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|---------------------------|---|--|
|                           | functions as may be assigned to them under this Act.  |  |
| <b>Tribunals</b>          | Appointed by the appropriate government for the adjudication of Industrial Disputes relating to matters specified in IInd or III rd Schedule. | To enter the premises of any establishment related to a dispute, enforce the attendance of any person for examination, compel the production of documents, appoint one or more people having special knowledge of the matter |
| <b>National Tribunals</b> | Appointed by the appropriate government for the adjudication of Industrial Disputes of national importance / affecting several States.        | To enter the premises of any establishment related to a dispute, enforce the attendance of any person for examination, compel the production of documents, appoint one or more people having special knowledge of the matter |

#### **4g. LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS & MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS) ACT, 1988**

##### **Objective**

The main objective of the Act is to exempt establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. This Act relieves the small companies from following cumbersome paperwork that is required under various labour laws both at the Central and State level thereby reducing the compliance requirement under various labour laws.

##### **Applicability**

- This Act is applicable to small establishments or very small establishments.
- An establishment may be an industrial or other establishment or factory or plantation or newspaper establishment.

- Small establishment means an establishment in which not less than ten and not more than nineteen persons are employed or were employed on any day of the preceding twelve months.
- Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.

**Exemption from returns and registers under certain labour laws:**

Small establishments and very small establishments are exempted from submitting returns and maintaining registers under the following Acts:

- 1) The Payment of Wages Act, 1936
- 2) The Weekly Holidays Act, 1942
- 3) The Minimum Wages Act, 1948
- 4) The Factories Act, 1948
- 5) The Plantations Labour Act, 1951
- 6) The Working Journalists and other Newspaper employees (conditions of service) and Miscellaneous Provisions Act, 1955
- 7) The Contract Labour (Regulation and Abolition) Act, 1970
- 8) The Sales Promotion employees (Conditions of Service) Act, 1976
- 9) Equal Remuneration Act, 1976

But the employer of small and very small establishments should continue to do the following:

- i. Issue wage slips in the Form XI prescribed in the Minimum Wages (Central) Rules, 1950, made under Secs. 18 and 30 of the Minimum Wages Act, 1948 (11 of 1948)
- ii. Issue slips relating to measurement of the amount of work done by piece-rated worker required to be issued under the Payment of Wages (Mines) Rules, 1956 made under Secs. 13-A and 26 of the Payment of Wages Act, 1936 (4 of 1936)
- iii. File returns relating to accidents under Secs. 88 and 88-A of the Factories Act, 1948 (63 of 1948), and Secs. 32-A and 32-B of the Plantations Labour Act, 1951 (69 of 1951).

**Returns and Registers under the Act**

Instead of maintaining registers and filing returns under the above mentioned 9 legislations, the employer of small and very small establishments should do the following:

- Submit Core returns in Form A for the year ending 31<sup>st</sup> December.
  - This return should be submitted on or before the 15<sup>th</sup> February of the succeeding year by small establishments and very small establishments. This return should contain the details of the establishment / employer / principal employer / contractor and the nature of operation / industry /work carried on.
- Maintain register in Form B.
  - This is the register of wages required to be maintained by small establishments. It should be maintained within seven days of the expiry of the wage period.
- Maintain register in Form C.
  - This is the muster roll to be maintained by small establishments.
- Maintain register in Form D.
  - This is the monthly register showing welfare amenities to be maintained by small establishments. It should be completed within seven days of the expiry of each calendar month.
- Maintain register in Form E.
  - This is the monthly register of muster roll-cum-wages required to be maintained by very small establishments.

### **Penalty**

An employer who fails to comply with the provisions of the Act will be liable to payment of fine that may extend to Rupees five thousand in case of first conviction and in case of second or subsequent conviction, the employer will be liable to imprisonment for a period not less than one month but may extend to six months or with fine not less than Rupees ten thousand rupees but may extend to Rupees twenty thousand, or with both.

### **Other related information**

Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment Bill, 2007 - This Bill aims at amending the 1988 Act by exempting establishments employing up to 40 workers. The basket of labour laws for which companies can uniformly comply is likely to be raised from nine to sixteen.

The Kerala Labour Laws (Simplification Of Returns And Registers Of Small Establishments) Bill, 2002 – This Bill provides for simplification of forms of returns to be furnished and registers to be maintained by employers under certain labour laws in relation to establishments employing up to 50 employees.

#### **4h. THE PAYMENT OF BONUS ACT, 1965:**

The payment of Bonus Act provides for payment of bonus to persons employed in certain establishments of the basis of profits or on the basis of production or productivity and for matters connected therewith.

It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year.

#### **Eligibility for Bonus**

Every employee receiving salary or wages upto **Rs. 10,000** p.m. and engaged in any kind of work whether skilled, unskilled, managerial, supervisory etc. is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent, of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

However employees of L.I.C., Universities and Educational institutions, Hospitals, Chamber of Commerce, R.B.I., IFCI, U.T.I., IDBI, NABARD, SIDBI, Social Welfare institutions are not entitled to bonus under this Act.

#### **Calculation for Working Days in An Accounting Year**

An employee shall be deemed to have worked in an establishment in any accounting year also on the days on which--

- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

- (b) he has been on leave with salary or wage;
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (d) the employee has been on maternity leave with salary or wage, during the accounting year.

### **Disqualification for Bonus**

Notwithstanding anything contained in the act, an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behaviour while in the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

### **Minimum and Maximum Bonus Payable**

#### **Minimum Bonus**

- The minimum bonus which an employer is required to pay even if he suffers losses during the accounting year or there is no allocable surplus is 8.33 % of the salary or wages during the accounting year, or
- Rs. 100 in case of employees above 15 years and Rs 60 in case of employees below 15 years, at the beginning of the accounting year, whichever is higher

#### **Maximum Bonus**

If in an accounting year, the allocable surplus, calculated after taking into account the amount 'set on' or the amount 'set of' exceeds the minimum bonus, the employer should pay bonus in proportion to the salary or wages earned by the employee in that accounting year subject to a maximum of 20% of such salary or wages.

#### **Time Limit for Payment**

The bonus should be paid in cash within 8 months from the close of the accounting year or within one month from the date of enforcement of the award or coming into operation of a settlement following an industrial dispute regarding payment of bonus.

However if there is sufficient cause extension may be applied for.

## Calculation of Bonus

The method for calculation of annual bonus is as follow:

1. Calculate the gross profit in the manner specified in-
  - a. First Schedule, in case of a banking company, or
  - b. Second Schedule, in any other case.
2. Calculate the Available Surplus.

Available Surplus = A+B, where A = Gross Profit – Depreciation admissible u/s 32 of the Income tax Act - Development allowance - Direct taxes payable for the accounting year (calculated as per Sec.7) – Sums specified in the Third Schedule.

B = Direct Taxes (calculated as per Sec. 7) in respect of gross profits for the immediately preceding accounting year – Direct Taxes in respect of such gross profits as reduced by the amount of bonus, for the immediately preceding accounting year.

3. Calculate Allocable Surplus

Allocable Surplus = 60% of Available Surplus, 67% in case of foreign companies.

4. Make adjustment for 'Set-on' and 'Set-off'. For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set on and set off from the previous years, as illustrated in Fourth Schedule.
5. The allocable surplus so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year.

In case of an employee receiving salary or wages above **Rs. 3,500** the bonus payable is to be calculated as if the salary or wages were **Rs. 3,500 p.m.** only.

### Duties / Rights of Employer

#### Duties

- To calculate and pay the annual bonus as required under the Act

- To submit an annual return of bonus paid to employees during the year, in Form D, to the Inspector, within 30 days of the expiry of the time limit specified for payment of bonus.
- To co-operate with the Inspector, produce before him the registers/records maintained, and such other information as may be required by them.
- To get his account audited as per the directions of a Labour Court/Tribunal or of any such other authority.

## **Rights**

An employer has the following rights:

- Right to forfeit bonus of an employee, who has been dismissed from service for fraud, riotous or violent behaviour, or theft, misappropriation or sabotage of any property of the establishment.
- Right to make permissible deductions from the bonus payable to an employee, such as, festival/interim bonus paid and financial loss caused by misconduct of the employee.
- Right to refer any disputes relating to application or interpretation of any provision of the Act, to the Labour Court or Labour Tribunal.

## **Rights of Employees**

- Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.
- Right to refer any dispute to the Labour Court/Tribunal Employees, to whom the Payment of Bonus Act does not apply, cannot raise a dispute regarding bonus under the Industrial Disputes Act.
- Right to seek clarification and obtain information, on any item in the accounts of the establishment.

## **Recovery of Bonus Due**

- Where any bonus is due to an employee by way of bonus, employee or any other person authorised by him can make an application to the appropriate government for recovery of the money due.
- If the government is satisfied that money is due to an employee by way of bonus, it shall issue a certificate for that amount to the collector who then recovers the money.
- Such application shall be made within one year from the date on which the money became due to the employee.
- However the application may be entertained after a year if the applicant shows that there was sufficient cause for not making the application within time.

### **Offences and Penalties**

For contravention of the provisions of the Act or rules the penalty is imprisonment upto 6 months or fine up to Rs.1000, or both.

For failure to comply with the directions or requisitions made the penalty is imprisonment upto 6 months or fine up to Rs.1000, or both.

In case of offences by companies, firms, body corporate or association of individuals, its director, partner or a principal officer responsible for the conduct of its business, as the case may be, shall be deemed to be guilty of that offence and punished accordingly, unless the person concerned proves that the offence was committed without his knowledge or that he exercised all due diligence.

### **4i. Payment of Gratuity Act, 1972**

#### **Applicability of the Act**

The Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments. The Act enforces the payment of 'gratuity', a reward for long service, as a statutory retiral benefit. Every employee irrespective of his wages is entitled to receive gratuity if he has rendered continuous service of 5 years or more than 5 years.

It is not paid to an employee gratuitously or merely as a matter of boon. It is paid for the service rendered by him to the employer (Delhi Cloth and General Mills Co; Ltd Vs the Workmen).

Gratuity is payable to an employee on termination of his employment after he has rendered continuous service for not less than five years:

- on his superannuation
- on his resignation
- on his death or disablement due to employment injury or disease

The Working Journalists and Other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955, provides for payment of gratuity. As such, three years of continuous service is required for eligibility for Gratuity.

The payment of gratuity shall be forfeited:

- to the extent of the damage or loss caused by the employee to the property of the employer
- where the service of the employee is terminated due to misconduct

According to Sec.2(e) "**employee**" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity].

According to Sec.2A (1) **an employee shall be said to be in continuous service** for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment), lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act. (2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer -

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) two hundred and forty days, in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) one hundred and twenty days, in any other case;

*Explanation:* For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which -

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

(3) where an employee employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during such period.

### **Rate of gratuity**

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned.

In the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

In the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days wages for each season.

In the case of a monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees.

### **Responsibility of the Employer:**

Every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other prescribed insurer:

The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed.

Where an employer fails to make any payment by way of premium to the insurance or by way of contribution to all approved gratuity fund, he shall be liable to pay the amount of gratuity due

under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

Whoever contravenes the provision above shall be punishable with fine which may extend to Rs 10,000/- and in the case of a continuing offence with a further fine which may extend to Rs 1000/- for each day during which the offence continues.

#### **4j. THE WORKMEN'S COMPENSATION ACT, 1923**

The Workmen's Compensation Act, aims to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen.

It provides for payment by certain classes of employers to their workmen compensation for injury by accident.

**Act does not apply where workman covered under ESI Act** - Since a workman is entitled to get compensation from Employees State Insurance Corporation, a workman covered under ESI Act is not entitled to get compensation under Workmen's Compensation Act, as per section 53 of ESI Act, 1948.

#### **Meaning of Workman (Sec.2 (n))**

"**Workman**" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is - (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or (ia)

(a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

The provisions of the Act have been extended to cooks employed in hotels, restaurants using power, liquefied petroleum gas or any other mechanical device in the process of cooking.

#### **Employees Entitled To Compensation:**

Every employee (including those employed through a contractor but excluding casual employees), who is engaged for the purposes of employers business and who suffers an injury in any accident arising out of and in the course of his employment, shall be entitled for compensation under the Act.

#### **Employers Liability for Compensation (Accidents)**

The employer of any establishment covered under this Act, is required to compensate an employee:

- a. Who has suffered an accident arising out of and in the course of his employment, resulting into (i) death, (ii) permanent total disablement, (iii) permanent partial disablement, or (iv) temporary disablement whether total or partial, or
- b. Who has contracted an occupational disease.

#### **Employer Shall Not Be Liable:**

- a. In respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding **three days**;
- b. In respect of any injury not resulting in death, caused by an accident which is directly attributable to-
  - i. the workmen having been at the time thereof under the influence or drugs, or

- ii. the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
- iii. the wilful removal or disregard by the workmen of any safeguard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

The burden of proving intentional disobedience on the part of the employee shall lie upon the employer.

- iv. when the employee has contracted a disease which is not directly attributable to a specific injury caused by the accident or to the occupation; or
- v. when the employee has filed a suit for damages against the employer or any other person, in a Civil Court.

#### **Contracting Out:**

Any contract or agreement which makes the workman give up or reduce his right to compensation from the employer is null and void insofar as it aims at reducing or removing the liability of the employer to pay compensation under the Act.

#### **Definition of Disablement**

Disablement is the loss of the earning capacity resulting from injury caused to a workman by an accident.

- **Disablements can be classified as** (a) Total, and (b) Partial. It can further be classified into (i) Permanent, and (ii) Temporary, Disablement, whether permanent or temporary is said to be total when it incapacitates a worker for all work he was capable of doing at the time of the accident resulting in such disablement.
- **Total disablement** is considered to be permanent if a workman, as a result of an accident, suffers from the injury specified in Part I of Schedule I or suffers from such combination of injuries specified in Part II of Schedule I as would be the loss of earning capacity when totalled to one hundred per cent or more. Disablement is said to be permanent partial when it reduces for all times, the earning capacity of a workman in every employment, which he was capable of undertaking at the time of the accident. Every injury specified in Part II of Schedule I is deemed to result in permanent partial disablement.

- **Temporary disablement** reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident.

### **Accident Arising Out Of And In The Course Of Employment**

An accident arising out of employment implies a casual connection between the injury and the accident and the work done in the course of employment. Employment should be the distinctive and the proximate cause of the injury. The three tests for determining whether an accident arose out of employment are:

1. At the time of injury workman must have been engaged in the business of the employer and must not be doing something for his personal benefit;
2. That accident occurred at the place where he was performing his duties; and
3. Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature condition of employment.

### **Amount of compensation**

The amount of compensation payable will be as follows, namely :-

(a) where death results an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees, whichever is more;

(b) where permanent total disablement results from the injury an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of sixty thousand rupees, whichever is more; For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due. Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only;

(c) where permanent partial disablement results from the injury (i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the

case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

(d) Where temporary a half monthly payment of the sum disablement, whether equivalent to twenty-five per cent of total or partial, results monthly wages of the workman, to from the injury be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day - (i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more; or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter : Provided that - (a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.  
Explanation : Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of one thousand rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure

### **General principles of the Act**

- There must be a casual connection between the injury and the accident and the work done in the course of employment;
- The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury;
- It is not necessary that the workman must be actually working at the time of his death or that death must occur while he was working or had just ceased to work; and
- Where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury it would be enough for the workman to succeed. But where the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of the employment or where the accident was the result of an added peril to which the workman by his own conduct exposed himself, which peril was not involved in the normal performance of the duties of his employment, then the employer will not be liable.

### **Employer's fault is immaterial**

The compensation is payable even when there was no fault of employer. In *New India Assurance Co. Ltd. v. Pennamna Kuriern* - (1995) 84 Comp. Cas. 251 (Ker HC DB), claim of workmen for compensation under Motor Vehicle Act was rejected due to negligence of employee, but compensation was awarded under Workmen's Compensation Act on the principle of 'no fault'.

### **Compensation payable even if workman was careless**

Compensation is payable even if it is found that the employee did not take proper precautions. An employee is not entitled to get compensation only if (a) he was drunk or had taken drugs (b) he wilfully disobeyed orders in respect of safety (c) he wilfully removed safety guards of machines. However, compensation cannot be denied on the ground that workman was negligent or careless. – *Mar Themotheous v. Santosh Raj* 2001 LLR 164 (Ker HC DB).

### **Number of Workmen Employed Is Not Criteria**

In definition of 'workman' in schedule II, in most of the cases, number of workmen employed is not the criteria. In most of cases, employer will be liable even if just one workman is employed. The Act applies to a workshop even if it employs less than 20 workmen and is not a 'factory' under Factories Act. – *Sunil Industries v. Ram Chander* 2000 AIR SCW 4109 = 2001 LLR 64 = 2000(7) SCALE 415.

**Payment of compensation only through Commissioner** - A Commissioner for Workmen's Compensation is appointed by Government. The compensation must be paid only through the Commissioner in case of death or total disablement. Any lump sum payment to workman under the Act must be made only through Commissioner. Direct payment to workman or his dependents is not recognized at all as compensation.

### **4k. THE TRADE UNIONS ACT, 1926:**

The Trade Unions Act, 1926 provides for registration of trade unions with a view to render lawful organisation of labour to enable collective bargaining. It also confers on a registered trade union certain protection and privileges.

The Act extends to the whole of India and applies to all kinds of unions of workers and associations of employers, which aim at regularising labour management relations. A Trade Union is a combination whether temporary or permanent, formed for regulating the relations not only between workmen and employers but also between workmen and workmen or between employers and employers.

### **Registration**

Registration of a trade union is not compulsory but is desirable since a registered trade union enjoys certain rights and privileges under the Act. Minimum seven workers of an establishment (or seven employers) can form a trade union and apply to the Registrar for its registration.

- The application for registration should be in the prescribed form and accompanied by the prescribed fee, a copy of the rules of the union signed by at least 7 members, and a statement containing
  - (a) the names, addresses and occupations of the members making the application,
  - (b) the name of the trade union and the addresses of its head office, and
  - (c) the titles, names, ages, addresses and occupations of its office bearers.
- If the union has been in existence for more than a year, then a statement of its assets and liabilities in the prescribed form should be submitted along with the application.
- The registrar may call for further information for satisfying himself that the application is complete and is in accordance with the provisions, and that the proposed name does not resemble
- On being satisfied with all the requirements, the registrar shall register the trade union and issue a certificate of registration, which shall be conclusive evidence of its registration.

#### **Legal Status of a Registered Trade Union**

- A registered trade union is a body corporate with perpetual succession and a common seal.
- It can acquire, hold sell or transfer any movable or immovable property and can be a party to contracts.
- It can sue and be sued in its own name
- No civil suit or other legal proceeding can be initiated against a registered trade union in respect of any act done in furtherance of a trade dispute under certain conditions.
- No agreement between the members of a registered trade union shall be void or voidable merely on the ground that any of its objects is in restraint of trade.

#### **Appointment of Office Bearers**

At least 50% of the office bearers of a union should be actually engaged or employed in the industry with which the trade union is concerned, and the remaining 50% or less can be outsiders such as Lawyers, politicians, social workers etc.

To be appointed as an office bearer or executive of a registered trade union, a person must have

- a. attained the age of 18 years; and
- b. not been convicted of any offence involving moral turpitude and sentenced to imprisonment, or a period of at least 5 years has elapsed since his release.

### **Change of Name & Registered Office**

- A registered trade union may change its name with the consent of at least 2/3rds of the total numbers of its members.
- Notice of change of name in writing, signed by the secretary and 7 members of the union, should be sent to the registrar.
- the Registrar shall register the change in name if he is satisfied that the proposed name is not identical with the name of any other existing union and the requirements with respect to change of name have been complied with.
- The change of name shall not affect any rights and obligations of the trade union or render any legal proceeding by or against the trade union as defective.

### **Change of Registered Office**

Notice of change in registered office address should be given to the Registrar in writing within 14 days of such change.

### **Dissolution of a Trade Union**

A registered trade union can be dissolved in accordance with the rules of the union. A notice of dissolution signed by any seven members and the secretary of the union should be sent to the registrar within 14 days of the dissolution. On being satisfied the registrar shall register the notice and the union shall stand dissolved from the date. The funds of the union shall be divided by the