[ZEKIA P., TRIANTAFYLLIDES & JOSEPHIDES JJ.]

CHARALAMBOS DROUSIOTIS (No.2),
Appellant (Applicant).

v.

THE CYPRUS ASBESTOS MINES LTD.,
Respondents.

(Civil Appeal No. 4542).

Workmen's Compensation—Claim for compensation under the Workmen's Compensation Law, Cap. 188—Proceedings must be instituted within six months from the date of the accident—Delay in instituting proceedings may be excused—In cases where the delay was occasioned by mistake or "other reasonable cause"—Section 14 (1) proviso (b)—"Reasonable cause"—The test is whether a "reasonable cause" within the statute for the six months delay or failure has been established—In which case the question whether further delay in making a claim is or is not reasonable does not arise.

Notice of accident—Whether injury complained of resulted from the accident which occurred in the respondents employment—Issue remitted to the trial Court—Sections 14 and 15 of Cap. 188 (supra)—The Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) section 25 (3).

Practice—Appeal—Findings of fact by the trial Court—Findings of primary facts—Inferences from primary facts as found by the trial Court—The Supreme Court is not bound by any determinations on questions of fact made by the trial Courts—And it has power to review the whole evidence and draw its own inferences—And although the Supreme Court as a Court of Appeal would be slow to reverse the findings of primary facts made by the trial Courts, though it has done so in proper cases—It would be prepared to form an independent opinion upon the proper conclusion of fact to be drawn from a finding of primary facts—The Courts of Justice Law, 1960, section 25 (3) supra.

Findings of fact—Primary facts—Inferences to be drawn therefrom—Powers of the Supreme Court sitting as a Court of Appeal—See under Practice above.

This is an appeal by the applicant-workman from the dismissal by the trial Court of his application for compen-

sation under the Workmen's Compensation Law Cap 188 on account of the delay on the part of the workman to file his aforesaid application This application was filed in June 1961, whereas the alleged accident causing the injury, for which compensation was sought occurred some time in 1949

Section 14 (1) of the Workmen's Compensation Law, Cap 188 provides

"(1) Proceedings for the recovery under this Law of compensation for an injury shall not be maintainable unless notice of the accident has been given and *unless* the application for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury or, "

Provided that

(*a*) (*b*) the failure to make an application within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake *or other reasonable cause* ".

The Supreme Court in allowing the appeal, held that on the primary facts as found by the trial Court "reasonable cause within the statute (*supra*) for the six months' delay has been established, the question of whether the further delay in making the claim was or was not "reasonable" being immaterial

Cases referred to

Luckie v. *Merry* (1915) 8 B W C C 447,

King v *Port of London Authority* (1919) H L 12 B W C C 260, p 267, per Lord Birkenhead L C ,

Hillman v *London, Brighton and South Coast Railway* (1919) 12 B W C C 323,

Lingley v *Thomas Firth and Sons Ltd* (1920) B W C C 367,

Shotts Iron Co. Ltd v. *Fordyce* (1930) 23 B W C C 73;

Stenning v *Southern Railway Co.* (1937) 30 B W C.C 430,

Harries v. *James Howden and Co. Land Ltd*, [1939] 3 All E R 34 at p. 38

Appeal.

Appeal against the judgment of the District Court of Limassol (Loizou P.D.C. & Malachtos D.J.), dated the 28th August, 1965 (Application No. 10/61) whereby applicant's application for compensation under the Workmen's Compensation Law, Cap. 188 was dismissed.

Chryssis Demetriades, for the appellant.

M. M. Houry, for the respondents.

Cur. adv. vult.

ZEKIA, P.: The judgment of the Court will be delivered by Josephides, J.

JOSEPHIDES, J.: This is an appeal by a workman from the dismissal of his application for compensation under the Workmen's Compensation Law, Cap. 188. On the 9th March, 1966, we delivered a reserved judgment* whereby we held that the proceedings in the present case were not statute barred and we then heard argument on the remaining grounds of appeal and cross-appeal, namely:

Ground of Appeal: "The Court was wrong in law and/or in fact in holding that there was not sufficient reasonable cause within the meaning of the Law, during the first six months after the accident, for appellant not to file an application for compensation within that period".

Cross-Appeal: "That the finding of fact of the trial Court that the respondents' foreman took notice of the accident should be set aside".

Two other grounds of the cross-appeal were abandoned but the respondents' counsel supported the finding of the trial Court that the appellant's failure to make his application to the Court within the statutory period of six months from the occurrence of the accident was not occasioned by a reasonable cause.

The statutory provisions applicable to the present case are sections 14 and 15 of the Workmen's Compensation Law, Cap. 188. Section 14(1) and (2) read as follows:

"14(1) Proceedings for the recovery under this Law of compensation for an injury shall not be maintainable

* Reported in this vol. at p. 136 *ante*.

unless notice of the accident has been given by or on behalf of the workman as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the application for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury or, in the case of death within six months from the time of death :

Provided that–

(a) the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause ;

(b) the failure to make an application within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake or other reasonable cause.

(2) Notice in respect of an injury under this Law may be given either in writing or orally to the employer (or if there is more than one employer to one of such employers) or to any foreman or other official under whose supervision the workman is employed, or to any person designated for the purpose by the employer, and shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened".

Section 15 (3) (d) reads as follows :

"(3) The want of, or any defect or inaccuracy in, the notice of an accident required by the last preceding section of this Law shall not be a bar to the maintenance of proceedings for the recovery of compensation under this Law

where the employer is the owner of a mine or quarry or the occupier of a factory or workshop-

....

.(d) if the injury has been treated in an ambulance room at the mine, quarry, factory or workshop ".

The workman gave evidence before the trial Court and called three witnesses in support of his case as regards the occurrence of the accident and his treatment in the respondent company's hospital in 1949 and subsequently. The respondent company did not call any oral evidence so that the workman's evidence remained uncontradicted. Three medical reports and some other records of the company were put in by consent, and the fact of the workman's admission to the company's hospital for 10 days in 1952 was admitted by the company. It was further stated that the hospital records of the respondent company for 1949 could not be traced and that the medical reports produced represented the true condition of the applicant at the time.

The following statement of facts is taken from the judgment which we delivered on the 9th March, 66, on the question whether these proceedings were statute barred:

" The following were the facts given in evidence on behalf of the workman before the trial Court. In June or July 1949 while he was employed by the respondent company as labourer he was involved in an accident in the course of his employment as a result of which he was injured. The accident occurred while he was engaged in carrying a heavy object together with three other labourers, one of the three lost his balance and fell and, as a result, part of a waggon, which was very heavy, fell on the workman and hit him on the spine. One of the persons present at the time was the foreman of the respondent company who sent him to the company's hospital where he was attended by the doctor and was given two injections on the back ; and he was put on sick leave for 4 days. The doctor instructed him to do light work, he said, and as the foreman knew about it he would not give him heavy work. For the next three years he used to visit the doctor periodically because he was feeling pain but, nevertheless, he continued to work without a break receiving the same wages.

In 1952 he was referred by the respondent company to Dr Spyros Pavlides, an X-ray specialist, for examination of the lumbar spine Dr. Pavlides's report, dated the 14th June, 1952, was put in evidence by consent and reads as follows (Exhibit 1)

'The upper anterior surface of the second lumbar vertebra appears depressed, indicating an old-standing crush injury

Apart from this there is osteoarthritis of the fourth lumbar vertebra

The a-p film shows a left convex scoliosis of the lumbar spine'

It is the workman's version that after the X-ray examination he went back to hospital and he was given 30 or 35 days' leave, out of which he was detained in hospital for 10 or 15 days In fact it is admitted by the respondent company that he was admitted to the company's hospital on the 11th June, 1952 and discharged on the 21st June, 1952, that is to say, he was in hospital for 10 days, and that the hospital patient's record shows that the diagnosis was 'arthritis deformas' Another two medical reports were put in by consent, the one is dated 27th March, 1958 (exhibit 5) and it is signed by the company's chief medical officer It reads as follows

'The Manager,
The Asbestos Mines Ltd,
Amiandos

Dear Sir,

This is to certify that Charalambos Droushiotis, No 455 is not fit for manual work due to an old deformity of his spine'.

The second medical report is dated at Amiandos on the 2nd July, 1958 (exhibit 4) and it is signed by Dr Kirwan The report reads as follows

'Re Charalambos Droushiotis No. 455.

Stands with right side of pelvis higher than left with mild compensating scoliosis-erector spinal in spasm and all movements limited by pain referred to L-S region where there is considerable tenderness. No gross abnormality of S I. joint obvious but symphysis definitely out of alignment

X-rays show that there has been an upward rotation of left side of pelvis with slip in symphysis pubis and dislocation of S.I. joint - latter injury extends into pedicle and terminal of 5th L.V., the transverse process of which is sacralised.

This man has a very definite disability and is unfit for heavy manual labour or work of any kind necessitating lifting and or stooping".

On the 15th November, 1958, the workman was discharged from the service of the company and was paid his gratuity amounting to £150.920 mils, but he did not institute the present proceedings until June 1961. In the particulars of his application for compensation the workman states that his incapacity for work is 'total incapacity' and he claims £800 compensation, the maximum provided under the Law. He was employed by the respondent company continuously from 1952 to 1958, except during the war period 1941 to 1945 when he was serving in the Army.

The reasons given by the workman in his evidence for his failure to apply to Court within the first six months after the accident as provided under section 14 (1) of the Workmen's Compensation Law, Cap 188, were: (*a*) that he was kept at work by the respondent company and paid his wages in full; (*b*) that *he thought that he would become well and that, although* he felt pain during the first six months, he was under treatment and did not know what he had; and (*c*) that he thought the respondent company would keep him in their employment.

The trial Court stated in their judgment that they were satisfied from the evidence before them that the workman "was at the time a piece worker and therefore a 'workman' within the meaning of the Law and that the accident described did occur out of and in the course of his employment with the respondents and that he was at the time treated in the respondents hospital. According to his evidence he continued in his employment as a quarry contractor or piece worker at least until the end of 1951 and that after his treatment in hospital some time in 1952 following the X-ray by Dr. Pavlides, he was given light work and paid full wages".

The Court then went on to consider the legal defences raised by the respondent company but there is no finding in their judgment whether or not the workman's injury complained of in his application to Court in 1961 resulted from the accident which occurred in 1949.

On the question whether the workman gave notice of the accident under the provisions of section 14 of the Law the trial Court ruled as follows : " It is clear to us from the evidence that the respondents' foreman took notice of the accident immediately after its occurrence and as we said earlier on that the applicant was treated on the same day in their hospital. In view of the above and in the light of the provisions of section 14(2) and 15(3) (d) we are of opinion that the requirements of the Law as to notice must be deemed to have been satisfied ".

Having heard learned counsel on this point we are of the view that this finding of the trial Court is amply supported by the evidence and the cross-appeal must, accordingly, fail.

With regard to the question of " reasonable cause ", the trial Court found that the workman's failure to apply within the statutory period of six months was not occasioned by a reasonable cause, which is one of the exemptions provided in section 14 of the Law. In reaching that conclusion the trial Court were of opinion that it must have been quite clear to the workman that there was something wrong with him which was not trivial, as he had said more than once that during the first six months he felt pain in his back which necessitated repeated visits to the doctor ; that even if the precise nature of his injury was not known to him it could not be said that he had any reason to believe that the injury could have been trivial ; that the circumstances of the case did not justify the conclusion that either the respondent company knew or ought to have known that the workman intended to seek compensation or that they led him to form the belief that he would receive compensation in any form without making an application therefor ; and that it was not clear to the Court from the evidence that the workman received any favour at all from his employers during the first six months.

Section 14(1)(b) of our Workmen's Compensation Law, Cap. 188, which is applicable to this case, reproduces substantially the provisions of section 2 (1) (b) of the English Workmen's Compensation Act 1906, and of section 14 of the 1925 Act, with one exception, to which we referred in our previous judgment*, but which is not material for the purpose of deciding the point under consideration.

* Judgment reported in this vol. at p. 136 *ante*.

We propose referring to a number of cases decided by the House of Lords and the Court of Appeal in England between 1915 and 1939 which, we think, are helpful as showing how those Courts applied the provision as to "reasonable cause" for the delay of more than six months in making a claim.

In *Luckie* v. *Merry* (1915), 8 B.W.C.C. 447, a van-driver who had been in the same employment for seventeen years injured his hand by accident. He explained the accident to his employer, who told him he could potter about the factory. He did this and gradually became able to do most of his old work, but some of his fingers were rendered permanently stiff. He continued in this way receiving full wages all the time for about *eight months*, when he was dismissed for other causes. He thereupon made a claim for compensation which was resisted on the ground that no claim had been made within six months of the accident. It was held by the Court of Appeal that the man being in receipt of full wages, and the employers having complete knowledge of the whole matter, there was reasonable cause for the workman not making a claim earlier.

In *King* v. *Port of London Authority* (1919) H.L., 12 B.W.C.C. 260, Lord Birkenhead, L.C., at page 267, said: "The facts in the present case are by no means unlike those disclosed in *Luckie* v. *Merry*, [1915] 3 K.B. 83; 8 B.W.C.C. 447, and upon the facts of that case I approve of the decision in that case. I expressly guard myself against the supposition that I lay down any general principle that under all circumstances the continued payment of the same wages by the employer to the injured workman after the accident amounts to reasonable cause for not giving notice. The general atmosphere must always be considered. It is sufficient for me to say that the evidence given before the County Court Judge justified, without perhaps requiring, the conclusion that the workman made no formal claim for compensation because he formed the view, encouraged thereto by the conduct of the employer, that he would receive compensation, should incapacity supervene in the future, without the necessity of making a formal claim. It is very easy to imagine cases in which the attitude of the employer during the critical six months may appear to be at once so promising and so generous that there is very reasonable cause for an omission to give notice. There are other cases falling upon the other side of the line. It is enough for me to say that in my opinion the present case belongs to the first class".

In *Hillman* v *London, Brighton & South Coast Railway* (1919), 12 B W C C. 323, a workman, in moving a heavy weight, found he had sustained a rupture He reported the matter to the officials of the railway company employing him, was given first aid, and then instructed to go to the hospital, where he was fitted with a truss. He was able to return to light or supervising work a few days after the accident, being paid the same rate of wages as before, but was unable to undertake any heavy work, and frequently had to sit down and rest, a state of facts of which his employers had full knowledge He made no claim, however, until he was discharged more than two years after the accident The Court of Appeal held, applying *King* v *Port of London Authority* (*supra*) (and reversing the County Court Judge) that, on the facts, the employers must be taken to have known that the workman would make a claim, if he were incapacitated at any time by the injury from earning his full rate of wages, and that this amounted in law to reasonable cause for delay in making the claim and that what amounts to "reasonable cause" is a question not of fact, but of law

Atkin L J, at page 342, said

> "Then the only other question is what is really meant by 'reasonable cause' Subject to—I do not like to say criticism, but subject to the explanation which is suggested by my Lord of the passage in Lord Atkinson's judgment, which I have very little doubt fulfils the intention of the learned Lord, it appears to me that that definition for the purpose of this case is quite sufficient He says:
>
> > 'I think the case of *Turnbull* v *Vickers, Ltd*, (1914) 7 B W C C 396; *Lucke* v *Merry* (*supra*), and *Abbott* v *Biggleswade Joint Hospital Board*, (1918) 9 B W C C 107, establish that where all the facts of a particular case prove, to the satisfaction of an arbitrator, that a workman, to the knowledge of the employer, or his agent, intends to seek compensation for an injury or accident sustained by him, and the employer or his agent says or does something calculated to lead the workman to form a belief, on which he acts, that, without making a claim, compensation will be given to him in the form of continuing him in his employment at his former wages, although he may not be able to do efficiently all his former work, the arbitrator, as a Judge of both law and fact, would be justified in holding that reasonable cause

existed for the workman's omitting to make a claim formally within the six months'.

I think probably he intends to say that you should substitute: 'He is entitled to seek compensation'. That state of facts arises in this case. The only doubt that I have in my mind at all upon the propriety of deciding this point is the question of whether or not we are entitled to draw what would be the inference of fact, that the workman acted upon the belief that he would get compensation. But it appears to me that upon the evidence and facts in this case, that is the only inference it is possible to draw. You really have a case here in which there can be no doubt whatever but that this workman was, in fact, a workman who, when the accident happened, was entitled to make a claim for compensation and entitled to take the appropriate proceedings to have that liability declared on the footing of the procedure which is now laid down in the case of *King* v. *The Port of London Authority (supra)*".

In the case of *Lingfer* v. *Thomas Firth & Sons Ltd.* (1920) 13 B.W.C.C. 367, the applicant was employed by the respondents as a munition worker. In August 1917, while at her work she was injured by a shell falling on her toe, but she did not make a claim for compensation until February 1920. It was held that on the facts of the case there was no evidence of any reasonable cause for the delay of more than six months in making a claim; and that, once reasonable cause for six months' delay is established, then the question of whether further delay in making a claim is or is not reasonable does not arise.

In *Shotts Iron Co. Ltd.* v. *Fordyce* (1930) 23 B.W.C.C. 73, referred to above, a miner wrenched the muscles of his back in April 1924 but he remained at work at full wages until March 1928, when, on account of increasing difficulty in performing his work, he gave it up. He made his claim for compensation for the first time in October 1928. It was held by the House of Lords that, from the facts as found by the arbitrator to the effect that the workman honestly believed that the accident was trivial and that nothing serious had happened to him, the proper inference of law to be drawn was that the failure to make claim within six months was occasioned by a reasonable cause.

In *Stenning* v. *Southern Railway Co.* (1937) 30 B.W.C.C. 430, a signalman sustained a rupture in 1928 while at work.

After consulting his own doctor and after having been seen by his employers' doctor he continued at his work as a signalman under the impression that the matter was trivial, but wearing a truss. Six years later he began to realise that the matter was not trivial. In 1936 he was offered work as a crossing keeper, but refused it on grounds unconnected with his injury. His employers then reduced his wages on the ground that he was unable to perform signal-box duty "in consequence of a physical disability". The workman then filed a request for arbitration which was some 8½ years after the original accident. The County Court Judge held that there was reasonable cause for the failure to make a claim within the statutory period and the employers appealed. It was held by the Court of Appeal that the Judge had drawn the proper inference of Law from the facts found and they applied *Shotts Iron Co. Ltd.* v. *Fordyce* (*supra*).

In *Harris* v. *James Howden & Co. (Land) Ltd.* [1939] 3 All E.R. 34, the husband of the plaintiff had been killed in an accident due to the condition of the floor of a power station. The case in support of an action for damages was so strong that it was not then thought advisable to make a claim under the Workmen's Compensation Act, 1925, which there was little likelihood would ever be prosecuted. In the course of the action for damages, great difficulty was encountered in ascertaining who, among a number of contractors and sub-contractors, was responsible for the condition of the floor which was the cause of the accident. At the trial, it was decided that the wrong parties had been sued, and it was then too late to bring an action under the Fatal Accidents Act against the right party. Upon the action being dismissed application was made for an assessment of compensation under the Workmen's Compensation Act, 1925. It was contended that the absence of the claim under that Act was due to mistake within the meaning of section 14 of that Act. It was held by the Court of Appeal that there had not been any mistake, but there was, on the facts, reasonable cause for not having given notice of the making of a claim under the Act, and an order should be made for assessment of compensation. The order of Goddard L.J. was accordingly reversed.

Mackinnon, L.J., at page 38, said:

> "The other question is whether there was other reasonable cause for not making this claim within the 6

months. We have had a quantity of cases cited to us containing expressions of opinion about this clause or other parts of section 14. I want first to say this. It seems to me that a question as to whether or not there has been a mistake or other reasonable cause is primarily a question of fact, and, in the normal case when it comes on appeal from a county Court Judge who has found, or who has not found, that there was a mistake or other reasonable cause, the function of the Court of Appeal is only to say whether or not there was evidence on which he could make that finding. Most of the cases which have been cited to us are simply concerned with that question of fact. The present case is not an appeal from a county Court Judge, but from a decision of GODDARD, L.J. He is in a less favourable position than that of a county Court Judge, in that his finding of fact does not bind us. We are not concerned merely to say whether or not there was evidence on which he could come to that conclusion. We are in a position to differ from him if we think either that there was a mistake or that there was other reasonable cause. In my view, we are justified in finding, and I find as a fact, that there was reasonable cause for not having given notice. In my judgment, there was reasonable cause—and I differ from GODDARD, L.J., in that respect—and I think that an order should have been made for the assessment of compensation under the Workmen's Compensation Act, 1925".

And du Parcq, L.J., at the same page, said :

"I agree. We are laying down no new principle of law. We are finding facts as in the ordinary way a county Court Judge sitting as an arbitrator would find them, and I do not wish to add anything to what has been said by Mackinnon, L.J.".

On the basis of the above authorities we are of the view that once "reasonable cause" for six months' delay is established, then the question whether further delay in filing a claim in Court is or is not reasonable, does not arise. The general atmosphere, including the attitude of the employer during the critical six months, must always be considered by the Court in deciding whether there was reasonable cause for the delay.

As regards the powers of this Court on appeal from the findings of trial Courts, under section 25 (3) of the Courts of Justice Law, 1960, the Court is not bound by any determinations on questions of fact made by the trial Court and has power to review the whole evidence and draw its own inferences ; and although the Court of Appeal would be slow to reverse the findings of *primary* facts made by the trial Court (though it has done so in proper cases), in would be prepared to form an independent opinion upon the proper *conclusion* of fact to be drawn from a finding of primary facts.

In this case the undisputed primary facts are that during the first six months the workman was in receipt of full wages and the employers had complete knowledge of the whole matter ; that the workman was treated in the employers' hospital on the same day of the accident and that their doctor recommended light work ; that he had pain for the first six months and that he continued to be under the treatment of the company's doctor for a period of three years ; that he was given light work and paid full wages from the time of the accident for a period well exceeding the first six months; that for at least three years the workman honestly believed that nothing serious had happened to him and that it was only in 1952 that he began to realise that the matter was not trivial, when he was referred to the company's X-ray specialist.

From these facts we are of the view that the proper inference to be drawn is that there was reasonable cause for delay in filing his claim in Court. It, therefore, follows that we differ from the finding of fact of the trial Court and we find as a fact that there was reasonable cause for the workman not filing his application in Court within the prescribed period of six months from the accident.

The only question now left open is whether the workman's injury complained of in his application filed in 1961 resulted from the accident which occurred in the respondent company's employment in 1949. As the trial Court has not made a finding on this question, acting under the powers conferred on this Court under the provisions of section 25(3) of the Courts of Justice Law, 1960, we direct a re-trial of the following issue by the same Bench, if possible :

(a) the trial Court to hear and determine the issue whether the workman's injury in 1961 resulted from his accident in 1949, after receiving oral medical evidence to be adduced, in addition to the medical reports already put in evidence by consent ; and

(b) if the Court finds for the workman on the above issue, then to assess the amount of compensation payable to him and give judgment accordingly.

In the result the appeal is allowed and the cross-appeal dismissed. The order of the District Court dismissing the workman's claim is set aside, and an order of re-trial made in the above terms. The respondents shall pay the costs of this appeal, but the costs before the District Court shall be costs in the cause at the re-trial and shall be decided by the trial Court.

Appeal allowed. Cross-appeal dismissed. Order of District Court set aside. Order for a re-trial in terms. Order as to costs as aforesaid.