

## APPELLATE CIVIL.

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*Before Buckland A. C. J., Costello and Pancrtridge JJ.*

1934

Feb. 26.

ABDUL KARIM

v.

EASTERN BENGAL RAILWAY.\*

*Employer and Workmen—Compensation—Notice of injury not served on the employer, accident being known—Application to employer for settlement of dispute not made within six months from injury—Claim for compensation before Commissioner after expiration of six months from injury—Limitation—Workmen's Compensation Act (VIII of 1923), ss. 10, 22.*

The period of six months, to which section 10 of the Workmen's Compensation Act of 1923 refers, relates to the claim for compensation made by the workman against his employer and has no reference to the period within which an application for settlement of the matter by the Commissioner can be made.

*Powell v. Main Colliery Company* (1) and *M'Cafferty v. MacAndrews & Co.* (2) applied.

APPEAL in the claim case No. 63 of 1931.

On the 29th March, 1929, the appellant, a workman employed by the respondent, was cleaning the outer body of an engine, standing on its footstep. The engine began to move slowly from one line to another for marshalling and approached a curve, when suddenly the appellant's right leg was injured by being caught between the engine and the tender, resulting in the loss of the right leg above the knee. Thereafter, the appellant approached the respondents for settlement of the compensation for the aforesaid injury, and, on the 9th of September, 1930, the respondents finally refused to pay any compensation.

On the 28th of September, 1931, the appellant filed his application, claiming compensation from the

\*Appeal from Original Order, No. 50 of 1932, against the order of A. L. Blank, Commissioner for Workmen's Compensation, Bengal, dated Sep. 28, 1931.

(1) [1900] A. C. 366.

(2) [1930] A. C. 599.

respondents before the court of the Commissioner for Workmen's Compensation, Bengal. On the same day, the learned Commissioner dismissed the appellant's claim under section 10(1) of the Act. Hence the workman preferred this appeal.

*Phaneendrakumar Sanyal* (with him *Jogeshchandra Singha*) for the appellant. The claim was not time barred.

[COSTELLO J. See *M'Cafferty v. MacAndrews & Co.* (1).]

*Sanyal* referred to *Powell v. Main Colliery Company* (2).

*Roopendrakumar Mitra* for the respondents in reply.

BUCKLAND A.C.J. This is an appeal against the order of Mr. Blank, Commissioner for Workmen's Compensation, Bengal, dated the 28th September, 1931, on an application under section 22 of the Workmen's Compensation Act, preferred by the appellant Abdul Karim. Upon the application, there are endorsed by the Commissioner, first, a note in which he writes "where is the reasonable cause from "11th March till date" and below his order: "Pleader "states he has no further cause to show. Claim "dismissed as not maintainable under section 10(1) of "the Act", both dated the 28th September, 1931. The question to be decided is whether or not the application was barred by limitation, which appears to have been the view which the Commissioner took under the section specified by him.

Section 10(1) of the Act is as follows:—

No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless . . . . . the claim for compensation with respect to such accident has been instituted within six months of the occurrence of the accident or, in case of death, within six months from the date of death.

Then there is a proviso that—

The Commissioner may admit and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been instituted, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or institute the claim, as the case may be, was due to sufficient cause.

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This section appears to have been taken from the English statute. Section 14 of the English Workmen's Compensation Act, 1925, provides as follows :—

Proceedings for the recovery under this Act of Compensation for an injury shall not be maintainable unless ..... the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident, *etc.*

The section contains two provisos of which the first refers to proceedings for settling the claim and the second to failure to make a claim within the time specified.

The difference in the form of the opening words of the two sections, which in the Indian section say that no proceedings shall be maintainable unless something has been done and in the English section say that proceedings shall not be maintainable unless something has been done, may be ignored. The question that arises is whether the use of the verb "institute" in relation to the claim for compensation distinguishes the Indian section in any way from the corresponding section of the English Act, which refers to the "making" of the claim for compensation. If there is no substantial difference between the two sections except in the form of the language employed, then it is clear, according to the decision in *Powell v. Main Colliery Company* (1), and the judgment of Lord Dunedin in *M'Cafferty v. MacAndrews & Co.* (2), that the section does not lay down that proceedings must begin within six months of the occurrence but that it only says that proceedings shall not be maintainable unless two conditions have been complied with,—(1) the giving of notice as soon as possible, and (2) the making of a claim within six months, and that the words "claim for compensation" refer not to proceedings before the tribunal by which the compensation is to be assessed but a claim for compensation by the workman's employer. If no

(1) [1900] A. C. 366.

(2) [1930] A. C. 599, 614.

distinction can be drawn from the use of the words "institute" and "make" respectively the principles of these decisions apply to the Indian statute.

This brings me to the narrow question, which has to be decided, whether the use of the word "institute" refers to the proceedings before the Commissioner or whether it is an unfortunate substitution for the word "make" in the English Act? In my judgment, it is the latter and it is not necessary to go very far to find support for this view. Section 22 relates to the initiation of proceedings before a Commissioner and refers to an "application for the settlement of any matter by a Commissioner" and prescribes certain particulars which are to be contained in the application, and among them, "in the case of a claim for compensation against an employer" certain details are to be given. I should find it difficult to hold that the words at the head of the section, "an application for the settlement of any matter by a Commissioner" and the reference to a "claim to compensation against an employer" both refer to exactly the same thing, namely, that by which proceedings are initiated before the Commissioner.

In my judgment, the period of six months, to which section 10 refers, relates to the claim for compensation made by the workman against his employer and has no reference to the period within which an application for the settlement of the matter by the Commissioner can be made. In this view, the Commissioner has not applied himself to the matter in hand. It may be that the claim for compensation was not made within time. It may be that if it was not made within time, nevertheless the Commissioner should, in the exercise of the discretion which the Act allows, admit the claim and decide it. These matters are not before us now. They are matters to which the Commissioner will have to address himself.

The order will be that the application be remanded to the Commissioner to deal with in accordance with law.

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The appellant is entitled to his costs of this appeal. The hearing fee is assessed at two gold mohurs.

Panckridge J.

COSTELLO J. I am of the same opinion.

PANCKRIDGE J. I am of the same opinion. Section 10(1) is clearly based upon similar provisions in the English statutes. At the date of the passing of the Indian Act, the words "claim for compensation" had been judicially interpreted by the House of Lords in *Powell v. Main Colliery Company* (1). The presumption I think must be that the Indian legislature was aware of such interpretation and intended it to be followed in the later enactment. I find nothing either in the section which we are considering or elsewhere in the Act, by which this presumption can reasonably be said to be rebutted.

*Case remanded.*

A. K. D.

(1) [1900] A. C. 366.