

(1984) 02 BOM CK 0004

Bombay High Court

Case No: None

Pendurang Waman
Shinde

APPELLANT

Vs

The Executive
Engineer, Building and
Construction
Department

RESPONDENT

Date of Decision: Feb. 3, 1984

Acts Referred:

- Workmens Compensation Act, 1923 - Section 10(1)

Citation: (1984) 1 ACC 262 : (1986) ACJ 1057

Hon'ble Judges: Patel, J

Bench: Single Bench

Judgement

Patel, J.

Appellant Pendurang, who was in the employment with the respondent Executive Engineer, Building and Construction Department, Khamgaon, as a black-smith in the work-shop at Khamgaon, suffered an injury to the right eye and as a result thereof he lost his vision. The Civil Surgeon, Buldhana certified that the right eye of the appellant has become permanently blind. As a consequence of this injury even the left eye was affected and there was every possibility of the appellant going blind. On 5th April 1973, a notice was served through Union claiming compensation amounting to Rs. 9800/- and medical expenses. Since there was no response to the notice, the appellant filed his claim for compensation before the Authority appointed under the Workman"s Compensation Act.

2. The respondent refuted the claim on various grounds. They pleaded that if at all such injury was caused as alleged, the appellant could not have worked after 26-12-1971. No notice was given by the appellant for the injury received. He actually continued to work till 31-1-1972. The appellant had given the date of the accident as 27-2-72. Even the correspondence entered into by the appellant showed that the incident happened on

27-2-1972. The respondent denied the liability to pay compensation or even expenses for medical treatment. A specific defence was raised that the appellant should have given the notice of accident in the manner provided as soon as practicable in accordance with Sub-section (1) of Section 10 of the Workmen's Compensation Act. The letter dated 5-4-1973 cannot be treated as a valid notice as contemplated by the Act.

3. The Civil Judge, Senior Division, Khamgaon, acting as the Commissioner of Workmen's Compensation, tried the dispute and by an order dated 30th April 1976, found that the injury was caused to the appellant on 26-12-1971 during the course of employment. It was also found that the appellant lost his sight of the right eye on account of the injury. The Authority also calculated the quantum of compensation as Rs. 2940/-. He, however, dismissed the application on the ground that the appellant failed to issue notice as soon as practicable which is a requirement precedent to institution of the claim. Feeling aggrieved by the order, the present appeal is filed by the appellant.

4. The only question that arises for consideration is whether a genuine claim could be rejected for want of prompt notice from an employee. On the basis of facts which have come on record it is clear that a letter dated 5-4-1973 was issued by the appellant through the Union and which fact was never disputed even by the respondent. This letter speaks of the accident but as having taken place on 27th February 1972. The said letter further recites as to how the accident took place and the injury that was caused. The compensation amount was also stipulated in the said letter. No doubt the actual date of accident was wrongly mentioned since it was ultimately found that the accident took place on 27-12-1971 and not on the date alleged in the letter. Merely because the error of the date has crept in the letter, it cannot be said that no notice was served by the appellant at all. It was sought to be suggested on behalf of the respondent that the notice does not relate to the incident of on 26-12-1971 and therefore, the notice was improper. It is also contended that the appellant might have suffered some injury elsewhere on the date mentioned in the letter and the claim preferred could be completely bogus. It is rather surprising that such an argument was advanced on behalf of the respondent when in fact such a defence was never contemplated before the learned Authority. There is absolutely no force in the contention raised on behalf of the respondent. In any case, the notice does contain the ingredients required to be incorporated in the notice as contemplated by law. The letter dated 5-4-1973 can serve the purpose of a notice under Sub-section (1) of Section 10 of the Workmen's Compensation Act.

5. The learned Authority, however, found that there was no sufficient cause disclosed by the appellant for serving a notice after lapse of about 15 months from the date of the occurrence of the accident. He accordingly rejected the claim which otherwise was found to be genuine. I shall shortly point out that this finding of the Authority is incorrect and without any basis.

6. No doubt a duty is cast upon an employee to serve a notice under Sub-section (1) of Section 10 of the Workmen's Compensation Act as soon as practicable after the

occurrence of the accident. At the same time, the fourth proviso of the said section makes provision for cases where absence of notice may not be bar for entertainment of the claim for compensation in case any person responsible to the employer for management of the business in which the injured workman was employed, comes to know of the accident at or about the time of occurrence. In such a circumstance, even want of notice would not come in the way of an employee. It is, therefore, necessary to scrutinise the evidence on record and find out whether the Management had knowledge of the accident in which the appellant was injured.

7. The appellant, in his deposition, has stated that the Executive Engineer Shri Modak had given a letter to the Civil Surgeon, who had visited Khamgaon and after his examination he gave the required certificate Ex. 23. He further stated that he had given an application in the department, suggesting thereby the necessary information regarding the incident was supplied. In cross examination, the appellant clearly and unequivocally deposed that on the date of the incident he went to Shri Pendharkar, his immediate superior and informed him of the accident. Not only that, it is also in evidence that the appellant also submitted medical bills to Shri Pendharkar probably seeking reimbursement. Though the appellant was cross-examined at length, the statement made by the appellant about the letter given by Shri Modak addressed to the Civil Surgeon remained untouched and unshaken. As against this evidence, the respondent examined Shri Pendharkar who showed as if he was totally ignorant of the incident. According to him, he never noticed any injury in the eye of the appellant even though he had occasion to see him regularly even after the alleged accident every day. He is said to have given a report on 24-9-1973 wherein he has mentioned that no injury was caused to the appellant in the workshop. This, according to him, was as per his personal knowledge. It could be said that the report prepared by him was based on a wrong date of incident, as contained in the notice dated 5-4-1973 and in all the correspondence that was exchanged between the parties and to that extent he may be quite right. On the basis of the evidence on record, it can never be inferred that the employer had no knowledge about the accident. It is also very unusual that a workman who suffers an injury in the course of employment will not come to the notice of the immediate superior in the Department who is stated to be invariably present in the workshop. In any eventuality, the statement given by the appellant in so far as the letter given by Shri Modak, the Executive Engineer, is concerned, has gone unchallenged and there is no reason suggested to disbelieve the appellant. I have, therefore, every reason to believe that the employer had knowledge of the accident soon after its occurrence and therefore, even if it is found that there was delay in serving the notice, the claim of the appellant cannot be rejected on that ground.

8. In my opinion the appellant is entitled to receive compensation amounting to Rs. 2940/- for the loss of vision in the right eye due to accident which occurred in the course of and out of the employment.

9. In the result, the appeal filed by the appellant is allowed. The respondent shall pay to the appellant the costs of this appeal.