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Workmen's Compensation—Heart Attack—Arising out of the Course of Employment?

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damages suffered by them due to the streets disrepair, but the city acquires the right to indemnity against this alterer of the streets, his affirmative action of changing the public way imposing upon him the duty to repair.

WORKMEN'S COMPENSATION

Heart Attack—Arising Out Of The Course Of Employment?

Until recently in workmen's compensation law the rule in respect to "heart" cases was that to be entitled to compensation the employee must have been subjected to unusual strain, while engaged in unusual work or in work beyond his normal duties.[1] It was subsequently decided that whether an employee who has suffered a heart attack was subjected to unusual strain is an issue of fact and the mere fact that he was performing his customary duties or lighter duties does not necessarily exclude finding that he was subjected to unusual strain.[2] The claimant's past history of work is not as important as the question of whether the exertion significantly contributed to this injury.

In the case of *Burris v. Lewis*,[3] claimant's son dropped dead while lifting a nail keg weighing about fifty pounds from the ground to the tailboard of his employer's truck. The medical witness described the long-term deterioration of the employee's heart and stated that no fresh leisions were discovered in his examination.

In light of the fact that a compensation claim for heart injury cannot be sustained without medical testimony to the effect that the injury was caused by the strain of work,[4] the Court rejected the claim on the grounds that the claimant's heart had so deteriorated that any exertion became an overexertion, and that claimant died at work merely because he was engaged in some kind of physical activity.

The Court expressed the fear that if this employee were to receive compensation, then anyone who dies of a heart attack while working would be entitled to compensation. The law, however, intended that to be compensable the injury must be the result of a risk of the employment.[5] In the instant case the medical testimony did not indicate that the injury could reasonably be associated with the work.

1. La Fountain v. La Fountain, 284 N.Y. 792, 31 N.E.2d 199 (1940).
2. Masse v. James H. Robinson Co., 301 N.Y. 34, 92 N.E.2d 56 (1950). *Cf.* Deyo v. Village of Piermont Inc., 283 App. Div. 67, 126 N.Y.S.2d 523 (3rd Dep't 1953).
3. 2 N.Y.2d 323, 160 N.Y.S.2d 853 (1957).
4. Owens v. McGovern, 309 N.Y. 449, 131 N.E.2d 729 (1956).
5. N.Y. WORKMEN'S COMPENSATION LAW §2 (7).