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Workmen's Compensation—Test for Occupational Disease

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The paragraph authorizing minimum fee schedules was enacted[9] in response to a message of the Governor[10] outlining the many abuses by physicians in the field of workmen's compensation. No mention was made of similar abuses by hospitals. Further substantiation for this construction may be implied from an opinion of the Attorney General of New York wherein it was stated that the amendments were directed toward existing practices of physicians.[11] Since the time of that opinion no chairman has ever attempted to set minimum fees for hospitals.

In light of this history it is apparent that the decision of the Court was the only correct one. As a further support for the decision the extra-legal argument of the petitioners is well taken. A charitable or private hospital, in order to continue its operation, must charge higher fees to those who can afford them in order to offset the loss sustained in caring for the needy. If they are unable to charge a person with workmen's compensation benefits any more than their minimum charge they would soon find it difficult to operate without state aid. This latter alternative of course would put the burden upon the taxpayers of providing hospital care for persons who are fully capable of paying their own way. As there is no evidence of widespread abuse by hospitals of their power to arbitrarily fix fees in relation to their patients' pocketbooks, there is no need for control by the workmen's compensation board.

Test for Occupational Disease

In *Detenbeck v. General Motors Corporation,*[12] the Court was faced with the question of whether an award should be made for an occupational disease under section 3 of the Workmen's Compensation Law[13] where there was no showing that the disease was incidental to the employment although there was no doubt but that the employment had caused the disease. The employee, suffering from a congenital back defect, complained that his defect had been aggravated by his

9. L. 1935, c. 258.

10. 49 N. Y. STATE DEP'T. REP. 1, 4 (1934): ". . .(U)nscrupulous physicians . . . have operated in a way to exploit worker, employer and insurance carriers through prolonged treatment, padded bills and inferior professional service . . . (U)nder the proposed bill, . . . (T)he Commissioner is empowered . . . to establish uniform minimum fees for . . . medical care. Payment to physicians of amounts larger than those permitted by the schedule will not be allowed unless voluntarily authorized by the employer . . ."

11. 1936 OPS. ATTY. GEN. 282: ". . . (T)he purposes of the amendments to section 13 of the Workmen's Compensation Law is (*sic*) best summarized by the special message of the Governor of the State of New York dated March 19, 1934 . . . (F)rom it we obtain the true intent and purpose of the enactments of the amendments, . . . namely to permit the employee freedom of action in choosing his *physician* . . ." (Emphasis added).

12. 309 N. Y. 558, 132 N. E. 2d 840 (1956).

13. WORKMEN'S COMPENSATION LAW §3: 2. Compensation shall be payable for . . . 29. Any and all occupational diseases.

employment in an automobile factory. As he could not point to a specific injury, the employee proceeded under the theory that this was an occupational disease since it was the type of condition which such employment would naturally cause in persons with a like defect.

The Court held, reversing the Appellate Division's affirmation of the award,[14] that claimant's "disease" did not fall within the requirements of an occupational disease in that, but for the congenital defect, the type of employment would not tend to produce such a result. In order that a disease be classified as occupational it must be shown that it is the type of disease that is the natural result of the particular type of employment.[15] It is not enough that the employment cause the disease; there is the further requirement that the employment be such that it would tend to cause the disease in the normal person.[16]

There have been recoveries for occupational diseases where the claimant was suffering from a pre-existing defect or susceptibility.[17] However, these cases may be distinguished in that, while the claimants—because of their susceptibility—were more prone to contract the disease, nevertheless the disease was one which the normal person also would be likely to contract from the very nature of the employment. The test is the same whether the claimant is normal or defective—is there some connection between the disease and the type of employment?[18]

Two dissenting judges were of the opinion that the trend in New York as well as in other jurisdictions has been toward the awarding of compensation in cases of this nature. Authority for this position was founded upon recent New York decisions which were distinguished by the majority[19] as well as upon decisions from other jurisdictions.[20]

If, as the dissent advances, the trend has been toward awarding compensation in cases where a disease would not have been caused except for the predisposition

14. 285 App. Div. 1099, 139 N. Y. S. 2d 439 (3d Dep't 1955): "While a normal person would not have been affected it is rather clear that all employees who had the same weakness would in all probability be similarly affected. This is sufficient to bring the condition within the classification of an occupational disease."

15. *Harman v. Republic Aviation Corp.*, 298 N. Y. 285, 82 N. E. 2d 785 (1948); *Champion v. Gurley*, 299 N. Y. 406, 87 N. E. 2d 430 (1949).

16. See note 15 *supra.*

17. *Griffin v. Griffin & Webster Inc.*, 283 App. Div. 145, 126 N. Y. S. 2d 672 (3d Dep't 1953), *motion for leave to appeal den.*, 306 N. Y. 984, 118 N. E. 2d 606 (1954); *Buchanan v. Bethlehem Steel*, 278 App. Div. 594, 101 N. Y. S. 2d 1011 (3d Dep't 1951), *aff'd without opinion*, 302 N. Y. 848, 100 N. E. 2d 45 (1951).

18. *Goldberg v. 954 Marcy Corp.*, 276 N. Y. 313, 12 N. E. 2d 311 (1938).

19. See note 17 *supra.*

20. *Samuels v. Goodyear Tire & Rubber Co.*, 317 Mich. 149, 26 N. W. 2d 742 (1947); *Kroger Grocery & Baking Co. v. Industrial Comm.*, 239 Wis. 455, 1 N. W. 2d 802 (1942); *Giambattista v. Thomas Edison Inc.*, 32 N. J. Super. 103, 107 A. 2d 801 (1954).

of the complainant, it is fortunate that the Court has made its position clear in this regard. To allow compensation in such instances would be to open the flood gates to innumerable unfounded claims which the statute was never intended to cover. However, it is this writer's opinion that there has been no such trend. If the cases cited by the dissenting judges be carefully examined it becomes evident that despite loose language in some of them, they may be distinguished as the majority has done as pointed out above.

While the rule announced by the majority is correct, it is submitted that it was incorrectly applied in the instant case. In its effort to correct wrong thinking in this area the Court seems to have been blinded to the fact that the employee, who was required almost daily to lift objects weighing over 100 pounds, was actually engaged in employment which by its very nature would tend to cause an occupational disease even in the normal person.