[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ERAKLIS MICHAEL,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF LABOUR AND SOCIAL INSURANCE AND OTHERS,

Respondents.

(Case No. 60/66).

Social Insurance—Benefits—Entitlement—Social Insurance Law, 1964 (Law No. 2 of 1964)—Decision of the Respondents rejecting Applicant's claim for injury benefit under the Law—Failure of the Applicant to satisfy the Court that his claim had been rejected on the basis of a misconception regarding the true position, from either the factual or the medical point of view.

Legal aid—Legislation for a scheme of legal aid, as envisaged by Article 30.3(d) of the Constitution, not yet enacted—Present case indicates the need for such scheme to be brought into existence.

By this recourse under Article 146 of the Constitution the Applicant complains against a decision which was reached in the Ministry of Labour and Social Insurance and by virtue of which he was denied an injury benefit under the relevant provisions of the Social Insurance Law, 1964 (Law No. 2 of 1964). The Court dismissed the recourse holding that the Applicant failed to satisfy it that his claim had been rejected by the Respondents on the basis of a misconception regarding the true position, from either the factual or the medical point of view. In the course of its Judgment the Court made the following observations in connection with the question of legal aid:

Per curiam: It is unfortunate that there has not yet been brought into existence a scheme for legal aid for cases such as the present one. Article 30.3(d) clearly envisages the possibility of providing by legislation for a

scheme of this nature, and a case such as this one does indicate the need for it.

Recourse.

Recourse against the decision of the Respondents by virtue of which Applicant was denied an injury benefit under the provisions of the Social Insurance Law, 1964 (Law 2/64)

F. Kolotas with *A. Vasiliou* (*Mrs.*), for the Applicant.

K. Talarides, Senior Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: By this recourse the Applicant complains, in effect, against a decision which was reached in the Ministry of Labour and Social Insurance and by virtue of which he was denied an injury benefit under the relevant provisions of the Social Insurance Law, 1964 (Law 2/64). This decision was communicated to the Applicant by letter dated the 11th January, 1966 (see *exhibit* 1); as stated therein the claim of the Applicant for an injury benefit was rejected because the bodily injury concerned did not occur as a result, and in the course, of his employment.

It is not in dispute that in August, 1965, the Applicant was working as a labourer at the construction site of Polemidhia Dam; his main job was to unload cement bags from lorries which were carrying cement to the site.

It is the centention of the Applicant that on the 21st August, 1965, while he was trying to take from a lorry a cement bag, in order to carry it to a nearby store, a heap of cement bags, stacked on the lorry, fell on him, knocking him to the ground and causing him internal injuries, which resulted in his having pains at the lower part of his neck and left shoulder, and in diminishing the strengtn of his left arm and hand to such an extent as to render him unable to work.

This contention of the Applicant having been rejected as incorrect, the *sub judice* decision was reached, and as a result this recourse was filed.

The relevant case-file of the Ministry of Labour and Social Insurance has been made available to the Court (see *exhibit* 4); it is on the material contained in such file that the *sub judice* decision was based; and such material appears to warrant rejecting the Applicant's claim for compensation.

When the hearing of this Case commenced counsel for the Applicant stated that he could call evidence establishing that the Applicant was, in fact, injured as alleged by him.

It was then directed by the Court that counsel for the Applicant should make available, in the first instance, to counsel for Respondent the statements of the witnesses whom he intended to call before the Court, in relation to the facts of the Case, so that the Insurance Officer concerned might examine the matter further, with a view to an out of Court agreement, before the Court, itself, would go into such facts. The said statements, in the form of affidavits, are *exhibits A and B* in these proceedings.

Eventually no out of Court agreement was reached; as the hearing of the Case was about to be resumed, counsel for the Applicant, Mr. Colotas, declared that he had given certain advice to the Applicant which his client was not prepared to accept, and, therefore, counsel sought leave to withdraw from the Case; such leave was granted.

Thereafter, the Applicant conducted his case in person and, in the end, Judgment was reserved, after the Applicant had given evidence in support of his version; he refused to call any witnesses to corroborate his story.

While the Judgment was under consideration counsel for the Respondent—acting very properly—forwarded to the Court a written statement of the Applicant regarding his case, which he had addressed to the Attorney-General's Office. As the Applicant appeared, by means of such statement, to be labouring under a grievance that his case had not been fully investigated into, it was decided by this Court, in the interests of justice, to hear the two persons who had sworn affidavits, as aforesaid, namely, Sheffic Sheriff Ali and Michalakis Galatis.

In the meantime, the health of the Applicant deteriorated, through other causes—he suffered a stroke—and so it became impossible, for some time, to proceed with the further hearing of the Case.

Later on, the Applicant applied to the Chief Registrar stating that he could not afford to appoint new counsel to represent him and that he requested to have the services of a lawyer appointed by the State.

I must pause here, for a moment, in order to observe that it is unfortunate that there has not yet been brought into existence a scheme of legal aid for cases such as the present one. Article 30.3(d) clearly envisages the possibility of providing by legislation for a scheme of this nature, and a case such as this one does indicate the need for it.

In the end Mrs. Vassiliou, agreed, at the request of the Chief Registrar, to render her services, as counsel, to the Applicant.

At the resumption of the hearing the aforementioned Ali and Galatis were heard as witnesses for the Applicant; there was also called, by the Applicant's side, an expert witness, Dr. Th. Michaelides. Evidence was, also, adduced on behalf of the Respondent, including an expert witness, Dr. G. Kozakos.

It was up to the Applicant to satisfy me of the correctness of his contention that the claim which he had made for an injury benefit had been rejected on the basis of a misconception regarding the true position, from either the factual or the medical point of view; even if he had managed to raise a substantial doubt in my mind about the true position in some material respect, I could, in the proper exercise of my competence, annul the decision complained of, so as to enable the proper authorities to re-examine the matter afresh.

I regret to say, however, that the Applicant has failed to carry his case so far as to render its outcome favourable for him.

Having heard the evidence of the Applicant himself as well as of his two witnesses, Ali and Galatis, having watched the demeanour of all three of them, having compared their evidence on material points, and having compared the evi-

dence of Ali and Galatis to the contents of their affidavits (marked A and B) sworn on the 4th January, 1967, and 24th December, 1966, respectively, I cannot place any reliance on the story put forward by the Applicant and his witnesses, so as to find that, as a matter of fact, on the 21st August, 1965, the Applicant was injured through cement bags falling on him and knocking him to the ground.

Had such an accident happened to him it would have been most natural for the Applicant to have reported it immediately to the representative of his employers, at the construction site, a certain Andreas Nicolaides; and actually the Applicant and his two witnesses have given evidence —studded with contradictions—to the effect that this was done. On the other hand, the aforementioned Nicolaides has given evidence stating that on the 21st August, 1965, neither the Applicant, nor Ali, nor Galatis, reported to him any accident as having happened to the Applicant. I believe his evidence and I reject any evidence, on this point, to the contrary, by the Applicant, Ali and Galatis.

It is perhaps possible that the Applicant on the 21st August, 1965 felt unwell, and he may even have fallen to the ground, as a result; actually, he was absent from work for a week thereafter. But the indisposition of the Applicant must have been due to causes other than being knocked down by cement bags; because, as already stated, I do not believe the evidence that he was so knocked down; actually, in his claim for an injury benefit (see reds 1–4 in the file *exhibit* 4) he has stated that, on that date, while unloading cement bags from a lorry, his left arm and leg became motionless («ἔμεινε ἀκίνητο»).

Moreover, I have not been satisfied, either, that the Applicant's physical symptoms, of which he was complaining after the 21st August, 1965, are to be attributed, medically, to injuries caused through cement bags falling on him and knocking him down. I have perused very carefully all the relevant medical certificates, which are to be found in the relevant file, (*exhibit* 4), and I have considered, also, the evidence of the medical expert called by the Applicant, Dr. Th. Michaelides, and of the medical expert called by the Respondent, Dr. G. Kozakos.

The maximum that can be said is that Applicant appears to be suffering from a disc lesion (or, "nucleus pulposus")

between the 6th and 7th cervical vertebrae; as Applicant's witness, Dr. Th. Michaelides, has put it, this condition could be caused through trauma involving application of force to the neck or the back, or through degeneration due to age. And it is quite significant that according to the evidence of Dr. Kozakos, which I do accept, the Applicant on the 1st September, 1965, told him that the symptoms of which he was complaining manifested themselves three months before the 1st September, 1965, *i.e.* long before the 21st August, 1965, when, allegedly, the Applicant suffered the injuries to which he attributes the said symptoms (see also the report of Dr. Kozakos, red 18 in the file *exhibit* 4).

In the circumstances I feel unable to say that the *sub judice* decision has been based on any misconception and that it, therefore, has to be interfered with by this Court.

I come now to the question of costs in this Case: I do not think that this is a Case in which I should award costs against the Applicant; I think, having seen him in Court, that he is an uneducated person who misunderstood the whole purpose of Law 2/64 and he somehow thought that the State owed him an injury benefit no matter how his relevant incapacity has been brought about. Furthermore, I feel very strongly that the interests of justice require that the costs of Mrs. Vassiliou, who undertook to appear for the Applicant, at the request of the Court, should be met—she having not received anything from Applicant, who is a man of no means; and, in any case, Mrs. Vassiliou who, if I may say so, has done her best with exemplary diligence was, in reality, retained by the Chief Registrar not only to assist the Applicant, but the Court itself, as well; therefore, I do think that her costs should be met, to their minimum extent at any rate, out of public funds. It is consequently ordered that the Republic should pay her £20 costs.

Application dismissed.
Order for costs as aforesaid.