Chapter 19: Workmen's Compensation

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CHAPTER 19

Workmen's Compensation

MAURICE F. SHAUGHNESSY

A. DECISIONS

§19.1. Maritime injury: Federal-state remedies. The doctrines of "local concern," 1 "twilight zone" 2 and "maritime but local" 3 have again risen their spectral heads to haunt the compensation attorney. The Supreme Court of the United States in the Calbeck 4 and Donovan 5 cases again interpreted Section 3 (a) of the Longshoremen's and Harbor Workers' Compensation Act. 6 This act, like state workmen's compensation acts, operates under the theory that industry, rather than the employee, is in the best position to sustain the economic loss of personal injury and death.

In the Calbeck and Donovan cases as reported by the Supreme Court of the United States on June 4, 1962, the question arises whether the jurisdictional dilemma that was laid to rest by Davis 7 has now come back to torment the practitioner. In Calbeck, the employee, Roger McGuyer, was a welder in the employ of the Levingston Shipbuilding Company, which owns and operates a shipyard on the navigable Sabine River, between Orange, Texas, and Calcasieu Parish, Louisiana. McGuyer worked both on the repair of completed vessels and on vessels under construction. He was injured while working on an uncompleted drilling barge which had been launched and was floating on the Sabine River while its superstructure was under construction. In the Donovan case the employee, Minus Aizen, was also a welder. His employer was Avondale Marine Ways, Inc., which operates two shipyards near New

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5 Donovan v. Avondale Shipyards, Inc., decided in the same opinion as Calbeck, note 4 supra.
Orleans. Aizen had worked only on new construction although fellow employees worked both on new construction and repair work. He was injured while welding on an oil drilling barge which had been launched and was floating on the navigable waters of the Mississippi River while its construction was being completed.

In each of these two cases the petitioner is a Deputy Commissioner of the Bureau of Employees’ Compensation, who based an award of compensation under the act on findings that the employee was engaged at the time of his injury in the work of completing the construction of a vessel afloat on navigable waters. In sustaining the award under the act the Supreme Court said in part:

Our conclusion is that Congress invoked its constitutional power so as to provide compensation for all injuries sustained by employees on navigable waters whether or not a particular injury might also have been within the constitutional reach of the state workmen’s compensation law. . . .

In sum, it appears that the Longshoremen’s Act was designed to ensure that a compensation remedy existed for all injuries sustained by employees on navigable waters, and to avoid uncertainty as to the source, state or federal, of that remedy. Section 3(a) should, then, be construed to achieve these purposes.8

The Court in essence held that shipyard workers employed on a vessel undergoing construction on the navigable waters of the United States, or for that matter on any dry dock, are entitled to benefits of the Longshoremen’s and Harbor Workers’ Compensation Act. Prior to this decision it was generally thought that persons engaged in new ship construction were not within the purview of the act.

It is readily understandable why the claimants in the present cases desired to come under the act. Maximum payments for Aizen under the Louisiana Compensation Act would be $14,000, whereas under the Longshoremen’s Act he would be entitled to $50 a week for life. He was permanently disabled at the age of twenty-five and should he live his full life expectancy of approximately forty-eight additional years he would receive $134,784, or over $120,000 more than he would receive under the applicable state act. McGuyer’s widow under the Texas Workmen’s Compensation Act would have been entitled to a gross amount of $12,600. Under the Longshoremen’s Act, however, if she did not remarry and lived her normal life expectancy the approximate amount due would be $83,500.

In 1927, in order to provide an injured longshoreman or harbor worker compensation, Congress passed an act to provide for the payment of compensation for injuries or death occurring on navigable waters of the United States. Section 3(a) provides:

Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

The origin of the Longshoremen's and Harbor Workers' Act can be traced directly to the action of some states in applying their state acts to longshoremen and harbor workers injured on vessels in navigable waters. Prior to the enactment of the Longshoremen's and Harbor Workers' Act in 1927 the states in order to prevent injured employees from being without a remedy evolved the "local" doctrine to circumvent the harsh result of Southern Pacific Co. v. Jensen. In that case the employee was driving a lumber cargo loader across a gangway to the vessel's hold. The accident occurred when Jensen was driving his truck from the vessel onto the gangway. The employee was killed on shipboard, and, therefore, his employment was maritime. His beneficiaries sought compensation under the New York Workmen’s Compensation Act. The Supreme Court in reversing New York, which awarded compensation, said:

The work of a stevedore, in which the deceased was engaging, is maritime in its nature; his employment was a maritime contract; the injuries which he received were likewise maritime; and the rights and liabilities of the parties in connection therewith were matters clearly within the admiralty jurisdiction.

The first breach in the Jensen doctrine was the Garcia case. Here the employee was doing longshoremen's work in the hold of a vessel. The holding was distinguished from Jensen by finding the injury was maritime in nature but local in character. The "maritime but local" doctrine was finalized in Grant Smith-Porter Ship Co. v. Rohde.

The Supreme Court, in 1942, evolved a new doctrine. The Davis case involved an iron worker who was killed when he fell from a barge into navigable waters. His beneficiary filed a claim under the Washington Compensation Act. The Washington Supreme Court rejected

9 244 U.S. 205, 37 Sup. Ct. 524, 61 L. Ed. 1086 (1917).
10 244 U.S. at 217, 37 Sup. Ct. at 529, 61 L. Ed. at 1099.
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the claim. The United States Supreme Court in reversing the state court said:

Harbor workers and longshoremen employed "in whole or in part upon the navigable waters" are clearly protected by this Federal Act; but, employees such as decedent here occupy that shadowy area within which, at some undefined and undefinable point, state laws can validly provide compensation. . . .

It must be remembered that under the Jensen hypothesis, basic conditions are factual: Does the state law "interfere with proper harmony and uniformity of" maritime law? Yet employees are asked to determine with certainty before bringing their actions that factual question over which courts regularly divide among themselves and within their own membership. As penalty for error, the injured individual may not only suffer serious financial loss through the delay and expense of litigation, but discover that his claim has been barred by the statute of limitations in the proper forum while he was erroneously pursuing it elsewhere. . . .

The horns of the jurisdictional dilemma press as sharply on employers as on employees. In the face of the cases referred to above, the most competent counsel may be unable to predict on which side of the line particular employment will fall. . . .

There is, in the light of the cases referred to, clearly a twilight zone in which the employees must have their rights determined case by case, and in which particular facts and circumstances are vital elements. That zone includes persons such as the decedent who are, as a matter of actual administration, in fact protected under the state compensation act.14

Again in Hahn v. Ross Island Sand & Gravel Co.15 the twilight zone doctrine was commented upon with approval. In effect this doctrine told injured employees that in doubtful cases "... he would be assured of workmen's compensation whether he proceeded under a state workmen's compensation act or the federal statute." 16 The question left unanswered by these cases is, what factual situation falls within the "twilight zone"? A Massachusetts decision by Chief Justice Qua in Moores's Case17 recognized the futility of attempting to reason logically about the ramifications of the "twilight zone." The principle question raised by Moores related to the applicability of the state compensation law. The claimant when injured was working at the shipyard of the self-insurer on a 475-foot tanker chartered by the United States Government. The employee's work was variously on piers, dry docks and ships at the self-insurer's plant, at which he was classified as a "rigger." The employee was injured when he slipped while giving signals to a crane operator. At the time of the injury

14 317 U.S. at 253-256, 63 Sup. Ct. at 227-229, 87 L. Ed. at 248-250.
16 358 U.S. at 274, 79 Sup. Ct. at 268, 3 L. Ed. 2d at 294 (separate opinion).
the claimant was on board a completed vessel undergoing extensive repairs on a dry dock, floating in navigable waters adjacent to a pier to which it was fastened. Massachusetts workmen’s compensation law covers all longshore maritime injuries not excluded by the constitutional grant of admiralty and maritime jurisdiction to the United States. Since the decision in *Jensen* it was necessary to observe carefully the line of demarcation between state and federal authority. In affirming the decision of the Industrial Accident Board which awarded benefits to the employee, Chief Justice Qua said in part:

It would seem, therefore, that although apparently some heed must still be paid to the line between State and Federal authority as laid down in the cases following the *Jensen* case, the most important question has now become the fixing of the boundaries of the new “twilight zone,” and for this the case gives us no rule or test other than the indefinable and subjective test of doubt. . . . Probably therefore our proper course is not to attempt to reason the matter through and to reconcile previous authorities, or to preserve fine lines of distinction, but rather simply to recognize the futility of attempting to reason logically about “illogic,” and to treat the *Davis* case as intended to be a revolutionary decision deemed necessary to escape an intolerable situation and as designed to include within a wide circle of doubt all water front cases involving aspects pertaining both to the land and to the sea where reasonable argument can be made either way, even though a careful examination of numerous previous decisions might disclose an apparent weight of authority one way or the other. We can see no other manner in which the *Davis* case can be given the effect that we must suppose the court intended it should have, and we must assume that the court intends to follow that case in the future.

Several interesting but yet unanswered questions arise as a result of the decision in *Calbeck* and *Donovan*. If a secretary who spends practically all of her working hours at an office desk is sent to deliver a message to another employee who is working on a vessel under construction and is injured, is her exclusive remedy under the Longshoremen’s and Harbor Workers’ Act? Again, if the owner of a small sporting goods store in Springfield sends his handyman to scrape the bottom of his boat that is in the local dry dock and the handyman falls into a local navigable river and is less handy at swimming than at scraping, is the handyman’s widow’s sole remedy under the Longshoremen’s and Harbor Workers’ Act?

To summarize the several doctrines including Section 3(a), as attempted above, is at worst foolhardy and at best fraught with danger.

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Few of the commentators can agree. The meaning of 33 U.S.C. §903(a) is far from being a question of first impression. In the thirty-five years since its enactment this provision has been before the United States Supreme Court many times. For the guidance of the practitioner, the Deputy Commissioner in this area has taken the position that he has jurisdiction of injuries on all incompleted vessels afloat, as well as marine railways and dry docks. It is the feeling of the United States Department of Labor, Bureau of Employees’ Compensation, that jurisdiction has been given to this division of all shipyards in Massachusetts who repair or construct boats or are engaged in any of the related activities such as demolition, painting, caulking and other functional supplementary matters.

§19.2. Action against third person. Farrell’s Case in essence allowed a double recovery for the widow. The facts, agreed to before the Industrial Accident Board, were substantially as follows: The employee on July 2, 1958, sustained injuries arising out of the course of his employment when struck while on the public way by an automobile owned and operated by one Malinowski. The injuries resulted in Farrell’s death on July 3, 1958. The employee was survived by two dependents. Hartford Accident and Indemnity Company was the carrier of both the workmen’s compensation insurance of Farrell’s employer and the automobile liability insurance of Malinowski, with a coverage limit of $20,000 for the injury or death of one person in one accident. The compensation insurer paid benefits under the act to the dependents and sought an offset.

Hartford, as a compensation insurer, did not bring an action against the third party, Malinowski, within nine months. The dependent widow, as executrix, brought such action, and the jury in Superior Court returned a verdict of $25,735 on Count I (conscious suffering) and $13,780 on Count II (death). The executrix, before entry of judgment, agreed to accept $20,000 in full payment for damages and to release Malinowski from all further liability. Hartford, as the liability insurer, agreed to pay, and has paid, the entire amount of its coverage ($20,000) and, as the compensation insurer, agreed to waive recovery of all payments made by it under G.L., c. 152, prior to March 11, 1960, the date of execution of the stipulation and agreement for entry of judgment.

The single member in his findings ruled that the action taken by the executrix did not in any way affect or relieve the obligation of the workmen’s compensation insurer to pay the dependent widow benefits under G.L., c. 152, §31. His order that the insurer continue the payments of dependency compensation was affirmed by the reviewing

21 2 Larson, The Law of Workmen’s Compensation §§89.00-89.60 (1952); Horovitz, Injury and Death Under Workmen’s Compensation Laws 21-33 (1944); Rodes, Workmen’s Compensation for Maritime Employees: Obscurity in the Twilight Zone, 68 Harv. L. Rev. 637, 658-639 (1955); Morrison, Workmen’s Compensation and the Maritime Law, 38 Yale L.J. 472, 500 (1929); Comment, 67 id. 1205, 1210-1211 (1958).
board. The insurer appealed from the decree entered in the Superior Court that the dependency payments be made in accordance with the board’s decision.

In affirming the decree of the Superior Court, the Supreme Judicial Court assumed, since there was no need to decide the point, that under G.L., c. 152, §15, the insurer is entitled to full reimbursement from the proceeds of the law action against the third party before the claimant may recover any part. The Court held, however, that the rights of the insurer are affected by the stipulation under which the lump sum was made. This provided:

Whereas the executrix has agreed to accept twenty thousand dollars in full payment for damages and to release the defendant from all further liability; . . . Hartford . . . will pay to the executrix the sum of twenty thousand dollars, of which thirteen thousand seven hundred eighty dollars is for the death, and six thousand two hundred twenty dollars is for conscious suffering; . . . Hartford . . . agrees to waive recovery of all payments made to date under c. 152 of the General Laws . . .

Section 15 expressly provides that the hearing on the merits of the settlement is a time for the determination of “the amount, if any, to which the insurer is entitled out of such settlement by way of reimbursement . . .” The Court held that the settlement stipulation was to be construed in the light of this provision. The executrix gave up her rights against the defendant, and in view of the verbiage in the stipulation agreement the Court held that Hartford was not entitled to offset the $20,000 against future compensation.

If the defendant, Malinowski, was in fact impecunious it would appear that the executrix not only had her cake, but was able to enjoy every morsel of it.

It is unlikely that such a factual situation will again arise. In Farrell, the Court held the insurer to what was not actually in the stipulation but must have been understood by the parties, i.e., workmen’s compensation benefits would not be paid until after that number of weeks when $20,000 would have been paid had passed. A more careful drafting of settlement stipulations in the future will prevent the harsh rule of the present case.

§19.3. Incapacity. In Dimitropoulos’s Case, the employee, more than twenty years ago, was involved in an accident as a result of which his right eye was enucleated. On August 24, 1957, while in the course of his employment he received a blow on the head. Shortly thereafter his vision in his left eye became impaired, and a medical examination revealed that he had a detached retina. On September 7, 1957, an operation was performed to remedy this condition; as a result “vision was 20/30, corrected, the retina was in situ and the eye looked

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very good.” The only impairment in vision after the operation was the result of a pre-existing cataract which was in no way related to the employee's injury on August 24. After finding the foregoing facts, the single member found that the employee was totally incapacitated from September 3, 1957, to January 27, 1958, and partially incapacitated from January 28, 1958, to March 31, 1958, and awarded total and partial incapacity compensation respectively for these periods. With respect to compensation following March 31, 1958, the single member found that the employee's incapacity was not owing to any injury arising out of and in the course of his employment.

The reviewing board, with a modification, affirmed the findings of the single member and the award of compensation made by him. The board modified the decision of the single member "by specifically reserving the employee's right to further compensation following March 31, 1958, when they were terminated by the single member." There was no appeal from this decision.

Pursuant to the modified decision a second hearing was held before another single member. This hearing was limited to the issue of impairment of earning capacity subsequent to March 31, 1958. In essence the single member found that the employee did not have any disability subsequent to March 31, 1958, that was causally related to an injury of August 24, 1957. The single member, accordingly, denied compensation.

The reviewing board affirmed the decision of the single member with a modification. The reviewing board found in accordance with the testimony of a qualified ophthalmologist that "since the employee had a detached retina in his only eye . . . he should avoid heavy work and work of the nature . . . he was performing at the time of his injury . . . because of the physical danger that might result to this eye in performing work of a heavy nature." Concluding, the board found that "since this employee because of the injury to his left eye is restricted to doing work of a light nature and of a type not likely to re-injure . . . [that] eye . . . his earning capacity, because of his restriction to such types of work, is reduced." The board awarded partial incapacity compensation under Section 35 from March 31, 1958.

Upon certification to the Superior Court by the insurer a decree was entered in accordance with the board's decision. From this decree the insurer appealed.

The Supreme Judicial Court held that a finding of partial incapacity is warranted when an employee, under competent medical advice, refrains from engaging in his former work because of a considerable risk of re-injury, and pursues less remunerative work in order to avoid that risk. The Court pointed out that the finding of the single member, adopted by the board, that the employee's sight was “as good as

2 343 Mass. at 343, 178 N.E.2d at 499.
3 Ibid.
before the injury and that he could do his regular work, but with the possibility of another accident if he overexerted," did not compel a finding of no incapacity on the ground that the employee is physically able to do his former work.

There was apparently no Massachusetts decision precisely on point, but according to the Court it had been considered elsewhere. The case of Williams v. Lancasters Steam Coal Collieries, Ltd. was cited by the Court as supporting its decision. In that case, a hewer, who was about fifty years of age, was in 1923 certified to be suffering from miner's nystagmus. He received compensation for total incapacity until 1924, when he resumed work on the surface at lower wages and was paid partial compensation. In 1927 he returned to work underground, but in 1934 was again certified to be suffering from miner's nystagmus and received partial compensation. On May 4, 1939, compensation was suspended by the employer on the grounds that the medical practitioner had certified on that date that the employee was fit to resume his ordinary work. The employee filed for further compensation. The lower court held that the medical evidence indicated there was a reasonable probability that incapacity might ensue from work underground and it thus was not suitable employment for the employee. An award was made for the resumption of compensation from May 4, 1939.

The word "incapacity" as found in Sections 34, 34A and 35 of G.L., c. 152, has been defined on innumerable occasions by the Supreme Judicial Court. In Evans's Case it was said: "It is settled that, with certain exceptions which are immaterial here, compensation under the Workmen's Compensation Act is awarded for impairment of earning capacity and not for injury as such." Again in Zeigale's Case it was said: "Compensation is awarded not for the injury as such but rather for an impairment of earning capacity caused by the injury." It is axiomatic that an employee seeking an award of compensation must show by a preponderance of the evidence the nature and extent of his incapacity. It has also been held that an employee's inability to obtain work resulting directly from his injury is an "incapacity for work" within the meaning of the Workmen's Compensation Act. Dimitropoulos was hired by his employer with knowledge of his physical impairment. An insurer takes the employee in the condition in which it finds him and is bound to compensate him according to the provisions of the act for incapacity resulting from any compensable injury recorded during the period covered by the policy. Whether an employee has been incapacitated is a question of fact, and when there is evidence to justify the finding of the Industrial Accident Board

4 35 B.W.C.C. 75.
7 Davis's Case, 304 Mass. 530, 24 N.E.2d 541 (1949).
8 Lacione's Case, 227 Mass. 269, 116 N.E. 485 (1917).
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reversing the decision of the single member, its finding is not subject to review on the merits.\textsuperscript{10} Dr. Yasuna, an ophthalmologist, testified on behalf of Dimitropoulos as follows:

My opinion that an individual such as this who has had [a] detached retina which has been operated [on], in this case relatively successfully, should not engage from then on in any heavy work whatsoever. . . . Any patient who has had a retinal detachment should be limited to light work. . . . The reason for saying that is [that] the patient has had a retinal detachment and is prone to have another detachment which can certainly be brought on more so by having a strain, heavy lifting or further injury to his eye or head. . . . The possibility of a recurrence in an only eye is even higher than 25%, maybe as high as 50% if exposed to heavy lifting work.\textsuperscript{11}

There was evidence in Dr. Yasuna's testimony as to incapacity. It is well settled that findings of fact by the board are final if there is any evidence to support them.\textsuperscript{12} And it is equally well settled that the decision of the reviewing board cannot be reversed unless required as a matter of law.\textsuperscript{13}

The Supreme Judicial Court in affirming the decision of the board in awarding partial incapacity compensation may have given the board another Pandora's box. The Court held that the medical testimony, together with the serious consequences which might ensue if the employee resumed his former type of work, justifies the award of partial compensation. Who can say that an employee who had a back injury may not sustain further difficulties on return to work; or the claimant with dermatitis may not cause a fresh outbreak on his return to work; or the coronary patient may not sustain another occlusion. If the state and federal "Hire the Handicapped" program is to have the full cooperation of industry in the future, the board will have to weigh carefully what results may reasonably ensue on an injured employee's return to work.

B. LEGISLATION

§19.4. Appeal on rates. General Laws, c. 152, §52D, has been amended by Acts of 1962, c. 299, which allows any insured to obtain all information relative to a rate established for that insured. Any party affected by the action of any rating organization or insurer may appeal to the Commissioner of Insurance, who will provide a hearing.

§19.5. Increase in weekly benefits for specified injuries. Acts of 1962, c. 471, makes a number of substantial changes in G.L., c. 152, §36. In case of the following specified injuries the sum of $20 a week

\begin{itemize}
  \item \textsuperscript{10} Donovan's Case, 243 Mass. 88, 137 N.E. 34 (1922).
  \item \textsuperscript{11} 343 Mass. 341, 344 n.1, 178 N.E.2d 497, 499 n.1 (1961).
  \item \textsuperscript{12} Chapman's Case, 321 Mass. 705, 707, 75 N.E.2d 435, 435 (1947).
  \item \textsuperscript{13} McCann's Case, 286 Mass. 541, 543, 190 N.E. 725 (1934).
\end{itemize}
shall be paid in addition to all other compensation for the following periods:

(a) For the loss by enucleation or otherwise, or the total loss of use of both eyes, a period of five hundred weeks.

(b) For the reduction to twenty seventieths of normal vision in both eyes, with glasses, a period of five hundred weeks.

(c) For the reduction to twenty seventieths of normal vision in one eye, with glasses, a period of two hundred weeks.

(d) For the loss by enucleation or otherwise, or the total loss of use of one eye, or for injury to one eye which produces an inability which is not correctible to use both eyes together for single binocular vision, a period of two hundred weeks.

(e) For any permanent but partial reduction in either the acuity or field of vision of either eye, such period of weeks in proportion to the period applicable in the event of total loss, total loss of use, or the reduction to twenty seventieths of normal vision of one or both eyes as the partial reduction bears to such total loss, total loss of use or reduction to twenty seventieths of normal vision.

(f) For the loss of hearing of both ears, four hundred weeks.

(g) For the loss of hearing of one ear, one hundred and fifty weeks.

(h) For the bodily disfigurement the number of weeks which, according to the determination of the industrial accident board, reviewing board or single member, is a proper and equitable compensation, not to exceed two hundred and twenty weeks, which sum shall be payable in addition to all other sums under this section wherever the same shall be applicable.

(i) For loss of bodily functions or sense other than hearing and sight the number of weeks which, according to the determination of the board, reviewing board or single member, is a proper and equitable compensation, not to exceed one hundred and seventy-five weeks.

(j) For loss by severance of the right or major arm at the shoulder, a period of two hundred and twenty-five weeks.

(k) For loss by severance of the left or minor arm at the shoulder, a period of two hundred weeks.

(l) For loss by severance of the right or major hand at the wrist, a period of one hundred and seventy-five weeks.

(m) For loss by severance of the left or minor hand at the wrist, a period of one hundred and fifty weeks.

(n) For the loss by severance of either leg at the hip, a period of two hundred weeks; for the loss by severance of both legs at the hip, a period of five hundred weeks.

(o) For the loss by severance of either foot at any point above the ankle joint, a period of one hundred and fifty weeks; for the loss by severance of both feet at any point above the ankle joint, a period of three hundred and fifty weeks.

(p) For such periods in the case of an arm or a leg, that if either is amputated at or above the elbow or the knee it or they will be treated as though at the shoulder or the hip; but if amputated below
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the elbow or the knee it or they will be treated as though at the ankle or the wrist.

(q) If the member, whether leg, foot, arm or hand, is not lost by severance, but is so injured as to be permanently incapable of use, for the same number of weeks as though it were severed; provided, however, that if the loss of use is less than total, then for such period of weeks in proportion to the period applicable in the event of total loss of use of said leg, foot, arm or hand as the functional loss bears to the total loss of use of such leg, foot, arm or hand.

(r) If the fingers, toes or other parts of the hand or foot have been severed or permanently rendered incapable of use, such period of weeks in proportion to the period applicable in the event of total loss or total loss of use of said hand or foot as the functional loss arising out of said severed or inutil part of said hand or foot bears to the total loss or loss of use of the same.

(s) For loss by severance of both hands at the wrist, a period of four hundred weeks.

(t) For loss by severance of both arms at the shoulder, a period of five hundred weeks.

The weekly payments provided for the act may at the discretion of the board or any member thereof be paid to the employee in a bulk sum. The act specifically provides that compensation payable under it is not to affect adversely the employee's right to compensation under Section 36 or any other section of the Workmen's Compensation Act.