

MRS. WILLIE MAE BOSTON,	)	IN THE CIRCUIT COURT OF
surviving widow of JOSEPH	)	
BOSTON, deceased, suing	)	BALDWIN COUNTY, ALABAMA
individually and for and on	)	
behalf of BRENDA JOAN BOSTON,	)	AT LAW
WILLIE EDWARD SANDERS, LINDA	)	
MARIE SANDERS, AND MARY LUCILLE	)	CASE NO. <u>4522</u>
SANDERS, being the four sur-	)	
viving minor dependent children	)	
of Joseph Boston, deceased,	)	
	)	
Plaintiffs	)	
	)	
Vs.	)	
	)	
WILLIAM A. BRYANT, JR.,	)	
	)	
Defendant	)	

This case coming on for hearing on the Complaint and Answer as filed, and the Court having been made aware of the matters and things involved with respect thereto, and having heard from counsel of both parties, and after fully considering the evidence presented by both sides in support of their respective positions does find as follows:

FINDINGS OF FACT

On June 14, 1960, Joseph Boston was employed by William A. Bryant, Jr. as a laborer to cut and load timber on land near Stiggers Lake near Stockton, Baldwin County, Alabama, and the nature of his duties required him to ride in a boat, with other employees, in order to get to the land where said timber was being cut. As a result, such employment was subject to the Workmen's Compensation Laws of the State of Alabama, and the Court expressly finds that at the time of the aforementioned accident on, to-wit, June 14, 1960, the deceased, Joseph Boston, was, at the time the boat overturned and he was drowned, acting within the line and scope of his employment and thus subject to the Workmen's Compensation Laws of the State of Alabama.

At the time of his death the said Joseph Boston was earning an average weekly wage of approximately \$41.00.

It is the position of plaintiffs that on June 14, 1960, while the said Joseph Boston was being transported by boat to his employment in cutting timber, that he was provided said boat transportation by his employer, William A. Bryant, Jr.; that it was necessary for him to ride in said boat in order to get to his employment; that said boat was in the sole control and operation of an agent of said defendant; that for reasons unknown to plaintiffs the boat overturned and Joseph Boston was caused to be drowned; and that all of said matters and things occurred as Joseph Boston was acting in the line and scope of his employment as an employee of William A. Bryant, Jr., and as such is covered by the Workmen's Compensation Laws of the State of Alabama.

The defendant concedes that the average weekly wages of Joseph Boston were \$41.00 per week; that Joseph Boston was employed by the defendant to cut timber on land near Stiggers Lake, as aforesaid, but defendant expressly denies that compensation is due on behalf of the death of said Joseph Boston because of the fact that the defendant allegedly furnished the said deceased with a life preserver which the said deceased willfully failed to use, and as a result of that the deceased willfully brought about his own destruction and is not covered by the Workmen's Compensation Laws of the State of Alabama. The defendant concedes that the deceased died from drowning on June 14, 1960, after said boat overturned as aforesaid.

The Court finds that there is a decided conflict in the facts here presented as to whether or not Joseph Boston willfully failed to use the life preserver, as contended by defendant, that the Court is of opinion that the facts are more than sufficient to justify compensation award under the laws of this state.

CONCLUSIONS OF LAW

The burden rests on the plaintiffs to sustain the position made by their complaint. This Court finds that the doubts in this case should be resolved where possible in favor of the employee. Construing the facts in their most favorable light for the plaintiffs, the Court is of the opinion that there is sufficient evidence upon which to base a finding that at the time of his death Joseph Boston was acting in the line and scope of his employment as an employee of defendant William A. Bryant, Jr., and further that he did not willfully fail to use a safety appliance allegedly furnished by the defendant, and that because of that he is entitled to Workmen's Compensation under the laws of this state at the rate of \$26.65 per week for a period of 175 weeks, or, if both parties consent and elect to do so, said compensation may be payable by the defendant herein in a lump sum of \$4,625.80.

The Court has further found from the evidence that all funeral expenses for said deceased employee have been previously paid and the defendant herein is not charged in this suit with any of same.

JUDGMENT

The Court having reached the foregoing conclusions of fact and of law from the pleadings and matters here considered,

upon consideration thereof, is of the opinion that plaintiffs should have and recover of the defendant, William A. Bryant, Jr., compensation based on \$26.65 per week for a period of approximately 175 weeks, payable in a lump sum of \$4,625.80, if the said defendant and said plaintiffs so elect, which includes any and all medical and/or funeral expenses which plaintiffs have incurred or may incur in the future as a result of said accident and death of June 14, 1960.

It is, therefore, considered, ordered, adjudged and decreed by the Court that judgment herein be and the same hereby is entered for the plaintiffs and that the plaintiffs have and recover of the defendant, William A. Bryant, Jr., the sum of \$4,625.80, together with the costs of court, for the recovery of all of which let execution issue.

It is further ordered by the Court that LeNoir Thompson, Esq., attorney for plaintiffs, be allowed an attorney's fee of a sum equal to 15% of the amount of this judgment.

ORDERED, ADJUDGED AND DECREED this 20 day of December, 1960.


JUDGE

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surviving widow of JOSEPH	)	
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	)	
Defendant	)	

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA:

The plaintiffs claim of the defendant benefits under the Workmen's Compensation laws of Alabama, as provided in Title 26, Chapter 5, Code of Alabama of 1940, as amended, said benefits being now due and owing under the following statement of facts:

Your plaintiff, Willie Mae Boston, resides at Route 1, Box 8, Stockton, Baldwin County, Alabama, and has so resided in said County and State for a long period of time.

Brenda Joan Boston, Willie Edward Sanders, Linda Marie Sanders and Mary Lucille Sanders are the four surviving minor dependent children of plaintiff, Willie Mae Boston and Joseph Boston, deceased, all of said children now residing with and being dependent upon plaintiff Willie Mae Boston.

Defendant's name is William A. Bryant, Jr., an individual doing business in Baldwin County, Alabama.

On, to-wit, June 14, 1960, the relation of employer and employee, or master and servant, existed between defendant,

William A. Bryant, Jr., and plaintiffs' deceased husband and father, Joseph Boston, and as a result of such relation the employment of Joseph Boston was subject to the Workmen's Compensation laws of Alabama.

While so employed and engaged in the business of the defendant, William A. Bryant, Jr., and while engaged in riding in a boat on Stiggers Lake, approximately ten (10) miles from Stockton, Baldwin County, Alabama, said boat being owned by defendant William A. Bryant, Jr., and while engaged in crossing said lake to cut timber on adjacent property in behalf of said defendant William A. Bryant, Jr., and while acting within the line and scope of his employment with said defendant, the said Joseph Boston suffered an accident which arose out of and in the course of his said employment and as a direct and proximate result of said accident the said Joseph Boston was killed by drowning.

Plaintiffs aver that the defendant, William A. Bryant, Jr., had actual, prompt and immediate notice of said accident as provided for in Title 26, Section 304, Code of Alabama of 1940, as amended.

At the time of said accident, Joseph Boston was earning an average weekly wage of \$41.00; he had been earning an average weekly wage of \$41.00 for some time prior to said accident; and a controversy has now arisen as to the benefits to be paid to plaintiffs under the Workmen's Compensation laws of Alabama.

Plaintiffs further aver that plaintiff Willie Mae Boston is the surviving widow of the said Joseph Boston; that they were married on, to-wit, January 14, 1960, at Waynesboro, Mississippi, and that three of the four above named children, namely, Willie Edward Sanders, Linda Marie Sanders and Mary Lucille Sanders were born to plaintiff Willie Mae Boston while she was a single woman, but that all three of said children were accepted by the deceased after his marriage to plaintiff as his own, were regarded as his own and were wholly dependent upon him at the time of the aforementioned accident; that Brenda Joan Boston was born as a result of the union of plaintiff Willie Mae Boston and the deceased, and was also wholly dependent upon the deceased at the time of his death; and that all four of the above named children were wholly dependent upon the deceased at the time of his death and are now wholly dependent upon plaintiff Willie Mae Boston for their support and maintenance.

WHEREFORE, plaintiffs claim of the defendant, William A. Bryant, Jr., such benefits as they may be entitled to receive under the Workmen's Compensation laws of Alabama, and pray that notice may be given the defendant and that a hearing may be had, all in accordance with the laws and rules of this Honorable Court.

Willie Mae Boston
WILLIE MAE BOSTON, individually,
and as and for and on behalf of
Brenda Joan Boston, Willie Edward
Sanders, Linda Marie Sanders and
Mary Lucille Sanders

LeNoir Thompson
LeNoir Thompson, Attorney
for Plaintiffs

FILED

DEC 20 1960

ALICE J. DUCK, Clerk

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA:

Your petitioner, Willie Mae Boston, respectfully shows unto your Honor that heretofore on, to-wit June 14, 1960, that her husband, Joseph Boston was drowned while in the employ of William Bryant under such circumstances that the workmen's compensation law is applicable, that she is in disagreement with his employer and his insurance carrier to the extent of their liability and as to the amount of compensation to which she is entitled, that she desires to employ Thompson & White, attorneys of this bar to represent her in her claim against said employer, and/or his workmen's compensation carrier.

Wherefore, the petitioner prays that the Court make an order or approve the employment of said attorneys pursuant to Code 1940, Tit. 26, Section 261.

Willie Mae Boston
Willie Mae Boston, Petitioner

The foregoing having been submitted and the court being of the opinion that said permission should be granted, the said Willie Mae Boston is hereby permitted and authorized to employ Thompson & White, attorneys at law, to represent her in a claim for the death of her husband arising out of an accident sustained in the line and course of his employment while employed by William A. Bryant, Jr.

Hubert M. Hall
Judge

12/2/60

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ALICE J. DUCK, Clerk

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A N S W E R

Comes now William A. Bryant, Jr., defendant in the above styled cause, and for answer to the complaint heretofore filed and each count thereof, separately and severally, interposes the following separate and several pleas thereto:

ONE

Not guilty.

TWO

The material allegations thereof are untrue.



 Attorney for Defendant

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

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ALICE J. DUCK, Clerk