
(1932) 08 CAL CK 0023
In the Calcutta High Court

Hira Lal Mondal

APPELLANT

Vs

Burmah Shell Oil Storage and Distributing Co. of India Ltd.

RESPONDENT

Date of Decision : 03-08-1932

Acts Referred:

Workmens Compensation Act, 1923 — Section 10

Citation : AIR 1933 Cal 130

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

Bench : Full Bench

Judgement

Rankin, C.J.—This is an appeal by a workman from a decision of the Commissioner under the Workmen's Compensation Act in a case in which the workman claimed a lump sum exceeding Rs. 300 as compensation for the injuries alleged to have been sustained by him on 7th February 1930. It is clear enough that he went to the company's doctor on the next day and it appears that on 21st April he wrote a letter to the company in which he said:

From 7th February last I am unable to work and could not attend owing to severe pain over the chest and heart. I had a hurt over the chest while I was boring rail; since then I am feeling this difficulty.

2. Then he goes on to ask that he may get his pay for the time during which he was absent and also that he may be permitted to retire with a gratuity. In the end the employing company, the Burmah Shell Company, refused to make any payment and the workman brought the case under the Workmen's Compensation Act on 6th August 1930. In his application before the Commissioner he stated the cause of his injury somewhat differently without succeeding in being very intelligible. He said:

the cause of the injury was due to a fall from a height of about 20 feet while mating a hole in the garden in the Filling Shade No. 3 in Budge Budge Installation of the said company.

3. That collection of English words is not particularly clear, but I understand from

the learned advocate for the appellant that what it means is that he was drilling a hole in a joist, that by some accident he was hit on the chest by or fell up against the tool he was using so as to render him unconscious; at all events he slipped and fell down and in that way suffered an injury. The matter is by no means plain but it is important to observe that up to the present time it has not been inquired into at all. What happened was that the employers filed a written statement taking all the usual defences and three issues were framed: (1) whether the applicant sustained any personal injury by accident; (2) if so, did he sustain the injury alleged; and (3) was the statutory notice served. u/s 10 of the Act the provision is that proceedings are not to be entertained:

unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured.

4. The Act however provides that:

the Commissioner may admit and decide any claim notwithstanding that the notice has not been given in due time" as provided by the Act "if he is satisfied that the failure so to give the notice was due to sufficient cause.

5. The section also provides that

the notice shall state in ordinary language the cause of the injury

and certain other particulars. Now when this matter came before the Commissioner he first of all decided to deal with issue 3 first: Was the statutory notice served ?" It was argued before him that notice had been given verbally the day after the accident, that is to say, on 8th February to the company. The Commissioner says that Section 10 requires a notice in writing. No doubt, so far the learned Commissioner is right. He goes on to say:

He says that the applicant having done this supplemented it by a written notice on 21st April, which complies with all the provisions of the section. It does not however comply with the first provision, for it does not state the cause of the accident. This if given in the application as a fall from 20 feet, but the applicant has not been able to show that any notice of such a fall was ever given to the employer.

6. In my judgment, the decision is based upon an erroneous view. When the statute says that the "notice shall state in ordinary language the cause of the injury" it does not mean that the notice must state in language to the same effect as the subsequent document namely the application before the Commissioner. It merely says that the thing is not to be deemed a proper notice if it does not state in ordinary language the cause of the injury. In this case whoever has written the letter for this work man has done his best to state in his language the cause of the injury; but he has not done it very well; he has not done it in the same sort of language as is afterwards employed before the Commissioner. What he says is: "I had a hurt over the chest while I was boring rail" In my judgment,

as a statement of the cause of the injury whether it is a very unsuccessful attempt or a good attempt has nothing to do with the point. The Commissioner's idea that this notice of 21st April is not a notice within S 10 is in my judgment erroneous

7. If there is something suspiciously vague about it, that is a matter which is to be considered when the Commissioner comes to deal with the merits. The delay in giving this notice may be a matter of great importance. What the Commissioner had to decide was whether he would refuse to entertain this because of the absence of a written notice given in due time. The Commissioner has not found that the notice of 21st April was bad because it was not given "as soon as practicable after the happening of the accident." He has not found that at all. In the same way he has not even purported to consider whether the failure was due to sufficient cause. It may very well be that this man having seen the company's doctor and told him all about it had considerable excuse for thinking that it was better to wait before giving a formal notice to the company. That matter has not been dealt with. The issues framed in the case do not show that the Commissioner had appreciated that on the failure to prove a timeous notice in writing he had other duties in the matter.

8. In my judgment, this matter must go back to the Commissioner. It will be open to him still to hold that the notice of 21st April is bad as not having been given "as soon as practicable after the happening of the accident." That is a matter which is to be inquired into upon evidence. The employers must pay the costs of this appeal. We assess the hearing-fee at three gold mohurs.

C.C. Ghose, J.

9. I agree.