

SUPREME COURT OF MISSISSIPPI

Total Transportation, Inc. of Mississippi and Protective Insurance Company v. Gerry Lynn Shores, Widow and Dependent of Phillip Shores, Deceased

968 So. 2d 488 (Miss. 2007) · No. No. 2005-CT-01951-SCT · Decided September 19, 2005

SUMMARY

The Mississippi Supreme Court held that the death of an over-the-road truck driver, who was abducted and killed after spending approximately eleven hours drinking at a bar, was not compensable under the Mississippi Workers' Compensation Act. The Court concluded that the third-party assault was not directed against the employee because of his employment and that his extended bar visit was not reasonably incidental to his work as a traveling employee. The Court affirmed the Court of Appeals and reversed and rendered the Rankin County Circuit Court judgment.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Easley, Justice, for the Court; Easley, Justice; Smith, Chief Justice; Waller, Presiding Justice; Carlson, Justice; Randolph, Justice; Lamar, Justice; Dickinson, Justice; Diaz, Presiding Justice; Graves, Justice
JURISDICTION	Mississippi
DECIDED	September 19, 2005
DOCKET	No. 2005-CT-01951-SCT
DISPOSITION	other
PROCEDURAL POSTURE	Workers' compensation appeal on writ of certiorari from a divided decision of the Mississippi Court of Appeals. The Court of Appeals had reversed the Rankin County Circuit Court and rendered judgment for Total Transportation; the Mississippi Supreme Court reviewed that decision.
STANDARD OF REVIEW	Workers' compensation decisions are reviewed under the substantial-evidence test. The Commission's factual findings are ordinarily upheld unless unsupported by substantial evidence, arbitrary or capricious, or based on an erroneous application of law. Legal questions are reviewed for error of law.

PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential
PARTIES	Total Transportation, Inc. of Mississippi, Protective Insurance Company v. Gerry Lynn Shores, Widow and Dependent of Phillip Shores, Deceased

TOPICS

workers compensation statutory interpretation appellate procedure standard of review

PRACTICE AREAS

workers compensation employment law statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Whether Phillip Shores's death from a third-party intentional act was directed against him because of his employment under Mississippi Code section 71-3-3(b).
2. Whether Shores's extended stay at a bar, alcohol consumption, and conduct before the killing constituted a personal deviation such that his death did not arise out of and in the course of employment.
3. Whether the Workers' Compensation Commission improperly applied Mississippi workers' compensation law in finding the death compensable.

HOLDINGS

1. Shores's death was not caused by a willful act directed against him because of his employment. His employment merely furnished an opportunity for him to be present in the area and was not a contributing cause of the assault and killing.
2. The Commission improperly expanded Mississippi workers' compensation law by treating Shores's death as compensable based merely on his status as a traveling employee and the general risk of assault near a truck stop.
3. Appellate courts may reverse a Commission decision when it rests on an erroneous application of law, even though factual findings receive deferential substantial-evidence review.

KEY QUOTATIONS

"The words 'because of,' like other broadly-construed words of causation with[in] the act, such as 'arising out of,' express the necessity of a nexus between the injury and employment." (§ 17)

"As such, the employment must be a "contributing cause" of the willful act of the third party, as opposed to merely being a "contributing cause" of the employee being present at the place where the assault occurred." (§ 19)

"The Court of Appeals correctly determined that the Commission expanded the relevant law by finding that Shores's death, which was caused by a third-party intentional act, was directed against him because of his employment and therefore compensable." (§ 27)

FACTUAL BACKGROUND

Phillip Shores and his wife worked as an over-the-road trucking team for Total Transportation. During a repair stop in Wyoming, Lynn left Phillip at a truck stop and returned later, but Phillip had entered a bar, where he remained for approximately eleven hours, consumed alcohol, and appeared intoxicated. After the bar closed, Phillip accepted a ride from a patron who kidnapped and shot him; the Mississippi Workers' Compensation Commission found his death compensable.

PROCEDURAL HISTORY

Lynn Shores sought death benefits after her husband, an over-the-road truck driver, was murdered in Wyoming after leaving the truck and spending approximately eleven hours at a bar. An administrative law judge awarded benefits, the Mississippi Workers' Compensation Commission affirmed, and the Rankin County Circuit Court affirmed the Commission. The Mississippi Court of Appeals reversed and rendered judgment for Total Transportation, and the Mississippi Supreme Court affirmed the Court of Appeals while reversing and rendering the circuit court judgment.

DISPOSITION

other

REMAND INSTRUCTIONS

None. The Court affirmed the Court of Appeals' judgment, reversed the Rankin County Circuit Court judgment, and rendered judgment in favor of Total Transportation.

CASES CITED

- Total Transp., Inc. v. Shores, 2006 Miss. App. LEXIS 874 (Miss. Ct. App. 2006)
- Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991)
- Georgia Pac. Corp. v. Taplin, 586 So. 2d 823 (Miss. 1991)
- Smith v. Jackson Constr. Co., 607 So. 2d 1119 (Miss. 1992)
- Weatherspoon v. Croft Metals, Inc., 853 So. 2d 776 (Miss. 2003)
- Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221 (Miss. 1997)
- Metal Trims Industries, Inc. v. Stovall, 562 So. 2d 1293 (Miss. 1990)
- Big "2" Engine Rebuilders v. Freeman, 379 So. 2d 888 (Miss. 1980)
- Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 59 So. 2d 294 (1952)
- Green v. Glen Oaks Nursing Ctr., 722 So. 2d 147 (Miss. Ct. App. 1998)
- Johnson v. Roundtree, 406 So. 2d 810 (Miss. 1981)
- Adams v. Lemuria, Inc., 738 So. 2d 295 (Miss. Ct. App. 1999)
- Sanderson Farms, Inc. v. Jackson, 911 So. 2d 985 (Miss. Ct. App. 2005)
- Ellis v. Rose Oil Co., 190 So. 2d 450 (Miss. 1966)
- Tyson Foods, Inc. v. Hillard, 772 So. 2d 1103 (Miss. Ct. App. 2000)

