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SOCIETY
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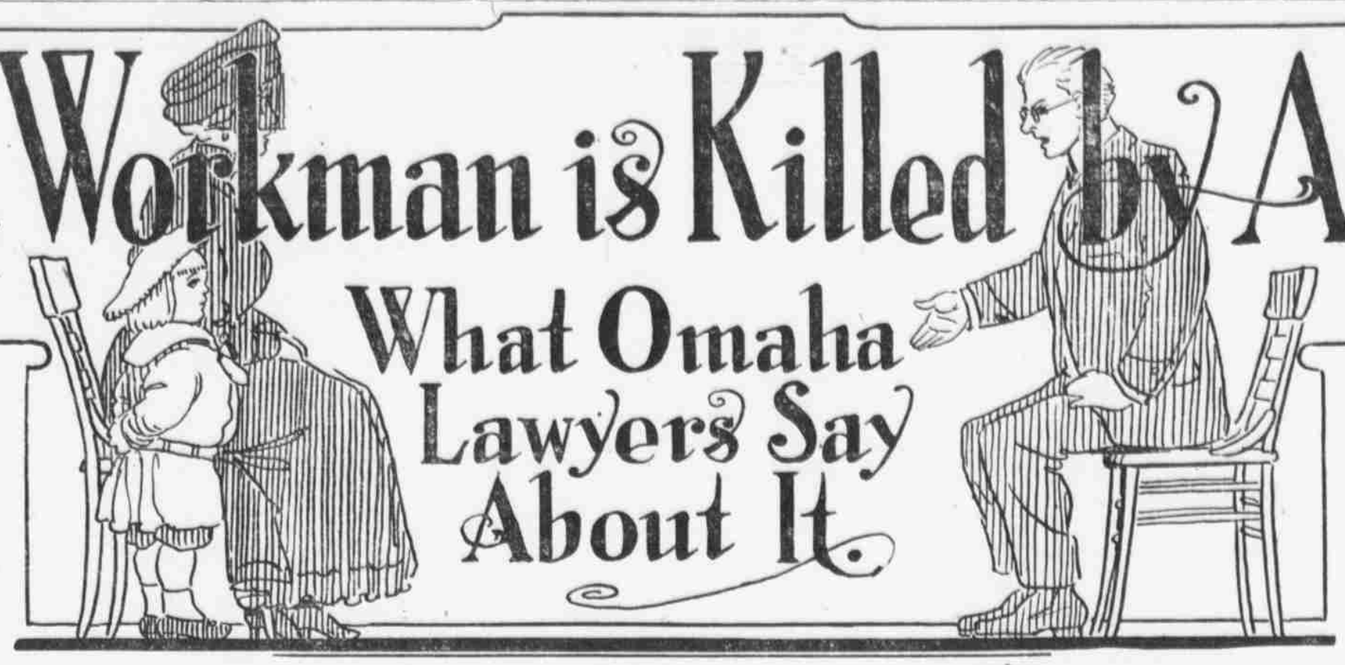
When a Workman is Killed by Accident.



What Omaha Lawyers Say About It.

Not long ago a young man undertook to prepare a paper on the subject of workmen's compensation, and to secure help on mooted points, such as the maximum amount recoverable for death, wrote to a number of prominent Omaha lawyers asking their opinion. The replies have come into possession of The Bee and are so interesting that they are here made public.

"What in your opinion should a workmen's compensation law fix as the limit, if any, for compensation for death. To make it more concrete, what would it be right to ask for on behalf of a widow and two children for the loss of the husband earning $100 a month in the building trades, say thirty-two years old and otherwise robust and in good health."

The Law of Liability and Its Consequences

"The whole matter of a workman's compensation act is at present in its earliest experimental stages. Consequently, opinions regarding such act are necessarily theoretical. Under the law as it now stands the employer is liable where the workman is injured through or because of the employer's neglect. Where an injury occurs without fault on the part of the employer, there is no liability. In this state of the law it is not difficult to prescribe a just and correct measure of damages. Where the injuries result from the employer's negligence, or fault, then the damages recovered ought to be, in a case not resulting in death, the full amount of loss sustained by the workman, and in case of death, the full amount of the loss sustained by his next of kin. Now the object of a workman's compensation act is to make the employer liable where no liability would exist under the law as it now is, that is, it is proposed to make the employer bear the loss or a portion of the loss when the injury has been inflicted without fault or negligence on his part. This being the theory of this new line of legislation, it is apparent that it would be quite unjust to load the employer with the entire burden of a loss which occurred without any fault on his part. Consequently, the theory of these workmen's compensation acts seems to be to share the loss between employer and employe. This being the theory, the laws thus far adopted in other states generally provide that in case of an injury not resulting in death, and independent of any negligence on the part of the employer, the employer shall pay a part of the loss sustained by the workman. States that have thus far enacted such laws differ as to the proportion of loss to be borne by each party. Some of them, as I am informed, fix the amount of compensation at one-half the rate of wages which the workman was receiving.

"As I have said, the whole matter is now in its earliest experimental stage. After it has been tried out in different states for a number of years experience will furnish the basis for many valuable amendments. In this early experimental stage, however, and in view of the circumstance that the whole theory of the legislation is to apportion a loss where no one is particularly to blame, it would seem to me that the most just and the most practicable method of apportionment would be to divide the loss equally between the employer and workman. In cases not resulting in death such a division can be figured out with reasonable accuracy. We can take the workman's average earnings for a reasonable period of time prior to the accident and then allow him one-half of the same rate during the time of his disability, and also one-half of the expense occasioned by the injury. In a death case the problem is perhaps a little more complicated. Under the law as it now is, where the death of an employe is caused by the negligence of the employer, the measure of recovery is the entire amount of pecuniary loss sustained by the next of kin of the deceased. This is not always subject to accurate measurement, but the nearest approach to an accurate rule is to ascertain the amount per annum which the deceased was appropriating or using for the benefit of his next of kin, then to ascertain from the tables of life expectancy the probable period during which he would have continued to be able to make the same provision for his family, and thereby ascertain the aggregate amount of loss to the family. Then we take the present worth of this aggregate amount, based upon some reasonable rate of interest, and allow such present worth as the amount of recovery. Now it strikes me that as the theory of a workman's compensation act is to divide the loss where the injury is one of the accidents of the business, but without fault on the part of the employer, that we might take the same kind of compensation as is now allowed in death cases where death is caused by the fault of the employer, and then divide the result thus obtained in two, making the employer liable for one-half. I think that an apportionment on this basis would be more nearly in accord with the theory of these compensation acts than any which undertakes to establish either a fixed measure of recovery or a fixed maximum.

"The main purpose of any workman's compensation act which undertakes to make the employer liable where he has been guilty of no negligence is to charge the business with the burden of all accidents supposed to be due to risks inherent in the business. If the compensation provided is made too small, the law will lack merit in not reasonably providing for the workman. On the other hand, if it is placed too high, it will create burdens that can be borne only by employers of such large means and such control of the trade that they will be able to reimburse themselves by increasing the selling price of their output. The result of such a system would be to drive out of business all small contractors and small manufacturers, destroying whatever competition these smaller concerns now afford, and centralizing the whole business of employment in the hands of fewer and bigger concerns. I think that it will be found very desirable to avoid any regulation which will tend to the destruction of the smaller employers and the building up of monopolistic power in the hands of big concerns. One thing is certain, men cannot be compelled to remain in business under conditions which render the business unprofitable, and any employer's liability act which refuses to recognize the rights and interests of the employer will be a failure. The driving out of existence of all comparatively small concerns would not only give the big fellows a monopoly in the way of fixing prices of what they have to sell, but it will also destroy competition in the prices which employers will offer for labor, and in this way workmen, as a class, will be liable to lose much more in their wages through any one-sided legislation than they would gain through compensation for injuries.

"T. J. MAHONEY."

Stop Litigation Waste

"As I recollect, the American Federation of Labor and the Civic federation, in discussing this matter, agreed that $5,000 would be a fair consideration in the case which you put. I am inclined to believe that $5,000 is about what is right for a widow and two children where a husband—say 32 years of age—should lose his life in the service of his employer. I, at least, should not make the amount any less than that.

"I wish to say that I am very much in favor of a workmen's compensation law, and I think that much of the money that is wasted in the courts could be saved to the employe, or in case of his decease, to his widow and children, if a fair compensation law was passed. I believe it would be a great economic saving as well as a matter of justice.

"HOWARD H. BALDRIGE."

Favor Less Wage Efficiency

"What I do not know about workmen's compensation acts would fill volumes. I am not an expert damage case lawyer, never having had any such cases. Nor have I made a study of laws standardizing damages for personal injuries.

"Apart from a law, which to be practical—which is to say could be passed with the approval of employer and employe or of those who represent them—would probably give more to those of less wage efficiency and less to those of greater earning capacity, I would say that in the case stated the actual damages would be the present worth of $100 per month, figured for the period of expectancy at the age of 32, with possibly some diminution for decreased wage efficiency in the latter period of the expectancy of life.

"Probably this present worth would have to be reduced some in order to increase the allowance to or on account of those who are able to produce less, but whose families probably ought to have more than the same method would produce in their cases.

"CHARLES A. GOSS."

Prompt Payment of Fixed Amount the Main Thing

"I have represented both plaintiffs and defendants in this class of law suits in this community for the last twenty-five years, and the most definite conclusion I have reached from my experience is the utter insufficiency of the present system, and the uncertainty and indefiniteness of awards of damages in personal injury cases. Sometimes the plaintiff gets more than he is entitled to, and in other cases the final compensation received by him is pitifully inadequate. It is also a fact that the sums expended by corporations in defending and preparing the defense of such cases, and in finally paying such judgments as may be recovered, including those that are erroneously excessive, would provide a sufficient fund, under a rational compensation law, to furnish much better redress to the injured employe or his surviving family, than is afforded under the existing system.

"Now to answer your specific question:

"In determining what amount an employer should pay to an injured employe or to his family, there are many elements to be considered and many points of view to be used. In the first place, the law should give compensation in all cases of injury, without inquiring whether the injury is due to the negligence of the employer or the employe, or both, or proceeds from a cause independent of both of them. From the standpoint of the employer, and what he is required to contribute, the injury to the body of an employe should be treated like the wear and tear on the machinery of the employer, and constitute an item of expense, to be met just the same, no matter what cause originates it; he would replace machinery and charge it to expense, without regard to the cause of the injury to the machinery. Of course, in saying this I do not mean to eliminate the humane element, applicable to the condition of the injured employe and his family, but I mean to say that in fixing that portion of the compensation which ought to be contributed by the employer, all questions of negligence on either side should be rejected.

"I do not believe that the employer, under existing conditions of society, should be obliged to contribute all the fund that ought to be at the disposal of an injured man or his family. There should still remain upon the employe some part of this burden of providing beforehand for such contingencies, by savings, or by carrying his own insurance, or otherwise, which, in my judgment, constitutes a necessary part of a wholesome individualism, and ought not to be entirely eliminated from our industrial system.

"In the next place, there must still rest upon the public, in some form, either from public taxation or other sources, such as charitable hospitals, sanitariums, provisions for old people and orphans, some part of the burden of caring for the victims of misfortune.

"I feel that the German system comes nearer representing the correct ideal in this matter than any other that has been devised. Without being accurately informed of all its details, I understand that in case of injury or death, the employer contributes a part of the fund, the employe is required out of his wages to accumulate a part, and the state, out of the public taxes, furnishes the balance. But this system is not readily adaptable to our conditions. In the first place, we are not ready to adopt the paternalism of forcing a man to pay for insurance out of his wages. We prefer to leave that to his own initiative, and the result is that most prudent employes do carry some form of insurance, and voluntarily pay for the same out of their own wages. We are not ready to contribute a definite allowance out of the public taxes. In my judgment, the time will not arrive for such a condition of things in Nebraska until we have passed out of our present agricultural stage, into a more highly organized industrial condition. Therefore the rational compensation law at the present time should provide only for the payment by the employer to the employe, in all cases of injury, of that portion of the fund which, tested by the foregoing standards, the employer ought to contribute. I will say now that I am in favor of a constitutional amendment, so that an industrial board will have arbitrary power to fix and pay out of the fund in its hands, contributed to in advance by the employers, the damages awarded in each case, as soon as the injured person becomes entitled to it, and I would eliminate from this matter all the vexatious delays of litigation. Moreover I would require the employer to guarantee the contribution of his share of the fund, by carrying insurance, so as to protect against insolvent employers.

"Now to answer your specific question as to the amount to be allowed a widow and two children for the death of a husband aged 32, in good health and earning $100 a month in the building trades:

"Under the mortality tables, this man would have an expectancy of thirty-three years. There are contingencies on both sides: On the one hand, from that age on he might develop business capacity, become a master builder and acquire a fortune; on the other hand, he might develop bad habits and cease to support his family, or meet with an early accident, outside of his occupation. But both of these elements should, in my opinion, be rejected, and a settlement made on the basis of a vast majority of the cases. This assumes that during a large part of the ensuing thirty-three years, he would have continued to be a wage earner. If he earned $100 a month from the age of 32 until the age of 65, the end of his life expectancy, the total present value of such earning power would be about $16,000. But it cannot be said that his life, at this time, is worth that much to his family. There are his own expenditures to be considered, and also the fact that even in the typical case, his earning power would naturally decrease as he approached the end of his life period, and he might even become, to some extent, a burden on the younger members of his family. I would say that from all sources, that is, the employer, the insurance which he ought to have provided for himself, either voluntarily or by state law, and the provisions from the public taxes, if we ever reach that, his family should have at the time of his death the equivalent of $10,000, either in present money, if they are competent to take care of it, or in an invested provision which will yield them annual payments during a period of say, twenty years, of the equivalent in value to $10,000.

"Now as I have said, the employer ought not to contribute all of that. In my judgment, he should make up substantially one-third of it, taking into account that he is doing it in all cases, whether the death resulted from his fault or not. He should be required to pay about $3,600. This, you will see, is substantially three years' wages.

"As above suggested, it is my experience that if in all such cases as you suppose, there was a method which provided for the prompt payment of that amount to the surviving family in case of death, it would produce much better results than the present system. Of course any system which is adopted now can be modified, as the result of a first trial and some years of experience.

"F. A. BROGAN."

No Automatic Compensation

"The trouble with all compensation laws which attempt to fix a limit for benefits or indemnity is that when they do that, they are doing an injustice to the person injured, or to his family if he is killed.

"Take, for instance, a person 32 years old, as you say. His natural expectancy of life would be thirty-three years. If he is earning $100 a month, the just compensation to his widow and next of kin would be the present value of his earnings for the thirty-three years he would live thereafter, making a reasonable reduction for reduction in wages the latter part of his life. That can be the only just rule. Any other rule would be arbitrary. Whatever is the present value or probable earnings of a person during the natural expectancy of life would be the only just rule.

"The proposed compensation law takes the whole matter from the jury and leaves it with the commission, and instead of lessening the delays, it increases them. Not only would there be hearings before the commission, but appeals from it to the district court, which court can remand the case to the commission for further investigation; appeals again; argument before the district judge on the question of evidence; appeal from the district judge to the supreme court, thus adding to the delays between the commission and the district court.

"W. W. SLABAUGH."

Clings to Negligence Idea

"The question asked is a very difficult one to answer, because the amount in any given case should depend upon the facts of that case.

"With reference to the concrete case presented by you, it would seem as though the husband, while living, out of his income could contribute for the support of his wife and two children at least $50 per month, which is $600 per year, and at 6 per cent interest this would require $10,000 of capital in order to give her such an income. This, of course, is a large sum and much beyond any amount specified in any of the proposed laws, so far as I know, and then again there remains the point to be considered as to whether in this particular case the husband's death was caused by his own negligence or whether such death was entirely the result of negligence of his employer.

"The law of this state at one time fixed a maximum sum for the death of an individual at $5,000, but that law was repealed some years ago, and at present there is no limit on the amount which may be recovered.

"There is a further point to be considered, and that is that in the given case mentioned, by you the two children will, if they live, in the course of time be self-supporting, and therefore the widow would not require so much for herself as she would require while the children were being educated and taught to earn their own living.

M. A. HALL."

Sue for More Than Expected

"Prior to 1907 the maximum amount which might be recovered for the death of a person caused by wrongful act or neglect of another was $5,000. This amount, in the opinion of all lawyers, conserved the interests of the defendants in cases brought for trial, in that the defendant, whether railroad or not, could rest in absolute security that he or it would not have to pay in any event anything in excess of $5,000, and that for that reason in the clearest case of liability some defendants would litigate the matter in the hopes of getting a jury to arrive at a verdict for a less sum than $5,000.

"From and since the year 1907, when the legislature removed the $5,000 limit and also legislated on the subject of fellow servant, the amount in case of death has been an open one to be ascertained by a jury. The law having removed the limit of the defendants in case of death, knowing that their liability was not limited and fearing that a jury might give a verdict of more than $5,000, have in many cases settled claims before trial by paying more than $5,000. For instance, I settled myself one death claim for $6,500 without trial.

"In my opinion, $10,000 would not be an excessive recovery for loss of a husband earning $100 a month, of the age of 32 years. If suit was brought for such death I would sue for a larger amount than $10,000, so that twelve jurymen looking at it from a standpoint of twelve individuals could arrive after a consideration of all the facts at what they deem to be a just and proper verdict for the particular case.

"It is my opinion that the so-called agitation for workmen compensation laws have underlying all other question a desire to get a limit placed by law for the deaths of employes and likewise for injuries of employes.

"I am not able to understand why workmen are agitating at this time such laws. Had the workmen some few years ago, before the legislatures and congress had legislated upon the subjects of fellow servant rule and assumption of risks, and before which time the workmen had little chance to recover for injuries or death as compared with his rights in that regard now, I would have thought that they were advancing their own interests.

A. W. JEFFERIS."

Unconditional Liability

"I am inclined to favor a law similar to the Missouri statute, which allows a fixed penalty of $5,000 to the next of kin, regardless of the question of pecuniary loss, though, perhaps, the amount should be higher. Also believe that the law should be so worded that in the event there is no pecuniary loss to next of kin, there should still be a recovery, so that the person causing death cannot escape liability merely because there are no dependent next of kin. Unless fixed as a penalty, there should be no limit other than the present value of prospective earnings, to be determined under mortuary and annuity tables, from $5,000 to $12,500.

"JOHN A MOORE."

A Few Side Steppers

"Don't know enough about the matter to give you any information worth while."

"JAMES C. KINSLER."

"Replying to your letter, I would be glad to talk this matter over with you if you will call at my office.

"HARLEY G. MOORHEAD."

"I have had but little experience in personal injury litigation, and having made no special study of the compensation act recently adopted, I do not care to express an opinion on the question you submit.

"JOHN J. SULLIVAN."