

SEAMEN'S COMPENSATION.

No. 56 of 1938.

An Act to amend the *Seamen's Compensation Act 1911*.

[Assented to 10th December, 1938.]

[Date of commencement, 7th January, 1939.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1.—(1.) This Act may be cited as the *Seamen's Compensation Act 1938*.

Short title
and citation.

(2.) The *Seamen's Compensation Act 1911** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Seamen's Compensation Act 1911-1938*.

Definitions.

2. Section three of the Principal Act is amended—

(a) by omitting the definition of “The Comptroller-General”; and

(b) by omitting the definition of “Seaman” and inserting in its stead the following definition:—

“‘Seaman’ means apprentice, pilot, or other person employed or engaged in any capacity on board a ship in connexion with the navigation or working of the ship, but does not include a master, engineer or deck officer of a ship.”

Application of Act.

3. Section four of the Principal Act is amended—

(a) by omitting paragraph (a) of sub-section (1.); and

(b) by omitting from sub-section (2.) the words “, as regards paragraphs (b) and (c) of sub-section (1.) of this section,”.

4. After section five of the Principal Act the following sections are inserted:—

Medical benefits.

“5A.—(1.) In addition to any compensation payable by the employer under this Act in respect of personal injury caused to a seaman by accident arising out of and in the course of his employment, the employer shall pay the cost, not exceeding in any case the sum of Twenty-five pounds, of such medical, surgical and hospital treatment and ambulance services in relation to the injury as are, in the opinion of the Minister administering this Act, reasonably necessary:

Provided that an employer shall not be liable to pay the cost of medical, surgical and hospital treatment and ambulance services both independently of and also under this section:

Provided also that if the seaman is left on shore at any port and there is a public hospital at or convenient to that port and the seaman elects to be treated elsewhere than in that hospital, the liability of the employer in respect of the cost of medical, surgical and hospital treatment and ambulance services shall be limited to the amount that would be payable for the treatment and services if the seaman were treated as an in-patient of that hospital or the sum of Twenty-five pounds, whichever is the less.

(2.) For the purposes of this section—

“ambulance services” includes any conveyance of an injured workman to a medical practitioner or to a hospital;

“medical treatment” includes—

(a) treatment by a duly qualified medical practitioner, a registered dentist, or a masseur;

(b) the provision of skiagrams, crutches and artificial members; and

* Act No. 18, 1911.

(c) any nursing, medicines, medical or surgical supplies or curative apparatus supplied or provided for him otherwise than as a patient at a hospital; and

“hospital treatment” means treatment at any hospital and includes the maintenance of the workman as a patient at the hospital, and the provision or supply by the hospital of nursing, attendance, medicines, medical or surgical supplies or other curative apparatus, and any other ancillary service.

“5B. Where a seaman sustains, by accident arising out of and in the course of his employment, any of the injuries specified in the first column of the Third Schedule to this Act, the compensation payable under this Act shall, when the injury results in total or partial incapacity, be the amount specified in the second column of that Schedule opposite the specification of the injury in the first column, less any amount received by the seaman under the First Schedule to this Act, or by way of wages under any Act, Imperial Act or State Act, and less the weekly cost of maintenance of the seaman for which the employer is liable under any such Act, during any period of his total incapacity arising from his injury.

Compensation
for certain
injuries.

“5C.—(1.) Where—

(a) a seaman is suffering from any of the diseases mentioned in the Fourth Schedule to this Act and is thereby incapacitated from earning full wages at the work at which he was employed; or

Compensation
to seaman
affected by or
dying from
certain
industrial
diseases.

(b) the death of a seaman is caused by any of those diseases, and the disease was caused, within twelve months prior to the date of incapacity, by his employment as a seaman, the employer who last employed the seaman shall, subject to this Act, be liable to pay to the seaman or his dependants compensation in accordance with this Act as if the disease were a personal injury by accident arising out of and in the course of that employment within the meaning of section five of this Act and, for the purposes of section six of this Act, the date of incapacity shall be deemed to be the date of the occurrence of the accident.

(2.) A claimant for compensation under this section shall if so required furnish to the employer from whom compensation is claimed any information in his possession as to the names and addresses of all the other employers by whom the seaman was employed during the period of twelve months prior to the date of incapacity or death.

(3.) If the disease is of such a nature that it is contracted by a gradual process, any other employers who, at any time during the period of twelve months preceding the seaman's incapacity, employed the seaman in any employment which caused or contributed towards the contraction of the disease, shall be liable to make to the employer from whom compensation is recoverable such contributions (not exceeding the maximum amounts prescribed under the First Schedule to this Act) as, in default of agreement, are settled by arbitration, in accordance with the Second Schedule to this Act, or by proceedings in a County Court.

(4.) If a seaman produces a certificate from a duly qualified medical practitioner that he is suffering from one of the diseases specified in the Fourth Schedule to this Act and that such disease was contracted through his employment, and a Medical Inspector of Seamen appointed under the *Navigation Act* 1912-1935 is satisfied that the disease was so contracted, the disease shall, in the absence of proof to the contrary, be deemed to have been caused by the employment in which the seaman was engaged.

Maximum
compensation

"5D. Notwithstanding anything contained in this Act, a seaman shall not, in respect of personal injury caused by any one accident, be entitled to receive as compensation under this Act an amount exceeding Seven hundred and fifty pounds in addition to such payments as are made under section five A of this Act."

Depositions
where
injured seaman
left behind.

5. Section eleven of the Principal Act is amended by omitting from sub-section (2.) the word "Comptroller-General" and inserting in its stead the word "Minister".

Evidence of
loss of ship.

6. Section twelve of the Principal Act is amended by omitting from sub-section (1.) the word "twelve" (wherever occurring) and inserting in its stead the word "three".

Returns as to
compensation.

7. Section sixteen of the Principal Act is amended—

- (a) by omitting the words "to the Comptroller-General",
- (b) by omitting from paragraph (a) the words "period specified by the Comptroller-General" and inserting in their stead the words "prescribed period"; and
- (c) by omitting from paragraph (c) the words "or as the Comptroller-General requires".

The First
Schedule

8. The First Schedule to the Principal Act is amended—

- (a) by omitting clause (1.) and inserting in its stead the following clause :—

"(1.) The amount of compensation under this Act shall be—

- (a) where death results from the injury—

- (i) if the seaman leaves any dependants wholly dependent upon his earnings, 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 Seven hundred and fifty pounds;

Provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the seaman's employment by the said employer has been less than the said four years, then the amount of his earnings during the said four years shall be deemed to be two hundred and eight times his average weekly earnings during the period of his actual employment under the said employer;

- (ii) if the seaman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration or proceedings under this Act, to be reasonable and proportionate to the injury to the said dependants; and
- (iii) if he leaves no dependants, the reasonable expenses of his burial, not exceeding Twenty-five pounds;

- (b) where total or partial incapacity for work results from the injury—
 a weekly payment during the incapacity not exceeding two-thirds of the seaman's average weekly earnings during the previous twelve months, if he 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, such weekly payment not to exceed Three pounds ten shillings :

Provided that—

- (i) where compensation is payable for incapacity for part of a week the amount shall bear the same ratio to compensation for a full week that normal working time during such part bears to the seaman's full normal working week ; and
 - (ii) in the case of a seaman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than Two pounds five shillings, one hundred per centum shall be substituted for two-thirds of his average weekly earnings, but the weekly payment shall in no case exceed One pound ten shillings ; and
- (c) where total incapacity for work results from the injury, there shall be added to any amount payable weekly under the foregoing provisions of this Schedule an amount of Seven shillings and sixpence per week in respect of each child, totally or mainly dependent upon the seaman at the time of the injury, who is under the age of fourteen years, and the payment of that amount shall be continued during such incapacity until the child in respect of whom the payment is received attains the age of fourteen years :

Provided that—

- (i) if the injured seaman is entitled under any Act or State Act to the payment of a weekly allowance or endowment in respect of any dependent child, the amount of any such weekly payment shall be deducted from the weekly amount payable under this paragraph in respect of such dependent child ; and
 - (ii) the total amount payable in respect of dependent children shall not exceed such an amount as would, when added to the weekly amount payable under paragraph (b) of this clause, exceed the amount of the seaman's average weekly earnings.” ;
- (b) by inserting in paragraph (a) of clause (2.), after the word “remunerated”, the words “and in computing such average weekly earnings amounts paid by way of overtime to the seaman shall be included” ;
- (c) by inserting after paragraph (d) of clause (2.) the following paragraph :—
- “(e) where a seaman receives, as a regular condition of employment, board or board and lodging in addition to wages, the earnings of the seaman shall include such amount, not exceeding Thirty shillings per week, as is assessed as the value of the board or board and lodging.” ;
- (d) by omitting clause (4.) and inserting in its stead the following clauses :—
- “(4.) No weekly payment shall be payable in respect of any period during which the owner of the ship is under any Act, Imperial Act or State Act liable to payment of full wages to the injured seaman.
- “(4A.) Where under any Act, Imperial Act or State Act, the employer is liable to defray the expenses of maintenance of the injured seaman, the amount of any weekly payment of compensation payable to the seaman under this Schedule shall be subject to deduction of the amount of the weekly cost of maintenance of the seaman paid by the employer.” ;
- (e) by omitting from the proviso to clause (6.) the words “person to whom the expenses of medical attendance and burial” and inserting in their stead the words “persons to whom payments in respect of medical, surgical and hospital treatment, ambulance services and burial expenses” ;

(f) by omitting clause (8.) and inserting in its stead the following clause :—

“(8.) Any question as to—

(a) who is a dependant ; or

(b) how the compensation shall be allotted among, or otherwise dealt with for the benefit of, the dependants

shall, in default of agreement, be settled by arbitration under this Act, or by a County Court.”;

(g) by omitting from the proviso to clause (17.) the words “ fifty per cent.” and inserting in their stead the words “ two-thirds ” ;

(h) by omitting from that proviso the words “ One pound ” and inserting in their stead the words “ Three pounds ten shillings ” ; and

(i) by omitting clause (20.) and inserting in its stead the following clause :—

“(20.) Any amount paid in compensation under this Act, whether by way of weekly payment or sum paid in redemption thereof, or lump sum payment for a specific injury fixed in accordance with the Third Schedule to this Act, shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against it.”.

Addition of
Third and
Fourth
Schedules.

9. After the Second Schedule to the Principal Act the following Schedules are inserted :—

“ THIRD SCHEDULE.

COMPENSATION FOR SPECIFIED INJURIES.

Nature of Injury.	Amount payable.		
	£	s.	d.
Loss of both eyes	750	0	0
Loss of an only eye			
Loss of both hands			
Loss of both feet			
Loss of a hand and a foot			
Total and incurable loss of mental powers	675	0	0
Total and incurable paralysis of limbs or mental powers			
Loss of either arm, or of the greater part thereof	675	0	0
Loss of one eye, with serious diminution of the sight of the other	675	0	0
Loss of lower part of either arm, either hand, or five fingers of either hand	600	0	0
Loss of leg	600	0	0
Loss of hearing	600	0	0
Loss of the lower part of a leg	562	10	0
Loss of a foot	525	0	0
Loss of sight of one eye*	375	0	0
Loss of a thumb	225	0	0
Complete deafness of one ear	200	0	0
Loss of a forefinger	150	0	0
Loss of part of a thumb	112	10	0
Loss of little finger, middle finger or ring finger	112	10	0
Loss of a toe or the joint of a finger	90	0	0
Loss of a joint of a toe	75	0	0

* For the partial loss of the sight of one eye, there shall be payable such percentage of the amount that would be payable for the total loss of the sight thereof as is equal to the percentage of the diminution of sight.

For the purposes of this Schedule, the loss of a specified part of the body shall be deemed to include—

(a) the loss of the use of that part; and

(b) the loss of the efficient use of that part in and for the purposes of his employment;

Provided that in the latter case a percentage of the prescribed amount payable, equal to the percentage of the diminution of the full efficient use as aforesaid, may be awarded in lieu of the full amount.

“FOURTH SCHEDULE.

DESCRIPTION OF DISEASE.

Lead poisoning.

Poisoning by benzol or its homologues.

Poisoning by carbon monoxide.

Dermatitis produced by oil or grease or dust or caustic or corrosive liquids.

Pneumonia.

Pleurisy.”