

Hon. Mr. Massey.

WORKERS' COMPENSATION AMENDMENT.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Section 7 of principal Act amended.</p> <p>3. Section 9 of principal Act amended.</p> <p>4. Provisions as to recovery of compensation where New Zealand ship lost with all hands on board.</p> <p>5. Proceedings may be taken by agreement before Magistrate.</p>	<p>6. Public Trustee may take proceedings for recovery of compensation in certain cases.</p> <p>7. Compensation-moneys on death to be paid to and disbursed by Public Trustee.</p> <p>8. Section 41 of principal Act amended.</p> <p>9. Cause of action survives on death of party. Repeal.</p> <p>10. Second Schedule to principal Act amended.</p>
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A BILL INTITULED

AN ACT to amend the Workers' Compensation Act, 1908.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Workers' Compensation Amendment Act, 1913, and shall form part of and be read together with the Workers' Compensation Act, 1908 (hereinafter referred to as the principal Act).

Short Title.

2. Section seven of the principal Act is hereby amended by omitting all words after the word "apply," and substituting therefor the following :—

Section 7 of principal Act amended.

"The worker's average weekly earnings at the time of the accident shall be deemed to be not less than a full working-week's earnings at the ordinary (but not overtime) rate of pay for the work at which he was employed at that time, notwithstanding that he may not have actually worked or the employment may not have actually continued for the full week; and his average weekly earnings after the accident shall be deemed to be not less than a full working-week's earnings at the ordinary (but not overtime) rate of pay for the work at which he is for the time being employed, and the compensation shall be computed and assessed accordingly :

"Provided that in any case of total incapacity the weekly payment shall be not less than one pound."

Section 9 of principal Act amended.

3. Section nine of the principal Act is hereby amended by repealing subsection one thereof, and substituting the following subsection therefor:—

“(1.) When a worker is, at the time of the accident, under the age of twenty-one years or is an indentured apprentice or an apprentice or improver under an award or industrial agreement, and his incapacity, whether total or partial, is permanent, his average weekly earnings at the time of the accident shall be deemed to be the weekly sum which he would probably have been able to earn if he had then attained the age of twenty-one years, or had completed his apprenticeship, or had ceased to be an improver, as the case may be, being in no case less than two pounds per week, and the reduction of his earning-power (if any) shall be deemed to be the difference between that sum and the weekly sum which he will probably be able to earn after attaining the age of twenty-one years, or on the completion of his apprenticeship, or on ceasing to be an improver, as aforesaid.”

Provisions as to recovery of compensation where New Zealand ship lost with all hands on board.

4. Section eleven of the principal Act is hereby amended by adding thereto the following subsection:—

“(7.) Subsections two and three of section ninety-four of the Shipping and Seamen Act, 1908 (which relates to the recovery of wages of seamen and apprentices lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.”

Proceedings may be taken by agreement before Magistrate.

5. (1.) Notwithstanding anything in section nineteen of the principal Act, in any case where the parties, by writing signed by them or their solicitors, so agree, proceedings for the recovery of compensation ~~or for the determination of any question as to the distribution of such compensation among dependants~~ *in respect of any injury by accident which has not caused the death of a worker* may be taken in a Magistrate's Court, and shall be heard and determined by a Magistrate sitting alone.

(2.) The decision of the Magistrate in any such case shall be final and conclusive, and shall be binding on the parties in the same manner as if it were the decision of the Court of Arbitration.

(3.) Until altered by regulations, the procedure in any proceedings before a Magistrate's Court pursuant to this section shall be determined by the regulations for the time being in force with respect to similar proceedings before the Court of Arbitration.

(4.) Section thirty-seven of the principal Act is hereby amended by inserting after the words “Judge of the Court of Arbitration” the words “or by the Magistrate, where the proceedings are taken in the Magistrate's Court.”

New.

Magistrate may award compensation in certain cases.

5A. Where in an action in the Magistrate's Court for the recovery of damages independently of the principal Act in respect of an injury to a worker by accident arising out of his employment the

worker fails to establish his claim, the Magistrate shall have the same jurisdiction to award compensation under the principal Act as is conferred on the Supreme Court under and by virtue of section forty-six of that Act, and the provisions of the said section shall, with the necessary modifications, extend and apply accordingly.

Struck out.

6. Notwithstanding anything in section twenty-one of the principal Act, proceedings for the recovery of compensation in respect of an accident causing the death of a worker may, on the request in writing of any person entitled under that section to take such proceedings, be taken by the Public Trustee on behalf of the representative or dependants of the worker, as the case may be.

Public Trustee may take proceedings for recovery of compensation in certain cases.

7. (1.) Where the amount of the compensation-money due in respect of the death of a worker has been arrived at *whether* by the judgment of the Court of Arbitration or ~~other competent Court otherwise~~, the employer or other person liable to pay the same shall, unless the ~~order Court~~ otherwise provides orders, pay the same to the Public Trustee; and the receipt of the Public Trustee, or of any one authorized by him in that behalf, shall be a complete discharge to such employer or other person.

Compensation-moneys on death to be paid to and disbursed by Public Trustee.

(2.) The Public Trustee shall thereupon hold the said money pending an order of the said Court disposing of or apportioning the same, and shall obey that order. Application for an order under this subsection may be made by any dependant or by the Public Trustee on the request in writing of any dependant.

(3.) If within one month after the receipt of the said money the Public Trustee does not receive notice from any dependant interested therein that application is being made for such order, it shall thereupon become the duty of the Public Trustee to apply for such order.

(4.) A certificate under the hand and seal of the Public Trustee showing the receipt of the said money shall, in any Court or proceedings whatsoever, be sufficient evidence of the facts therein stated without any further proof.

Struck out.

8. Section forty-one of the principal Act is hereby amended by omitting from subsection one the word "building" wherever it occurs; and by adding the following subsection:—

Section 41 of principal Act amended.

"(6.) In this section the expressions "mine" and "factory" respectively include any building used as part of and for the purposes of a mine or factory."

Cause of action survives on death of party.

9. (1.) The right to recover compensation under the principal Act or to recover damages independently of that Act in respect of an accident to a worker shall survive notwithstanding the death either of the employer or other person liable to pay the compensation or damages or of the worker, and all proceedings for the enforcement of such right may be begun or continued by or against the representative of the deceased person, ~~or in the case mentioned in section six hereof may be begun or continued by the Public Trustee.~~

(2.) Section forty-nine of the principal Act is hereby repealed.

Repeal.

10. The Second Schedule to the principal Act is hereby amended by omitting the figures "30," opposite the reference to the total loss

Second Schedule to principal Act amended.

of the sight of one eye, and substituting the figures "50"; and by adding the following:—

The total loss of two joints of a finger—

If the forefinger of the right hand	12½ per cent.	5
If the forefinger of the left hand	10 "	
If the little finger of either hand	8½ "	
If the middle or ring finger of either hand	6½ "	

New.

With certain specified exceptions, liability not affected by agreement.

11. (1.) Save as otherwise expressly provided in this Act no agreement between an employer and a worker, whether made before 10 or after the coming into operation of this Act, shall be effective so as to exempt the employer in whole or in part from any liability to pay compensation for any injury to be suffered by the worker.

(2.) Notwithstanding anything in this section, an agreement may be made between an employer and a worker, or between an 15 employer and any representative or dependant of a deceased worker, or between any such dependants themselves, after the happening of an injury to the worker, for the settlement of any claim to compensation or of any question arising with respect to compensation:

Provided that an agreement between an employer and a worker, 20 or between an employer and any representative or dependant of a deceased worker, shall not be binding on such worker, representative, or dependant respectively unless before making the agreement he had competent and independent advice as to any legal and medical 25 questions arising in connection with the claim for compensation, and understood the agreement: and in any case where such an agreement is challenged the onus shall lie on the employer of proving compliance with this subsection.

(3.) Subject to the provisions of the *last preceding* subsection any such agreement as is mentioned therein shall be binding on the 30 parties, and any such agreement entered into by the representative of a deceased worker shall be binding on the dependants of that worker.

(4.) Subject to the provisions of subsection *two* hereof, any such agreement as is mentioned therein shall be binding on a person under the age of twenty-one years if it is in writing and approved by a 35 Magistrate, and, unless the Magistrate otherwise orders, any money payable to such person under the agreement may be paid to him, and his written receipt therefor shall be a sufficient discharge.

(5.) Nothing in this section shall be so construed as to confer upon the representative of a deceased worker any power to determine 40 the shares in which compensation is to be apportioned between the dependants of that worker.

Repeal

(6.) This section is in substitution for section eighteen of the principal Act, and that section and also section ten of the Workers' Compensation Amendment Act, 1911, are hereby accordingly 45 repealed.

Section 4 of Amendment Act, 1911, amended.

12. Section four of the Workers' Compensation Amendment Act, 1911, is hereby amended by omitting from subsection two the words "the accident which causes."

Repeal.

13. Section eight of the Crown Suits Amendment Act, 1910, is 50 hereby repealed.

Admission of evidence.

14. In any action under the principal Act the Court may accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.