
(1955) 05 CAL CK 0033
In the Calcutta High Court
Case No : A.F.O.O. No. 186 of 1954

Angus Co. Ltd.

APPELLANT

Vs

Chouthi

RESPONDENT

Date of Decision : 19-05-1955

Acts Referred:

Workmens Compensation Act, 1923 — Section 17, 19, 22, 3, 32

Citation : AIR 1955 Cal 616 : 60 CWN 174

Hon'ble Judges : Chakravartti, C.J.;Lahiri, J

Bench : Division Bench

Advocate : Phanindra Kumar Sanyal, for the Appellant;Nalini Kanta Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Chakravartti, C.J.—Of the two grounds urged in this appeal, one is really a ground of fact, but the other raises what appears to be a question of first impression. It is this: Does the Workmen's Compensation Act contemplate successive applications with respect to the same injury or, to put it in more precise terms, when the compensation payable for a particular injury has been settled either by an award or by agreement can the workman concerned make a second application on the ground that the injury has since been aggravated and the disablement has increased and that consequently he is entitled to further compensation?

2. The facts out of which this appeal has arisen are as follows: The respondent, Chouthi, was admittedly a workman employed under the appellant company and admittedly on 5-1-1951, he suffered a personal injury by accident in the course of and arising out of his employment. The accident was that, while on duty, he was knocked down by one of the railway engines of the employer-company. The injuries suffered were of a ghastly character. They included a compound fracture of both the upper and lower jaws, including the teeth and the nasal bones, injury to the skull and injury to the scalp, that to the scalp being so violent that the

bone was broken to pieces and several of them, necrosed or not necrosed, had to be extracted by more than one operation.

Strange as it might seem, the workman survived. After the accident, he was taken immediately to the company's own hospital and treated there till 21-2-1951 when he was discharged. Thereafter, negotiations seemed to have been commenced between the parties as to fixing the compensation payable to the respondent by agreement and in the course of such negotiations he was examined by one Dr. Garrow who assessed his disability as permanent and as involving loss of 60 per cent. of his earning capacity. When the matter came up to the Commissioner u/s 28 of the Act, he thought that, in view of the nature of the injuries, it was desirable that the workman should be examined by a Brain Specialist.

Accordingly, the respondent was examined by one Dr. Anklesaria, who is an F. R. C. S. of the London University and a brain surgeon. Dr. Anklesaria examined the respondent and after doing so, confirmed the assessment of his disability as made by Dr. Garrow. In the certificate granted by him on 10-7-1951 he added that it would be advisable for the respondent to do only light work for the present, but after a period of about six months, he would be able to do ordinary work.

3. Both the general physician and the Brain Specialist having assessed the respondent's disability as involving loss of 60 per cent. of his earning Capacity, an agreement was entered into between him and his employers on the same basis and it was registered on 18-7-1951. The compensation agreed to was Rs. 1512/-, of which a portion having been received by the workman previously the actual payment made after the registration of the agreement was Rs. 1357/-. The basis on which the compensation was settled was that of a "permanent partial disability.

4. It appears that after the execution of the agreement, the respondent rejoined his duties on 23-7-1951 and was given light work. This must have been on the strength of the observation contained in the certificate granted by Dr. Anklesaria. The respondent continued to be in service till 15-8-1951, but was apparently unable to carry on. He went on sick leave on the 16th August and remained on such leave till the 27th August following. On the 28th of August he resumed his duties, but apparently his physical condition was such or became such that further medical attention appeared to be necessary.

Certain papers of the Company's own hospital show that the respondent went to the Outdoor Department of the hospital on 22-10-1951 and on the 29th November following he was advised an operation. A further operation was performed and a few more pieces of bone were taken out from his head. As far as one can see from the hospital papers, he continued to receive medical attention till 6-3-1952.

5. In the meantime, on 8-12-1951, another of the company's doctors, out Dr.

J.N. Datta, pronounced the respondent unfit for further service and thereupon he was discharged.

6. It must have been about that time that the respondent began to think that the compensation he had received was not adequate and that he was entitled to a further amount. There is on the record a certificate granted by Dr. Manmatha Nath Pal on 17-3-1952, as respects the nature of the injuries received by the respondent on 5-1-1931. What caused that certificate to be issued on the 17th of March has not been made clear, but it is reasonable to presume that something made it necessary to ascertain and place on record the nature of the personal injuries suffered by the workman, as they were on the date of the accident.

7. On 1-5-1952, the respondent made the application out of which the present appeal arises. In that application he recited the accident and also admitted that he had already received a sum of Rs. 1357/- under an agreement, but he went on to say that the disability had since been aggravated and, therefore, he was filing a fresh claim "for aggravation". The fresh claim was a claim for a lump-sum payment of Rs. 4,200/- less Rs. 1357/- which he admitted to have received and, therefore, a net sum of Rs. 2,843/-. The amount was claimed on the basis that the monthly wages of the respondent had been Rs. 100/-.

8. By their written statement filed on 2-7-1952, the appellant-company denied that there had been any aggravation of the disability since the agreement. They also claimed that the respondent should be further examined by a doctor and that he should be directed to report to the company for the purpose of such examination. A further case made by the company was that the respondent had suffered a permanent disablement resulting from the injury and compensation for that disablement had already been assessed at a loss of 60 per cent. of the earning capacity by agreement between the parties and the respondent had received payment of the compensation agreed to. Since, according to the company, there had been no subsequent aggravation of the physical condition of the respondent, it was pleaded that he was not entitled to any further compensation. The average monthly wages of the respondent were stated to have been not Rs. 100/- as claimed by the respondent, but only Rs. 58-8-1.

9. It is important to note that it was not one of the company's contentions that even assuming that there had been an aggravation of the physical condition of the respondent and, an increase of his disability, he was still not entitled under the Act to maintain a second application.

10. It appears that after the respondent's application had been filed, he was examined by two doctors. One of them was the same Dr. Anklesaria who examined him for the second time on 25-7-1932. Earlier, on 6-6-1952, the respondent was examined by a doctor of his own choice, one Dr. Satinath Banerjee.

11. In his second certificate, Dr. Anklesaria stated that he found the respondent's condition to be exactly the same as it had been at the time of the

first examination and that it had not deteriorated in any way. According to the doctor, the disablement was still such as entailed a loss of 60 per cent. of the respondent's earning capacity. The certificate states further that the respondent was fit for ordinary work. The complaints made by him were described as "absolutely inconsistent with neurological examination" and the respondent himself was described as "stubbornly unco-operative."

12. Dr. Satinath Banerjee's certificate gave an account of the condition of the respondent's body as found by him on clinical examination. The details are such as make one's flesh creep. According to the certificate, there was evidence of deterioration, particularly of the head injuries and the then loss of earning capacity was permanent and total. The certificate noted that the patient could not open his mouth fully, nor speak well, nor chew his food well, that there was obstruction of the nostrils on account of the fracture of the nasal bone, that the patient suffered from insomnia and complained of headache and that even his gait had become disturbed and looked in co-ordinated.

13. Both the doctors gave evidence in Court. Dr. Satinath Banerjee frankly admitted that he had not been supplied with any material wherefrom he could gather what the condition of the respondent had been in July, 1951. He however added that if in July 1951, he found the patient's condition to have been as it was then, he would have assessed the disability at 100 per cent. for the head injury alone. Dr. Anklesaria adhered to his opinion that the respondent had not sustained any permanent disability in excess of the 60 per cent. originally assessed and that there had been no aggravation or deterioration. While admitting that the respondent could not open his jaws fully, nor talk or eat properly, the doctor asserted that even then he could carry loads of the weight of two or two and a half maunds.

14. It is only necessary to refer to the medical opinion of another of the company's doctors, Dr. Manmatha Nath Pal, whom I have already mentioned. He said nothing with regard to the extent of the disability at the time of the original injury, although his certificate states what the injuries were. But he has stated that as regards the petitioner's unfitness for work on account of his head injury, he is of the same view as Dr. J.N. Datta expressed on 8-12-1951. This opinion obviously relates to the respondent's physical condition on the date on which Dr. Datta gave his certificate.

15 The learned Commissioner considered the evidence of the doctors as also the documentary evidence placed before him and came to the conclusion that there had been an aggravation of the injuries, increasing the disability from loss of 60 per cent. of the earning capacity to 100 per cent. of such loss. Having come to that finding, the learned Commissioner proceeded to make an award for Rs. 2,520/- less Rs. 1522/- already paid, that is to say, for a further net amount of Rs. 1008/-. It is against that decision that the company have preferred the present appeal.

16. On behalf of the appellant two points were urged before us by Mr. Sanyal. He contended that there had been no aggravation at all of the injury suffered by the respondent and that the learned Commissioner's finding to the contrary was based on no evidence or rather was against the tenor of the evidence before him. It was contended in the second place that even assuming that there had been an aggravation of the injury since the agreement, the respondent was still not entitled in law to maintain a second application for further compensation.

17. It seems to me that the company's first contention is answered by the clear facts of the case. I shall refer presently to the very ingenious criticism made by Mr. Sanyal of the judgment of the learned Commissioner, but there are certain facts which stare one in the face and against which it is useless for the company to contend. The company, it should be remembered, are not saying that the compensation paid on the basis of a 60 per cent. loss of the earning capacity was inadequate. Their case is that the disability was correctly assessed and has remained at what it was at the time of the agreement. But leaving speculation aside, it is a fact that after the agreement had been executed, the respondent was allowed to rejoin service under the company and he in fact earned wages,

It is thus clear that on 25-7-1951, when he rejoined his duties after the accident, his earning capacity had not totally disappeared and the company treated him, and treated with him, on that basis. Subsequently, however, on 8-12-1951, one of the doctors of the company came to form the opinion that the respondent had become unfit for further service and acting on that opinion, the company discharged the respondent. It is thus clear that it was only on 8-12-1951, that, according to the company's own doctors, the total disappearance of the respondent's earning capacity first occurred.

The facts I have recited make it perfectly clear that there was in fact no total loss of the earning capacity by or immediately after the accident and the respondent earned wages from the company themselves. If to that one adds the further fact that on 8-12-1951, the company refused to keep the respondent any longer in their service on the ground that he was no longer fit, the conclusion becomes inevitable that some earning capacity remained in the respondent after the accident, his loss being at that time only 60 per cent. and that the earning capacity so surviving the accident was lost by him on or about 8-12-1951, when the disability became total,

As Mr. Mukherjee, appearing for the respondent, reminded us, the disability contemplated by the Act was disability in relation to the earning capacity and the physical condition comes in only so far as the mining capacity is affected thereby, On the facts established by the company's own conduct as also by the evidence called by themselves, there can be no manner of doubt that the personal injury suffered by the respondent had, in fact, become aggravated after the date of the agreement and that the disability increased from 60 per cent. loss of the earning capacity to total loss.

18. I would now refer to the ingenious criticism advanced by Mr. Sanyal on behalf of the company. He contended that the evidence in this case consisted in the opinion of medical men and that it was quite possible that on precisely the same physical condition of a particular workman, one doctor would say that the loss of earning capacity should be assessed at 60 per cent. and another would say that such loss should be assessed as total. Mr. Sanyal's point was that, in the first place, what the doctors on whom the respondent was relying had said was that on 8-12-1951, or thereafter his condition was such that there was no longer any earning capacity left in him.

The assessment of the disability as on or about, 10-7-1951, had been 60 per cent. But the same physical condition which had evoked the medical opinion expressed on 8-12-1951 or subsequently, might have existed in July 1951 and might have caused another doctor to say that the disability was only 60 per cent. Mr. Sanyal particularly reminded us that the respondent's own doctor had not seen him in July, 1951 and had not been supplied with materials about his physical condition at that time. The only doctor who had seen the respondent at both points of time was Dr. Anklesaria and his opinion was that the respondent's physical condition had not deteriorated.

19. I am not quite sure if Mr. Sanyal realised the effect of what he was saying. A contention that the respondent's physical condition had not deteriorated can have two meanings. One meaning would be that the physical condition had in fact remained the same and that the disability caused by such condition had been correctly assessed at the time the agreement had been entered into. The other meaning would be that the assessment of the disability was no true criterion on what the physical condition really was and it was quite possible that the same physical condition as seen subsequently, which, in fact, involved a total disability, had also existed at the earlier point of time, but the disability had then been assessed by another doctor or another agency at the lower percentage.

Mere difference between the disability as assessed at different points of time by different doctors would not, therefore, be conclusive evidence that there had been any change of the physical condition. I have already disposed of the contention of Mr. Sanyal in the first of the two meanings I formulated. I have held that on the facts it was clear beyond any vestige of doubt that the physical condition of the respondent had not remained stationary but had deteriorated. In its second meaning, the contention of Mr. Sanyal seems to me to land his clients in serious difficulty.

The company cannot throw overboard their own doctors, namely, Dr. Manmatha Nath Pal and R.T.N. Datta. Their opinion was that at least on 8-12-1951, the respondent was not fit for service. If the company's contention be that the same might have been the condition of the respondent in July, 1951, although the disability was assessed at 60 per cent., then the position would be that there had been no adequate assessment of the disability and that the respondent, being entitled to compensation on the basis of a permanent and total disability, had yet

accepted an agreement on a basis of permanent and partial disability.

If such turned out to be the real state of the facts, it would become a serious question whether Section 17 of the Act would not be attracted and whether the agreement would not have to be held to be void on the ground that the respondent had relinquished a part of his compensation. If Mr. Sanyal's client still wanted to contend that the second application would not lie, the contention would have to be not that a second application did not lie on the ground of aggravation of the original injury, but that it did not lie even to correct a mistake which had occurred in the assessment of the disability as it existed even at the date of the agreement:

As I have pointed out, the plain case made before the Commissioner by the company was that there had been no aggravation of the injury in fact, and the only legal argument urged before us was that no second application on the ground of aggravation was maintainable. The other possible contention which I mentioned just now, would not avail the company in the least, because in the first place the case was never placed on that basis and in the second place it would bring the company face to face with Section 17.

20. I have said so much only to dispose of the criticism made by Mr. Sanyal of the judgment of the learned Commissioner. Whatever else may be said of it, the learned Commissioner was certainly right in saying that the evidence of Dr. Anklesaria was contradicted by that of Dr. Manmatha Nath Pal. Dr. Anklesaria speaking on 25-7-1952, said that the respondent's disability was still 60 per cent., but Dr. Manmatha Nath Pal, speaking as of 8-12-1951, said that as to the respondent's condition-even as on that date, he thought in agreement with Dr. J.N. Datta that the disability was total. I am accordingly of opinion that the first contention of Mr. Sanyal fails.

21. The second contention is a pure contention of law. Having considered the sections of the Act, I have come to the reluctant and regretful conclusion that it must be accepted.

22. The general provision relating to the employer's liability for compensation is contained in Section 3 of the Act. It says that, if personal injury is caused to a workman by accident arising out of and in the course of employment, his employer shall be liable to pay compensation in accordance with the provisions of Chap. II of the Act. Two methods are prescribed by the Act for the assessment of compensation, one of them being the method of agreement and the other the method of award by a commissioner.

The Act does not directly say in any of its sections that the parties may settle the question about compensation by agreement, but there is an indirect reference to settlements by agreement in Section 3(5)(b) of the Act and Sections 19(1) and 22(1), both imply that recourse may be had to the method of an award by the Commissioner, only when the method of agreement has failed. The only other section relating to agreement is Section 28 which provides for the registration of

agreements and also empowers the Registrar to refuse registration in certain cases.

But whether the compensation is fixed by an award or settled by agreement, the Act seems clearly to contemplate that once a workman is proved to have suffered personal injury by accident in circumstances contemplated by the Act, he will be entitled to compensation, but such compensation shall be fixed and declared once and for all except in case of temporary disabilities, partial or total. The procedure prescribed by the Act for making an application for compensation, the provision made for the serving of notices and the enumeration of the matters to be considered, all suggest that a personal injury involving permanent disablement can be the subject-matter of only a single adjudication.

The only provision for a review of the compensation is contained in Section 6 of the Act, but before I refer to that section, it is necessary to refer to Section 4. Section 4 is concerned with the amount of compensation and it lays down what the compensation shall respectively be for the four kinds of disablement known to Act, namely, permanent disablement, total, permanent disablement, partial; temporary disablement, total; and temporary disablement, partial.

The case of temporary disablement, whether total or partial, is dealt with in Clause D of the section and it states that for such disablement, a half-monthly payment during the disablement or during the period of five years, whichever is shorter, shall be made of sums computed in certain ways by reference to the monthly wages of the workmen. These half-monthly payments may be commuted under the provisions of Section 7 of the Act, either by agreement between the parties or by an order of the Commissioner. The payments prescribed by Clause D of Section 4 are however made variable by Section 6 which provides for a review of such payments.

The section says that any half-monthly payment, whether payable under an agreement or under an order of a Commissioner, may be reviewed by the Commissioner, on the application of either party on the ground that there had been a change in the condition of the workman and then Sub-section (2) of the section provides that, on such review, a monthly payment may be continued or increased or decreased or ended, or if the accident is found to have resulted in a permanent disablement, it may be converted into a lump sum.

Section 6 thus makes an express provision for altering the amount once fixed as compensation on the ground of a subsequent change in the circumstances, but by the terms of the section it is limited to half-monthly payments which are prescribed by the Act for only temporary disablement, partial or total. Besides Section 6, there is no other provision in the Act which empowers the parties to seek a reopening of the question of compensation, whether fixed by an agreement or determined by an award. (23) The reason why the Act has made an exception in the case of the temporary disablement appears to me to be plain. The disablement- being temporary, is normally bound or due to disappear, or it

may be that it will grow worse and be aggravated into a permanent disability but whether or not the subsequent development be for the better or for the worse, the disablement is for the time being of a temporary character and since it is temporary, provision for future adjustment is obviously called for.

Since the compensation is to be paid for the disablement, there will be no reason to pay it when the disablement has ceased for, again, since compensation is payable for the disablement as it is at the time the compensation is fixed, there is no reason why the full amount should continue to be paid, although the disablement diminishes and the earning capacity is correspondingly restored. Looking at the matter from the other point of view, since the compensation is originally assessed on the basis of a temporary disablement, there is no reason why the figure so assessed should be maintained, even if the disablement worsens and deteriorates into a permanent disability.

The Act, therefore, for reasons which it is not difficult to see, has made provision for subsequent adjustments of half-monthly payments, first assessed as compensation for a temporary disablement, The case of permanent disablement is plainly different.

The disablement being already a permanent one at the date when the compensation is assessed, its entire range is before the parties and there can be no reason to make provision for future adjustment, at least in the case of total disablement. In the case of partial disablement as well, if it is of a permanent character, the assessment is made on the basis of the disablement as it is and on the further basis that it is permanent, namely, will remain what it is and, therefore, it becomes equally unnecessary to make provision for future adjustments.

I have tried to give a reason for the distinction made by the Act between permanent and temporary disablements, but it is really not necessary to do so. If the Act has not provided for a reopening of the question of compensation with respect to cases of permanent disablement, no second application on the ground of aggravation of an injury or disablement can be maintainable whatever reasons the Legislature might have had in making the distinction and irrespective of whether those reasons are good or bad.

24. Mr. Mukherjee who appeared for the respondent invited us to hold on the basis of certain other sections that the Act did contemplate successive application in cases where there was a progressive deterioration of the earning capacity. He referred, in the first instance, to Section 17 of which I am unable to see any relevancy.

That section prevents a workman from contracting himself out of his rights and says that any agreement by which a workman relinquishes any right of compensation from the employment shall be null and void. Obviously, the section contemplates relinquishment of such compensation as the workman is entitled to at the time, because unless there is a present right in him to claim such

compensation, there can be no relinquishment of it. The section, therefore, cannot and does not contemplate a right to further compensation arising in future out of a change in the circumstances of the workman's physical condition. Section 17, therefore, seems to me to be nothing to Mr. Mukherjee's purpose.

Equally inappropriate were his references to Sections 19 and 22, because they only presuppose that prior to recourse to a Commissioner for the purpose of obtaining an award, there must be an attempt at a settlement by agreement and that the application to the Commissioner for an award must state which of the matters in issue between the parties have been agreed to and which have not been. I am unable to see how either of these sections indicates that a second application on the ground of aggravation of the disability is maintainable.

Mr. Mukherjee, however, relied chiefly on the language of two of the forms prescribed by Rule 48 of the Rules framed under the Act -- Forms K and L. Form K is the form for the memorandum of agreement with respect to compensation for injury resulting in temporary disablement. Form L is the form for a similar memorandum of agreement relating to compensation for injury resulting in permanent disablement.

25. Mr. Mukherjee pointed out that the compensation contemplated by Form K was "in respect of all disablement" of a temporary nature arising out of the said accident, whether now or hereafter to become manifest." In striking contrast, according to Mr. Mukherjee, was Form L which contemplated compensation. "In respect of the disablement stated above and all disablement now manifest." The point in Mr. Mukherjee's contention was that since the words "hereafter to become manifest" did not occur in Form L which related to agreements as to compensation for permanent disablement, such agreements must be taken to be limited to disablement manifest at the time, but not extending to disablement which might become manifest in future.

It was contended that in the case of a permanent disablement, disablement which might become manifest in future had been deliberately omitted from Form L and such omission implied that the agreement was not intended to cover further and future disablement for which the workman was left free to claim further compensation.

26. The argument of Mr. Mukherjee will not bear examination, but before I examine it, I should like to refer to the next form prescribed by the Rules, Form M. That form also is a form for a memorandum of agreement as to compensation for injury resulting in temporary disablement. But the distinction between Form K and Form M is that while Form K is applicable to cases of a lump sum payment, Form M is applicable to cases of half-monthly payments. The stipulation in Form M is as follows:

"This agreement is subject to the condition that the amount of the half-monthly payments may be varied in accordance with the provisions of the said Act on account of an alteration in the earnings of the said workman during disablement.

It is further stipulated that all rights of commutation u/s 7 of the said Act are unaffected by this agreement".

27. It appears to me that the true scope and intent of the three forms will appear more clearly, if we compare first Form K and M. Form K settles the whole claim for injury resulting in temporary disablement by the receipt of a lump sum amount. Naturally, such an agreement excludes future adjustments provided for in Section 6 of the Act but since future adjustments on account of a change in the circumstances are contemplated by the Act, it was necessary to say that the agreement was in full settlement of all and every claim in respect of disablement arising out of the accident whether then manifest or whether it became manifest in future.

A full settlement by the payment and receipt of a lump sum naturally excludes a reopening of the question in future and it is necessary to include in such a settlement disablement which may become manifest in future, because, but for such inclusion in the agreement itself, future adjustment u/s 6 of the Act would not be excluded and therefore the object of the settlement would fail. Far different is the position under Form M. The agreement there contemplated is an agreement for the payment of half-monthly payments and it expressly provides for variation in future as contemplated by Section 6 as also commutation as contemplated by Section 7 and the only matter agreed to which, one can see is the matter of the amount of the monthly payment.

Coming now to Form L, it is true that it speaks of only "all disablement now manifest", but it was not necessary to say anything more or to refer to disablement "hereafter to become manifest," because in the case of permanent disablement, there is no section like Section 6 and there is no possibility of further adjustments which require to be excluded by an express provision made in the agreement itself. The omission of the words "hereafter to become manifest" in Form L does not, therefore, suggest that disablement which may become manifest in future is excluded from the preview of the agreement and it is left open to the workman to claim further compensation in future, should such manifestations occur. In my view, the forms relied on by Mr. Mukherjee do not lend him any assistance.

28. I have dealt textually with the textual argument of Mr. Mukherjee, based on the forms but the short answer to his contention is that if an Act itself has not given a right, such right cannot be created, by a Form prescribed by the rules.

29. It was next contended by Mr. Mukherjee that if the Act did not expressly authorise a second application on the ground of an aggravation of the injury and increase of the disability, there was at least no bar which excluded such applications. The answer to that argument is that an application for compensation under the Workmen's Compensation Act is not an application under the general law, but an application under a special statute. No application under a special statute can be made unless the right to make such an application

has been given by such statute itself. The right under the Workmen's Compensation Act is not something like the common law right to damages. It is a creature of the Act itself and can be claimed only in the manner and to the extent that the Act prescribes and permits.

30. It is not impossible that when a personal injury suffered by a workman is assessed for the purpose of compensation, some mistake should be made, nor is it impossible that even a permanent disablement, when it is partial, may deteriorate. In the case of permanent disablement of a total character, the question perhaps does not arise, because the limit has been reached and all the disabilities having occurred, there is no further disability to occur in the future. But it is conceivable that in the case of a permanent disability of a partial character there may be an aggravation. Why the Legislature has made no provision for such cases, it is not for us to say.

It may have been thought that it would be quite impossible to work the Act if successive applications made at different points of time during the remainder of the workman's life were to be permitted and it was to be decided each time whether an aggravation had occurred and if it had occurred, whether it was an aggravation of the injury itself as such or whether the deterioration had been occasioned by the operation of external causes. We are however, not concerned with questions of legislative policy and one sole function is to interpret the Act, as we find it.

31. For the reasons I have given, the Act does not in my view provide for a second application for further compensation on the ground of an aggravation of a present (Sic -- permanent (?) disability for which compensation has once been fixed and declared, either by settlement or by an award. The second contention urged by Mr. Sanyal must, therefore, succeed.

32. In the result this appeal is allowed, the judgment and order of the learned Commissioner are set aside and the application made by the respondent is dismissed. Since, however, the point on which the appeal succeeds was not taken in the Court below, the appellants will not be entitled to any costs. We further think that since, if this point had been taken in proper time, the further proceedings by way of an appeal might not have taken place and the respondent may have been involved in these proceedings by the omission of the appellants to take the point he should not be asked to refund the sum of Rs. 200/- which has already been withdrawn by our order, passed on 22-7-1954, in the connected Rule. To that direction Mr. Sanyal agrees, and he says that there is no chance of recovering it from the respondent in any event.

33. In the result, the appeal is allowed but without costs and subject to the condition that the respondent shall not be required to refund the sum of Rs. 200/- withdrawn by him by our order dated 22-7-1954.

Lahiri J.

34. I agree.