

SEAMEN'S COMPENSATION.

No. 7 of 1949.

An Act to amend the *Seamen's Compensation Act* 1911-1947, and for other purposes.

[Assented to 25th March, 1949.]

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

Short title
and citation.

1.—(1.) This Act may be cited as the *Seamen's Compensation Act* 1949.

(2.) The *Seamen's Compensation Act* 1911-1947* 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* 1911-1949.

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

* Act No. 19, 1911, as amended by Statutory Rules 1926, No. 135; Act No. 59, 1938; Act No. 18, 1947; and Statutory Rules 1947, No. 12a.

3. Section three of the Principal Act is repealed and the following section inserted in its stead:—

" 3.—(1.) In this Act, unless the contrary intention appears— Interpretation.

'County Court' means a County Court, District Court or Local Court of any State, or any Court exercising in any part of the Commonwealth a limited civil jurisdiction and presided over by a judge or a police, stipendiary or special magistrate;

'dependant', in relation to a deceased seaman, means—

- (a) a member of the seaman's family;
- (b) a person to whom the seaman stood *in loco parentis* or who stood *in loco parentis* to the seaman;
- (c) any ex-nuptial child or grand-child of the seaman; and
- (d) if the seaman was an ex-nuptial child, any parent or grand-parent of the seaman,

who was wholly or in part dependent upon his earnings at the date of his death or who would, but for his incapacity due to the injury, have been so dependent;

'disease' includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development, and also includes the aggravation or acceleration of a disease and the recurrence of a pre-existing disease;

'employer' includes the Crown (whether in right of the Commonwealth or of a State), any authority constituted by or under the law of the Commonwealth or of a State or Territory of the Commonwealth, any body of persons (whether corporate or unincorporate) and the legal personal representative of a deceased employer;

'injury' means any physical or mental injury and includes the aggravation or acceleration of an injury and the recurrence of a pre-existing injury;

'Judge of a County Court' includes the Judge of a County Court, District Court or Local Court and also any police, stipendiary or special magistrate presiding, or having jurisdiction to preside, over a County Court as defined by this Act;

'member of the family', in relation to a seaman, means the wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister, adopted child, mother-in-law or any woman who for not less than three years immediately prior to his death or incapacity was wholly or mainly maintained by the seaman and who, although not legally married to him, lived with him as his wife on a permanent and *bona fide* domestic basis and who, at the date of his death or incapacity, is maintaining one or more children under sixteen years of age or is not less than fifty years of age;

'port' includes place and harbour;

'seaman' means an apprentice, a pilot or any 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, mate, engineer or radio officer of a ship;

'ship' includes every vessel used in navigation not ordinarily propelled by oars;

'vessel' means any ship or boat and includes any vessel of any other description used for any purpose on the sea or in navigation.

"(2.) Any reference to a seaman who has been injured shall, where the seaman has died as the result of the injury, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

"(3.) In the application of the provisions of this Act to and in relation to a seaman to whom section five c of this Act applies, any reference in those provisions to a personal injury by accident arising out of or in the course of a seaman's employment shall be read as including a reference to a disease due to the nature of the employment in which the seaman was engaged.

"(4.) Where a person with whom a seaman has entered into a contract of service or apprenticeship temporarily lends or lets on hire the services of the seaman to another person, the first-mentioned person shall, for the purposes of this Act, be deemed to continue to be the employer of the seaman while he is working for that other person."

Compensation
for personal
injuries to
seamen.

4. Section five of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the word "and" and inserting in its stead the word "or"; and
- (b) by omitting paragraph (b) of sub-section (2.).

5. Section five AA of the Principal Act is repealed and the following section inserted in its stead :—

Injury while
travelling to
or from work.

"5AA.—(1.) Where personal injury by accident is caused to a seaman while he is travelling to or from—

- (a) his place of employment;
- (b) a Mercantile Marine Office; or
- (c) a place which it is necessary for him to attend to obtain a medical certificate or to receive medical, surgical or hospital treatment or compensation in respect of a previous injury,

the employer shall, subject to this Act, be liable to pay compensation in accordance with this Act as if the accident were an accident arising out of or in the course of his employment.

"(2.) In this section, 'travelling' means travelling by the shortest convenient route for the journey, and does not include travelling during or after any substantial interruption of the journey

or any substantial deviation from the route made for a reason unconnected with the seaman's employment, attendance at the Mercantile Marine Office, or obtaining the certificate, treatment or compensation, as the case may be :

Provided that if it is shown that, in the circumstances of any particular case, the nature, extent, degree and content of the risk of accident were not materially changed or increased by reason only of the interruption or deviation, the injury or accident shall be deemed to have been caused to the seaman while travelling to or from work."

6. Section five A of the Principal Act is amended—

(a) by inserting in sub-section (1.) after the word "wages", the words "or but for the operation of clause (i) or (ii) of sub-paragraph (b) of paragraph (2.), of paragraph (4.) or of paragraph (4A.), of the First Schedule to this Act";

Medical benefits.

(b) by adding at the end of sub-section (1.) the following proviso :—

"Provided also that, where, in the opinion of the Minister, the exceptional circumstances of any case warrant payment of an amount in excess of One hundred pounds, the employer shall be liable to pay such amount in excess of One hundred pounds as appears to the Minister to be reasonable in those circumstances."; and

(c) by inserting in sub-section (2.), after the word "dentist," the words "a registered physio-therapist".

7. Section five B of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-sections :—

Compensation for certain injuries.

"(1.) Subject to this Act, where a seaman sustains, by accident arising out of or 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 incapacity other than total and permanent incapacity for work, be the amount specified in the second column of that Schedule opposite the specification of the injury in the first column.

"(1A.) Upon payment of an amount under this section the seaman shall not be entitled to any payment in accordance with sub-paragraph (b) or sub-paragraph (c) of paragraph (1.) of the First Schedule to this Act in respect of a period of incapacity for work resulting from the injury, but the amount payable under this section shall not be subject to any deduction in respect of any amount previously paid to the seaman in accordance with either of those sub-paragraphs."

8. Section five C of the Principal Act is amended—

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

Compensation in respect of death or incapacity of seaman through disease due to employment.

"(1.) Where—

(a) a seaman is suffering from a disease and is thereby incapacitated for work; or

(b) the death of a seaman is caused by a disease,

and the disease is due to the nature of the employment in which the seaman was engaged, the employer shall, subject to this Act, be liable to pay compensation in accordance with this Act as if the disease were a personal injury by accident arising out of or in the course of the seaman's employment."

- (b) by omitting from sub-section (2.) the words "during the period of twelve months";
- (c) by omitting from sub-section (3.) the words "at any time during the period of twelve months preceding" and inserting in their stead the words "prior to"; and
- (d) by omitting sub-section (4.).

9. Section five D of the Principal Act is repealed and the following section inserted in its stead :—

Maximum
compensation.

"5D.—(1.) Notwithstanding anything contained in this Act, the amount of compensation payable in respect of an injury or injuries caused by any one accident shall not, except as provided by this section, exceed One thousand two hundred and fifty pounds.

"(2.) Where an injury results in the death or the total and permanent incapacity of the seaman for work, sub-section (1.) of this section shall not apply to limit the total amount of compensation payable under this Act.

"(3.) In the application of sub-section (1.) of this section in relation to the total amount of compensation payable to a seaman under section five B of this Act, the total amount of any compensation paid to the seaman in accordance with the First Schedule to this Act before payment to him of the amount specified in the Third Schedule to this Act shall be disregarded."

10. Section ten of the Principal Act is repealed and the following sections inserted in its stead :—

Remedies both
against the
employer and
a stranger.

"10.—(1.) Where an injury in respect of which compensation is payable under this Act is caused under circumstances which create, or appear to create, a legal liability in some person other than the employer to pay damages in respect of the injury (which other person is in this section referred to as 'the third party'), the provisions of this section shall apply.

"(2.) The seaman may take proceedings both against the third party to recover damages and against the employer for compensation, but shall not be entitled to retain both damages and compensation.

"(3.) The employer may request the seaman to take proceedings against the third party and, where the seaman takes such proceedings at the request of the employer, the proceedings shall be conducted on the seaman's behalf at the expense of the employer, but the seaman shall pay to the employer the amount of any costs received by the seaman from the third party in respect of the proceedings.

"(4.) Where the seaman receives both compensation under this Act and damages from the third party, the seaman shall repay to the employer such amount of the compensation as does not exceed the amount of damages recovered from the third party.

"(5.) Upon notice to the third party, the employer shall have a first charge on moneys payable by the third party to the seaman to the extent of any compensation which the employer has paid to the seaman.

"(6.) Where the seaman has received compensation under this Act, but no damages or less than the full amount of damages to which he is entitled, the third party shall be liable to indemnify the employer against so much of the compensation paid to the seaman as does not exceed the damages for which the third party is liable.

"(7.) Payment of money by the third party to the employer under the last preceding sub-section shall, to the extent of the amount paid, be a satisfaction of the liability of the third party to the seaman.

"(8.) All questions as to the right to and amount of any indemnity for which a third party is liable under this section shall, in default of agreement, be settled by action or, by consent of the parties, by arbitration under this Act.

"10A.—(1.) Except as provided by this Act, a seaman shall not be entitled, in respect of personal injury by accident arising out of or in the course of his employment, to receive compensation or any payment by way of compensation from the employer both independently of and also under this Act.

*Liability of
employer
independently
of this Act.*

"(2.) Where personal injury is caused to a seaman in circumstances which create, or appear to create, a legal liability in the employer to pay damages in respect of the injury and the seaman has received compensation under this Act, the seaman shall not be entitled to take proceedings against the employer to recover damages unless he commences those proceedings within twelve months after the date upon which he received payment, or the first payment, of compensation under this Act.

"(3.) A seaman who recovers damages from an employer in respect of an injury shall not be entitled to compensation or any payment under this Act in respect of the same injury and any sum received by him under this Act in respect of that injury prior to the award of the damages shall be deducted from the amount of the damages recoverable from the employer."

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

(a) by omitting clauses (i) and (ia) of sub-paragraph (a) of paragraph (1.) and inserting in their stead the following clause :—

*Amendment
of the First
Schedule.*

"(i) if the seaman leaves any dependants wholly dependent upon his earnings, the sum of One thousand pounds and, in addition, an amount of Fifty pounds in respect of each child who, being a dependant under the age of sixteen years

at the date of either the injury or the death of the seaman, was at the date of the injury wholly or mainly dependent upon the earnings of the seaman ;” ;

(b) by omitting sub-paragraphs (b) and (c) of paragraph (1.) and inserting in their stead the following sub-paragraphs :—

“ (b) where the seaman is totally incapacitated for work by the injury—a weekly payment during his incapacity of the sum of Four pounds and, in addition, the sum of—

(i) One pound five shillings in respect of—

(1) the wife of the seaman ; or

(2) if he has no wife, or if compensation is not payable in respect of his wife—one female, over the age of sixteen years, who is—

(A) caring for a child under the the age of sixteen years and wholly or mainly dependent upon the earnings of the seaman ; or

(a) a member of the seaman's family,

if she was wholly or mainly dependent upon the earnings of the seaman at the date of the injury and remains so dependent ; and

(ii) Ten shillings in respect of each child who, at the date of the injury, was under the age of sixteen years and wholly or mainly dependent upon the earnings of the seaman and who, being under the age of sixteen years, remains so dependent ; and

(c) where the seaman is partially incapacitated for work by the injury—a weekly payment during his incapacity—

(i) of the amount (if any) by which the weekly amount which he is earning, or is able to earn in some suitable employment or business, after the injury is less than his weekly pay at the date of the injury, or of the amount of Four pounds, whichever is the less ; or

(ii) of the amount (if any) by which the weekly amount which he is earning, or is able to earn in some suitable employment

or business, after the injury is less than the weekly amount which would have been payable to him under sub-paragraph (b) of this paragraph, if he had been totally incapacitated,

whichever is the greater.”;

(c) by omitting paragraphs (1A.), (1B.), (2.), (3.) and (4.) and inserting in their stead the following paragraphs:—

“(2.) Notwithstanding anything contained in paragraph (1.) of this Schedule—

(a) where death results from the injury—

(i) any amount paid or payable before the death of the seaman by way of weekly payments in respect of his total or partial incapacity for work shall not be deducted from the sum payable under clause (i) of sub-paragraph (a) of that paragraph, or shall be disregarded in determining the sum payable under clause (ii) of that sub-paragraph, as the case may be; but

(ii) the amount by which any lump sum, paid to a seaman in pursuance of paragraph (18.) of this Schedule or section five B of this Act before the death of the seaman, exceeds the total of all weekly payments which would have been payable under sub-paragraph (b) or sub-paragraph (c) of that paragraph, if they had continued until the date of his death, shall be deducted from the sum payable under clause (i) of sub-paragraph (a) of paragraph (1.) of this Schedule, or shall be taken into account in determining the sum payable under clause (ii) of that sub-paragraph, as the case may be, but the sum so payable shall not be reduced to less than Two hundred pounds; or

(b) where the employee is totally or partially incapacitated for work by the injury—

(i) no payment shall be made under sub-paragraph (b) or sub-paragraph (c) of that paragraph which is in excess of the amount of the weekly pay of the seaman at the date of the injury;

- (ii) no such payment shall be made in respect of any period during which the owner of the ship is under any Act, Imperial Act or State Act liable to pay full wages to the injured seaman; and
- (iii) if the seaman is a minor who is not entitled under the terms of any award, order or determination of an industrial authority, any industrial agreement or any law to receive the same rate of pay as an adult, the words 'Three pounds' shall be deemed to be substituted for the words 'Four pounds' in the application of the provisions of sub-paragraph (b) or sub-paragraph (c) of that paragraph in relation to the seaman while he remains such a minor.

"(2A.) The amount of any child endowment paid under Part VI. of the *Social Services Consolidation Act* 1947-1948 in respect of a child shall be disregarded in ascertaining, for the purposes of this Schedule, whether or not that child is or was dependent upon the earnings of a seaman.

"(3.) For the purposes of this Schedule—

(a) 'pay' means the salary or wages of the seaman, and includes—

- (i) where the seaman receives, as a regular condition of his employment, board or board and lodging in addition to wages—such amount, not exceeding Thirty shillings per week, as is assessed as the value of the board or board and lodging; and
- (ii) unless otherwise prescribed—any allowance payable to the seaman in respect of his employment,

but, subject to the regulations, does not include any allowance which is intermittent or any allowance or sum which is payable in respect of special expenses incurred or likely to be incurred by the seaman in respect of his employment; and

- (b) any reference to the weekly pay of the seaman at the date of the injury means, if the rate of pay of seamen of the same class is subsequently varied under the terms of any award, order or determination of an industrial authority, any industrial agreement or any law, the rate of pay as so varied.

"(4.) The amount of any weekly payment of compensation payable to a seaman under this Schedule shall be subject to deduction of the amount of any payment, allowance or benefit which the seaman receives from the employer during the period of the seaman's incapacity." ; and

- (d) by omitting the proviso to paragraph (17.).

12. The Second Schedule to the Principal Act is amended—

Amendment
to the Second
Schedule.

- (a) by adding at the end of paragraph (2.) the words "or by arbitration before a Judge of a County Court";
- (b) by inserting in paragraph (6.), after the word "committee" (wherever occurring), the words ", a Judge"; and
- (c) by inserting in paragraph (12.) thereof, after the word "arbitrator," the word "Judge".

13. The Principal Act is amended by omitting the Third and Fourth Schedules thereto and inserting in their stead the following Schedule :—

The Third
Schedule.

"THIRD SCHEDULE.
COMPENSATION FOR SPECIFIED INJURIES.

Section 5a.

Nature of Injury.	Amount Payable.		
	£	s.	d.
Loss of both eyes	1,250	0	0
Loss of an only useful eye, the other being blind or abraded ..	1,250	0	0
Loss of one eye, with serious diminution of the sight of the other ..	937	10	0
Loss of one eye	600	0	0
Loss of hearing	875	0	0
Complete deafness of one ear	250	0	0
Loss of both hands	1,250	0	0
Loss of right arm or greater part thereof	1,000	0	0
Loss of left arm or greater part thereof	200	0	0
Loss of lower part of right arm, right hand or five fingers of right hand	875	0	0
Loss of lower part of left arm, left hand or five fingers of left hand ..	787	10	0
Loss of right thumb	375	0	0
Loss of left thumb	337	10	0
Loss of right forefinger	250	0	0
Loss of left forefinger	225	0	0
Loss of right middle finger	200	0	0
Loss of left middle finger	187	10	0
Loss of right ring finger	175	0	0
Loss of left ring finger	162	10	0
Loss of right little finger	162	10	0
Loss of left little finger	150	0	0
Loss of total movement of joint of right thumb	175	0	0
Loss of total movement of joint of left thumb	162	10	0
Loss of distal phalanx or joint of right thumb	200	0	0

THIRD SCHEDULE—continued.

Nature of Injury.	Amount Payable.
	£ s. d.
Loss of distal phalanx or joint of left thumb	187 10 0
Loss of portion of terminal segment of right thumb involving one-third of its flexor surface without loss of distal phalanx or joint	175 0 0
Loss of portion of terminal segment of left thumb involving one-third of its flexor surface without loss of distal phalanx or joint	162 10 0
Loss of two phalanges or joints of right forefinger	150 0 0
Loss of two phalanges or joints of left forefinger	137 10 0
Loss of two phalanges or joints of right middle or ring fingers	137 10 0
Loss of two phalanges or joints of left middle or ring fingers	125 0 0
Loss of two phalanges or joints of right little finger	125 0 0
Loss of two phalanges or joints of left little finger	112 10 0
Loss of distal phalanx or joint of right forefinger	125 0 0
Loss of distal phalanx or joint of left forefinger	112 10 0
Loss of distal phalanx or joint of other finger of right hand	100 0 0
Loss of distal phalanx or joint of other finger of left hand	90 0 0
Loss of hand and foot	1,250 0 0
Loss of both feet	1,250 0 0
Loss of leg above knee	937 10 0
Loss of leg below knee	812 10 0
Loss of foot	750 0 0
Loss of great toe	250 0 0
Loss of any other toe	100 0 0
Loss of two phalanges or joints of any other toe	50 0 0
Loss of phalanx or joint of great toe	125 0 0
Loss of phalanx or joint of any other toe	75 0 0

Adjustment of
weekly
payments
under the
Principal Act.

14.—(1.) Where, at the date of commencement of this Act, a person is receiving or entitled to receive weekly payments in accordance with the First Schedule to the Principal Act, he shall, from and including that date, be entitled to receive weekly payments in accordance with the provisions of the Principal Act, as amended by this Act.

(2.) Where, before the date of commencement of this Act, a seaman sustained an injury or contracted a disease in respect of which weekly payments in accordance with the First Schedule to the Principal Act would have been payable at that date if he had been incapacitated for work at that date, and he is not, at that date, so incapacitated, but after that date he becomes incapacitated for work as a result of the injury or disease, weekly payments in respect of that incapacity shall be in accordance with the provisions of the Principal Act, as amended by this Act.

(3.) Where, after the date of commencement of this Act, death results from an injury or a disease which was sustained or contracted before that date and in respect of which compensation was payable under the Principal Act, compensation shall be paid in respect of that death in accordance with the provisions of the Principal Act, as amended by this Act.