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**Shankar Vs. the Assistant Executive Engineer, Grbc, Sub-division 7 and Another**

**Shankar Vs. the Assistant Executive Engineer, Grbc, Sub-division 7 and Another**

**SooperKanoon Citation : [sooperkanoon.com/383510](http://sooperkanoon.com/383510)**

**Court :** Karnataka

**Decided On :** Mar-06-2000

**Reported in :** 2001ACJ1119; [2000(86)FLR871]; ILR2000KAR2632; 2000(5)KarLJ577

**Judge :** B.K. Sangalad, J.

**Acts :** Workmen's Compensation Act, 1923 - Sections 28(1)

**Appeal No. :** Miscellaneous First Appeal No. 2466 of 1994

**Appellant :** Shankar

**Respondent :** The Assistant Executive Engineer, Grbc, Sub-division 7 and Another

**Advocate for Def. :** Sri D.L. Shivakumar, Government Advocate

**Advocate for Pet/Ap. :** Sri Anand Kumar for Sri Jagadish Patil, Adv.

**Judgement :**

B.K. Sangalad

1. The appellant is the applicant who has filed the application for the compensation on 21-1-1992 stating that he was working as a Coolie under the respondent 2. On

12-6-1991 when he was working, the soil block and the stones fell on his head and legs, as such he sustained injuries especially the toes. Hence he claimed the compensation of Rs. 1,00,000/-.

2. Mr. Anand Kumar, learned Counsel for the appellant submitted that the learned Commissioner has not followed the mandatory provision as per Section 28(1) of the Workmen's Compensation Act, 1923. On the other hand the learned Government Pleader submitted that there was a compromise and the memorandum was sent to the Commissioner who registered it on being satisfied that there was no undue influence, fraud, much less any coercion and inadequacy. Hence the memorandum has to be accepted.

3. In view of these rival submissions, the award of the learned Commissioner is perused. According to Section 28(1) of the Workmen's Compensation Act after receipt of the memorandum, the Commissioner has to issue the notice to the applicant and further has to register it not before the expiry of 7 days. In this case, it is not done so. On page No. 9 of the award itself, it is mentioned that it is not done. Hence it goes to show that there is a non-compliance of the mandatory provision. Therefore, the impugned award is liable to be set aside and the following order is passed:

In the result, the appeal is allowed. The award dated 9-3-1994 is set aside. The matter is remitted to the Commissioner for Workmen's Compensation, Belgaum for holding fresh enquiry in accordance with law.