue of causal relationship. The doctor testifying for the claimant based his conclusion on the *possibility* that the accident produced a certain sequence of events which led to the heart attack some thirty days later. He could in no way prove *conclusively* that these particular events did in fact occur. The appellant's witness based his findings on the autopsy and microscopic examination of the heart.

There have been many cases which have dealt with the problem of causal relationship brought about by lapse of a substantial period of time between the accident and the death. Cases which have denied recovery usually turn on the fact that the evidence does not sustain the finding that an accident occurred,[3] or ample evidence is presented to show that an accident is being feigned.[4] In the cases of coronaries, the evidence often fails to show whether the accident occurred before or after the attack.[5] However, where there is clear, convincing evidence establishing that an accident did in fact occur, the courts have been very liberal in finding causal relationship.[6] Expert testimony, although controverted, is not rejected as insufficient in law because it is not given with positive medical certainty. "The law does not require proof of such positiveness. It is sufficient if from the facts a reasonable inference arises that the exertion caused death." [7]

The position of the dissent is that the testimony of the appellant's witness is conclusive because of the lack of direct evidence to contradict it. This is assuming that the testimony of the claimant's doctor is mere speculation and no reasonable inference of fact arises. It is submitted that taking this view would deny compensation in many cases which are borderline. This would not be consistent with the theory underlying the Workmen's Compensation Acts. These acts have attempted to mitigate the burden of injuries on em-

1. Palermo v. Samuel Gallucci and Son Inc., 6 A.D.2d 911, 176 N.Y.S.2d 95 (3d Dep't 1958).
2. Palermo v. Samuel Galluci and Son Inc., 5 N.Y.2d 529, 186 N.Y.S.2d 255 (1959).
3. McCormack v. National City Bank, 303 N.Y. 5, 99 N.E.2d 887 (1951).
4. Carroll v. Knickerbocker Ice Co., 218 N.Y. 212, 113 N.E. 507 (1954).
5. Riehl v. Town of Amherst, 308 N.Y. 212, 124 N.E.2d 287 (1954).
6. Suschinski v. Allegheny Ludlum Steel Corp., 5 A.D.2d 903, 171 N.Y.S.2d 173 (3d Dep't 1958); Boltrak v. Mike Schechter Inc., 5 A.D.2d 725, 169 N.Y.S.2d 733 (3d Dep't 1957); Wachsitork v. Sky View Transportation Co., 5 A.D.2d 1028, 173 N.Y.S.2d 405 (3d Dep't 1958); Mathiez v. Meyer, 6 A.D.2d 741, 174 N.Y.S.2d 340 (3d Dep't 1958).
7. Green v. Geiger, 253 A.D. 469, 471, 3 N.Y.S.2d 269 (3d Dep't 1958).

ployees by eliminating many of the common law defenses of the employer, thereby allowing recovery in a greater number of cases. The rationale for this is founded on the fact that employers may insure themselves and add this to their cost of doing business which in effect places the cost on the consumer. In the instant case, the facts clearly show that an accident did occur, and no evidence was submitted indicating the possibility of fraud. Since the major issue in this case was the conflicting medical testimony, the mere fact that the conflict existed should be enough to raise a doubt as to whether or not the accident produced the fatal attack. This doubt having been resolved by the Board in favor of the claimant coupled with the policy considerations behind Workmen's Compensation is sufficient justification for affirming the award.

CORONARY THROMBOSIS AS BASIS OF CLAIM

An accidental injury, arising out of, or sustained in the course of one's employment, is compensable under New York's Workmen's Compensation Law so long as the injury complained of is one within the meaning of the term "industrial accident." "What constitutes an 'industrial accident' is to be determined by the common-sense viewpoint of the average man."[8]

In *Schecter v. State Insurance Fund*,[9] the claimant, Senior Trial Attorney in charge of all litigation for the State Insurance Fund, suffered a heart attack after his work load had been significantly increased. The Workmen's Compensation Board granted an award to him which was subsequently set aside by the Appellate Division of the Supreme Court, Third Department, which held that there was no accident within the legal meaning of the word.[10] However, the Court of Appeals, in a five to two decision, reinstated the award granted by the board.

A coronary thrombosis is compensable under the Workmen's Compensation Law provided it results from unusual or excessive strain in the performance of one's work.[11] Furthermore, one may be subjected to such strain although the work performed is of the same general type as that in which one is regularly involved,[12] and the fact that there is a pre-existing pathology which contributes to the injury is not sufficient reason for denial of compensation.[13]

In the instant case, the claimant normally spent sixty to seventy percent of his time in court performing his work as trial counsel but, for a seven week period immediately preceeding the heart attack, he was required to be present in court one hundred percent of the time.

At the hearing before the Workmen's Compensation Board conflicting expert medical testimony was advanced on behalf of both the claimant and the carrier as to the causal connection between the increased workload and the

8. Masse v. James H. Robinson Co., 301 N.Y. 34, 37, 92 N.E.2d 56, 57 (1950).
9. 6 N.Y.2d 506, 190 N.Y.S.2d 656 (1959).
10. 7 A.D.2d 813, 180 N.Y.S.2d 782 (3d Dep't 1959).
11. Cooper v. Brunswick Cigar Co., 298 N.Y. 731, 83 N.E.2d 142 (1948).
12. Sleator v. National City Bank, 309 N.Y. 708, 128 N.E.2d 415 (1955).
13. Cooper v. Brunswick Cigar Co., *supra.*, note 11.