UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
10 MAY 1973
25 RUSSELL SQUARE
LONDON W.C.1

Judgment 4 of 1972

No. 35 of 1970

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA

BETWEEN

MARIA STASKA (substituted for Jan Staska since deceased) — Appellant

- and -

GENERAL MOTORS-HOLDEN'S PROPRIETARY LIMITED — Respondents

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CASE FOR THE RESPONDENTS

RECORD

1. This is an appeal from the judgment of the High Court of Australia (Barwick, C.J., Kitto and Owen, JJ., McTiernan and Windeyer, JJ., dissenting) dated the 18th April 1969, which had allowed the Respondents' appeal from a judgment of the Full Court of the Supreme Court of South Australia (Bray, C.J., and Walters, J., Mitchell, J., dissenting) dated the 22nd November 1968, which had allowed the Appellants appeal from a decision of the Local Court of Adelaide (Judge Williams) dated the 8th July 1968 to the effect that a claim by the Appellant for workmens compensation was limited to a total of $5,200.

p.58
pp.34,35
pp. 3-18

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2. The facts of the case are not now in dispute and are set out in the judgment of Judge Williams. It was common ground that on the 21st May 1956, the Appellant suffered an injury to his lower back which arose out of and in the course of his employment by the Respondents, and in respect of which he was entitled to receive compensation under the Workmen's Compensation

pp. 3-5

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Act 1932 of South Australia (hereinafter called 'the Act'). He returned to work after a few days but from time to time had recurring after effects of the injury, including the removal of a spinal disc in November 1961. After that operation the Appellant returned to a clerical employment with the Respondents, but the after effects continued until he ceased work on 7th February 1967, and he has not worked since. Judge Williams found on the evidence before him that the Appellant's condition would not improve, and that his total incapacity for work was permanent. 10

3. The Appellant was incapacitated for various periods between December, 1956, and January, 1967, arising out of the injury to his lower back sustained on the 21st May, 1956, in respect of which he received weekly payments of compensation under the Act.

pp. 1,2

4. By an application dated the 27th March, 1968, the Respondents applied under section 28 of the Act for redemption of their liability to make weekly payments of compensation to the Appellant. The Appellant did not file any answer and at the hearing supported the application. The learned arbitrator, Judge Williams, was called upon to decide what was the statutory limit under the Act to the total amount which the Respondents might be called upon to make by way of weekly payments - that being a matter which had necessarily to be decided in determining the amount of the lump sum to be paid in redemption of liability to make further payments. The arbitrator held that the limit of the Respondents' liability in respect of weekly payments to the Appellant was the sum of £2,600 ($5,200), that being the figure specified in section 18 (3) as it stood in May, 1956, when the accident to the Appellant occurred. 20 30

p.5 11.26-28

5. The relevant provisions of the Act as amended to the 1st June, 1964, are as follows :- 40

"18. (1) Where total or partial incapacity for work results from the injury, the amount of compensation shall be a weekly payment during the incapacity not exceeding a sum equal to three-quarters of the average

weekly earnings of the workman during the previous twelve months if the workman 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, plus one pound fifteen shillings per week for each child under the age of sixteen years totally or mainly dependent upon the earnings of the workman and, if the workman at the time of the accident had or during the incapacity has a wife totally or mainly dependent upon his earnings, an additional sum of four pounds ten shillings a week payable from the date of such dependency.

(2) The weekly payment to a workman having a wife or a child under the age of sixteen years totally or mainly dependent on his earnings shall not exceed sixteen pounds five shillings a week or his average weekly earnings during the period aforesaid, whichever is lower.

(3) The total liability of the employer in respect of payments under this section shall not exceed three thousand five hundred pounds."

As at the 21st May, 1956, the date of the Appellant's injury, section 18 (3) of the Act provided for a total liability of £2,600 (Act No. 49 of 1955).

In 1958, section 18 of the Act was amended by Act No 42 of 1958; the amending Act by Section 5 thereof increased the amounts of weekly payments for which section 18 then provided and increased the maximum liability fixed by section 18 (3) to £2,750 and further provided as follows :-

"8. Section ... 5 ... of this Act shall apply only in relation to injury or death caused by an accident occurring after the commencement of this Act.

In cases of injury or death caused by accident occurring before the commencement of this Act the provisions of the principal Act as in force immediately before the commencement of this Act shall apply."

In 1960, a further amending Act (No. 11 of 1960) was passed which again amended section 18 of the Act by increasing the amounts of weekly payments and increasing the maximum liability from £2,750 to £3,000. Act No. 11 of 1960 made identical provision in relation to its application as in section 8 of Act No. 42 of 1958 10

In 1961, section 18 of the Act was further amended by Act No. 47 of 1961 under which the weekly payments were increased and the maximum liability was increased from £3,000 to £3,250. Identical provision in relation to its application was made as in section 8 of Act No. 42 of 1958. 20

A similar course was followed in 1963 when Act No. 55 of that year was passed; it increased the weekly payments under section 18 of the Act and increased the maximum liability under section 18 (3) to £3,500 and made identical provision in relation to its application as in section 8 of the Act No. 42 of 1958.

In 1965, by Act No. 52 of that year section 18 (3) of the Act was amended to read as follows :- 30

"The total liability of the employer in respect of payments under this section shall not exceed in the case of total incapacity £6,000 and in the case of partial incapacity the sum of £4,500.

Further by Act No. 52 of 1965 section 9, it was provided:

"9. The following section is enacted and inserted in Part III of the principal Act 40

after section 28 thereof :-

28a. Notwithstanding anything in this or any other Act contained, where -

(a) compensation has been paid to a workman pursuant to this Part;

(b) the workman has returned to work; and

10 (c) the workman subsequent to his return to work dies or suffers incapacity as a result of the injury in respect of which compensation was paid,

the amount of compensation payable in respect of the death of the workman shall be computed and based upon the amount of compensation payable under this Act at the time of the death of the workman or, as the case 20 may require, the amount of weekly compensation payable in respect of the subsequent incapacity shall be computed and based upon the rates of weekly compensation payable at the time of the subsequent incapacity.

Provided however that this section shall not apply where compensation has been paid to the workman in respect of the injury pursuant to section 26 of this Act."

30 (Section 26 deals with fixed rates of compensation for certain injuries).

In 1966, by Act No. 86 of that year (the Workmen's Compensation Act Amendment Act, 1966) the said section 28a was amended so as to read as follows :-

"28a. Notwithstanding anything in this or any other Act contained, the amount of compensation payable in respect of the

death of a workman after the commencement of the Workmen's Compensation Act Amendment Act, 1966, shall be the amount of compensation payable under this Act at the time of the death of the workman whether the injury resulting in the death occurred before or after such commencement and the amount of the weekly payment of compensation payable to a workman for total or partial incapacity pursuant to this Part after the said commencement shall be the weekly rates of compensation in force from time to time, irrespective of when the injury occurred: Provided that this section shall not apply where compensation has been paid to the workman in respect of the injury pursuant to section 26 or section 28 of this Act nor shall it apply to the total liability of an employer under subsection (3) of section 18 of this Act." 10 20

6. The learned arbitrator, Judge Williams, in his decision, in holding that section 18 (3) as at the date of the accident in May, 1956, applied, considered that there was nothing in Act No. 52 of 1965 which made the 1965 amendment to section 18 (3) retrospective. He considered that the 1965 form of section 28a was introduced for the very purpose of dealing with the operation of any amendments raising the amounts of compensation, but that the section made no provision in relation to the operation of the 1965 amendments to section 18 (3). He concluded that such amendments were not to apply to any incapacity arising after the passing of the 1965 Act as a result of injury before the passing of the 1965 Act. The learned arbitrator then considered section 28a in its 1966 form and found that the provision that the section should not apply to the total liability of an employer under section 18 (3) to be a legislative declaration that the appropriate amount to be taken as limiting the total liability of the employer in any particular case should be the amount payable as at the date of the injury and not as at the date of the incapacity. The learned arbitrator considered the principle that, where a statute alters the rights of persons or creates fresh liabilities with regard to persons or imposes obligations on

p.14 ll. 11-18
p.17 ll. 39-43
pp.10-11
pp.11-12

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persons, it ought not to be held retroactive in its operation unless the words are clear, precise and free from ambiguity. He said that the right of a workman who suffers from an accident for which compensation is payable under a Worker's Compensation Act accrues immediately on the happening of the injury; he found that the Respondents' total liability as at the time when the accident occurred was fixed by section 18 (3) at £2,600. He held that the 1965 amendments did not retrospectively alter that amount. He relied on the decision of the High Court of Australia in Kraljevich v. Lake View and Star Ltd. 70 C.L.R. 647. The learned arbitrator rejected the Appellant's argument that the intent and meaning of the 1965 amendments to section 18 (3) were that the increased amounts were to apply to incapacities for work which occurred after the passing thereof, so that since the Appellant's incapacity for work did not commence until late 1966, he was entitled to receive in all $12,000, the amount provided for by those amendments in respect of total incapacity. He found nothing in the case of Ogden Industries Pty. Ltd. v. Lucas 41 A.L.J.R. 147 which threw any doubt upon the correctness of the Kraljevich case. The Appellant had had a number of periods of incapacity from work before the passing of the 1965 amending Act for which he had been paid compensation on the basis of total incapacity and it seemed to the learned arbitrator that for that reason the Respondents had at that time already acquired a vested right to limit the total payments of compensation for total incapacity to $5,200, of which the Respondents could not be deprived except by legislation which because of its subject matter or express words clearly increased the limit retrospectively. The learned arbitrator concluded that the 1965 amendments of section 18 (3) were not retrospective so as to deprive the Respondents of their vested right because there was no clear indication in the 1965 amending Act that they were intended to have a retrospective effect on already accrued rights.

pp.14-16

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The learned arbitrator accordingly awarded the sum of $4,694 to the Appellant by way of

pp.17-18

redemption of the Respondents' liability to make weekly payment of compensation to the Appellant, such award being based on the sum of $5,200 as the total liability provided for by section 18 (3) of the Act as at the 21st May 1956 the date of the Appellant's injury

pp.18-19

7. The Appellant appealed to the Full Court of the Supreme Court of South Australia. The appeal was heard by Bray C.J., and Walters and Mitchell, JJ., and Judgment was given on the 22nd November, 1968 allowing the Appellant's appeal by a majority. 10

pp. 20-24

8. In his Judgment, Bray, C.J., said that he had read Mitchell, J.'s judgment. The learned Chief Justice agreed with Mitchell, J.'s view

p.20 ll. 8-16

that the period in section 18 (1) of the Act over which the average weekly earnings were to be calculated was the period immediately before the injury and not the period immediately before

p.20 ll. 16-22

the incapacity. He further agreed with Mitchell, J., that the word 'injury' in section 18 (1) of the Act meant the completed physical condition from which the incapacity resulted and not the event which produced the phenomenon from which the physical condition later developed. He further agreed with Mitchell J., that the 20

p.20 ll. 22-26

injury to the Appellant occurred on the 21st May 1956, and rejected the argument that the Appellant suffered injury on the 14th November 1966, or, alternatively on the 7th February, 1967. 30

p.21 ll. 35-40

The learned Chief Justice held, disagreeing with Mitchell, J., that the effect of section 28a in its 1965 form in making applicable the weekly rate under section 18 (2) of the Act at any particular time also made applicable automatically the maximum in force under section 18 (3) of the Act in the absence of some provision to the contrary, express or implied. He relied upon the case in the High Court of

pp. 21-22

Australia of Wattle Gully Mines v. Clementi 94 C.L.R. 353 at p.363 when the following was said :- 40

"But however this may be, the provisions of the principal Act which relates to 'rates' of compensation must comprise the whole of the provisions of that Act which, in a case

for which weekly payments are provided, regulate the extent of the employer's liability to make such payments. The rate of payments in such a case is not fully or accurately described by saying that it is so much a week; it is so much a week subject to the Statutory limit upon the total amount to be paid."

The learned Chief Justice concluded that when the Appellant's total incapacity began on the 13th November, 1966, he acquired a right under the 1965 Act to weekly payments at the rate in force at that time and up to the total maximum in force at that time, namely $12,000. He did not consider that his conclusion contravened the presumption against the retrospective operation of statutes or the rules relating to repealing statutes contained in the Acts Interpretation Act. He was in favour of allowing the Appeal and sending the case back for re-assessment of the compensation on the basis that the maximum amount for which the Respondents could be liable was $12,000.

p.22 ll. 5-10

pp. 22-23

p.24

9. In her dissenting judgment, Mitchell, J., set out the facts of the case relevant to the appeal. The learned Judge rejected the argument that section 18 of the Act provided for the computation of weekly payments at the time of the resulting incapacity and not at the time of the accident. The learned Judge then dealt with the submission that where section 18 (1) of the Act refers to incapacity resulting 'from the injury' it refers to the completed physical condition from which incapacity results but does not necessarily relate to the event or accident which produces the condition from which the physical disability develops. It seemed to the learned Judge that this submission was consonant with the argument for the Appellant which did not find favour with the High Court of Australia in <u>Ogden Industries Pty. Ltd. v. Lucas 41 A.L.J.R. 146</u>. On the evidence the learned Judge could see no reason to disagree with the finding of Judge Williams that the injury occurred on the 21st May, 1956. The learned Judge then dealt with the submission that the 1965 amendment to section 18 (3) operated in favour of the Appellant. The

pp. 25-31

pp. 26-27

pp. 27-28

p.28 ll. 14-16

pp. 28-31

p.31 ll. 3-6 — learned Judge found herself unable to distinguish the case of Kraljevich v. Lake View & Star Ltd. 70 C.L.R. 647 and concluded that as soon as the injury by accident had occurred to the Appellant on the 21st May, 1956, the total liability of the Respondents was then fixed at the amount specified in section 18 (3) of the

p.31 — Act then in operation. The learned Judge considered that neither the fact that the 1965 Act omitted the exclusion of past accidents (10) which was contained in previous amending Acts nor the fact that the 1966 form of section 28a expressly excluded the operation of that section to the total liability of the employer under section 18 (3) of the Act, affected the matter. She considered that unless there was something in the amendment to enable a statute providing for compensation to be construed as relating to an injury suffered prior to the amendment, then any statutory provision that it should not apply (20) to injury occurring prior to the amendment was otiose. In her opinion, the 1965 amendment to section 18 (3), of the Act applied only to injury occurring after the date of the amendment, and that the Appellant was therefore not entitled to receive more than the amount of compensation fixed at the date of his injury by accident in May, 1956. The learned Judge was in favour of dismissing the Appeal.

pp. 32-34 — 10. Walter, J., in his Judgment agreed with (30) Mitchell, J., that the liability of the Respondents to pay compensation in accordance

p.32 ll. 9-21 — with the Act came into existence when the accidental injury happened and as to the

pp. 32-33 — meaning of 'injury' within section 18 (1) of the Act, However, the learned Judge was of the

p.32 ll. 29-33 — view that section 28a in its 1965 form should be construed so as to afford the utmost relief to the workman which its language would allow. In

pp. 33-34 — his opinion, the design of the legislature in (40) enacting section 28a in its 1965 form was to relate the compensation of a workman, who had already been paid compensation but who had returned to his work and had subsequently died or suffered an incapacity causally connected with the original accidental happening, to the rates payable at the date of the supervening death or incapacity, but that in enacting the provision to the section (section 28a in its 1965 form), Parliament intended to make it clear that a (50)

workman who had already received compensation at the rate prescribed by section 26 of the Act for an injury specified in that section had been compensated once and for all. The learned judge agreed with Bray, C.J., that the Appeal be allowed. p.34

11. The Respondents appealed to the High Court of Australia. The appeal was heard by Barwick, C.J., McTiernan, Kitto, Windeyer and Owen, JJ., and Judgment was given on the 18th April, 1969, allowing the Respondents' appeal by a majority. pp.35-36

12. In his Judgment, Barwick, C.J., summarized the facts relevant to the appeal and after reviewing the terms of section 28a in its 1965 and 1966 forms dealt with the decision of the majority of the Full Court that the increase of the rate of weekly compensation payable, in the absence of a contrary intention to be found in the statute, automatically made 'the maximum in force under section 18 (3)' of the Act as then current i.e. $12,000, applicable to the employer who was bound to make the increased weekly payments of compensation. The learned Chief Justice referred to the case of Wattle Gully Mines v. Clementi 94 C.L.R. 353, to the passage at p.363 relied on by the majority of the Full Court for its decision and held that the majority of the Full Court was wrong in finding that, upon the Appellant becoming entitled to the increased rate of weekly payments of compensation by reason of section 28a in its 1965 form, he acquired a vested right under the 1965 Act to weekly payments 'up to the total maximum in force at that time, namely, $12,000', a right which section 28a in its 1966 form left untouched. The learned Chief Justice said that section 18 (3) of the Act did not give any rights, but merely set a ceiling to a liability; in his opinion, it was not accurate to say of the incapacitated workman that he had a vested right to certain payments up to a total sum. The amount to which he was entitled would be determined by the nature and extent of his incapacity, which might never warrant the payment to him of any sum approaching the sum set as the total liability of the employer. The learned

pp.37-45

pp. 37-41

p.41

pp. 41-42

p.42 ll. 12-15

Chief Justice found that the Wattle Gully Mines Case did not support the conclusion of the majority of the Full Court; the reasons for judgment in that case did not say that the workmen's right was a right to weekly payments up to a total sum but that a reference in an amending Act to 'rates or amounts of compensation' was large enough to include the amount of total liability of an employer to pay compensation. In the opinion of the learned Chief Justice the proposition that an increase in the rate of weekly payments of compensation under the Act necessarily involved and carried with it an increase in the total liability of the employer to make such weekly payments could not be sustained. He said that earlier amendments made to the Act in 1951 and 1953 indicated that weekly payments could be increased without thereby increasing the total liability of the employer, as did part of the proviso to section 28a in its 1966 form. He considered that the final words of section 28a in its 1966 form 'nor shall it (i.e. section 28a) apply to the total liability of an employer under subsection (3) of section 18 of this Act' meant that the 1966 Act wrought no change in the total liability of the Respondents in respect of weekly payments of compensation under the Act; that the said final words did not support the proposition that an increase in the rate of weekly payments of compensation automatically increased the total liability to make such payments. He concluded that no part of section 28a, in either form, applied to the total liability of an employer, the section being limited in relevant respects to the weekly payments themselves.

p.42 ll. 31-36

p.43 ll. 16-25

The learned Chief Justice, therefore, considered that the matter ultimately turned on the question whether the 1965 amendment increased the total liability of the Respondents in respect of weekly payments of compensation to the Appellant. He said that the Appellant's counsel (the Respondent in that appeal) sought to reach the conclusion that the total liability of the Respondents for the purpose of the application of section 28a in its 1966 form was the amount fixed by section 18 (3) of the Act as

p.43 ll. 26-30

pp. 43-44

amended in 1965 by the submission that, although it was textually silent on the matter, the proper interpretation of the 1965 Act as a whole was that the total liability of all employers in respect of all injuries whenever received was thereby set at ∅12,000; that was to say, that the increase in total liability did not depend on the workmen fulfilling the requirements of section 28a in its 1965 form.
10 The learned Chief Justice was unable to find any justification for such a construction. He reiterated his inability to accept the view that there was a necessary relationship between the increase in the rate of weekly payments and the total liability of the employer so that an increase in the ceiling set by section 18 (2) of the Act automatically resulted in an increase in the employer's total liability. He considered that the change effected by the 1965 (p.44 ll. - 26 -36)
20 Act was limited at best to changing the rates of weekly compensation in the case of injuries received before the commencement of the 1963 amendment of the Act, namely 28th November, 1963, from the rate prevailing at the time of the receipt of the injury to the rate prevailing at the date of the incapacity which supervened upon a return to work. He considered that the 1966 Act increased that rate at least to the rate current at the date of incapacity. The
30 learned Chief Justice was in favour of allowing the Appeal. (p.45)

13. McTiernan, J., in his dissenting Judgment, (pp.45-48) said that in his opinion the decision of the majority of the Full Court that the relevant figure was ∅12,000 was right. (p.46 ll. 25-28) He cited part of section 28a in its 1965 form as follows:- (p.46 ll. 29-34)

> "... the amount of weekly compensation
> "payable in respect of the subsequent
> "incapacity shall be computed and based
> 40 "upon the rates of weekly compensation
> "payable at the time of the subsequent
> "incapacity."

The learned Judge said that section 28a in its 1965 form and section 18 of the Act constituted a context in which section 28a had to be construed and that the weekly compensation payable pursuant to section 28a must be a (pp. 46-47)

weekly payment computed and based on section 18. He said that it was, therefore, a payment in a series of payments, the sum total of which could not exceed $12,000 in the case of total incapacity. He said that if section 28a was not beholden to section 18 it was a mere declaration without operative effect. He concluded that section 18 (3) as amended by the 1965 Act applied to payments pursuant to section 28a in its 1965 form, finding that the words "under this section" in section 18 (3) meant that the compensation payable pursuant to section 28a was really 'under' section 18 (3). 10

p.48 ll 1-5

The learned Judge said that, even if section 28a in its 1965 form did not relate to an injury which occurred before the commencement of the 1965 Act, the 1966 form of section 28a achieved the result of rendering inapplicable the limits on weekly payment and total liability in section 18 of the Act existing at the time of the injury. He said that section 28a in its 1966 form assimilated the compensation, for which it provided, to weekly payments under section 18; a weekly payment made pursuant to section 28a in its 1966 form was, as formerly, one of a series of payments due to terminate by virtue of section 18 (3) when, in the case of total incapacity, the sum total paid would be $12,000. The learned Judge considered that the last part of the proviso to section 28a in its 1966 form was obscure but said that the context indicated that the provisions of the section should not apply in the case of a workman to whom the employer had paid the total amount of his liability under section 18 (3), if thereafter incapacity due to the injury occurs. He was in favour of dismissing the appeal. 20 30

p.48 ll 12-21

p.48

14. Kitto, J., said that in his opinion the appeal should be allowed for the reasons appearing in the judgments of Barwick, C.J., and Owen J., which he had had the advantage of reading. 40

pp. 49-51
p.49 ll. 14-24

15. Windeyer, J., in his dissenting Judgment said that he was unable to see that any question of the retrospective operation of statutes was involved in the appeal. It seemed to the learned Judge that the question depended simply

on the application of the provisions of the Workmen's Compensation Act 1932-1966 read as a whole, read literally and read prospectively as from the 1st December, 1966, ignoring earlier enactments. The learned Judge referred to section 28a in its 1966 form and said that he could not agree with the view that the last part of the proviso to that section amounted to a legislative declaration that the appropriate amount to be taken as limiting the total liability of the employer in any particular case should be the amount payable as at the date of the injury and not as at the date of the incapacity. It seemed to the learned Judge that the last part of the proviso meant that section 28a was to be entirely ignored in reading section 18 (3) to ascertain what the total liability of the employer was. He considered that the words of section 18 (3) as amended in 1965 were clear and fixed the total liability of the employer at $12,000 in the Appellant's case. He was in favour of dismissing the appeal.

p.50

pp. 50-51

16. Owen, J., in his Judgment, summarized the relevant facts and set out in outline a number of amendments made, between 1958 and 1966, to section 18 and to the new section 28a, introduced in 1965 and amended in 1966. He considered that up to and including the amending Act No. 55 of 1963 the legislative pattern was clear; from time to time the amounts of weekly payments were increased as was the limit of liability, it being expressly provided in each amending Act that the increased figures should apply only in cases in which the accident causing injury occurred after the enactment of the amendment. He was of the view that, applying the ordinary rules of statutory interpretation, the various amended rates and maximum limits would have only applied to such cases had there been no express provision to that effect. "The draftsman, however, very wisely decided to leave no possible doubt as to the legislative intention." The learned Judge concluded that the amendments up to and including Act No. 55 of 1963 to section 18 of the Act had no effect on the maximum liability of the Respondents to the Appellant in respect of weekly payments; the limit of the Respondents'

pp. 51-57

pp. 51-53

p.53 ll. 27-43

pp. 53-54

liability continued to stand at the 1956 figure of £2,600.

p.54

The learned Judge then summarized the terms of the amendments of 1965 and said that the Appellant came within the terms of section 28a; he was a person to whom compensation had been paid before 16th December, 1965, he had returned to work and after 16th December, 1965, he had suffered incapacity as a result of the injury in respect of which the compensation had been paid. He was, therefore, entitled to be paid weekly amounts of compensation at the rate payable at the time of that incapacity. The learned Judge was, however, unable to find anything in the Act of 1965 to rebut the presumptive rule of construction under which the amendments which it made to section 18 (3) would apply only to cases in which the employment injury occurred after the amendments came into operation. He concluded that the maximum liability of the Respondents to the Appellant after the 1965 Act in respect of weekly payments remained at the 1956 figure of £2,600.

p.55 ll 1-10

p.55 ll. 11-33

The learned Judge then summarized the effect of section 28a in its 1966 form. He concluded that there was nothing in the 1966 Act which altered the total liability of the Respondents to the Appellant in respect of weekly payments and the position in that respect remained at the figure of £2,600. He said that his conclusion was reinforced by the concluding words of section 28a in its 1966 form.

p.55 ll. 34-42

pp. 55-57

Owen, J., then dealt with decision of the majority of the Full Court that the terms of section 28a in its 1965 form automatically made applicable the increased maximum liability provisions of the 1965 Act and the reliance of the majority of the Full Court on the decision in <u>Wattle Gully Mines v. Clementi 94 C.L.R. 353.</u> He agreed with Barwick, C.J., that the passage relied on by the majority of the Full Court at p.363 did not justify the construction placed by that Court upon section 28a in its 1965 form. The learned Judge concluded by agreeing with Mitchell, J., that section 18 (3) as amended in 1965 applied only to cases in which the employment

injury occurred after the date of the amendment and had, therefore, no application to the present case. He was in favour of allowing the appeal. p.57

17. The Appellant was granted special leave to appeal to the Privy Council on the 4th February 1970. pp. 59-60

18. The Respondent respectfully submits that this appeal ought to be dismissed and the judgments of Judge Williams on the application, and of Mitchell, J., in the Full Court, and of Barwick, C.J., and Kitto and Owen, JJ., in the High Court were correct. It is respectfully submitted that the amending Acts of 1965 and 1966 did not alter the Respondents' total liability under section 18 (3) of the Act and that Judge Williams was right to base his award on the figure of $5,200, being the total liability provided for under section 18 (3) at the time of the Appellant's injury in May, 1956.

19. The Respondents respectfully submit that the Judgment of the majority of the High Court of Australia was right and ought to be affirmed and this appeal ought to be dismissed with costs for the following (among other)

R E A S O N S

1. BECAUSE on a proper construction of the Workmen's Compensation Act, 1932-1966, Judge Williams was right in awarding the sum of $4,694.

2. BECAUSE the Full Court ought not to have upset Judge Williams' award.

3. BECAUSE of the other reasons given by Mitchell, J., Barwick, C.J., and Owen, J.

STUART M. McKINNON.

No. 35 of 1970

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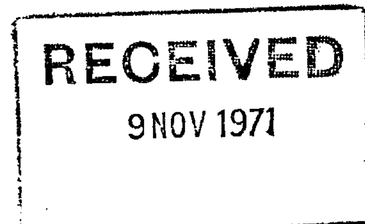

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