

**GONZALES V. ALLISON & HANEY, INC., 1963-NMSC-041, 71 N.M. 478, 379 P.2d
772 (S. Ct. 1963)**

**Solomon GONZALES, Claimant, Plaintiff-Appellee,
vs.
ALLISON & HANEY, INC., Employer, and Mountain States Mutual
Casualty Company, Insurer, Defendants-Appellants**

No. 7076

SUPREME COURT OF NEW MEXICO

1963-NMSC-041, 71 N.M. 478, 379 P.2d 772

March 12, 1963

Workmen's compensation case. The District Court, Bernalillo County, D.A. Macpherson, Jr., D.J., entered judgment for claimant and defendants appealed. The Supreme Court, Noble, J., held that in absence of objections to instructions sufficient to suggest error urged on appeal, error could not be reviewed in Supreme Court for first time.

COUNSEL

Montoya & Shwartz, Albuquerque, for appellants.

Traub, Parham & Zuris, Albuquerque, for appellee.

JUDGES

Noble, Justice. Carmody and Moise, JJ., concur.

AUTHOR: NOBLE

OPINION

{*478} {1} Defendants have appealed from a judgment entered pursuant to a jury verdict awarding claimant total temporary disability of 26 weeks and partial permanent disability of 45% on account of an injury occurring on October 10, 1958.

{2} Complaint is made for the first time on appeal that by its instructions 7, 8, 9 and 10, the court charged the jury upon {*479} an issue not presented by the pleadings. We have repeatedly said that the specific vice in the challenged instruction must be pointed out and a ruling of the trial court invoked thereon to preserve the claimed error for appeal. *Zamora v. Smalley*, 68 N.M. 45, 358 P.2d 362; *Louderbough v. Heimbach*, 68 N.M. 124, 359 P.2d 518; *Alford v. Drum*, 68 N.M. 298, 361 P.2d 45 1; *State v. Compton*,

57 N.M. 227, 257 P.2d 915. In the absence of objections to the instructions sufficient to suggest the error now urged, this court said in *Louderbough v. Heimbach*, supra:

"* * * It follows, therefore, that the instructions, right or wrong, cannot be reviewed for error here for the first time."

See, also, *Warren v. Spurck*, 64 N.M. 106, 325 P.2d 284.

{3} It is also contended that the challenged instructions charged the jury upon a question on which there is no evidence. It would serve no useful purpose to detail the evidence to which the instructions complained of are directed. A review of the record convinces us that defendants' contention is without merit. Attorneys fees in the sum of \$500.00 will be awarded to claimant for attorneys fees on this appeal. The judgment appealed from should be affirmed.

{4} It is so ordered.