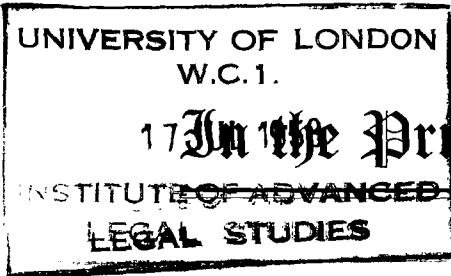


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No. 1 of 1949. 31170

ON APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES.

BETWEEN

SLAZENGENS (AUSTRALIA) PTY. LIMITED *Appellant*

AND

10 IVY PHYLLIS EILEEN BURNETT, Administratrix
of the ESTATE of MINNIE GERTRUDE MILLIGAN,
deceased *Respondent.*

Case for the Respondent

RECORD.

1. This is an appeal from so much of a rule of the Supreme Court of New South Wales (Jordan C.J. and Davidson and Street JJ.) dated the 1st June, 1948, as held (with a consequential order as to costs) that on the findings of fact contained in a case stated for the decision of the Court by the Chairman of the Workers' Compensation Commission of New South Wales the Commission did not err in law in holding that John Samuel Milligan "received injury" within the meaning of section 7 (1) (b) of the Workers' Compensation Act, 1926-1947. p. 29, l. 15.

20 2. The Respondent is the administratrix of the estate of Minnie Gertrude Milligan who was an applicant for workmen's compensation in respect of the death of her husband John Samuel Milligan, a worker employed by the Appellant, on the 29th May, 1947, as the result of a coronary occlusion which he suffered whilst journeying by tram from his place of abode to his place of employment. p. 35, ll. 30-39. p. 2, ll. 7-17.

3. The principal relevant provisions of the Workers' Compensation Act, 1926-1947, are as follows :—

6. (1) In this Act, unless the context or subject-matter otherwise indicates or requires :

* * * * *

30 "Dependants" means such of the members of the worker's family as were wholly or in part dependent upon the earnings of the worker at the time of his death, or would but for the incapacity due to the injury have been so dependent, . . .

* * * * *

“ Injury ” means personal injury arising out of or in the course of employment and includes a disease which is contracted by the worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor but does not, save in the case of a worker employed in or about a mine to which the Coal Mines Regulation Act, 1912-1941, applies, include a disease caused by silica dust.

* * * * *

7. (1) (a) A worker who has received an injury whether at or away from his place of employment (and in the case of the death of the worker, his dependants) shall receive compensation from his employer in accordance with this Act. 10

(b) Where a worker has received injury without his own default or wilful act on any of the daily or other periodic journeys referred to in paragraph (c) of this subsection, and the injury be not received—

(i) during or after any substantial interruption of, or substantial deviation from, any such journey, made for a reason unconnected with the worker’s employment or unconnected with his attendance at the trade, technical or other school, as the case may be ; or 20

(ii) during or after any other break in any such journey, which the Commission, having regard to all the circumstances, deems not to have been reasonably incidental to any such journey ;

the worker (and in the case of the death of the worker, his dependants), shall receive compensation from the employer in accordance with this Act.

(c) The daily or other periodic journeys referred to in paragraph (b) of this subsection shall be— 30

(i) between the worker’s place of abode and place of employment ;

. . .

8. (1) Where death results from the injury, and the worker leaves any dependants wholly dependant upon his earnings, the amount of compensation payable by the employer under this Act shall be—

(a) a sum equal to his earnings in the employment of the same employer during the four years next preceding the injury, or the sum of four hundred pounds, whichever of those sums is the larger, but not exceeding in any case eight hundred pounds. 40

* * * * *

31. (1) There shall be a Workers’ Compensation Commission

. . .

* * * * *

36. (1) The Commission shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Act, and the action or decision of the Commission shall be final.

(2) Nothing in subsection one of this section shall prevent the Commission from reconsidering any matter which has been dealt with by it, or from rescinding, altering or amending any decision or order previously made, all of which the Commission shall have authority to do.

10 (3) The decisions of the Commission shall be upon the real merits and justice of the case, and it shall not be bound to follow strict legal precedent.

(4) Without limiting the generality of the provisions of subsection one of this section, the jurisdiction of the Commission shall extend to determining—

(a) the question whether an injury received by a worker entitles him to compensation under this Act ;

* * * * *

20 37. (1) No award, order, or proceeding of the Commission shall be vitiated by reason of any informality or want of form, or be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature, on any account whatsoever.

(2) No writ of prohibition or certiorari shall lie in respect of any award, order, proceeding, or direction of the Commission relating to, or on the face of the proceedings appearing to relate to any matter arising out of this Act.

(3) The validity of any proceeding or decision of the Commission shall not be challenged in any manner whatsoever.

30 (4) When any question of law arises in any proceeding before the Commission, the Commission may of its own motion, and shall, if in the manner and within the time prescribed by rules any party to the proceedings so requests, state a case for the decision of the Supreme Court thereon. A case may be stated under this section, notwithstanding that an award, order, direction or decision has been made or given by the Commission.

(5) The Supreme Court for the purpose of hearing any such case shall consist of three judges, and shall have power to make such order as it thinks fit in regard to the costs of and incidental to any case so stated.

40 (6) The judges of the Supreme Court, or any two of them, may also make rules with regard to the setting down of any case for argument, and the hearing and decision of the same, and its return with the decision of the Supreme Court thereon.

(7) The decision of the Supreme Court upon the hearing of any such shall be binding upon the Commission and upon all the parties to such proceeding.

* * * * *

p. 3, l. 45 to
p. 4, l. 18.

4. The Commission found that John Samuel Milligan was employed by the Appellant; that his wife was wholly dependent on his earnings at the time of his death; that on the 29th May, 1947, while on his daily journey between his place of abode and his place of employment he suffered a coronary occlusion from which he died on the same day; that the physical effort of the journey played no part in the happening of the occlusion; that he had been suffering from hypertension and myocardial degeneration which as well as the coronary occlusion were not contracted in the course of or contributed to by his employment and were not an injury which arose out of or in the course of his employment; and that the coronary occlusion had no causal connection with the journey. 10

p. 9, l. 32-p. 10,
l. 15.

5. On these facts the Commission held that John Samuel Milligan received injury within the meaning of section 7 (1) and that his widow was entitled to £800 and costs.

p. 2, l. 30-p. 3,
l. 44.

6. The judgment of the Commission is set out in the case stated.

p. 1, l. 30.

7. The Appellant pursuant to section 37 (4) requested the Commission to state a case for the decision of the Supreme Court on the question whether on the Commission's findings of fact the Commission erred in law in holding that John Samuel Milligan received injury within the meaning of section 7 (1) (b). 20

p. 4, l. 21.

p. 30, l. 29.

8. The Supreme Court (Jordan C.J. and Davidson and Street JJ.) by rule dated the 1st June, 1948, answered the question in the negative for reasons given by Jordan C.J. who thought that the case was entirely covered by *Peart v. Hume Steel Limited* (1947) 47 St. R.N.S.W. 384, the reasoning of which had been approved in the High Court of Australia.

pp. 32-33.

p. 33.

9. On the 28th June, 1948, the Supreme Court (wrongly, as the Respondent contends) granted the Appellant conditional leave to appeal to His Majesty in Council, and on the conditions being fulfilled, final leave was granted on the 15th November, 1948. 30

p. 35.

10. The Respondent respectfully submits that in sections 36 and 37 of the Workers' Compensation Act, the legislature was clearly providing that the Commission is not subject to control by way of appeal or otherwise by any court or by His Majesty in Council, save only for the control exercised by way of a case stated. The Respondent submits that on case stated the decision of the Supreme Court is final and conclusive and that on the principal of such cases as *De Silva v. The Attorney General of Ceylon* [1949] W.N. 248, such decision is not subject to review by His Majesty in Council. 40

11. The Respondent also submits that "injury" in section 7 (1) (b) obviously has a wider meaning than "an injury" in section 7 (1) (a) and

than the definition of " Injury " in section 6. The context and subject-matter of sub-clause (b) requires such wider meaning since otherwise the sub-clause would have no possible field of operation. The Respondent submits that the Commission and the Supreme Court were therefore right in holding that John Samuel Milligan received injury when he had a fatal seizure whilst on a journey to which section 7 (1) (b) applies.

12. The Respondent therefore submits that this appeal should be dismissed for the following amongst other

REASONS

- 10 (1) BECAUSE the Workers' Compensation Act sets up a tribunal in respect of whose decisions no appeal lies to His Majesty in Council.
- (2) BECAUSE the decision of the Supreme Court on a question of law stated by the Commission for the decision of the Supreme Court thereon is final and conclusive.
- 20 (3) BECAUSE if an appeal as of right lies to His Majesty in Council, His Majesty in Council should not entertain the appeal, because under the Workers' Compensation Act the result of the appeal can in no event affect the rights of the parties to this appeal.
- (4) BECAUSE the Commission and the Supreme Court rightly interpreted section 7 (1) (b) of the Workers' Compensation Act.
- (5) BECAUSE the Commission and the Supreme Court rightly applied section 7 (1) (b) to the facts found by the Commission.
- (6) BECAUSE the reasons given by the Commission and by the Supreme Court are sound.

30

FRANK GAHAN.

In the Privy Council.

ON APPEAL

*from the Supreme Court of New
South Wales.*

BETWEEN

SLAZENGERS (AUSTRALIA)

PTY. LIMITED - *Appellant*

AND

IVY PHYLLIS EILEEN

BURNETT, Administratrix

of the Estate of Minnie

Gertrude Milligan, deceased *Respondent*

Case for the Respondent

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