

WHEN IS A SUICIDE COMPENSABLE UNDER A
WORKMEN'S COMPENSATION STATUTE?

RALPH S. BAUER*

THE facts on which the question of compensation for a suicide under a workmen's compensation statute arise are, in broad outline, as follows: the employee, after receiving injuries arising out of and in the course of the employment, finding convalescence slow or difficult, commits suicide. In some of these cases, the facts indicate with sufficient clearness that he had, at the time of killing himself, complete control over his actions, or, to put it another way, that, at the time, his acts were volitional. In other cases, the facts seem to indicate clearly enough that he was, at the time of the suicide, so completely insane as to have no volition. In some of this latter class of cases, the clearly indicated insanity has, as one of its manifestations, an uncontrollable impulse to commit suicide.

Here, as in all other fields in which human conduct is to be judged by more or less uncertain and relative standards and not by set rules, and in which there is often comparative uncertainty as to what the facts really are, there naturally exists a considerable border-land of cases of which the final disposition is hardly predictable. Probably the disposition of a close case by the board is less easily predictable than is the result of an appeal to the courts from an award or a refusal of an award by the board, for, in such a case, the court is likely to follow the finding of facts by the board, just as in a common law case it would follow the finding of facts by the jury if there is some evidence to sustain the finding.

The key to the situation seems to be in the question whether the decedent exercised volition in committing suicide, and this should be true, whether the formula used in a particular case emphasizes as essential to recovery non-volition or insanity or an uncontrollable impulse. Insanity is important only as it destroys the power of true volition to die and therefore makes it a fact that decedent's suicide was not a volitional act. An uncontrollable impulse is important only as a driving force that has impelled the decedent into the suicidal act without the exercise of any true volition. Looking at the different formulae in the abstract, one might come to the conclusion that whether proof of non-volition of the decedent or of uncontrollable impulse or of both is stated as a requisite of claimant's case, in the great majority of cases, probably would make no difference; but, inasmuch as a general state of non-volition in the mind, especially in a well developed case of insanity, is a thing often so distinctly evidenced by objective manifestations as to be fairly susceptible of proof, while an uncontrollable impulse is likely to be a thing so strictly subjective as to give little or no objective manifestation prior to the suicidal act and therefore likely to be unsusceptible of proof, probably a formula directly making volition the pivotal

* Professor of Law, De Paul University.

point upon which to decide the case is preferable to a formula making the case turn upon uncontrollable impulse. It is of course true that the very reason for talking about uncontrollable impulse is that the suicide upon uncontrollable impulse is not a volitional suicide; but, because of the subjective approach through the "uncontrollable impulse" formula, it would seem that industrial boards may find it more difficult to justify in their own minds an award to the claimant under this formula than under the formula stressing volition. It may be comparatively easy to adduce some objective proof that the decedent was so insane that he was incapable of entertaining any volition, so that there is some proof to sustain an award; but it may be somewhat more difficult to find any proof that the decedent actually had an uncontrollable impulse to commit suicide, for the fact of uncontrollable impulse lies in the field of the subjective, which is not so easily penetrable by proof.

In general, in workmen's compensation cases, courts seem inclined to follow loosely, with perhaps a greater liberality to plaintiff, the general principles of the common law as to causation and of inclusion of damage within or exclusion from the operation of the rule of law invoked by the plaintiff, just as they have done in cases brought under wrongful death statutes.¹

In one case,² a board's award of compensation for suicide was permitted by

¹ *Daniels v. New York, New Haven & Hartford R. Co.*, 183 Mass. 393, 67 N.E. 424, 62 L.R.A. 751 (1903), is a wrongful death case in which recovery was refused because the uncontroverted evidence tended to show that decedent "with deliberate purpose, planned to take his own life," that he had "an understanding of the physical nature and effect of his act," and that he had a "willful and intelligent purpose to accomplish it." This case is often cited and followed in workmen's compensation cases. See *Tetrault's Case*, 278 Mass. 447, 180 N.E. 231 (1932).

² *Sinclair's Case*, 248 Mass. 414, 143 N.E. 330 (1922).

For a criticism of *Sinclair's Case*, see article by the present writer, *Suicide as Intervening Cause in Workmen's Compensation Cases as Compared with Suicide in Cases of Wrongful Death*, 5 Boston Univ. L. Rev. 228 (1925). See also article, *Comment on Professor Bauer's Article, Causation and Suicide*, by Professor John E. Hannigan, 5 Boston Univ. L. Rev. 233.

In the original article at p. 231 the writer has said: "There seems to be no reported case in which the recovery has been allowed under a wrongful death statute, where so clearly volitional a suicidal act intervened as in *Sinclair's Case*. But, when one considers the purposes of the workmen's compensation acts and the tendency of courts not to apply strictly the common rules of proximate cause to these cases, it is not surprising that compensation is awarded in some cases in which the chain of causal connection seems weak. However, it is submitted that the opinion in *Sinclair's Case* goes much farther than the purposes of workmen's compensation acts justify. According to the report of the case, the evidence tends to show that the deceased committed suicide by intelligent, understanding, slow, and deliberate self-starvation. This was not an unconscious or involuntary act induced by the injury that had occurred in the course of his employment. Can the purposes of these statutes include compensation for death under such circumstances? The purposes of these statutes are social and economic. The primary social and economic purpose is to make happier and economically more stable the condition of the worker. Secondly, it is purposed that this betterment of conditions will lead to greater efficiency in laborers. With these purposes in view it is deemed just to compel an industry to pay, as a part of its current expenses, compensation for such injuries as arise out of and in

the court to stand, in the face of the finding by the board that decedent had refused food during a long period and had finally starved himself to death. Here, apparently, was a clear case of volitional suicide; but this is not the usual disposition of such cases, and the same court has recently seemed to evince a change of heart without any allusion whatever to its earlier aberration from the beaten path.³

In a recent case in the New York Appellate Division,⁴ the court said:

"The Industrial Board has found, upon competent supporting evidence, that the deceased employee, as the result of accidental injuries sustained by him in

course of the employment. It is submitted that no purpose of the act is served by granting compensation in such a case as Sinclair's. The assurance to the laborer that his dependents will receive compensation if he consciously and willfully starves himself to death after an injury, is not such a comfort to him as to increase his happiness or his deficiency; nor does it seem economically sound to compel an industry to pay for a willful suicide of an employee."

At p. 237 in Professor Hannigan's article referred to above, the following interesting queries are put: "May not a court, taking man as he is, permit a jury to consider the deprivation of or injury to his normal understanding or will power, resulting from a physical injury, as analogous to a progressive condition which may be the cause of further development of injury? The will to live, the will to resist evil suggestion; the power to fight against despair,—are they anything more than shields, powers of protection? When a man is wrongfully deprived of them, are not the consequences of such deprivation fairly in the chain of causation?"

The late Dean James Parker Hall, in a letter dated December 23, 1925, addressed to the present writer, in regard to the above-mentioned article on "Suicide as Intervening Cause in Workmen's Compensation Cases," said: "I agree with your conclusion, which is also supported by the Scotch case of *Malone v. Cayer, Irvine & Co.*, 45 Sc. L.R. 351. When the employee commits suicide when so insane, as to have no real volition, I agree that the Compensation Act should apply. Otherwise I do not think his death was in its policy. I should disagree with the Scheffer Case [*Scheffer v. Washington City, etc. St. Ry. Co.*, 105 U.S. 249, 26 L. Ed. 1070 (1881), a wrongful death case], assuming the insanity there to deprive the injured person of his volition." Dean Hall seems to have considered volition or non-volition the proper test. On the whole, it would seem that no better test can be found, either in the cases of wrongful death or in those of workmen's compensation.

³ *Tetrault's Case*, 278 Mass. 447, 180 N.E. 231 (1932). Here the employee received an injury December 30, 1929, and was paid compensation until his death. He died January 20, 1930. His widow claimed compensation for his death. The Industrial Accident Board found that the employee met his death by jumping from a bridge into the Connecticut river, and that his death was causally connected with conditions due to his injury, and awarded compensation. The superior court entered a decree whereby it ruled that the evidence did not warrant a finding that the death was "causally related to any injury arising in and out of the course of his employment," and dismissed the claim. The supreme judicial court affirmed the decree of the superior court, saying: "The testimony above recited and the other evidence in the case, though tending to show that the employee's mind was disordered when he committed suicide, did not warrant a finding that he took his own life 'through an uncontrollable impulse or in a delirium of frenzy without conscious volition to produce death, having knowledge of the physical consequences of his act.'" Without mention of *Sinclair's Case*, *supra*, note 2, the court here reverts to the earlier tests of uncontrollable impulse and non-volition, used in *Sponatski's Case*, 220 Mass. 526, 108 N.E. 466, L.R.A. 1916A, 333 (1915).

⁴ *Koniczny v. Kresse Co., Inc.*, 234 App. Div. 517, 256 N.Y.S. 275 (1932).

his employment, became insane, due to which insanity he committed suicide as the result of an uncontrollable impulse and without conscious volition, and that said death unavoidably resulted from the said accidental injuries. There is, therefore, nothing to sustain appellants' contention of lack of causal relation between the injuries and death."

In a Vermont case,⁵ the court said:

"It is held that when the insanity resulting from an accident ends in a suicide which is the result of an uncontrollable impulse or in a delirium of frenzy, and without conscious volition to produce death having knowledge of the physical consequences of the suicidal act, there is a direct and unbroken causal connection between the accident and the death, and compensation therefor is to be awarded. But when the suicide is the result of a voluntary, willful choice, with knowledge of the purpose and physical effect of the act, a new and independent agency intervenes, breaks the chain of causation, and compensation is to be denied. In compensation cases, the rule is the same as in negligence cases, as is shown by the Sponatski Case."⁶

To a great extent, workmen's compensation decisions in general seem to be swayed by general common law principles of "causation" and of "intervening cause,"⁷ and it is only natural that this should be as true of suicide cases as it is of cases of personal injuries to claimant. There are, however, some noticeable deviations from those principles.⁸

⁵ *McKane v. Capital Hill Quarry Co.*, 100 Vt. 45, 134 Atl. 640 (1926).

⁶ *Supra*, n. 3.

⁷ In *Baker v. State Industrial Commission*, 128 Ore. 369, 274 Pac. 905 (1929), the court, in allowing compensation, follows substantially one of the formulae of proximate cause often recited in the decisions of negligence cases. See also *Polucha v. Landes*, 60 N.D. 159, 233 N.W. 264 (1930); and *Continental Casualty Co. v. Industrial Commission*, 75 Utah 220, 284 Pac. 313 (1929).

⁸ In some of the cases in which compensation has been allowed it seems that, either as to causation or as to certainty of proof, courts have been much less rigid in their requirements of plaintiffs than at common law. In *Wilder v. Russell Library Co.*, 107 Conn. 56, 139 Atl. 644, 56 A.L.R. 455 (1927), claimant's decedent, a young woman, was a librarian employed by defendant. She worked very hard as librarian and put much additional strain upon herself by work as president of the State Library Association and for conventions. These outside activities were for the purpose of benefiting the library and herself. Through overwork, she became insane and committed suicide. The decedent was subject by heredity to a predisposition of mental trouble. The commission had reached the conclusion, based on facts, that the death arose out of and in the course of her employment. This conclusion was sustained by the trial court and the supreme court. When one considers the uncertainty of proof of the causal relation in the case as reported, one wonders whether any such result would have been reached in an action brought under a wrongful death statute for negligently causing death of a decedent, a type of case in which the courts more certainly and consistently follow common law principles of causation.

In *Travelers' Insurance Co. v. Peters*, 3 S.W. (2d) 568, 571 (Tex. Civ. App. 1928), the court held that a petition for compensation for death of an employee was not demurrable because it

To allow recovery of compensation for a clearly volitional suicide would seem to be going beyond the purpose of the workmen's compensation statutes, and it would probably encourage suicide in some cases. Furthermore, it would be an interesting question whether a statute in terms allowing compensation for volitional suicide would be constitutional.

Whatever formula is used, it would seem that the key to workmen's compensation cases in which the claimant seeks compensation for suicide is to be found in the question, "Did the claimant's decedent commit suicide without any real volition, as a result of an injury that is compensable under the statute?"

failed to allege that the accident was the proximate cause of the death, where the petition showed by clearest inference that the injuries sustained were the efficient, exciting, or contributory cause of death.