

CIVIL REVISION.

Before R. C. Mitter J.

BISHWESHWAR RAY CHAUDHURI

v.

KHAGENDRA KAIBARTA.*

1935

July 29,

Workman—Death for injuries in course of employment by contractor under a railway company—Admission of liability by the railway company—Contractor, if entitled to notice and to contest claim for compensation—Workmen's Compensation Act (VIII of 1923), ss. 10A, 12—Rules under the Act, r. 36.

In an enquiry by a Commissioner under the Workmen's Compensation Act of 1923 to determine the liability to pay compensation to the children of a deceased workman, employed by a contractor under a railway company (the workman having died of injuries received by him in course of such employment on the railway), the contractor is entitled to notice from the Commissioner under section 10A of the Act so as to enable him to dispute the claim of the dependants of the deceased workman, even though the principal of the contractor (the railway company) admits liability and deposits the compensation money.

CIVIL RULE.

The material facts and arguments appear in the judgment.

Jateendranath Sanyal for the petitioner.

Dheerendralal Kastagir and *Suneelchandra Datta* (for *Sudheerkumar Kastagir*) for the opposite party.

Cur. adv. vult.

R. C. MITTER. J. The petitioner is a contractor employed by the Assam-Bengal Railway, opposite party No. 7, in this Rule. He employed a labourer of the name of Bhogiram Nadiyal, the father of the opposite parties Nos. 1 to 6. Bhogiram Nadiyal

*Civil Revision, No. 107 of 1935, against the order of K. W. P. Marrar, Deputy Commissioner of Nowgong, dated Jan. 3, 1935.

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fell down from a ballast train on the 4th August, 1934, and died on the following day. The Commissioner appointed under the Workmen's Compensation Act served a notice on the Assam-Bengal Railway under section 10A of the Workmen's Compensation Act. The railway company admitted liability and deposited Rs. 600 under the provision of the said section. Thereafter it is stated that the railway company deducted Rs. 600 from the petitioner's bill. The petitioner thereafter made an application before the Commissioner for being given an opportunity to contest his liability, he taking up the position that the dependants of the deceased labourer are not entitled to claim any compensation. The Commissioner passed the following order on the 3rd January, 1935 :—

I am not required to make any enquiry now, as the railway authority, the real employer, after enquiry, has accepted the liability. If the railway authorities were satisfied that there was no liability they would have disclaimed it.

The petitioner has moved this Court against this order. In the explanation submitted by Commissioner in pursuance of an order of my learned brother Mr. Justice McNair, he has stated that under section 12 of the Act the railway company was liable to pay compensation and "when the principal," namely, the railway company, "admitted liability there was no necessity to make any enquiry. It does not appear from the Act that when the principal accepts liability, the contractor can deny it."

In my judgment, the orders passed by the Commissioner proceed upon misconception. The petitioner was the employer of the deceased labourer and not the railway company; the railway company is the principal of the employer, namely, of the contractor, and is under the circumstances defined in section 12 liable directly to the labourer's dependants *as if it was the employer*. This is quite clear from section 12 of the Act. The notice under section 10A ought to have been given, not to the railway company, but to the petitioner, inasmuch as no claim had been

preferred by the dependants of the deceased labourer against the railway company. Besides, as subsection (2) of section 12 puts the contractor under the liability to indemnify the railway company, he is entitled to notice and can certainly dispute the claim of the dependants of the deceased labourer. Rule 36 of the rules framed by the Government of India is clear on the point. Mr. Kastagir who appears for the Assam-Bengal Railway Company does not oppose the Rule and he wants the enquiry to be made in the presence of the petitioner. I, accordingly, set aside the orders passed. If the Commissioner wants to proceed under section 10A of the Act, he must serve a notice on the petitioner and proceed according to law. The Rule is made absolute but without costs.

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A. K. D.