

### Employee

“Employee” means any person (other than an apprentice) employed on a salary or wages not exceeding Rs. 21,000/- per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied. [Section 2(13)]

Part time permanent employees working on fixed hours are employees (1971 (22) FLR 98).

### Employer

“Employer” includes:

- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as a manager of the factory under Clause (f) of Sub-section 7(1) of the Factories Act, 1948, the person so named; and
- (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent. [Section 2(14)]

### Establishment in Private Sector

It means any establishment other than an establishment in public sector. [Section 2(15)]

### Establishment in Public Sector

It means an establishment owned, controlled or managed by:

- (a) a Government company as defined in Section 617 of the Companies Act, 1956;
- (b) a corporation in which not less than forty percent of its capital is held (whether singly or taken together) by:
  - (i) the Government; or
  - (ii) the Reserve Bank of India; or
  - (iii) a corporation owned by the Government or the Reserve Bank of India. [Section 2(16)]

### Salary or Wage

The “salary or wage” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living) but does not include:

- (i) any other allowance which the employee is for the time being entitled to;
- (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
- (iii) any travelling concession;
- (iv) any bonus (including incentive, production and attendance bonus);
- (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

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- (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
- (vii) any commission payable to the employee. [Section 2(21)]

The Explanation appended to the Section states that where an employee is given in lieu of the whole or part of the salary or, wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.

The definition is wide enough to cover the payment of retaining allowance and also dearness allowance paid to the workmen. It is nothing but remuneration (Chalthan Vibhag Sahakari Khand Udyog v. Government Labour Officer AIR 1981 SC 905). Subsistence allowance given during suspension is not wages. However lay-off compensation is wages.

### **Establishment – Meaning of**

Section 3 of the Act provides that the word establishment shall include all its departments, undertakings and branches wherever it has so whether situated in the same place or in different places and the same shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:

Provided that where for any accounting year, a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch then such department, undertaking or branches shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department, or undertaking or branch was, immediately before the commencement of that accounting year treated as part of establishment for the purpose of computation of bonus.

### **CALCULATION OF AMOUNT PAYABLE AS BONUS**

The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees. First of all, Gross Profit is calculated as per First or Second Schedule. From this Gross Profit, the sums deductible under Section 6 are deducted. To this figure, we add the sum equal to the difference between the direct tax calculated on gross profit for the previous year and direct tax calculated on gross profit arrived at after deducting the bonus paid or payable to the employees. The figure so arrived will be the available surplus. Of this surplus, 67% in case of company (other than a banking company) and 60% in other cases, shall be the “allocable surplus” which is the amount available for payment of bonus to employees. The details of such calculations are given below.

#### **(i) Computation of gross profits**

As per Section 4, the gross profits derived by an employer from an establishment in respect of any accounting year shall:

- (a) in the case of banking company be calculated in the manner specified in the First Schedule.
- (b) in any other case, be calculated in the manner specified in the Second Schedule.

#### **(ii) Deductions from gross profits**

According to Section 6, the sums deductible from gross profits include

- (a) any amount by way of depreciation admissible in accordance with the provisions of Section 32(1) of the Income-tax Act, or in accordance with the provisions of the Agricultural Income-tax Law, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an

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award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation.

What is deductible under Section 6(a), is depreciation admissible in accordance with the provisions of Section 32(1) of the Income- tax Act and not depreciation allowed by the Income-tax Officer in making assessment on the employer.

- (b) any amount by way of development rebate, investment allowance, or development allowance which the employer is entitled to deduct from his income under the Income Tax Act.
- (c) subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during the year.
- (d) such further sums as are specified in respect of the employer in the Third Schedule.

**(iii) Calculation of direct tax payable by the employer**

Under Section 7, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:

- (a) in calculating such tax no account shall be taken of
  - (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
  - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of Section 32 of the Income-tax Act;
  - (iii) any exemption conferred on the employer under Section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of Section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;
- (b) where the employer is a religious or a charitable institution to which the provisions of Section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- (c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income.

**(iv) Computation of available surplus**

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in Section 6.

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of –

- (a) the gross profits for that accounting year after deducting therefrom the sums referred to in Section 6; and
- (b) an amount equal to the difference between
  - (i) the direct tax, calculated in accordance with the provisions of Section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

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- (ii) the direct tax calculated in accordance with the provisions of Section 7 in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year. (Section 5)

## ELIGIBILITY FOR BONUS AND ITS PAYMENT

### (i) Eligibility for bonus

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. (Section 8)

**An employee suspended but subsequently reinstated with full back wages can not be treated to be ineligible for bonus for the period of suspension. [*Project Manager, Ahmedabad Project, ONGC v. Sham Kumar Sahegal* (1995) 1 LLJ 863]**

### (ii) Disqualification for bonus

An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises or the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment. (Section 9)

This provision is based on the recommendations of the Bonus Commission which observed "after all bonus can only be shared by those workers who promote the stability and well-being of the industry and not by those who positively display disruptive tendencies. Bonus certainly carries with it obligation of good behaviour".

**If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place (*Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court*, (1996) 2 LLJ 606).**

### (iii) Payment of minimum bonus

Section 10 states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this Section shall have effect in relation to such employee as if for the words one hundred rupees the words sixty rupees were substituted.

Section 10 of the Act is not violative of Articles 19 and 301 of the Constitution. Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 (*State v. Sardar Singh Majithia* (1979) Lab. I.C.).

### (iv) Maximum bonus

(1) Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that Section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount

in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

(2) In computing the allocable surplus under this Section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that Section. (Section 11)

#### **(iv-A) Calculation of bonus with respect to certain employees**

Where the salary or wages of an employee exceeds seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wages were seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government. whichever is higher per mensem. (Section 12)

#### **(v) Proportionate reduction in bonus in certain cases**

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 had worked in that accounting year, shall be proportionately reduced. (Section 13)

#### **(vi) Computation of number of working days**

For the purposes of Section 13, 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 or under the Industrial Disputes Act, 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. (Section 14)

#### **(vii) Set on and set off of allocable surplus**

(1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule. (Section 15)

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilized for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

(3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.

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(4) Where in any accounting year any amount has been carried forward and set on or set off under this Section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Apart from the provisions contained in Section 15(1), there is no statutory obligation on an employer to set apart any part of the profits of the previous year for payment of bonus for subsequent years.

**(viii) Adjustment of customary or interim bonus**

Where in any accounting year (a) an employer has paid any puja bonus or other customary bonus to an employee; or (b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then, the employer shall be entitled to deduct at the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance. (Section 17)

**In *Hukam Chand Jute Mills Ltd. v. Second Industrial Tribunal, West Bengal*, AIR 1979 SC 876, the Supreme Court held that the claim for customary bonus is not affected by 1976 Amendment Act. In fact, it has left Section 17 intact which refers to puja bonus or other customary bonus. Section 31A (see later) speaks about productivity bonus but says nothing about other kinds of bonuses. The contention that all agreements inconsistent with the provisions of the Act become inoperative, has no substance vis-a-vis customary bonus. Conceptually statutory bonus and customary bonus operate in two fields and do not clash with each other.**

**(ix) Deductions of certain amounts from bonus**

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act, in respect of that accounting year only and the employee shall be entitled to receive the balance, if any. (Section 18)

**(x) Time limit for payment of bonus**

- (a) Where there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
- (b) In any other case, the bonus should be paid within a period of eight months from the close of the accounting year. However, the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fit, so, however, that the total period so extended shall not in any case exceed two years. (Section 19)

**(xi) Recovery of bonus from an employer**

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

If may be noted that every such application shall be made within one year from the date on which the money become due to the employee from the employer. Any such application may be entertained after the expiry of



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the said period of one year, if the appropriate Governments satisfied that the applicant had sufficient cause for not making the application within the said period.

*Explanation:* In this Section and in Sections 22, 23, 24 and 25, employee includes a person who is entitled to the payment of bonus under this Act but who is no longer in employment. (Section 21)

Mode of recovery prescribed in Section 21 would be available only if bonus sought to be recovered is under settlement or an award or an agreement. Bonus payable under Bonus Act is not covered by Section 21 (1976-I Labour Law Journal 511).

### **BONUS LINKED WITH PRODUCTION OR PRODUCTIVITY**

Section 31A enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act. However, bonus payments under Section 31A are also subject to the minimum (8.33 per cent) and maximum (20 per cent). In other words a minimum of 8.33 per cent is payable in any case and the maximum cannot exceed 20 per cent. (Section 31-A)

### **POWER OF EXEMPTION**

If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act. (Section 36)

Government should consider public interest, financial position and whether workers contributed to the loss, before grant of exemption (*J.K. Chemicals v. Maharashtra, 1996 III CLA Bom. 12*).

### **PENALTIES**

If any person contravenes any of the provisions of this Act or any rule made thereunder; he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Likewise if any person, to whom a direction is given or a requisition is made under this Act, fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 28)

### **OFFENCES BY COMPANIES**

If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Further, if an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be proceeded against and punished accordingly. (Section 29)

For the purpose of Section 29, 'company' means any body corporate and includes a firm or other association of individuals, and 'director', in relation to a firm, means a partner in the firm.

### **COMPLIANCES UNDER THE ACT**

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

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1. The total number of employees who are entitled to bonus in department/ undertaking (a) are ..... and (b) are .....
2. The total number of employees who are not entitled to bonus in view of their having worked for less than thirty days during the accounting year in case of department (a) are .... and (b) are .....
3. The Establishment did not pay bonus to .... employees in view of their dismissal from service for (a) fraud or (b) riotous behaviour on the premises of Establishment or (c) theft, misappropriation or sabotage of any property of the establishment.
4. The Establishment has made deductions from the amount of bonus payable under PBA in respect of ..... employees in view of their being found guilty of misconduct causing financial loss to the Establishment. The quantum of deduction was only to the extent of amount of loss suffered by the Establishment.
5. The Establishment has computed the gross profit and available surplus in accordance with the provisions of the Act read with the rules made thereunder.
6. In relation to the year ended 31<sup>st</sup> March 20...., the Establishment paid bonus in cash/cheque(s) or electronic clearance system (ECS) or other electronic mode to its employees at the rate of ..... which is not less than the minimum statutory requirement as specified under PBA on 15<sup>th</sup> January 20...., which is within eight months from the close of the accounting year.
7. During the accounting year, the Establishment opened a separate bank account for transfer of unpaid/unclaimed bonus in respect of employees who have either not been paid bonus for any reason or not collected their bonus for the accounting year ended on 31<sup>st</sup> March 20.... with ..... Bank (Branch) ..... The unpaid/unclaimed bonus has been deposited with the concerned welfare Board.
8. During the year, the Establishment transferred on ..... to Labour Welfare Fund a sum of Rs. .... being the unpaid/unclaimed bonus of ..... employees, whose entitlement under PBA remained unpaid/unclaimed since ..... being the last date on which the bonus was to be paid to those .... for the year ended 31<sup>st</sup> March 20....
9. In relation to the year ended 31<sup>st</sup> March 20...., the Establishment has filed Annual Return with the Inspector appointed under the Act on ....., which is within thirty days from the date of payment of bonus under Section 19 of the PBA.

### LESSON ROUND UP

- The Payment of Bonus Act provides for payment of bonus to persons employed in certain establishments on 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. The Act does not apply to certain classes of employees specified therein.
- The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees.
- Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.
- An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for fraud; or riotous or violent behaviour while on the premises of the establishment; or theft, misappropriation or sabotage of any property of the establishment.
- Every employer shall be bound to pay to every employee in respect of any accounting year a minimum



bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

- In case of newly set up establishments provisions have been made under Section 16 for the payment of bonus.
- If there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
- In any other case, the bonus should be paid within a period of eight months from the close of the accounting year.
- If any dispute arises between an employer and his employee with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or any corresponding law relating to investigation and settlement of industrial disputes in force in a State and provisions of that Act, shall, save as otherwise expressly provided, apply accordingly.
- The Act enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act.

### SELF TEST QUESTIONS

1. Describe the scope and object of the Payment of Bonus Act, 1965.
2. Write short notes on:
  - (a) accounting year;
  - (b) allocable surplus;
  - (c) employee and employer;
  - (d) salary and wages.
3. What is allocable surplus? How does it differ from available surplus?
4. Enumerate the categories of employees who are not covered under the Payment of Bonus Act.
5. What is the eligibility limit for payment of bonus? Who is disqualified from getting bonus under the Act?

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# Section IV

## Equal Remuneration Act, 1976

### LESSON OUTLINE

- Learning Objectives
- Object and scope of the Act
- Appropriate Government
- Remuneration same work or work of similar nature
- Act having overriding effect
- Duty of employer
- Non Discrimination while recruiting men and women
- Authorities for hearing and deciding claims and complaints
- Maintenance of Registers
- Penalty
- Lesson Round Up
- Self Test Questions

### LEARNING OBJECTIVES

In today's globalised liberalised scenario, women form an integral part of the Indian workforce. In such an environment, the quality of women's employment is very important and depends upon several factors. The foremost being equals access to education and other opportunities for skill development. This requires empowerment of women as well as creation of awareness among them about their legal rights and duties.

In order to ensure this, the Government of India has taken several steps for creating a congenial work environment for women workers. A number of protective provisions have been incorporated in the various Labour Laws. To give effect to the Constitutional provisions and also ensure the enforcement of ILO Convention the Equal Remuneration Act, 1976 enacted by the Parliament.

The implementation of the Equal Remuneration Act, 1976 is done at two levels. In Central Sphere the Act is being implemented by the Central Government and in State Sphere, the implementation rests with the State Governments.

Therefore, students should know the intricacies involved in the Equal Remuneration Act, 1976.

***Article 39 of Constitution of India envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, the Parliament enacted the Equal Remuneration Act, 1976.***

## OBJECT AND SCOPE

The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers for same work or work of similar nature without any discrimination and also prevents discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment. The provisions of the Act have been extended to all categories of employment. The Act extends to whole of India.

## Definitions

**“Appropriate Government”** means –

- (i) in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and
- (ii) in relation to any other employment, the State Government. {section 2(a)}

**“Man” and “Woman”** mean male and female human beings, respectively, of any age. {section 2(d)}

**“Remuneration”** means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled. {section 2(g)}

**“Same work or Work of a similar nature”** means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment. {section 2(h)}

## Act to have overriding effect

Section 3 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act, or in any instrument having effect under any law for the time being in force.

## Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature

Section 4 of the Act provides that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature and employer shall not reduce the rate of remuneration of any worker.

It may be noted that as per Section 2(g) “remuneration” means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled and Section 2(h) defines “same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of woman are not of practical importance in relation to the terms and conditions of employment :

### Discrimination not to be made while recruiting men and women

As per section 5 employer while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, shall not make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force .

However, above mentioned section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment

### Authorities for hearing and deciding claims and complaints

Section 7 of the Act empower the appropriate Government appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding complaints with regard to the contravention of any provision of the Act; claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature; and define the local limits within which each such authority shall exercise its jurisdiction.

### Maintenance of Registers

As per section 8 it is the duty of every employer, to maintain registers and other documents in relation to the workers employed by him in the prescribed manner.

### Penalty

If any employer:- (i) makes any recruitment in contravention of the provisions of this Act; or (ii) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or (iii) makes any discrimination between men and women workers in contravention of the provisions of this Act; or (iv) omits or fails to carry out any direction made by the appropriate Government, then he/ she shall be punishable with fine or with imprisonment or with both.

## LESSON ROUND UP

- Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.
- Same work or Work of a similar nature means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.
- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.
- The Act provides that no employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature and employer shall not reduce the rate of remuneration of any worker.



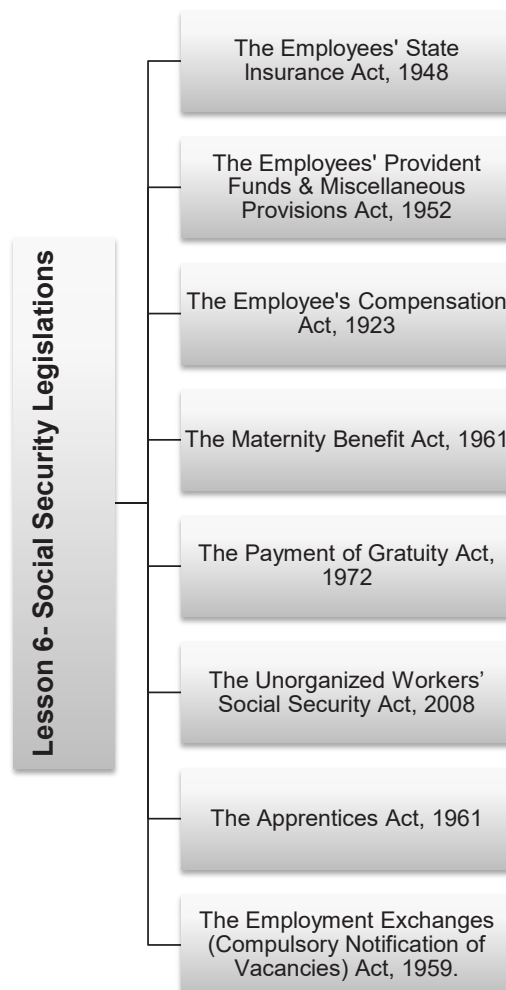


## Lesson 6

# Social Security Legislations

The social security legislations in India derives their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. These provide for mandatory social security benefits either solely at the cost of the employers or on the basis of joint contribution of the employers and the employees. While protective entitlements accrue to the employees, the responsibilities for compliance largely rest with the employers. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation enacted for the purpose of instituting provident funds, pension fund and deposit linked insurance fund for employees working in factories and other establishments. The Act aims at providing social security and timely monetary assistance to Industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and In some other contingencies. Presently, the following three Schemes are in operation under the Act through the Employees' Provident Fund Organisation (EPFO). They are Employees' Provident Funds Scheme, 1952; Employees' Deposit Linked Insurance Scheme, 1976 and Employees' Pension Scheme, 1995.

The principal social security laws enacted for the organised sector in India are:



# Section I

## Employees' Compensation Act, 1923

### LESSON OUTLINE

- Learning Objectives
- Object and Scope
- Disablement
- Employer's Liability for Compensation in cases of occupational disease
- Employer's Liability for Compensation In cases of personal injuries
- Employer's liability when Contractor is engaged
- Compensation
- Obligations and Responsibility of Employer
- Notice and Claim
- Medical Examination
- Procedure in the proceedings before the Commissioner
- Appeals
- Penalties
- Special provisions relating to Masters and Seamen
- Special provisions relating to captains and crew of aircrafts
- Special provisions relating to workmen abroad of companies and motor vehicles
- Compliances under the Act
- Schedules
- LESSON ROUND UP
- SELF TEST QUESTIONS

### LEARNING OBJECTIVES

The passing of the Workmen's Compensation Act renamed as Employees' Compensation Act, 1923 was the first step towards social security of workmen. It aims at providing financial protection to workmen and their dependants in case of accidental injury by means of payment of compensation by the employers.

The Employees' Compensation Act, 1923 provides for payment of compensation to the employees' and their dependents in the case of injury by industrial accidents including certain occupational diseases arising out of and in the course of employment resulting in death or disablement.

This Act applies to certain railway servants and persons employed in hazardous employments such as factories, mines, plantations mechanically propelled vehicles, construction work etc.,. The Workmen's Compensation Act, 1923 has been renamed as the Employees' Compensation Act, 1923. For the words "workman" and "employee" and "employees" have been substituted respectively for making the Act gender neutral. The amendment has been brought about by the Workmen's Compensation (Amendment) Act, 2009 came into force on January 18, 2010.

Therefore, it is essential for the students to be familiar with the general principles of employee's compensation stipulated under the Act.

***Employees' Compensation Act, 1923 provides for the payment by certain classes of employers to their employees of compensation for injury by accident.***

## OBJECT AND SCOPE

The Employees' Compensation Act is social security legislation. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions. The Act also seeks to help the dependents of the employee rendered destitute by the 'accidents' and from the hardship arising out from such accidents. The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law. The Act extends to the whole of India.

## DEFINITIONS

Some important definitions are given below:

### (i) Dependant

Section 2(1)(d) of the Act defines "dependant" as to mean any of the following relatives of a deceased employee, namely:

- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, or a widowed mother, and
- (ii) if wholly dependent on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; and
- (iii) if wholly or in part dependent on the earnings of the employee at the time of his death:
  - (a) a widower,
  - (b) a parent other than a widowed mother,
  - (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor, or if widowed and a minor,
  - (d) a minor brother or an unmarried sister, or a widowed sister if a minor,
  - (e) a widowed daughter-in-law,
  - (f) a minor child of a pre-deceased son,
  - (g) a minor child of a pre-deceased daughter where no parent of the child is alive or
  - (h) a paternal grandparent, if no parent of the employee is alive.

*Explanation* – For the purpose of sub-clause (ii) and items (f) and (g) of sub-clause (iii) references to a son, daughter or child include an adopted son, daughter or child respectively.

### (ii) Employee

The definition of workmen has been replaced by the definition of employee. The term "employee" has been inserted by the Workmen's Compensation (Amendment) Act, 2009 under a new clause (dd) in Section 2 of the Act. Clause (n) defining "workman" has been omitted.

Under Section 2(dd) "employee" has been defined as follows:

"Employee" means a person, 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

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- (ii) (a) a master, seaman or other members 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
- (iii) 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 any employee who has been "injured shall, where the employee is dead, include a reference to his dependants or any of them;

**(ii) Employer**

The following persons are included in the definition of "employer":

- (a) any body of persons incorporated or not;
- (b) any managing agent of the employer;
- (c) legal representative of a deceased employer. Thus, one who inherits the estate of the deceased, is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him;
- (d) any person to whom the services of an employee are temporarily lent or let on hire by a person with whom the employee has entered into a contract of service or apprenticeship. [Section 2(1)(e)]

A contractor falls within the above definition of the employer. Similarly, a General Manager of a Railway is an employer (*Bajjnath Singh v. O.T. Railway*, A.I.R. 1960 All 362).

**(iii) Seaman**

"Seaman" under Section 2(1)(k) means any person forming part of the crew of any ship but does not include the master of the ship.

**(iv) Wages**

According to Section 2(1)(m), the term "wages" include any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer to an employee towards any pension or provident fund or a sum paid to employee to cover any special expenses entailed on him by the nature of his employment.

Wages include dearness allowance, free accommodation, overtime pay, etc. (*Godawari Sugar Mills Ltd. v. Shakuntala; Chitru Tanti v. TISCO; and Badri Prasad v. Trijugi Sitaram*).

The driver of a bus died in an accident. On a claim for compensation made by widow it was held that line allowance and night out allowance came under the privilege or benefit which is capable of being estimated in money and can be taken into consideration in computing compensation as part of wages (*KSRTC Bangalore v. Smt. Sundari*, 1982 Lab. I.C. 230). The claim of bonus being a right of the workman is a benefit forming part of wages and the same can be included in wages (LLJ-II 536 Ker.).

## DISABLEMENT

The Act does not define the word Disablement. It only defines the partial and total disablement. After reading the partial or total disablement as defined under the Act one may presume that disablement is loss of earning capacity by an injury which depending upon the nature of injury and percentage of loss of earning capacity will be partial or total. The Act has classified disablement into two categories, viz. (i) Partial disablement, and (ii) Total disablement.

### (i) *Partial disablement*

Partial disablement can be classified as temporary partial disablement and permanent partial disablement.

- (a) *Where the disablement is of a temporary nature:* Such disablement as reduces the earning capacity of an employee in the employment in which he was engaged at the time of the accident resulting in the disablement; and
- (b) *Where the disablement is of a permanent nature:* Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time. [Section 2(1)(g)] But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

Schedule I contains list of injuries deemed to result in Permanent Total/Partial disablement.

In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the employee's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity in not only the employment in which he was engaged at the time of accident but in all other employments.

Whether the disablement is temporary or permanent and whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in Part II of Schedule I.

**In the case of *Sukhai v. Hukam Chand Jute Mills Ltd.*, A.I.R. 1957 Cal. 601, it was observed:**

**“If a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsaleable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it would otherwise fetch. The capacity of a workman may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost if such a result ensue by the reason of the results of an accident, although the accident has not really reduced the capacity of the workman to work. He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but had been turned away on account of the results of the accident visible on his person.”**

If after the accident a worker has become disabled, and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement (*General Manager, G.I.P. Rly. v. Shankar*, A.I.R. 1950 Nag. 307).

*Deemed to be permanent partial disablement:* Part II of Schedule I contains the list of injuries which shall be deemed to result in permanent partial disablement.

Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

Note to Schedule I – On the question whether eye is a member or limb as used in the note to Schedule I it was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary, it could

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be said that the words limb or member include any organ of a person and in any case it includes the eye (*Lipton (India) Ltd. v. Gokul Chandran Mandal*; 1981 Lab. I.C. 1300).

**(ii) Total disablement**

Total disablement can also be classified as temporary total disablement and permanent total disablement.

“Total disablement” means, such disablement whether of a temporary or permanent nature, which incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement. Provided further that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or similarly total disablement shall result from any combination of injuries specified in Part II of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said Part II against these injuries amount to one hundred per cent or more. [Section 2(1)(l)]

Some judicial interpretations on the subject are as follows:

**The expression incapacitates a workman for all work does not mean capacity to work or physical incapacity. If due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn he is entitled to compensation for total disablement (*Ball v. William Hunt & Sons Ltd.*, 1912 A.C. 496). It is immaterial that the workman is physically fit to perform some work. Thus, where a workman, though physically capable of doing the work cannot get employment in spite of his best efforts, he becomes incapacitated for all work and hence entitled to compensation for total disablement.**

**Loss of physical capacity is co-extensive with loss of earning capacity but loss of earning is not so co-extensive with loss of physical capacity as he may be getting the same wages even though there may be loss of physical capacity. In a case permanent partial disability caused to a workman in accident while working on ship, e.g. getting pain in his left hand and experiencing difficulty in lifting weights, it was held that workman can be said to have lost his earning capacity even though getting same amount of wages as before *Mangru Palji v. Robinsons*, 1978 Lab. I.C. 1567 (Bom.). Where it is not a scheduled injury the loss of earning capacity must be proved by evidence.**

Where the worker lost his vision of one eye permanently in an accident in course of his employment in colliery, the compensation should be assessed in accordance with item 26 Part II in Schedule I (*Katras Jherriah Coal Co. Ltd. v. Kamakhya Paul*, 1976 Lab.I.C.751).

In an injury the workman, had amputated his left arm from elbow, who was a carpenter. It was held by the Supreme Court in *Pratap Narain Singh Deo v. Srinivas Sabata*, 1976 I Lab.L.J.235, that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

**Where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st Schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be determined not on the basis of the work he was doing at the time of accident (*Divisional Manager KSRTC v. Bhimaiah*, 1977 II L.L.J. 521).**

## **EMPLOYER'S LIABILITY FOR COMPENSATION**

Section 3 of the Act provides for employers liability for compensation in case of occupational disease or personal injuries and prescribes the manner in which his liability can be ascertained.

**(a) In cases of occupational disease**



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- (i) Where an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein, as an occupational disease, peculiar to that employment, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment.
- (ii) Where the employee employed in any employment specified in Part B of Schedule III, for a continuous period of not less than six months under the same employer, and whilst in the service contracts any disease specified in the Part B of Schedule III, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment. The employer shall be liable even when the disease was contracted after the employee ceased to be in the service of the employer, if such disease arose out of the employment.
- (iii) If an employee whilst in service of one or more employers (not necessarily the same employer) in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify, contracts any disease, even after he ceased to be in the service of any employer and disease arose out of such employment, specified in the Schedule, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment.

However, where the employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may in circumstances deem just. [Section 3(2A)]

- (iv) If it is proved:
  - (a) that the employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and
  - (b) that the disease has arisen out of and in the course of the employment;the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section.
- (v) The Central Government or the State Government after giving, by notification in the Official Gazette, not less than three months notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of Sub-section (2) shall apply in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.
- (vi) Except as mentioned above no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

**(b) In case of personal injury**

As regards personal injury, the employer becomes liable if the injury is caused to an employee by accident arising out of and in the course of his employment.

**(i) Personal injury**

There must be personal injury caused to an employee.

Normally, Injury implies physical or bodily injury caused by an accident. However, such personal injury will also include nervous shock or break-down or mental strain. In the case of *Indian News Chronicle v. Mrs.*

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*Lazarus*, A.I.R. 1961, Punj. 102, an electrician who had to go frequently to a heating room from a cooling plant, contracted pneumonia which resulted in his death. It was held that the injury caused by an accident is not confined to physical injury and the injury in the instant case was due to his working and going from a heating room to a cooling plant as it was his indispensable duty.

**(ii) Accident**

The personal injury must be caused by an “accident”.

The term “accident” has not been defined in the Act but its meaning has been sufficiently explained in number of decided cases.

The expression accident must be construed to its popular sense. It has been defined as a mishap or an untoward event which is not expected or designed. What the Act intends to cover is what might be expressed as an accidental injury.

**In the case of *Smt. Sunderbai v. The General Manager, Ordinance Factory Khamaria, Jabalpur, 1976* Lac. I.C. 1163 (MP), the Madhya Pradesh High Court has clarified the difference between accident and injury. Accident means an untoward mishap which is not expected or designed by workman, ‘Injury’ means physiological injury. Accident and injury are distinct in cases where accident is an event happening externally to a man, e.g., where a workman falls from the ladder and suffers injuries. But accident may be an event happening internally to a man and in such cases accident and injury coincide. Such cases are illustrated by failure of heart and the like, while the workman is doing his normal work. Physiological injury suffered by a workman mainly due to the progress of disease unconnected with employment may amount to an injury arising out of and in the course of employment if the work, that the workman was doing at the time of the occurrence of the injury contributed to its occurrence. The connection between employment must be furnished by ordinary strain of ordinary work if the strain did in fact contribute to accelerate or hasten the injury. The burden of proof is on applicant to prove the connection of employment and injury.**

**(iii) Arising out of employment and in the course of employment**

To make the employer liable, it is necessary that the injury is caused by an accident which must be raised out of and in the course of employment.

**Arising out of employment**

The expression “arising out of employment” suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause. Thus, where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment (*Laxmibai Atma Ram v. Bombay Port Trust*, AIR 1954 Bom.180). Generally if an employee is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, employer is not liable. But if the employment is contributory cause or has accelerated the death that the death was due to disease coupled with the employment, then the employer would be liable as arising out of the employment.

**In the case of *Mackenzie v. I.M. Issak*, it was observed that the words arising out of employment means that injury has resulted from risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered. There must be a casual relationship between the accident and the employment.**

**If the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed unless of course the workman has exposed himself to do an added peril by his own imprudence.**

The Supreme Court in *Mackinnon Mackenzie and Co. (P.) Ltd. v. Ibrahim Mohammed Issak*, AIR 1970 S.C. 1906 approving the observation of Lord Sumner made in *Lancashire and Yorkshire Railway Co. v. Highley*, 1917 A.C. 352, observed that the test is: was it part of the injured persons employment to hazard, to suffer or to do that which caused his injury? If yes, the accident arose out of his employment, if not it did not.

#### **Arising in the course of employment**

The expression “in the course of employment” suggests the period of employment and the place of work. In other words, the workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

The expression “employment” is wider than the actual work or duty which the employee has to do. It is enough if at the time of the accident the employee was in actual employment although he may not be actually turning out the work. Even when the employee is resting, or having food, or taking his tea or coffee, proceeding from the place of employment to his residence, and accident occurs, the accident is regarded as arising out of and in the course of employment.

Employment – The word “employment” has a wider meaning than work. A man may be in course of his employment not only when he is actually engaged in doing something in the discharge of his duty but also when he is engaged in acts belonging to and arising out of it (*Union of India v. Mrs. Noorjahan*, 1979 Lab. I.C. 652).

For the expression “accident arising out of and in the course of employment” the basic and indispensable ingredient is unexpectedness. The second ingredient is that the injury must be traceable within reasonable limits, to a definite time, place or occasion or cause. The Act should be broadly and liberally constructed in order to effectuate the real intention and purpose of the Act.

#### **(iv) Theory of notional extension of employment**

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment. It means that the accident must take place at a time and place when he was doing his master's job.

It is well settled that the concept of “duty” is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment (*Weaver v. Tradegar Iron and Coal Co. Ltd.*, (1940) 3 All, ER 15).

It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment and his wife is entitled for compensation (*Naima Bibi v. Lodhne Colliery* (1920) Ltd., 1977 Lab. I.C. NOC 14). If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment (*TNCS Corporation v. Poonamalai*, 1994 II LLN 950).

#### **(v) When employer is not liable**

In the following cases, the employer shall not be liable:

- (i) When the injury does not result in disablement for a period exceeding 3 days.

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- (ii) When the injury not resulting in death or permanent total disability is due to any of the following reasons:
  - (a) the employee was at the time of accident, under the influence of drink or drugs, or
  - (b) the employee wilfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing safety of workers, or
  - (c) the employee, wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of the employee.

Thus, where a employee dies due to an accident arising out of and in the course of employment, it cannot be pleaded that death was due to any of the reasons stated from (a) to (c) (*R.B. Moondra & Co. v. Mst. Bhanwari*, AIR, 1970 Raj. 111).

**(c) Suit for damages in a Court barred**

Under Section 3(5), an employee is not entitled to any compensation under the Workmen's Compensation Act, 1923, if he has instituted, in a Civil Court, a suit for damages against the employer or any other person.

Similarly, an employee is prohibited from instituting a suit for damages in any court of law, (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or (b) if the employee and the employer have entered into an agreement for the payment of compensation in accordance with the provisions of this Act.

**EMPLOYER'S LIABILITY WHEN CONTRACTOR IS ENGAGED**

Section 12 of the Act envisages the employer's liability to pay compensation to a contractor.

(i) Sometimes, employer may engage a contractor instead of employing his own employee for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of the employee engaged by him. If any injury is caused by an accident to any of these employees, the employer cannot be held liable because they are not employed by him and hence are not his employees. But now Section 12(1) makes the employer liable for compensation to such employees hired by the contractor under following circumstances:

- (a) The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).
- (b) The employee were engaged in the course of or for the purpose of his trade or business.
- (c) The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.

The amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(ii) According to Section 12(2), where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered compensation and all questions as the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(iii) The above provision, however, does not prevent an employee from recovering compensation from the contractor instead of the employer, i.e., the Principal. [Section 12(3)]

(iv) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be to execute the work or which are otherwise under his control or management. [Section 12(4)]

**Following illustrative cases will further clarify the law laid down in Section 12:**

- (a) A Municipal Board entrusted the electrification work of the town to State employees. A employee received injuries while performing his work. *Held*, it is the State and not the Board, liable to pay compensation because execution of electrical project is not the ordinary business of the Municipal Board (A.I.R. 1960 All 408).
- (b) A contractor was entrusted with the repairs of a defective chimney. A employee engaged by him was injured while carrying out repairs. *Held*, mill was not liable for compensation as the repairing of chimney is not the part of companys trade or business, whether ordinarily or extraordinarily.
- (c) A cartman was engaged by a Rice Mill to carry rice bags from mill to railway station. The cartman met with an accident on a public road while returning back from railway station and this resulted in his death. There was no evidence to show that employee was engaged through a contractor. In a suit for compensation against the mill owner, it was observed that Section 12 is not applicable where the accident arise out of and in the course of employment. Even assuming that the deceased was in the employment of contractor engaged by the employer, the liability of the owner was clear from Section 12(1) and it had not been excluded by reason of Section 12(4).

## COMPENSATION

### **(i) Meaning of compensation**

“Compensation” has been defined under Section 2(1)(c) of the Act to mean compensation as provided for by this Act. The meaning of the term will be more clear in the following paragraphs.

### **(ii) Amount of compensation**

Amount of compensation is payable in the event of an employee meeting with an accident resulting into temporary or permanent disability or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with Schedule IV.

Schedule II contains a list of persons engaged in different employments/ operations specified therein who are covered by the definition of employee and entitled to compensation e.g. a person employed for loading/unloading of materials in a factory or ship, persons employed in work incidental or connected with manufacturing process. Schedule III contains a list of occupational diseases which if contracted while in employment entitles a employee to compensation such as disease caused by lead, mercury, etc. Schedule IV lays down the relevant factor (a certain figure) related to the age of the employee at the time of death, injury or accident by which wages are multiplied to arrive at compensation.

### **(iii) Compensation to be paid when due and penalty for default**

*Time of payment of compensation:* Section 4A of the Act provides that compensation under Section 4 shall be paid as soon as it falls due. Compensation becomes due on the date of death of employee and not when Commissioner decides it (*Smt. Jayamma v. Executive Engineer, P.W.D. Madhugiri Division*, 1982 Lab. I.C. No. 61).

The employer is required to deposit or to make provisional payment based on the extent of liability which he accepts with the Commissioner or hand over to the employee as the case may be even if the employer does not admit the liability for compensation to the extent claimed.

Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to the employee or his dependent as the case may be.

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**(iv) Method of calculating wages**

Monthly wages mean the amount of wages deemed to be payable for a months service and calculated as follows:

- (a) Where the employee has, during a continuous period of not less than 12 months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be 1/12th of the total wages which have fallen due for payment to him by the employer in the last 12 months of that period.
- (b) Where the whole of the continuous period of service was less than one month, the monthly wages of the employee shall be the average monthly amount which during the 12 months immediately preceding the accident was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality.
- (c) In other cases, including cases in which it is not possible to calculate the monthly wages under clause (b), the monthly wages shall be 30 times the total wages earned in respect of the last continuous period of service, immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period. (Section 5)

A period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days.

**(v) Review of half-monthly payment**

Section 6 of the Act provides that any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner may be reviewed by the Commissioner on the application either of the employer or of the employee accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the employee or subject to rules made under this Act, an application made without such certificate.

Any half monthly payment, may on review, under the above provisions be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the employee is entitled less any amount which he has already received by way of half-monthly payments.

**(vi) Commutation of half monthly payments**

Section 7 of the Act provides that any right to receive half-monthly payments may, by agreement between the parties or if the parties cannot agree and the payments have been continued for not less than 6 months on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner as the case may be.

**(vii) Distribution of compensation**

No compensation has to be paid in respect of an employee whose injury has resulted in death and no payment of lump sum compensation to a woman or a person under a legal disability except by deposit with the Commissioner. The employer cannot make payment of compensation directly to the deceased legal heirs. It is the Commissioner who decides on the distribution of compensation to the legal heirs of the deceased employee. (Section 8)

Right to claim compensation passes to heirs of dependant as there is no provision under the Act to this effect (*AIR 1937 Cal. 496*). Payment of *ex-gratia* or employment on compassionate grounds will not be employers' liability (*LAB IC 1998 JK 767*).

**(viii) Compensation not to be assigned etc.**

Save as provided by this Act, no lump sum or half-monthly payment payable under this Act can be assigned, or



charged or attached or passed to any person other than the employee by operation of law nor can any claim be set-off against the same. (Section 9)

**(ix) Compensation to be first charge**

The compensation money shall bear the first charge on the assets transferred by the employer. It says that where an employer transfers his assets before any amount due in respect of any compensation, the liability whereof accrued before the date of transfer has been paid, such amount shall, notwithstanding any thing contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property. (Section 14A)

**(x) Insolvency of employer and the compensation**

Following provisions under Section 14 of the Act have been made in this respect:

- (i) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any employee, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the employee, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the employee than they would have been under the employer.
- (ii) If the liability of the insurers to the employee is less than the liability of the employer to the employee, the employee may prove for the balance in the insolvency proceedings or liquidation.
- (iii) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the employee.

But the employee is required to give notice of accident and resulting disablement therefrom to the insurers as soon as possible after he becomes aware of the insolvency or liquidation proceedings otherwise the above provisions shall not be applied.

- (iv) There shall be deemed to be included among the debts which under Section 49 of the Presidency Towns Insolvency Act, 1909, or under Section 61 of the Provincial Insolvency Act, 1920 or under Section 530 of the Companies Act, 1956, are in the distribution of property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.
- (v) Where the compensation is half-monthly payment, the amount due in respect thereof shall, for the purposes of this Section, be taken to be the amount of the lump sum for which the half-monthly, payment could, if redeemable be redeemed if application were made for that purpose under Section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.
- (vi) The provisions of sub-section (iv) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (iii) but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as if referred to in sub-section (i).
- (vii) This Section shall not apply where a company is wound up voluntarily merely for purpose of reconstruction or of amalgamation with another company.

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**(xi) Contracting out of compensation**

Section 17 provides that any contract or agreement whereby an employee relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. (Section 17)

**Duty of employer to inform employee of his rights**

Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.

**OBLIGATIONS AND RESPONSIBILITY OF AN EMPLOYER**

**(i) Power of Commissioner to require from employers statements regarding fatal accidents**

(a) Where a Commissioner receives information from any source that an employee has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the employee's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form giving the circumstances attending the death of the employee, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(b) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(c) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(d) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependents of the deceased employee, that it is open to the dependents to prefer a claim for compensation and may give them such other further information as he may think fit. (Section 10A)

**(ii) To submit reports of fatal accidents and serious bodily injuries**

(i) Where by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring in his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury in the prescribed form (Form EE of the Workmen's Compensation Rules: Rule 17).

"Serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days. [Expl. to Section 10B(1)]

(ii) The State Government may, by notification in the Official Gazette, extend the provisions of sub-section (i) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

(iii) Nothing in this section shall apply to the factories to which the Employees' State Insurance Act, 1948, applies. (Section 10B)

**NOTICE AND CLAIM**

(a) No claim for compensation shall be entertained by a Commissioner unless the notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless

the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death. (Section 10)

Provided that:

- (i) where the accident is the contracting of a disease the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease;
- (ii) in case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer;
- (iii) if an employee who, having been employed in an employment for a continuous period specified under sub-section 3(2) in respect of that employment ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.
- (iv) The want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim:
  - (a) if the claim is preferred in respect of the death of an employee resulting from an accident which occurred in the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises, or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or
  - (b) if the employer or any one of several employers or any persons responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred.
- (v) The Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(b) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed.

(c) The State Government may require that any prescribed class of employers shall maintain at their premises at which employees are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting *bona fide* on his behalf.

(d) A notice under this section may be served by delivering it at, or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served or, where a notice-book is maintained, by entry in the notice-book.

The Commissioner can initiate *suo motu* proceedings and can waive the period of limitation under this Section (1997-II-LLJ 292 All.).

## MEDICAL EXAMINATION

According to Section 11 of the Act:

- (i) Where an employee has given notice of an accident, he shall, if the employer, before the expiry of 3

days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any employee who is in receipt of half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time as per the rules under the Act.

- (ii) If an employee refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal, or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.
- (iii) If an employee, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and officers himself for such examination.
- (iv) Where an employee, whose right to compensation has been suspended under sub-section (ii) or sub-section (iii), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased employee.
- (v) Where under sub-section (ii) or sub-section (iii) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (d) of sub-section (i) of Section 4, the waiting period shall be increased by the period during which the suspension continues.
- (vi) Where an injured employee has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the employee has not thereafter been regularly attended by a qualified medical practitioner or having been so attended had deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the employee had been regularly attended by a qualified medical practitioner, whose instructions he had followed, and compensation, if any, shall be payable accordingly.

The Allahabad High Court in *Burhwal Sugar Mills Ltd. v. Ramjan*, observed that Section 11 confers a right and not an obligation on employer to have workmen medically examined. If he does not do so it will not debar employer from challenging medical certificate produced by employee. The court held that where the award of compensation was passed on basis of medical certificate without examination of doctor on oath, the award was liable to be quashed since there was no evidence on oath on which compensation could be awarded.

## **PROCEDURE IN THE PROCEEDINGS BEFORE THE COMMISSIONER**

### ***(i) Appointment of Commissioners***

Section 20 as amended by the Workmen's Compensation (Amendment) Act, 2009 provides that the State Government may, by notification in the Official Gazette, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personal management, human resource development and industrial relations to be a Commissioner for Employee's Compensation for such area as may be specified in the notification. Where more than one Commissioner has been appointed for any area, the Government may by general or special order regulate the distribution of business between them.

Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code. Section 20(3) empowers the Commissioner to appoint or choose any person, possessing special knowledge of any matter relevant to the matter under inquiry, to assist him in holding the inquiry.

**(ii) Reference to Commissioner and his jurisdiction**

Section 19(1) lays down jurisdiction of a Commissioner to entertain a claim in respect of payment of compensation to an employee. The Commissioner is empowered in default of an agreement to settle any question which may arise in any proceeding under this Act as to the liability of any person to pay compensation, and in particular, the Commissioner has jurisdiction over following matters:

- (a) Liability of any person to pay compensation.
- (b) Whether a person injured is or is not an employee?
- (c) The nature and extent of disablement.
- (d) The amount or duration of compensation.

If an application is made under the Employee's Compensation Act to the Commissioner, he has, by virtue of Section 19(1) of the Act, jurisdiction to decide any question as to the liability of any person including an insurer to pay compensation. Section 19(2) further provides that the enforcement of that liability can only be made by him. The Commissioner's jurisdiction is wide enough to decide the tenability of the objections; the consequential direction of the Commissioner to the insurer to pay is also covered under Section 19(1). In any event in execution of the order against the insured, namely, the employer, the Commissioner can enforce his liability against the insurer under Section 31. In the light of Section 19 read along with Section 31, the order of the Commissioner can never be challenged as being without jurisdiction (*United India Fire & General Insurance Co. Ltd. v. Kamalalshi*, (1980) 2 LLJ 408).

**(iii) Jurisdiction of Civil Court barred**

No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act. [Section 19(2)] However, where the Commissioner has no jurisdiction to decide any matter and even fails to decide when raised, thereby leaving a party without any defence the Civil Court will have jurisdiction to entertain such suits (*Madina Saheb v. Province of Madras*, AIR1946 Mad. 113).

**(iv) Venue of proceedings and transfer**

Section 21 dealing with venue of proceedings and transfer of cases under the Act provides that:

(1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which:

- (a) the accident took place which resulted in the injury; or
- (b) the employee or in case of his death, the dependent claiming the compensation ordinarily resides; or
- (c) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India

any such matter may be done by or before a Commissioner for the area in which the owner of agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under Section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or money remaining with the latter and on receipt of such a request, he shall comply with the same.

(2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard.

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under Sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

The section deals with territorial jurisdiction of Commissioner under the Act. Further, for the first time the procedure for deciding case under the Act regarding accident having place outside India [second proviso to Sub-section (1) of Section 21] has been provided for. This is further clear from the fact that a Commissioner can transfer the matter to another Commissioner under Section 21(2) of the Act under specified circumstances.

#### **(v) Form of application**

All claims for compensation subject to the provision of the Act shall be made to the Commissioner. But such applications other than the applications made by dependant or dependants can only be submitted when the parties have failed to settle the matter by agreement.

An Application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed and shall contain, in addition to any particulars which may be prescribed, the following particulars namely:

- (a) a concise statement of the circumstances in which the application is made and the relief of order which the applicant claims;
- (b) in the case of a claim for compensation against an employer, date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;
- (c) the names and addresses of the parties; and
- (d) except in the case of an application by dependents for compensation, a concise statement of the matters on which agreement has and of those on which agreement has not been come to.



If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner. (Section 22)

However, any defect in the application, e.g., when it is not in the prescribed form cannot be fatal to the claim. Any such irregularity can be rectified with the permission of the Commissioner at any stage (*M.B. & G. Engineering Factory v. Bahadur Singh*, AIR 1955 All 182).

**(vi) Power of the Commissioner to require further deposit in case of fatal accident**

Where the Commissioner is of the opinion that any sum deposited by the employer as compensation payable on the death of an employee, is insufficient, he is empowered to call upon, by a notice in writing stating his reasons, the employer to show cause why he should not make a further deposit within a stipulated period. If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable and requiring him to deposit the deficiency. (Section 22A)

**(vii) Powers and procedure of Commissioners**

The Commissioner shall have for the following purposes, all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of:

- (a) taking evidence on oath;
- (b) enforcing the attendance of witnesses; and
- (c) compelling the production of documents and material objects.

Further, for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, he shall be deemed to be a Civil Court. (Section 23)

**(viii) Appearance of parties**

Any appearance, application or act required to be made or done by any person before or to a Commissioner other than an appearance of a party which is required for the purpose of his examination as a witness, may be made or done on behalf of such person, by a legal practitioner or by an official of an Insurance Company or registered Trade Union or by an Inspector appointed under Section 8(1) of the Factories Act, 1948, or under Section 5(1) of the Mines Act, 1952 or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the Commissioner by any other person so authorised. (Section 24)

**(ix) Method of recording evidence**

The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form a part of the record.

Provided that:

If the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same and such memorandum shall form a part of the record.

Further, the evidence of any medical witness shall be taken down as nearly as may be word for word. (Section 25)

In the case of *M.S.N. Co. Ltd. v. Mohd. Kunju*, AIR 1956 Trav. Co. 935, it was held that the Commissioner should not make a medical certificate the basis of his award unless he has examined the concerned medical officer.



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***Time Limit for disposal of cases relating to compensation***

A new Section 25A has been inserted by the Workmen's Compensation (Amendment) Act, 2009 providing for the time Limit for disposal of cases relating to compensation. As per Section 25A, the Commissioner shall dispose of the matter relating to compensation within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.

***(x) Costs***

All costs, incidental to any proceedings before a Commissioner, shall subject to rules made under this Act, be in the discretion of the Commissioner. (Section 26)

However, the Commissioner must use his discretion judiciously.

***(xi) Power to submit cases***

A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision. (Section 27)

***(xii) Registration of agreements***

Section 28 makes it obligatory for the employer to send a memorandum to the Commissioner where amount of any lump sum payable as compensation has been settled by agreement:

- (a) whether by way of redemption of a half-monthly payment or otherwise, or
- (b) where an compensation has been settled as being payable to a woman or a person under a legal disability.

The Commissioner shall record the memorandum in a register in the prescribed manner, after he has satisfied himself as to its genuineness provided that the Commissioner has given at least 7 days notice to the parties concerned before recording such memorandum. The Commissioner may at any time rectify the register.

The Commissioner may refuse to register the memorandum on the following grounds:

- (a) Inadequacy of the sum or amount settled; or
- (b) Agreement obtained by fraud or undue influence or other improper means.

The Commissioner may in such a situation make such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

An agreement which has been registered as aforesaid shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.

***(xiii) Effect of failure to register agreement***

Where a memorandum of any agreement, the registration of which is required by Section 28 is not sent to the Commissioner as required by that Section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of Section 4, shall not unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the employees by way of compensation whether under the agreement or otherwise. (Section 29)

**APPEALS**

An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

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- (aa) an order awarding interest or penalty under Section 4A;
- (b) an order refusing to allow redemption of a half-monthly payment;
- (c) an order providing for the distribution of compensation among the dependants of a deceased employee or disallowing any claim of a person alleging himself to be such dependant;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions. (Section 30)

Such appeal should be filed within 60 days of order. The section empowers appellate Court to infer with findings recorded by commissioner only in case of substantial error of law (*LLJ II 1998 Kar. 764*). The provisions of Section 5 of Limitation Act, 1963 shall be applicable to appeals under the Section.

No appeal shall lie unless the following requirements are fulfilled:

- (i) A substantial question of law is involved in the appeal.
- (ii) In case of order, other than order refusing to allow redemption of a half-monthly payment, unless the amount in dispute in the appeal is not less than ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify.
- (iii) The memorandum of appeal should be accompanied by a certificate by the Commissioner to the effect that the applicant has deposited with him the amount payable under the order appealed against. Deposit of compensation amount is alone contemplated: deposit of penalty or interest is not condition precedent for filing appeal (*LLJ I 1999 Kar. 60*).
- (iv) The appeal does not relate to any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

Jurisdiction conferred on High Court being special any further appeal against the judgement is barred. No. leave petition was therefore held maintainable (*LLJ I 1998 1122 Pat.*). Finding whether the claimant was a employee arrived by commissioner on material on record is a fact hence no further appeal is allowed (*LAB IC 1998 Ori. 3254*).

### **Recovery**

The Commissioner may recover, as an arrear of land revenue, any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of Section 5 of the Revenue Recovery Act, 1890. (Section 31)

## **PENALTIES**

Section 18A of the Act prescribes penalties for the contravention of the provisions of the Act which include fine up to Rs. 5,000. The following omissions attract this punishment under the Act:

- (a) Whosoever fails to maintain a notice book which he is required to maintain under Section 10(3); or
- (b) Whosoever fails to send to the Commissioner a statement of fatal accidents which he is required to send under Section 10A(1); or
- (c) Whosoever fails to send a report of fatal accidents and serious bodily injuries which he is required to send under Section 10B; or

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- (d) Whosoever fails to make a return of injuries and compensation which he is required to make under Section 16.

No prosecution under Section 18A shall be instituted except by or with the previous sanction of the Commissioner and no court shall take cognizance of any offence under this section unless complaint is made within 6 months of the date on which the alleged commission of offence comes to the knowledge of the Commissioner.

**SPECIAL PROVISIONS RELATING TO MASTERS AND SEAMEN**

According to Section 15, the Act shall apply in the case of employees who are masters of ships or seamen subject to the following modifications, namely:

- (a) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.
- (b) In the case of the death of a master or seaman, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost:

Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

- (c) Where an injured seaman or master is discharged or left behind in any part of India or in any other foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence:
  - (i) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
  - (ii) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and
  - (iii) if the deposition was made in the course of a criminal proceedings, on proof that the deposition was made in the presence of the person accused;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceedings was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

- (d) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping liable to defray the expenses of maintenance of the injured master or seaman.
- (e) No compensation shall be payable under this Act in respect of any injury in respect of which provisions are made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention (Navy, Army, Air Force and Mercantile Marine) Act, 1939, or under War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Central Government.

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- (f) Failure to give a notice to make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceedings under this Act in respect of any personal injury, if:
  - (i) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and
  - (ii) the State Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made makes provisions for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and
  - (iii) the proceedings under this Act are commenced within one month from the date on which the said certificate of the State Government was furnished to the person commencing the proceedings.

**SPECIAL PROVISIONS RELATING TO CAPTAINS AND OTHER MEMBERS OF CREW OF AIRCRAFTS**

These provisions have been stipulated under Section 15A of the Act. As per Section 15A, this Act shall apply in the case of employees who are captains or other members of the crew of aircrafts subject to the following modifications, namely:

- (1) The notice of the accident and the claim for compensation may, except where the person injured is the captain of the aircraft, be served on the captain of the aircraft as if he were the employer, but where the accident happened and the disablement commenced on board the aircraft it shall not be necessary for any member of the crew to give notice of the accident.
- (2) In the case of the death of the captain or other member of the crew, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the aircraft has been or is deemed to have been lost with all hands, within eighteen months of the date on which the aircraft was, or is deemed to have been so lost:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

- (3) Where an injured captain or other member of the crew of the aircraft is discharged or left behind in any part of India or in any other country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence:
  - (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
  - (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;
  - (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

## **SPECIAL PROVISIONS RELATING TO EMPLOYEES ABOARD OF COMPANIES AND MOTOR VEHICLES**

This Act according to Section 15B shall apply:

- (i) in the case of employee who are persons recruited by companies registered in India and working as such abroad, and
- (ii) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 (59 of 1988) as drivers, helpers, mechanics, cleaners or other employees:

(1) The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.

(2) In the case of death of the employee in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured employee is discharged or left behind in any part of India or in any other country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence:

- (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
- (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;
- (c) if the deposition was made in the course of a criminal proceeding, or proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

## **COMPLIANCES UNDER THE ACT**

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. There are ..... workers and contractors, employed by the establishment who are covered under the provisions of this Act.
2. The factory/establishment has submitted to the ESI Corporation returns in the prescribed form containing the particulars relating to the persons employed as per the provisions of the Act, regulation and rules made in this behalf.
3. The establishment has paid compensation to the employee for the personal injury caused to him by an

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accident arising out of and in the course of his employment as per the provisions contained in the Act during the financial year.

4. During the year under review, there was no dispute in respect of any bonafide claims of the employees.
5. During the year under review, every bonafide claim was duly settled by the establishment.
6. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act

**SCHEDULE I**

[See Section 2(1) and (4)]

**PART I**

**List of Injuries Deemed to Result in Permanent Total Disablement**

<b>Sl. No.</b>	<b>Description of injury</b>	<b>Percentage of loss of earning capacity</b>
(1)	(2)	(3)
1.	Loss of both hands or amputation at higher sites	100
2.	Loss of a hand and foot	100
3.	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye sight is essential	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100

**PART II**

**List of Injuries Deemed to Result in Permanent Partial Disablement**

*Amputation Cases – Upper limbs – Either arm*

1.	Amputation through shoulder joint	90
2.	Amputation below shoulder with stump less than 20.32 cms. from tip of acromion	80
3.	Amputation from 20.32 cms. from tip of acromion to less than 4" below tip of olecranon	70
4.	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43 cms. below tip of olecranon	60
5.	Loss of thumb	30
6.	Loss of thumb and its metacarpal bone	40
7.	Loss of four fingers of one hand	50
8.	Loss of three fingers of one hand	30

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9.	Loss of two fingers of one hand	20
10.	Loss of terminal phalanx of thumb	20
10A.	Guillotine amputation of tip of thumb without loss of bone	10

*Amputation Cases—Lower limbs*

11.	Amputation of both feet resulting in end-bearing	90
12.	Amputation through both feet proximal to the metatarso – phalangeal joint	80
13.	Loss of all toes of both feet through the metatarso – phalangeal joint	40
14.	Loss of all toes of both feet proximal to the proximal inter phalangeal joint	30
15.	Loss of all toes of both feet distal to the proximal inter – phalangeal joint	20
16.	Amputation at hip	90
17.	Amputation below hip with stump not exceeding 12.70 cms. in length measured from tip of great trochanter	80
18.	Amputation below hip with stump exceeding 12.70 cms. from tip of great trochanter but not beyond middle thigh in length measured	70
19.	Amputation below middle thigh to 8.89 cms. below knee	60
20.	Amputation below knee with stump exceeding 8.89 cms. but not exceeding 12.70 cms.	50
21.	Amputation below knee with stump exceeding 12.70 cms.	50
22.	Amputation of one foot resulting in end-bearing	50
23.	Amputation through one foot proximal to the metatarso-phalangeal joint	50
24.	Loss of all toes of one foot through the metatarso- phalangeal joint	20

*Other injuries*

25.	Loss of one eye, without complications, the other being normal	40
26.	Loss of vision of one eye without complications or disfigurement of eye-ball, the other being normal	30
26A.	Loss of partial vision of one eye	10

*Loss of – A. Fingers of right or left hand Index finger*

27.	Whole	14
28.	Two phalanges	11
29.	One phalanx	9
30.	Guillotine amputation of tip without loss of bone	5

*Middle finger*

31.	Whole	12
32.	Two phalanges	9
33.	One phalanx	7
34.	Guillotine amputation of tip without loss of bone	4



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*Ring or little finger*

35.	Whole	7
36.	Two phalanges	6
37.	One phalanx	5
38.	Guillotine amputation of tip without loss of bone	2

*B. Toes of right or left foot great toe*

39.	Through metatarso-phalangeal joint	14
40.	Part, with some loss of bone	3

*Any other toe*

41.	Through metatarso-phalangeal joint	3
42.	Part, with some loss of bone	1

*Two toes of one foot, excluding great toe*

43.	Through metatarso-phalangeal joint	5
44.	Part, with some loss of bone	2

*Three toes of one foot, excluding great toe*

45.	Through metatarso-phalangeal joint	6
46.	Part, with some loss of bone	6

*Four toes of one foot, excluding great toe*

47.	Through metatarso-phalangeal joint	9
48.	Part, with some loss of bone	3

*Note:* Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be equivalent to the loss of that limb or member.

### LESSON ROUND UP

- The Employee's Compensation Act, 1923 is one of the important social security legislations. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions.
- The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law.
- The Act provides for employers liability for compensation in case of occupational disease or personal injuries and prescribes the manner in which his liability can be ascertained.
- Amount of compensation is payable in the event of an employee meeting with an accident resulting into temporary or permanent disability or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with Schedule IV. Compensation shall be paid as soon as it falls due.
- Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The



## Section II

# Employees' State Insurance Act, 1948

### LESSON OUTLINE

- Learning Objectives
- Introduction
- Confinement
- Contribution
- Employment Injury
- Immediate Employer
- Registration of Factories and Establishments under this Act
- Employees' State Insurance
- Administration of Employees' State Insurance Scheme
- Employees' State Insurance Corporation
- Wings of the Corporation
- Employees State Insurance Fund
- Contributions
- Benefits
- Employees' Insurance Court (E.I. Court)
- Exemptions
- Compliances under the Act
- LESSON ROUND UP
- SELF TEST QUESTIONS

### LEARNING OBJECTIVES

Parliament has enacted a number of legislations in the area of social security for the workers. The Employees' State Insurance Act was promulgated by the Parliament of India in the year 1948. It was the first major legislation on Social Security in independent India to provide certain benefits to the employees in the organized sector in case of sickness, maternity and employment injury.

The Central Government established a Corporation to be known as the 'Employees' State Insurance Corporation is the premier social security organization in the country. It is the highest policy making and decision taking authority under the ESI Act and oversees the functioning of the ESI Scheme under the ESI Act.

For the administration of the of Employees' State Insurance scheme , the Employees' State Insurance Corporation Standing Committee and Medical Benefit Council have been constituted. Further, ESI Fund has been created which is held and administered by ESI Corporation through its executive committee called Standing Committee with the assistance, advice and expertise of Medical Council and Regional and Local Boards and Committees

It is important for the students to be thoroughly acclimatized with this branch of law to know its practical significance.

***The Employees' State Insurance Act, 1948 provides an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury resulting in loss of wages or earning capacity. The Act also guarantees reasonably good medical care to workers and their immediate dependants.***

## INTRODUCTION

The Employees' State Insurance Act, 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury and also makes provisions for certain other matters in relation thereto. The Act has been amended by the Employees' State Insurance (Amendment) Act, 2010 for enhancing the Social Security Coverage, streamlining the procedure for assessment of dues and for providing better services to the beneficiaries.

The Act extends to the whole of India. The Central Government is empowered to enforce the provisions of the Act by notification in the Official Gazette, to enforce different provisions of the Act on different dates and for different States or for different parts thereof [Section 1(3)]. The Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories [Section 1(4)]. According to the proviso to Section 1(4) of the Act, nothing contained in sub-section (4) of Section 1 shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act. Section 1(5) of the Act empowers the appropriate Government to extend any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise after giving one month's notice in the Official Gazette. However, this can be done by the appropriate Government, only in consultation with the Employees' State Insurance Corporation set up under the Act and, where the appropriate Government is a State Government, it can extend the provisions of the Act with the approval of the Central Government.

Under these enacting provisions, the Act has been extended by many State Governments to shops, hotels, restaurants, cinemas, including preview theatres, newspaper establishments, road transport undertakings, etc., employing 20 or more persons. It is not sufficient that 20 persons are employed in the shop. They should be employee as per Section 2(9) of the Act, getting the wages prescribed therein (*ESIC v. M.M. Suri & Associates Pvt. Ltd.*, 1999 LAB IC SC 956). According to the proviso to sub-section (5) of Section 1 where the provisions of the Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishment within that part, if the provisions have already been extended to similar establishment or class of establishments in another part of that State.

It may be noted that a factory or an establishment to which the Act applies shall continue to be governed by this Act even if the number of persons employed therein at any time falls below the limit specified by or under the Act or the manufacturing process therein ceases to be carried on with the aid of power. [Section 1(6)]

## IMPORTANT DEFINITIONS

### (i) Appropriate Government

"Appropriate Government" means in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oil-field; the Central Government, and in all other cases, the State Government. [Section 2(1)]

### (ii) Confinement

"Confinement" means labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of child whether alive or dead. [Section 2(3)]

### (iii) Contribution

"Contribution" means the sum of money payable to the Corporation by the principal employer in respect of an

**Lesson 6 – Section II** ■ Employees' State Insurance Act, 1948 **411**

employees and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act. [Section 2(4)]

**(iv) Dependent**

“Dependent” under Section 2(6A) of the Act (as amended by the Employees' State Insurance (Amendment) Act, 2010) means any of the following relatives of a deceased insured person namely:

- (i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years,, an unmarried legitimate or adopted daughter,
- (ia) a widowed mother,
- (ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;
- (iii) if wholly or in part dependent on the earnings of the insured person at the time his death:
  - (a) a parent other than a widowed mother,
  - (b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,
  - (c) a minor brother or an unmarried sister or a widowed sister if a minor,
  - (d) a widowed daughter-in-law,
  - (e) a minor child of a pre-deceased son,
  - (f) a minor child of a pre-deceased daughter where no parent of the child is alive or,
  - (g) a paternal grand parent if no parent of the insured person is alive.

**(v) Employment Injury**

It means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India. [Section 2(8)]

It is well settled that an employment injury need not necessarily be confined to any injury sustained by a person within the premises or the concern where a person works. Whether in a particular case the theory of notional extension of employment would take in the time and place of accident so as to bring it within an employment injury, will have to depend on the assessment of several factors. There should be a nexus between the circumstances of the accident and the employment. On facts no case could be an authority for another case, since there would necessarily be some differences between the two cases. Therefore, each case has to be decided on its own facts. It is sufficient if it is proved, that the injury to the employee was caused by an accident arising out of and in the course of employment no matter when and where it occurred. There is not even a geographical limitation.

**The accident may occur within or outside the territorial limits of India. However, there should be a nexus or casual connection between the accident and employment. The place or time of accident should not be totally unrelated to the employment (*Regional Director, E.S.I. Corpn. v. L. Ranga Rao*, 1982 I-L.L.J. 29). Where an employee who is on his way to factory meets with an accident, one K.M. from the place of employment, the Court held that the injury cannot be said to be caused by accident arising out of and in the course of his employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory (*Regional Director ESI v. Francis de Costa*, 1997 LLJ I 34 SC).**

In *E.S.I. Corpn. Indore v. Babulal*, 1982 Lab. I.C. 468, the M.P. High Court held that injury arose out of employment

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where a workman attending duty in spite of threats by persons giving call for strike and was assaulted by them while returning after his duty was over. A worker was injured while knocking the belt of the moving pulley, though the injury caused was to his negligence, yet such an injury amounts to an employment injury (*Jayanthilal Dhanji Co. v. E.S.I.C.*, AIR AP 210).

The word injury does not mean only visible injury in the form of some wound. Such a narrow interpretation would be inconsistent with the purposes of the Act which provides certain benefits in case of sickness, maternity and employment injury (*Shyam Devi v. E.S.I.C.*, AIR 1964 All. 42).

#### (vi) Employee

“Employee” according to Section 2(9) as amended by the Employees’ State Insurance (Amendment) Act, 2010 means any person employed for wages in connection with the work of a factory or establishment to which this Act applies and:

- (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of the factory or establishment, whether such work is done by employee in the factory or establishment; or elsewhere, or
- (ii) who is employed by or through a immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent, on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
- (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person, whose services are so lent or let on hire, has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof, or with the purchase of raw materials of, or the distribution or sale of the product of the factory or establishment; or any person engaged as an apprentice, not being an apprentice engaged under Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time, ; but does not include:

- (a) any member of the Indian Naval, Military or Air Forces; or
- (b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government.

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period shall continue to be an employee until the end of that period. The Central Government has since prescribed the wage limit for coverage of an employee under Section 2(9) of the Act as Rs. 21,000 per month. Further, it is provided that an employee whose wages (excluding remuneration for overtime work) exceed Rs. 21,000 a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the period.

**In the case of *Royal Talkies Hyderabad v. E.S.I.C.*, AIR 1978 SC 1476, there was a canteen and cycle stand run by private contractors in a theatre premises. On the question of whether the theatre owner will be liable as principal employer for the payment of E.S.I. contributions, the Supreme Court held that the two operations namely keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre and the workers engaged therein are covered by the definition of employee as given in E.S.I. Act. The Supreme Court observed that the reach and range of Section 2(9) is apparently wide and deliberately transcends pure contractual relationship.**

**Lesson 6 – Section II** ■ Employees' State Insurance Act, 1948 **413**

Section 2(9) contains two substantive parts. Unless the person employed qualifies under both, he is not an employee. First, he must be employed in or in connection with the work of an establishment. The expression in connection with the work of an establishment ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of establishment. Some nexus must exist between the establishment and the work of employee but it may be a loose connection. The test of payment of salary or wages is not a relevant consideration. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment.

The word employee would include not only persons employed in a factory but also persons connected with the work of the factory. It is not possible to accept the restricted interpretation of the words "employees in factories". The persons employed in zonal offices and branch offices of a factory and concerned with the administrative work or the work of canvassing sale would be covered by the provisions of the Act, even though the offices are located in different towns (*Hyderabad Asbestos Cement Products, etc. v. ESIC*, AIR 1978 S.C. 356). The Act is a beneficial piece of legislation to protect interest of the workers. The employer cannot be allowed to circumvent the Act in the disguise of ambiguous designations such as 'trainees, 'apprentices etc. who are paid regular wages, basic wages plus allowances. Such workers also fall under the Act (LLJ-II-1996 389 AP). Managing director could be an employee of the company. There could be dual capacity i.e. as managing director as well as a servant of the company (*ESIC v. Apex Engg. Pvt. Ltd.*, Scale (1997) 6 652).

**(vii) Exempted Employee**

"Exempted Employee" means an employee who is not liable under this Act to pay the employees contribution. [Section 2(10)]

**(viii) Principal Employer**

"Principal Employer" means the following:

- (i) in a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;
- (ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed the head of the Department.
- (iii) in any other establishment, any person responsible for the supervision and control of the establishment. [Section 2(17)]

**(ix) Family**

"Family" under Section 2(11) as amended by the Employees' State Insurance (Amendment) Act, 2010 means all or any of the following relatives of an insured person, namely:

- (i) a spouse;
- (ii) a minor legitimate or adopted child dependent upon the insured person;
- (iii) a child who is wholly dependent on the earnings of the insured person and who is:
  - (a) receiving education, till he or she attains the age of twenty-one years,
  - (b) an unmarried daughter;
- (iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues.



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- (v) dependent parents whose income from all sources does not exceed such income as may be prescribed by the Central Government.
- (vi) In case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person.

**(x) Factory**

The definition of the factory as amended by the Employees' State Insurance (Amendment) Act, 2010 is as follows:

"Factory" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

It may be noted that the terms manufacturing process, occupier and power, shall have the meaning assigned to them in the Factories Act, 1948. [Section 2(12)]

**(xi) Immediate Employer**

"Immediate Employer" means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on, in or incidental to the purpose of any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor. [Section 2(13A)] It would not be necessary that the work undertaken by immediate employer should be in the premises where the factory of principal employer is situated (1997-II LLJ 31 Pat.).

**(xii) Insurable Employment**

It means an employment in factory or establishment to which the Act applies. [Section 2(13A)]

**(xiii) Insured person**

It means a person who is or was an employee in respect of whom contributions are, or were payable under the Act and who is by reason thereof entitled to any of the benefits provided under the Act. [Section 2(14)]

**(xiv) Permanent Partial Disablement**

It means such disablement of a permanent nature, as reduced the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement:

Provided that every injury specified in Part II of the Second Schedule to the Act shall be deemed to result in permanent partial disablement. [Section 2(15A)]

**(xv) Permanent Total Disablement**

It means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part-I of the Second Schedule to the Act or from any combination of injuries specified in Part-II thereof, where the aggregate percentage of the loss of earning capacity, as specified in the said Part-II against those injuries, amounts to one hundred per cent or more. [Section 2(15B)]

### **(xvi) Seasonal Factory**

It means a factory which is exclusively engaged in one or more of the following manufacturing processes namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year:

- (a) in any process of blending, packing or repacking of tea or coffee; or
- (b) in such other manufacturing process as the Central Government may by notification in the Official Gazette, specify. [Section 2(19A)]

### **(xvii) Sickness**

It means a condition which requires medical treatment and attendance and necessitates, abstinence from work on medical grounds. [Section 2(20)]

### **(xviii) Temporary Disablement**

It means a condition resulting from an employment injury which requires medical treatment and renders an employee as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury. [Section 2(21)]

### **(xix) Wages**

"Wages" means all remuneration paid or payable in cash to an employee if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration if any, paid at intervals not exceeding two months but does not include:

- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment, or
- (d) any gratuity payable on discharge. [Section 2(22)]

Wages include other additional remuneration paid at intervals not exceeding two months wages. It is question of fact in each case whether sales commission and incentive are payable at intervals not exceeding two months (*Handloom House Ernakulam v. Reg. Director, ESIC*, 1999 CLA 34 SC 10). Travelling allowance paid to employees is to defray special expenses entitled on him by nature of his employment. It does not form part of wages as defined under Section 2(22) of the E.S.I. Act. Therefore, employer is not liable to pay contribution on travelling allowance. [*S. Ganesan v. The Regional Director, ESI Corporation, Madras*, 2004 Lab.I.C 1147]

## **REGISTRATION OF FACTORIES AND ESTABLISHMENTS UNDER THIS ACT**

Section 2A of the Act lays down that every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

## **EMPLOYEES' STATE INSURANCE**

Section 38 of the Act makes compulsory that subject to the provisions of the Act all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own

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contribution. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.

## **ADMINISTRATION OF EMPLOYEES' STATE INSURANCE SCHEME**

For the administration of the scheme of Employees' State Insurance in accordance with the provisions of this Act, the Employees' State Insurance Corporation Standing Committee and Medical Benefit Council have been constituted. Further, ESI Fund has been created which is held and administered by ESI Corporation through its executive committee called Standing Committee with the assistance, advice and expertise of Medical Council, etc. and Regional and Local Boards and Committees.

## **EMPLOYEES' STATE INSURANCE CORPORATION**

Section 3 of this Act provides for the establishment of Employees' State Insurance Corporation by the Central Government for administration of the Employees' State Insurance Scheme in accordance with the provisions of Act. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.

### **Constitution**

The Central Government appoints a chairman, a vice-chairman and other members representing interests of employers, employees, state governments/union territories and medical profession. Three members of the Parliament and the Director General of the Corporation are its ex-officio members. [Section 4]

### **Powers and duties of the Corporation**

Section 19 empowers the Corporation, to promote (in addition to the scheme of benefits specified in the Act), measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

Section 29 empowers the Corporation (a) to acquire and hold property both movable and immovable, sell or otherwise transfer the said property; (b) it can invest and reinvest any moneys which are not immediately required for expenses and or realise such investments; (c) it can raise loans and discharge such loans with the previous sanction of Central Government; (d) it may constitute for the benefit of its staff or any class of them such provident or other benefit fund as it may think fit. However, the powers under Section 29 can be exercised subject to such conditions as may be prescribed by the Central Government.

### **Appointment of Regional Boards etc.**

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations. (Section 25)

## **WINGS OF THE CORPORATION**

The Corporation to discharge its functions efficiently, has been provided with two wings:

### **Standing Committee**

The Act provides for the constitution of a Standing Committee under Section 8 from amongst its members.

### **Power of the Standing Committee**

The Standing Committee has to administer affairs of the Corporation and may exercise any of the powers