1954 *Present :* **Pulle J.**

SOUTH WESTERN OMNIBUS CO., LTD., Appellant, *and* S. P. JAMES SILVA, Respondent

S. C. 523—Workmen's Compensation, C 30/11,798/51

Workmen's Compensation Ordinance (Cap. 117)—Clause 1 of Schedule II—"Workman"—Proof of manual labour not essential—Section 16 (2)—"Sufficient cause".

(i) A person was employed in an omnibus company as a Senior Traffic Inspector whose duty it was to check the number of passengers carried by each omnibus operating in the area allotted to him and the ticket books. He had also to supervise the field staff which included checkers, time-keepers, stand supervisors, drivers and conductors. In the event of the breakdown of an omnibus he had to make a report to the proper official of the company although it was not part of his duty personally to attend to any repairs.

Held, that the employee was a workman within the meaning of section 2 of the Workmen's Compensation Ordinance read with clause 1 of Schedule II, although he did not fall within the category of manual labourers.

(ii) Ignorance of the legal requirements of section 16 (1) of the Workmen's Compensation Ordinance is not a sufficient cause within the meaning of section 16 (2) for failure to make a claim within the prescribed time. Nor does the fact that notice of the claim was given to the employer have any bearing on the question of sufficient cause for failure to claim in time.

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

D. S. Jayawickreme, with *H. B. White* and *A. C. M. Uvais*, for the respondent-appellant.

M. M. Kumarakulasingham, for the applicant-respondent.

Cur. adv. vult.

May 10, 1954. PULLE J.—

This appeal raises two questions of difficulty under the Workmen's Compensation Ordinance. The first is whether the claim was made out of time and the second whether the respondent in whose favour an award has been made is a person who is included in the definition of "workman" in section 2 of the Ordinance read with Clause 1 of Schedule II.

The accident which resulted in injury to the respondent occurred on the 23rd November, 1951. At this time he was employed by the appellant company as a Senior Traffic Inspector whose duty it was to check the number of passengers carried by each omnibus operating in the area allotted to him and the ticket books. He had also to supervise the field staff which included checkers, time-keepers, stand supervisors, drivers and conductors. In the event of the breakdown of an omnibus he had to make a report to the proper official of the company although it was

not part of his duty personally to attend to any repairs. The circumstances in which the accident occurred are detailed in the evidence of the respondent which has been accepted. On the 23rd November the respondent was riding a motor bicycle with a Junior Traffic Inspector on the pillion in the course of their employment. At Dodanduwa the respondent heard the sound of a bus coming from Galle and as he saw it coming he signalled to the driver to stop. The latter applied the brakes but it moved towards its right and collided with the motor bicycle. The pillion rider was thrown off and the respondent was run over and severely injured.

I am not prepared to accept the submission that the Assistant Commissioner erred in law in holding that the respondent was employed, otherwise than in a clerical capacity, in connexion with the operation of mechanically propelled vehicles used for the carriage or conveyance of passengers. The only authority cited in support of the company's contention is a passage from the judgment of Gratiaen J. in *De Silva v. Premawathie* [1] in which he said :

" I think that the language of the local Ordinance and of its relevant Schedule catches up only the occupations of persons who belong to what are popularly described as ' the working classes ' engaged in manual labour and earning ' wages ' as distinct from salaries. "

As a guide to the interpretation of the definition of " workman " in section 2, read with Schedule II, I think, if I may say with all respect, the proposition is stated too widely in the passage which I have quoted. I prefer to accept the interpretation in two earlier passages where the learned Judge states :

" It is clear that the Legislature intended to give the enactment only a fairly restricted range of operation and that it was not intended to benefit all classes of employees . . . . . An employee could not qualify for any statutory benefit unless he came strictly within one or other of the various occupations specified in Schedule II. "

If, therefore, an employee came within the description in Clause I of Schedule II, in my opinion it makes no difference whether the nature of his duties places him or not in the category of manual labourers. I derive some support from *Manicam v. Sultan Abdul Cader Bros.* [2] in which Soertsz A.J. said :

" Take the case of an omnibus. It is operated in order to carry passengers. It requires besides a driver and a cleaner, a conductor. Can it be said that the conductor is not employed in connexion with the operation of the omnibus ? If the interpretation of the Commissioner is right, a conductor of an omnibus does not fall within the definition of workman in the Ordinance. Is there any justification for such an exclusion, when the express terms of the paragraph exclude *only* those employed in a clerical capacity ? "

In my opinion there was evidence before the Assistant Commissioner on which he could properly find that the respondent was a workman within the meaning of Clause 1 of Schedule II.

The question which has troubled me most is the plea that the claim for compensation not having been instituted within six months of the

[1] *(1948) 50 N. L. R. 306.* [2] *(1936) 38 N. L. R. 28.*

occurrence of the accident the learned Assistant Commissioner was wrong in admitting the claim under section 16 (2) on the ground that the failure to institute the claim in time was due to sufficient cause. The company has formulated the plea as follows :

" That in holding that there was ' sufficient cause ' within the meaning of section 16 (2) of the Ordinance, for the claim not being instituted within six months, the learned Assistant Commissioner had failed, *inter alia*, to take into consideration the applicant-respondent's own admission that he was ignorant of the provisions of section 16 (1) of the Ordinance and had therefore misdirected himself in law. "

The first intimation that the Commissioner had of the accident was on 13th May, 1952, when he received the letter A4 dated 9th May, 1952, from one Hema Lalitha Jayawardena praying the Commissioner to order the company to pay Rs. 4,900 to the respondent as compensation under the Ordinance. The writer described the respondent as her husband although she stated in her evidence that she was not legally married to him. According to her and the respondent A4 was written for and on behalf of the latter. It is not argued that A4 marks the institution of the claim for, if that be so, its receipt was well within six months reckoned from 23rd November, 1951. The period of six months expired on the 23rd May, 1952, but the application for compensation in Form A under regulation 11 of the Workmen's Compensation Regulations, 1935, was received by the Commissioner only on the 9th July, 1952. It is in evidence that the respondent sought to settle the claim with the company but that fell through completely towards the end of April, 1952, so that the respondent had still nearly a month within which to institute the claim.

Regulation 17 (1) provides that after considering any written statement and the result of any examination of the parties, the Commissioner shall ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend. It is a curious feature in this case that the respondent on whom the burden lay to establish a sufficient cause to account for his failure to institute his claim in time was not asked to state categorically the reason for the failure. His own position and that of his wife are contradictory. He stated in his evidence that he did not know that a claim for compensation is prescribed in six months. The wife's evidence is that when she wrote A4 on the 9th May she was aware that the claim had to be made within six months of the date of accident. In finding sufficient cause in favour of the respondent the Assistant Commissioner has not adverted to the one reason which, by implication, the respondent assigned for the failure, namely, his ignorance of the legal requirements. The question I have to decide is whether in the events which have happened there wa evidence on which the Assistant Commissioner could have found in favour of the respondent under section 16 (2). I am compelled reluctantly to come to the conclusion that there was no evidence. In so far as it can be said that the finding is a question of fact I am empowered under section 48 (3) to reverse it for the purpose of disposing of the appeal.

That ignorance of legal requirements is not a reasonable excuse was laid down by the Court of Appeal in England in *Roles v. Pascall & Sons* [1]. The words that fell to be interpreted were, " the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom or other reasonable cause ". This case has been expressly followed in *Christoffelsz v. Dhanarath Menika* [2]. Learned Counsel for the respondent invited me to distinguish *Dhanarath Menika's case* [2] on the ground that it does not appear in the judgment that notice of the claim had been given to the employer by the widow. I do not think it is a valid ground for making a distinction. However, I have called for and examined the record of that case and it does appear that notice had been given before the claim was instituted. That a notice of the claim given to an employer has no bearing on the question of sufficient cause for failure to claim in time is implicit in section 16 (1) the first paragraph of which lays down two concurrent conditions, one of which is the giving of notice and the other, the institution of proceedings within six months.

Learned Counsel for the respondent relies on the case of *Munshi & Co. v. Yeshwant Tukaram* [3] where an application made out of time for compensation was admitted under section 10 of the Indian Workmen's Compensation Act VIII of 1925. That section is in terms almost identical with section 16 (2) of the Ordinance. The workman was injured in an explosion in a dockyard and he claimed compensation before a Claims Commission set up by the Government of India. He was awarded a sum of Rs. 2,280 in respect of his injury but that sum was made subject to a deduction of the amount awarded under the Workmen's Compensation Act. The reason he gave for applying for compensation after the prescribed period was that he was under the impression that he would receive the full compensation from the Claims Commissioner and that it was only afterwards he was informed that in the first instance compensation would be granted under the Workmen's Compensation Act and that thereafter he would receive additional compensation from the Claims Commissioner. The High Court of Bombay held that the workman genuinely misunderstood his position and that they saw no reason to find that the discretion under section 10 was exercised unjudicially. If this case purported to hold ignorance of the law as a sufficient cause I do not feel I should follow it in preference to *Christoffelsz v. Dhanarath Menika* [2] based as it is on the judgments of Cozens-Hardy M. R., Fletcher Moultan L.J. and Buckley L.J. in *Roles v. Pascall & Sons* [1] which is not considered in the Bombay case [3].

Much as I would like to reach a conclusion favourable to the respondent I am unable to do so having regard to the evidence and the proper interpretation of the phrase " sufficient cause ".

It is unfortunate that no issue was formulated as to whether grounds existed to justify relief to the respondent under section 16 (2). The only

[1] *(1911) 1 K. B. 982.* [2] *(1949) 51 N. L. R. 275.*
[3] *(1948) A. I. R. Bombay 44.*

issue on the point was "Is the claim prescribed in law?". The real issue was whether the failure to institute the claim within six months was due to sufficient cause. The Assistant Commissioner's finding is expressed as follows:

"The respondent company has not in any way been prejudiced by this application being made about one and half months after the prescribed period. Moreover, at no stage could it be said that the applicant waived his claim for compensation."

Neither reason seems to be satisfactory. It was not the case of either party that the applicant waived his claim at any time. The Assistant Commissioner continued, "In view of all the circumstances of this case I hold that there was sufficient cause within the meaning of section 16 (2)". Whether he did or did not take into account the one substantial reason given by the respondent, namely, that he was ignorant of the legal requirements, the finding cannot be supported.

I would allow the appeal and set aside the order made by the Assistant Commissioner. I make no order as to costs.

Appeal allowed.