[HIGH COURT OF AUSTRALIA.]

LUYA JULIUS PROPRIETARY LIMITED AND ANOTHER . . . . . DEFENDANTS, } APPELLANTS;

AND

SHEPHERD . . . . . RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1955.

BRISBANE. *Aug.* 3;

SYDNEY, *Aug.* 23.

Dixon C.J., Webb, Fullagar, Kitto and Taylor JJ.

Workers' Compensation (Q.)—Infant worker—Injury—Sustained on journey to work—Injury due to negligence of third party—Entitled to compensation—Compensation paid to and received by infant worker—Whether infant worker entitled to maintain common law action for damages for negligence—The Workers' Compensation Acts 1916 *to* 1952 *(Q.), ss.* 9, 15, *sched. cll.* 20, 24.

An infant who has received workers' compensation under *The Workers' Compensation Acts* 1916 *to* 1952 (Q.) in respect of an injury sustained by him is not entitled to maintain a common law action for damages in respect thereof against a third party whose negligence caused the injury.

Smith v. *Commonwealth Oil Refineries Ltd.* (1938) 60 C.L.R. 141, applied; *Farmer & Co. Ltd.* v. *Griffiths* (1940) 63 C.L.R. 603 and *Cain* v. *Malone* (1942) 66 C.L.R. 10, distinguished.

Decision of the Supreme Court of Queensland (*Matthews J.*), reversed.

APPEAL from the Supreme Court of Queensland.

One Shepherd brought an action in the Supreme Court of Queensland against Luya Julius Proprietary Limited and another claiming damages for injury sustained by him when a collision took place between his motor cycle and a truck owned by the defendant company and driven by the second defendant. At the time of the accident and of the institution of the proceedings the plaintiff was an infant, but he had attained the age of twenty-one years by the time the action came on for hearing. The substantive defence raised

was based upon cl. 24 of the schedule to *The Worker's Compensation Acts* 1916 *to* 1952 (Q.) in that the plaintiff had applied for and recovered compensation under such Act and was thereby precluded from recovering in an action for damages. To this defence the plaintiff answered that at the time of the receipt of the compensation he was an infant, that such receipt of compensation was not for his benefit and was not legally binding upon him so as to preclude him from suing.

The action came on for hearing before *Matthews* J., who entered judgment for the plaintiff.

From this decision the defendants appealed to the High Court.

The relevant facts and statutory provisions are sufficiently set forth in the judgment of the Court hereunder.

G. A. G. Lucas, for the appellants.

A. L. Bennett Q.C. and *J. Aboud*, for the respondent.

Cur. adv. vult.

Aug. 23.

THE COURT delivered the following written judgment:—

This is an appeal from a judgment of the Supreme Court of Queensland (*Matthews* J.). The judgment was given in an action in which the respondent Shepherd was plaintiff and the two appellants were defendants. The plaintiff was injured in a collision which occurred in the city of Brisbane on the morning of 23rd June 1952, between a motor cycle ridden by him and a motor truck owned by the appellant company and driven by the other appellant. By their pleading the defendants denied negligence and alleged contributory negligence, but at the trial negligence was admitted, the allegation of contributory negligence was abandoned, and the sole defence on which the defendants relied was based on cl. 24 of the schedule to *The Workers' Compensation Acts* 1916 *to* 1952 (Q.). It was alleged that the injuries suffered by the plaintiff were injuries for which compensation was payable under *The Workers' Compensation Acts*, that the plaintiff had applied for and recovered compensation under the provisions of that Act, and that he was thereby precluded from recovering damages from the defendants. To this plea the plaintiff replied that he was at all material times an infant, and that it was not for his benefit that he should receive workers' compensation instead of damages.

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The plaintiff was at all material times a worker within the meaning of the Act, being employed as a shop assistant by Calile Malouf Pty. Ltd., of Stanley Street, South Brisbane. Since the accident occurred when he was travelling to his work, he was entitled to compensation under s. 9 of the Act. He claimed compensation and was paid by way of compensation between 24th June 1952 and 24th February 1953 weekly sums totalling £161 7s. 9d. The writ in the action was issued on 18th July 1953. The plaintiff was in fact at all material times an infant, and the action was commenced by his father as his next friend. He reached the age of twenty-one years on 25th August 1954, shortly before the action came on for trial.

Section 15 of *The Workers' Compensation Acts* 1916 *to* 1952 provides that the provisions set forth in the schedule to the Act shall be applicable to the business of State accident insurance and to proceedings for and consequent upon the recovery of compensation under the Act. There is a provision for amendment of the schedule by the Governor in Council by Order in Council published in the *Gazette*, but we were informed that no material amendment had been made. Clause 24 of the schedule is in the following terms:—"Recovery of damages from stranger . . . When the injury for which compensation is payable by the Insurance Commissioner under this Act was caused under circumstances creating also a legal liability in some other person to pay damages in respect thereof—(i.) The worker may both take proceedings against that person to recover damages and may apply for compensation under this Act, but is not entitled to recover both damages and compensation; and (ii.) If the worker has recovered compensation under this Act, the Insurance Commissioner shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by action or, if the parties consent, by an industrial magistrate under this Act."

In *Smith* v. *Commonwealth Oil Refineries Ltd.* (1), it was held by this Court (*Latham* C.J. and *Rich*, *Starke and Dixon* JJ.) that actual receipt by a worker of any sum by way of compensation constituted a "recovery" of compensation within the meaning of cl. 24 of the schedule, and that after such recovery an action for damages at common law could not be maintained by the worker against a person other than the employer. It was further held that a worker who had received compensation could not, by repaying the amount

(1) (1938) 60 C.L.R. 141.

received, restore himself to the position of one who had not recovered compensation. Both points had in fact been decided in the same way by the Court of Appeal on a corresponding provision in the English legislation: see *Attorney-General* v. *Arthur Ryan Automobiles Ltd.* (1) and *Huckle* v. *London County Council* (2).

In each of the above cases the worker was at all material times an adult. In *Farmer & Co. Ltd.* v. *Griffiths* (3), the worker was an infant, and a majority of two Justices of this Court (*Evatt* and *McTiernan* JJ., *Dixon* J. dissenting) held, affirming a majority decision of the Full Court of New South Wales (*Griffiths* v. *Farmer & Co. Ltd.* (4), that the receipt by an infant worker of compensation did not debar him from proceeding at common law against a third party unless it was established that it was for his benefit that he should receive compensation rather than recover damages from the third party. This case arose under s. 64 of the *Workers' Compensation Act* 1926-1938 (N.S.W.), but that section was in terms identical with the provision of the Queensland Act which had been in question in *Smith* v. *Commonwealth Oil Refineries Ltd.* (5) and is in question in this case. The question of the position of an infant worker arose again in this Court in *Cain* v. *Malone* (6). That case arose under a different section of the Act of New South Wales, but it was conceded by the appellant that he could not succeed unless *Farmer & Co. Ltd.* v. *Griffiths* (3) were overruled. A Court consisting of five Justices (*Latham* C.J. and *Rich*, *Starke*, *McTiernan* and *Williams* JJ.) was invited to overrule *Farmer & Co.Ltd.* v. *Griffiths* (3). The Court unanimously declined to overrule that case, although *Starke* J. expressed his agreement with the dissenting opinion of *Dixon* J. (7). In the present case *Matthews* J., although he also would have agreed with the view of *Dixon* J., regarded the matter as covered by *Farmer & Co. Ltd.* v. *Griffiths* (3) and himself, of course, as bound by the decision in that case.

Mr. *Lucas*, who appeared for the appellant, did not invite us to overrule *Farmer & Co. Ltd.* v. *Griffiths* (3). He argued, however, that, although cl. 24 of the schedule to the Queensland Act was in terms identical with s. 64 of the New South Wales Act, yet there were such differences between the New South Wales Act and the Queensland Act as to make the decision in that case inapplicable to the present case. He referred in particular to s. 9 of the Queensland Act and to cl. 20 of the schedule. Section 9 provides that

(1) (1938) 2 K.B. 16.
(2) (1910) 26 T.L.R. 580; (1910) 27 T.L.R. 112.
(3) (1940) 63 C.L.R. 603.
(4) (1940) 40 S.R. (N.S.W.) 296; 57 W.N. 96.
(5) (1938) 60 C.L.R. 141.
(6) (1942) 66 C.L.R. 10.
(7) (1942) 66 C.L.R., at p. 17.

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every worker who is injured by accident in certain circumstances " shall receive out of the State Accident Insurance Fund compensation in accordance with this Act, and except as in this Act is otherwise provided such payment shall be in lieu of any and all rights of action whatsoever . . . ." This does not preclude the making of a claim for damages at common law against a third party, but, read with cl. 24 of the schedule, it clearly means that an actual payment of compensation is an answer to any such claim. Clause 20 of the schedule provides that " when payment of any moneys under the Act is made to any person under twenty-one years of age, whether such person claims as a worker, dependant, or legal personal representative, the receipt of such person therefor shall be a good and valid discharge in law; and such person (notwithstanding minority) may agree with the Insurance Commissioner upon the amount of compensation payable."

Mr. *Lucas's* argument necessitates an attempt to determine the *ratio decidendi* of *Farmer & Co. Ltd.* v. *Griffiths* (1). Under s. 29 (1) of the English Act of 1925 an " option " between two remedies was expressly given to the worker, and it is understandable that it should be held that what would amount to a binding exercise of an option or election in the case of an adult should be held not to amount to such an exercise in the case of an infant—whether the option or election be given by statute or contract or will or otherwise: cf. *Stephens* v. *Dudbridge Ironworks Co.* (2); *Murray* v. *Schwachman Ltd.* (3); and *Stimpson* v. *Standard Telephones & Cables Ltd.* (4). The question arising in such a case is not a question of construction, and such a view does not attribute different meanings to the word " option " according as the optionee is an adult or an infant. But, although *Stimpson's Case* (4) seems to have been regarded as supporting the decision in *Farmer & Co. Ltd.* v. *Griffiths* (1), the latter case is not put, and could not, in our opinion, be put on the basis that the infant was called upon to exercise an option or make an election. What s. 64 of the New South Wales Act, as interpreted in *Smith's Case* (5), said was simply that an actual receipt of compensation should have a certain effect in law.

Whatever may be thought of the decision in *Farmer & Co. Ltd.* v. *Griffiths* (1), it rests fundamentally, we think, on the proposition that an infant could not give a valid discharge from an obligation to the benefit of which he was entitled. *McTiernan* J. put it that, unless

(1) (1940) 63 C.L.R. 603.
(2) (1904) 2 K.B. 225.
(3) (1938) 1 K.B. 130.
(4) (1940) 1 K.B. 342.
(5) (1938) 60 C.L.R. 141.

it was shown to be for his benefit, the infant was not " capable of performing the act of recovering compensation and thereby discharging his right to damages ". (1) His Honour speaks again of the incapacity of the " infant worker to perform the act of recovering compensation " (2) within the meaning of s. 64. *Evatt* J. (3) agreed with the judgment of *McTiernan* J. Again, in *Cain* v. *Malone* (4), *Rich* J., adopting the words of counsel for the appellants, stated the question in the case as being whether " for the purpose of s. 63, any *de facto* receipt by an infant of money paid to him by way of workers' compensation . . . is a binding receipt " (5) so as to carry the consequences prescribed by the section. Moreover it was in relation to this very question of capacity to give a discharge that *Dixon* J. considered the view of the majority in *Farmer & Co. Ltd.* v. *Griffiths* (6) to be erroneous. He said: " Now it is not true that an infant can give a good discharge for no payment made to him . . . there is no such general rule in respect of liabilities contractual in their origin" (7).

As soon as it is seen that the decisions in *Farmer & Co. Ltd.* v. *Griffiths* (6) and *Cain* v. *Malone* (4) are based on a supposed incapacity of an infant to give a binding receipt for moneys paid to him by way of workers' compensation, it becomes plain, we think, that those decisions can have no application to cases arising under *The Workers' Compensation Act* 1916 *to* 1952 (Q). For, whatever might have been the true position at common law, that Act expressly confers upon an infant the capacity which was denied in those cases. Clause 20 of the schedule says that the receipt of an infant for any moneys paid to him under the Act shall be a good and valid discharge in law. He may, moreover, make a binding contract with the Insurance Commissioner with regard to the amount of compensation payable. It would be inconsistent with cl. 20 to say that an infant is " incapable of performing the act of recovering compensation " within the meaning of cl. 24. Clause 20 makes him capable of receiving compensation and of giving a valid receipt and discharge therefor. In these respects he is expressly placed in the same position as a person of full age: he has the same capacity as a person of full age. His receipt carries the consequences prescribed by s. 9, and no reason can, consistently with cl. 20, exist for saying that the decision in *Smith* v. *Commonwealth Oil Refineries Ltd.* (8), is not applicable to him.

(1) (1940) 63 C.L.R., at p. 616.
(2) (1940) 63 C.L.R., at p. 617.
(3) (1940) 63 C.L.R., at p. 614.
(4) (1942) 66 C.L.R. 10.
(5) (1942) 66 C.L.R., at p. 15.
(6) (1940) 63 C.L.R. 603.
(7) (1940) 63 C.L.R., at p. 608.
(8) (1938) 60 C.L.R. 141.

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For these reasons this appeal should, in our opinion, succeed. The appeal should be allowed with costs, the judgment of the Supreme Court discharged, and in lieu thereof there should be judgment for the defendants in the action with costs.

Appeal allowed with costs.

Order that the judgment of the Supreme Court of Queensland (Matthews *J.*) *be discharged, and in lieu thereof order that there be judgment for the defendants in the action with costs.*

Solicitors for the appellants, *F. B. Hemming & Hall.*
Solicitors for the respondent, *Frank Roberts & Kane.*

R. A. H.