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Workmen's Compensation - Injuries Arising Out of And in the Course of Employment - Employer Furnishing Transportation and Employee Carrying Work to Do at Home as Exceptions to Coming and Going Rule

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WORKMEN'S COMPENSATION—INJURIES ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—EMPLOYER FURNISHING TRANSPORTATION AND EMPLOYEE CARRYING WORK TO DO AT HOME AS EXCEPTIONS TO COMING AND GOING RULE—Decedent, a member of the Public Service Commission, was fatally injured in an accident while traveling between his place of employment and his home. He was driving an automobile furnished by the state, which bore the expenses of maintenance and operation. Decedent had with him certain files to work on at his home, his custom being to devote a part of each weekend to matters connected with his employment. Plaintiff as widow brought an action for death benefits under the Workmen's Compensation Act. The Workmen's Compensation Commission entered an award for the plaintiff. On appeal by the state, *held,* reversed. Death did not "arise out of and in the course of" the decedent's employment. Neither the fact that the employee carried work to be done at home, nor the fact that the employer supplied transportation, established necessary causal or time relationship between injury and employment. *White v. State,* 338 Mich. 282, 61 N.W. (2d) 31 (1953).

The general rule is that an accident occurring while the employee is going to or coming from his place of employment is not one "arising out of and in the course of" his employment.[1] But there are two recognized exceptions which might have been applied in the principal case.[2] One of these exceptions is that where the employer furnishes transportation to the employee in coming from or going to his place of employment, accidents en route do "arise out of

[1] Cardillo v. Liberty Mutual Ins. Co., 330 U.S. 469, 67 S.Ct. 801 (1947). See 32 IOWA L. REV. 161 (1946). While the phrase "arising out of and in the course of" represents two distinct requirements for compensation, they are so entwined that they are usually considered together. 1 CAMPBELL, WORKMEN'S COMPENSATION 106 (1935).

[2] Cardillo v. Liberty Mutual Ins. Co., note 1 supra; Matter of MacClelland v. Dodge Brothers, 233 App. Div. 504, 253 N.Y.S. 773 (1931); Ohmen v. Adams Bros., 109 Conn. 378, 146 A. 825 (1929). See 32 IOWA L. REV. 161 (1946).

and in the course of" his employment.[3] Some courts base this exception on the ground that the transportation is beneficial to the employer.[4] Others take the same view on the ground that the providing of transportation is an express or implied term of the employment contract.[5] Sometimes liability is restricted to cases in which the employer furnishes transportation as a part of the contract of employment, an injury is suffered while going to or returning from the place of employment, and the vehicle is under the control of the employer.[6] There are many cases in which the employer was in control of the vehicle when the injury was suffered.[7] However, there is substantial authority for recovery even though the control of the conveyance was entirely with the injured employee.[8] Some courts even say that all that is necessary to come within the "transportation exception" is that the employer pay the expenses of transportation.[9] Though not so well substantiated, there is another exception to the general rule of no recovery for injuries incurred while traveling to and from work. Where the employee is on the way home to do work there, even though on a fixed salary, some authorities hold that the injury arises out of and in the course of the employment. However the courts are not unanimous in accepting this exception. There are two principal classes of cases in which this exception has been asserted. In the "schoolteacher" cases, the courts generally hold that an injury suffered while en route and while carrying school materials is not a compensable injury.[10] On the other hand, in the "insurance salesman"

[3] Kobe v. Industrial Accident Commission, 35 Cal. (2d) 33, 215 P. (2d) 736 (1950); Texas Employers' Ins. Assn. v. Inge, 146 Tex. 347, 208 S.W. (2d) 867 (1948); Industrial Commission v. Wilson, 34 Ohio App. 36, 170 N.E. 37 (1929).

[4] See 62 A.L.R. 1438 at 1446 (1929).

[5] That the employer does in fact regularly furnish the transportation is enough to establish the contract. Radermacher v. St. Paul City Ry. Co., 214 Minn. 427, 8 N.W. (2d) 466, 145 A.L.R. 1027 (1943). Where a city council made no contract but city did furnish car to employee, held, injury while en route to or from work did arise out of and in the course of employment. Bock v. Reading, 120 Pa. Super. 468, 182 A. 732 (1936). See also Gray v. W. T. Congleton Co., 263 Ky. 716, 93 S.W. (2d) 829 (1936).

[6] Konopka v. Jackson County Road Commission, 270 Mich. 174, 258 N.W. 429 (1935).

[7] Callan v. State Highway Dept., 293 N.Y. 743, 56 N.E. (2d) 742 (1944); Hunter v. Summerville, 205 Ark. 463, 169 S.W. (2d) 579 (1943); Heary v. Draudt, 288 N.Y. 593, 42 N.E. (2d) 602 (1942); Cudahy Packing Co. v. Industrial Commission, 60 Utah 161, 207 P. 148, 28 A.L.R. 1394 (1922).

[8] Chapman v. Cyr Co., 135 Me. 416, 198 A. 736 (1938); Matter of Onisk v. Knaust Bros., 225 App. Div. 186, 232 N.Y.S. 541 (1929); Fidelity Union Casualty Co. v. Hammock, (Tex. 1928) 5 S.W. (2d) 812; Beers' Case, 125 Me. 1, 130 A. 350 (1925); State v. District Court, 141 Minn. 348, 170 N.W. 218 (1919); Mole v. Wadworth, [1913] W. C. & Ins. Rep. 160 (1913). Cf. Otto v. Chaplin, 243 Mich. 256, 220 N.W. 661 (1928); Wertz v. Reynolds, 77 Ind. App. 234, 133 N.E. 393 (1921).

[9] Stover v. Washington County, 63 Idaho 145, 118 P. (2d) 63 (1941); State v. District Court, 141 Minn. 61, 169 N.W. 274 (1918).

[10] Murphy v. Board of Education, 314 Mich. 226, 22 N.W. (2d) 280 (1946); Board of Education v. Industrial Commission, 392 Ill. 261, 64 N.E. (2d) 374 (1945); Industrial Commission v. Gintert, 128 Ohio St. 129, 190 N.E. 400, 92 A.L.R. 1032 (1934), reversing the case of Inglish v. Industrial Commission, 125 Ohio St. 494, 182 N.E. 31, 83 A.L.R. 210 (1932). Cf. Jellico Grocery Co. v. Hendrickson, 172 Tenn. 148, 110 S.W. (2d) 333 (1937). See also Lang v. Board of Education, 70 S.D. 348, 17 N.W. (2d) 695 (1945); Hunter v. Summerville, note 7 supra.

cases, where the employee is injured while taking work home, recovery is generally allowed.[11] There is no apparent factual distinction warranting this divergence of opinion. The view followed in the "schoolteacher" cases is simply the result of a policy whereby courts try to draw the line of employers' liability very close to the principal place of employment.

In making any decision on compensability of an injury, the courts must take into consideration the remedial character of workmen's compensation legislation. The purpose of the legislation is to mitigate the financial straits of the injured workmen,[12] and the phrases "arising out of" and "in the course of" are usually given a liberal construction to effectuate the humane purposes which the acts seek to accomplish.[13] The court in the principal case has little support for its decision denying the "transportation exception." It based its holding on the absence of agreement between the state and decedent. While there was no express contract, some courts recognize that the mere furnishing of transportation by the employer is enough to imply such an agreement.[14] From the standpoint of a liberal construction of the statute, the court's decision has even less justification. The court, however, is supported by the closely analogous schoolteacher cases. That concern over expansion of the employer's liability was weighed against the policies underlying workmen's compensation statutes is not doubted. One may well doubt, however, that the scale was properly adjusted in this case.[15]

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[11] Cahill's Case, 295 Mass. 538, 4 N.E. (2d) 332 (1936); Proctor v. Hoage, 65 App. D.C. 153, 81 F. (2d) 555 (1935). Cf. Standard Oil Co. v. Clark, 44 Ohio App. 211, 184 N.E. 861 (1932).

[12] 26 NOTRE DAME LAWYER 462 at 472 (1951).

[13] Hunter v. Summerville, note 7 supra. See also 58 AM. JUR., Workmen's Compensation §210 (1948).

[14] See note 5 supra. See also 145 A.L.R. 1033 (1943).

[15] Subsequent to the decision in the principal case, the Michigan Workmen's Compensation Act was amended by the following addition: "Every employee going to or from his work while on the premises where his work is to be performed, and within a reasonable time before and after his working hours, shall be presumed to be in the course of his employment." Mich. Pub. Acts 1954, No. 175, §412.1. The amendment obviously fails to comprehend the situation existing in the principal case.