

Gun & Davey

Covered



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COVERED CASES

ARCIPRESTE -v- EMAIL MAJOR APPLIANCE GROUP (SIMPSON LIMITED)

Decision of the Full Bench of the Workers Compensation Tribunal

(JD34/1998)

Section 42A assessment of loss of earning capacity – requirement to re-evaluate the worker's notional weekly earnings at the time of each interim assessment.

Facts:

The employer issued a determination pursuant to Section 42A making the fourth interim assessment of the worker's loss of future earning capacity. It relied upon the same notional weekly earnings figure it had relied upon in making the earlier (third) interim assessment.

Issue:

Whether in making further interim assessments pursuant to Section 42A, the employer is first required to review the rate of notional weekly earnings?

Held:

Yes. The words "rates of earnings current at the date of the assessment" in Section 42A(3)(a) require the compensating authority to make an assessment of the worker's notional weekly earnings as at the date of the assessment.

The review process provided for by Sections 38 and 39 of the Act only applies in respect of weekly payments of income maintenance being paid pursuant to Section 35.

Commentary:

Whilst the Court indicated that it would have been helpful for Parliament to have stipulated how the re-evaluation of the worker's notional weekly earnings was to take place, the Court itself did not assist in doing so!