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Workmen's Compensation: Negligent Co-Employee's Personal Liability Defined: Saala v. McFarland (Cal. 1965)

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> engaged in activities appropriate to their age, experience, and wisdom, it would be unfair to the public to permit a minor in the operation of a motor vehicle to observe any other standards of care and conduct than those expected of all others. . . .[17]

In view of the large number of automobiles in California, their danger to the public at large, and the fact that the Legislature has established certain qualifications and safety measures binding on all drivers regardless of age, it is unrealistic, contrary to expressed legislative policy, and inimical to the public safety to permit minors a more lenient standard of care.

> A member of the traveling public has the right to expect that others using our highways, regardless of their age and experience, will obey the traffic laws and exercise the adult standard of ordinary care.[18]

Thomas Hansen

WORKMEN'S COMPENSATION: NEGLIGENT CO-EMPLOYEE'S PERSONAL LIABILITY DEFINED: *SAALA V. McFARLAND* (CAL. 1965)

In *Saala v. McFarland*[1] the California Supreme Court interprets section 3601 of the Labor Code[2] so that a negligent co-employee can be held personally liable for his tort even though the injured party also obtains relief under the California Workmen's Compensation statutes.[3] Plaintiff Saala and defendant McFarland worked for a common employer who provided a parking lot for the convenience of his employees. At the end of a shift plaintiff was struck by defendant's car while both were still in the employer's parking area. Plaintiff recovered workmen's compensation benefits and in addition brought an action for negligence against defendant. The trial court granted a summary judgment for the defendant and the First District Court of Appeals affirmed.[4] In reversing this judgment, the Supreme Court introduced its opinion by stating:

> Even though plaintiff properly received workmen's compensation benefits since her injury was one "arising out of and in the course of the employment" (Lab. Code, § 3600), summary judgment must be

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[17] *Id.* at —, 107 N.W.2d at 863.
[18] Neudeck v. Bransten, 233 A.C.A. 1, 7, 43 Cal. Rptr. 250, 254 (1965).

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[1] 63 A.C. 120, 403 P.2d 400, 45 Cal. Rptr. 144 (1965).
[2] CAL. LABOR CODE § 3601.
[3] CAL. LABOR CODE §§ 3201-6240.
[4] Saala v. McFarland, 231 A.C.A. 22, 41 Cal. Rptr. 530 (1964).

> reversed because the trial court erred in concluding that the provisions of section 3601 of that code barred any recovery from defendant coemployee in the present civil action for negligence.[5]

There are three relevant code references in this problem area. They are sections 3600, 3601 and 3852 of the Labor Code. Because the proper conditions for compensation were met in this case, plaintiff Saala collected workmen's compensation benefits under section 3600, the material part of which states:

> Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person . . . shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment . . . .[6]

Plaintiff was able to receive her workmen's compensation benefits under this section because, as the Supreme Court points out, it is the established rule that,

> Injuries sustained by an employee while going to or from his place of work on premises owned and controlled by his employer are generally deemed to have arisen out of and in the course of the employment. (Cal. Cas. Ind. Exch. v. Ind. Acc. Com., 21 Cal. 2d 751, 757, 135 P.2d 158, 162.)[7]

In addition to the compensation provided by section 3600, section 3852 provides that, "The claim of an employee for compensation does not affect his claim or right of action for all damages proximately resulting from such injury or death against any person other than the employer. . . ."[8] Thus, section 3852 standing alone would give the plaintiff in this case a cause of action against the defendant for his negligence.

However, section 3601 must also be considered as it limits the broad scope of section 3852. Since plaintiff and defendant are coemployees, section 3601 bars plaintiff's recovery if the defendant was acting *within the scope of his employment.* In part, this section states:

> Where the conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this division is . . . the exclusive remedy for injury or death of an employee against the employer or against any other employee of the employer acting within the scope of his employment. . . .[9]

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[5] Saala v. McFarland, 63 A.C. 120, 121, 403 P.2d 400, 401, 45 Cal. Rptr. 144, 145 (1965).

[6] CAL. LABOR CODE § 3600.

[7] 63 A.C. 120, 122, 403 P.2d 400, 401, 45 Cal. Rptr. 144, 145 (1965).

[8] CAL. LABOR CODE § 3852.

[9] CAL. LABOR CODE § 3601. As enacted in 1937 it read: "Where the conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this division is, except as provided in section 3706, the exclusive remedy

There are some exceptions under which even a co-employee acting within the scope of his employment can be held personally responsible to the injured employee for his actions but these exceptions are not material to this case.

In considering these statutory provisions, the Supreme Court in *Saala* noted, "Essentially, the issue is whether 'acting within the scope of his employment' in section 3601 has the same meaning as 'arising out of and in the course of the employment' in section 3600."[10] Naturally, as the court points out, if the two phrases are synonymous the specific immunity for the co-employee provided by section 3601 would prevail over the more general third party liability imposed by section 3852.

To answer this question the court looks at the situation from an historical standpoint, pointing out that prior to the 1959 amendment to section 3601, which purportedly made workmen's compensation benefits an employee's exclusive remedy as against a negligent co-employee, section 3852 preserved an employee's common law right to independently bring an action against a co-employee for a negligent injury. *Baugh v. Rogers*,[11] a 1944 case, states, "Our workmen's compensation laws were not designed to relieve one other than the employer from any liability imposed by statute or by common law."[12] In the later case of *Singleton v. Bonnesen*,[13] a defendant deputy sheriff was held to be personally liable to the heirs of a negligently killed sheriff even though the negligence causing the death occurred in the scope of the deputy's and the sheriff's employment.[14] The court stated:

> As coemployees we know of no rule prohibiting a suit by one against the other for damages on account of negligence, even though their common employer may be protected from such a suit by provisions of the Workmen's Compensation Act.[15]

The Supreme Court in *Saala* distinguishes the phrase "arising out of and in the course of the employment" which includes activities required in coming to and going from work while on property controlled by the employer, from the phrase "within the scope of his employment" which the court defines by quoting,

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against the employer for injury or death." This section was amended in 1959 to read as it presently does.

[10] 63 A.C. 120, 123, 403 P.2d 400, 402, 45 Cal. Rptr. 144, 146 (1965).

[11] 24 Cal. 2d 200, 148 P.2d 633, 152 A.L.R. 1043 (1944).

[12] *Id.* at 214, 148 P.2d at 641, 152 A.L.R. at 1053; *accord*, Lamoreux v. San Diego etc. Ry. Co., 48 Cal. 2d 617, 311 P.2d 1 (1957).

[13] 131 Cal. App. 2d 327, 280 P.2d 481 (1955).

[14] The court in *Saala* implies that the *Singleton* decision was the primary factor motivating the Legislature to enact the 1959 amendment to § 3601.

[15] 131 Cal. App. 2d 327, 329, 280 P.2d 481, 482 (1955).

> Conduct is within the scope of employment only if the servant is actuated to some extent by an intent to serve his master. (Rest. Agency 2d, § 235, comment a; *accord*, Dolinar v. Pedone, 63 Cal. App. 2d 169, 175, 146 P.2d 237 [3]; see Meyer v. Blackman, 59 Cal. 2d 668, 676 [5], 31 Cal. Rptr. 36, 381 P.2d 916.)[16]

With this distinction in mind, the court construes the 1959 amendment to section 3601 in the light of the case which, it says, stimulated the amendment.

> The presumption that an overall change is intended where a statute is amended following a judicial decision (45 Cal. Jur. 2d 614) is given its full effect if section 3601 as amended is construed to change the law stated in those cases and exempt from civil liability only a coemployee's actions within the scope of employment, rather than those "arising out of and in the course of the employment."[17]

Saala should be read in the context of a Fourth District Court of Appeals case involving almost the same factual situation. In *McIvor v. Savage*,[18] plaintiff was injured when the automobile in which she was riding was struck by defendant's automobile while both parties were preparing to leave their mutual employer's parking lot following a work shift. Plaintiff sued defendant for negligence and defendant was granted a summary judgment. Plaintiff appealed to the Fourth District Court of Appeals which reversed this judgment stating:

> . . . the affidavit and declaration which the defendants filed in support of their motions [for summary judgment] . . . did not allege facts from which it may be concluded as a matter of law that they were not acting within the scope of their employment at the time the plaintiff was injured.[19]

Although the case was decided primarily on this procedural question, the court had a significant amount to say on the substantive interpretation of the phrase "scope of his employment" as found in Labor Code section 3601. It said:

> Our conclusion is that section 3601 does not foreclose an action by an employee against a coemployee for injuries sustained by the former as a result of the negligent conduct of the latter merely because the injuries sustained were compensable under the Workmen's Compensation Statute; the fact that such an injury arose out of and in the course of employment does not establish per se that the coemployee who inflicted that injury was acting within the scope of his employment; the phrase "scope of his employment" as used in that section to describe the nature of the act of the coemployee whose conduct caused

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16 63 A.C. 120, 124-25, 403 P.2d 400, 403, 45 Cal. Rptr. 144, 147 (1965).
17 *Id.* at 124, 403 P.2d at 403, 45 Cal. Rptr. at 147.
18 220 Cal. App. 2d 128, 33 Cal. Rptr. 740 (1963).
19 *Id.* at 138, 33 Cal. Rptr. at 746.