

1957 Present : H. N. G. Fernando, J.

P. W. WAAS, Appellant, and M. A. PEIRIS, Respondent

S. C. 10—Workmen's Compensation C30/10,251/53

Workmen's Compensation Ordinance (Cap. 117)—Section 42—Amount of compensation fixed by agreement of parties—Memorandum of agreement—Duty of Commissioner to register it.

Where, in proceedings under the Workmen's Compensation Ordinance, the parties have agreed on the amount of compensation payable to the workman, the Commissioner is not entitled to refuse to register the memorandum of agreement as provided in section 42 merely on the ground that the sum acknowledged to have been received by the workman has not actually been paid.

APPEAL under section 48 of the Workmen's Compensation Ordinance.

E. A. G. de Silva, for the respondent-appellant.

No appearance for the applicant-respondent.

T. A. de S. Wijesundere, Crown Counsel, for the Attorney-General on notice.

Cur. adv. vult.

September 30, 1957. H. N. G. FERNANDO, J.—

The accident of which these proceedings under the Workmen's Compensation Ordinance are the outcome took place on 10th March 1953 and it is common ground that the parties subsequently agreed that the amount of compensation payable to the workman should be Rs. 336. There is a

Memorandum of Agreement to this effect dated 13th July 1953, and on that date the employer's insurer transmitted the Memorandum to the Commissioner for registration. I do not think there is any substance in the argument for the employer that since the agreement was transmitted by the Insurance Company and not by the employer, the agreement was not properly before the Commissioner. It is obvious that the employer must have expressly or impliedly authorised the Company to transmit the Memorandum to the Commissioner.

Section 42 of the Ordinance requires the Commissioner to register a Memorandum of Agreement if satisfied as to its genuineness, and enables the Commissioner in certain specified circumstances to refuse to register the Memorandum and, if so, to make an order as to the payment of compensation. Before coming to any decision the Commissioner issued notices on several occasions to the workman informing him that the question of registering the Memorandum would be considered. But it would appear that these notices may not have reached the workman because they were addressed to him care of the employer's Mill at which he was no longer employed. Ultimately, however, the workman had sent a petition to the Commissioner alleging that the employer had promised to pay some money as compensation but that it had not been paid.

An inquiry was then held on 29th August 1956 at which it was common ground that the amount mentioned in the Memorandum of Agreement was the amount properly due as compensation due to the workman from the employer. That being so I do not see how the Assistant Commissioner could decline to register the Memorandum; the only relevant ground specified in section 42 on which a refusal might have been justified was that the agreement fixing Rs. 336 had been "obtained by fraud, undue influence or other improper means" and the fact that both parties admitted Rs. 336 to be the proper amount makes it clear that the workman voluntarily consented to the fixation of that amount.

In declining to register the Memorandum, however, the Assistant Commissioner has relied on another circumstance to which I shall now refer. The Form of the Memorandum is one prescribed by Rules under the Ordinance and has at its foot a form of receipt to be filled in where payment of the agreed amount has already been made, and in the present case the workman has signed the receipt acknowledging payment of the whole sum. But at the inquiry he contended that only Rs. 89 had been paid to him and that the employer had promised to pay the balance. While the Assistant Commissioner did not accept the version that only Rs. 89 had been paid, he came to a finding, which was quite unwarranted by the evidence, that only half the amount due on the Memorandum had actually been paid, and he therefore refused to register the Memorandum and also made order that the employer should pay the balance half, that is Rs. 168. In my view a finding, even if it were assumed to be a correct finding, that the sum acknowledged in the receipt had not actually been paid, cannot alter the admitted fact that the workman agreed to accept Rs. 336 as compensation. The Assistant Commissioner was therefore

clearly wrong in refusing to register the agreement and I have accordingly to set aside the order he made and to direct that the Memorandum be registered as provided in section 42.

The right to receive payment of a specified amount as compensation only arises under the Ordinance *after the amount payable is fixed* either by an award or order duly made under the Ordinance or in an agreement duly recorded, and since in the present case the fixation of the amount was by agreement, the right to payment will only accrue after the Memorandum is recorded in pursuance of my direction. It will then be open to the workman, if so advised, to take proceedings for recovery of the agreed amount, and the question whether, having regard to the receipt signed by the workman on 13th July 1953, the amount of Rs. 336 was actually paid or not will then arise for determination.

Order set aside.

