

(1926) 11 CAL CK 0017
In the Calcutta High Court

Ashutosh Seal

APPELLANT

Vs

Gouripore Co. Ltd.

RESPONDENT

Date of Decision : 29-11-1926

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : AIR 1927 Cal 286

Judgement

1. This is an appeal u/s 30 of the Workmen's Compensation Act (8 of 1923). The facts are that the Appellant - a workman employed by (the Gouripore Company, Ltd. - suffered an injury to his left hand causing, according to the medical evidence, an abrasion on the outer side of the left index finger and an injury exposing the subcutaneous tissue. It is not disputed that the injury was caused by accident arising out of and in the course of his employment. This happened on the 25th June 1925. He was treated by the doctor attached to the Mill till the 30th June. He then, it appears, went to the Imambarah hospital in Hughly on the opposite side of the river where he was treated from the 2nd to the 8th July. On the 8th July he wanted to become an indoor-patient of the hospital, but he was asked by the doctor to get a letter to that effect from the Mill. On that day, according to the appellant's evidence at about noon he went to the Mill and obtained the necessary letter. Sometime after that it was found that gangrene had set in and that operation was necessary. In the result, two of his fingers (index and thumb) had to be amputated. He then applied under the Act for compensation for the injury thus caused to his person. It is a case of partial disablement as defined in Clause (g) of Section 2 of the Act.

2. It is not disputed before us that if the workman is found entitled to any compensation, he would, under the schedule to the Act, be able to recover Rs. 367 odd from the defendant. The learned commissioner appointed u/s 20 of the Act dismissed the workman's claim and hence this appeal. u/s 30 of the Act an appeal lies to this Court on two conditions : (1) that a substantial question of law is involved in the appeal; and (2) that the amount in dispute on the appeal is not less than Rs. 300. The second ground is satisfied because the value of the appeal

is more than Rs. 300. As regards the first point, the question of law involved is as to whether the Commissioner approached the case from the correct standpoint and whether the workman's claim was not dismissed on a wrong interpretation of the law. We are of opinion that in the present case the appeal is competent and that it is open to us in this first appeal to decide all questions of law and fact that arise in it.

3. The learned Commissioner framed an issue in the case which is to this effect:

Was the loss of applicant's left index finger and thumb solely and directly attributable to the accident?

4. It is argued that the issue as framed does not on the law as it stands properly arise in the case. u/s 3 an employer shall be liable to pay compensation if the injury is caused to a workman by accident arising out of and in the course of his employment. u/s 4 the employer is liable to compensate the workman according to the scale given in the Act where permanent partial disablement results from the injury. The wording employed by the legislature following the English law of compensation to workmen is that the disablement must result from the injury. The law does not insist and has nowhere indicated that the disablement should be solely and directly attributable to the accident. There are cases where the disability cannot be said to be due solely and directly to the accident. The true test is not whether the disablement is the direct or even probable result of the injury or the injury the natural cause thereof, but whether the disablement can be traced to the injury even as an unusual, but not unconnected, result thereof. In the case of *Dunham v. Clare* [1902] 2 K.B. 292 the deceased met with an accident which caused the wound to his toe. He was treated for that wound in the hospital but after a certain interval erysipelas set in and he died of blood-poisoning. It was held that the death was the result of the injury within the meaning of the Workmen's Compensation Act, 1897, even though in fact it might not be the natural or probable consequence thereof. In *Ystradowen Colliery Company Ltd. v. Griffiths* [1909] 2 K.B. 533, a workman got a severe injury in the thigh and as he had to walk some distance to get to his home he caught cold which made him subject to bronchitis and chronic asthma and permanently incapacitated him for work. Cozens Hardy, M.R., observed thus:

It is not the law to say that a disease which has been accelerated, still more if produced, by the accident, is not a matter which comes within the four corners of the Act of Parliament.

5. In another passage he observed as follows:

I think, we are bound to give him (the County Court Judge)

this direction that the test is not whether the present condition of the man is the natural result of the injury, but he must consider the result in fact. It may be an improbable result - I will even go so far as to say, as Collins, M.R., said, possibly even an unnatural result - but the question is whether the man's present

condition is the result of the accident in this sense that it is occasioned by his debilitated condition immediately after the accident and occasioned by the accident which he has met with.

6. There are many cases which have taken the same view, the result of which is that if the disability can be traced to the injury caused by accident in the course of his employment the workman will be entitled to compensation. The case of *Humber Towing Coy., Ltd. v. Barclay* 5 *Butterworth's Compensation Cases* 142 does not depart from the principle thus stated. In that case the workman's forearm was broken by accident. He had it set by a bone-setter who did the work so negligently that the man's arm became stiff, and incapacitated him for further work. The Master of the Bolls (Cozens-Hardy, M.R.) very rightly observed that the employer is responsible for the injury caused to the workman but he does not insure against lack of skill or competency of any doctor or physician who might treat the workman. In our opinion the words "result from" in Section 4 are wider than "solely and directly attributable" as the learned Judge takes them to mean, and the requirement of the law is satisfied if the injury can be traced to the accident even as the unnatural cause thereof.

7. In our judgment the plaintiff's claim can only be defeated by the provisions of Clause (6) of Section 11 of the Act, That clause says that a workman becomes disqualified and cannot claim compensation if he refuses to be attended by a qualified medical practitioner whose services have been offered to him by the employer or having accepted such offer has deliberately disregarded the instructions of such medical practitioner and 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. To claim exemption the employer has to prove the circumstances mentioned in the section disentitling the workman from claiming compensation. It has been proved in this case that the appellant was offered the services of a medical practitioner. We do not know the qualifications of Mr. Sarat Chandra Chatterjee, the Mill doctor, who has been examined in this case on behalf of the respondent. Assuming that he was a qualified medical practitioner, it has further to be proved that the Appellant refused to accept the offer. The evidence is that the doctor treated him for five days. There is no evidence that he deliberately disregarded the instructions of the doctor. It has further to be proved that the appellant was not attended thereafter by a qualified medical practitioner. The evidence in the case is that after leaving the Mill doctor, the appellant went to the Imambara hospital where it cannot be said that he was not attended by a qualified doctor. On the face of it therefore the respondent has not been able to discharge the onus placed upon him by law.

8. We next examine the evidence in the case. The appellant, supported by his witness, tells the story as stated above. The doctor, Sarat Chandra Chatterjee, examined on behalf of the Mill, says that when on the 8th July the appellant

came to him his hand was wrapped up in a very-dirty rag, soaked in mustard oil, and the gangrenous condition of his hand was due to sepsis from using dirty rags. The appellant and his witness, however, deny that the rag on the day he came to the. Mill was a dirty rag. Their case is that the appellant was dressed in the morning of that day by the doctor at the hospital and he came to the Mill soon after for the letter. It is unfortunate that the learned Commissioner did not do his best to secure the evidence of the doctor who had treated the appellant at the hospital. An application was made on behalf of the appellant for the issue of process for the attendance of the doctor as a witness on his behalf. But it was returned unserved for want of time. This was on the 26th November 1925 though the learned Commissioner did not deliver his judgment till the 16th December 1925. But on the evidence as it stands we are not prepared to accept the story as given by the respondent's witness.

9. It seems to us on a reading of the entire evidence and on a consideration of all the facts that the man received the injury, the exact nature of which may be what the doctor has described. He got himself treated for a few days by the Mill doctor, but not getting much benefit he went to the Imambara hospital for better treatment. It seems to us that as the appellant was not improving as he had expected he wanted to be an indoor-patient of the hospital and for that purpose he came to the Mill for a letter, When he came there he had the bandage put by the hospital doctor and there is no reason to disbelieve it. The story that his hand was wrapped up in a dirty rag soaked with mustard oil seems to us to be an invention. The doctor further says that the wound was making progress under his treatment and it would have taken 10 or 12 days to cure. This statement does not appear to us as true. There was no reason why the appellant when deriving benefit from the treatment of the Mill doctor should take the trouble of crossing the river and visiting the hospital. It cannot therefore be doubted that the disablement which the appellant complains of was the result of the injury received from the accident in the course of his employment and that the employer respondent cannot claim exemption from liability for compensation u/s 11(6) of the Act. We accordingly allow the appeal, set aside the order of the Commissioner and decree the claim of the appellant for Rs. 367-8 with costs of this Court only. We assess the hearing-fee at three gold mohurs.