

the way in which I have dealt with it. In my opinion therefore the construction put upon the said subsection is not the correct one, and the construction contended for by the appellant is the correct one. Accordingly this appeal should be allowed, the order nisi should be made absolute, and the case should be referred back to the Special Magistrate with a direction that in the opinion of this court he has jurisdiction to hear and determine the complaint against the respondent under section 137 of the Child Welfare Act, 1947.

Solicitor for the appellant: *Crown Solicitor*.

Solicitors for the respondent: *Hardwick, Slattery & Gibson*.

Editorial Note: From this decision the respondent appealed with special leave to the High Court of Australia. The appeal was heard in Perth on September 5, 1950, and the appeal was allowed and the order of the magistrate restored.

COMMISSIONER OF RAILWAYS,

(RESPONDENT), APPELLANT.

THOMAS, (APPLICANT), RESPONDENT.

1950

July 18
Aug. 15

Workers' Compensation—Payment to worker for dependent wife during period of total or partial incapacity for work—Weekly payments not thereby to exceed maximum prescribed—Workers' Compensation Act, 1912-1948, s. 7, First Schedule, Par. 1. (c)

The maximum weekly payments to which a worker is entitled during a period of total or partial incapacity for work are inclusive of any payment to which the worker may be entitled for a dependent wife.

In a case stated pursuant to section 29 (9) of the Workers' Compensation Act, 1912-1948, the Workers' Compensation Board referred for the decision of the Full Court a question of law which was, in substance, as follows: Is an injured worker who has received a weekly payment of £6 as compensation during the period of his incapacity for work also entitled to receive a further sum of £1 per week for a dependent wife?

The worker, the present respondent, sustained injury by accident arising out of or in the course of his employment with the present appellant on the 24th September, 1948. He was as a result totally incapacitated for work from that date until the 9th May, 1949, when he resumed work. On the 8th April,

1950

SCOTT
v.
KING

Walker, J.

Dwyer, C.J.
Wolff, J.
Walker, J.

1950

COMMISSIONER OF
RAILWAYS
v.
THOMAS

1949, the Workers' Compensation Act Amendment Act, 1948, (No. 77 of 1948) came into operation, and, by section 12 of this Act, paragraph (c) of clause 1 of the first schedule, as appearing in the Workers' Compensation Act, 1912-1948, was introduced. This paragraph for the first time incorporated provision for payment to a worker of £1 per week for a dependent wife and the paragraph also provided that "weekly payments, including payments for dependent children, shall not exceed the average weekly earnings or six pounds whichever is the lesser amount . . ." The worker claimed that for the period April 8, 1948 until May 9, 1949, in addition to the weekly payment which he had received he was entitled to the sum of £1 per week for his dependent wife.

This contention was upheld by the Workers' Compensation Board who thereupon and upon the request of the present appellant stated a case for the decision of the Full Court.

Clarkson and Wright for Appellant.

Dunphy for Respondent.

Cases referred to:

Millars Timber & Trading Co. v. Taylor, (1938) 60 C.I.R. 562.

Ormond Investment Co. Ltd., v. Betts, (1928) A.C. 143.
Cur. ad. vult.

1950

Aug. 15

Dwyer, C.J.

DWYER, C. J.: The question asked on this case stated by the Workers' Compensation Board is whether an injured worker who has a dependent wife and children and who received £6 per week as compensation during incapacity under the Workers' Compensation Act prior to the 1949 amendment coming into operation was also entitled to receive a further sum of £1 per week in respect of the dependent wife.

In my opinion, an answer in the affirmative would not be in accordance with the decision of the High Court in the case of *Millars Timber & Trading Co. v. Taylor*. The reasons given for that judgment appear to be equally applicable to the case now before us. The answer to the question should therefore be no.

Wolff, J.

WOLFF, J.: If this question fell to be decided on the wording of the first schedule alone it would seem that the provisions of paragraph (c), clause 1, of that schedule are so worded as to exclude from the maximum of £6 the payment of £1 per

week for a dependent wife under sub-paragraph (ii) of paragraph (c), but if reference is made to subsection (3) of section 7 of the Act, which is the section by which the first schedule now under consideration is enacted, it will be seen that paragraph (f) of that section distinctly states that "no worker shall in any case . . . be entitled to receive more than £1,250 compensation in addition to payment of such expenses as are provided for in paragraph (c) of the proviso to clause 1 of the first schedule."

The material provisions of the proviso referred to relate to certain expenses in the nature of hospital, medical and surgical charges and travelling expenses. It will be noticed that there are limits placed on the amounts payable in respect of these items; see paragraphs (c), (d) and (e) of the proviso. From the body of the Act, therefore, it appears clear that with the exception of the expenses just mentioned there is a limit to the compensation payable. If the Act were construed by a reading of paragraph (c) of clause 1 of the first schedule alone it would mean that the limit prescribed by the Act might be exceeded. It is argued for the respondent that the term "weekly payment" as used in paragraph (c) just mentioned means a weekly payment of compensation as distinct from additional benefits prescribed by the Act, but that distinction will not bear analysis. Reference to section 7 of the Act, particularly subsection (1), and the heading of the first schedule shows that the term "compensation" is intended to cover all classes of payments under the Act and the term "weekly payment" when used is an all-embracing term to cover the totality of components making up the payment. I do not think the amending Act, No. 33 of 1949, (section 12), is of any assistance one way or the other. It might be argued that the amendment was enacted by way of abundant caution, or on the other hand that it was putting right an anomaly which had been created when the provisions of the first schedule were amended in 1948 to include the payment to a dependent wife. For these reasons I am of the opinion that the interpretation placed by the board on paragraph (c) of clause 1 of the first schedule is erroneous and that the question referred by the chairman of the board should be answered in the negative.

WALKER, J.: This is an appeal by way of a case stated by the Workers' Compensation Board under section 29 (g) of the

1950

COMMISSIONER OF
RAILWAYS
v.
THOMAS

Wolf, J

Walker, J.

1950

COMMISSIONER OF
RAILWAYS
v.
THOMAS

Walker, J.

Workers' Compensation Act, 1912-1949, being the Workers' Compensation Act 1912-1948 (reprinted) as amended by the Workers' Compensation Act Amendment Act, 1949, which came into operation on the 26th October, 1949. The question submitted by that board involves a consideration of the proper construction to be placed upon the third paragraph of subparagraph (ii) of paragraph (c) of clause 1 of the first schedule to the said Act which reads as follows: "Weekly payments, including payments for dependent children, shall not exceed the average weekly earnings or six pounds whichever is the lesser amount, and the total liability of the employer in respect thereof shall not exceed one thousand two hundred and fifty pounds."

Facts agreed on by the parties concerned show that the applicant sustained injury by accident arising out of or in the course of his employment with the respondent on the 24th September, 1948; that he was totally incapacitated for work from that date to the 9th May, 1949, when he resumed work; that the respondent paid to the applicant weekly payments of compensation at £4 10s. during the period from the 24th September, 1948, to the 7th April, 1949, and at £6 per week during the period from the 8th April, 1949, to the 9th May, 1949; and that from the time of the accident to the 9th May, 1949, the applicant had two children under sixteen years of age and a wife dependent upon him.

The variation of the rate of the weekly payment from £4 10s. to £6 which occurred on the 8th April, 1949, was brought about by the coming into operation on that date of the Workers' Compensation Act Amendment Act, 1948, which amended the principal Act as theretofore in force by inserting paragraph (c) of clause 1 of the first schedule to the Act in the form in which the said paragraph (c) appears in the Workers' Compensation Act, 1912-1948, (reprinted). The new paragraph (c) for the first time incorporated in clause 1 of the first schedule provision for payment to a worker of an additional weekly allowance of £1 for a dependent wife. The action taken by the applicant before the Workers' Compensation Board arose out of the refusal of the employer to pay the worker the said weekly allowance of £1 for his dependent wife in addition to the maximum amount of £6 per week prescribed by the third paragraph of subparagraph (ii) of paragraph (c) of clause 1

of the said first schedule. This court is now asked to determine whether or not the worker is entitled to receive both the maximum weekly allowance of £6 and the additional allowance of £1 per week for his wife in respect of the period commencing on the 8th April, 1949, and ending on the 9th May, 1949. Although it does not directly affect the determination of the question in issue in this particular case, it is a matter of some significance that as from the 26th October, 1949, the said question has already been resolved by the manner in which the third paragraph in question has been amended by section 12 of the Workers' Compensation Act Amendment Act, 1949, which came into operation on the last-mentioned date. Now, it is certain that in cases arising since that date the maximum weekly payment of £6 does include and cover the weekly allowance of £1 for the wife of the worker. In this particular case, however, the question submitted does fall for determination because it arises in connection with the period from the 8th April, 1949, to the 9th May, 1949, and the relevant provisions of the first schedule to the Act as then in force.

As a useful aid to the determination of the said question, a review of the history of the legislation dealing with the relevant provisions is well worth while. The principal Act which came into operation on the 14th February, 1913, provided in clause 1 (b) of the first schedule thereto that during the period of his incapacity a worker should receive by way of compensation a weekly payment not exceeding fifty per cent. of his average weekly earnings and in any event not exceeding £2 per week and no provision was made for payment of an additional weekly allowance for dependent children. By an amending Act passed in 1920, the maximum weekly amount was increased from £2 to £2 10s., but an amending Act which came into operation on the 16th January, 1925, replaced the former provision by a new provision which read as follows:—

“(b) 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 . . . together with . . . seven shillings and six pence 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 £750.”

1950

COMMISSIONER OF
RAILWAYS
v.
THOMAS*Walker, J.*

1950

COMMISSIONER OF
RAILWAYS
v.
THOMAS

It was then for the first time that provision was made in the Act for payment of an additional weekly allowance for dependent children, and that provision remained unaltered until the 19th December, 1941, when by a further amending Act such provision was replaced by another provision as follows: ‘(b) When total or partial incapacity for work results from the injury a weekly payment during the incapacity not exceeding—

Walker, J.

- (i) fifty per cent of the wages of the worker in the week immediately preceding the accident. If the worker has not been so long employed, his wages for the purpose of this paragraph shall be deemed to be a full working week’s wages (exclusive of overtime) at the rate of pay for the work at which he was employed at the time of the accident and the compensation shall be computed and assessed accordingly; or
- (ii) fifty per cent 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, whichever is the larger sum.

In addition, seven shillings and sixpence per week shall be payable for each dependent child under the age of 16 years. Weekly payments, including payments for dependent children, shall not exceed three pounds ten shillings, and the total liability of the employer in respect thereof shall not exceed £750.”

The words “including payments for dependent children” thus in 1941 appeared for the first time in the Act, and I think it can correctly be stated that their importation into the Act followed upon the decision of the High Court in *Millars Timber & Trading Co. Ltd v. Taylor*, with which I will deal later. By the Workers’ Compensation Act Amendment Act, 1948, which came into operation on the 8th April, 1949, the said provision was again amended to the form in which it appears as paragraph (c) of clause 1 of the first schedule to the Act as reprinted, and it is then for the first time that provision is made for payment of an additional weekly allowance of £1 for his dependent wife. In relation thereto it is interesting to note that in the new provision, although the third paragraph of the said

paragraph (c) (ii) raised the maximum weekly amount from £3 10s. to £6 and the total liability of the employer from £750 to £1,250, the paragraph follows exactly the words of the corresponding paragraph as in force before the 8th April, 1949, when the amending Act of 1948 came into operation. That is to say, it specifically includes reference to payments for dependent children but omits any reference to the new payment for a dependent wife which for the first time is provided for in the Act of 1948. It is such omission which gives rise to the uncertainty regarding the proper construction to be placed upon the third paragraph of subparagraph (ii) of paragraph (c) of clause 1 of the first schedule to the Act as in force between the 8th April, 1949, and the 26th October, 1949, and in relation to such omission some significance attaches to the fact that on the said 26th October, 1949, Parliament deemed it necessary to rectify the omission by means of the amendment made in the principal Act by section 12 of the Workers' Compensation Act Amendment Act, 1949. Having regard to the former history of the legislation and to the decision of the High Court in *Millars Timber & Trading Co. Ltd. v. Taylor*, I think that the amending Act of 1949 signifies that Parliament intended to rectify an omission which occurred inadvertently and thereby to preserve a policy which had been established over many years in relation to weekly payments of compensation before the occurrence of the omission in the amending Act of 1948 caused to arise an uncertainty as to whether an alteration in such established policy was intended. In case my action in making reference to the provisions of the Workers' Compensation Act Amendment Act, 1949, may excite criticism concerning the propriety thereof, I base my authority for so doing upon the observations of Lord Buckmaster in his judgment in *Ormond Investment Co. Ltd. v. Betts*, at page 156, and upon the observations of Dixon J. in his judgment in *Millars Timber & Trading Co. Ltd. v. Taylor*, at page 571.

In my view, however, the question submitted is resolved definitely by the lines of the reasoning adopted severally by the Justices of the High Court in arriving at the decision in the said case *Millars Timber & Trading Co. Ltd., v. Taylor*. Quite apart from the fact that I consider I am bound by their judgments, seeing that they were unanimous in their decision, I feel that in giving my judgment in this mat-

1950

COMMISSIONER OF
RAILWAYS
v.
THOMAS*Walker, J.*

1950

COMMISSIONER OF
RAILWAYS
v.
THOMAS

Walker, J.

ter I cannot express my views more forcibly and more adequately than by a reiteration of the observations contained in the judgments of the said Justices which I respectfully consider are directly a propos the question which has been submitted to this court in this matter. In my opinion, there cannot be any doubt that the lines of reasoning followed by the learned Justices apply with equal force and aptitude to the determination of the question now before this court, and I cannot and do not propose to attempt to add any further line of reasoning of my own to those adopted by the Justices in the High Court in the authority to which I have referred. The words "including payments for dependent children" in the paragraph now under review cannot, in the light of the said judgments, reasonably be read so as to mean that payment for a dependent wife must be excluded from the operation of the said paragraph. Otherwise the anomalies which the Justices in the High Court pointed out would arise if the corresponding provision in the Act as in force in 1938 were construed so as to exclude from the operation of that provision the weekly allowances for dependent children would most certainly arise in relation to the corresponding provision in the Act as in force during 1949 between the 8th April, 1949, and the 26th October, 1949. In my opinion, therefore, the question submitted in the case stated now before this court should be answered in the negative.

Solicitors for the appellant: *Jackson, McDonald, Connor & Ambrose.*

Solicitors for the respondent: *Dwyer, Durack & Dunphy.*
