'Fellow Servant Doctrine'

Compensation for job injuries began with English common law

In England in 1837, a butcher's driver was injured when another worker overloaded his cart. Out of this landmark case, Priestly vs. Fowler, emerged the first time a clarification of what protection or compensation a worker was entitled to for injury on the job.

Prior to this case, it had been well established English law of negligence that a master could be held liable for an injured third party for injuries caused by negligence by the master's servant.

However, in the 1837 case, Lord Abinger refused to apply this general rule to a situation in which the injured third party was another servant of the same master.

He denied recovery, declaring that it would be absurd to hold an employer responsible for injuries to one employee arising from the negligence of another of his employees. This originated the "fellow servant doctrine" as a defense for an employer sued by an injured employee.

The English rule, relating to recovery in industrial accidents, was almost immediately adopted in the United States. In the first recorded case in this country in 1841, a South Carolina court denied recovery to a locomotive fireman who had been injured by the negligence of the engineer under whom he worked.

From that time on until the second decade of the 20th century, legal responsibility for industrial accidents in the United States was judged largely according to the basic doctrines formulated in these early decisions.

The common-law rules of employers' liability were almost useless by current standards, but at the time it sounded fair. An employer, for example, had to use reasonable care to protect his workers from injury. This included providing them with a safe workplace — including tools and appliances — and to establish rules of conduct, which would warn them of special dangers.

To recover damages, a worker had to convince a judge that his employer was negligent. If the employer was not proven negligent, the judge would dismiss the case. Also, even if the employer was negligent, the employee had to prove that he was not negligent, too, in order to win the case.

Another employer loophole was that management could escape payment of damages by contending that the injured employee had "assumed" the risk which resulted in his injury and had waived his right to recover.

There was still another factor which hurt the worker's chances of recovery. It was costly for the employee to take legal action, and few had the resources to initiate it.

Early unions and others agitated strongly for both basic changes and modification of these laws. Some states did adopt statutes, which wipe out the "fellow servant" rule, usually directed at railroad accidents. First to take such action was Georgia in 1856, followed by Iowa in 1862.

Other states took similar action, and there was gradual expansion of coverage to other workplaces. By 1910, most states had laws varying from affirmation of common-law doctrines to those which actually gave the injured employee a little better chance in court to recover damages.

A breakthrough was made by the federal government in 1908. A law was enacted granting certain of its employees the right to compensation when an injury was sustained in the course of employment. This was replaced by a stronger law, with extended coverage and benefits, in 1916.

Montana was the first state to pass a compulsory workman's compensation law in 1909. It provided for a state cooperative insurance fund in the coal mining industry maintained by contributions from the employer on a per tonnage basis and from employees based on their earnings. A $3,000 death benefit was provided and a $1 a day maximum for permanent disability.

By 1911, 13 states had appointed investigative commissions, which were followed by meaningful workman's compensation laws the following two years. To Kansas and Washington go the credit for being the first states to pass such laws, although Wisconsin was the first state to put its laws into operation.

A joint commission was appointed by the American Federation of Labor (AFL) and the National Civic Federation, an organization which included employers, in 1913. It undertook a study of the new statutes and concluded that they were the type of compensation laws most desirable. This encouraged more states to act.

By 1932, only four states — Arkansas, Mississippi, Florida, and South Carolina — did not have "injury pay" laws.

In 1948, Mississippi became the last state to enact one.

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