

**James Patrick & Company Proprietary Limited** - - *Appellant*

v.

**Dacie Ethel Sharpe** - - - - - *Respondent*

FROM

**THE FULL COURT OF THE SUPREME COURT  
OF VICTORIA**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 4TH OCTOBER, 1954**

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*Present at the Hearing :*

LORD PORTER  
LORD OAKSEY  
LORD REID  
LORD TUCKER  
LORD ASQUITH OF BISHOPSTONE

[*Delivered by LORD REID*]

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This is an appeal from a judgment of the Full Court of the Supreme Court of Victoria dated the 21st October, 1952, on a Case Stated by the Workers' Compensation Board of the State of Victoria dated the 12th June, 1952. The appellant was the employer of the late Sydney Allan Sharpe and the respondent is his widow.

The facts found by the Workers' Compensation Board were as follows:—

(A) The deceased Sydney Allan Sharpe late of 39 St. Vincent Street Albert Park Shore Shipwright aged fifty-one years was at all times material a worker within the meaning of the Workers' Compensation Acts of the State of Victoria and on the 4th December 1950 was in the employ of the respondent.

(B) The deceased worker left a widow (the applicant) and one child under the age of sixteen years both of whom were totally dependent upon the earnings of the deceased worker.

(C) While travelling between his place of residence and his place of employment on the 4th December 1950 the worker suffered an auricular fibrillation.

(D) As a direct result of such auricular fibrillation the worker died on the 4th December 1950 at his home.

(E) The post mortem disclosed microscopic evidence of degenerative changes in the heart muscle not specific of any disease. No other abnormality was observed.

(F) The worker for some years prior to his death suffered from atherosclerosis and a degenerative and progressive heart disease.

(G) The worker's pathological condition was not known to or suspected by him.

(H) The onset of the auricular fibrillation was a sudden physiological change unexpected and not designed by the worker.

The question of law submitted for the opinion of the Full Court was whether upon these findings of fact it was open to the Board to find that the deceased died "as the result of injury by accident arising out of or in the course of his employment" with the appellant. The Court answered this question in the affirmative.

The respondent's claim was made under the Workers' Compensation Act, 1928 of the State of Victoria as amended from time to time and particular importance attaches to the amendments made by the Act No. 5128 of 1946. At the relevant date the material statutory provisions were:—

"Section 5 (1). If in any employment personal injury by accident arising out of or in the course of the employment is caused to a worker his employer shall subject as hereinafter mentioned be liable to pay compensation in accordance with the provisions of the Workers' Compensation Acts.

(5) Without limiting the generality of the provisions of sub-section (1) but subject to the provisions of paragraph (c) of sub-section (2) of this section, an injury by accident to a worker shall be deemed to arise out of or in the course of the employment if the accident occurs—

(a) while the worker on any working day on which he has attended at his place of employment pursuant to his contract of employment—

(i) is present at his place of employment ; or

(ii) having been so present, is temporarily absent therefrom on that day during any ordinary recess and does not during any such absence voluntarily subject himself to any abnormal risk of injury ; or

(b) while the worker—

(i) is travelling between his place of residence and place of employment ; or

(ii) is travelling between his place of residence or place of employment and any trade technical or other training school which he is required to attend by the terms of his employment or as an apprentice or which he is expected by his employer to attend, or is in attendance at any such school

Provided that any injury incurred while so travelling is not incurred during or after—

any substantial interruption of or substantial deviation from his journey made for a reason unconnected with his employment or unconnected with his attendance at the school, as the case may be ; or any other break in his journey which the Board, having regard to all the circumstances, deems not to have been reasonably incidental to any such journey."

"Section 3 (1). In this Act unless inconsistent with the context or subject matter:—

"Disease" includes any physical or mental ailment disorder defect or morbid condition whether of sudden or gradual development and also includes the aggravation acceleration or recurrence of any pre-existing disease as aforesaid.

"Injury" means any physical or mental injury or disease and includes the aggravation acceleration or recurrence of any pre-existing injury or disease as aforesaid."

The nature and cause of auricular fibrillation do not appear from the findings of the Board. It appears to have been agreed between the parties that the Full Court should inform themselves on this matter by consulting

medical works, and a number of passages from such works are set out by Sholl J. in his judgment. This is the only material now available to their Lordships and from this material it appears that by auricular fibrillation is meant a condition in which the auricles of the heart cease to contract rhythmically as a whole in a series of orderly beats but the muscles contract in an incoordinated manner so that the blood circulation is impaired, the beat of the heart becoming irregular. The cause of this condition does not appear to be known but it is known to occur with certain types of heart disease. The Board in its findings stated that the post mortem disclosed evidence of degenerative changes in the heart muscle not specific of any disease but that the deceased had for some years suffered from atherosclerosis and a degenerative and progressive heart disease. It is not at all clear from these findings whether the Board meant to find that the auricular fibrillation was a further stage in a progressive disease which had already become established or that the auricular fibrillation was a new disorder not related to the disease which had already become established. But it is not necessary in their Lordships' view to pursue this question because their Lordships would reach the same conclusion on either interpretation of the Board's findings. Their Lordships agree with Sholl J. that it must be held that the deceased died as the result of a sudden and unexpected onset of a functional failure of the heart muscle resulting in a functional failure of the vital organs and that the deceased simply died because his heart suddenly ceased to function properly.

The question for decision in this case therefore is whether by the occurrence of this auricular fibrillation personal injury by accident was caused to the deceased within the meaning of section 5 (1) of the Act reading into that section the definitions of "disease" and "injury" contained in section 3. If it was, then the requirements of section 7 are satisfied because the Case Stated contains a finding that as a direct result of the auricular fibrillation the deceased died on the same day at his home, and the requirement of section 5 that the injury by accident must arise out of or in the course of the employment is satisfied because section 5 (5) deems the injury by accident to have arisen out of or in the course of the employment if the accident occurs while the worker is travelling between his place of residence and place of employment.

Before the passing of the Act No. 5128 the law in Victoria on questions material to this case was the same as it was in the United Kingdom under the Workmen's Compensation Acts. The injury by accident had "to arise out of and in the course of the employment", there was no statutory definition of injury corresponding to the definition in Section 3, and there was nothing corresponding to Section 5 (5). There is no dispute in this case about the applicability of Section 5 (5). This case turns on the extent of the changes made by the enactment of the definitions of "injury" and "disease" and by the substitution of "or" for "and" in the phrase "arising out of or in the course of the employment".

To determine the meaning and effect of these amendments it is necessary to have in mind the state of the law before they were enacted. There was little controversy about this except on one point and their Lordships will not make any extensive examination of the authorities. The relevant words in the statutes were "personal injury by accident arising out of and in the course of the employment". With regard to these words Lord Macnaghten said in the early case of *Fenton v. Thorley & Co. Limited* [1903] A.C. 443 at p. 448, "Now the expression 'injury by accident' seems to me to be a compound expression. The words 'by accident' are I think introduced parenthetically as it were to qualify the word 'injury' confining it to a certain class of injuries and excluding other classes as for instance injuries by disease or injuries self inflicted by design. Then comes the question, do the words 'arising out of and in the course of the employment' qualify the word 'accident' or the word 'injury' or the compound expression 'injury by accident'? I rather think the latter view is the correct one". That view has been

accepted but "the phrase 'injury by accident' as used in successive Workmen's Compensation Acts has been the subject of repeated and elaborate discussion and in the course of the forty years or more which have passed since the first decisions under the Act of 1897 it is possible, as Lord Tomlin pointed out in a case which I shall mention, to trace a gradual but steady extension of its meaning" (per Viscount Caldecote L.C. in *Fife Coal Co. v. Young* [1940] A.C. 479 at p. 483).

This extension is particularly notable in cases dealing with disease. In *Walker v. Bairds & Dalmellington Ltd.* 1935 S.C. (H.L.) 28 at p. 32 Lord Tomlin in reviewing the authorities said with regard to *Clover Clayton & Co. v. Hughes* [1910] A.C. 242. "This case seems to me to establish that there may be personal injury by accident even though the employee's work has proceeded in the normal way and even though the injury is due to the presence of a special condition in the employee's body". Later in the same speech he said "The latest stage in the progression was reached in the cases of *Falmouth Docks & Engineering Co. v. Treloar* [1933] A.C. 481 and *Partridge Jones & John Paton Limited v. James* [1933] A.C. 501. In each of these cases a man with heart disease died at his work which he was or had been doing in the ordinary way, this work being found to have contributed to his death. There was in neither case any distinct event or occurrence which, taken by itself, could be recognised as an accident. Each case was held to be within the Act." But death or disability which was merely the result of a continuous process over a period, there being no particular change in the man's condition at any one time, was never held to be due to injury by accident. This was finally decided in *Roberts v. Dorothea Slate Quarries Co. Ltd.* [1948] 2 All E.R. 201. In view of one argument submitted for the appellant in the present case their Lordships will quote a passage from the speech of Viscount Caldecote L.C. in *Fife Coal Co. v. Young* already referred to, where, having approved of earlier cases on this point, he said "In all of them the facts were such as to make it impossible to identify any event which could, however loosely, be called an accident. In these cases the workmen failed, not because a disease was outside the purview of the Workmen's Compensation Act altogether, but because the burden of proof that there had been an accident was not discharged. When the workman's claim is in respect of a progressive disease the difficulty of pointing to a definite physiological change which took place on a particular day is, in general, likely to be almost insuperable, and in 1906 Parliament, in the case of certain diseases and later by an enlargement of the schedule of industrial diseases relieved the workman in the specified cases of this obligation. But if the circumstances of any claim in respect of incapacity due to disease are such as to make it possible to discharge this burden I see no reason for thinking that what is called a disease is different in principle from a ruptured aneurism as in *Clover Clayton & Co. v. Hughes* or heart failure as in *Falmouth Docks & Engineering Co. Ltd. v. Treloar*".

In all cases in the United Kingdom and in Victoria before 1946 it was necessary to prove that some external event or some action of the deceased had caused the sudden physiological change to happen when it did. In the present case the workers death was due to a sudden physiological change which happened at a time deemed to be in the course of his employment but there is no finding that any external event or any action of the deceased played any part in causing the fibrillation to happen when it did and their Lordships must deal with the case on the footing that the fibrillation was due solely to the onset or progress of some disease within the man's body.

The question now to be decided is whether the effect of the amendments made by the Act No. 5128 is to make it no longer necessary to associate the sudden physiological change with any external event or any action by the deceased. That question depends on the reason why such an association had formerly to be proved. Undoubtedly one reason was that, as the injury by accident had always to arise out of the employment, a causal connection between the injury and the employment had to be

proved and that could only be done by associating the injury with something which the man did or something which befell him in connection with the employment. If that was the only reason then it is no longer necessary to establish that association in cases where the injury occurred or is deemed to have occurred in the course of the employment because in those cases it is no longer necessary to prove that the injury arose out of the employment. But it is maintained for the appellant that that was not the only reason: it was argued that the authorities show that "injury by accident" means injury brought about by something external and excludes any injury due solely to the onset or development of disease. The statute still requires injury by accident if the employer is to be liable under section 5 and if that phrase has that meaning then the appellant would not be liable in this case.

It is not easy to determine from the authorities whether any precise meaning had become attached to the words "injury by accident" taken by themselves because it was never necessary to consider those words in isolation from the whole phrase injury by accident arising out of and in the course of the employment. In a number of passages cited by counsel for the appellant the words "injury" or "accident" or "injury by accident" may appear to be interpreted in the sense for which the appellant contends but in at least most of those passages it appears to their Lordships that there was no intention to consider these words in isolation and that what was really being considered was the meaning of the whole phrase.

The word "injury" has now been defined by the Act No. 5128 and effect must be given to this definition on its true interpretation. The obvious purpose of this Act was to extend the scope of statutory compensation and it may well be that the enactment of this definition has altered or widened the meaning of the phrase injury by accident. By definition the word injury now means *inter alia* any disease and disease includes *inter alia* any physical ailment disorder defect or morbid condition whether of sudden or gradual development and also includes the aggravation acceleration or recurrence of any pre-existing disease.

If the words of these definitions are given their natural meanings then undoubtedly the deceased suffered injury at a time deemed to be in the course of his employment. But it was argued for the appellant that a narrower meaning must be given to those words and in particular that "disease" in the definition of injury means the contraction of disease from some external cause and that "aggravation acceleration or recurrence" of a disease means aggravation acceleration or recurrence brought about by some external event: if the first onset of a disease or its subsequent aggravation acceleration or recurrence is due solely to conditions within the man's body then it was argued that that is not covered by the definition. This argument appeared to their Lordships to be based on three main grounds. In the first place it was said that otherwise there is a conflict with section 8 (1) of the Act No. 5128 (now section 12 of the Workers' Compensation Act 1951 and hereafter referred to as section 12). Then it was said that the definitions ought if possible to be read as not altering the existing law. And finally it was said that to give to the definitions their full natural meaning would so extend the scope of the Act as to make it apply to cases which could not have been intended to involve liability to pay compensation. Even if there were force in these reasons their Lordships would have great difficulty in holding it possible to construe these definitions in this way. But in their Lordships' judgment there is little or no substance in these reasons.

Section 12 (1) (b) provides "Where the death of a worker is caused by any disease and the disease is due to the nature of any employment in which the worker was employed at any time prior to the date of disablement then subject to the provisions hereinafter contained the worker or his dependants shall be entitled to compensation under this Act as if the disease were a personal injury by accident arising out of or in the

course of that employment and the disablement shall be treated as the happening of the accident". It is said that the latter part of this subsection shows that a disease by itself is not a personal injury by accident and that a disablement by such a disease is not an accident. But this argument leaves out of account the fact that the statute requires not merely injury but injury by accident.

The words "by accident" are not defined in the statute and must therefore be interpreted in light of the authorities. Their Lordships have already noted that a disease of gradual development even though brought on by the man's work cannot be held to be injury by accident and on any view the provisions of Section 12 (1) (b) were necessary to deal with disablement which did not happen suddenly. It is true that if the natural meaning is given to the definition of injury Sections 5 and 12 will overlap, and cases of sudden disablement may be covered by both provisions. But that is no sufficient reason for giving a limited meaning to the definition of injury.

Then it was said that the definition ought so far as possible to be read as setting out the existing law and not as extending it. But the Act by which they were enacted was an Act designed to extend the scope of compensation and there is no reason why such an extension should not be made in this way. Finally it was said that so wide an extension cannot have been intended because it might involve liability to pay compensation for disablement caused by some gradual failure of strength due solely to advancing age. But it does not appear to their Lordships that the words of the definition of disease can easily bear that interpretation. Disease is defined as including any ailment, disorder defect or morbid condition but all these words must be read in their context and the context does not suggest that interpretation to their Lordships. But it is not necessary to decide that question because in Victoria there must not only be injury but injury by accident, and that limitation is sufficient to exclude the class of case on which this argument was based.

Their Lordships must now deal with certain Australian cases relied on by the appellant. *Slazengers (Australia) Pty. Ltd. v. Burnett* [1951] A.C. 13 was an appeal from the Supreme Court of New South Wales. The Workers' Compensation Act in that State differs materially from the Act in Victoria. The injury need not be by accident but injury is more narrowly defined: in particular the definition only includes a disease to which the employment was a contributory factor. The decision of their Lordships turned on the applicability of that definition in a certain subsection, and the grounds of decision have no application in the present case. It is true that the question whether a disease not induced by an outside event could be an injury was raised in argument, but it was not dealt with by their Lordships. The appellant founded on the reference in the judgment to *Kellaway v. Broken Hill South Ltd.* 44 N.S.W. St. R. 210, but that reference is somewhat cryptic. "A worker who having reached his place of employment dies of a coronary occlusion being the result of a disease to which the employment was not a contributory factor is not entitled to compensation: see *Kellaway v. Broken Hill South Ltd.*, a case clearly decided correctly though some of the reasoning may be open to criticism". The reasoning of Jordan C.J. was different from that of Roper J. and Roper J. expressed the opinion that an autogenous disease was not an injury. It was argued that it could be inferred that it was the reasoning of the Chief Justice which was doubted and that therefore the opinion of Roper J. must have been approved. Their Lordships are doubtful whether that is the correct inference and in any event Roper J. was dealing with a definition of injury which differed materially from that in force in Victoria.

Then the appellant founded on *Hetherington v. Amalgamated Collieries of W.A. Ltd.* 62 C.L.R. 317 a case from Western Australia, where, as in Victoria, it is necessary to prove injury by accident but the injury need only arise out of or in the course of the employment. In that case it was found that the man's exertion at his work had contributed to his death and so there was an external event and the point at issue in the present case was

neither decided nor specifically considered. But the judges of the High Court made an elaborate examination of the authorities, and it was pointed out for the appellant that if they had thought that an external event was unnecessary and that a sudden physiological change by itself could be an injury by accident it would have been much easier to decide the case on this ground. That may be true but their Lordships cannot infer from it that any of the learned judges had formed a definite opinion that a sudden physiological change by itself could not be injury by accident. Evatt J. pointed out (at p. 33) that the appeal could be disposed of merely by reference to the accepted principles laid down in the English cases, and that where it was necessary the introduction of the disjunctive form of expression would require further consideration, but in that case this was not necessary. In that case there was nothing accidental about the event which led to the man's death occurring when it did. His disease was such that ordinary exertion at his work led to his death. The only thing which could be said to be accidental or unexpected was his sudden death at that particular time. On that matter Dixon J. (as he then was) said (at p. 332) "surprising as it may seem such a cause of death falls within the definition of injury by accident arising out of the employment. As a matter of common speech the expression 'injury by accident' appears inappropriate and inapplicable but a long course of judicial decisions has extracted from the expression latent implications which make the test of the employer's liability independent of such things as external mishap, traumatic injury and unusual or unexpected incidents of work or duty".

The appellant accepted that passage as stating the law accurately. It was admitted that in Victoria it is now unnecessary to have an external event of an accidental or unexpected character or an event connected with the man's work or, in a case to which Section 5 (5) applies, connected with his journey. But it was argued that it is still necessary to have an external event of some kind without which the physical breakdown would not have occurred when it did. It was admitted that the event need only have been the last straw and indeed counsel for the appellant ultimately admitted that it may not be necessary always to prove just what the event was. If the man has died and there is no direct evidence of what happened just before the physical breakdown it was admitted that it would be enough if the Workers' Compensation Board were satisfied by medical evidence that in all probability the breakdown would not have occurred at that particular time unless something external had happened to cause it to occur then. That being so it is very difficult to suppose that it could have been intended to retain the need to prove some external event in every case and their Lordships would only be prepared to accept the appellant's contentions if the words used by the legislature compelled that conclusion. But far from compelling that conclusion in their Lordships' judgment the terms of the statute point almost irresistibly to the opposite conclusion.

The first case in which it was necessary to decide the present question was *Willis v. Moulded Products (Australia) Ltd* [1951] V.L.R. 58. In that case the worker died as a result of cerebral hæmorrhage which occurred while he was travelling to his work. His physical condition was such that the strain of his normal living or activity of any kind was likely to cause such a hæmorrhage, but its occurrence at the time when it did occur was unexpected. It was argued that there could be no injury by accident unless there was shown to be some agency or some circumstance extraneous to the worker which brought about the injury but the Full Court held that the employer was liable to pay compensation. That case is indistinguishable from the present case, and the present case was brought before the Full Court with the object of having the decision in *Willis' case* reconsidered. But the Court decided to follow the decision in *Willis' case*. In both *Willis' case* and the present case the authorities were fully reviewed particularly by Sholl J. and their Lordships agree with the decisions. Their Lordships will therefore humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal.

In the Privy Council

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DELIVERED BY LORD REID

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