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IN THE SUPREME COURT OF)
)
THE TERRITORY OF PAPUA) 1962 No. APP4 (N.G.)
)
NEW GUINEA) Appeal No. 2 of 1962 (N.G.)

IN THE MATTER of the Workers' Compensation Ordinance 1958-1960

- and -

IN THE MATTER of an Appeal pending from an award and Order of Mr R.G.Ormsby, Stipendiary Magistrate at Madang, wherein WATKINS (OVERSEAS) LIMITED is Appellant and PIUS WANGI is Respondent

- and -

IN THE MATTER of the Workers' Compensation Ordinance 1958-1961

- and -

IN THE MATTER of an Appeal from the District Court at Madang

BETWEEN:

PIUS WANGI

Appellant

WATKINS (OVERSEAS) LIMITED

Respondent

J U D G M E N T

In the matter of an arbitration between the worker and the employer Company an Order and award was made on the 13th December, 1961 that:-

(1) The said Watkins (Overseas) Limited is liable to pay to the said PIUS WANGI compensation assessed in accordance with the Fourth Schedule to the Workers' Compensation Ordinance 1958-1961 in addition to weekly payments assessed in accordance with the Second Schedule to the said Ordinance.

(2) That the respondent Watkins (Overseas) Limited do pay to the applicant PIUS WANGI the weekly sum of £2.7.3 as compensation for personal injury caused to the said PIUS WANGI on the Fourth day of May, 1961 by accident arising out of his employment as a casual worker employed by the said respondent such weekly payment to commence from the 19th day of December, 1961 and to continue during the total incapacity of the said PIUS WANGI for work.

(3) That the respondent Watkins(Overseas) Limited do pay to the applicant PIUS WANGI and amount of £634.10.0 as compensation assessed in accordance with the Fourth Schedule to the said Ordinance but limited by the application of Section 13(1) of the said Ordinance and reduced by the application of Section 7(1) of the said Ordinance.

Against this award the employer has appealed to this Court seeking a variation by striking out paragraphs 1 and 3 of this award. The worker has appealed seeking a variation of paragraph 3 of the award by substituting for the sum of £634.10.0 the sum of £951.15.0. An Order was made herein by the Registrar that both Appeals be heard together.

In the arbitration it was agreed by both parties that by reason of injuries suffered by the Appellant by accident arising out of or in the course of his employment he had been rendered totally and permanently incapacitated for work. The injuries included spinal injuries which inter alia deprived the Appellant of the loss of the use of both legs.

provision creating a right in the Appellant to a payment of the amount shown in the Fourth Schedule as appropriate to any Fourth Schedule injury which he suffered - in this case, loss of the use of both legs.

Apart from Section 13(1) the operative provisions entitling workers to benefits would in some cases continue until very large sums had been paid thereunder. Section 13 is a Section which is primarily directed to declaring a maximum amount beyond which the worker's entitlement and the employer's liability shall not extend.

Section 13(1) provides that notwithstanding anything contained in the Ordinance the amount of compensation payable in respect of an injury or injuries caused by any one accident shall not, except as provided by that Section, exceed $2,950.

Section 13(11) states, "Where an injury results in death or the total and permanent incapacity of the worker for work the last preceding sub-section shall not apply to limit the total amount of compensation payable under this Ordinance, which shall be assessed in accordance with the Second and Fourth Schedules to this Ordinance."

It is said that the effect of the words following the comma, hereinafter called "the words in question", is to enact that in the case of a worker who is totally and permanently incapacitated there shall be a right in him to recover all sums to which the worker might be entitled by reason of Section 8 under the terms of the Second Schedule and also to recover the sums set out in the Fourth Schedule opposite any of the named injuries which the worker may have suffered. It is to be noted that it was unnecessary to provide any such positive enactment in respect of the Second Schedule payments because they are already independently

him and his dependants by Section 8 and Section 5(2).

It is pointed out that the words in question were inserted in Section 13(2) by way of addition to the terms of that Sub-Section as it appears in the Ordinance in force immediately before the Ordinance of 1958. That Ordinance contained a provision corresponding to Section 11(1), Section 11(2), Sections 13(1) and but for the words in question, 13(2). Under that Ordinance it is clear that a person suffering a total and permanent incapacity could claim no benefit in the nature of a Fourth Schedule payment because the only provision conferring Fourth Schedule benefits expressly excluded him therefrom.

It is said, therefore, that the insertion of the words in question was a device adopted to reform this exclusion. It is said also that unless that meaning is ascribed to the words in question then the purpose of their inclusion is obscure and they have no work to do.

To this Mr White makes answer that the words in question are inapt to express the positive grant of a benefit and that they appear in a Section which is concerned not to grant benefits but to declare the limits or lack of limits of benefits granted elsewhere in the Ordinance.

It is said also that in view of the exclusion by Section 11(1) of the Fourth Schedule benefits by express words in the case of persons totally and permanently incapacitated, it might have been expected that a provision intended to reverse that exclusion would have been made by some unequivocal expression to be found perhaps in an amendment of that Section or at any rate having some compelling reference thereto.

It is also said that the scheme of the Act does not encourage the view that legislative policy would be likely to envisage the payment of a Fourth Schedule benefit against a background of continuing weekly payments. Reference to Sheppard v. United Stevedoring Proprietary Limited 54 A.L.R. 529 provides some support for this view. Again it is said that the task of the worker is to extract from the words in question the positive enactment of a liability of the employer to pay and that the word "assessed" is a word more apt to express the notion of calculating something otherwise ordered to be paid than to create an original liability in respect of something not otherwise ordered to be paid.

The strength of the argument for the worker lies in the difficulty of ascribing any purpose to the words in question unless they are intended to create some additional entitlement in the worker or his dependants. If they do create an additional entitlement they do so only in respect of the Fourth Schedule payments. On the worker's contention the words must be taken to mean that in cases of death or total permanent incapacity, there shall be a payment by reference to the Fourth Schedule as well as payments under the Second Schedule. Considered in relation to death, this must be taken to mean either, nothing, because the Fourth Schedule does not deal with death, or to mean that there shall be a payment by reference to the various members of the body, loss of use of which is caused by the death. The latter is absurd. If therefore the words are intended to create a new liability they fail to do so with regard to death. This throws considerable doubt on the suggestion that they do create a new liability at all. So far as cases of total permanent incapacity are concerned, it is difficult to believe that the

been made and death has supervened, and in Paragraph 13 for payment of a lump sum of an amount less in certain circumstances than the Fourth Schedule payment appropriate to the injury suffered, are to apply in the case of entitlements on death and total permanent incapacity. Used in this sense, the words in question do the opposite of what is claimed for them on behalf of the worker. I am inclined to think this is the true explanation of the insertion of the words in question. I therefore think that the words in question cannot be used to create a new original liability to pay under the Fourth Schedule as well as unlimited weekly payments in the case of a total and permanent incapacitated worker.

The appeal by Watkins (Overseas) Limited must therefore be allowed and it follows that the appeal by the worker must be dismissed.

So far as costs are concerned, I think the employer failed to take this obviously arguable matter seriously enough at the arbitration proceedings. There is, of course, a disinclination on the part of the Court to visit a liability for costs on a worker who is seriously injured and has not acted unreasonably in the proceedings. In addition, the employer paid no costs of the arbitration.

I did think the worker should contribute to some degree to the costs of the successful Appellant, but when I come to consider the amount involved, it seems to me to be so small as to lack significance to the employer but to constitute a considerable burden to the worker. I think therefore that the proper Order in the circumstances is that each party bear its own costs.

The formal Order is that the award be varied by striking out paragraphs 1 and 3 of the award and the figure "(2)" and that there be no Order as to costs.

J.

9.30 am. 31st March 1962.