All England Law Reports/1946/Volume 1 /Fitzsimons v Ford Motor Co Ltd (Aero Engines) - [1946] 1 All ER 429

[1946] 1 All ER 429

Fitzsimons v Ford Motor Co Ltd (Aero Engines)

COURT OF APPEAL

SCOTT AND SOMERVELL LJJ AND VAISEY J

6, 22 FEBRUARY 1946

Workmen's Compensation - Accident - Disease as injury caused by accident - Succession of accidental injuries - Cumulative effect - Vibrations caused by rapidly rotating instrument - "Raynaud's disease."

Judgments - Judicial decisions as authorities - Decision of Court of Appeal inconsistent with the decision of House of Lords.

The appellant was employed by the respondents, from September 1943, as a rotary fettler. His work consisted in holding, tightly gripped in the left hand, a hand machine, which was electrically operated and vibrated 2,800 revolutions a minute, whilst with his right hand he pressed it against the material to be cut, using the weight of his body to increase the pressure. After about a year the appellant found his hand going dead. On the morning of 14 March 1945, he got a "dead hand" 3 times, and from that time was incapacitated, totally until 18 June 1945, and thereafter partially. Medical evidence was to the effect that the appellant's condition was known as "Raynaud's disease," and that each vibration caused by the rapidly rotating instrument was a tiny blow to the appellant's hand and arm, transmitted to the nerves, causing small damage to their tissues, and ultimately cutting off the flow of blood needed to keep the hand in a healthy condition. In an action for compensation under the Workmen's Compensation Act, 1925, the county court judge held that to constitute an injury by accident within the Act the workman must be suddenly and decisively attacked at his work, and that the gradual ruining of the appellant's blood vessels did not bring him within the Act. On appeal the respondents relied on decisions of the Court of Appeal which were inconsistent with decisions of the House of Lords:--

Held - (i) the use of the instrument involved a succession of accidental injuries to the appellant and he was entitled to an award.

Burrell (Charles) & Sons Ltd v Selvage followed.

(ii) it was the duty of the Court of Appeal to refuse to follow decisions of its own which were inconsistent with decisions of the House of Lords.

Notes

It is held that decisions of the Court of Appeal that an injury caused by the cumulative effect of a succession of accidents is not an injury by accident are inconsistent with the decision of the House of Lords in *Burrell v Selvage*, which the court accordingly follows in preference to its own earlier decisions, in accordance with the principles recently recapitulated in *Young v Bristol Aeroplane Co* ([1944] 2 All ER 293).

As to Disease as Injury by Accident, see *Halsbury*, Hailsham Edn, Vol 34, pp 819-821, para 1157; and for Cases, see *Digest*, Vol 34, pp 271-273, Nos 2302-2310.

Cases referred to in judgment

Brintons Ltd v Turvey [1905] AC 230, 34 *Digest* 464, *3799*, 74 LJKB 474, 92 LT 578, 7 BWCC 1, HL, *affg*, ST *sub nom Higgins v Campbell & Harrison Ltd, Turvey v Brintons Ltd* [1904] 1 KB 328, CA.

Innes (or Grant) v Kynoch [1919] AC 765, 34 *Digest* 272, *2308*, 88 LJPC 85, 121 LT 39, 12 BWCC 78.

Burrell (Charles) & Sons Ltd v Selvage (1921), 90 LJKB 1340, 34 *Digest* 272, *2309*, 126 LT 49, 14 BWCC 158, HL, *affg*, SC *sub nom Selvage v Burrell (Charles) & Sons Ltd* [1921] 1 KB 355, CA.

Steel v Cammell, Laird & Co Ltd [1905] 2 KB 232, 34 *Digest* 271, *2302*, 74 LJKB 610, 93 LT 357, 7 BWCC 9.

Williams v Guest, Keen & Nettlefolds [1926] 1 KB 497, 34 *Digest* 272, *2310*, 95 LJKB 676, 134 LT 459, 18 BWCC 535.

Cole v London & North Eastern Ry Co (1928), 21 BWCC 87, *Digest* Supp.

Appeal

Appeal by the applicant from an award of His Honour Judge Fraser Harrison made at the Salford County Court and dated 26 October 1945.

F W Beney KC and H Burton for the appellant.

F E Pritchard KC and J S R Abdela for the respondents.

Cur adv vult

22 February 1946. The following judgment was delivered.

SCOTT LJ

delivering the judgment of the court]. This is an appeal by the workman from a judgment of His Honour Judge Fraser Harrison who held that the injuries to his left hand suffered by him in the employment

of the respondents were not caused by accident. In our opinion there was no evidence to support that finding. The workman had been employed by the respondents from about September 1943, as a rotary fettler. His work consisted in holding a hand machine, tightly gripped in the left hand, which was electrically operated and vibrated at 2,800 revolutions a minute, whilst with his right hand he pressed it against the material to be cut, using the weight of his body to increase that pressure. After about a year the workman began to find the tips of the fingers of the left hand going dead in the morning. He showed it twice to the respondents' doc-

tor but was told it was not a "dead hand," and each time he returned to work. Finally, on 14 March 1945, he got a note from his own doctor, and on 15 March took it to the respondents' doctor, after trying to work that morning and 3 times getting a "dead hand." From that time on he was incapacitated, totally until 18 June 1945, and thereafter partially. The only question before the judge was whether it was an injury "by accident."

The doctor called for the workman examined him in June, 1945, and gave evidence that his condition was known medically as "Raynaud's disease," caused partly by loss of blood in the tissues which caused the hand to go white, and partly by loss of blood in the nerves causing spasm or cramp in the blood vessels, damaging them and so constricting the flow of blood. The first cause, he said, is an upsetting of the balance of nervous control of the blood vessels, due to the tight grasping of a rapidly rotating instrument. Every time the tool is used the condition gets worse. It is the vibrations which cause the condition of the nervous system and not the vibrations acting on already diseased nerves. From the medical point of view the accident occurs when the workman uses the tool and the change takes place inside the limb. Every time he has to do the work the disease gets worse. The doctor would not have considered it unreasonable if the workman had given up work in December 1944.

The facts are thus quite clear and undisputed. The judge accepted them as we have stated them, but held that to constitute an injury by accident within the Act the workman must be "suddenly and decisively attacked at his work," and in effect that the gradual ruining of his blood vessels did not bring him within the Act. In our opinion he was wrong in so holding. Each vibration caused by the rapidly rotating instrument was, as it were, an infinitesimal blow to the man's hand and arm, transmitted to the merves, causing an infinitely small damage to their tissues, and in the end cutting off the flow of blood needed to keep the hand in a healthy condition. Some men may have better powers of resistance to such attacks than others, but the mere fact that the breakdown does not occur until the cumulative effect of the tiny blows from the vibrations produces a certain degree of alteration in the nerves does not affect the character of the cause.

In *Brintons Ltd v Turvey*, decided under the Act of 1897, and in *Grant v Kynoch*, it was held that diseases caused by germs entering the body may be accidents within the Acts. In these cases there was a particular time, ascertainable or not, when the infection entered and the disease started. Does the fact that the disease or condition causing the disability is gradual in its onset and is the result of the cumulative effect of successive occurrences prevent its being accidental? In our opinion it does not. In *Burrell v Selvage* a girl worker was over a long period of time getting slight cuts, which gradually caused poisoning. Lord Sterndale MR said ([1921] 1 KB 355, at p 365):

> 'I cannot see that the fact that the condition results from several accidents prevents it from resulting from accident within the meaning of the statute.'

That view was upheld in the House of Lords. Lord Buckmaster said (14 BWCC 158, at p 161):

> 'It has been decided by your Lordship's house in the case of *Grant* v. *Kynoch*, and also in *Brintons, Ltd.* v. *Turvey* that disease arising out of and in the course of an employment may in certain circumstances be regarded as an accident within the meaning of the statute, and be made the proper subject-matter of a claim for compensation. In the present case there is no dispute that the disease from which the respondent suffered is a disease which distinctly arose out of the injuries that she received while in the course of her employment, and it cannot be disputed that her cut and abrased fingers were on each occasion what would be called an accident within the meaning of the statute. The only question, therefore, for consideration is whether, when the disease is due not to one specific and definite accident but to a series of

> accidents, each one of which is specific and ascertainable though its actual influence on the resulting illness cannot be precisely fixed the workman is disentitled to the benefit of the statute. My Lords, I cannot find any words in the statute which permit of such a construction. In the present case personal injury was suffered, it was suffered by accident, and the accident is no less accidental because it occurred on a series of occasions instead of on one; it follows that the claim to compensation was properly established. I have only to add that I find that this opinion is in exact agreement with the line of reasoning adopted by the learned county court judge and the Court of Appeal, and, having regard to the

> fulness of the judgment of that court, in the terms of which I entirely agree, there is nothing further that I desire to add. The other noble Lords concurred.'

The respondents relied chiefly on *Steel v Cammell Laird*. In that case a worker using white and red lead, with which to smear rope-yarn for caulking, gradually became poisoned by getting it into his system. The Court of Appeal held that there was no injury by accident, and as one reason for that conclusion pointed out that if a gradual process could be an accident the workman would never know when to give notice of his claim. That ground is not, in our view, consistent with the decisions of the House of Lords. In *Williams v Guest Keen* the court merely followed *Steel's* case; and in *Cole v London & North Eastern Ry Co*, it merely followed *Williams v Guest Keen*, Atkin LJ saying (21 BWCC 87, at p 94):

> 'If we were not bound by authority, I think there is a great deal which might be said for this workman.'

In this state of the authorities we think it is our duty to follow *Burrell v Selvage* and hold that the use of the drill involved a succession of accidental injuries to the workman and that he is entitled to an award.

Appeal allowed with costs.

Solicitors: Rowley, Ashworth & Co agents for Rowley, Ashworth & Co Manchester (for the appellant); John Whittle Robinson & Bailey, Manchester (for the respondents).

C StJ Nicholson Esq Barrister.