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# Industrial Indem. Co. v. Industrial Acci. Com. [DISSENT]

Jesse W. Carter  
*Supreme Court of California*

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[42 C.2d 879; 269 P.2d 881]

[L. A. No. 23082. In Bank. May 11, 1954.]

INDUSTRIAL INDEMNITY COMPANY (a Corporation),  
Petitioner, v. INDUSTRIAL ACCIDENT COMMIS-  
SION and DOYLE WYATT, Respondents.

PROCEEDING to review an order of the Industrial Accident Commission allowing a credit against an award of compensation for personal injuries. Award affirmed in part and annulled in part with directions.

Leonard, Hanna & Brophy and Edmund D. Leonard for Petitioner.

Everett A. Corten, Gordon W. Winbigler and T. Groesinger for Respondents.

EDMONDS, J.—The question presented in this proceeding to review an award of the Industrial Accident Commission is the same as that in *R. E. Spriggs, Inc. v. Industrial Acc. Com.*, ante, p. 785 [269 P.2d 876].

Doyle Wyatt, a farm laborer in the employ of Norman Potter, doing business as Potter Nursery, sustained a compensable injury as a result of the assertedly negligent operation of an automobile by a third party. Wyatt settled his claim for damages against the third party for \$1,000. Of that amount, \$215.93 was paid to the employer's insurer in satisfaction of a lien for previous compensation expenditures. Wyatt's attorney received \$357.50 for attorney's fees. The Industrial Accident Commission deducted from the credit allowed the employer's insurer the amount paid by Wyatt as an attorney's fee, allowing only \$426.57 plus a credit of \$112.64 for prior disability payments.

For the reasons stated in the Spriggs case, that portion of the award crediting Industrial Indemnity Company with only \$539.21 is annulled, with directions to the commission to increase the amount to \$896.71; in all other respects, the award is affirmed.

Shenk, J., Traynor, J., Schauer, J., Spence, J., and Bray, J. pro tem.,\* concurred.

\*Assigned by Chairman of Judicial Council.

CARTER, J.—I dissent for the same reasons stated by me in *R. E. Spriggs, Inc. v. Industrial Acc. Com.*, ante, p. 785 [269 P.2d 876]. In addition, however, this case squarely presents the wholly unjust situation mentioned by me in my dissent in *Dodds v. Stellar*, 30 Cal.2d 496 [183 P.2d 658]. I there said that as a result of denying the employee the right to deduct counsel fees incurred in recovering from the tortfeasor, the employee might well receive less than the workmen's compensation payable to him. That result is reached here despite the legislative amendments designed to alleviate the injustice. Here the compensation amounted to \$896.71. The employee received \$1,000 in settlement from the tortfeasor. He had to pay his attorney \$357.50 leaving a balance of \$642.50, thus receiving less than the compensation to which he was entitled.

[42 C.2d 880; 271 P.2d 4]

[L. A. No. 22940. In Bank. May 27, 1954.]

JOHN RIX TYRELL, Petitioner, v. THE COMMITTEE OF BAR EXAMINERS et al., Respondents.

PROCEEDING to review resolution of Committee of Bar Examiners denying an application for admission to practice law without examination. Petition denied.

Donald G. Hall for Petitioner.

Richard J. Archer for Respondents.

THE COURT.—John Rix Tyrell seeks to review a resolution of the Committee of Bar Examiners denying his application under section 6060.8 of the Business and Professions Code for admission to practice law without examination. The basis of the committee's action was the determination that Tyrell had not "entered upon active duty in the armed forces" as required by that section.

After serving in the United States Naval Reserve during World War II, Tyrell was released to inactive duty. He commenced the study of law and in June 1952, was graduated from an accredited law school. The next final bar examination was conducted in October of that year.