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 S.T.V.S.  
 CHETTIYAR  
 FIRM  
 v.  
 THE  
 COMMISSIONER OF  
 INCOME-TAX.  
 HEALD,  
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income, profits or gains included in the assessment for a subsequent year were included in that computation, and that it is a question of fact, to be decided on the evidence in the particular case, whether he succeeds in showing that they were so included.

I would direct the Commissioner to pay the costs of the firm in this reference and in Civil Miscellaneous Application No. 129 of 1928, advocate's fee in each case to be ten gold mohurs.

CHARI, J.—I concur.

ORMISTON, J.—I concur.

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### REFERENCE (Workmen's Compensation).

*Before Sir Benjamin Heald, Kt., Officiating Chief Justice, Mr. Justice Chari and Mr. Justice Ormiston.*

### IN THE MATTER OF GUDDAI MUTAYALU.\*

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*Workmen's Compensation Act (VIII of 1923), ss. 8, 10, 19—Financial Commissioner cannot direct Commissioner under the Act to reverse his decision—Commissioner's own power to re-open case—Commissioner's power to entertain a late claim for compensation after ordering refund to employer—Employer's right to be party to distribution proceedings—Employer's safety in paying through Commissioner—Ex gratia payment, claim for refund or credit of.*

A Commissioner appointed under the Workmen's Compensation Act after complying with the provisions of the Act and the rules, ordered the return of the deposit to the employer, a mill-owner as he was satisfied that there was no dependant of a workman who died from an accident in the mill situate in Thaton District. More than six months from the date of death, the widow of the deceased residing in India made a claim before the Commissioner, which was brought to the knowledge of the mill-owner who made a certain payment to the widow. The Financial Commissioner (Transferred Subjects) directed the Commissioner to re-open the proceedings. The Commissioner made a reference to the High Court.

*Held*, that neither the Financial Commissioner nor any other officer of Government had any power to direct the Commissioner to reverse his decision. Under the proviso in s 10 (1) of the Act, the Commissioner has power, either of his own motion or at the suggestion of any authority or person, to entertain a late claim after due inquiry and to order the redeposit of the compensation. It

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\* Civil Reference No. 7 of 1929.

is open to the employer to be a party to the distribution proceedings and to contest the status of the alleged dependant. The Act does not forbid compensation being paid otherwise than through the Commissioner, but payment through the Commissioner protects the employer against other subsequent claims. If an employer has already voluntarily paid some compensation to an only dependant he can claim a refund of that in paying the full amount through the Commissioner.

*Saw Po Chit* for the employer.

ORMISTON, J.—This is a reference under section 27 of the Workmen's Compensation Act, 1923 (Act VIII of 1923), by a Commissioner for Workmen's Compensation appointed under that Act. On the 1st February, 1927, an accident occurred in a mill belonging to Ah Nyan at Zinmathwe, Thaton District, which resulted in the death on the same day of a workman employed therein named Guddai Ramannah or Yammaya. The accident was reported to the Commissioner on the 25th March, 1927, whereupon notice was issued to the mill-owner to deposit the amount of the compensation specified in section 4 (1) of the Act. The mill-owner, on the 9th May, 1927, pursuant to section 8 (1), deposited the sum of Rs. 807-8-6, furnishing at the same time, as provided in rule 6 of the Indian Workmen's Compensation Rules, 1924, a statement in Form A annexed to those rules therein describing the workman as Yamaya of Zinmathwe village, which must have been at the time his correct address. Rule 7 requires the Commissioner to cause to be displayed in a prominent position outside his office an accurate list of the deposits received by him under section 8 (1), together with the names and addresses of the depositors and of the workmen in respect of whose deaths the deposits have been made. The Commissioner ordered this to be done, and on the 11th May, 1927, it was done, the list displayed containing the name of Yamaya of Zinmathwe village. Section 8 (4) directs the Commissioner,

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on the deposit of any money under sub-section (1), if he thinks it necessary, to cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the amount of compensation. If he is satisfied, after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. On the 6th June, 1927, no one having appeared to claim compensation, the Commissioner directed a notice to be published calling upon the dependants to appear before him on the 2nd July, 1927, for determining the distribution of the compensation. The notice was to be published at the mill, at the headman's house, and also at a conspicuous place in the village where the mill was situate, by beat of gong after reading out the contents of the notice. Copies were ordered to be posted also at the District Court and at the Deputy Commissioner's Court house. The notices were so published, and no one having appeared on the day fixed, they were so published a second time. The notices described the workman as Yamaya of Zinmathwe village. No one appeared on the 24th August, 1927, which was the adjourned date.

The Commissioner was satisfied that no dependant existed, basing his decision in part on section 10 (1) of the Act, to which I will presently refer. Apart from that sub-section, he had ample materials on which he could have arrived at his conclusion. He was not obliged to serve the notice on any particular dependant, and he could have had no means of knowing who the dependants were, neither the Act nor the rules providing that he should be supplied with a list of them, or with any address of the workman other than the village where he was working at the

time of the accident. The Commissioner having recorded his satisfaction that no dependant existed directed the return of the deposit to the mill-owner, which was done on the 16th September, 1927.

On the 28th September, 1927, the Commissioner received a claim from Guddai Mutayalu, the widow of the workman, residing in the Ganjam District of the Madras Presidency, which was supplemented by a further claim received on the 1st October, 1927. The claims were filed, a copy of the second claim having been sent by the claimant to the mill-owner for information and favourable disposal. The mill-owner made to the widow an *ex gratia* payment, which she acknowledged.

On the 21st June, 1928, the Officer-in-charge, Labour Statistics Bureau, Rangoon, as a result of an inspection of the proceedings in the case wrote to the Financial Commissioner (Transferred Subjects) criticising the action of the Commissioner, and suggesting that he should be enlightened as to the correct procedure. He received a reply dated the 9th August, 1928, from the Financial Commissioner, endorsing the criticisms of the Officer-in-charge, Labour Statistics Bureau, and adding further criticisms. The reply concluded by requesting that the attention of the Commissioner be drawn to the alleged errors in procedure and that he be asked to take steps to rectify them. The claimant, he wrote, should be given an opportunity of proving her claim, for which purpose it was suggested that the District Magistrate, Ganjam, be asked to investigate it.

The correspondence was forwarded to the Commissioner, who after causing the claim to be investigated as suggested, and satisfying himself that it was a true claim, on the 26th March, 1929, required the mill-owner to redeposit the amount of compensation.

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The mill-owner objected on the ground that the Commissioner having by his order held that no claim was admissible, because none was made within six months of the date of the death, the Financial Commissioner had no power to reverse the order and direct the proceedings to be reopened. The Commissioner appears to have been inclined to agree with this view, and, in consequence, he made the present reference. It should be stated that the Commissioner who made the order directing the return of the compensation, the Commissioner who reopened the proceedings on receipt of the Financial Commissioner's letter, and the Commissioner who made the reference were successive holders of the office.

The questions referred are :—

(1) Was the Commissioner correct in accepting the reversal of his order by the Financial Commissioner and reopening the case without reference to the High Court?

(2) If he was correct, has he the power to direct a new deposit of the sum returned to (presumably "by" is meant) him?

Another question is suggested and may be thus formulated.

(3) If the answer to questions (1) and (2) are answered in the affirmative, should the *ex gratia* payment of Rs. 300 be deducted from the amount of compensation payable to the claimant?

The answer to the first question is simple. The Act gives the Financial Commissioner no power to issue any such order. Section 30 allows appeals to the High Court from certain orders, in particular, from an order disallowing a claim of a person alleging himself to be a dependant. Except, however, as provided by this section, no appeal lies from his orders, and there is no authority conferred by the

Act, or by rules framed thereunder on the Financial Commissioner or any other officer of Government to direct the Commissioner to reverse any decision at which he may have arrived. If and in so far as the Financial Commissioner did purport to direct the Commissioner to reopen the proceedings, his action was *ultra vires*. It is open of course to anyone to make suggestions to the Commissioner, but if such suggestions are made by a superior officer of Government, it is desirable that they be not made in such a form as to be capable of interpretation as orders.

The second question, in the form in which it is put, having regard to the answer to the first question, does not exactly arise. It suggests, however, the question whether the Commissioner, having satisfied himself in the manner prescribed by the Act and the rules made thereunder that there were no dependants of the deceased workman, and having, in consequence, refunded to the employer the compensation deposited by him, has the power to reopen the matter on the application of a workman and to require the redeposit of the compensation. I have already stated that, in my opinion, the Commissioner had complied with the provisions of the Act and the rules, and had materials before him on which he could be satisfied that the workman had no dependants. He was, therefore, amply justified in refunding the deposit to the mill-owner. Section 10 (1) enacts in the case of the death of a workman resulting from an accident, that no proceedings for the recovery of compensation shall be maintainable before a Commissioner, unless the claim for compensation with respect to the accident has been instituted within six months from the date of the accident but there is a proviso that the Commissioner may admit and decide any claim to compensation in any case, notwithstanding that

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the claim has not been instituted within six months from the date of the death, if he is satisfied that the failure to institute the claim was due to sufficient cause. At the date of the order of the 24th August, 1927, no claim had been instituted before the Commissioner by any dependant, and being satisfied that there was no dependant, all that he had to do was to record that fact and, under the provisions of section 8(4) to order the return of the deposit. Subsequent to the order, on the 28th September, 1927, he received a claim from an alleged dependant, which was amended by a claim received three days later. It was, under the terms of the proviso, open to him to admit and decide the claim, if he was satisfied that there was sufficient reason for not instituting it within six months from the death. Once the claim is instituted it lies open to the Commissioner, whether on his own motion, or on the suggestion of the Financial Commissioner (Transferred Subjects), or of any one else, to satisfy himself whether or not the applicant had brought herself within the terms of the proviso. The Commissioner, however, has never had his attention directed to this aspect of the case, and it is still open to him to make the necessary enquiries with a view to ascertaining whether there was sufficient cause for the delay, and if he is satisfied that there was such cause, to admit the claim.

If the claim is admitted, he has to decide it. The mill-owner has already admitted liability for the consequence of the accident by depositing the compensation. It is suggested that the Commissioner, having under section 8(4), directed its refund, is *functus officio* and that he has no power under the Act to direct its redeposit. I do not consider that there is any substance in this argument. Section 8(1) provides that compensation "payable" in respect of

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a workman whose injury has resulted in death shall be deposited with the Commissioner. The employer may dispute his liability. In that event, under section 19(1) the question of his liability has to be decided by the Commissioner. If the Commissioner decides against him, there is an obligation on the part of the employer to pay the compensation to the Commissioner, which may be enforced by the issue of an order under rule 8 of the Workmen's Compensation Rules, on the application of a dependant, but until the decision there is no such obligation. I fail to understand why an employer who has admitted liability should be in any better position than an employer who has not admitted liability. The circumstances that he has already made the deposit and that it has been returned to him under what must *ex hypothesi* be considered to be a mistake of fact, seem to me to be immaterial. I am of the opinion that, subject to the observance of the provisions of rule 8, the Commissioner has power to order the redeposit of the compensation. I should point out, although the question does not strictly fall within the scope of this reference, that under rule 6, the employer is entitled to be a party to the distribution proceedings, and that it is open to him, if so advised, to contest the status of the alleged dependant.

The last question, in the form in which I think it should be stated, is whether the *ex gratia* payment of Rs. 300 should be deducted from the amount of compensation payable to the claimant. I am assuming for the purpose of the answer that it will be either admitted or established that the Rs. 300 was paid by the employer to the widow and was so paid as compensation for the accident. If there is any dispute on the point it should be enquired into and settled by the Commissioner. The Act does not forbid

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compensation being paid otherwise than through the Commissioner. The whole scheme of section 8 under sub-section (1) whereof compensation "shall" be paid to the Commissioner, seems to be designed for the protection of the employer against claims in respect of accidents where his liability is admitted or established. If he does so pay the compensation, he is protected against the claims of all dependants, whether or not they have applied to be parties to the distribution. If he makes the distribution himself he lays himself open to attack by persons who may afterwards turn up and claim to be dependants. But if he pays the correct amount to the only person who is a dependant, it is not, I think, open to that person to claim the amount over again, and if he makes to him a payment of less than the correct amount, he should, I think, be only required to pay the difference. It would probably be a protection to the employer in the present instance against the claims of other persons who may hereafter put forward belated claims if (in the event of the widow's claim to compensation being admitted and decided in her favour) the employer were to pay the whole of the compensation to the Commissioner under section 8 (1). Section 8 (4) does not oblige the Commissioner to cause notice to be published and in the present instance, he might well dispense with republication. In that event he would refund Rs. 300 to the employer and pay the balance to the widow.

HEALD, OFFG. C.J.—I concur.

CHARI, J.—I concur.