

1955

Present : Gratiaen, J.

MARTIN FERNANDO, Appellant, and ELIZABETH FERNANDO,
Respondent

S. C. 708 of 1955—Workmen's Compensation C 3/191/51

Workmen's Compensation Ordinance (Cap. 117)—Claim thereunder—Failure to institute it in due time—Effect of delay thereafter—"Sufficient cause"—Section 16 (1) and (2).

Where a claim for compensation in respect of the death by accident of a workman was made nearly three years after the date of the death—

Held, that the Commissioner's jurisdiction under section 16 (2) of the Workmen's Compensation Ordinance to admit and decide a claim for compensation after the expiry of the period of six months specified in section 16 (1) is regulated by the question whether the failure to institute the claim *within that period* has been sufficiently excused; the section nowhere states that any subsequent delay ousts the Commissioner's jurisdiction under the Ordinance. The reasons for the subsequent delay would, however, be relevant to the Commissioner's decision whether or not he ought to exercise in favour of the claimant his discretion to admit the claim.

APPEAL against a decision under the Workmen's Compensation Ordinance.

L. G. Weeramantry, for the respondent-appellant.

C. V. Munasinghe, for the applicant-respondent.

Cur. adv. vult.

September 20, 1955. GRATIAEN, J.—

This is an appeal against a decision under the Workmen's Compensation Ordinance ordering the appellant to pay to the widow of P. John Fernando (the deceased) a sum of Rs. 2,400 as compensation; the deceased had died in consequence of an accident arising out of, and in the course of his employment under the appellant. The appellant disputed liability on the ground, *inter alia*, that the claim for compensation was not preferred until the 13th September, 1954—that is to say, until very nearly three years after the date of death. *Prima facie*, therefore, the widow's failure to make her claim within the period of six months fixed by section 16 (1)

would operate as a bar to the maintenance of the proceedings. The Commissioner was satisfied, however, that she was protected by section 16 (2) the relevant provisions of which are as follows :—

“ The Commissioner may admit and decide any claim to compensation in any case notwithstanding that . . . the claim has not been instituted in due time as required by sub-section (1) if he is satisfied that the failure so to institute the claim was . . . due to sufficient cause. ”

The Commissioner accepted the widow's evidence to the effect that, shortly after the death of the deceased, the appellant promised to convey to her a land by way of compensation, and that it was only after this promise, the implementation of which was postponed on various pretexts, proved to be completely lacking in sincerity, that she sought relief under the Ordinance. In these circumstances there is clearly “ sufficient cause ” for the delay in instituting her claim within the statutory period of six months specified by section 16 (1).

Learned counsel for the appellant conceded that, on the proved facts, the delay in instituting the claim in six months was sufficiently excused. He argued, however, that the further delay of over two years was quite unreasonable and therefore operated as a statutory bar to the proceedings. In support of this argument he relied on certain *obiter dicta* of Duke L. J. in *Prophet v. Roberts*¹ and of Eve J. in *Hillman v. London, Brighton and South Eastern Railway*².

It is certainly correct to say that Duke L. J. and Eve J. suggested (although the particular cases referred to were decided on other grounds) that the length of time which has elapsed since the expiry of the six month period provided by the English Act was equally relevant to the issue whether there was reasonable cause for failure to make a claim within time. This suggested interpretation was, however, unanimously rejected by the Court of Appeal in *Lingley v. Firth*³, where the meaning of the following words of proviso (b) to section 2 (1) of the English Act, which are analogous to section 16 (2) of our Ordinance, directly arose for consideration :

“ provided always that . . . the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was excused by mistake, absence from the United Kingdom, or other reasonable cause. ”

The Court decided that, if there was reasonable cause for not making a claim within six months, no subsequent lapse of time without reasonable cause could operate as a bar to proceedings for compensation unless the claim had become prescribed under some other provision of the law. Similarly, I respectfully take the view that in Ceylon the Commissioner's jurisdiction under section 16 (2) of the Ordinance to admit and decide a claim for compensation after the expiry of the six month period is regulated by the question whether the failure to institute the claim

¹ (1919) 88 L. J., K. B. 957.

² (1920) 1 K. B. 284.

³ (1921) 1 K. B. 655.

within that period has been sufficiently excused; the section nowhere states that any subsequent delay ousts the Commissioner's jurisdiction under the Ordinance.

Learned counsel pointed out, alternatively, that under section 16 (2) the Commissioner "*may* admit and decide a claim" whereas the English Act unequivocally declares that the delay in making a claim within six months, if reasonably explained, "*shall not be a bar* to the maintenance of such proceedings". I agree that the difference of language is significant having regard to the circumstance that the English Act had manifestly served as a model for the draftsman of our Ordinance. Accordingly I am prepared to assume that the word "*may*" is used in section 16 (2) in a discretionary rather than a compulsory sense. Even in that view, the delay in instituting a claim for compensation after expiry of the statutory period does not operate automatically as a bar to the claim; but the reasons for the further delay would be relevant to the Commissioner's decision whether or not he ought to exercise in favour of the claimant his discretion to admit the claim. In this particular case the Commissioner accepted the widow's explanation that the appellant continued, even after the six month period had expired, to hold out promises from time to time that he would compensate her without the necessity for invoking the machinery of the Ordinance. In these circumstances the Commissioner was perfectly justified in exercising his discretion in favour of the widow; the appellant was himself responsible for the delay which he now calls to his aid.

Learned counsel concedes that, even if the Prescription Ordinance applies to proceedings under the Workmen's Compensation Ordinance, the present claim is not barred by limitation. I dismiss the appeal with costs.

Appeal dismissed.
