

1955

Present : Pulle J. and Weerasooriya J.

T. K. SARNELIS, Appellant, and CIVILIAN LABOUR
ADMINISTRATIVE OFFICER, Respondent

S. C. 962—Workmen's Compensation C. 30/9,807/50

Workmen's Compensation Ordinance—Appeal—Form of petition of appeal—Sections 48 (1), 49 (1), 51—Criminal Procedure Code, s. 340 (2).

A point of law stated in a petition of appeal filed under section 48 (1) of the Workmen's Compensation Ordinance need not be certified by an advocate or proctor in terms of section 340 (2) of the Criminal Procedure Code.

Thomas v. Ceylon Wharfage Co., Ltd. (1948) 49 N. L. R. 397, overruled.

THIS was a preliminary objection taken against an appeal preferred under the Workmen's Compensation Ordinance. The matter was referred to a Bench of two Judges.

No appearance for the appellant.

S. J. Kadirgamar, with *P. Somatilakam*, for the respondent.

Mervyn Fernando, Crown Counsel, as *amicus curiae*.

Cur. adv. vult.

March 30, 1955. PULLE J.—

This matter which has been referred to a Bench of two Judges raises a point of procedure in regard to appeals to this court under the Workmen's Compensation Ordinance.

The appellant claimed compensation against the Civilian Labour Administrative Officer, Royal Air Force, Katunayake, for injury suffered as the result of an accident which occurred on the 1st April, 1950. An order was made dismissing his claim on the ground that he was not a "workman" as that word is defined in section 2 (1) of the Ordinance. He appealed from that order. The question we have to decide is whether the appeal should be rejected on the preliminary objection taken by the employer that the petition does not bear a certificate by an advocate or proctor that the matter of law on which the appeal is taken is a fit question for adjudication by this Court. The objection is supported on the authority of *Thomas v. Ceylon Wharfage Co., Ltd.*¹ and *The Additional Controller of Establishments v. Lewis*². The appellant did not appear nor was he represented and we are indebted to learned Crown Counsel for appearing as *amicus curiae*.

The right of a party aggrieved to appeal on a point of law is conferred by section 48 (1) of the Ordinance which is the first of the sections in Part X dealing with appeals. The appeal must be by way of petition which shall, by section 49 (1), "bear uncanceled stamps to the value of

¹ (1948) 49 N. L. R. 397.

² (1949) 40 C. L. W. 3.

five rupees and shall be filed in the Supreme Court within a period of thirty days reckoned from the date of the order against which the appeal is preferred". The next stage of the appeal is its hearing and disposal and that is provided for in section 51 which reads,

"Subject to the provisions of this Part the provisions of Chapter XXX of the Criminal Procedure Code shall apply *mutatis mutandis* in regard to all matters connected with the hearing and disposal of an appeal preferred under section 48 and, for such purpose, the order of the Commissioner shall be deemed to be the order of a court."

In my view the qualifying phrase "subject to the provisions of this Part" means that if any matter pertaining to the hearing and disposal of an appeal is specifically provided for in Part X such a matter would not attract the provisions of Chapter XXX of the Criminal Procedure Code. On this line of reasoning, even if it can be maintained that the expression in section 51 "all matters connected with the hearing and disposal of an appeal" is wide enough to embrace the appeal itself, including, therefore, the form of that appeal, the qualifying phrase with which section 51 opens will exclude the petition of appeal from the ambit of Chapter XXX of the Criminal Procedure Code. In other words, sections 48 and 49 of the Ordinance deal expressly with the conditions necessary to constitute an "appeal" and one is not called upon, once those conditions are satisfied, to invoke Chapter XXX for the purpose of determining its true form.

With all respect to the learned Judge who decided the two cases relied on by the respondent to support the preliminary objection, I am unable to agree that, giving the words "in regard to all matters connected with the hearing and disposal of an appeal" even a connotation of the widest amplitude, the provisions of section 340 of the Criminal Procedure Code govern the form of an appeal under the Workmen's Compensation Ordinance. The matter becomes clear to me when sections 48 to 51 are examined in two stages. Section 48 confers the substantive right of appeal (vide *Colonial Sugar Refining Co. v. Irving*¹) and section 49 regulates the conditions pre-requisite to the exercise of that right. Once that right is exercised only the steps taken for the adjudication of the questions raised by the appeal and the adjudication itself can be regarded as "all matters connected with the hearing and disposal of the appeal" within the meaning of section 51. The corresponding stages, namely, the exercise of the substantive right of appeal from a judgment or final order pronounced by a Magistrate's Court or District Court (vide sections 338 and 340) and the procedure thereafter (vide sections 343, 344, 345 and 347) are equally well marked.

In the case of *University Motors v. Barrington*² referred to in *Thomas v. Ceylon Wharfage Co., Ltd.*³ Clauson, L. J., stated,

"The phrase 'a hearing' is somewhat vague, and is susceptible of different meanings in various contexts. Perhaps the best example that can be given to show that that is so is the case which was cited

¹ (1905) A. C. 369.

² (1939) 1 All E. R. 630.

³ (1938) 49 N. L. R. 397.

in the House of Lords, which it is unnecessary to go into at length, *Green v. Penzance (Lord)* ¹, where in a particular context, the verb 'to hear' was decided to cover, not only the occasion on which the judicial officer in that case dealt with the case (if I may use that expression), but also all occasions on which he was performing the judicial functions vested in him under the particular statute in question. It is material to this case only as showing that it is impossible to come to a sound conclusion as to the meaning of the word 'hearing' in its application unless the particular circumstances of each case are given careful consideration".

Bearing in mind the caution in the last sentence of the passage cited I think it is a legitimate observation to make in the present case that unless and until the appeal was filed there was not called into operation the performance of any judicial functions or the taking of any steps connected therewith.

In my opinion a petition of appeal filed under the Workmen's Compensation Ordinance need not bear a certificate in terms of section 340 (2) of the Criminal Procedure Code and the preliminary objection must be overruled. The appeal will, therefore, be set down for hearing in the ordinary course.

WEERASOORIYA J.—

I agree.

Section 51 of the Workmen's Compensation Ordinance expressly refers to "an appeal preferred under section 48". In my opinion there is "an appeal preferred under section 48" when (in a case where an appeal lies) a petition of appeal bearing the requisite stamp or stamps is filed by the aggrieved party in the Supreme Court within the specified time.

It seems to me that the line is clearly drawn by the use of the words quoted above and that it is only in regard to all matters connected with the hearing and disposal of such an appeal that the provisions of Chapter XXX of the Criminal Procedure Code would apply. One may, however, then be faced with the argument that the words "all matters connected with" in section 51 are a superfluity and that the same result would have been achieved even if those words had been omitted from the context, but this argument appears to be met by the consideration that those words somewhat enlarge the expression "the hearing and disposal" so as to bring within its scope (in a case of doubt) such matters as, for example, the giving of notice of appeal, the listing of the appeal and the communication of the result of the appeal to the Commissioner, in regard to each of which there is no provision in Part X of the Workmen's Compensation Ordinance whereas specific provision in that behalf is contained in sections 342, 343 and 350 of the Criminal Procedure Code.

Preliminary objection overruled.

¹ L. R. 6 App. Cas. 657