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"Traumatic Injury" Under the Kentucky Workmen's Compensation Act

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"TRAUMATIC INJURY" UNDER THE KENTUCKY WORKMEN'S COMPENSATION ACT

Section 1 of the Kentucky Workmen's Compensation Act provides:

> "It [the act] shall effect the liability of the employers subject thereto to their employes for a personal injury sustained by the employe by accident arising out of and in the course of his employment, or for death resulting from such accidental injury; provided, however, that 'personal injury by accident' as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident, nor shall it include the results of a preexisting disease, but shall include injury or death due to inhalation in mines of noxious gases or smoke, commonly known as "bad air," and also shall include injuries or death due, to the inhalation of any kind of gas and to the disease of silicosis."[1]

In the case of *The Great Atlantic and Pacific Tea Co.* v. *Sexton*,[2] the plaintiff, Sexton, was working at the job of skinning and dressing rabbits. He had a cut on his hand which he had received while chopping wood at home, and by reason of such cut and by coming in contact with a diseased rabbit, he contracted tularemia. He was allowed compensation by the Kentucky court which said the injury was the natural and direct result of a "traumatic injury by accident." The court further stated that the injury was suffered in the course of employment, unexpectedly and without design, and was traceable to a definite time, place, and cause.

The same court in the same year denied compensation in the case of *Mills* v. *Columbia Gas Construction Company*.[3] There the applicant was working in the country away from normal habitation, laying a gas line. Because of the scarcity of water the company furnished water to the men. Since some of the water was contaminated the plaintiff caught typhoid fever. Compensation was not allowed, the court deciding that typhoid fever was not a compensable injury, since *Kentucky Revised Statutes 342.005* specifically excludes diseases of all character except where the disease is itself a natural and direct result of a traumatic injury, while typhoid fever results from the absorption of typhoid bacilli into the system through the normal channels of entry.

It may be questioned whether these two cases can be reconciled. Insofar as the two diseases are concerned, both are bacterial diseases.[4] Tularemia will show its symptoms in from three to ten

[1] KY. R. S. (1946) 342.005.
[2] 242 Ky. 266, 46 S.W. 2d 87 (1932).
[3] 246 Ky. 464, 55 S.W. 2d 394 (1932).
[4] CAGE and LANDON, COMMUNICABLE DISEASES; OSLER, PRINCIPLES AND PRACTICE OF MEDICINE.

days and may be acquired by a bite from a diseased tick or fly, eating insufficiently cooked diseased meat, or an infection through the skin. The tularemia bacilli are distributed throughout the body in the blood and cause an involvement of the lymph-glands and occasional suppuration. The general features are chills, with high fever, general weakness, an occurrence of conjunctival ulcers and probable skin eruptions.

As to typhoid fever, the authorities state that the disease is acquired by swallowing the infecting organisms and is spread by direct or indirect contact with the sources of infection with the bacilli being in the circulating blood in all cases in its early stages. The incubation period averages from ten to fourteen days and noticeable enlargement of the spleen, degeneration of the liver, and other body changes occur.

There are several questions that arise, the answers to which must be compared before the two cases can be adequately contrasted. The first question is whether the two cases can be adequately differentiated so as to reach a different result solely on the difference in modes of entry of the bacilli into the bodies of the claimants. It is submitted that it is not logical to argue that entrance through a pre-existing artificial cut on the skin is a "traumatic injury" while entry through a natural opening is not. The scratch on the skin is merely a conduit for an entry of disease germs into the body and to hold that the passage of germs into the body by a pre-existing scratch, which produces a disease, is a "traumatic injury" while not to hold a similiar entry through a normal channel of entry is a "traumatic injury" seems strained and unnatural. Since in the *Sexton Case* the claimant had scratched his hand prior to the time of his cleaning the rabbits it is evident that the "traumatic injury" occurred not at the time of entry into the body but *subsequent* thereto. In the one case the germ entered through the mouth and in the other case the germ entered through a pre-existing cut, so, since neither can be a "traumatic injury," as to the mode of *entry* into the body, a second question is presented.

This second question is whether on these facts either or both of the diseases were the result of a "traumatic injury," within the meaning of the phrase as used in the Kentucky Statute. The term "traumatic injury" which is used in the *Kentucky Workmen's Compensation Act* has long and often caused trouble as to its interpretation and meaning. It is derived from the word "trauma" which Webster defines as: "an injury, or wound, or the resulting condition." As used in the Compensation Act the court has held it to be limited to an external injury but a study of the word will show that it goes further than that and may include internal force as well. In the various definitions made of the word no mention is made of the word "external," and too it has other meanings in other fields. *Webster's New International Dictionary* defines the word "trauma"

in the field of psychiatry as being "a mental shock; a disturbing influence to which a neurosis may be traced." In the Kentucky Act itself—*Kentucky Revised Statutes, sec. 342.005*—no mention is made of the word "external." Thus, it would seem that the term "traumatic injury" should not be made to mean only an external force or blow but may cover an *internal shock or blow as well.*

Let us suppose the following hypothetical situation: A and B are employes of C in C's paint store. They are working in the basement when a fire breaks out and spreads rapidly. In order to escape up the stairs they must go through a high and intense wall of flame. A in escaping receives severe burns on the hands and face. B, wearing gloves and partially covering his face, follows A out but being terror stricken fails to hold his breath and breathes flame-ridden air into his lungs. Externally B is burned only about one section of his face but as a result of breathing the flames his mouth, throat, and part of his lungs are seared which later develops into pulmonary edema and he dies from "drowning."

Under the above situation there is little doubt but that A received a "traumatic injury by accident," but would the fatal injury of B be compensable? It is submitted that it would be even though the death was caused by an *internal traumatic* blow. The effect of excessive heat against the body has already been classified as a traumatic injury in the case of *Wolfe* v. *American Rolling Mill Company.*[5] Here the deceased was slagging molten metal within a few feet of molds of liquid steel. He became ill of heatstroke and died a short time later. The court called his death a personal injury by accident. Too, in the case of *Hoosier Engineering Company* v. *Sparks*[6] the claimant worked for a company which was constructing a high voltage power line. Claimant and others had been cutting brush on the right of way and claimant, in the afternoon, started and tended a brush fire. He became overheated and then unconscious, remaining so until the next morning. He was confined to his room for nearly a month. Here the court held that his injury was compensable notwithstanding his skin was neither burned nor blistered. Thus, it would seem that the force of heat on any part of the body could be classified as a traumatic injury and it would not matter if the heat were internal before its devastating force first started to work. Then, if the foregoing be true, is it any different from the case of *Mills* v. *Columbia Gas Construction Company?* In the *Mills Case* the claimant *swallowed contaminated* water, the germs of which soon caused an enlargement of the spleen, changed various organs, etc. In the hypothetical case the deceased *swallowed flames* which later led to pulmonary edema and he "drowned." In both cases it was an accident and in both cases, as a result of an internal force or blow, the accident caused grievous injury to the employe. It

[5] 277 Ky. 395, 126 S.W. 2d 835 (1939).
[6] 302 Ky. 375, 194 S.W. 2d 843 (1946).

would seem the two cases are so *closely related* as to reach a like result.

Another issue that should claim comment, while on the subject of "traumatic injury," is whether a disease caused by a germ can be classified as an injury. Professor Moreland, of the University of Kentucky Law School, states: "The decision that some external physical force actually directed against the body must occur in order to constitute traumatic injury by accident places a narrow construction on the word 'traumatic.' The impact of a germ upon the integrity of the claimant's body, a blow which though microscopically minute, produces an immediate effect, may well be held to be a traumatic injury."[7] And, to cite again the *Sexton Case* where the claimant was allowed compensation, the court called the mishap of tularemia which is caused by a germ, a "traumatic injury by accident."

The third question to be answered is whether either or both of the diseases can be traced to a *definite time, place* and *cause.*

In the case of *Lyda Hamilton* v. *Liggett and Myers Tobacco Company*[8] the plaintiff contracted a disease of the backs of her hands and fingers by reason of the performance of her work as a scrub woman for defendant and her hands coming in contact with the solutions which she used in such work. The disease developed gradually over a period of six months when she had to quit work. The court denied her claim saying that the disease having developed gradually during the time she was engaged at the work and not resulting from any external injury it was not a personal or traumatic injury by accident as defined in the Workmen's Compensation Act.

Also, in the case of *William Simon* v. *Louisville Ice and Coal Storage Company*[9] the court denied plaintiff's claim under the following facts. Plaintiff was employed by defendant as an ice puller. In removing the cans of ice from the vats, calcium brine dripped on his shoes and the lower part of his trousers in this way coming in contact with the skin and causing sores and boils to develop on his right leg. The disability was not the result of any one particular application of the brine, but was due to a series of applications during the period of his employment of several weeks. Here the court denied plaintiff's claim by saying the disability must be the result of a personal injury and must be traceable to some definite time and place resulting from some definite cause.

It is evident in the light of these and similar decisions that where an injury has developed gradually over a period of weeks or months or where the time of the injury cannot be traced definitely

[7] Moreland, *The General Development of Workmen's Compensation Acts* (1925) 13 KY. L. J. 200 at 206.

[8] 4 Ky. W. C. B. L. Dec. 147 (1921).

[9] 4 Ky. W. C. B. L. Dec. 190 (1921).

there cannot be a recovery on the part of the plaintiff. In these cases the result has not been reached by any one injury but because of the application of an aggravation of numerous forces or blows over a period of time. In the *Lyda Hamilton Case* the first time she dipped her hands in the strong solution there was a slight injury but neither noticeable nor harmful. However, the constant dipping in the solution for a period of six months finally caused grievous harm, but in no wise could any one application be called the true blow that caused the injury. It was the application of the whole that caused the disease.

However, in the *Sexton Case* the court reached a conclusion that the time and place of the force of the germs against Sexton's skin could be found. It occurred when he was dressing the rabbits and the cause was the germs from these diseased rabbits.

It is submitted that the court could have reached a like result in the *Mills Case.* The disease was not the result of numerous applications or blows but was the result of drinking contaminated water by the claimant at a particular time. It was not an aggravation of a force against the body over a period of time but was due to the injurious application made when he drank the water. It cannot be likened to the numerous aggravated cases which lingered on for periods of weeks or months before the disease caused the person to be incapacitated, because here the claimant cannot be said to have drunk the water for ten days before he became ill. It was the company's accidental mishap that caused his disease.

As earlier related, the Kentucky Workmen's Compensation Act expressly forbids compensation for disease unless such disease is the natural and direct result of a traumatic injury by accident. However, the word "traumatic" has been held not to be limited to a physical force or blow in the sense of terms which imply power, vigor, or violence. The Court of Appeals has held as in the *Sexton Case* and in the *Sparks Case* that any independent influence or cause coming into contact with the body and causing injury to the physical structure thereof may be classified as a traumatic injury.

The fourth question is whether either or both of the diseases were the result of an accident. *Webster's New International Dictionary* defines the word "accident" as being . . . "an event that takes place without one's foresight or expectation; an undesigned, sudden, and unexpected event; an undesigned and unforeseen occurrence of an afflictive or unfortunate character; an unexpected happening not due to any negligence or malfeasance of the party concerned." The Kentucky Court of Appeals has already decided that under the facts of the *Sexton Case* tularemia as a disease is an accident. At the same time it is the writer's belief that in the case of *Mills* v. *Columbia Gas Construction Company* typhoid fever as a disease was an accident as used within the Workmen's Compensation Act. Mills was in the course of his employment when

he came in contact with the contaminated water. The water, because of its scarcity in the vicinity, was being provided by the company solely for the use of the employes who had no chance to provide their own. The claimant, as did all the other employes, used the water so provided and it cannot be said he was lax or negligent in so doing. The contamination of the water was unforeseen and unexpected. It was not caused by any negligence or malfeasance on the part of Mills, but rather was caused by the very nature and geographical location of the work being done. It was an unforeseen occurrence of an afflictive character as used in the definition of "accident." Surely the action of the typhoid germs on the integrity of the employe's body is as much an accident as the similiar action of the tularemia germs, where in both cases the employer had no knowledge of the nature of his act and in both cases the germs so placed subsequently diseased the employes.

From the foregoing cases and comments it would seem that the two cases at issue cannot be adequately differentiated. In the one case the germs entered the body through a normal channel and in the other the germs entered through a pre-existing cut, and both can be said to be "traumatic injuries." If the force of a tularemia germ is a "trauma," then the force of a typhoid germ is a "trauma." If the *Sexton Case* was an accident in the course of employment, there is no reason why the *Mills Case* should not be an accident in the course of employment. If the disease of tularemia can be traced to a definite time, place, and cause, then the disease of typhoid fever can be traced to a definite time, place, and cause. It is the writer's belief that the *Mills Case* should have been decided the same way as the *Sexton Case* for it was a disease which was the natural and direct result of a traumatic injury by accident as defined by the Kentucky Workmen's Compensation Act and should be compensable.

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