CALCUTTA HIGH COURT

Kamarhatty Co. Ltd

Vs.

Abdul Samad

Civil Rule No. 2033 of 1951

(Harries, C.J. and G.N. Das, J.)

07.12.1951

JUDGMENT

Harries, C.J.

1. This is a revision praying that an order of the learned Commissioner for Workmen's Compensation granting the opposite party compensation to the amount of Rs. 283-8-0 together with Rs. 10 costs be set aside.

2. The opposite party Abdul Samad claimed a sum of Rs. 882 as compensation from the petitioners, the Kamarhatty Jute Mills Co. Ltd., who were his employers. He alleged that sometime in the month of March 1925 he sustained an accident whilst on duty in the engine department of the petitioners' factory and as a result received personal injuries which resulted in a loss of capacity for work. The accident was concerned with some machinery in the factory and the opposite party's right hand, it is said, was caught in this machinery and the thumb and index finger damaged. Eventually, it is said, the first phalanx of the thumb and half the index finger were removed by amputation.

3. No claim for compensation was made in this case until 3-8-1950 over twenty-five years after the alleged accident. It was stressed on behalf of the petitioners that the applicant opposite party actually left their service on 1-1-1943, due apparently to the fear of bombing by the Japanese, later he rejoined and resigned his service on 24-3-1950 and as I have stated made his claim on 3-8-1950.

4. There was a dispute in the Court below as to whether there had been any accident and as to whether this man had a damaged hand when he first entered into service. The petitioners of course were at a very grave disadvantage having regard to this lapse of time. But the learned Commissioner held that the accident had been proved and as that is a finding of fact it cannot be challenged before us as there was evidence to support it.

5. It was, however, urged that the claim for compensation was bound to be dismissed by reason of the fact that no claim for compensation had been preferred within twelve months of the date of

accident. Admittedly, no claim was made, but it was contended on behalf of the opposite party that there was reasonable cause for not making such a claim. The learned Commissioner eventually held that there was reasonable cause for not making this claim within twelve months of the date of the accident and accordingly rejected the plea that want of claim within the stipulated period was a complete bar to the grant of any compensation.

6. The point as to failure to make a claim within twelve months was a point of substance. The necessity for making prompt claims is clearly seen in cases of this kind. The management of these mills had changed since 1925 and it was quite impossible for the present management to deal with this claim.

7. The opposite party endeavored to make a case that he did not claim compensation as some Senior officials in the management at the time of the accident had promised him compensation. Had he been able to establish that, it might have been held that he had reasonable cause for not making his claim within twelve months. The learned Commissioner however rejected that explanation and I think rightly.

8. The learned Commissioner, however, held that this workman had reasonable cause for not making a claim within twelve months because he had returned to work under the petitioners and had earned similar if not higher wages. He certainly had earned higher wages at a later stage of his employment. In those circumstances the learned Commissioner felt that he could be excused from making a claim within twelve months.

9. Does the fact that an injured workman has returned to work and been able shortly after the accident to earn his pre-accident wages or even higher wages excuse him from making a claim within twelve months of the date of the accident? This matter was considered at considerable length by the English Court of Appeal in *Lingley v. Thomas Firth and Sons, Ltd*[1]*.,* It is to be observed that the provision requiring notice of claim in the English Workmen's Compensation Act is very similar to that in the Indian Act. In Lingley's case a woman had received an injury on the toe which did not incapacitate her completely beyond a day. Her evidence however was that the toe pained her considerably and that she was unable to stand up during her work. The toe became worse and eventually after more than a year had elapsed from the date of the accident she made a claim. After she returned to work she earned higher wages as she had been promoted. But in spite of that fact the Court of Appeal in England held that there was no reasonable cause for failure to make a claim.

10. In Lingley's case, (1921) 1 KB 655, it could not be said that the accident was a trivial one though she had only been away from work for a day or so. Her description of the pain she suffered whilst continuing with her work made it clear that the accident, if not a serious one, could not be described as a trivial one. The Court of Appeal appeared to have thought that if the accident had been trivial, there might have been reasonable cause for not reporting it, but as the accident was not trivial then the fact that she returned to work and even earned higher wages afforded no cause for not reporting the same. She knew that as a result of the accident she was suffering some degree of incapacity and she knew that she was not getting better by reason of the fact that her toe continued to give her pain and frequently made it impossible for her to stand up at her work. Such being the case, the accident could never have been regarded as trivial and notice should in the view of the Court of Appeal have been given.

[1](1921) 1 KB 655

11. The present case appears to me to be a very much stronger case than Lingley's case, (1921) 1 KB 655. Here the accident caused very definite and serious injury and caused a certain degree of permanent incapacity because as a result of the accident the man had lost the first phalanx of the thumb and half the index finger of his right hand and there is nothing to suggest that this man was left-handed. The injury was a serious one and that would be obvious to the most illiterate and ignorant person. Yet no claim was made within the statutory period. All that can be said in extenuation of the conduct of the opposite party is that he returned to work and eventually, if not immediately, began to earn higher wages. That however has been expressly held in England not to amount to reasonable cause and that view has been taken by this Court in recent cases. As late as 28-8-1951, this Court held in the case of *Messrs. National Tobacco Co. (India) Ltd. v. Hardit Singh*[2], that mere returning to work and earning wages did not amount to reasonable cause for not making a claim. The authorities on this question are entirely against the opposite party, and that being so it must be held that the learned Commissioner was wrong in holding that the delay in making the claim should be condoned.

12. Mr. Sanyal on behalf of the petitioners has contended that even if there was reasonable cause for not making a claim within the first twelve months, there was certainly no cause whatsoever for not making a claim shortly after 1-1-1943 when the workman actually left the petitioner's employment. The argument is that it must have been obvious to the workman then that a claim should be made. But no claim was made.

13. It is, however, clear from the words of S.10, Workmen's Compensation Act, and the proviso thereto that a Court may adjudicate upon a claim made more than twelve months after the accident, if there was reasonable cause for not making the claim within twelve months. If the failure to make a claim within the first twelve months is satisfactorily explained, then it matters not if there has been subsequent negligence or improper delay in making the claim. What the Court has to decide is whether there was sufficient cause for making the claim within twelve months, not whether there was sufficient cause for not making the claim within the period in which no claim was made. If there was sufficient cause in this case for not making a claim within twelve months, then the failure to make a claim on or shortly after 1-1-1943 when he left the petitioner's employment would be wholly immaterial. This question is discussed at length in *Lingley v. Thomas Firth and Sons*[3], the English case to which I have already made reference and that view has been followed in a number of cases of this Court. All that the workman is called upon to explain is his failure to make a claim within twelve months of the date of the accident.

14. For these reasons the petition must be allowed and the order of the learned Commissioner for Workmen's Compensation set aside. The rule is accordingly made absolute. The amount of compensation deposited in the Court of the Commissioner for Workmen's Compensation must be returned forthwith to the petitioners.

15. We make no order for costs of this rule.

G. N. Das, J.

[2] A.F.O.O. No.99 of 1950 (Cal)
[3](1921) 1 KB 655

16. I agree.
Petition allowed.