Privy Council Appeal No. 18 *of* 1935

The Metropolitan Coal Company Limited - - - - *Appellants*

v.

Jacob Pye - - - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF AUSTRALIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH MARCH, 1936.

Present at the Hearing:

THE LORD CHANCELLOR (VISCOUNT HAILSHAM).
LORD THANKERTON.
LORD MAUGHAM.
SIR GEORGE LOWNDES.
SIR SIDNEY ROWLATT.

[*Delivered by* SIR SIDNEY ROWLATT.]

This is an appeal from a decision of the High Court of Australia reversing a decision of the Supreme Court of New South Wales on a case stated under the provisions of the Workers' Compensation Act 1926-1929 section 37 (4) at the request of the appellant company, by the Workers' Compensation Commission of New South Wales.

The only question for determination is whether an applicant for compensation under the Act must in order to establish his claim not only prove that he has contracted a disease arising out of and in the course of his employment, but go on to prove that it was not caused by silica dust (in which case the employer would not be liable) or whether it suffices for him to prove the first proposition only, leaving it to the employer to show, if he can, that the disease was due to silica dust. It is a short though important question of construction relating to the onus of proof.

The directly relevant sections are as follows:—

> "*Section* 7 (1).—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."
>
> "*Section* 6 (1).—In this Act unless the context or subject-matter otherwise indicates or requires . . . 'Injury' means personal injury arising out of and in the course of the employment and includes a disease so arising whether of sudden onset or of such a nature as to be contracted by gradual process other than a disease caused by silica dust."

"*Section* 5.—Nothing in this Act shall affect the operation of the Workmen's Compensation (Silicosis) Act 1920, as amended by this Act . . . ."

By the Workmen's Compensation (Silicosis) Act 1920, as amended by the Workers' Compensation Act 1926-1929 and by the Scheme made by the Minister thereunder, provision is made for the payment of compensation by the employers of workmen in specified industries and processes or groups of industries and processes involving exposure to silica dust who suffer death or total disablement or partial disablement from diseases of the pulmonary or respiratory organs caused by exposure to silica dust. "Coalmining" is not included in the industries or processes or groups of industries or processes specified in such Act or the Scheme made thereunder.

The appellant company owns and works coal-mines situated in the State of New South Wales, and the respondent was formerly employed by the appellants as a miner in one of their coal-mines.

On the 6th March, 1933, the respondent filed an application for compensation which was heard by the Commission, being the appropriate tribunal under the Acts, on the 11th and 12th May, 1933. On behalf of the respondent there was put in evidence a certificate by a Medical Board (which by section 51 (3) of the Act is conclusive evidence as to the matter certified) stating that the respondent had "a partially incapacitating pulmonary fibrosis which could be due to coal dust". The respondent also called two radiologists who had made X-ray examinations of his lungs, and three other medical men. The result of their evidence was that the radiograph showed pneumonoconiosis, there being a mottling on the lungs which meant fibrosis and fine particles of dust, and that the condition observed might be brought about by silica dust or other dusts.

The appellants called no evidence and submitted that there was no case to answer.

On the 12th May, 1933, the Commission found :—

"(1) that the incapacity for work of the applicant" (the respondent herein) "since the 27th day of April has been and still is partial;

"(2) that the applicant's partial incapacity for work is due to pulmonary fibrosis and results from the inhalation of dust in the respondent's" (the appellant herein) "Coalmine;

"(3) that the disease which partially incapacitates the applicant for work is of such a nature as to be contracted by a gradual process and his employment with the respondent was employment to the nature of which the disease was due;

"(4) that on the evidence before it the Commission is not satisfied that the partial incapacity for work of the respondent results from a disease caused by silica dust."

On these findings they awarded compensation to the respondent and at the request of the appellant company stated

a case for the Supreme Court of New South Wales. That Court by a majority entered judgment for the appellant company. On appeal the High Court of Australia, also by a majority, reversed this decision. In both Courts the only question was upon which party the onus lay as regards silica dust.

Carefully reasoned judgments were delivered in both Courts below but their Lordships do not think it necessary to examine these in detail. The majority in the Supreme Court of New South Wales and the minority in the High Court of Australia acted on the view that the Workmen's Compensation Act applied only to a category of cases restricted in limine by the omission of cases of disease caused by silica dust. That, in the opinion of their Lordships, is to mistake the scope of this legislation. The intention of the Act as appearing from section 6 (1) is to provide for compensation in every case of injury (including disease) arising out of and in the course of a workman's employment. In the language of Mr. Justice Rich we have in the Workmen's Compensation Act 1926-1929 a general law for compensating such injuries. That is the paramount enactment and to give effect to it the words " other than a disease caused by silica dust " must be read as inserted not to limit it but to prevent it being appealed to in particular circumstances where the relief would overlap that provided by a special and narrower scheme. Till such overlapping appears, its operation is unaffected. To hold otherwise would have the result that where, as in this case, medical evidence shows that the disease is due to dust but can not specify the kind of dust, the workman is left without any compensation at all though undoubtedly suffering from a disease arising out of and in the course of his employment. This is to leave a gap which destroys the intended completeness of the scheme.

Their Lordships do not overlook the circumstance that coal-mining is not an industry brought within the operation of the Act dealing with silicosis. The result, no doubt, is that if disease in a coal miner is affirmatively proved to be due to silica dust the workman is left unprotected; and in that case the two schemes together do not cover the whole of the ground. The coal mining industry may have been omitted from the silicosis scheme because it was not contemplated that pulmonary disease contracted in a coal mine could ever be definitely attributed to silica dust in particular. The medical evidence in this case suggests that possibility. It is, however, unnecessary to speculate upon this point. The construction of the Act in its general application cannot be affected by the omission of this particular industry from the complementary legislation.

It only remains to add that basing their conclusion upon the scope and intention of the Act, their Lordships do not find it necessary to examine the decisions referred to in the

judgments in the Court below and in the arguments before this Board in which the effect of different forms of language upon the onus of proof has been discussed upon general principles.

For these reasons their Lordships will humbly advise His Majesty that the appeal be dismissed. The costs have been provided for by the order granting special leave to appeal.

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In the Privy Council.

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v.

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DELIVERED BY SIR SIDNEY ROWLATT.

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