

# BOMBAY HIGH COURT

J. Hogan

Vs

Gafur Ramzan

(Baker and Divatia, JJ.)

04.08.1933

## JUDGMENT

### **Baker, J.**

1. This is an appeal against an order of compensation made by the Ex-Officio Commissioner at Thana under the Workmen's Compensation Act, and involves a point of limitation. The claimant, who was a labourer employed by the opponent at his sand and brick works at Mumbra, met with an accident on September 24, 1929, which resulted in the loss of his leg. The claim was made in September 1931, but it is in evidence that after the loss of his leg the claimant was employed by the opponent as a watchman up to about April or May 1930, when he was dismissed. Under Section 10 of the Act, the claim for compensation should have been instituted within six months of the occurrence of the accident, i.e., by March 24, 1930, though the Commissioner has power to excuse the delay for sufficient cause. The delay of six months is satisfactorily explained by the claimant's employment on light duties on the same pay, but the Commissioner held that there was no explanation of the delay in making the claim from April 1930, when the claimant was dismissed, to September 1931, when the claim was made. But, following the ruling of the Court of Appeal in *Lingley v. Thomas Firth & Sons*<sup>1</sup> he held that the delay must be excused.

2. This is the principal, and indeed the only, point in the case, although it has been argued in appeal that the claimant is not a workman within the meaning of the Act. It is clear, in view of the definition in the Act, that the claimant, who was employed in a works where sand was dredged from the creek and sifted so as to remove mud and stones, was a workman within the meaning of the Act, His ordinary duties were to spread sand in barges, but under the orders of the foreman he was with others employed on the day in question in turning pontoons so as to get the manholes upwards, the pontoons being required for the purpose of erecting a dredger on them for the purpose of removing sand, and in-the course of this operation his leg was injured by one of the pontoons, resulting in its amputation. The only question, therefore, that arises in this appeal is whether the claim is barred by limitation by Section 10 of the Act in view of the express finding

of the Commissioner that the delay in making the claim from April 1930 to September 1931 is not satisfactorily explained.

3. Now on this point we have an express ruling of the Court of Appeal in England on the corresponding section of the English statute which is in terms the same as Section 10. In *Lingley v. Thomas Firth & Sons*, the Court of Appeal held that where reasonable cause is established within Section 2, Sub-section (1)(b) of the Workmen's Compensation Act, 1906, for failure to make a claim for compensation within six months of the occurrence of an accident which has occasioned injury to a workman, the bar to the maintenance of proceedings under the Act is removed, and, subject to the ordinary statute of limitations, proceedings can be maintained at any time after the expiry of the specified period. The view which was expressed in *Prophet v. Roberts*<sup>2</sup> to the contrary has been dissented from ; so also the view of Eve J. in *Hillman v. London Brighton and South Coast Railway Co*<sup>3</sup>. It has been argued by the learned counsel for the appellant that the learned Lord Justices of the Court of Appeal expressly stated that this view is subject to any bar that might arise under the general law of limitation, if there be any, as to which they expressed no opinion, and he contends that under Article 22 of the Indian Limitation Act the period of limitation for a suit for damages for personal injury is one year from the date of the injury, and he argues that the present claim would be barred at the expiry of a year under that Article. For the respondent it is argued that the Indian Limitation Act applies to suits and not to proceedings under the Workmen's Compensation Act. I think this contention is correct. Section 19 of the Act expressly ousts the jurisdiction of the civil Court in matters required by the Act to be settled by a Commissioner. Though Section 23 empowers the Commissioner to exercise the powers of a civil Court under the Code of Civil Procedure for certain purposes, the Act nowhere says that the proceedings under the Act should be treated as a suit, or that the ordinary law of limitation has to be applied to them, and it makes special provisions for limitation in Section 10 for the original proceedings, and in Section 30 for appeals. The provisions of Section 5 of the Indian Limitation Act, 1908, are made applicable to appeals under this section, but there is no reference to the Indian Limitation Act in Section 10. There is, therefore, a clear distinction between proceedings under the Act, and civil suits, and a special period of limitation being provided by Section 10, we are to be guided by that, and not by the general provisions of the Indian Limitation Act, and it would be wrong to apply a period of limitation especially provided for suits to proceedings under the Workmen's Compensation Act. We must, therefore, be guided by Section 10, and Section 10 alone, which provides for six months' limitation, which can be extended by the Commissioner for sufficient cause. During the period of six months immediately following the accident the claimant was employed on light duties on the same pay by the employer-that is a sufficient reason for his not having made the claim within that period. And once a reasonable cause is established for failure to make a claim for compensation within six

months of the occurrence of the accident, the bar to the maintenance of proceedings under the Act is removed under the ruling of the Court of Appeal in *Lingley v. Thomas Firth & Sons*. There does not appear to be any subsequent ruling on this point, and as the corresponding section of the English Act is practically the same as that of the Indian Act, we should follow the ruling of the Court of Appeal.

4. The result is that the appeal fails, and must be dismissed with costs.

**Divatia, J.**

5. I concur. As to the respondent being a workman or not within the meaning of that term in the Workmen's Compensation Act, I do not feel any doubt. I think he is such a workman. Under Schedule II of the Workmen's Compensation Act a person who is employed within the meaning of Clause (2) of Section 2 of the Indian Factories Act of 1911 in any place which is a factory within the meaning of Sub-section (a) of Clause (3) of that section is a workman. Now, Section 2, Clause (2) of the Indian Factories Act is that-

(2) a person who works in a factory, whether for wages or not,-

(a) in a manufacturing process or handicraft, or

(b) in cleaning any part of the factory used for any manufacturing process or handicraft, or

(c) in cleaning or oiling any part of the machinery, or

(d) in any other kind of work whatsoever, incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process of handicraft therein, shall be deemed to be employed therein.

6. And a factory is defined in Section 2, Clause (3)(a) as-

any premises wherein, or within the precincts of which, on any one day in the year not less than twenty persons are simultaneously employed and steam, water or other mechanical power or electrical power is used in aid of any 'manufacturing process.

7. and Section 2, Clause (4), of the Indian Factories Act defines what a manufacturing process is. It means any process for or incidental to

(a) making, altering, repairing, ornamenting, finishing, or otherwise adapting for use, transport or sale, any article, or part of an article, or

(b) refining oil or pumping, or filtering water, or

(c) supplying, generating or transforming pneumatic, hydraulic or electrical energy, and includes the bailing of any material for transport.

8. Now, here it is found that in the works of the present opponent, where the applicant was engaged, sand was dredged from the bottom of the creek and separated from shingle and was then adapted for use and for sale and for transport. The dredging is done by the same power as used in the dredgers working in the premises of the works. This would show that the premises are a factory within the meaning of Section 2, Clause (3)(a), and the process of separating sand and adapting it for use is also a manufacturing process within the meaning of Section 4(a) of the Indian Factories Act. Therefore, the workman would fall under Section 2, Clause (2)(d) of the Indian Factories Act, and would, therefore, be a workman within the meaning of that term in the Workmen's Compensation Act.

9. The next point is whether the application is in time. Under Section 10 of the Workmen's Compensation Act, which is very similar to the corresponding provision in the English Workmen's Compensation Act, it is provided that-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 notice or institute the claim, as the case may be, was due to sufficient cause:

10. Now, here, this injury took place on September 24, 1929. Therefore, under this section the last date for giving notice was March 24, 1930. But it appears, as has been found by the learned Commissioner, that the notice of the claim was given to the opponent on August 1, 1931, and it has been further found that up to the end of June 1930 the present respondent was in the employ of the present appellant. Therefore, he did not give any notice of his claim. The learned Commissioner is of opinion, therefore, that until the end of June 1930, the respondent had sufficient cause for the delay in giving such notice, and I think he is right. As the respondent, after he came from the hospital, was engaged by the present appellant himself, and was in the appellant's service, there was sufficient reason, I think, for not giving him notice of his claim till the end of that period. But as to the subsequent period from July 1930 to August 1, 1931, when he did give notice to the opponent, the learned Commissioner is of opinion that the delay of a little more than a year has not been explained by the applicant. However, the learned

Commissioner holds that if the delay for the first period is to be excused on the ground of there being sufficient reason for it, the delay for the subsequent period does not matter and ought also to be excused under the ruling in *Lingley v. Thomas Firth & Sons*<sup>4</sup> In that case although on the actual facts the delay was not sufficiently explained, it was held that once the delay in not filing the claim within six months is excused on the ground that there was sufficient cause for it, then the subsequent delay was not material and should also be excused by virtue of the sufficient cause being given for the first period of delay, the proviso being made there that it was subject to the ordinary period of limitation. Now, here, the only period of limitation provided for in the Workmen's Compensation Act is that contained in Section 10, and there is no other period of limitation provided for in this Act. Article 22 of the Indian Limitation Act, which contains the provision for a regular suit for personal injury, would not apply here, because the proceedings under this Act are not regular suits, and they are to be started by an application and not by a suit. Then, again, Section 19 of this Act clearly shows that the jurisdiction of a civil Court is ousted in matters required by this Act to be settled by the Commissioner, Therefore, to my mind, the only period of limitation contemplated by the legislature is that provided in Section 10, and, following the judgment of the Court of Appeal in *Lingley v. Thomas Firth & Sons*, I agree in holding that the lower Court has rightly exercised its discretion in excusing the delay for the second period as well.

11. I would, therefore, agree that the appeal fails and should be dismissed with costs.

Cases Referred.

1[1921] 1 K.B. 655

2(1918) 11 B.W.C.C. 301, 310

3[1920] 1 K.B. 284, 300

4[1921] 1 K.B. 655