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Workmen's Compensation - Hazardous Nature of the Employer's Business - Proximity to Customer's Motor Vehicles

William C. Sandoz

public entertainment interest in the details of a previously published news event will not be jeopardized by the passage of time, the principal case indicates that the extent of this interest in the identity of the person involved will vary with the nature of the injury that would be inflicted if the news item were revitalized.[12]

In summary, the significance of the present case in the doctrine of the right of privacy relates to the revitalization of news events. In such cases the court balances the public interest in entertainment against the private interest in withdrawing from public surveillance, and in this process certain guiding principles appear to be established: (1) The details of the news event, excluding the plaintiff's identity, will always be the subject of public interest in entertainment. (2) If the identity of the plaintiff is also revealed, the extent of the public interest in entertainment will vary with the nature of the injury which would be inflicted upon the plaintiff. (a) If the plaintiff's interest in freedom from mental disturbance is all that would be invaded, the court will probably say the plaintiff has not acquired a right of privacy; however, (b) if there is more serious tangible injury, the court will probably say that the plaintiff's interest in his right of privacy is predominant.

WILLIAM R. VEAL

WORKMEN'S COMPENSATION—HAZARDOUS NATURE OF THE EMPLOYER'S BUSINESS—PROXIMITY TO CUSTOMER'S MOTOR VEHICLES—Plaintiff was injured while loading a truck in the course of his employment. He maintained that although the employer's retail feed business owned no motor vehicles, it involved their operation, since all feed was sold directly to customers who drove their vehicles to the place of business. *Held*, the mere fact that employee was required as a part of his regular duties to be near motor vehicles, which his employer did not own, operate or control, did not convert the business from nonhazardous to hazardous. *Fields v. General Casualty Company of America*, 36 So. (2d) 843 (La. 1948).

In order for a business to be hazardous within the meaning of the Workmen's Compensation Act,[1] it must either be specifically designated as such or must involve the use of a contrivance

1. La. Act 20 of 1914 [Dart's Stats. (1939) §§ 4391-4432]. For a complete discussion of hazardous businesses, see Malone, Hazardous Businesses and Employment under the Louisiana Workmen's Compensation Law (1948) 22 Tulane L. Rev. 412.

or device declared by the act to be hazardous.[2] The scope of the act has been enlarged considerably by this so-called omnibus provision, which renders a business hazardous if it involves "the installation, repair, erection, removal, or operation of boilers, furnaces, engines and other forms of machinery."[3] This provision has been the basis for a long line of decisions holding businesses hazardous which regularly use motor vehicles,[4] despite the fact that their use may not be indispensable.[5] It has been extended to cover employees engaged in loading and unloading the standing motor trucks of a hauling business.[6] In the *Haddad* case[7] and in most of the cases[8] which follow its doctrine, the employer owned the motor vehicle in question. However, this doctrine has been extended without comment to cover situations where the employer exercised control over vehicles owned by his employees but used in the course of his business.[9] Thus it appears that ownership of the motor vehicle is not an absolute necessity.

The court in the instant case might find some comfort in *Reagor v. First National Life Insurance Company*,[10] which held that the insurance business is not hazardous merely because its agents travel on foot and are thus exposed to the perils of heavy

2. La. Act 20 of 1914, § 1(2) [Dart's Stats. (1939) § 4391].

3. Ibid.

4. Haddad v. Commercial Truck Co., 146 La. 897, 84 So. 197 (1920); Plick v. Toye Bros. Auto and Taxicab Co., 127 So. 59 (La. App. 1930). See also Staples v. Henderson Jersey Farms, 181 So. 48 (La. App. 1938); Franz v. Sun Indemnity Co., 7 So.(2d) 636 (La. App. 1942); Youngblood v. Colfax Lumber Co., 125 So. 883 (La. App. 1942). Malone, supra note 1, at 418, 419, 420, 421, 424, 432, 433; Comment (1947) 7 LOUISIANA LAW REVIEW 415, 421.

5. Holland v. Continental Casualty Co., 155 So. 63 (La. App. 1934); Crews v. Levitan Smart Shop, 171 So. 608 (La. App. 1937); Richardson v. American Employment Ins. Co., 31 So.(2d) 527 (La. App. 1947). Malone, supra note 1, at 419, 422, 433.

6. Richardson v. Crescent Forwarding Co., 135 So. 688 (La. App. 1931); Snear v. Eisenloh, 144 So. 265 (La. App. 1932); Hayes v. Barras, 6 So.(2d) 66 (La. App. 1941); Jones v. Williams, 33 So.(2d) 580 (La. App. 1947); Malone, supra note 1, at 418, 425; Comment (1947) 7 LOUISIANA LAW REVIEW 419, 424. Cf. Allen v. Yantis, 196 So. 530 (La. App. 1940).

7. Haddad v. Commercial Truck Co., 146 La. 897, 84 So. 197 (1920).

8. Holland v. Continental Casualty Co., 155 So. 63 (La. App. 1934); Youngblood v. Colfax Lumber Co., 125 So. 883 (La. App. 1942); Franz v. Sun Indemnity Co. of N.Y., 7 So.(2d) 636 (La. App. 1942); Richardson v. American Employment Ins. Co., 31 So.(2d) 527 (La. App. 1947).

9. Morovitz v. K.C.S. Drug Store, 149 So. 244 (La. App. 1933). See also Malone, supra note 1, at 418, 420; Powell v. Spencer Bros., 5 La. App. 218 (1926), cited with approval in Newsmith v. Reich Bros., 203 La. 928, 14 So.(2d) 767 (1943); Beebe v. McKeithen, 5 La. App. 179 (1926), discussed in Malone, supra note 1, at 419.

10. Reagor v. First National Life Ins. Co., 28 So.(2d) 527 (La. App. 1946), modified on other grounds in 33 So.(2d) 521 (La. App. 1947). See also Malone, supra note 1, at 416. Accord: Horton v. Western Union, 200 So. 44 (La. App. 1941), discussed in Malone, supra note 1, at 418, 430, 523 and Comment (1947) 7 LOUISIANA LAW REVIEW 418. Cf. Dejan v. Ujuffy, 14 Orl. App. 230 (La. 1917), discussed in Malone, supra note 1, at 414, 416.

traffic. This decision is eminently sound. Allowing recovery in such an instance would create a serious administrative problem and result in virtual abolition of the distinction between hazardous and non-hazardous businesses.

The principal case can be readily distinguished from the *Reagor* decision. Here the presence of the customers' motor vehicles was invited by the employer and was vital to the continued successful operation of his business, as he was without means to transport his product to customers. Therefore the employee was required as a part of his regular duties to work in close proximity to motor vehicles essential to the employer's business.

It is submitted that the court in the instant case might have reached a contrary conclusion without fear of administrative difficulties by viewing the employer as having made the motor vehicles of the customers an integral part of his regular business. Such a conclusion would be in accord with the policy of liberality found in both the decisions and the act itself.

WILLIAM C. SANDOZ

WORKMEN'S COMPENSATION—LIABILITY TO EMPLOYEES OF INTERMEDIARY IN LUMBERING CASES—Suit was brought against the insurer of the Gross and Janes Tie Company to recover compensation for injuries received by the plaintiff in the course of his employment at a tie mill owned by McAllister. The tie company negotiated with a third party landowner for the purchase of timber for which the landowner was to be paid twenty cents for each tie cut. The company then engaged McAllister to move his tractor-type tie mill onto the land and cut the ties. He was paid the market price less twenty cents per tie retained by the company and remitted to the landowner.[1] *Held*, that no relationship of principal and contractor existed between the company and the employer of the plaintiff; that the company was a purchaser of manufactured ties, therefore, the plaintiff was not entitled to recover compensation from the company under Section 6 of the Workmen's Compensation Act.[2] *Grant v. Consolidated Underwriters*, 33 So.(2d) 575 (La. App. 1947).

1. Also deducted from the price paid to McAllister, but not material to the purpose of this discussion, was twenty cents per tie which the company retained and applied to a debt owed to the company by McAllister evidenced by a chattel mortgage on the tie mill; and twelve to fourteen cents per tie retained and paid to the landowner for services rendered in hauling the ties after they were cut.

2. Louisiana Workmen's Compensation Law, La. Act 20 of 1914, as amended, § 6 [Dart's Stats. (1939) § 4396].