

SUPREME COURT OF LOUISIANA

No. 95-C-1387

HILLIARD J. MATTHEWS

Versus

FARLEY INDUSTRIES

consolidated with

No. 95-C-1796

LANA S. MARTIN

Versus

TEXACO INC.

LEMMON, J., Dissenting

Irrespective of La. Rev. Stat. 23:1310.8, an employee who was injured by accident in the course of employment and arising out of employment has a cause of action for compensation benefits if the employee proves partial or permanent disability as a result of the accident. La. Rev. Stat. 23:1221. The issue in these two cases is whether that cause of action is precluded by a judgment denying benefits in an earlier proceeding.¹

The issue is presented more clearly by the facts of the Matthews case. In regard to Matthews' May 1990 injury on the job, the employee would have been eligible for compensation benefits in the first proceeding but for his failure to prove he was disabled in June 1991, and his claim was denied on that basis. The present proceeding, filed in June 1994, asserts that he has now become disabled from the original injury,

¹The lower courts in the Martin case approached the issue in terms of an exception of no cause of action for modification of benefits after an earlier judgment denying benefits.

and the issue is squarely presented whether the earlier judgment precludes Matthews' claim for his present disability.

The issue of the employee's present disability was not decided in the first proceeding, and the judgment finding him not to be disabled in June 1991 is not res judicata as to the issue of his present disability.² Moreover, the employee could not have presented a claim in the first proceeding for the disability that has allegedly developed since that proceeding, and the earlier judgment only bars "causes of action existing at the time of final judgment arising out of the . . . occurrence that is the subject matter of the litigation" ³ La. Rev. Stat. 13:4231(2).

Matthews perhaps will be unable to prove at the trial in this proceeding that his present disability was caused by the original accident. Or his claim may be dismissed as time-barred. But he should not be precluded from asserting his present claim on exceptions of either res judicata or no cause of action. The judgment of the court of appeal in the Matthews case, overruling the exception of res judicata, should be affirmed.

²Denial of benefits in the first proceeding on the basis that plaintiff failed to prove an on-the-job accident obviously would be a res judicata bar in the second proceeding.

³La. Rev. Stat. 13:4232A(1), which provides that a judgment does not bar another action when exceptional circumstances justify relief from the res judicata effect of the judgment, may also be applicable here. The development of a non-disabling injury into a disabling injury may constitute the exceptional circumstances contemplated by the statute.

My position may be subject to criticism as encouraging second suits on the same injury, but any abuse can be controlled by imposition of sanctions.

