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The Injured Arthritic: His Medico-Legal Rights

Louis J. Gelber*

PLAINTIFFS IN GENERAL fare rather poorly in litigation cases when trauma is responsible for the aggravation of their arthritic condition. The inadequate rewards are usually due to the poor presentation of the claimant's case to the judge and jury. The purpose of this paper is to illustrate some of the disabling results that trauma inflicts on victims of arthritis of the spinal column, and to discuss adjudication of these cases, as well as suggested therapy by means of x-rays.

It has long been held that hypertrophic osteo-arthritis does not necessarily disable a person. However, when trauma supervenes, flare-ups result which may cause disability of varying degrees.¹ It is common knowledge and often held that trauma may aggravate a dormant hypertrophic arthritis. However, the burden is always on the plaintiff to prove his disability. The fact that a claimant is suffering from or is afflicted with arthritis does not necessarily bar him from the right to compensation in the case of injury. An award may be had for disability caused by an injury whether arising out of employment or any other accident if the injury accelerates or aggravates an existing condition.²

Hypertrophic osteo-arthritis is a chronic, nondisabling inflammation of the joints, indicated by bony spurs at the site of attachment of tendons, fascia or ligaments, due to continued irritation or strain. Any trauma or accident may cause a flare-up or aggravation of the condition. A single severe trauma can be directly responsible for an acute exacerbation of a chronic condition, whether it be termed "traumatic synovitis" with or without effusion, or damage to the cartilage. In *Industrial Indemnity Co. v. Industrial Accident Commission*,³ it was held sufficient to support a finding that the accident aggravated a pre-existing arthritis which, prior to the accident was asymptomatic, non-disabling and dormant. Drs. Codman and Anderson attribute calcifications of tendons and tendon sheaths in bursa to trauma. A distension due to effusion in a knee joint can be a prime factor in preventing healing of cartilage and ligaments thus resulting in an unstable joint.⁴

A broad definition of "Hypertrophic Osteo-Arthritis" was given at the Tenth Rheumatism Review and presented in the *Annals of Internal Medicine* in September and October of 1953. It was described as a large

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¹ *National Life & Accident Ins. Co. v. Upchurch*, 57 Ga. App. 399, 195 S.E. 588 (1938).

² *Oklahoma Gas & Electric Co. v. Slocum*, 159 Okla. 245, 15 P. 2d 29 (1932).

³ 95 Cal. App. 329, 213 P. 2d 11, 17 (1950).

⁴ Codman, *Shoulder* (1939).

group of diseases of the musculo-skeletal system characterized by pain, stiffness of joints, muscles and related structures. These disorders affect the various articular structures consisting of cartilage, joint capsule and bone as well as connective tissue.

Trauma bears a much closer relation to hypertrophic arthritis than it does to the atrophic type. An injury resulting in a fracture of a joint where arthritis is already present will disable the joint far more severely than if no arthritis existed. Both cartilage and soft structures deteriorate much faster in the traumatized arthritic joint, due to poor circulation present. The severity and intensity of the trauma determines the amount of disability. The point in traumatology is to realize that resistance is abnormally low where arthritis involves either the spine or joints. Occasionally, there is irregular destruction of cartilage within the joint. The bone thus denuded of cartilage articulates with the opposing surface resulting in friction and eburnation. This in most cases is the natural physiological response of the intervertebral discs due to senile changes. These changes in the main consist of loss of elasticity of the discs and increase in calcification of the ground substance thus depriving the spine of its "buffer" system.

Radiologic findings of spurs and bridges in the arthritic spine are merely signs representing the natural response to the loss of its elasticity. This loss is due largely to the degeneration of the intervertebral discs. Many cases of degenerative arthritis involving the intervertebral discs have been mistakenly diagnosed as ruptured discs when occurring in the cervical spine or lumbo-sacral region. Nature further compensates for this loss of elasticity by providing for additional fixation in the spine in the form of bridges and spurs. These spurs and exostoses often progress so far that the intervertebral foramina are narrowed. Therefore, the slightest trauma or shift in spinal motion produces pressure on nerve roots causing pain and radiculitis.

Furthermore, the muscles surrounding arthritic joints are somewhat spastic, the ligaments partly calcified. Insofar as hypertrophic osteoarthritis is a systematic disease, disturbances in physiology exist. These disturbances are manifested by a slightly lowered metabolic rate, disturbance of blood flow as well as vasoconstriction. From the above, it will appear that in a background conducive to arthritis, a blow to a part of the body need not be severe in order to produce aggravation. Therefore, when evaluating or adjudicating cases of aggravation of arthritis caused by trauma, one must consider either singly or in combination such factors as metabolic and circulatory disturbances, infections, and chronic strains.

Spines or joints involved with arthritis react to trauma far differently than would normal joints. In addition, symptoms of pain and limitation of motion, following an accident in an arthritic subside much more

slowly than one not afflicted. A spine with osteo-arthritic changes is in itself more or less incapacitated for heavy work. Any attempt at heavy work may strain it beyond its physiological endurance. In *Citizens Coal Mining Co. v. Industrial Commission*⁵ it was held that where the disability is due to gradual progress of arthritis rather than aggravation by trauma, compensation will be denied. Although roentgenological evidence of lipping, spurring and bridging plays a great part in court proceedings, it should prove nothing more to the court than that the plaintiff or patient is afflicted with arthritis. The testimony of a physician that an injury more than likely aggravated an employee's pre-existing arthritic condition was held sufficient to sustain an award.⁶ Compensation was awarded in a case wherein the claimant's fall on his back awakened his dormant osteo-arthritis causing a temporary total and permanent partial disability.⁷ In *Turek v. Damalak*,⁸ compensation was denied in a case where a sewing machine operator aggravated a pre-existing arthritic condition when he moved his machine to make it more accessible while replacing a belt. Insofar as there was no evidence of over exertion and coming within the normal duties of an operator of sewing machines, compensation was denied.⁹

After trauma, when do symptoms of exacerbation begin in a spine with arthritic changes?

When acute symptoms, the result of trauma, subside in arthritic patients, there may be indications of continuing disability due to persistent pain, radiculitis, rigidity and restriction of motion. It thus becomes essential to prove that these symptoms were not present before the injury and that they progressed with increasing intensity after trauma. The exacerbation often lights up a cervico-brachial radiculitis as well as sciatica. As above stated, the question of aggravation of an arthritis is largely medical and requires substantiation in our courts. In *McCary v. Pugh*,¹⁰ it was held that the evidence must conclusively show that the condition of arthritis was aggravated or accelerated to incapacitate the employee. The disability ought to come into existence within a reasonable time following the accident and should manifest itself so it can be determined that it was brought about by an accident in the employment and work the employee was performing. The plaintiff in this case failed to prove a causal connection between an accident and arthritic condition from which he was presently suffering.

⁵ 309 Ill. 473, 141 N.E. 134 (1923).

⁶ *Crenshaw v. Pendleton Mfg. Co.*, 215 S.C. 66, 54 S.E. 2d 61 (1949).

⁷ *Gullickson v. No. Dak. Workmen's Comp. Bureau*, 83 N.W. 2d 826, 833 (N. D. 1957).

⁸ 161 Pa. Super. 84, 53 A. 2d 748 (1947).

⁹ *Id.*, 53 A. 2d at 749.

¹⁰ 70 So. 2d 708 (Ct. App. La. 1954).

Therefore, how long after a given trauma to an arthritic joint should aggravation of symptoms appear? The later the appearance of symptoms, the less the probability that any exacerbation was the result of the original injury.

Since 1956, thermography has been tested with promising results in such fields as traumatic lesions, breast cancers and malignant tumors. A most recent report by an orthopedist and radiologist from Albert Einstein Center in Philadelphia, describes the potentialities of the use of thermography in the medico-legal field of orthopedics.¹¹ Borderline findings in traumatology and malingering may be aided by thermography where all other diagnostic methods fail. Many patients complain of low back pain after accidents where all procedures including myelography may prove negative. However, a positive thermogram with a significant temperature differential at the level of the fourth lumbar interspace may lead to further diagnostic studies such as lumbar discograms and interosseous vertebral venogram studies. These findings may be positive for discogenic disease between L 4-5, thus solving a very important medico-legal problem. Furthermore, thermography may come into play in sprains over various parts of the body where persistent hot spots are indicated. It may still become an important diagnostic tool in traumatic injuries in latent arthritic joints as well as sprains. This is especially so where these joints and sprains are asymptomatic but become medico-legal problems in inclement weather. With these problems in traumatology filling our court calendars as well as the files of the insurance companies, thermography may show promise of creating new dimensions in diagnosis and treatment.

Arthritic inflammation of intervertebral discs was found to produce severe pains in the back and abdomen. Many operations were performed by Dr. Sullivan for so called herniated discs only to find that the severe pains in the abdomen, pelvis and back were due to inflammatory hypertrophic osteo-arthritis involving discs.¹²

The author has found deep x-ray therapy treatments very effective in over a thousand cases of radiculitis, especially in arthritic cases aggravated by trauma.¹³ Therefore, before resorting operative procedures such as laminectomy, facetectomy or fusion, deep x-ray therapy should be tried over the involved regions.

In all above cases, pre and post irradiation care of the skin was found to be of prime importance especially in hypersensitive skins. For

¹¹ Glickman and Kallish, *Thermography in Orthopedics*, 121 *Annals*, N. Y. Academy of Science, 157 to 170 (1964).

¹² Sullivan and Symonds, *Disc Infections and Abdominal Pains*, 188 *J.A.M.A.*, 655 (1964).

¹³ Gelber, *X-ray Therapy of Arthritis and Radiculitis*, 76 *Miss. Valley Med. J.* (Sept. 1956). See also other articles by the author on the same subject in earlier volumes of the *Miss. Valley Medical Journal*.

over a quarter of a century, the author has been using Rayderm Ointment to preserve the skin thus preventing any complications of allergies or hypersensitivity.

Therefore to summarize, one could readily see why the thousands of negligence and compensation cases with varying degrees of arthritis are becoming serious medico-legal problems throughout the country. Insurance companies are faced with these problems—

- a) To what extent did trauma cause an exacerbation of the arthritis?
- b) How long may such exacerbation last?
- c) What soft structures are involved?

To answer the above questions, it becomes very apparent that the course of the arthritis before the accident, whether latent or not, must be clearly established before we can determine whether trauma had an exacerbating effect.