

(1928) 02 CAL CK 0020
In the Calcutta High Court

Aroth

APPELLANT

Vs

Craig Jute Mills Ltd.

RESPONDENT

Date of Decision : 07-02-1928

Acts Referred:

Workmens Compensation Act, 1923 — Section 11(6), 27

Citation : AIR 1928 Cal 481

Hon'ble Judges : Rankin, C.J;C.C. Ghose, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is a reference under the Workmen's Compensation Act (Act 8 of 1923) made by the Commissioner, Workmen's Compensation, Bengal, under the power conferred on him by Section 27 of the Act, which is as follows:

The Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court, and if he does so shall decide the question in conformity with such decision.

2. The question of law referred to us has reference to the true construction of Sub-section (6), Section 11 of the Act, and arises upon the following facts which have been found by the Commissioner. The applicant alleged that while joining threads in a beaming machine his right hand was caught between the drum and steam heated cylinder and was smashed. The employer contended that the hand was not smashed but only scalded and that owing to the applicant's disregard of the medical officer's instruction to keep his hand in bandages it became septic. The Commissioner has found that the employer's version is the correct one, that the applicant's disability is due to analysis of the joints which is the result of sepsis and that the present condition of his hand is due to his own conduct in disregarding the medical officer's instructions. In other words, that his injury has been aggravated by his disregard of those instructions. The Commissioner has accepted the evidence of the employer's doctor that the original injury was only a very slight burn.

3. The question is whether in these circumstances the Sub-section 6, Section 11 applies to the case. That sub-section is as follows:

Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal, failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner, and compensation, if any, shall be payable accordingly.

4. The difficulty which presents itself to the Commissioner arises from the fact that in the present case the workman was attended, and regularly attended, by the qualified medical practitioner whose services were offered to him by the employer free of charge and the question of law referred to us is stated as follows:

In Section 11, Sub-section (6) do the words "If it is thereafter proved that the workman has not been regularly attended by a qualified practitioner" include attendance by the medical practitioner provided by the employer whose instructions he has disregarded, or should they be construed as if they read "by another medical practitioner?" How should these words be applied to the case before me?

5. It is to be observed that Sub-section (6) has been enacted in the interest of the employer. It deals with the case where an injury has been received and where the injury has afterwards been aggravated by a refusal of medical attention offered to the applicant by the employer or by disregard of the instructions of the medical practitioner whose services had been so offered to the applicant by the employer. The sub-section is very carelessly drafted, but the words with which the present case is chiefly concerned:

If it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner,

have a clear and reasonable purpose. To take first the case where the workman has refused to be attended by the employer's doctor. These words operate to prevent the workman suffering prejudice from this refusal if he has been regularly attended by a qualified medical practitioner, that is, *ex hypothesi*, by some qualified medical practitioner other than the employer's doctor. Coming then to the second case, where the workman having accepted the services of the employer's doctor had deliberately disregarded the instructions of such medical practitioner. The words in question operate to prevent any prejudice resulting under this sub-section to the workman's claim for compensation if the workman

has put himself in the hands of some other doctor. In that case disregard of the instructions -given by the employer's doctor will not have the result of prejudicing the workman's claim for compensation.

6. It seems to me to be quite impossible that these words:

If it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner

should apply to the case of regular attendance by the employer's doctor whose instructions have been disregarded. If therefore in the present case the Commissioner is of opinion that the workman acted unreasonably in the circumstances of the case in removing the bandages from his hand and that his injury has been aggravated thereby, then the concluding words of the sub-section must take effect and the workman's claim for compensation must be assessed upon the basis of an injury of the same nature and duration as might reasonably have been expected if the workman had been regularly attended by a qualified medical practitioner.

7. It is possible to suggest that the words in question were intended to apply only to the case of a refusal by the workman to be attended by the employer's doctor. The concluding words of the sub-section give some slight foundation to this contention; but I am not of opinion that such a construction is not permissible as it would involve doing considerable violence to the language actually employed by the legislature.

8. A case might arise in which the workman had refused to be attended by the employer's doctor acting as such, but had engaged the same doctor on his own account. This case may be unlikely, but in view of possibilities of this character I hesitate to go beyond the necessities of the present case to say that for all purposes the phrase "that the workman has not been regularly attended by a qualified medical practitioner" should be construed as if it read "by another qualified medical practitioner." For the purposes, however, of the present case, and cases of the same character, that is necessarily the meaning of the phrase. The question referred to us for our decision is thus answered. There will be no order as to costs.

C.C. Ghose, J.

9. I agree.