1962 *Present:* **H. N. G. Fernando, J., and L. B. de Silva, J.**

CEYLON MOTOR TRANSIT CO. LTD., Appellant, *and*
S. M. DAVID, Respondent

S. C. 140/1961—D. C. Colombo, 43014/M

Workmen's Compensation Ordinance—Section 60—Injured workman—Acceptance of compensation from employer—Effect thereof as bar to subsequent action.

Under section 60 of the Workmen's Compensation Ordinance a workman who has accepted a sum of money as compensation in accordance with the Ordinance in respect of an injury suffered by him is not entitled to maintain an action in the courts for damages in respect of that injury. In such a case, the workman is presumed to know that his agreement to accept the sum would bring section 60 into operation.

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan, with *S. J. Kadirgamar* and *K. N. Choksy*, for 1st defendant-appellant.

No appearance for the respondent.

Cur. adv. vult.

January 15, 1962. H. N. G. FERNANDO, J.—

The plaintiff in this action who bad been employed by the 1st defendant Company as a lorry cleaner sued the 1st defendant for damages in a sum of Rs. 10,000 in respect of injuries sustained by the plaintiff in the course of his employment when a lorry driven by another employee of the defendant Company collided with a tree.

The defendant's Answer did not challenge the facts as stated in the plaint but relied only on a point of law, namely that the plaintiff having accepted a sum of Rs. 3,560 as compensation in accordance with the Workmen's Compensation Ordinance in respect of the injury suffered by him, he was not in law entitled to maintain an action in the courts for damages in respect of that injury. The relevant part of section 60 of the Ordinance is that " no action for damages shall be maintainable by any workman in any court of law in respect of any injury . . . if he has agreed with his employer to accept compensation in respectof the injury in accordance with the provisions of this Ordinance ".

The Accountant of the defendant Company gave evidence on its behalf to the effect that the Company was insured with Royal Exchange Assurance Company in respect of its liability under the Workmen's Compensation Ordinance and that in the normal way the Insurance Company was informed of this accident and the plaintiff examined by a doctor. In accordance with the medical report a sum of Rs. 2,520 was paid to the plaintiff on 30th July 1956. On that occasion, in accordance with the provisions in that behalf contained in the Workmen's Compensation Ordinance, the memorandum of agreement *D3* was signed by the Accountant on behalf of the Company and by the plaintiff to the effect that the parties had agreed to pay and accept respectively the sum of Rs. 2,520 in full settlement of the workman's claim under the Workmen's Compensation Ordinance.

The Accountant said in his evidence that the contents of forms such as *D3*, which are in English, are always explained to the workmen because they have difficulty in understanding the contents. This presumably is because the forms used by the Company were in English. According to this witness the contents of the form *D3* was explained to the plaintiff by the clerk who attended to payments to the minor employees. He said that the clerk explained it in Sinhalese and that he himself understood Sinhalese well enough to know that the contents were correctly explained.

Subsequently there was another medical report in respect of the plaintiff and on 30th September 1957 a further sum of Rs. 840 was paid to the plaintiff. On this occasion another memorandum of agreement *D1* was signed by the Secretary of the Company and by the plaintiff. While it is not clear that on the first occasion the signature of the plaintiff was witnessed by some friend of his, on the second occasion it is admitted by the plaintiff that he brought one Miranda with him, and *D1* shows that Miranda signed as a witness. Despite this evidence of the Accountant that the contents of the document were explained on both occasions to the plaintiff the learned District Judge had held that the plaintiff " was not aware when he received the first sum paid as compensation that it was a payment made in terms of the Ordinance ".

The plaintiff in his evidence denied outright that the contents of the two documents were ever explained to him or that he had knowledge that on the first occasion the payment was made to him as compensation by

reason of the accident. He said also that at the time he was unaware that a workman can claim compensation under the Workmen's Compensation Ordinance. According to him he was only told that the document relates to the accident and that it was being paid to him for treatment.

It is apparent that the plaintiff after receiving the first payment in 1956 had consulted a Proctor whose advice was available to him before the second payment was made. On the 17th September 1957 the Proctor wrote to the defendant Company with reference to the sum of Rs. 840 which was the further compensation payable to the plaintiff. In this letter the Proctor requested the Defendant Company to allow the plaintiff to draw the sum of Rs. 840 without prejudice however to his rights to bring an action against the Insurance Company. One of the points made by the learned Judge against the defendant Company is that in view of this letter the plaintiff when he received the second payment was entitled to assume that his rights to recover damages under the common law were not prejudiced. This consideration in my opinion was not relevant for the reason that if the acceptance of the first payment did in fact bring section 60 of the Ordinance into operation then the circumstances in which the second payment was made could not halt the operation of the section. To put the matter in another way the state of mind of the plaintiff on the second occasion affords no clue to what his state of mind was when he accepted the first payment.

In regard to the necessity for an explanation of the contents of the memorandum of agreement *D3* it seems to me that what had to be said to the plaintiff was very simple. All that was necessary was to ask him whether he agreed to accept the sum of Rs. 2,520 in full settlement of his claim under the Workmen's Compensation Ordinance. What has to be clearly borne in mind however is that according to the principle *ignorantia juris haud neminem excusat* the plaintiff was presumed to know (although I must concede that he probably did not in fact know) that his agreement to accept this sum would bring section 60 into operation. If that matter too had needed explanation to the plaintiff there might have been some reason to think that no explanation of it was given.

In my opinion it was in the highest degree likely that the necessary explanation was in fact given ; it was something that one would expect to have been done in the ordinary course of business. Surely it was unlikely that so large a sum as Rs. 2,520 would be paid out without ordinary care. The learned Judge failed to refer to the plaintiff's evidence that he was told that the money was given to him for treatment. If this evidence was true then the Company's officers would have been deliberately deceiving the plaintiff and inducing him to sign the document *D3* on the faith of a false statement. If the plaintiff's evidence on this point was false, it follows that an explanation had in fact been given to him and that some two years later he chose to give to the court an incorrect version of that explanation. Had the learned Judge directed

his mind to this aspect of the matter I doubt whether he would have reached the conclusion which carries with it the implication that a deliberate deceit was practised on the plaintiff.

For these reasons I would set aside the decree appealed against and dismiss the action with costs in both courts.

L. B. DE SILVA, J.—I agree

Appeal allowed.