

1981

Present: de Silva J.

THEMANIS, Appellant, and LAWARIS, Respondent

*S. C. 389—Workmen's Compensation C 30/10011/47**Workmen's Compensation Ordinance (Cap. 117)—Section 16 (2)—Procedure for recovery of compensation—Failure to institute claim within six months—sufficient cause.*

A workman claimed from his employer a certain sum as compensation for injuries sustained by him in the course of his employment. Although the accident took place on September 5, 1947, the application for compensation was received on October 5, 1948, that is, after the expiry of the statutory period of six months from the date of the accident. The evidence, however, clearly showed that the employer had paid the workman from time to time towards compensation and had promised to get further moneys from the Insurance Company which he failed to do.

Held, that in the circumstances the failure on the part of the workman to make his claim before the expiry of six months was due to sufficient cause within the meaning of section 16 (2) of the Workmen's Compensation Ordinance.

APPPEAL from an order of the Commissioner for Workmen's Compensation.

H. W. Jayewardene, for the respondent appellant.

M. M. Kumarakulasingham, with *J. C. Thurairatnam*, for the applicant respondent.

Cur adv. vult.

February 20, 1951. DE SILVA J.—

This is an appeal by the respondent, the employer, against the award of a sum of Rs. 2,310 as compensation to the applicant-respondent for injuries sustained by him in the course of his employment under the appellant.

The quantum of compensation awarded by the learned Commissioner is not in issue for learned Counsel for the appellant conceded that no objection could be taken to the amount of compensation awarded. The

only ground on which the appeal is pressed is that the claim for compensation was not made within six months of the occurrence of the accident which gave rise to the claim. The accident took place on 5th September, 1947. The appellant knew of the accident. In his evidence he states that he got the workman treated and that he gave him money also. Appellant had received from the workman a receipt for Rs. 150. Appellant also admits that after this accident he continued to employ respondent under him as a watcher. The man was employed for about six or seven months. The workman admitted before the learned Commissioner that he had received in all Rs. 307. The Manager of the appellant in his evidence states that the applicant was paid over Rs. 700 in several instalments, the final instalment being Rs. 150. The applicant states that the appellant helped him with money and promised to get further moneys from the Insurance Company. According to the admission of the applicant he had received from the appellant in all Rs. 307.

The question for consideration is whether upon the facts in this case the learned Commissioner was justified in holding that the failure on the part of the applicant to make the claim before the expiry of six months was due to sufficient cause within the meaning of section 16 (2) of the Workmen's Compensation Ordinance, Chapter 117. Various authorities have been submitted to me as to what constitutes sufficient cause.

In *Roles v. Pascall and Sons* (104 Law Times 298), in the course of his judgment, Cozens-Hardy, M.R., at page 300 makes the following observation, "If, for instance, the employer has been paying compensation for a time without any formal notice of claim, that may be a very good reasonable cause why the workman did not make the formal claim within the six months. I merely give that as an illustration which is quite sufficient, I think, to satisfy the words of the section and which is quite consistent with good sense". It is not denied that the applicant's claim was made after the expiry of the statutory period of six months from the date of the accident. I find that the application was received on the 5th October, 1948, that is, long after the expiry of the period of six months. The evidence clearly shows that the employer had paid the workman moneys from time to time towards compensation and he had promised the workman to get further moneys from the Insurance Company which he failed to do. Under the circumstances I am of opinion that the learned Commissioner has correctly held that the failure on the part of the applicant to make the claim within six months was due to sufficient cause.

The appeal is dismissed with costs.

Appeal dismissed.
