APPELLATE CIVIL.

Before Bishan Narain J.

BRAHMUN AND OTHERS,—*Appellants.*

versus

BALAM ALIAS BALMUKAND,—*Respondent*

First Appeal from Order No. 145 of 1953

1954

Nov., 24th

Workmen's Compensation Act (VIII of 1923)—Section 30—Judgment not pronounced in the presence of the parties—Counsel informed after some days—terminus a quo for purposes of appeal—Whether date of judgment or date of communication to counsel.

Indian Limitation Act (IX of 1908)—Section 5- Time between the date of judgment and its communication to Counsel—Whether can be excluded—"Sufficient Cause"—Construction of—Workmen's Compensation Act (VIII of 1923)—Section 3—Procedure to be followed by Commissioner indicated—Question whether the accident arose out of and in the course of employment—Whether a question of law—Section 30—Power of High Court to interfere—Extent of—"Employment"—meaning and scope of.

Held, that where a judgment is not announced in the presence of the parties, and at a subsequent date information as to the judgment is sent to the party or his pleader, the latter must be taken to be the date of the judgment and limitation will start from the date of such information. Although Order XX of the Code of Civil Procedure has not been made applicable to the proceedings under the Workmen's Compensation Act, this principle is in consonance with natural justice and is based on the principle that an act of Court or of its officers should prejudice no man and, therefore, it should be held applicable to these proceedings. In any case it is a "sufficient cause" within the meaning of section 5 of the Indian Limitation Act which is applicable to appeals under the Workmen's Compensation Act, to extend the time for filing the appeal by the period which lapsed between the date of judgment and its communication to the parties' Counsel. The words "sufficient cause" should be given the construction which advances substantial justice, particularly when no negligence nor inaction nor want of *bona-fides* is imputable to the appellant.

Held, that for a proper trial of the case under this Act the Commissioner must first ascertain the sphere of the workman's employment and then determine how the accident occurred and then decide as a matter of law whether the accident arose out of and in the course of employment. It is true that the words "arise out of and in course of employment" used by the Legislature are rather vague and there is no general principle which can be evolved to explain and define these phrases. It is, however, clear that both these expressions must be satisfied before the applicant can become entitled to compensation from the employer of the injured workman. This involves construction of section 3 of the Workmen's Compensation Act and the ascertainment of the meanings of the phrases used by the Legislature and that is a question of law and not of fact. Where the relevant material facts are found and admitted the question whether the accident arose out of and in the course of employment is a question of law.

Held, that if it is clear that Commissioner had arrived at his decision on the facts in a manner which showed that his conclusion had been controlled by some error of law or on a supposition of the existence of evidence of which in fact there was none that a judicial tribunal could reasonably give effect to, then the High Court in an appeal under section 30 of the Workmen's Compensation Act can interfere. It is also open to the High Court to determine in an appeal under section 30 of the said Act whether there is any evidence on which the Commissioner could come to the conclusion that the accident did not occur in the course

of and out of employment. In case the Commissioner, in arriving at a finding, has misdirected himself on a substantial question of law, it is open to the High Court to review the evidence on the record and to decide the question of fact involved in the case. But if an issue has been left undecided by the Commissioner, it is not open to the High Court to examine evidence and decide that issue. It must remand the case to the Commissioner for decision on that issue.

Held, that the word "employment" in the Workmen's Compensation Act is not confined to actual work or place of work. It extends to all things which the workman is entitled by the contract of employment expressly or impliedly to do.

Case law reviewed.

First appeal from the order of Shri Gulal Chand Jain, Senior Subordinate Judge, Kangra, at Dharamsala, dated the 27th July, 1953, dismissing the suit.

D. N. AGGARWAL, for the appellants.

D. K. MAHAJAN, for the respondent.

JUDGMENT

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BISHAN NARAIN, J. This is an appeal under section 30 of the Workmen's Compensation Act, 1923, against the order of the Commissioner dismissing the application of the widow and minor sons of Raghu, deceased, for award of compensation under the said Act.

Briefly, the facts are that Raghu used to work on the mine of Balmukand, respondent, and an accident occurred on 15th March 1951, in which one Kalyan Singh workman died, Raghu was seriously injured and one or more other workers also received injuries. Raghu applied from the hospital claiming Rs. 5,000 as compensation on the allegation that while he was working in the mine along with three other workers, the mine fell and one worker died and he received serious injuries. Balmukand, the employer, in reply pleaded that he had leased the mine to Kalu Ram on 12th February 1951, and, therefore, he was not liable to pay any compensation and that in any case, according to him, no accident had occurred in his mine

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during the course of the employment of Raghu and he further alleged that if the applicant went to the jungle for his own work and if any accident occurred there he, i.e., Balmukand was not liable. Unfortunately before that application could be decided Raghu died in the hospital on 14th September 1951, and his application was dismissed in default on 16th October 1951. His minor sons and the widow then filed the present application on 9th November 1951, and it remained pending before the Commissinoner till 27th July 1953, when it was dismissed on the finding that the accident did not occur in the course of any employment of the deceased nor did it arise out of employment and it is against that order that the present appeal is directed.

Shri Daya Krishan Mahajan, learned counsel for the respondent, has raised a preliminary objection that the appeal is barred by time. Now, under section 30 of the Workmen's Compensation Act, an appeal is to be filed within sixty days and in the present case the order under appeal was passed on 27th July 1953, while the appeal was filed in this Court on 9th November 1953, i.e., after the expiry of more than sixty days. From the record, however, it is clear that the order in question was not made in the presence of the parties and the learned Commissioner in the order under appeal directed that the counsel for the parties should be informed of the same. On going through the papers attached to the appeal I find that the appellant's counsel who appeared before the Commissioner was not informed of the order till 4th September 1953. An application for a certified copy of this order was made on 22nd September 1953, and the copy was completed on 20th October 1953. Now, there is no doubt that if the appellants are entitled to exclude the time

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from 27th July 1953, to 4th September 1953, and are also entitled to exclude the time taken in obtaining a certified copy, then the appeal is within time. It is clear in the circumstances that it was not possible for the appellants to learn of the order till it was announced to them and that was on 4th September 1953. It cannot be held, where a judgment is not announced in the presence of the parties, that they should continue making enquiries every day as to when the order will be passed and, therefore, it appears to me only natural that the parties should rely on the Commissioner giving the necessary information to them to enable the aggrieved party to file an appeal within limitation or, in case a conditional order is passed, to enable a party to comply with the same. It is well settled that when a judgment in a civil suit has been pronounced without previous notice to a party and at a subsequent date information as to the judgment is sent to the party or his pleader, the latter must be taken to be the date of the judgment and limitation will start from the date of such information. Although Order XX of the Code of Civil Procedure has not been made applicable to the proceedings under the Workmen's Compensation Act, this principle in my opinion is in consonance with natural justice and is based on the principle that an act of Court or of its officers should prejudice no man and, therefore, it should be held applicable to these proceedings. In any case section 5 of the Limitation Act has been expressly made applicable to appeals under the Workmen's Compensation Act and there is no doubt that the omission of the Commissioner to pronounce the order in the presence of the parties and not to inform the parties till 4th September 1953, constitutes sufficient ground for not filing the appeal within time, and in exercise of my discretion I extend the time by

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the period from 27th July to 4th September 1953. After all, the words "sufficient cause" should be given the construction which advances substantial justice, particularly when no negligence nor inaction nor want of *bona fides* is imputable to the present appellants. As for the period taken in obtaining a certified copy, obviously the appellants are entitled to deduct this time under section 12 of the Limitation Act, which applies to cases under the Workmen's Compensation Act by virtue of section 29(2)(a) of the Limitation Act. Section 30 of the Workmen's Compensation Act, does not expressly exclude the provisions contained in section 12 of the Limitation Act. For these reasons, I overrule the objection raised by the learned counsel for the respondent and hold that the appeal is within time and that in any case there is sufficient reason for not having filed this appeal within sixty days of the order under appeal.

Now, an employer is liable to pay compensation under section 3 of the Workmen's Compensation Act if personal injury is caused to a workman by accident arising out of and in the course of his employment provided the injury results in total or partial disablement for a period exceeding seven days. Thus an applicant must prove to the satisfaction of the Commissioner, (1) that there was an accident; (2) that it arose out of employment; (3) that the accident occurred in the course of employment; and finally (4) that the injury resulted in total or partial disablement for a period exceeding seven days. In the present case there is no doubt that an accident took place on 15th March 1951, and it is also not disputed that the injuries caused to the employee resulted in total or partial disablement for a period exceeding seven days. The Commissioner, however, has dismissed the petition on the somewhat bald finding that the accident did not arise out of and in

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course of employment. The learned counsel for the respondent has argued that the appeal to this Court lies only if a substantial question of law is involved in the appeal and that the present appeal is concluded by findings of fact which the Commissioner has given after rejecting the petitioners' evidence and after accepting the respondent's version of the accident.

It appears to me that for a proper trial of the case under this Act the Commissioner must first ascertain the sphere of the workmen's employment and then determine how the accident occurred and then decide as a matter of law whether the accident arose out of and in the course of employment. It is true that the words "arise out of" and "in course of employment" used by the Legislature are rather vague and there is no general principle which can be evolved to explain and define these phrases. It is, however, clear that both these expressions must be satisfied before the applicant can become entitled to compensation from the employer of the injured workman. This involves construction of section 3 of the Workmen's Compensation Act and the ascertainment of the meanings of the phrases used by the Legislature and that is a question of law and not of fact. Where the relevant material facts are found and admitted, the question whether the accident arose out of and in the course of employment is a question of law. If the Commissioner after disbelieving some portion of the evidence and accepting another portion of the evidence proceeds to say, as he has done in the present case, "I hold that the accident arose out of and in the course of employment" then he is mixing up the decision which he must give on question of law in order to decide whether the case of the applicants comes within the statute with the question of fact. The Commissioner, however, is not entitled to mix decisions of fact

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with decisions of law and it is open to the appellate Court to examine the question of law,—*vide* observations of Lord Atkinson in *Herbert* v. *Samuel Fox and Co., Limited* (1). It appears to me that if it is clear that the Commissioner had arrived at his decision on the facts in a manner which showed that his conclusion had been controlled by some error of law or on a supposition of the existence of evidence of which in fact there was none that a judicial tribunal could reasonably give effect to, then the High Court in an appeal under section 30 of the Workmen's Compensation Act can interfere, and in my opinion this conclusion is in consonance with the discussion and decision in *Lancashire and Yorkshire Railway Company* v. *Highley* (2). It has been repeatedly held that a question is a substantial question of law if it is so between the parties (*vide Saheb Rai and others* v. *Shafiq Ahmad and others* (3), and it cannot be denied that if in the present case the application has been dismissed on an erroneous view of law the High Court has power to interfere. It was held in *Vishram Yesu Haldankar* v. *Dadabhoy Hormasji and Company* (4), that when the Commissioner finds that there was no evidence on which he could base a finding that the accident occurred out of the employment then it is open to the High Court under section 30 of the Workmen's Compensation Act to determine as a question of law if the finding is correct. It, therefore, follows that it is also open to the High Court to determine in an appeal under section 30 of the said Act whether there is any evidence on which the Commissioner could come to the conclusion that the accident did not occur in the course of and out of employment.

(1) (1916) A.C. 405
(2) (1917) A.C. 352
(3) A.I.R. 1927 Privy Council 101
(4) A.I.R. 1942 Bom. 175

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Now, in the present case the Commissioner has rejected the applicants' evidence mainly on the ground that Hira Singh, A.W. 1, stated that he was injured in the accident and then admitted in cross-examination that he did not claim any compensation for the injury. There is, however, no evidence on the record showing the extent of injuries on the person of Hira Singh. It is not every kind of injury for which owner is liable to pay compensation and the appellants' evidence in the present case could not have been rejected merely on this ground in the absence of proof that Hira Singh was entitled to claim compensation but did not do so. It is true that A.W. Shiv Ram stated in cross-examination that a tree also fell down at the time of the accident in the mine. but I fail to see how this statement is relevant in discrediting the appellants' evidence when the witness has not stated that Raghu was injured by the fall of the tree. The Commissioner has accepted the statement of Loji, R.W. 2, Dhanna, R.W. 3, and Hari Chand, R.W. 6, with the observation that they all say that the injury was received by Raghu by the fall of a tree. They also say that the tree was not situated within the area of the mine. Now this amounts to a finding that the tree which was not situated within the area of the mine injured the workman. Dhanna, R.W. 3, however, has stated that the tree was 40 to 50 paces from the mine while Hari Chand. R.W. 6. deposes to the tree being 200 yards away. It is true that Loji, R.W. 2. has stated that the tree is outside the mine, which may or may not mean only a few yards away, but there is no evidence that the tree was outside the area of the mine. In any case it cannot be said that the word "employment" in the Act is confined to actual work or place of work. It extends to all things which the workman is entitled by the contract of employment expressly or impliedly to do.

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It was held in *Bhagubai* v. *The General Manager, Central Railway, V. T., Bombay* (1), that once it had been proved that the deceased was at the particular place for reasons of employment and he met with an accident there it is for the employer to establish that the peril was brought about by the employee himself. In the present case it is admitted by Mr. Daya Krishan Mahajan before me that the accident occurred between noon and 1 p.m. and it is obvious, therefore, that the employee must have, if the testimony of respondent's witnesses is to be accepted, left off the work temporarily and gone away 40 to 50 paces from the mine and it may well be that he did so to have a little rest or to take his meal and in either case the accident may well arise out of his employment as observed by Lord Atkinson in *Herbert* v. *Samuel Fox and Co., Limited* (2). Thus the findings given by the Commissioner do not necessarily exclude the injury in the present case arising out of and in the course of employment. I am, therefore, of the opinion that the Commissioner's finding is not conclusive in the present case and I hold that the Commissioner has misdirected himself on a substantial question of law.

The question that next requires consideration is whether I can go into the evidence or I must remand it for a fresh finding. In my opinion, in such circumstances it is open to the High Court to review the evidence on the record and to decide the questions of fact involved in the case as was held in *Central Glass Industries, Ltd.* v. *Abdul Hossain* (3):

(1) I.L.R. 56 Bom. 509
(2) (1916) 1 A.C: 405 at p, 411
(3) A.I.R. 1948 Cal. 12

5915 C2 V.8. 9.5.78.

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I have carefully gone through the evidence and I am of the opinion that the version of the accident given by the appellants' witnesses is the correct version and should be accepted. The learned Commissioner has ignored, while appraising the evidence of the parties, the important fact that neither Balam, the employer, nor his Manager has come into the witness box to depose to scope of employment and the time and location of the accident. There is no reason to reject the testimony of Hira Singh, A.W. 1, who was present at the spot at the time of the accident and his version is supported by the application that Raghu made before he died (*vide* Exhibit A. 1). The employer never alleged in his written statement that the accident was due to the fall of a tree and the statements of his witnesses conflict with each other regarding the time of the accident and the distance of the alleged place of accident from the mine. I am, therefore, of the opinion that the story put up by the employer that injuries were caused by the fall of a tree is really an afterthought and it appears to me that the employer and his Manager did not come into the witness box deliberately and their absence from the witness box shows that they were not in a position to deny the version of the accident set up by the appellants' witnesses. The learned counsel for the respondent admitted before me that the accident took place at about noon and that is supported by the statement of Hira Singh, A.W. 1. I, therefore, hold that the accident took place while Raghu was working in the mine between noon and 1 p.m. when he was injured by fall of a stone and in such circumstances it must be held that the accident arose out of and in the course of employment as was held in similar circumstances in *Mrs. Margaret Thom of Simpson* v. *Sinclair* (1).

(1) (1917) A.C. 127

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The learned Commissioner unfortunately has not decided issue No. 2 relating to the amount of compensation to which the applicants would be entitled in case the injury took place out of and in the course of the employment. The Workmen's Compensation Act contemplates that the applications under the Act should be decided as expeditiously as possible and it is only proper that the Commissioner should take special care to give findings on all disputed points to avoid a possible order of remand by the High Court. In the present case proceedings continued pending before the Commissioner from 9th November, 1951, till 27th July, 1953, and even then no finding was given on issue No. 2, with the result that the claim for compensation for an accident on 15th March 1951, cannot even now be finally decided and it is obvious that such a delay may be a cause of considerable hardship to the claimants. Under this Act appeal lies only on a substantial question of law and therefore, it is not open to me to examine evidence on an issue which has been left undecided by the Commissioner. In the circumstances I must remand the case to the Commissioner for decision on issue No. 2, on the evidence already recorded and I must admit that I am doing so after considerable hesitation.

For the reasons given above, I accept this appeal and remand the case to the learned Commissioner to decide issue No. 2, in accordance with law on the evidence already on record. The respondent will pay the costs of this appeal to the appellants. The parties have been directed to appear before the learned Commissioner on 27th December, 1954.