1957 *Present:* Sinnetamby, J.

E. AMERASINGHE, Appellant, *and* THE MANAGER, CEYLON WHARFAGE CO., LTD., Respondent.

S. C. 5—Workmen's Compensation C 30/7819/52

Workman—Accident—Claim for compensation—Delay in making it—Sufficient cause—Workmen's Compensation Ordinance (Cap. 117), s. 16 (1) and (2).

Where a workman has been induced on the advice of his employer to believe that he had no ground for making a claim for compensation, the workman's delay in making his claim would be excused.

The appellant was a tally clerk employed by the respondent company. In the course of his duty on October 10, 1952, he was stung by a bee. He became unconscious and had to be admitted to hospital. On the recommendation of the company's doctor, however, he was given his normal work till he was discontinued in February, 1956. The doctor's advice showed that the

injurious effect of the accident was latent and not patent at the time. So far back as April and May, 1955, the appellant was informed that his services would be discontinued unless his attendance improved.

Held, that there was sufficient cause within the meaning of section 16 (2) of the Workmen's Compensation Ordinance for the failure of the appellant to prefer his claim within the period of six months prescribed by section 16 (1).

Held further, that once the failure to make the claim within the statutory period of six months was excused, it was not material to consider any further delay after that period.

APPEAL under the Workmen's Compensation Ordinance.

C. G. Weeramantry, with *N. R. M. Daluwatte*, for the applicant-appellant.

Lyn Weerasekera, for the respondent.

V. G. B. Perera, Crown Counsel, for the Attorney-General, on notice.

Cur. adv. vult.

January 25, 1957. SINNETAMBY, J.—

The appellant was a tally clerk employed by the respondent company. In the course of his duties on 10/10/1952 he was stung by a bee. He became unconscious and had to be admitted to hospital. On the recommendation of the company's doctor he was given his normal work from January, 1953, till he was discontinued in February, 1956. The appellant's case is that after he resumed work he was frequently absent on account of illness caused by the accident and that he submitted medical certificates whenever he was so absent. There is nothing in the proceedings to show that this statement is wrong. It would appear that so far back as April and May, 1955, the appellant was informed that his services would be discontinued unless his attendance improved.

Upon these facts it is reasonable to assume that the company's doctor thought the appellant had suffered no such disablement as would have rendered him unfit for work and the company liable to pay compensation and recommended his re-employment; that the appellant acting on this representation though he gave notice of the accident did not give notice of his claim for compensation within the specified period of six months; that subsequently his attendance was unsatisfactory and he received notice terminating his services in April, 1955, for the first time; that his bad attendance was due to the effect of the accident and that the full effects of the accident upon the appellant were latent and not discernible, as would appear from the company's doctor's recommendation, until sometime later.

At the hearing before the Commissioner of Workmen's Compensation the company took the legal defence that the claim was barred as it had not been preferred within the period of six months prescribed by section 16 (1) of the Workmen's Compensation Ordinance (Cap. 117). The Commissioner upheld the objections and considered that no sufficient cause had been established within the meaning of section 16 (2) for the delay in making the claim to enable him to entertain it. The appeal is against that decision.

The provisions of our Ordinance in regard to reasonable cause are expressed in somewhat different words to those employed in the English Act, but for all practical purposes they would appear to be the same. In England it has been held that when the workman has been induced on the advice of the employer to believe that he had no ground for making a claim the delay would be excused—vide Hals. Vol. 34 para 1205 (Hailsham Ed.) In the present case the company's doctor's advice, which presumably was correct at the time, that the appellant may be re-employed certainly would have induced a reasonable man to assume that the accident had no ill-effects of a kind that would give rise to a claim. In any event the advice shows that the injurious effect of the accident was latent and not patent at the time—vide *Shotts Iron Co. v. Fordyce* [1]. In the circumstances of this case I am of the view that the appellant has shown sufficient cause for the delay in making his claim.

It is true that the appellant became aware of the fact that he was entitled to claim more than six months before he actually made the claim but this is no bar. Once the failure to make the claim within the statutory six months is excused it is not material to consider any further delay after that period. *Lingley v. Thomas Frith & Sons* [2].

I would accordingly set aside the order of the Commissioner and remit the case back to him for assessment of compensation. The appellant would be entitled to the costs of the appeal.

Order set aside.