[HIGH COURT OF AUSTRALIA.]

MILLARS TIMBER AND TRADING COMPANY LIMITED . . . . . Appellant;
Respondent,

AND

TAYLOR . . . . . Respondent.
Applicant,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. of A. 1938.

Melbourne, *Oct.* 27, *Nov.* 3.

Latham C.J., Rich, Dixon, and McTiernan JJ.

Workers' Compensation (W.A.)—Maximum compensation payable—Whether payments in respect of children to be taken into account—Workers' Compensation Act 1912-1934 (*W.A.*) (No. 69 of 1912—No. 36 of 1934), *First Schedule.*

The First Schedule to the *Workers' Compensation Act* 1912-1934 (W.A.) provides that when total or partial incapacity for work results from the injury a worker is entitled to receive "a weekly payment during the incapacity not exceeding fifty per centum of his average weekly earnings . . . together . . . with seven shillings and sixpence per week for each child under the age of sixteen years; such weekly payment not to exceed three pounds ten shillings, and the total liability of the employer in respect thereof not to exceed seven hundred and fifty pounds."

Held that payments made in respect of children under the age of sixteen years were to be taken into account in ascertaining the maximum amount payable and that they were not sums additional to the maximum amount expressed in the schedule.

Decision of the Supreme Court of Western Australia (Full Court) reversed.

Appeal from the Supreme Court of Western Australia.

Upon an application for arbitration under the *Workers' Compensation Act* 1912-1934 (W.A.) by Walter Kenneth Taylor against

Millars Timber and Trading Co. Ltd. a statement of facts, which was substantially as follows, was agreed upon between the parties :—

1. The applicant sustained injury by accident arising out of or in the course of his employment with the respondent on 14th September 1937.

2. The applicant is still incapacitated.

3. The average weekly earnings of the applicant at all material times were £6 13s. 5d.

4. Since the date of the accident the respondent has paid the applicant £3 10s. per week and no more.

5. At the time of the accident and since, the applicant had and has five children under the age of sixteen years.

6. The applicant contends that in addition to fifty per cent of his average weekly earnings he should have been paid from the date of the accident 7s. 6d. per week for each of his children under the age of sixteen years.

7. The respondent contends that the maximum amount for which it is liable under clause 1 (*b*) of the First Schedule to the Act is £3 10s. per week.

The police magistrate upheld the applicant's contention and held that he was entitled to be paid at the rate of £5 4s. 2d. per week. On appeal the Full Court of the Supreme Court of Western Australia upheld this decision.

From the decision of the Supreme Court the employer appealed, by special leave, to the High Court.

Wilbur Ham K.C. (with him *Nelson*), for the appellant. The "weekly payment" referred to in clause 1 (*b*) of the First Schedule to the Act is really one payment made up of two items and not two separate payments. The words "together with" imply union as one payment. In the *Shorter Oxford English Dictionary* under "together" occur the expressions "together with ; along with ; in combination with ; in addition to ; in company or co-operation with ; at the same time as." The weekly payment is made to the worker, not to his children, and can be redeemed by payment of a lump sum to the worker. If *Walton* v. *Commissioner of Railways* (1) is

(1) Unreported. (Supreme Court of Western Australia, 15th June 1938.)

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correct, then not only can the maximum of £3 10s. be exceeded, but also the maximum of £750. The scheme of the Act is that there should be a maximum. It is essential that insurance companies should know the limit of their liability, otherwise it is impossible for them to fix their rates correctly. By the 1924 amendment the whole of clause 1 (*b*) was repealed and re-enacted with the addition of the words in question. The increase in the limit in 1924 was solely to cater for child allowances.

Dunphy, for the respondent. The decision of the Supreme Court was right in holding that the payments in respect of children were in addition to the weekly payments not exceeding fifty per cent of the worker's average weekly earnings. The history of the legislation shows that the interests of the worker have been extended. Every amendment which the legislature has made has been to increase the benefits of the worker, and there is no reason why the amendment which gave the worker benefits in respect of children under sixteen years of age should not have increased the benefits to which the worker was formerly entitled.

Wilbur Ham K.C., in reply.

Cur. adv. vult.

The following written judgments were delivered :—

Nov. 3.

LATHAM C.J. This is an appeal by special leave from a judgment of the Full Court of the Supreme Court of Western Australia which raises a question of interpretation of a provision in the First Schedule to the *Workers' Compensation Act* 1912-1934. The First Schedule provides that the amount of compensation under the Act shall be, " when total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per centum of his average weekly earnings during the previous twelve months if the worker has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, together in either case with seven shillings and sixpence per week for each child under the age of sixteen years ; such weekly payment not to exceed three pounds ten shillings, and the total liability of the employer in respect thereof not to exceed

seven hundred and fifty pounds." The contention of the respondent is that the limit of three pounds ten shillings per week and the limit of the total liability of the employer to seven hundred and fifty pounds are related only to the weekly payments during incapacity not exceeding one-half of the average weekly earnings of the worker and that they have no relation to the payment of seven shillings and sixpence per week for each child under the age of sixteen years. The Full Court accepted this contention, simply following a decision in *Walton* v. *Commissioner of Railways* (1). That decision was itself based upon a prior decision of the Full Court in *Darling Range Road Board* v. *Swan* (2). In that case, however, the decision was based upon the view that the words relating to the payment in respect of children had been introduced into the pre-existing section by amendment in 1924, so that the words "such weekly payment" at the end of the provision still related to the payment made in relation to weekly earnings and not to the payment made on account of children. But in 1924 the pre-existing provision was in fact repealed and the present provision, introducing payment in respect of children, was enacted. At the same time the maximum payments were raised from two pounds ten shillings to three pounds ten shillings per week, and the maximum liability of the employer was increased from £500 to £750. Thus, a consideration of the history of the legislation rather supports the view that the increases in the maximum payments were related to the introduction of the liability to make payments in respect of children.

The matter must, however, be decided upon the terms of the provision as it now stands. The clause provides that a weekly payment based on wages together with seven shillings and sixpence per week for each child shall be made. Then the clause continues: "such weekly payments not to exceed three pounds ten shillings, and the total liability of the employer in respect thereof not to exceed seven hundred and fifty pounds." The total liability is the liability in respect of "such weekly payment." "Such weekly payment" is the weekly payment referred to earlier in the section. That weekly payment is a payment not only of a sum which is related

(1) Unreported. (Supreme Court of Western Australia, 15th June 1938.)
(2) (1932) 34 W.A.L.R. 125.

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to earnings, but also a payment of sums in respect of children. These payments are to be made "together." In my opinion the weekly payment referred to at the end of the clause is the weekly payment to be made by the employer, including all the items which constitute that weekly payment, that is to say, the weekly payment based on earnings together with other sums of seven shillings and sixpence per week in respect of children. This interpretation is open upon the words of the section, and it is, I think, supported by a consideration of other provisions in the schedule.

In the first place, the clause itself provides for what is described as "a weekly payment during the incapacity." These words appear at the beginning of the clause. They undoubtedly describe the weekly payment based on earnings. If they did not also describe the weekly payments in respect of children, then the limitation that payments are to be made "during the incapacity" would not be applicable to the payments in respect of children. The result would be that the payments in respect of children would go on indefinitely, notwithstanding the complete recovery of the worker. Such a result is so unreasonable that a construction which brings it about should not be adopted unless no other construction is reasonably open.

There are several provisions in the schedule which provide for dealing with what is described as the weekly payment in certain special circumstances. Under clause 7, for example, it may be ordered, in the case of money payable to a person under a legal disability, that the weekly payment be paid into court during the disability. It would be strange if this provision did not apply to sums payable in respect of children as well as to sums based upon the earnings of the worker.

Similarly, clause 12 provides that weekly payments may be suspended if a worker refuses to submit himself for a proper medical examination. Again, it would be remarkable if payment of only a portion of the amount payable by way of compensation was suspended in such a case, with the result that the worker could refuse to submit himself for examination and yet continue to receive payments on account of children. Clause 16 provides for redemption of weekly payments by a lump sum, and clause 18 provides that

weekly payments shall not be assigned. There is every reason for reading these provisions as applying to the total amount of weekly compensation payable to a worker, including any payments on account of children.

I am, therefore, of opinion that payments made in respect of children should be taken into account when a question arises as to whether a worker has received the maximum amount of three pounds ten shillings per week or seven hundred and fifty pounds. The legislature has taken this view of the clause in the *Mine Workers' Relief Act* 1932-1934, secs. 48 and 49, but it is not necessary to rely upon these provisions in order to interpret the clause in question.

The material before the court does not disclose whether any other question arises or whether the respondent is entitled to any further order from the Local Court. The order of this court therefore should be that the case be remitted to the Local Court to do what may be just consistently with the decision of this court.

The appeal should be allowed, the judgment of the Local Court should be set aside and the case remitted as already stated. The judgment of the Supreme Court should be set aside and judgment entered in the appeal to the Supreme Court for the defendant. There should be no order for costs in the courts below. The appellant, in accordance with the terms of the order granting special leave to appeal, must pay the respondent's costs of this appeal.

RICH J. The *Workers' Compensation Act Amendment Act* 1924 (W.A.) introduced an amendment to clause 1 of the First Schedule to the principal Act by substituting for par. *b* the following paragraph : "When total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per centum of his average weekly earnings during the previous twelve months if the worker has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, together in either case with seven shillings and sixpence per week for each child under the age of sixteen years ; such weekly payment not to exceed three pounds ten shillings, and the total liability of the employer in respect thereof not to exceed seven hundred and fifty pounds."

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The addition in the new paragraph of the maintenance for children has caused some difficulty in construction. The question raised in this appeal is what are the maxima intended by the paragraph. The factors in the amount payable for total or partial incapacity are a sum not exceeding fifty per cent of the average weekly earnings and the maintenance sum for children. The limit is placed upon the aggregate sum and, children or no children, the employer's liability is confined to a weekly payment of £3 10s.

The appellant should pay the costs of this appeal, and there should be no costs below.

DIXON J. This appeal depends upon a question of construction arising under the *Workers' Compensation Act* 1912-1934 of Western Australia. It is the result of an ambiguity in that part of the schedule regulating the scale and conditions of compensation which governs the amount payable for total or partial incapacity (First Schedule, clause 1 (*b*)). The question is whether the maximum amount payable weekly on account of total or partial incapacity is three pounds ten shillings or that sum together with seven shillings and sixpence for each child of the injured worker under the age of sixteen years. In the year 1924 the legislature added to the compensation, in cases of incapacity, a weekly sum of seven shillings and sixpence for each such child. But, upon the question whether the additional payment fell outside the limitation placed upon the amount of the weekly payment, a limitation to £3 10s., or, on the other hand, was subject to that limitation, the intention of the legislature was concealed under an equivocal formula. Stripped of immaterial conditions and qualifications, the formula is expressed in these words: "A weekly payment during the incapacity not exceeding fifty per centum of his average weekly earnings . . . together . . . with seven shillings and sixpence per week for each child under the age of sixteen years; such weekly payment not to exceed three pounds ten shillings." In the last clause of this statement, does the expression "such weekly payment" mean the weekly payment consisting (1) of the sum not exceeding fifty per cent of the worker's average weekly earnings and of (2) seven shillings and sixpence for each young child? Or does it mean the

weekly payment confined to the sum not exceeding fifty per cent of his average weekly earnings and excluding the sum payable on account of young children, which thus would be treated as an addition falling outside the limitation of amount? The words quoted are followed by a limitation upon the total amount, a limitation so expressed as to raise a like question. For the clause proceeds: "and the total liability of the employer in respect thereof not to exceed seven hundred and fifty pounds." Here, does the word "thereof" relate back only to the weekly sum not exceeding fifty per cent of the worker's average weekly earnings, or to the payment consisting both of that sum and of the amount payable on account of young children? It is not satisfactory to answer the question upon which the appeal depends without answering also this question. For they are governed by the same considerations and are interdependent.

In my opinion the answer to both questions is that the maximum amounts prescribe limits beyond which the weekly payments to the worker may not go, whether computed by reference to his average weekly earnings only or by reference to those earnings and to his having children under sixteen.

As a matter of grammatical construction it must be conceded that the provision is susceptible of either meaning. But the structure of the provision suggests that what was in contemplation was one weekly payment consisting of the two integers, viz., a sum not exceeding fifty per cent of the average weekly earnings and a sum on account of young children. The limits are then imposed on the operation of what has preceded, and for that purpose the draftsman refers to the weekly payments so composed. This impression of the meaning of the limitation of amount is, I think, confirmed by some more general considerations.

(1) The policy of confining the employer's liability within a stated maximum appears not only in this provision but elsewhere in the statute. The application of such a policy demands consistency, otherwise it becomes meaningless. A clear expression of intention should, therefore, be required before attributing to the legislature an intention to restrict the operation of the maximum to part only of the weekly sum payable as compensation.

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(2) Sec. 6 (3) (*b*) of the Act applies the maximum of £750 to cases in which the injury suffered by the worker consists in the loss of a member or the like for which a lump sum is fixed by a table (Second Schedule); and it applies it in a way suggesting that the limitation affects the whole weekly payment, including the amount based on the existence of children under sixteen. When a worker so injured accepts a lump sum, he is entitled to no further weekly payments whether in respect of average weekly earnings or of young children. Those already received are to be deducted from the lump sum payable; and, on the construction of sec. 6 (3) (*a*), I think that it is clear that the amounts already paid on account of the worker's children under sixteen are included in the deduction. Yet the maximum payment to the worker suffering the loss of a member or similar injury mentioned in the table is fixed by sec. 6 (3) (*b*) at the same amount of £750 as is adopted for ordinary cases of total or partial incapacity.

(3) The *Mine Workers' Relief Act* 1932-1934, Part IV., Division 1, relating to "prohibited and notified mine-workers," although a later Act contains provisions which, I think, may be taken into account and which show that the legislature regarded the maximum of £3 10s. a week imposed by clause 1 (*b*) of the First Schedule of the *Workers' Compensation Act* 1912-1924 as governing not only the amount calculated by reference to average weekly earnings but also that payable in respect of young children. This appears, I think, from the third proviso to sub-sec. 1 of sec. 48 of the *Mine Workers' Relief Act* 1932-1934, which deals with the case of a "prohibited or notified" mine-worker who is receiving compensation under the *Workers' Compensation Act* by weekly payment in accordance with that Act. Referring in terms to such a case, the proviso goes on to state for its own purposes a contingency which, in substance, amounts to that of the mine-worker's receiving the full weekly compensation allowable. It does so in a significant form. It describes the contingency as follows: "and the circumstances are such that fifty per centum of his average weekly earnings as ascertained in accordance with the provisions of the First Schedule to the said Act together with the sum of seven shillings and sixpence for each child under sixteen years of age as allowed by the said Act exceeds in the aggregate the maximum weekly payment of three pounds ten shillings per week payable under the said Act." It thus plainly appears that in the subsequent enactment the legislature regarded

the whole weekly payments given by the *Workers' Compensation Act* for incapacity as limited to £3 10s., that is, both that part based on average weekly earnings and that based on the existence of children under sixteen.

"Where the interpretation of a statute is obscure or ambiguous, or readily capable of more than one interpretation, light may be thrown on the true view to be taken of it by the aim and provisions of a subsequent statute" (per Lord *Atkinson*, *Ormond Investment Co.* v. *Betts* (1)). (Cp. *Deputy Federal Commissioner of Taxes* (*S.A.*) v. *Elder's Trustee and Executor Co. Ltd.* (2).)

In my opinion the appeal should be allowed. The order of the Supreme Court should be discharged, and in lieu thereof it should be ordered that the matter should be remitted to the Local Court to be dealt with as should appear just. The appellant must pay the costs of the appeal to this court pursuant to its undertaking, and, as the decision of the magistrate and of the Full Court was based on the authority of *Walton* v. *Commissioner of Railways* (3), there should be no costs in those courts.

McTIERNAN J. I agree with the construction placed on clause 1 (*b*) of the First Schedule to the *Workers' Compensation Act* 1912-1934 of Western Australia by my learned brethren.

I agree that the appeal should be allowed and that the appellant should pay the costs of the appeal according to its undertaking, but that there should be no costs of the proceedings in the Local Court or the Supreme Court.

Appeal allowed. Order of Supreme Court set aside. Order of Local Court set aside and matter remitted to the Local Court to be dealt with consistently with the order of this court as should appear just. The appellant, in accordance with the terms of the order granting special leave to appeal, to pay respondent's costs of this appeal.

Solicitors for the appellant, *Jackson, Leake, Stawell & Co.*
Solicitors for the respondent, *Dwyer, Durack & Dunphy.*

H. D. W.

(1) (1928) A.C. 143, at p. 164. (2) (1936) 57 C.L.R. 610, at pp. 625, 626.
(3) Unreported. (Supreme Court of Western Australia, 15th June 1938.)