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WORKMEN'S COMPENSATION

WILLIAM H. NICHOLSON, JR.*

Deduction or Offset from Award by Employer

In the case of *Wall v. C. Y. Thomason Co.*¹ it was held that an award having been made by the hearing commissioner, which award had not been appealed from, the rendition of judgment by the Court of Common Pleas in accordance with the award became mandatory under the provisions of section 72-357 of the 1952 Code, and that advances allegedly made by the employer but not presented at the hearing before the commissioner could not be deducted. The employer contended that it was entitled to a reference to determine the merits of the offset claimed under the provision of Code section 72-172, but the Court held that section applicable only to payments made by the employer with the approval of the commission and before the final award.

Formula for Partial Specific Losses

The Supreme Court in the case of *G. E. Moore Co. v. Walker*² nullified an attempt by the majority of the Industrial Commission to change by rule the formula theretofore followed in computing compensation for partial loss, or for partial loss of use of various members of the body, as enumerated in section 72-153.

The formula which the commission sought to change was as follows:

Maximum number of weeks compensable for total specific loss X the percentage of specific loss X the weekly compensable rate (60% of average weekly wage, but not more than \$35.00, nor less than \$5.00).

The following would have been substituted:

Average weekly wage X compensation rate X percentage of anatomical loss for the statutory period as specified.

In permanently enjoining enforcement of the latter formula the Supreme Court referred to the fact that the former had been the prevailing view from the time of enactment of the

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1. 232 S. C. 153, 101 S. E. 2d 286 (1957).

2. 232 S. C. 320, 102 S. E. 2d 106 (1958).

Workmen's Compensation law in South Carolina in 1935 to adoption of the new formula in 1957 without challenge or legislative amendment, and that it was in accord with the construction given similar statutes by most of the courts of other jurisdictions. It was held that the new formula, if enforced, would nullify the rule of proportion for partial incapacity. "For instance, under the new rule an employee earning \$90 a week would receive exactly the same compensation for 65% loss of the arm as for a 100% loss and an employee earning \$40 a week would receive exactly the same compensation for 20% loss of the arm as for a 5% loss."

Necessity for Specific Factual Findings by Commission

Two cases reported during the survey period were remanded to the Industrial Commission for findings of fact. In the first, the case of *Gray v. Laurens Mill*,³ the question involved was whether the employer had been prejudiced and the claimant had reasonable excuse for failing to give notice of the accident as required by provision of Code of Laws of South Carolina, 1952, sections 72-301 and 72-302. A mere finding of the hearing commissioner that "the employer had knowledge of the accident and was not prejudiced by the delay in giving formal notice" was held insufficient, there being no finding of "reasonable excuse". The Court held that there should be specific findings in the award of "reasonable excuse" and "lack of prejudice" with discussion of the facts upon which such findings are based.

In the other case remanded, *Fradley v. Pacific Mills*,⁴ it was held that the commission erred in not making specific findings as to the duration of temporary total disability, and, on the question of partial disability, as to what the claimant was able to earn after the injury.

Effect of Conclusive Presumption of Dependency

For the first time the Supreme Court of South Carolina declared what had been the construction adhered to by the Industrial Commission, that a widow conclusively presumed to be dependent upon a deceased employee under the provision of Code section 72-161 does not take to the exclusion of a person held to be totally dependent under Section 72-162. In

3. 231 S. C. 488, 99 S. E. 2d 36 (1957).

4. 231 S. C. 601, 99 S. E. 2d 398 (1957).

the case of *Bush v. Gingrey Brothers*⁵ a mother, found as a fact to be wholly dependent upon the deceased worker, was held entitled to share equally with the widow.

5. 232 S. C. 20, 100 S. E. 2d 821 (1957).

