APPELLATE CIVIL.

1958.

April, 12.

Before Wort, A.C.J. and Manohar Lall, J.

ABDUL MATIN

v.

BIDESI RAJWAR.*

Workmen's Compensation Act, 1923 (*Act VIII of* 1923), *sections* 10 *and* 30—*amount awarded as compensation to two workmen, whether can be consolidated for purposes of valuation of appeal—"instituted", meaning of—ignorance of law, whether is a sufficient cause within the meaning of the proviso to section* 10.

The Commissioner acting under the Workmen's Compensation Act awarded Rs. 231-1-7 compensation for an accident to *M* and Rs. 462-3-2 to *B*. In both the cases the claim was made more than six months after the accident, but the Commissioner took the view that the workmen being of the coolie class could not be expected to know the rules, and accordingly entertained the claim. The employer appealed to the High Court.

Held, that the total amount of compensation allowed was immaterial and that the rights of one workman could not be governed by the conditions and circumstances of the case of the other workman and therefore the appeal against *M* who was awarded compensation below Rs. 300 was incompetent.

Held, also that the word 'instituted' was not synonymous with the word 'made'. The word 'instituted' is an act referable to the making or filing formally before the appropriate court of a claim for compensation.

Abdul Karim v. *Eastern Bengal Railway*(1), doubted and distinguished.

Held, also that the Commissioner could not excuse the delay on account of the ignorance of law on the part of the workmen.

Roles v *Pascall and Sons*(2), relied on.

* Appeal from Original Order no. 164 of 1937, from an order of J. S. Hardman, Esq., acting as Commissioner under the Workmen's Compensation Act, Gaya, dated the 22nd June, 1937.

(1) (1934) I. L. R. 61 Cal. 508, F. B.

(2) (1911) 1 K. B. 982.

Appeal by the employer under the Workmen's Compensation Act, 1923.

The facts of the case material to this report are set out in the judgment of Wort, A.C.J.

N. K. Prasad II and *Ramanugrah Prasad*, for the appellant.

Choudhury Mathura Prasad, for the respondents.

WORT, A.C.J.—The appeal in this case is by the employer against the order of the Commissioner acting under the Workmen's Compensation Act granting compensation for an accident which arose out of and in the course of his employment of one Meghan awarding Rs. 231-1-7 for permanent disability and in the case of one Bidesi compensation amounting to Rs. 462-3-2. Under section 30 of the Act an appeal is given to this Court in a case which raises a substantial question of law, but it provides that no appeal lies in a case in which the amount in dispute is less than Rs. 300. So far as Meghan's case is concerned, that condition is not complied with, as I have already said, because the compensation awarded is only Rs. 231 odd although in the other case it was in excess of the Rs. 300, that is, in Bidesi's case. Now, it is contended by the learned Advocate, who appears on behalf of the appellant, that the words of the proviso to section 30 must be construed as entitling the employer to appeal where the total amount in the appeal involves a sum of more than Rs. 300. If that argument is to be accepted, then the rights of one workman would be governed by the conditions and circumstances of the case of the other workman. That in my judgment, as I have said, is an impossible contention. We must treat each of these cases as separate cases although they may be the subject-matter of one appeal, and that being so, the appeal so far as Meghan's case is concerned, in my judgment, does not lie to this Court.

The circumstances of both cases, however, are very similar with regard to the point which is in

1938.

ABDUL MATIN v. BIDESI RAJWAR.

WORT, A. C. J.

dispute. The learned Commissioner has come to the conclusion that sufficient cause within the proviso to section 10 has been shown entitling him to take cognizance of these cases, although the claim was made more than six months after the accident. That the claim before the Commissioner was made six months after the accident is not in dispute; but it is contended by the learned Advocate appearing on behalf of the workmen that the words " unless the claim for compensation with respect to such accident has been instituted within six months " must be construed as meaning a claim made against the employer and, although this Court is not entitled to go into the evidence, we have been referred to the evidence in support of that contention. The evidence of Bidesi himself is that he was three months in the hospital, that he received nothing from Matin Babu and afterwards when he went to him he refused to give him anything. Now, in my judgment, even if we had jurisdiction to go into the evidence it would be impossible to hold on that evidence a view contrary to that held by the Commissioner that either a claim for compensation had been made to the employer, or, to use the words of the section itself, a claim had " been instituted within six months." The question whether the words " has been instituted within six months " mean a claim against the employer, or the institution of legal proceedings before the Commissioner, has been the subject-matter of a decision of the Calcutta High Court in the case of *Abdul Karim* v. *Eastern Bengal Railway*(1) where Buckland, A.C.J. made the observation that the word " institute " in the first sub-clause of section 10 is an unfortunate substitution for the word " make " in the English Act. The words in the Act are the following: " 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

(1) (1934) I. L. R. 61 Cal. 508, F. B.

death." In my judgment, the question does not strictly arise in this case; but had it arisen and had it been necessary for the purpose of the decision of this case it would seem to me that the proviso to sub-section (*1*) of section 10 would make the matter clear. The words of the proviso are—

> "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."

In my judgment, as I have said, it seems to me that those words are quite conclusive as regards the meaning of the words "instituted within six months". The word "institute" is an act referable to the making or filing formally before the appropriate court a claim for compensation. The learned Commissioner in this case appears to have taken that view of the section and comes to the conclusion that sufficient cause has been shown in the following words:

> "Meghan is of the coolie class, he was in hospital for a long while seriously ill, and cannot be expected to know the rules. Bidesi is also of the same class. The accident is not denied, as it was reported by the manager on the 16th February 1936. I consider that adequate cause has been shown."

It would appear from the order that he was of the opinion that in the case of Bidesi sufficient or adequate cause had been shown by reason of Bidesi's ignorance of his right or ignorance of the law. Sufficient authority against that view of the matter is a decision on the same words in the English Act in the case of *Roles* v. *Pascall and Sons*(*1*) where the Court of Appeal held that ignorance on the part of the workman of the existence of the Act was not a reasonable cause, and it is perfectly obvious, if I may be allowed to say so, with respect to the decision of the learned Judges of the Court of Appeal that their decision is obviously right and necessarily ignorance

(1) (1911) 1 K. B. 982.

1938.

ABDUL MATIN v. BIDESI RAJWAR.

of the law cannot be any reasonable cause within the meaning of the Act. That being so, it seems to me that Bidesi's case should have been held by the Commissioner as not maintainable. So far as Meghan's case is concerned, I have already said that no appeal lies.

WORT, A. C. J.

The appeal so far as Meghan's case is concerned will, therefore, be dismissed, but in the case of Bidesi the appeal will be allowed and the order of the learned Commissioner awarding compensation will be set aside. There will be no order as to costs.

MANOHAR LALL, J.—I entirely agree. In my opinion, when proper occasion arises it will be necessary to consider the correctness of the decision of the Calcutta High Court in *Abdul Karim* v. *Eastern Bengal Railway*(1). The question which arose in that case does not fall to be determined in the present case.

Appeal allowed in part.

J. K.

LETTERS PATENT.

1938.

April, 20.

Before Wort, A.C.J. and Manohar Lall, J.

MANBODH BHAGAT

v.

JASWANT KUMAR SINGH.*

Landlord and tenant—suit for rent against some of the tenants, whether maintainable—Contract Act, 1872 (*Act IX of* 1872), *section* 43.

Where the landlord sued some of the tenants for the whole rent of a holding and it was contended that the action was not maintainable,

Held, that in view of the law as laid down in section 43 of the Contract Act, the suit was maintainable.

* Letters Patent Appeal no. 5 of 1937, from a decision of the Hon'ble Justice Sir Khaja Mohammad Noor, dated the 20th January, 1937, in Second Appeal no. 807 of 1934.

(1) (1934) I. L. R. 61 Cal. 508, F. B.