Buffalo Law Review

Volume 8 | Number 1 Article 129

10-1-1958

Workmen's Compensation—Workmen's Compensation As Exclusive Remedy

Buffalo Law Review

WORKMEN'S COMPENSATION

Workmen's Compensation As Exclusive Remedy

Liability has been imposed by the Vehicle and Traffic Law upon the owner of a motor vehicle for the negligence of any person operating the vehicle upon a public highway with the express or implied permission of the owner.[1] The purpose of the statute was to change the common law rule by making the owner of the vehicle liable[2] in order to afford the injured person an additional remedy for his losses.

Section 29, subdivision 6, of the Workmen's Compensation Law provides:

> The right to compensation or benefits under this chapter, shall be the exclusive remedy to an employee, or in the case of death his dependents, when such employee is injured or killed by the negligence or wrong of another in the same employ.

The question whether this section of the Workmen's Compensation Law could be vitiated, in part, by the provisions of the Vehicle and Traffic Law was presented to the Court of Appeals in *Nasco v. Lafata*[3] and *Rauch v. Jones*.[4] In each of these cases the plaintiff was injured when involved in a motor vehicle accident caused by the negligence of a co-employee driver of the vehicle in which plaintiff was a passenger and while both plaintiff and driver were acting in the course of their employment. Recovery was sought under the Vehicle and Traffic Law against the employer-owner of the vehicle in the *Naso* case and a third party owner of the trailer in the *Rauch* case. The owner in each case was not present at the time of the accident.

The Court disallowed recovery because of the exclusive remedy provisions of §29(6), recognizing that to treat the vehicle owner, under the circumstances, as a third party whose liability is not eliminated by provisions of the Workmen's Compensation Law is to disregard the import of other provisions of the Law specifying a third party suit "only if the employee is injured or killed by one not in the same employ."[5] The Appellate Division, in affirming a judgment for the plaintiff in the *Naso* case on the grounds that the owner could be treated as a third party had seemingly overlooked this vital consideration.

Primary emphasis was placed by the Court of Appeals on the right of the

1. N. Y. VEHICLE AND TRAFFIC LAW §59. A similar liability has been imposed jointly on the separate owners of a tractor and trailer, in combination; see §59-a.
2. Mills v. Gabriel, 259 App. Div. 60, 18 N.Y.S.2d 78 (2d Dep't 1940), *aff'd* 284 N.Y. 755, 31 N.E.2d 512 (1940).
3. 4 N.Y.2d 585, 176 N.Y.S.2d 622 (1958).
4. .4 N.Y.2d 585, 592, 176 N.Y.S.2d 622, 628 (1958).
5. N. Y. WORKMEN'S COMPENSATION LAW §29(1).

owner of an auto, sued under the Vehicle and Traffic Law and not present at the time of the accident, to implead the actively negligent driver of his vehicle and to obtain recovery over against him under section 193-a of the Civil Practice Act.[6] The Court said that if the plaintiff were allowed to recover against the owner here in either of the cases, the owner would then have a right of recovery over against the co-employee driver, thus defeating the injured employee's bar from bringing action against his co-employee (and, in fact, thereby defeating the co-employee's immunity from suit) under the "exclusive remedy" provision of the Workmen's Compensation Law.

Jurisdiction Where Job Situs Outside State

Workers today may often be called upon to do various jobs outside the state. This raises a close question as to where the employment is "located" for purposes of determining jurisdiction in workmen's compensation cases. The New York Workmen's Compensation Law does not contain any provision for the granting of compensation to New York employees who are injured while outside its territorial limits. However, it has been interpreted, in appropriate cases, to extend to such employees.[7]

The test in such cases is whether the work performed outside the state was in its nature transitory and incidental to general employment in New York or whether the employment was at a fixed location outside the state. There is no rigid rule for determining this, but it is rather on evaluation of the significant contacts with the state.[8] Thus it appears that the facts of each case will govern the decisions and not juristic concepts.

In *Nashko v. Standard Water Proofing Co.*,[9] the deceased employee was a resident of New York and his employment was controlled and directed from this state. The decedent had worked as a steam cleaner at various jobs for his New York employer from 1945 until 1950, when he was sent to New Jersey to work on a specific project. For purposes of union regulations, he was designated as a New York employee and received boarding expenses while working outside of the state. He was also covered by a compensation policy procured in New York and there was an understanding that he would return to this state after the New Jersey assignment.

The Court felt that these factors, coupled with the presumption of coverage

6. Traub v. Dinzler, 309 N.Y. 395, 131 N.E.2d 564 (1955).
7. In re Post, 216 N.Y. 544, 111 N.E. 351 (1916).
8. Cameron v. Ellis Construction Co., 252 N.Y. 394, 169 N.E. 622 (1930).
9. 4 N.Y.2d 199, 173 N.Y.S.2d 565 (1958).