

N.Y. Court Sets Aside Jury Award for Injury to Young Caddiemaster

But rules that club may be liable for damages through action taken under workmen's compensation law

By WILLIAM JABINE

A 16-year-old assistant caddiemaster at a country club near New York City was struck in the eye by a ball hit by a 13-year-old caddie while both were playing the club's course on a quiet Friday afternoon. The club pro-supt. had given them permission to play a few holes. The injured boy brought actions

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against both the club and the youngster who had hit him. A jury in the trial court brought in a verdict for \$65,000 against the club and dismissed the complaint against the younger boy. The defendant club appealed the judgment against it and the plaintiff appealed the ruling dismissing the complaint against the younger boy. These appeals were heard by the N. Y. Appellate Division of the Supreme Court, second dept.

The Appellate Division's memorandum opinion reads in part: "In our opinion, the jury's verdict in favor of defendant (the younger boy) may not be disturbed since it rests in a fair and proper interpretation of the evidence, and the evidence does not preponderate greatly in favor of the plaintiff. (Citation) Accordingly, the judgment is affirmed.

Conflict with Available Remedy

"The jury's verdict in favor of plaintiff against the defendant club, however, cannot stand. In our opinion, it is against the weight of the evidence and it also conflicts as a matter of law with the exclusive remedy available to this plaintiff, namely, his workmen's compensation benefits (Workmen's Compensation Law, Sec. 11).

"There is no evidence that the club inadequately supervised its golf course or permitted immature and dangerous persons to play golf thereon. That is the essence of the claimed negligence against the club. On the contrary, the evidence demonstrated that on the day in question, express permission was needed, sought and given to defendant by the club's pro-supt. Further, the (13 year old) defendant was then a 6-foot, two-inches tall, 165-pound caddy who had played golf and caddied for two years; he had his own set of golf clubs, and he expected to play in a caddies' tournament three days after the day on which the accident occurred."

Should He Have Been Playing?

Having thus absolved the club of the charge of negligence in permitting the boys to play on its golf course, the Appellate Division turned its attention to the question of whether or not the plaintiff, who was acting caddiemaster on the day of the accident, was within the scope and course of his employment while playing golf on the club's course.

On this point the Court said: "On the issue as to workmen's compensation, the following factors as a matter of law compel a finding that on the day of the accident the plaintiff's playing of golf was within the scope and within the course of his employment: He was playing on the club's private course by express permission; he was working that day in a supervisory capacity as acting caddiemaster and was expected to resume work within an hour; there is a fair and reasonable inference that the club had a continuing control and supervision over him for the period of his play; he was paid for the entire day; and the club benefited from his play because of his increased knowledge of the game and his improved skill in playing could in time redound to the advantage of the club, its members and the caddies over whom he had supervision. (Citations)"

Thus the club escaped the penalty of the \$65,000 verdict against it, but still is likely to be penalized in a workmen's compensation action. (Ramsden vs. Shaker Ridge Country Club, 259 N.Y.S. 2d 280.)