

STATE OF MICHIGAN
COURT OF APPEALS

ANWAR ATWA, Administrator of the Estate of
MARWAN ATWA, Deceased and EATEDAL
ATWA, Individually and as Next Friend of WASEEM
ATWA, ABRAHAM ATWA and KAREEM ATWA,

UNPUBLISHED
August 26, 1997

Plaintiffs-Appellants,

v

No. 194047
Wayne Circuit Court
LC No. 95-535919-CZ

SALIM BAYYOUK and ALEXANDER'S FINE
DONUTS, INC., d/b/a DUNKIN' DONUTS,

Defendant-Appellees,

and

SALIM BAYOUK,

Defendant.

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Plaintiffs appeal by right summary disposition granted by the Wayne Circuit Court based on the exclusive remedy provision of the Worker's Disability Compensation Act. Plaintiffs contend that the facts, viewed in a light most favorable to them, bring this case within the intentional tort exception to § 131(1) of the Worker's Disability Compensation Act, MCL 418.131(1); MSA 17.237(131)(1). This case is being decided without oral argument pursuant to MCR 7.214(E).

At the outset, this Court recognizes that given the disappearance without explanation of the surveillance video tape, a presumption arises that such evidence would operate against appellees who presumably had control of it and must either have deliberately destroyed or failed to produce it. *Johnson v Secretary of State*, 406 Mich 420, 440; 280 NW2d 9 (1979).

* Circuit judge, sitting on the Court of Appeals by assignment.

Nonetheless, there is no fact or circumstance of the case which suggests that appellees “must have determined to injure the employee; in other words, he must have had the particular purpose of inflicting an injury upon his employee.” *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 172; 551 NW2d 132 (1996). While the employer arguably took inadequate steps to protect the deceased, there is nothing to evidence that the employer “must have had in mind a purpose to bring about given consequences.” *Id.*, 453 Mich at 171. Summary disposition was therefore properly granted.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell