

1941

Present : Soertsz J.

J. A. SIRISENA v. KELAART.

IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF  
COMMISSIONER OF WORKMEN'S COMPENSATION.

*Workmen's Compensation Ordinance (Cap. 117)—Inquiry by more than one  
Commissioner—Fatal irregularity—Reasons for postponement of inquiry,  
s. 54, reg. 20.*

An inquiry under the Workmen's Compensation Ordinance must be made before one Commissioner.

Where an inquiry was commenced before one Commissioner and concluded before another,—

*Held*, that the irregularity was fatal.

If an inquiry cannot be disposed of at one hearing, the Commissioner is bound to record the reasons that necessitate a postponement.

**T**HIS was an appeal from an order made under the Workmen's Compensation Ordinance.

*Saravanamuttu*, for the appellant.

*J. Alles*, for the respondent.

*Cur. adv. vult.*

August 29, 1941. SOERTSZ J.—

This is an appeal by a person claiming compensation under the Workmen's Compensation Ordinance, on the footing that he is a dependant, within the meaning of section 2 of the Ordinance, of a workman who came by his death as the result of an accident that occurred in the course of his employment.

On the evidence led at the inquiry, Mr. F. C. Gimson who appears to be a Commissioner appointed under the Ordinance, was not satisfied that the petitioner was a son of the deceased workman, and he refused the application.

Section 48 of the Ordinance gives a right of appeal on a point of law. There is no point of law raised in the petition of appeal in the manner in which, in consequence of section 51 of the Ordinance, it should have been raised. There is an averment in the petition of appeal that "the Commissioner's finding is against the weight of evidence". I am unable to accept that submission, and in that view of the matter, I should have rejected this appeal.

But I find that there is a substantial point of law although it has not been taken in the petition of appeal, or by Counsel at the argument before me, namely, that all the proceedings in this matter are vitiated by the fact that the inquiry began before one Commissioner, Mr. Jayanetti, who took the evidence of the petitioner and three witnesses, and, for some reason which does not appear on the record, adjourned the inquiry for a later date. This is contrary to regulation 20 framed under section 54 of the Ordinance which says that "if the Commissioner finds it impossible to dispose of an application at one hearing he shall record the reasons that necessitate a postponement".

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Passing that by, I find that on the later date, another Commissioner, Mr. Gimson, took the evidence of another witness called by the petitioner and made the order in question. This is, obviously, an unsatisfactory course. But it is even worse. It is contrary to the directions of the Ordinance and of the regulations framed thereunder. The provisions of the Ordinance and the regulations contemplate an inquiry by one single Commissioner except in the case stated in section 33 of the Ordinance, and there is nothing whatever to show that this was such a case.

I think I ought to take cognizance of this irregularity although no objection on that ground has been taken.

I therefore set aside the order and send the case back for inquiry according to the requirements of the Ordinance.

*Set aside.*

