

**(1928) 08 CAL CK 0035**

**Calcutta High Court**

**Case No:** None

Tiku Kahar

APPELLANT

Vs

Equitable Coal Co. Ltd.

RESPONDENT

**Date of Decision:** Aug. 23, 1928

**Acts Referred:**

- Workmens Compensation Act, 1923 - Section 30

**Citation:** AIR 1930 Cal 58

**Hon'ble Judges:** S.K. Ghose, J; B.B. Ghose, J

**Bench:** Full Bench

### **Judgement**

B.B. Ghose, J.

The objection that has been taken in this case on behalf of the respondents is that there is no substantial question of law involved in the appeal and that being so no appeal lies to the High Court from the order of the Commissioner u/s 30, Proviso. (2), Sub-section 1, Workmen's Compensation Act, (8 of 1923). The learned Commissioner has found that" the accident, which was a very unfortunate one by which the appellant lost his right arm was due to the wilful disobedience of the order expressly given to him as well as to the other workmen by the night Sirdar of the Colliery.

2. The case of the defendants-respondents was that the Sirdar actually made a cross over an old hole and he told the applicant and the other men not to drill there. The applicant gave his own evidence in support of his case. His evidence was that he saw no cross mark. The Commissioner has found that the version on behalf of the employers was true so that it must be taken as a fact that there was a cross mark and the workmen were forbidden to drill at the place. The next finding of the Commissioner was that there was wilful disobedience. It may be that upon the evidence in the case the Commissioner might reasonably have come to the conclusion that the facts do not show wilful disobedience. The evidence is that it does not matter how many holes are drilled by a workman in the course of the day.

They are not paid by piece work but the applicant among others received a daily-pay. There was no inducement on his part to wilfully disobey an order that had been made. The evidence of Jagannath Mondal on behalf of the opposite party is that a workman would get the same daily pay whether he drilled one hole or 20 holes even if the gallery had been cleared. Under such circumstances it might have been inferred quite reasonably that although the applicant drilled a hole at a place where there was a cross mark, it might have been due to forgetfulness or negligence or for any other reason but not as an act of wilful disobedience. A man does a thing wilfully when he does it intentionally because he expects some benefit to himself, either some convenience or an easy way of doing a piece of work and so forth. But it seems to me that the finding is one of fact which might be arrived at on the evidence. It is unfortunate that such a finding has been arrived at by the learned commissioner with which we cannot interfere in appeal having regard to the provisions of Section 30 of the Act. I hope, however, that the employers will find their way to make some compensation to the unfortunate workman, although he has failed in his appeal.

3. The appeal will stand dismissed but we make no order as to costs.

S.K. Ghose, J.

4. I agree.