A

SHIRI RAM SHARMA

v.

SECRETARY FOR LABOUR

B

[COURT OF APPEAL, 1975 (Gould V.P., Marsack J.A., Spring J.A.), 13th, 26th November]

Civil Jurisdiction

Workmen's compensation—failure by employer to serve notice of accident on Commissioner of Labour within specified time—whether such failure constituted reasonable cause enabling employee to pursue claim after specified time had elapsed—Workmen's Compensation Ordinance (Cap. 77) ss. 13, 14.—Employment Ordinance (Cap. 75) s. 8(b).

C

The failure of an employer to comply with Workmen's Compensation Ordinance s. 14 was a reasonable excuse for the workman's failure to make a claim within six months of the accident.

D

Cases referred to :

Kitchen v. Koch [1931] A.C. 753.
M. v. Commissioner of Income Tax [1969] E.A.L.R. 671.
Lingley v. Thomas Firth & Sons [1921] 1 K.B. 655.

Appeal against the judgment of the Supreme Court setting aside a decision of the Magistrate's Court disallowing the respondent's claim for compensation for injury resulting from an accident.

E

G. P. Shankar for the appellant.
M. J. Scott for the respondent.

The following judgments were read :

MARSACK J.A. [26th November 1975]—

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This is an appeal against a judgment of the Supreme Court sitting at Lautoka, delivered on the 31st July 1975. The judgment set aside a decision of the Magistrate's Court under which the respondent was held not entitled to any compensation for injury resulting from an accident, and awarded the respondent $590 as such compensation. This appeal is against the award of compensation only, and not against the quantum of the compensation awarded. Under Section (1)(*d*) of the Court of Appeal Ordinance, this appeal is limited to questions of law.

G

The facts may be shortly stated. On the 9th of May 1973 one Nemani Nayalo started work for the appellant as driver of a bulldozer. On the 11th May 1973 he was injured when the truck upon which the bulldozer was being loaded fell on its side. Nayalo suffered an injury to his leg as a result of which he spent three weeks in the Lautoka Hospital. The learned magistrate found that the appellant knew of the injury to Nayalo, and his finding was accepted by the learned trial judge. No notice of the accident was given by the employer,

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the appellant, to the Commissioner of Labour as required under secion 14(1) of the Workmen's Compensation Ordinance. No action was taken by Nayalo in the direction of obtaining compensation until 11th December 1973 when he reported the matter to the Labour Inspector. On the 10th January 1974 the Labour Inspector made contact with the appellant and gave him three copies of a form to fill in regarding Nayalo's injury. He did not complete the form, but after further approaches by the Labour Inspector, stated that he denied liability and would refer the Inspector to his solicitor. The Permanent Secretary for Labour started proceedings on behalf of Nemani Nayalo on 3rd July 1974, and these were heard on 10th September 1974 by the magistrate in Ba. The learned magistrate held that the claim was out of time and dismissed it. On appeal the learned judge in the Supreme Court held that there was reasonable cause for the delay in that the employer, the appellant, had not given notice to the Commissioner of Labour as he was required to do under section 14.

The grounds of appeal against that judgment are that the Supreme Court erred in law in holding that appellant's failure to comply with section 14 of the Workmen's Compensation Ordinance was a reasonable excuse for the workman's failure to make a claim within six months of the accident.

The relevant provisions of sections 13 and 14 of the Workmen's Compensation Ordinance are as set out below :

> " 13. Proceedings for the recovery under this Ordinance of compensation for an injury shall not be maintainable unless notice of the accident has been given by or on behalf of the workman as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury..... Provided that—
>
> (*b*) the failure to make a claim for compensation within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake or other reasonable cause.
>
> 14. (1) Notice of an accident, causing injury to a workman of such a nature as would entitle him to compensation under the provisions of this Ordinance shall be given in the prescribed form to the Commissioner, by the employer of such workman as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured.
>
> (3) Any employer who, without reasonable cause, fails to comply with the provisions of the two last preceding subsections shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds.
>
> (4) Nothing contained in this section shall prevent any person from making a claim for compensation under this Ordinance. "

The main question for determination on this appeal is whether the failure of the appellant to give the notice required by section 14(1) can amount to " reasonable cause " in favour of the workman, to the extent that it would validate a claim for compensation which was otherwise out of time. Many English and New Zealand authorities were cited before us in support of counsel's argument that the delay in making the claim was fatal. Mr Scott however, drew this Court's attention to section 8(*b*) of the Employment Ordinance, reading as follows :

" 8. The Commissioner, any labour officer, or any labour inspector authorised by the Commissioner in writing, may— A

(*b*) institute or appear or institute and appear on behalf of any employee in any civil proceedings by an employee against his employer in respect of any matter or thing or cause of action arising out of or in the course of the employment of such employee. "

Counsel pointed out that this provision appears only in the legislation of Fiji and of Kenya, and has no counterpart in the statutes of the United Kingdom or other Commonwealth countries. B

Mr Scott also made a statement from the Bar which we accept, that compensation claims of this character are normally brought by officers of the Labour Department, as many of the persons injured are illiterate and unable of themselves to take such steps as are necessary. It seems probable, as counsel contends, that this piece of legislation was designed to ensure that workmen suffering injuries which would entitle them to compensation, were not deprived of their remedies through their lack of education or similar considerations. In other words, the section was passed for the protection of the worker. C

In support of his argument under section 14(1) Mr Shankar refers to subsection 3, which specifies the penalty liable to be incurred by an employer who does not perform his duty under that section ; and he argues, in effect, that there is nothing in the section itself to provide that his failure would relieve the workman of his obligation to make his claim within the appointed time. Further, Mr Shankar points to the provision that nothing in section 14 shall prevent any person from making a claim. In other words, Mr Shankar's argument is that the employer must give notice of an accident and if he does not, he will be liable to be fined ; but there is nothing in that to prevent the workmen making a claim. D E

In my view however, this does not cover the question whether failure by the employer to notify the Labour Department can be considered a " reasonable cause " within section 13(*b*).

In determining what is a " reasonable cause ", it is necessary in my view, to consider how the Ordinance should be interpreted, whether strictly or with due regard to the general purposes of the enactment. In this respect I would adopt what is said by K. D. Srivastava in his work on the Indian Workmen's Compensation Act at p. 29, where a similar provision occurs : F

" The Act is not a quasi-penal statute and requires liberal interpretation like all other social security requirements. "

And further at p. 57 :

" Acts in the nature of beneficial measure should be interpreted in such a way as to carry out the main object which the Legislature had in view. " G

The object the Legislature had in view in passing the Workmen's Compensation Ordinance must have been in great measure the protection of the worker, and, in the appropriate circumstances, an assurance that he would receive the compensation properly payable to him in the case of accidental injuries. The rights and the interests of the employer are certainly not to be overlooked under the Ordinance ; and I must not be held as saying that the interests of the workman are always, under the Ordinance, to be preferred to those of the employer. H

In any event, it appears clear from a consideration of the dicta quoted from many authoritative judgments in *Willis's Workmen's Compensation* at pp. 4, 5,—which I do not find it necessary to set out in detail—that the Court should interpret a statute of this character broadly and with due regard to " the substantive intention and meaning of the statute. "

In the present case the findings of fact—which cannot be traversed on this appeal—are, briefly, these : The appellant knew of the accident at or about the time it happened ; and knew that it was sufficiently serious to require that the workman receive lengthy hospital treatment. The employer gave no notice to the Commissioner of Labour as he is required to do under section 14. The workman received no compensation. He stated that he knew nothing about his rights in that direction. His education was of a low standard. The Labour Department knew nothing of the matter until they received a complaint from the workman—who had been so advised by a relative—on 11th December 1973, whereupon the Labour Department took steps which resulted ultimately in the bringing of this action.

The learned judge held that the failure of the employer, the appellant, to give notice to the Secretary of Labour as required by section 14, provided the employee, the respondent, with reasonable cause for failure to make a claim within six months of the occurrence of an accident. Unless this ruling was made on palpably incorrect grounds, it must stand. It is consistent with the judgment in *Kitchen v. Koch* [1931] A.C. 753, where the House of Lords, overruling the Court of Appeal, held that delay on the part of a third person, there a surgeon, amounted to a " reasonable cause " for the failure of an injured workman to make his claim for compensation within the specified time.

There is also a decision of the East African Court of Appeal as to what can be found to be a " sufficient cause " for delay. " Sufficient cause " I take it, in the context, to be synonymous with " reasonable cause " in our Ordinance. That case was *M. v. Commissioner of Income Tax* [1969] E.A. 671 where at p. 673 the learned judge says :

> " I think no limitation should be prescribed to say what particular set of circumstances will constitute sufficient cause. The field must be left open to judge each case upon its own particular facts. The facts in each case, individual and different as they are bound to be, must be evaluated to determine whether sufficient cause is made out. "

That in my view correctly sets out the principle which this Court should follow in deciding whether or not the delay of the appellant to give notice of the accident as he is bound to do under section 14 amounts to a " reasonable cause " to excuse the delay of the respondent to make his claim within the specified time.

The learned judge in the Court below has held, in effect, that the delay in making a claim for compensation was due to the failure of the appellant to perform his statutory duty of giving notice to the Labour Department under section 14. Had he carried out that duty, there is every reason to believe that a claim would have been made, by the Labour Inspector on behalf of the respondent, within the time laid down. Accordingly the judge decided that in all the circumstances of the case, this must be held to be a " reasonable cause " for the delay under section 13(*b*). There were in my view, ample grounds upon which he could reach this conclusion. That being so, in accordance with the judgment in *Lingley v. Thomas Firth & Sons* [1921] 1 K.B. 655, cited by the learned judge in his judgment :

" Once it is found that failure to make a claim within the specified time is occasioned by reasonable cause, the bar provided by the statute is gone altogether. "

For these reasons I would hold that the judgment in the Court below on the issue of " reasonable cause " is correct and should be upheld. As the appeal was in no way directed towards the quantum of the compensation awarded, the judgment of that Court should stand.

Accordingly, I would dismiss the appeal and order the appellant to pay the costs.

GOULD V.P.

I have had the advantage of reading the judgment of my brother Marsack J.A. and agree with his reasoning and conclusions.

All members of the Court being of the same opinion the appeal is dismissed with costs.

SPRING J.A.

I have had the advantage of reading the judgment of my brother Marsack, J.A. in this appeal and agree with his reasoning and conclusions.

Appeal dismissed.