APPELLATE CIVIL.

Before Derbyshire C. J. and Mukherjea J.

1937

Dec. 14.

SALAMAT

v.

AGENT, EAST INDIAN RAILWAY.*

Workmen's Compensation—Claim, What is—Failure to give notice—Sufficient cause—Limitation—Workmen's Compensation Act (VIII of 1923), ss. 3(1), 10 prov.—English Workmen's Compensation Act, 1925 (15 & 16 Geo. V, c. 84), s. 14.

A claim within the meaning of s. 10 of the Workmen's Compensation Act is communication—oral or written—by or on behalf of the workman, from which the employer can see that a demand is being made upon him to pay compensation in respect of an accident. But a demand by a workman to a foreman for compensation is not such a claim, for a foreman is only a fellow workman.

What is "sufficient cause" for failure to give the notice or institute the claim, can only be decided in each particular case with reference to the facts and circumstances of that case.

Where after the accident, the workman, on recovery, was taken back and was in work and likely to remain in work on the same wages as before that fact was sufficient cause for his not bringing proceedings under the Workmen's Compensation Act within six months of the accident.

The Indian Limitation Act does not apply to proceedings under the Indian Workmen's Compensation Act; and once the workman had for sufficient cause not brought his proceedings within six months, there is nothing in the Workmen's Compensation Act, or the Limitation Act, to prevent him bringing his proceedings when he did, *viz.*, eleven years after the accident in this case.

Lingley v. *Thomas Firth & Sons, Limited* (1) followed.

APPEAL FROM ORIGINAL ORDER preferred by the workman.

The facts of the case and the arguments in the appeal appear sufficiently in the judgment.

*Appeal from Original Order, No. 628 of 1936, against the order of R. H. Parker, Commissioner for Workmen's Compensation, Bengal, dated Aug. 5, 1936.

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Phanindra Kumar Sanyal for the appellant.

Sarat Chandra Basak, Senior Government Pleader, and *Bhabesh Narayan Bose* for the respondent.

DERBYSHIRE C. J. This is an appeal by the workman—Salamat—against the decision of the Commissioner for Workmen's Compensation, Bengal, given on August 5, 1936, wherein he refused to award compensation under the Workmen's Compensation Act to the appellant. The respondent is the Agent of the East Indian Railway administration. The facts are as follows:—

In 1925, the workman was employed at the railway workshops at Lilooah, then owned by the East Indian Railway Company, but now taken over and run by the East Indian Railway administration. Whilst he was so employed, an accident happened when he was operating a machine-saw, with the result that his thumb and the first three fingers of the left hand were damaged and had to be amputated. After attending hospital for three or four months he returned to the same workshops and was employed by the same employers on the same or other work on which he earned the same wages as before. As time went on, his wages were increased and he actually received promotion. On August 2, 1935, he was discharged from work because he was found to be in possession of some jute which was believed to be stolen. On January 14, 1936, the appellant, through a pleader, applied for reinstatement and also for compensation under the Workmen's Compensation Act. The respondent refused this. On February 22, 1936, another similar request for reinstatement and compensation was made and this was again refused. On March 28, 1936, the applicant started proceedings before the Commissioner for Workmen's Compensation to recover compensation under the Act in respect of the accident which had occurred in 1925. The Commissioner refused to award him compensation—first, holding that it was not proved that an accident

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had happened to the applicant which arose out of and in the course of his employment and, secondly, that the delay to bring the proceedings for a period of eleven years barred the applicant of his rights under the Act.

As regards the first ground for the Commissioner's decision, I am unable to agree with him. The applicant in his evidence said :—

> I was a workman on E. I. R. and injured during my employment. I was engaged on a saw-machine on November 4, 1925. My hand was injured—the left. All my fingers were shorn off except the little finger. I was sent by the administration to Lilooah Hospital and admitted and remained three months. When I was discharged I went back to the railway and was told to go to work. I asked for compensation to the foreman and was told arrangement would be made. I was given suitable employment. I often made *tâgid*. Formerly I got 12 annas *per diem* and thereafter 12 annas *per diem*. I brought no claim in the Court because the foreman kept on putting me off. About four years ago the foreman was transferred. Then I was promoted and did not think it judicious to bring a claim.

That is the applicant's story. The respondent by reason of the delay is in a difficult position as regards giving evidence as to the happening of the accident. It is difficult to produce witnesses after eleven years to speak with any certainty as to the circumstances of the accident. Some of the respondent's records have been destroyed, but not all of them. The respondent called a witness—Dharma Das Ghosh—who produced a register of accident for 1925. He gave a description of Salamat and his injury. The respondent in his written statement, para. 5, admitted that—

> on November 4, 1925, an accident happened to the applicant when he was employed as a labourer and thereby the following injury was caused to the applicant :—
>
> Compound commutated fracture of thumb, index, middle and little fingers of the left hand.

The learned Commissioner did not feel himself justified upon that evidence and those admissions in coming to a conclusion that the accident which happened arose out of and in the course of the applicant's employment. There is no suggestion anywhere in the evidence or in the written statement that the applicant was, at the time of the accident, doing something

which disentitled him to compensation by reason of the provisos to s. 3(*1*) of the Act. That being so, in my view, the Commissioner ought to have come to the conclusion that this appellant workman did suffer an injury from an accident arising out of and in the course of his employment on November 4, 1925.

The second matter which I have to consider is that which is raised by s. 10 of the Act. Leaving out the irrelevant words and passages, that section provides:—

Sub-s. (*1*). No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and 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:

* * * * * * * *

Provided, further, 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.

No question arises here as to the employer having had notice of the accident. The only questions arising are: (1) was the claim instituted within six months of the occurrence of the accident and, if not, (2) was the failure to institute the claim within six months due to sufficient cause? The workman alleged in his evidence that he made *tâgid* to the foreman in respect of his compensation, that is to say, he made demands to the foreman to be paid compensation, when he went back to work which was within six months of the accident. Were those *tâgids* or demands, claims within the meaning of s. 10? The Act does not provide that a claim shall be made in writing, but it does provide that claims shall be made within six months unless there is sufficient cause for its not being made. In my view, a claim within the meaning of s. 10 is a communication by or on behalf of the workman from which the employer can see that a demand is being made upon him to pay compensation in respect of an accident. Here the employer is a

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railway administration—a very large concern. I cannot see that a demand by a workman to a foreman for compensation (if indeed it was made) is a claim within the meaning of s. 10. After all, a foreman is only a fellow workman in a superior position. He is not, in my view, a person authorised by his employer to receive claims or to deal with them. Claims ought to be made to someone higher in authority who can see that they are brought to the notice of that branch of the executive of the railway which is charged with the administration of matters arising out of this Act.

Apart from the *tâgids*, alleged to have been made from time to time, there is no evidence of any proper claim until January of 1936 when a demand was made upon the railway company by the appellant's pleader. That was a demand made ten years or more after the accident. The learned Commissioner considered that matter very carefully and came to the conclusion that that demand was too late, according to the terms of s. 10. We have had the advantage, which the learned Commissioner had not, of having this matter argued before us by advocates who have studied this section of the law at some length, and I for my part have come to a conclusion different from that arrived at by the learned Commissioner.

Under s. 10, proceedings are not maintainable unless the claim for compensation has been instituted within six months of the accident provided that the Commissioner may admit and decide any claim to compensation in any case notwithstanding the claim has not been instituted in due time as provided in the 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. This particular provision is somewhat similar to the provision of s. 14 of the English Workmen's Compensation Act, 1925, which provides :—

(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman

has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided that (b) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

Our attention was naturally attracted to the provisions of s. 14 of the English Act. As I have said, in some respects that is a similar provision to s. 10 of the Indian Act, but there is this, and, in my view, important, difference; in the English Act failure to make a claim within six months may be excused if the failure was occasioned by "mistake, absence from the United Kingdom or other reasonable cause"; whereas in the Indian Act failure may be excused if it is due to "sufficient cause". The English provision gave rise to much difficulty in application and it may well be that when the legislature came to deal with this matter they avoided the words "occasioned by "mistake, absence from the United Kingdom, or other "reasonable cause" and deliberately put in the words "due to sufficient cause".

What is "sufficient cause"? That can only be decided in each particular case with reference to the facts and circumstances of that case. The workman on returning to work three months after the accident was re-employed by the same employers in the same workshop at the same rate of wages and he continued in that employment at those wages until long after the period of six months from the happening of the accident had gone by. (Actually he continued in that employment for nearly ten years afterwards). Had the workman within six months from the happening of the accident sufficient cause for not instituting a claim against his employers? In my view, he had. He was in work, and likely to remain in work on the same wages as before and that, in my view, was sufficient cause for his not bringing proceedings under the Workmen's Compensation Act within six months

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of the accident. It has been said that the workman ought not to have delayed ten years and that by delaying these proceedings for ten years he is in some way barred from bringing these proceedings. As far as I can see, the Limitation Act does not apply to proceedings under the Workmen's Compensation Act. It appears to me that once the workman had, for sufficient cause, not brought his proceedings within six months, there is nothing in the Workmen's Compensation Act, the Limitation Act or in any other statute, to prevent him bringing his proceedings when he did.

A somewhat similar position was considered under s. 2 of the Workmen's Compensation Act, 1906 (which was replaced by s. 15 of the Workmen's Compensation Act, 1925) in the case of *Lingley* v. *Thomas Firth & Sons, Limited* (1). At p. 661, Lord Sterndale M. R. said :—

> In my opinion the learned Judge was right in saying that this bar of six months being once got rid of by reasonable cause for the failure to make the claim within the specified period, the appellants cannot take up the ground that although the failure within the six months was excused there has been subsequent unreasonable delay. As long as no Statute of Limitation has been infringed I think the learned Judge was quite right as to that, and that the proper construction is that the only thing with which that proviso is dealing is the failure to make a claim within the six months ; that being gone the bar is gone also. That is the point which is of general importance.

At p. 665, Warrington L. J. said :—

> It appears to me that if it is found that the failure to make the claim within six months was occasioned by reasonable cause, then the bar provided by the statute is gone altogether, and that any subsequent delay has no effect, except so far, of course, as it may bring into operation any general statutory enactment as to limitation which would apply to the case.

I am of the opinion, therefore, that, although it may place, and doubtless does place, the respondent in a difficult position with regard to collecting evidence to meet the applicant's case, yet there is nothing in the Workmen's Compensation Act or in any other

(1) [1921] 1 K. B. 655, 661, 665.

statute, as far as I have been able to ascertain, which prevented the workman from bringing the proceedings at the time he did in this particular case. That being so, I am of the opinion that this matter must go back to the Commissioner for Workmen's Compensation, Bengal, for him to deal with the appellant's application according to law in the light of the judgment here delivered. The appellant is entitled to the costs of this appeal, the hearing fee being assessed at three gold *mohurs*.

MUKHERJEA J. I agree.

Appeal allowed: case remanded.

G. S.