

1940

Present : Howard C.J.

MUTHUWEERAN v. SUPERINTENDENT, ETANA ESTATE.

In the matter of a case stated under section 39 of the Workmen's Compensation Ordinance, No. 19 of 1934.

Workmen's compensation—Employment of man with one eye blind—Loss of other eye—Total disablement—Workmen's Compensation Ordinance, No. 19 of 1934 s. 6 (1)B, (Cap. 117).

Where a workman, who has lost the sight of one eye, suffers the loss of the other eye as the result of an accident in the course of employment,—

Held, that the workman has suffered "total disablement" entitling him to compensation under 6 (1)B of the Workmen's Compensation Ordinance.

¹ 17 N. L. R. 33.

² 19 N. L. R. 277.

THIS was a case stated by the Commissioner of Workmen's Compensation under section 39 of the Workmen's Compensation Ordinance.

N. K. Choksy (with him *Miss Mehta* and *M. Ratnam*), for the employer.

R. R. Crosette-Thambiah, C.C., appears as *amicus curiae*.

Cur. adv. vult.

March 15, 1940. HOWARD C.J.—

This case has been submitted for the opinion of the Supreme Court by the Commissioner for Workmen's Compensation under section 39 of the Workmen's Compensation Ordinance (Cap. 117). The facts which are not in dispute are as follows:—Prior to an accident that occurred to him on August 19, 1938, the workman had lost the sight of his right eye. The time when and the circumstances in which the sight of this eye was lost are unknown, but it occurred long before August 19, 1938. Neither the present nor any previous Superintendent of the Etana Estate where the workman was employed was aware of the fact that the latter was blind in his right eye. On August 19, 1938, the workman suffered injury to his left eye arising out of and in the course of his employment. On August 23, 1938, he entered hospital and lost the sight of his left eye completely. The question for my decision is whether in law the workman has suffered "total" or "partial" disablement. Giving the phraseology of the definition of "partial disablement" where it occurs in section 2 its ordinary meaning, I do not think it can be contended that the disablement suffered by the workman comes within this definition. His earning capacity has, as the result of the accident on August 19, 1938, not been merely reduced, in every employment which he was capable of undertaking at the time of the accident, but he has been incapacitated for all such work. The injury, therefore, caused permanent total disablement entitling this workman to compensation under section 6 (1)B of the Ordinance. In this connection I would refer to the case of *Lee v. Baird & Co., Ltd.* (Vol. 1, Butterworths' *Workmen's Compensation Cases*, p. 34). At page 38 Lord Mackenzie states as follows:—

"It is the law that if a man who is already afflicted with an infirmity is injured by an accident and thereby incapacitated from carrying on the work which he was previously fit to do, then that is an injury which results from the accident, even though the accident would not have incapacitated him had he been otherwise sound. The case may be figured of an injury to a man who to begin with has only one eye. That renders him more liable to be disabled, but if an accident happens, and if there is injury to the sound eye, those responsible for the accident will be liable for the consequences, although if he had the other eye the result would not have been the same. In the same way, it is obvious that if a man with a lame leg receives an injury to the other leg the injury would have very much more serious consequences. Accordingly, I am unable to agree with the view of the learned Sheriff-Substitute upon the facts as stated in the case. It appears to me that this is the case of a man whose right eye has been rendered of little use in consequence of the accident, and that the result of that,

coupled with his previous infirmity, is to render him partially incapacitated for work, and accordingly he is still in a state of partial incapacity in the sense of the statute, and that partial incapacity, renders the employers liable to make compensation.”

In my opinion, therefore, the workman in this case has suffered permanent total disablement.
