Duquesne Law Review

Volume 4 | Number 3 Article 11

1965

Insurance - Total Disability

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Justice Eagen obviously envisions cases where it would be unreasonable to bind a party by his signature, this specific case being one of these situations. However, a standard of "reasonableness" would have an unstabilizing effect on the commercial system which has been so adequately protected by the traditional view. It is submitted that a rule of "reasonableness" should not be considered by the Pennsylvania courts in the future. Further, the courts should be very cautious about creating any new exceptions to the traditional rule.

The traditional view and its exceptions are firmly established in Pennsylvania in clear and concise terms. The court, by discussing such a multiplicity of topics and expressing such a wide diversity of opinion, has converted a simple contracts problem into an unduly complex maze of verbiage.

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INSURANCE—Total Disability—The concept of "total disability" is clarified and expanded in Pennsylvania.

Cobosco v. Life Assurance Co. of Pennsylvania, 419 Pa. 158, 213 A.2d 369 (1965).

In September of 1965, the Supreme Court of Pennsylvania redefined and expanded, in *Cobosco v. Life Assurance Company of Pennsylvania*,[1] the difficult insurance question of the meaning of the term "total disability."

The appellant, Mrs. Cobosco, was the owner of a hardware store. From 1951 until October, 1960, the time of her disabling accident, she ran the store almost entirely by herself. She worked eight to ten hours a day, six days a week. The only assistance she received was from her son, who made occasional deliveries, and from an employee who handled the heavier merchandise.

In October of 1960, Mrs. Cobosco fractured her right femur and was hospitalized. Two months later, she sustained the same injury and reentered the hospital. Almost a year after the original accident, Mrs. Cobosco fell, this time twisting her right leg. As a result of these accidents, Mrs. Cobosco suffered a permanent shortening of her right leg and a permanent "foot drop."[2] She could not drive a car, walk without a cane,

1. 419 Pa. 158, 213 A.2d 369 (1965). The opinion of the court was written by Mr. Justice Cohen. Mr. Chief Justice Bell dissented but did not file an opinion.

2. A "foot drop" is the inability to raise the foot. It is caused by a direct blow to the sciatic nerve in the leg. The muscles of the calf, and the muscles on the lateral aspect of the shin-bone become wasted and flabby. The hamstring muscle on the back side of the thigh and the muscles of the buttocks may also become atrophied or flabby. The amount of paralysis and weakness depends upon the site and the amount of injury to the nerve.

climb steps, or stand on her feet for long periods of time. She was able to work in the store only three days a week, for not more than one hour each day. During these periods, she could do some light selling, determine policy, and supervise employees.

Mrs. Cobosco claimed benefits under the "total disability" clause of an insurance policy with the defendant Life Assurance Company. The insurer paid benefits for only part of the period during which Mrs. Cobosco said she was disabled. The company contended that after January 20, 1962, her injuries did not cause "continuous total disability and total loss of time,"[3] as required under the policy.

Mrs. Cobosco commenced an action in the Court of Common Pleas of Luzerne County in March of 1963,[4] resulting in a verdict for plaintiff for the full extent of her claim. The insurer appealed to the superior court, which entered judgment n. o. v., citing the criterion in *Moskowitz v. Prudential Insurance Company of America*:[5] "Inability to perform the manual labor incident to the insured's own business does not establish total disability, if he can, notwithstanding his injury, manage and operate the business."[6] The superior court held that Mrs. Cobosco's ability to manage and to do some light work in the store removed her from the ranks of the "totally disabled."

Mrs. Cobosco then appealed to the Pennsylvania Supreme Court, which, in turn, reversed the judgment of the superior court and reinstated the judgment of the trial court. In reaching its decision, the supreme court dealt with two fundamental issues.

First, from which occupations must an insured be excluded in order to qualify as totally disabled?

The court noted that Mrs. Cobosco was not entitled to benefits merely because she was totally disabled as a hardware merchant. Indeed, her insurance policy required that she be "totally disabled" with respect to "any gainful occupation for which she may be reasonably fitted by reason of training, experience and accomplishment."[7] However, the supreme court held that *under the circumstances of this case* the insured need show only "total disability" in her occupation as a hardware merchant.

What were these circumstances? Mrs. Cobosco, prior to her twenty-eight years as a hardware merchant, taught in an elementary school. But,

3. Cobosco v. Life Assurance Company of Pennsylvania, 204 Pa. Super. 119, 123, 203 A.2d 353, 354 (1964).

4. 620, March T., 1963, Court of Common Pleas of Luzerne County.

5. 154 Pa. Super. 362, 35 A.2d 567 (1944).

6. *Id.* at 365, 35 A.2d at 569.

7. Cobosco v. Life Assurance Company of Pennsylvania, *supra* note 1, at 164, 213 A.2d at 372.

since she was not a college graduate and did not hold a teaching certificate, she had not for many years been qualified to teach. Mrs. Cobosco's only other occupational experience was as a hardware merchant.

In considering which alternative occupations might have been open to Mrs. Cobosco during her disability, the supreme court cited *Cooper v. Metropolitan Life Insurance Company*.[8] Here, such alternatives are defined as "any occupation which the insured might be ordinarily capable of performing."[9] This is vague language, but the court qualified it by citing a statement from *Moskowitz v. Prudential Insurance Company*:[10] "An insurance company cannot conjure up some imaginary occupation for its insured and defend upon this phantasy of its own creation. . . ."

In holding for Mrs. Cobosco, the court seems to be saying that, in considering alternative occupations, it is more concerned with a claimant's actual experience and training rather than a claimant's potential capabilities. Thus, although Mrs. Cobosco's long experience as a hardware merchant could qualify her for employment in other phases of merchandising, the court evidently does not consider this relevant. In deciding future questions of which alternative occupations might affect a finding of "total disability," the court is likely to take into account only those occupations in which the insured has had actual and still-applicable experience.

The second issue decided was the degree of inability necessary to constitute "total disability." The court stressed the fact that the purpose of disability insurance is to furnish the insured with security against loss of earning power and not the loss of income the insured had been receiving.[11] This idea is particularly relevant where, as in the instant case, the claimant is self-employed. For if the claimant's business can be carried on by others during the period of his claimed "total disability," so that there is no loss of income from the business, this does not preclude the claimant from receiving benefits under his policy.

The test adopted by the court to determine "total disability" is that "the efforts which the claimant is capable of making in the operation of the business must be insubstantial and unimportant, by reason of their low quality or quantity, in relation to the character and amount of work required to carry on the business."[12] Therefore, when a case involves a

8. 317 Pa. 405, 177 Atl. 43 (1935).

9. *Id.* at 408, 177 Atl. at 44.

10. Moskowitz v. Prudential Insurance Company of America, *supra* note 5, at 365, 35 A.2d at 569.

11. Cobb v. Mutual Life Insurance Company of America, 151 Pa. Super. 654, 662, 30 A.2d 611, 616 (1943). Citing the minority opinion of Kenworthy, J., who dissented from the majority's view of the evidence, not its view of the law.

12. Cobosco v. Life Assurance Company of Pennsylvania, *supra* note 1, at 166, 213 A.2d at 373.

self-employed claimant whose disability limits his working capacity to the supervision of others, the issue of "total disability" is a question of fact for the jury. It is no longer a matter of law that the ability to perform supervisory work removes a self-employed claimant from the class of the "totally disabled."

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PENNSYLVANIA PRACTICE AND PROCEDURE—Principal Office Rule—The Pennsylvania Supreme Court has amended this rule to allow attorneys to practice in all counties.

In Re: Amendment to Rule 14 of the Rules of the Supreme Court of Pennsylvania, 419 Pa. (5), — A.2d — (1965).

Last November, in response to a petition filed by the Philadelphia Bar Association, the Pennsylvania Supreme Court adopted a resolution amending Rule 14 of the Rules of Court.[1] This amendment, although apparently definitive, has not entirely resolved the controversy. The crux of the uncertainty which remains is the extent of elimination of the Principal Office Rule[2] and its concomitant requirement that an "out of county" attorney retain a local associate before practicing in a county other than the one in which he maintains his principal office. Briefly stated, the Principal Office Rule allows a state certified attorney to practice only in the county in which he maintains his principal office. By virtue of this Rule, a nonresident attorney can maintain suit in another county only if he retains a local associate, *i.e.*, an attorney who does maintain his principal office in that county.

Historically, the Principal Office Rule began with the case of *Hoopes v. Bradshaw*.[3] There the supreme court was faced with interpreting the Act of May 8, 1909, P.L. 475, which stated that:

1. PA. SUP. CT. R. 14 (1966). Although adopted in 1965, the amended Rule first appeared in the 1966 Supreme Court Rules.

2. The pertinent section of this rules reads as follows:

> Admission to the bar of this Court shall entitle anyone so admitted to admission to the bar of any other court of this Commonwealth, subject however, to the right of the County Board of the county in which his application for admission to the bar is filed to pass upon the applicant's fitness and general qualifications (other than scholastic), notwithstanding any prior certification to such effect by the County Board of the county of his original registration, and subject, further, to the applicant's filing with the County Board, if local rules so require, his written promise to establish and maintain his principal office and place of law practice in the county to whose bar he seeks admission. PA. SUP. CT. R. 14 (1965).

3. 231 Pa. 485, 80 Atl. 1098 (1911).