Workmen's Compensation Insurance[1]

The Evolution of Compensation Laws—Salient Features of the Present Law

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IN PREPARING this paper I have had in mind that many of you are not actively engaged in the details of handling workmen's compensation matters for your respective industries. My discussion of this subject, therefore, will be as broad as possible.

Evolution of Compensation Laws—Common Law

The facts leading up to the adoption of compensation laws should be known in order to give one a background for a more comprehensive picture of the laws that exist today.

Prior to the introduction of machinery into industry, employer and employee worked side by side in the same shop at the common task. Their relation was an intimate one which made it possible for an employee, injured during the course of his occupation, to adjust the matter satisfactorily to all concerned. The legal relation of master and servant did not present a serious problem.

The introduction of machinery into industry in the late eighteenth and early nineteenth century ushered in an era of production of commodities on a large scale and seriously affected this intimate relation between employer and employee. The employer had so many employees that it was impossible for him to know them all intimately as he had in the past. Consequently, when difficulties arose they usually had to be settled at a court of common law. There were more and more of such disputes, for the introduction of machinery had caused a marked increase in the number of accidents and also in their severity. The relation of master and servant was becoming more and more intricate each year.

When a man was injured during his employment and he wished to recover damages, he had to sue his employer and prove him negligent. This was a very difficult thing to do, for the employer had three common law defences that were invulnerable, namely: the fellow servant rule, assumption of risk, and contributory negligence. They are defined briefly as follows:

Fellow servant rule means that a man injured as the result of negligence or carelessness of a fellow servant has no recourse under the law for recovering damages from his employer.

Assumption of risk means that a man voluntarily assumes the inherent hazards and risks of the industry when he is employed, and if he does not like them he may work elsewhere. The common law courts held during this period that if a man was acquainted with the risks of his job he could not recover from his employer.

Contributory negligence means that no recovery is possible in cases where an accident is due to any negligence on the part of the employee, even when the employer is at fault.

With these three defences against him the employee had very little chance to recover damages from his employer. It cannot be denied that the courts then looked with little favor on the claims for injuries presented by workmen. They felt that to recognize the liability of the employer for damages brought by injured employees would throttle enterprise and in many cases be ruinous to small manufacturers.

Employer's Liability Acts

The individual employee was no longer able to cope with his employer, who had organized his wealth into corporate form, so the employees also organized—in trade unions—to bargain collectively with their employers, or capital, to protect their individual rights. About the middle of the nineteenth century organized labor got public recognition of the theory that it is the duty of the state to protect its citizens along social lines. This recognition took shape in the form of a less severe interpretation of the common law. In fact, the three common law defences referred to above were modified by statute, so that an injured employee had a much better chance to recover damages from his employer than in the past. These new laws modifying the common law were known as employer's liability acts and were the intermediate steps to workmen's compensation acts.

To illustrate what this legislation did: the fellow servant rule was modified so that if a *foreman* in a chemical plant caused an explosion killing a number of workmen who were not in any way at fault, the dependents of those whose lives were lost could recover from the employer. The doctrine of assumption of risk was also modified; it was provided that under industrial and economic conditions where workmen are forced as a matter of self-preservation to accept employment regardless of the risk involved in the trade hazard, the argument that the employee assumes the risk and should therefore be barred from recovery, is not only far-fetched, but economically unsound, if thought is given to his dependents.

These modifications of the common law provided very little relief; it was still very hard for an injured workman to recover from his employer what we now know to be his just rights. The system resulted in friction between employer and employee, litigation involving perjury, and large verdicts to those least entitled to them while forcing others to the degredation of charitable relief.

The employers realized that they had to spend large sums defending the rights which were theirs under the law and that these sums were wasted as far as affording relief to the injured persons was concerned. This litigation promoted ill will between employer and employee, for no matter who ultimately won the verdict, there was ill feeling on the part of the one defeated.

Compensation Acts

Compensation acts developed in Europe, with the United States following its lead. Germany took the initiative, as she always has in social legislation, principally on account of her industrialism and her highly developed trade unions fostered by the government. The first act, passed in 1884, was sponsored by the socialist party and finally by the imperial government. Other European states immediately followed Germany's lead. The benefits under these acts are similar in form to those we have today in this state.

In the United States we were studying the European system of workmen's compensation from 1894 to 1909. The employer's liability acts enacted in nearly all our states were a failure as they were in Europe, in that the claimant had to engage in an expensive and protracted litigation which he could ill afford, and during which time he received no relief when it was most needed. The situation gave rise to a class of unscrupulous lawyers—the so-called ambulance chasers, who accepted cases on a percentage basis, sometimes as high as 50 per cent of the verdict. Study of the principles and workings of the various compensation laws of Europe led law-makers here to believe that the remedy for the situation was the enactment of workmen's compensation laws similar to those adopted in Europe. Consequently, from 1910 up to the present time the various states have adopted compensation laws, until now practically every state has a workmen's compensation act in force.

The basic principle underlying the theory of workmen's compensation laws is that an employee who sustains an injury arising out of the course of his employment should be indemnified for loss of earnings without regard to fault. In other words, the employer is held responsible for the damage, and the cost of such indemnification comes out of the running expenses of the concern. There are two exceptions, however; if it is proved that a man willfully injures himself, or that he was intoxicated at the time of the injury, he has no recourse under the law to recover from his employer.

The principle of this law is agreed by nearly all today to be just, humane and economically sound, and the best means so far of solving that perplexing legal relation of master and servant as it affects the servant in case of occupational accident.

The first compensation act passed in the United States was enacted in New York State in 1910. The Wainright Commission, appointed by Governor Hughes, reported in 1909 with a draft for a limited workmen's compensation act. The Wainright Bill, enacted in 1910, was later declared unconstitutional by the Court of Appeals in the famous case of Ives vs. South Buffalo R. R. Company. The court held that the act was in conflict with the fourteenth amendment to the constitution, in that it permitted the taking of property without due process of law. The court recognized the right of the legislature to abolish the three old common law defences, but it did not deem it proper for the legislature to grant compensation without proof of negligence on the part of the employer. It was, therefore, necessary to amend the constitution; this was done in 1913 and in 1914 our present workmen's compensation act was passed, effective July 1 of that year. The constitutionality of this

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