

1971

Present: Samerawickrame, J.

A. KALIAMMA *et al.*, Appellants, and WANARAJAH TEA CO., LTD.,
Respondent

S. C. 7/70—Workmen's Compensation C3/E/167/66

Workmen's Compensation Act (Cap. 139)—Sections 16 (1), 16 (2), 60—Death of workman—Claim for compensation before Commissioner—Requirement of formal institution—Time limit.

When a workman meets with an accident resulting in his death, section 16 (1) of the Workmen's Compensation Act requires that a claim for compensation thereunder should be filed formally before the Commissioner for Workmen's Compensation within one year of the date of the workman's death. An intimation to the employer is not sufficient.

APPEAL from an order of the Deputy Commissioner for Workmen's Compensation.

V. Jegasothy, for the applicant-appellant.

Nimal Senanayake, with *Miss S. M. Senaratne* and *Melvin Silva*, for the employer-respondent.

Cur. adv. vult.

November 12, 1971. SAMERAWICKRAME, J.—

At the inquiry before the Deputy Commissioner for Workmen's Compensation the following two issues were raised :—

- “ (1) Is the undated application received in the office of the Commissioner for Workmen's Compensation on 3.12.68 prescribed in terms of Section 16 (1) of the Workmen's Compensation Act ?
- (2) If so, can the Commissioner exercise his discretion under Section 16 (2) of the Act ? ”

The Deputy Commissioner heard argument in regard to issue (1) and delivered order holding that the undated application of the applicants received by him on 3.12.68 is prescribed in terms of s. 16 (1) of the Ordinance as it had not been filed within an year of the date of the death of the injured man Arumugam.

Arumugam had met with the accident which resulted in his death on 3rd March, 1966 and died on 22nd April, 1966. A letter from the Ceylon Workers' Congress notifying the employer of the accident was sent on 9th May, 1966.

Section 16 (1) of the Workmen's Compensation Act (Cap. 139) is to the following effect :—

“ No proceedings for the recovery of compensation shall be maintainable before a Commissioner 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, and unless the claim for compensation with respect to such accident has been instituted within one year of the occurrence of the accident or, in case of death, within one year from the date of death : ”

In terms of this provision proceedings are not maintainable unless the claim for compensation has been instituted within one year from the date of death. The word “ institute ” connotes a formal act and is more properly understood to refer to the making or filing formally before the Commissioner for Workmen's Compensation a claim rather than an intimation of it to the employer. There are two other provisions in the Ordinance in which the term “ instituted ” has been used and they show

the meaning given to it in the enactment. Section 16 (2) which has been referred to in the order of the Deputy Commissioner states :—

“The Commissioner may admit and decide any claim to compensation in any case notwithstanding that the notice required by subsection (1) has not been given, or that the claim has not been instituted in due time as required by that subsection, if he is satisfied that the failure so to give notice or to institute a claim, as the case may be, was due to sufficient cause.”

Section 60 provides :—

“60. Nothing in this Ordinance contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil court an action for damages in respect of the injury against the employer or any other person ; and no action for damages shall be maintainable by a workman in any court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner ; or ”

Section 2 (1) of the English Workmen's Compensation Act, 1897 contained in all material respects a provision identical with s. 16 (1) except that the word used was “made” and not “instituted” as in our section. In the case of *Powell v. Main Colliery Co. Ltd.*¹ 1900 A.C. 366 the House of Lords held that the provision had reference to a claim made to the employer and not to the initiation of proceedings before the tribunal. It is significant that when our Ordinance was drafted the word “made” has been altered to “instituted”.

Section 10 (1) of the Indian Workmen's Compensation Act, 1923 contained a provision identical with s. 16 (1) of our Ordinance. In *Abdul Karim v. Eastern Bengal Railway*², A. I. R. 1934 Calcutta 460, Buckland A.C.J. made the observation that the word “institute” in sub-clause 1 of s. 10 is an unfortunate substitution for the word “make” in the English Act and held that the provision referred to the claim made against the employer and not to the proceedings before the tribunal. This view however has been dissented from in *Alagappa Mudaliar v. Veerappan Chettiar*³, A.I.R. 1942 Madras 116 and *Matin v. Bidesi Rajwer*⁴, A.I.R. 1939 Patna 181.

The Indian Act has subsequently been amended extending the time to 2 years from the date of death and making it clear that the claim is one preferred to the Commissioner for Workmen's Compensation.

I am of the view that s. 16 (1) of the Workmen's Compensation Act (Cap. 139) requires that a claim for compensation should have been made by application to the Commissioner within one year of the date of death. I accordingly affirm the finding of the Deputy Commissioner for Workmen's Compensation and dismiss the appeal. The matter will now go back for further proceedings in respect of the other matters that have yet to be determined.

Appeal dismissed

¹ 1900 A. C. 366.

² A. I. R. 1934, Calcutta 460.

³ A. I. R. 1942, Madras 116.

⁴ A. I. R. 1939, Patna 181.