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Workmen's Compensation—Scope of Employment—Transportation Furnished by Employer as Substituted Means of Conveyance Within the Scope of Employment—In the case of Sjostrum v. Sproule, 49 Ill. App. 2d 451, 200 N.E.2d 19 (1st Dist. 1964), the Illinois Appellate Court for the First District was presented with the question of whether an accident, occurring while the parties were in an automobile which had been substituted for the original means of conveyance furnished by the employer, arose out of and in the course of employment, and thus supplied an affirmative defense to a common law action by one employee for the negligence of his fellow employee. In reversing its previous decision in the same case, the court held that where the use of a substitute means of conveyance was still within the purview of the original agreement to furnish transportation, the accident would be compensable exclusively under the Workmen's Compensation Act.

Plaintiff and defendant were engineering employees of Armour and Co., which was covered by the Workmen's Compensation Act. In March, 1952, the plaintiff was assigned to duty at Bradley, Illinois, where Armour was constructing a plant. Plaintiff, Sjostrum, was directed to drive to Bradley, either in a car furnished by Armour, or in his own car, in which event he was to be reimbursed six cents per mile. Defendant, Sproule, was assigned to the Bradley site in September, 1952, and drove his own car, receiving the six cents per mile reimbursement.

Both parties resided on the South side of Chicago, and no public transportation existed between Bradley and their homes. About two weeks after Sproule was assigned to the site, the overall supervisor at the Bradley plant, Mr. Blanding, "advised the defendant that he wanted to eliminate duplicate travel expenses"; thereupon, Blanding instructed the defendant to take a company car and drive the plaintiff to and from work. About a week before the accident, the company car developed mechanical trouble. Thereafter, up to and including the day of the accident, the defendant drove his own car, picking up and dropping off the plaintiff in the regular way. Blanding knew of this modification, and told the plaintiff and the defendant that an attempt would be made to get another company car. Subsequently, while driving the plaintiff to work, the defendant attempted to pass another car on icy roads at the base of a hill, and, in so doing, crashed into a car driven by John Scott and owned by International Shoe Company.

Sjostrum filed a suit charging negligence against Scott, International Shoe and Sproule. Sproule asserted Section 5(a) of the Workmen's Compensation Act as an affirmative defense, and he received a directed verdict.

3 Ill. Rev. Stat. Ch. 48, § 138 (1961). "No common law or statutory right to recover damages from the employer or his employees for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of
Judgment was subsequently entered against Scott and International Shoe Company. Both appealed, and Sjostrum filed a cross appeal against Sproule, contending that the accident did not arise out of the course of employment and thus the judgment of the lower court was erroneous. The Appellate Court reversed the judgment for Sproule and remanded the case to the trial court. It also reversed the judgments against Scott and International Shoe. On re-trial, the parties stipulated to the facts from the first trial and no additional evidence was offered. Judgment was entered for Sjostrum for $35,000 against Sproule. The defendant appealed, again asserting Section 5(a) of the Workmen's Compensation Act as an affirmative defense.

On the second appeal, the Appellate Court found that its previous decision regarding defendant's affirmative defense was in error, reversed the judgment for Sjostrum, and remanded with direction to enter judgment for the defendant.

It is well settled that one employee is not liable to a fellow employee for negligent acts so long as they arise out of and in the course of employment. In the case of O'Brien v. Rautenbush, the Illinois Supreme Court stated, "It is our opinion that the Workmen's Compensation Act does preclude a common law action against a negligent co-employee." The later case of Rylander v. Chicago Shortline Ry. reiterated the court's position and advanced the purpose of the legislation:

... [T]he Workmen's Compensation Act precludes a common law action for damages by an employee under the act against a co-employee based on the latter's negligence during the course of their employment. That result follows from the basic purpose of Workmen's Compensation to place the cost of industrial accidents upon the industry. That purpose would be blunted if the cost of those accidents was shifted from one employee to another within the industry. So far as persons within the industry are concerned, the Workmen's Compensation Act eliminated fault as a basis of liability.

It is generally accepted that accidents occasioned in traveling to and from work are not considered to arise out of and in the course of employment. There is, however, a well recognized exception to the general rule,

\footnotesize{this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury." (Emphasis added.)  
4 Sjostrum v. Sproule, supra note 1.  
6 O'Brien v. Rautenbush, 10 Ill. 2d 167, 139 N.E.2d 222 (1957); Rylander v. Chicago Short Line Ry., 17 Ill. 2d 618, 161 N.E.2d 812 (1959); Chmelik v. Vana, 31 Ill. 2d 272, 201 N.E.2d 434 (1964).  
7 Supra note 6.  
8 Id. at 172, 139 N.E.2d at 227.  
9 Supra note 6.  
10 Id. at 628, 161 N.E.2d at 822.}
viz., where the employer furnished transportation to and from work for the employees, any accidents arising out of the use of such transportation are compensable.\(^1\) It is this exception which the defendant asserted as his defense, maintaining that since he and the plaintiff were riding in transportation furnished by their mutual employer, the accident in controversy was within the course of employment, and Section 5(a) of the Workmen's Compensation Act applied. In this regard, one noted authority has stated:

One well recognized exception to the general rule that the employer is not liable for accidental injuries sustained by the employee away from the employer's premises while on the way to or from work is where the employer provides a means of conveyance to or from work. For example, where a factory is located some distance from suitable means of transportation the employer sometimes provides busses, etc., to carry the employees to and from the factory. If an accident should occur while the employee was being thus conveyed, as by collision between the bus and an automobile, the accident would be held to arise out of and in the course of the employment and the employer would be liable for compensation.\(^2\)

While there is little doubt as to the adoption of the exception by courts of most jurisdictions, it would appear that this is the first time that the exception has actually been tested in the Illinois courts. Prior to 1920, the Illinois Supreme Court had not even considered the exception, but in *Schweiss v. Industrial Commission*,\(^3\) the court by way of dicta acknowledged the existence of the exception. In that case, the plaintiff, an employee of the Wabash Railroad, was killed while crossing the railroad tracks on his way to work. While the court decided the case on other grounds, it noted the exception by stating:

The general rule followed in construing the Workmen's Compensation Act appears to be that a man's employment does not begin until he has reached the place where he has to work or the scene of his duty, and it does not continue after he has left unless the conveyance in which he travels to or leaves the premises is furnished by his employer.\(^4\)

On the same day, the Illinois Supreme Court also decided *United Disposal v. Industrial Commission*.\(^5\) In that case, the employer's plant was located several miles outside of Rockford, so transportation by truck was furnished each morning from a central location in Rockford to the work site. One evening, a truck driver took a truck to his home in Cherry Valley without the knowledge or permission of his supervisors, and in violation of his instructions. The following day he bypassed Rockford and drove the truck directly to the plant, taking with him two co-employees who also

\(^{13}\) 292 Ill. 90, 126 N.E. 566 (1920).
\(^{14}\) Id. at 92, 126 N.E. at 568.
\(^{15}\) 291 Ill. 480, 126 N.E. 183 (1920).
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lived in Cherry Valley. On the way to the plant, all three were killed in an automobile accident. In attempting to collect compensation benefits, the personal representatives of the decedents tried to show that the transportation was furnished by the employer, and therefore the accident was compensable. Though the court failed to use language as patent as that quoted from the Schweiss case, it inferentially recognized the exception.

... There was no agreement ... to furnish the decedents transportation from Cherry Valley to the farm ... . While arrangements had been made for them to ride on the trucks from Rockford to the farm, it was no part of the contract of hire that they would be furnished transportation from their homes to the place of their employment.10

The leading federal case expressing the exception to the general rule is Cardillo v. Liberty Mutual Co.,17 which dealt with a provision in a union contract that the employer would furnish transportation to all union members for work done outside the District of Columbia. The employer gave each worker $2.00 daily, which was added to his weekly check, in lieu of providing any specific method of transportation. The Court affirmed an award for compensation for injuries sustained by an employee while on the way home from work, stating:

It was found that Ticer's employer paid the cost as a means of carrying out its contract obligation to furnish the transportation itself. Where there is that obligation, it becomes irrelevant in this setting whether the employer performs the obligation by supplying its own vehicle, hiring the vehicle of an independent contractor, making arrangements with a common carrier, reimbursing employees for the cost of transportation by any means they desire to use.18 (Emphasis supplied.)

In the instant case, however, the plaintiff contended that since the defendant's car was being used instead of the employer's the exception did not apply, as the employer was not furnishing the transportation. The defendant countered this by maintaining that the use of the substitute means of conveyance did not obviate the applicability of the exception, as there was acquiescence on the part of Armour in using the defendant's car.

This issue, the use of a substituted means of conveyance, has been considered by several courts, which have found that an accident arising out

10 Id. at 486, 126 N.E. at 189.
17 330 U.S. 469, 67 Sup. Ct. 801 (1947). The Court noted four exceptions to the general rule that accidents occurring while traveling to and from work are not compensable: "(1) where the employment requires the employee to travel on the highways; (2) where the employer contracts to and does furnish transportation to and from work: (3) where the employee is subject to emergency calls, as in the case of firemen: (4) where the employee uses the highway to do something incidental to his employment, with the knowledge and approval of the employer." Id. at 480, 67 Sup. Ct. at 808.
of the use of such conveyance is compensable. In *Littlefield's Case*, the employee was usually driven to work by his employer, Grant. On the day of the accident, Grant directed another employee, Kinslow, to drive Littlefield to work. Kinslow, after picking up Littlefield, dropped his car off at a garage for mechanical repairs, and both employees were then driven to work in a car owned by the garage. In finding the ensuing accident compensable, the Maine court said:

The further fact that Mr. Kinslow left his own automobile at a garage and took another conveyance and another driver was only part and parcel of the original attempt to transport Mr. Littlefield to his work, and we cannot conceive that the ownership of the second auto affects the question in this case.

In the case of *Heaps v. Cobb*, Cobb was the chief engineer for the city of Baltimore. A chauffeured limousine was at his disposal; however, as he intended to drop his wife and aunt at a shopping destination on his way to work, Cobb used his own car. After he had let his wife and aunt off, the accident happened. In affirming the award, the court said:

> Where an employee is furnished transportation by his employer in connection with the latter's business, under an agreement express or implied, the employee is to be considered on duty while using this transportation. This holds true whether the injury occurred while the employee was using a vehicle furnished by the employer or was using one of his own as a substitute, providing the substitute was for some reason connected with his employment.

Finally, in *Stadler Fertilizer Co. v. Bennet*, the decedent lived in Fort Wayne, Indiana, but worked in Geneva, Indiana. He was normally given a ride in a company truck to and from work. However, the driver who usually drove the decedent to work was on vacation, in addition to which the company was short a truck due to repairs. Because of these events, the decedent drove his wife's truck to work, and, on the way home, was killed in an auto accident. The appellate court granted compensation, indicating that under the circumstances it could reasonably be inferred that the use of decedent's wife's truck was "necessary to suit the convenience of the employer," and thus there was tacit acquiescence by the employer.

From the above it would appear that the court's decision in *Sjostrum* has made Illinois one more state which acknowledges that accidents occurring while traveling to and from work in a conveyance provided by an employer are compensable, and is in keeping with the court's general attitude of enlarging the scope of the Workmen's Compensation Act whenever

19 124 Me. 129, 136 Atl. 724 (1927).
20 *Id.* at 131, 136 Atl. 726.
21 185 Md. 372, 45 A.2d 73 (1945).
22 *Id.* at 377, 45 A.2d at 78.
24 *Id.* at 526, 119 N.E.2d at 28.
possible. This follows from the court's general dislike of having to deny recovery to one who has suffered substantial injury, but may have done so partially or wholly through his own fault. Since the Workmen's Compensation Act makes a recovery possible for the injured party, the court's inclination is to apply the act rather than a common law remedy.

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