

6.2 Basic Provisions and Responsibility of this Act

The basic provisions of the Act are as follows:-

1. The person responsible for payment of wages shall fix the wage period upto which wage payment is to be made. No wage-period shall exceed one month.
2. All wages shall be paid in current legal tender, that is, in current coin or currency notes or both. However, the employer may, after obtaining written authorisation of workers, pay wages either by cheque or by crediting the wages in their bank accounts.
3. All payment of wages shall be made on a working day. In railways, factories or industrial establishments employing less than 1000 persons, wages must be paid before the expiry of the seventh day after the last date of the wage period. In all other cases, wages must be paid before the expiry of the tenth day after the last day of the wage period. However, the wages of a worker whose services have been terminated shall be paid on the next day after such termination.
4. Although the wages of an employed person shall be paid to him without deductions of any kind, the Act allows deductions from the wages of an employee on the account of the following:- (i) fines; (ii) absence from duty; (iii) damage to or loss of goods expressly entrusted to the employee; (iv) housing accommodation and amenities provided by the employer; (v) recovery of advances or adjustment of over-payments of wages; (vi) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof; (vii) subscriptions to and for repayment of advances from any provident fund; (viii) income-tax; (ix) payments to co-operative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office; (x) deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.



Example: One of the most famous payments of wages acts is the Payment of Wages Act of 1936 in India. The law was passed by the Bombay High Court while India was still under British colonial control. The Act notes that unfair treatment of workers is common and takes many forms. It specifically prohibits employers from making any unauthorized withholdings from workers' wages. The Payment of Wages Act of 1936 only applies to workers with incomes below a certain threshold. It also only applies to industrial and railroad workers, who were among the most imperiled groups in India in the 1930s.

6.2.1 Responsibility of this Act

Section 3 makes every employer responsible for the payment to persons employed by him of all wages required to be paid under the Act. Quite apart from this the following persons shall also be responsible for the payment of wages for persons employed otherwise by a contractor:

- In a factory, a person named as manager of a factory under the Factories Act, 1948.
- In industrial or other establishment a person responsible to the employer for the supervision and control of the industrial or other establishment.
- Upon railways (otherwise than in factories), if the employer is the railway administration and the person nominated in this behalf.

Notes

*Notes*

This section lays down that when a manager is appointed in a factory, industrial establishment or railway, he is responsible for payment of wages and section 19 enacts when the authority under section 15 is unable to recover from such a manager or person responsible under section 3 any amount directed to be paid, then such amount shall be recovered from the employer. Bombay High Court held that under section 15 proceedings are to be instituted against only one person whether he is a manager or the employer but not against both. If the owner of the factory appoints a manager he alone should be made party to an application under section 15 (3) for a claim for delayed wages. The liability of the owner arises only when it is subsequently found that the whole or part of the amount cannot be recovered from the manager. (A. I. R. 1940, Bom. 87). If the persons are employed by a contractor, the contractor is responsible for the payment of wages.

Self Assessment

Fill in the blanks:

3. All wages shall be paid in current legal tender, that is, in current or both.
4. All payment of wages shall be made on a

6.3 Application of the Act

The Payment of Wages Act, 1936 extends to the whole of India. It came into operation of 28th March, 1937. It applies in the first instance to the payment of wages to:

- persons employed in any factory;
- persons employed (otherwise than in factory) upon any railway by a railway administration, either directly or, through a subcontractor, by a person fulfilling a contract with railways administration; and
- persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of section 2.

The Act empowers the state government to extend the application of the whole or a part of the Act to any class of persons employed in the establishment or class of establishments specified by the Central/State Government under Section 2(h) (ii).



Did u know? Before doing so the State Government is required to:

- Issue three months notice of its intention to do so;
- Issue a notification of the extension in the Official Gazette. But in relation to establishment owned by the Central Government, no such notification shall be issued with the concurrence of that Government.



Task Find out the salary static and procedure and competent authority which deal with employment matters in the Payment Wages Act 1936.

6.4 Method for Computation and Fixing of Wages

There are two methods for Computation and Fixing of Wages:

6.4.1 Monthly Wages

For the purpose of calculating salary, a 'month' or 'complete month' refers to any one of the months in the calendar year.

An incomplete month of work is one where an employee:

- starts work after the first day of the month;
- leaves employment before the last day of the month;
- takes no-pay leave of one day or more during the month; or
- is on reservist training during the month.

Salary payable to a monthly-rated employee for an incomplete month of work is calculated using the formula below:

$$\text{Salary payable for incomplete month of work} = \frac{\text{Monthly gross rate of pay}}{\text{Total number of working days in that month}} \times \text{Total number of days the employee actually worked in that month}$$

Refers to the total amount of money including allowances payable to an employee for working for one month, excluding:

- (a) Additional payments by way of:
 - ❖ overtime payments;
 - ❖ bonus payments; or
 - ❖ annual Wage Supplements;
- (b) Any sum paid to the employee for reimbursement of special expenses incurred by him/her in the course of employment;
- (c) Productivity incentive payments; and
- (d) Travelling, food or housing allowances.

Excludes rest days, non-working days but includes public holidays. For employees, with a fixed rest day on Sunday and/or non-working day on Saturday, the total number of working days per month.

If the number of working hours in any working day is five hours or less, it shall be regarded as a half-day. If it is more than five hours, it shall be regarded as one working day.

6.4.2 Daily Basis

Daily basis of wages can be further categorized into Basic Rate of Pay and Gross Rate of Pay.

Basic Rate of Pay



Did u know? There are two ways to calculate daily wages: the basic rate of pay, and the gross rate of pay.

Basic rate of pay is used to calculate pay for work on a rest day or public holiday.

For a monthly-rated employee, the basic rate of pay for one day is calculated as follows:

$$\frac{12 \times \text{monthly basic rate of pay}}{52 \times \text{average number of days an employee is required to work in a week}}$$

For a piece-rated employee, the basic rate of pay for one day is calculated as follows:

Total pay earned (without allowance) during the 14 calendar days immediately before a rest day/public holiday/outpatient sick leave
Number of days worked during the same period of 14 calendar days

The basic rate of pay includes wage adjustments and increments that an employee is entitled to under his/her contract of service, but it excludes the following:

- (a) Additional payments by way of:
 - ❖ overtime payments;
 - ❖ bonus payments; or
 - ❖ annual Wage Supplements;
- (b) Any sum paid to the employee for reimbursement of special expenses incurred by him/her in the course of employment;
- (c) Productivity incentive payments; and
- (d) Any allowance however described.

Gross Rate of Pay

The gross rate of pay is used to calculate:

- (a) salary in lieu of notice of termination of service;
- (b) salary deduction for unauthorised absence from work;
- (c) paid public holidays; and
- (d) approved paid leave including:
 - ❖ annual leave;
 - ❖ hospitalisation leave; and
 - ❖ maternity leave.

For a monthly-rated employee, the gross rate of pay for one day is calculated as follows:

$$\frac{12 \times \text{monthly gross rate of pay}}{52 \times \text{average number of days an employee is required to work in a week}}$$

For a piece-rated employee, the gross rate of pay for one day is calculated as follows:

Total pay earned (with allowance) during the 14 calendar days immediately before a rest day/public holiday/outpatient sick leave
Number of days worked during the same period of 14 calendar days

Notes

The Gross rate of pay should include allowances that an employee is entitled to under his/her contract of service, but it excludes the following:

- (a) Additional payments by way of:
 - ❖ overtime payments;
 - ❖ bonus payments; or
 - ❖ annual Wage Supplements;
- (b) Any sum paid to the employee for reimbursement of special expenses incurred by him/her in the course of employment;
- (c) Productivity incentive payments; and
- (d) Travelling, food or housing allowances.

Self Assessment

Fill in the blanks:

- 5. The Payment of Wages Act, 1936 came into operation of
- 6. For the purpose of calculating salary, a refers to any one of the months in the calendar year.
- 7. If the number of working hours in any working day is hours or less, it shall be regarded as a half-day.
- 8. Daily basis of wages can be further categorized into and

6.5 Rules in Payment of Wages Act

Following are the rules applicable for in Payment of Wages Act area as follows:

6.5.1 Wage-periods (Sec. 4)

Every person responsible for the payment of wages must fix wage-periods in respect of which wages shall be payable, and see that no wage-period exceeds one month in any case. The penalty for contravention of this provision is fine extending to ₹ 200.

6.5.2 Time of Payment of Wages (Secs. 5, 6)

In regard to the time of payment of wages the following rules must be observed:

Section 5 of the Act lays down that the wages of every person employed upon or in:

- (a) Any railway, factory or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.
- (b) Any other railway, factory or industrial or other establishment, shall be paid before the expiry of the tenth day after the last day of the wage-period in respect of which the wages are payable.
- (c) In the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on the completion of a final tonnage amount of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the seventh day from the day of such completion.

- (d) Where the employment of any person is terminated by or on behalf of the employer the wages earned by him shall be paid before expiry of the second working day from the date on which his employment is terminated.

Notes



Notes

This section relates to time of payment of wages which are to be paid within seven days after the last day of the wage period except in establishments employing 1000 or more persons which are permitted to pay within ten days. All payments of wages are to be made on a working day. The penalty for a breach of the provisions of this section is provided under section 20(1) of the Act namely, a fine upto five hundred rupees.

6.5.3 Exemption from Compliance with the Time Limit for Payment of Wages

The Act empowers the state Govt. to exempt, the person responsible for the payment of wages to persons employed upon in railways (otherwise than in factory), or to persons employed as daily-rated workers in the control, public works Department or the state from the operation of this section. However, no such order shall be made without consultation of the central Government. In case of daily-rated workers.

Self Assessment

Fill in the blanks:

9. Every person responsible for the payment of wages must fix
10. The penalty for contravention of the provision is fine up to ₹
11. No wage-period exceeds one month in any case

6.6 Deduction from Wages

The following shall be deemed to be deduction from wages:

1. Every payment made by the employed person to the employer or his agent.
2. Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed, of any of the following penalties:
 - ❖ The withholding of increment or promotion (including the shortage of increment at an efficiency bar);
 - ❖ The reduction to a lower post or time scale or to a lower stage in a time scale; or
 - ❖ Suspension;

6.6.1 Deduction which may be made from Wages

Deduction authorized under the Act is enumerated in section 7(2). Any other deduction is unauthorized. Further, the authorized deduction can be made only in accordance with the provisions of the Act.

- (i) fines
- (ii) deduction for absence from duty;

- Notes**
- (iii) deduction for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account where such damage or loss is directly attributable to his neglect or default;
 - (iv) deduction for house accommodation supplied by the employer or by Govt. of any housing board set up under any law for the time being in force (whether the Govt. or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the State Govt. by notification in the Official Gazette.
 - (v) Deduction for such amenities and services supplied by the employer as the state Government or any officer specified by it in this behalf may, by general or special order, authorize;

6.6.2 Fines

The following rules apply to deductions by way of fines:

1. The fine shall be imposed on any employed person only for acts and omissions which has received approval of the State Government or of the prescribed authority, and has been specified by notice under Sub-section (2).
2. A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.
3. The fine shall not be imposed on any employed person unless he has been given an opportunity of showing cause against the fine.
4. The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three percent of the wages payable to him in respect of that wage-period.
5. No fine shall be imposed on any employed person who is under the age of fifteen years.
6. No fine shall be imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.
7. Every fine shall be deemed to have been imposed on the day of the Act or omission in respect of which it was imposed.
8. All fines and all realization thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under Section 3 in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.



Notes

Fines can be imposed on an employed person in respect of acts and omissions which are specified with the previous approval of the appropriate Government by notice exhibited in the factory. No fine can be imposed for an act or omission which is not contained in the notice and any such fine would be an unauthorised deduction. Secondly, before a fine can be imposed, an opportunity of showing cause against the fine should be given to the employed person and the procedure prescribed for the imposition of fine must be followed. Thirdly, the total amount of fine in one wage period must not exceed an amount equal to half anna in the rupee of wages payable to him in respect of the wage period. The fine imposed must be recovered in one lump sum. It cannot be recovered in instalments nor can it be recovered after sixty days from the day on which the act or omission in question was committed. All fines are to be applied only for such purposes beneficial to the staff as may be approved by the prescribed authority.

All the amounts realized in our organization are credited to a common fund maintained for the staff as a whole and are applied for common welfare of the employees as a whole increasing the Quality work life of the employees.



Example: When the persons employed upon of in any railway, factory or industrial establishment, are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are provided by the prescribed authority.

6.6.3 Deductions for Services Rendered

Deductions for house accommodation and for amenities and services rendered by the employer are permitted, but only when an employed person has accepted the house accommodation, amenity or service as a term of employment or otherwise, and shall not exceed an amount equivalent to their value. Furthermore, the deductions in respect of amenities and services can be made subject only to the following conditions:

- The approval of the Chief Inspector of Factories shall be obtained in writing to compulsory or general deductions from wages for any amenities or services provided by the employer.
- The kind and standard of services and amenities provided shall be subject to the approval of the Chief Inspector of Factories.
- The maximum deduction shall not exceed half the wages at any period. Penalty for the contravention of any provisions of this Section is up to ₹ 500.

The house accommodation, for which deductions are now allowed, may be supplied by the employer or by Government or by any housing board set up under law, e.g., under the Subsidised Industrial Housing Scheme (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation.

6.6.4 Deductions for Recovery of Advances (Sec. 12)

Deductions for recovery of advances or for adjustment of over-payments of wages can be made only on the following conditions:

1. An advance of money made before employment must be recovered from the first payment of wages, but advances given for travelling expenses can in no case be recovered.
2. Advances of wages not already earned are subject to rules made by State Governments, which are as follows:
 - ❖ an advance of wages not already earned shall not, without the previous permission of an Inspector, exceed an amount equivalent to the wages earned by the employed person during the preceding two (Bombay four) calendar months, or if he has not been employed for that period, twice the wages he is likely to earn during the two (Mumbai four) subsequent calendar months;
 - ❖ the advance may be recovered in installments by deductions from wages spread over not more than twelve (Bombay eighteen) months. No instalment shall exceed one-third, or where the wage of any wage-period are not more than twenty rupees, one fourth of the wages for the wage-period in respect of which the deduction is made;
 - ❖ the amounts of all advances sanctioned and the payment thereof shall be entered in a prescribed register;
 - ❖ (Bombay only) the rate of interest charged for advances granted shall not exceed 6 per cent per annum.

Penalty for contravention is fine up to ₹ 500.

6.6.5 Deductions for Absence from Duty

Deductions may be made under clause (b) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work. The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage period, during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by the Provincial Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.



Notes

Deductions for absence from duty. Deductions from wages on account of absence of an employed person should be proportionate to the period of absence from work. If a man is absent for one day out of 8, he can only lose 1/8 of his wages and the employer cannot make a greater deduction because of the inconvenience occasioned to him by such absence (*Arvind Mills Ltd. vs. K. R. Gadgil*, A.I.R. 1941, Bom. 26). Also as per sub-section (2) of this section, if the duration of his wage period is one month, the total number of working days being 25, and the employed person is absent from duty for four days, the maximum deduction allowed is 4/25th of the wages for the month. This is so because the amount of deduction is to be proportionate to the period for which a person is required to work which is 25 days in the present case. This section lays down the maximum amount of deduction. It may be less if the employer so wills.



Caution As an exception to what is said in the above paragraph, the employer is entitled to make deduction upto 8 days of wages where ten or more employed persons acting under concert absent themselves without due notice and without reasonable cause. It may be noted that the legislature has not used the word 'strike' though this proviso relates to strike so called. The reason seems to be that the word 'strike' is used in different senses and has no accepted connotation.

6.6.6 Deductions for Damage of Loss (Sec. 10)

A deduction for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money which he is required to account can be made where such loss is directly attributable to his neglect or default. A deduction for damage or loss shall not exceed the amount of damage or loss caused to the employer by his neglect or default. A deduction for damage or loss shall not be made until the employed person has been given an opportunity of showing cause against the deduction. All deductions and realisations in respect of damage or loss shall be recorded in a register to be kept by the person responsible for the payment of wages.



Case Study

The Divisional Engineer, G.I.P. Railway v. Mahadeo Raghoo and Another

In case of the Divisional Engineer, G.I.P. Railway v. Mahadeo Raghoo and Another, respondent was a gangman in the employ of the Central Railway Act that time his wages were ₹ 18 per month plus dearness allowance. With effect from the 1st November 1947 the Railway Board under Ministry of Railways of the Government of India introduced a scheme of grant of compensatory (city) allowance and house rent allowance at rates specified in their memorandum. This scheme was modified by the Railway Board's letter. As a result of this scheme certain railway employees stationed at specified headquarters were eligible for the allowance aforesaid at certain specified rates. The 1st respondent thus became entitled to the allowance of ₹ 10 per month. Therefore he was offered a rent allowance by the government which he refused. The question came up for consideration that whether deduction could be made regarding the house allowance.

The Court held that, Section 7 of the Act deals with such deductions as may be made from the wages as defined in the Act, of an employee. Sub-section (2) of section 7 categorically specifies the heads under which deductions may lawfully be made from wages. Clause (d) of this sub-section has reference to "deductions for house accommodation supplied by the employer", and section 11 provides that such a deduction shall not be made unless the house accommodation has been accepted by the employee and shall not exceed the amount equivalent to the value of such accommodation. The definition of "wages" in the Act also excludes from its operation the value of house accommodation referred to in sections 7 and 11 as aforesaid. The legislature has used the expression "value of any house accommodation" in the definition of "wages" as denoting something which can be deducted from "wages". The one excludes the other. It is thus clear that the definition of "wages" under the Act cannot include the value of any house accommodation supplied by the employer to the employee; otherwise it would not be a legally permissible deduction from wages. It is equally clear that house rent allowance which may in certain circumstances as aforesaid be included in "wages" is not the same thing as the value of any house accommodation referred to in the Act. That being so, there is no validity in the argument advanced on behalf of the 1st respondent that rule 3(i) aforesaid is inconsistent with the provisions of sections 7 and 11 of the Act. Therefore the appeal allowed.

Question

Critically analyse the above case.

Source: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1593043

Self Assessment

State whether the following statements are true or false:

12. The fine shall be imposed on any employed person only for acts and omissions which has received approval of the State Government.
13. No fine shall be imposed on any employed person who is under the age of eighteen years.
14. An advance of money made before employment must be recovered from the first payment of wages, but advances given for travelling expenses can in no case be recovered.
15. A deduction for damage or loss shall not be made until the employed person has been given an opportunity of showing cause against the deduction.

Notes

6.7 Summary

- The Act applies to the wages of persons employed in any factory or by a railway administration or by a contractor to a railway administration.
- The Act can be extended by the Provincial Government to any class of persons or establishments after giving three months' notice.
- For definition of 'factory' and 'railway administration, see notes under Section 2.
- The Act applies to all matters referred to therein except that it does not affect any special law or any specific form of procedure prescribed under any law for the time being in force.
- The employer and employee are always been in conflict for one or the other reasons.
- Wages are one of those issues. And deduction from wages has always been criticized by the employees.
- Though there are various provisions made under the Payment of Wages Act, 1936 where deduction can be made in certain circumstances.
- But such deduction must be permissible deduction so that the employers do not get resentful with such deduction.
- Therefore Section 7 to Section 12 specifically provides for the deduction that can be made from the wages of the employee.
- A deduction for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money which he is required to account can be made where such loss is directly attributable to his neglect or default.

6.8 Keywords

Allowance: An allowance is an amount of money set aside for a designated purpose.

Basic rate of pay: Basic rate of pay is used to calculate pay for work on a rest day or public holiday.

Bonus: The word Bonus refers to extra pay due to good performance.

Deduction: An expense subtracted from adjusted gross income when calculating taxable income, such as for state and local taxes paid, charitable gifts, and certain types of interest payments.

Factory: A building or buildings where goods are manufactured or assembled.

Fines: A fine is money paid usually to superior authority, usually governmental authority, as a punishment for a crime or other offence.

Remuneration: Remuneration is the total compensation that an employee receives in exchange for the services he/she performed for the employer.

Wages: Wages means all remuneration's expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

6.9 Review Questions

Notes

1. Define industrial establishment.
2. What are the basic provisions of the Payment of Wages Act, 1936?
3. Explain the various responsibility of Payment of Wages Act, 1936.
4. Explain two methods for computation and fixing of wages.
5. What are the rules in Payment of Wages Act?
6. Discuss about the exemption from compliance with the time limit for Payment of Wages.
7. What is Fine? Explain the rules apply to deductions by way of fines.
8. What are the deductions for recovery of advances?

Answers: Self Assessment

- | | |
|---------------------------|---|
| 1. False | 2. True |
| 3. Coin or currency notes | 4. Working day |
| 5. 28th March, 1937 | 6. month or complete month |
| 7. five | 8. Basic Rate of Pay, Gross Rate of Pay |
| 9. wage period | 10. 200 |
| 11. one moth | 12. True |
| 13. False | 14. True |
| 15. True | |

6.10 Further Readings



Books

Davis, Ja E (2012). *Labour Laws*. General Books.

Davidov, Guy & Langille, Brian (2011). *The Idea of Labour Law*. Oxford University Press.

Kumar, H.L. (2010). *Labour Laws*. Universal Law Publishing.

Rao, VSP (2008). *Industrial Relations & Labour Laws*. Excel Books.

Singh, B.D. (2009). *Labour Laws for Managers*. Excel Books India.



Online links

http://business.gov.in/legal_aspects/wages_1936.php

http://in.docsity.com/en-docs/Labour_Laws_-_Payment_of_Wages_Act_1936_-_Prof_R_N_Bhatt

Notes

http://www.delhi.gov.in/wps/wcm/connect/doiit_labour/Labour/Home/Acts+Implemented/Summary+of+the+Acts+Implemented/The+Payment+Of+Wages+Act,+1936

<http://www.ma-law.org.pk/pdflaw/PAYMENT%20OF%20WAGES%20ACT.pdf>

<http://www.management4all.org/2009/11/payment-of-wage-act-1936.html>

<http://www.mom.gov.sg/employment-practices/employment-rights-conditions/salary/Pages/calculation-salary.aspx#basic>

<http://www.scribd.com/doc/3044640/payment-of-wages-act-1936>

Unit 7: Definitions under Workmen's Compensation Act, 1923

Notes

CONTENTS

Objectives

Introduction

7.1 Genes of the Act

7.1.1 Object of the Act

7.1.2 Scope and Coverage

7.1.3 Calculation of Compensation

7.2 Definitions

7.2.1 Commissioner [Section 2 (1) (b)]

7.2.2 Workman

7.2.3 Disablement

7.3 Major Provisions of this Act

7.4 Distribution of Compensation

7.4.1 Authority

7.4.2 Contracting Out

7.4.3 Claims and Appeals

7.4.4 Administration

7.5 Summary

7.6 Keywords

7.7 Review Questions

7.8 Further Readings

Objectives

After studying this unit, you will be able to:

- Study the genes of the Act
- Discuss the various definitions in Workmen's Compensation Act, 1923
- Identify the major provisions of this Act
- Explain the distribution of compensation

Introduction

In the previous unit we dealt with the Payment of Wages Act, 1936 which is a central legislation which has been enacted to regulate the payment of wages to workers employed in certain specified industries. The unit also discussed about the basic Provisions, Responsibility, and Application of the Act and Identify the method for computation and fixing of wages. This unit will help you to understand the definitions under Workmen's Compensation Act, 1923. The various sections and sub-sections of this unit will also summarise the major provisions of this

Notes

Act and distribution of compensation. A beginning of social security in India was made with the passing of the Workmen's Compensation Act in 1923. Prior to 1923, it was almost impossible for an injured workman to recover damages or compensation for any injury sustained by him in the 'ordinary course of his employment. Of course, there were rare occasions when the employer was liable under the common law for his own personal negligence. The dependants of a deceased workman could, in rare cases, claim damages under the Fatal Accidents Act, 1855; if the accident was due to a wrongful act, neglect or fault of the person who caused the death. In 1921, the government formulated some proposals for the grant of compensation and circulated them for opinion. The proposals received general support. As a result, the Workmen's Compensation Act was passed in March 1923 and was put into force on July 1, 1924. Subsequently, there were a number of amendments to the Act. The Act contains 36 sections and four Schedules. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the Workmen's Compensation Act.

7.1 Genes of the Act

The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen and their dependants in case of injury and accident (including certain occupational disease) arising out of and in the course of employment and resulting in disablement or death. The Act applies to railway servants and persons employed in any such capacity as is specified in Schedule II of the Act. The schedule II includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations. The amount of compensation to be paid depends on the nature of the injury and the average monthly wages and age of workmen. The minimum and maximum rates of compensation payable for death (in such cases it is paid to the dependents of workmen) and for disability have been fixed and is subject to revision from time to time. A Social Security Division has been set up under the Ministry of Labour and Employment, which deals with framing of social security policy for the workers and implementation of the various social security schemes. It is also responsible for enforcing this Act.



Notes The Act is administered by the State Governments through Commissioners for Workmen's Compensation.

7.1.1 Object of the Act

The object of the Act is to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in the course of employment. The scheme of the Act is not to compensate the workman in lieu of wages, but to pay compensation for the injury sustained to him. The Workmen's Compensation Act, aims to:

- Provide workmen and/or their dependents some relief or to consider compensation payable by an employer to his workmen in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen as a measure of relief and social security.
- Provide for payment by certain classes of employers to their workmen compensation for injury by accident.
- To enable a workmen to get compensation irrespective of his negligence.
- It lays down the various amounts payable in case of an accident, depending upon the type and extent of injury. The employer now knows the amount of compensation he has to pay and is saved of many uncertainties to which he was subject before the Act came into force.

7.1.2 Scope and Coverage

The Act extends to the whole of India and applies to any person-who is employed, otherwise than in a clerical capacity, in the railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance and repairs of roads, bridges, etc., electricity generation, cinemas, catching or training of wild elephants, circus, and other hazardous occupations and employments specified in Schedule II to the Act.



Did u know? Under sub-section (3) of section 2 of the Act, the state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months notice in the Official Gazette.

The Act, however, does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employees' State Insurance Act, 1948 as disablement and dependants' benefit are available under this Act.

7.1.3 Calculation of Compensation

The amount of compensation payable by the employer shall be calculated as follows:

- (a) In case of death - 50% of the monthly wages X Relevant Factor or ₹ 50,000, whichever is more and ₹ 1000 for funeral expenses.
- (b) In case of total permanent disablement Specified under Schedule I - 60% of the monthly wages X Relevant Factor or ₹ 60,000, whichever is more.
- (c) In case of partial permanent disablement specified under Schedule I - Such percentage of the compensation payable in case (b) above as is the percentage of the loss in earning capacity (specified in Schedule I)
- (d) In case of partial permanent disablement not specified under Schedule I. Such percentage of the compensation payable in case (b) above, as is proportionate to the loss of earning Capacity (as assessed by a qualified medical practitioner).
- (e) In case of temporary disablement (whether total or partial). - A half-monthly instalment equal to 25% of the monthly wages, for the period of disablement or 5 years, whichever is shorter.



Caselet

Registration of Agreements and consequences of not doing so (Section 29)

The Law requires that the employer registers such agreements with the Commissioner. Failing which, the employer will be responsible to pay the full amount and not the reduced amount if any under the settlement/agreement. If the employer fails to register such a memorandum, the Commissioner may order the employer to pay the entire amount of compensation that the provisions of the Act provide for. In the agreement entered into the employer cannot pay less than the principle sum due as per the provisions of the Act. If s/he does the agreement will not be registered. A compromise can only be made in terms of the interest and penalty due from the employer.

In practice, in Karnataka several times the principle amount itself is not paid and as such agreements are not submitted for registration to the Commissioner, they do not also come up for scrutiny. The practice is common in the construction industry. In cases where the

Contd...

Notes

agreement is placed before the Commissioner in Bangalore, no compromise is allowed in the principal amount of compensation payable in fatal cases. However in non-fatal cases, compromise is often permitted to the extent of ₹ 23,000/-. The Commissioners may themselves 'appraise' the worker of the consequences of not compromising. I.e. the ensuing litigation, and the time and money that s/he will have to incur, which often influences the worker to accept the lesser amount. In cases of compensation payable to a women or person under a legal disability the Act requires that the sum be deposited with the Commissioner. Any direct payment made to such persons is considered to be no payment of compensation under law.

This provision for registration and depositing payment with the Commissioner is to safeguard the interests of the women and dependants from fraud or force. An unscrupulous employer may pay a lesser amount to the deceased's dependents. Similarly an unscrupulous dependent may collude with the employer to deny other dependents of their share. Therefore, in the case of payments to women and dependents of deceased, an employer can enter into agreement with them, however:

Such agreement should be registered, and

The money should not be given directly, but deposited with the Commissioner.

Source: <http://www.ngosindia.com/resources/wcact.pdf>

Self Assessment

Fill in the blanks:

1. The Workmen's Compensation Act was passed in March 1923 and was put into force on
2. The includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations.
3. The Act is administered by the through Commissioners for Workmen's Compensation.
4. The object of the Act is to impose an obligation upon to pay compensation to workers for accidents arising out of and in the course of employment.

7.2 Definitions

In this Act unless there is anything repugnant in the subject or context -

7.2.1 Commissioner [Section 2 (1) (b)]

Commissioner means a Commissioner for Workmen's Compensation appointed under Section 20. The Act provides for appointment of Officers to be known as Commissioners of Workmen's Compensation. The Commissioners are to determine the liability of any person to pay compensation (including the question whether a person is or is not a workman) and the amount or duration of compensation (including any question as to the nature or extent of disablement). No civil court has jurisdiction to deal with matters which are required to be dealt with by a Commissioner. Certain powers have been given to the Commissioners, e.g., the power to call for further deposits. The Commissioner has the powers of a Civil Court.

When compensation to be deposited with Commissioner?

Notes

The amount of compensation is not payable to the workman directly. It is generally deposited along with the prescribed statement, with the Commissioner who will then pay it to the workman. Any payment made to the workman or his dependents, directly, in the following cases will not be deemed to be a payment of compensation:

- (i) in case of death of the employee;
- (ii) in case of lump sum compensation payable to a woman or a minor or a person of unsound mind or whose entitlement to the compensation is in dispute or a person under a legal disability.

Besides, compensation of ₹ 10 or more may be deposited with the Commissioner on behalf of the person entitled thereto. The receipt of deposit with the Commissioner shall be a sufficient proof of discharge of the employer's liability.

7.2.2 Workman

The definition of the term "workman" is important because only a person coming within the definition is entitled to the reliefs provided by the Workmen's Compensation Act. "Workman" is defined in Section 2(n) read with Schedule II to the Act.

In Schedule IT, a list (consisting of 32 items) is given of persons who come within the category of workmen.



Example: Persons employed otherwise than in a clerical capacity or in a railway to operate or maintain a lift or a vehicle propelled by steam, electricity or any mechanical power; person employed otherwise than in a clerical capacity in premises where a manufacturing process is carried on; seamen in ships of a certain tonnage; persons employed in constructing or repairing building or electric fittings; persons employed in a circus or as a diver; etc.

Subject to the exceptions noted below, the term workman means:

- (a) a railway servant as defined in Section 3 of the Indian Railways Act of 1890 who is not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any capacity as is specified in schedule II or
 - ❖ A master seaman or other member of the crew of a ship.
 - ❖ A captain or other member of the crew of an aircraft.
 - ❖ A person recruited as driver, helper, mechanic, cleaner, or in any other capacity in connection with a motor vehicle.
 - ❖ 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;
- (b) employed on monthly wages not exceeding ₹ 1000 in any such capacity as is mentioned in Schedule II.

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

Notes

From 1st April 1976, the limit of monthly wages for purposes of this Act was raised from ₹ 500 to ₹ 1000. The words used in clause (b) mean that the wages must not exceed on average (now ₹ 1000) a month. The contract of employment may be expressed or implied, oral or in writing.

The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of the Act, unless a contrary intention appears be deemed to be the trade or business of such authority or department. The State Government has been given power to add to the list in Schedule II any hazardous occupation or specified injuries in such an occupation. The addition may be made by notification in the official Gazette, with not less than 3 months' notice.

There is legal decision regarding the question who is a workman. The general rule is that there must be the relationship of master and servant between the employer and the workman. Workman is a person whom the employer can command and control in the manner of performing the work *Yewen v. Noakes*. According to Wills, the following points are to be taken into consideration in determining the question whether a person is a workman:

- (a) the term of engagement
- (b) the payment of wages
- (c) the power of control over the work the power of dismiss

7.2.3 Disablement

Disablement means loss of capacity to work or to move. Disablement of a workman may result in loss or reduction of his earning capacity. In the latter case, he is not able to earn as much as he used to earn before his disablement. Disablement may be partial, or total. Further Partial disablement may be permanent, or temporary. Disablement, in ordinary language, means loss of capacity to work or move. Such incapacity may be partial or total and accordingly there are two types of disablement, partial and total. In the Act both types of disablement are further subdivided into two classes, temporary and permanent. By Section 2 (g) Temporary Partial Disablement means such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident, and Permanent Partial Disablement means such disablement as reduces his earning capacity in every employment he was capable of undertaking at that time. The Act is not limited only to physical.

1. **Partial Disablement [Section 2 (1) (g)]:** This means any disablement as reduces the earning capacity of a workman as a result of some accident. Partial disablement may be temporary or permanent.
 - ❖ Temporary partial disablement means any disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of accident which resulted in such disablement.
 - ❖ Permanent partial disablement is one which reduces the earning capacity of a workman in every employment which he was capable of undertaking at the time of injury.



Caution In a case of Partial Disablement it is necessary that (a) there should be an accident, (b) as a result of the accident the workman should suffer injury, (c) which should result in permanent disablement and (d) as a result whereof his earning capacity must have decreased permanently.

In the proportion in which his earning capacity has been decreased permanently he is entitled to compensation.

The medical evidence showing loss of physical capacity is a relevant factor but it is certainly not the decisive factor as to the loss of earning capacity. It is the loss of earning capacity that has to be determined. *Comms. for Port of Cal. v. A. K. Ghosh.*

The type of disablement suffered is to be determined from the facts of the case. But it is provided that every injury specified in Schedule I to the Act shall be deemed to result in permanent partial disablement. The schedule also mentions the percentage loss of earning capacity which is to be presumed in each such case.



Example: (From Schedule 1)

Description of Injury	Percentage loss of earning capacity
Loss of both hands	100
Severe facial disfigurement	100
Absolute deafness	100.
Loss of thumb	30
Loss of one eye	40
Middle finger of left hand (whole)	14

(There are 54 items listed in the Schedule with percentage loss of earning capacity for each item mentioned.)

2. **Total Disablement [Section 2 (1) (l)]:** It means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. It refers to that condition where a workman becomes unfit for every type of work and is not able to get job anywhere due to that disablement.

Total disablement is deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in Part II against those injuries, amounts to 100 per cent or more. Where an employee becomes unfit for a particular class of job but is fit for another class which is offered to him by the employer, the workman is entitled to claim compensation only on the basis of partial disablement and not total disablement



Task

Find out the compensation to be paid when due and penalty for default.

Self Assessment

Fill in the blanks:

5. means a Commissioner for Workmen's Compensation appointed under Section 20.
6. From 1st April 1976, the limit of monthly wages for purposes of this Act was raised from ₹ 500 to
7. The general rule is that there must be the relationship of between the employer and the workman.

Notes

8. of a workman may result in loss or reduction of his earning capacity.
9. means any disablement as reduces the earning capacity of a workman as a result of some accident.

7.3 Major Provisions of this Act

The main provisions of the Act are:-

1. **An employer is liable to pay compensation:** (i) if personal injury is caused to a workman by accident arising out of and in the course of his employment; (ii) if a workman employed in any employment contracts any disease, specified in the Act as an occupational disease peculiar to that employment.
2. However, the employer is not liable to pay compensation in the following cases:-
 - ❖ If the injury does not result in the total or partial disablement of the workman for a period exceeding three days.
 - ❖ If the injury, not resulting in death or permanent total disablement, is caused by an accident which is directly attributable to:- (i) the workman having been at the time of the accident under the influence of drink or drugs; or (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen; or (iii) the wilful removal or disregard by the workman of any safety guard or other device which has been provided for the purpose of securing safety of workmen.
3. The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification. Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.
4. Compensation shall be paid as soon as it falls due. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be.
5. If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.



Caution 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.

6. The State Government may, by notification in the Official Gazette, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the State Government may direct.
7. Whoever, fails to maintain a notice-book which he is required to maintain; or fails to send to the Commissioner a statement which he is required to send; or fails to send a report which he is required to send; or fails to make a return which he is required to make, shall be punishable with fine.

Self Assessment

Notes

State whether the following statements are true or false:

10. The employer is not liable to pay compensation if the injury does not result in the total or partial disablement of the workman for a period exceeding three days.
11. An employer is liable to pay compensation if the injury, not resulting in death or permanent total disablement.
12. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability.

7.4 Distribution of Compensation

The compensation shall be paid by the employer to a workman for any personal injury sustained by him in an accident arising out of and in the course of his employment. In Schedule I to the Act, the percentage loss of earning capacity or disablement caused by different types of injuries has been listed. However, the employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days, if the injury is caused when the workman was under the influence of drink or drugs or wilfully disobeyed a clear order or violated a rule expressly framed for the purpose of securing his safety or wilfully removed or disregarded a safety device. A workman is also not entitled to compensation if he does not present himself for medical examination when required, or if he fails to take proper medical treatment which aggravates the injury or disease. In case it is not fatal, an employment injury may cause any injury resulting in permanent total disablement, permanent partial disablement, or temporary disablement (Section 3).

The rate of compensation in case of death is an amount equal to 50 per cent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of ₹ 50,000, whichever is higher. Where permanent total disablement results from the injury, the compensation will be an amount equal to 60 per cent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of ₹ 60,000 whichever is higher.



Notes

Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the above purposes will be deemed to be two thousand rupees only.

Where permanent partial disablement results from the injury, if specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury. The percentage loss of earning capacity depends on the loss of limbs and varies from 1 per cent to 90 per cent. In the case of an injury not specified in Schedule I, such percentage of the compensation is payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury. Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but shall not in any case exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

In case of temporary disablement, a half-monthly payment of the sum equivalent to 25 per cent of monthly wages of the workman has to be paid. Half-monthly payment as compensation will be payable on the 16th day from the date of disablement. In cases where the disablement is for 28 days or more, compensation is payable from the date of disablement. In other cases, it is payable after the expiry of a waiting period of 3 days. Thereafter, the compensation will be payable

Notes

half-monthly during the period of disablement or during a period of 5 years, whichever is shorter. There is also a provision for commutation of half-monthly payments to a lump sum amount by agreement between the parties or by an application by either party to the Commissioner for Workmen's Compensation if the payments continue for not less than six months (Sections 4 and 7).

If the workman contracts any occupational disease peculiar to that employment, that would be deemed to be an injury by accident arising out of and in the course of his employment for purposes of this Act.



Did u know? In the case of occupational diseases, the compensation will be payable only if the workman has been in the service of the employer for more than six months.

Some of the occupational diseases listed in Schedule III to the Act are anthrax, poisoning by lead, phosphorous or mercury, telegraphist's cramp, silicosis, asbestosis, and bagassosis (Section 3).

7.4.1 Authority

It is provided that all cases of fatal accidents should be brought to the notice of the Commissioner for Workmen's Compensation; and if the employer admits the liability, the amount of compensation payable should be deposited with him. Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based on the extent of liability which he accepts; and such payment must be deposited with the Commissioner or paid to the workman. In such cases, the Commissioner may, after such enquiry as he thinks fit, inform the dependants that it is open to them to prefer a claim and may give such other information as he thinks fit. Advances by the employers against compensation are permitted only to the extent of an amount equal to 3 months' wages. He is also empowered to deduct an amount not exceeding ₹ 50 from the amount of compensation in order to indemnify the person who incurred funeral expenses. The employer is required to file annual returns giving details of the compensation in order to indemnify the person who incurred funeral expenses. The employer is required to file annual returns giving details of the compensation paid, the number of injuries and other particulars.

The amount deposited with the Commissioner for Workmen's Compensation is payable to the dependants of the workman. The amount of compensation is to be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit (Sections 2 and 8). If an employer is in default, in paying the compensation within one month from the date it fell due, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of six per cent per annum on the amount due. If, in the opinion of the Commissioner, there is no justification for the delay, an additional sum, not exceeding 50 per cent of such amount, may be recovered from the employer by way of penalty (Section 4A).



Task

Find out the power to require from employers statements regarding fatal accidents.

7.4.2 Contracting Out

A contract or agreement, whereby the workman relinquishes his right to compensation from the employer for the personal injury arising out of and in the course of employment, is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for,

the payment of compensation. The compensation payable to the workman or to his dependants cannot be assigned, attached or charged (Sections 9 and 17).

Notes

7.4.3 Claims and Appeals

In case the compensation is not paid by the employer, the workman concerned or his dependants may claim the same by filing an application before the Commissioner for Workmen's Compensation. The claim shall be filed within a period of two years of the occurrence of the accident or death. The application which is filed after the period of limitation can be entertained if sufficient cause exists. An appeal will lie to the High Court against certain orders of the Commissioner if a substantial question of law is involved. An appeal by an employer against an award of compensation is incompetent unless the memorandum of appeal is accompanied by a certificate that the employer has deposited the amount of such compensation. Unless such a certificate accompanies the memorandum of appeal, the appeal cannot be regarded as having been validly instituted.



Notes

The period of limitation for an appeal under Section 30 is sixty days (Sections 10 and 30).

7.4.4 Administration

The Act is administered by state governments which are required to appoint Commissioners for Workmen's Compensation. The functions of the Commissioner include:

- (i) Settlement of disputed claims;
- (ii) Disposal of cases of injuries involving death; and
- (iii) Revision of periodical payments (Section 20).

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 (Section 31):

The Act made provision for the framing of the rules by the State and Central Government and also their publication (Sections 32-36).

Self Assessment

State whether the following statements are true or false:

13. The compensation payable to the workman or to his dependants cannot be assigned, attached or charged.
14. In case the compensation is not paid by the employer, the workman concerned or his dependants may claim the same by filing an application before the Commissioner for Workmen's Compensation.
15. The percentage loss of earning capacity depends on the loss of limbs and varies from 1 per cent to 50 per cent.

Notes



Case Study

Supreme Court of India Judgment in Eshwarappa @ Maheshwarappa and Anr. vs. C. S. Gurushanthappa and Anr.

A certain Basavaraj was the driver of a privately owned car. In the night of October 28, 1992 he took out the car for a joyride and along with five persons, who were his neighbours, proceeded for the nearby *Anjaneya* temple for offering *pooja*. On way to the temple the car met with a fatal accident in which Basavaraj and four other occupants of the car died; the fifth passenger sustained injuries but escaped death. One of the persons dying in that motor accident was Nagaraj, whose parents are the appellants before this Court.

The heirs and legal representatives of the deceased driver, Basavaraj filed a claim for compensation under the Workmen's Compensation Act, 1923. They got nothing. The Commissioner under the Workmen's Compensation Act found and held that the accident did not take place in course of employment and rejected the claim for compensation.

The heirs of the four occupants of the car, dying in the accident (including the present appellants) and the fifth passenger suffering injuries in the accident sought compensation before the Motor Accidents Claims Tribunal. Their claims proved to be equally barren. The appellants took the matter in appeal before the High Court where they were equally unsuccessful. They are now in appeal before this Court by special leave.

The counsel appearing on behalf of the appellants raised a very limited issue. He submitted that in any event the appellants were entitled to the 'no fault compensation' as provided under section 140 of the Motor Vehicles Act, 1988 but they were denied even that by the Tribunal for reasons that are totally unsustainable in law.

We are, therefore, required to see how and why the appellants were denied compensation under section 140 of the Act and how far the denial was justified. The appellants filed a claim petition (MVC 1404/92) before the District Judge and MACT, Chitrandurga under section 166 of the Motor Vehicles Act seeking compensation for the death of Nagaraj. The appellants' petition, along with four other claim petitions (filed by the heirs of the other three occupants dying in that car accident and the fifth occupant who suffered injuries in that accident), was disposed of by the Tribunal by a common order dated May 9, 1996. From the order of the Tribunal, it appears that in four of the five cases before it, including MVC 1404/92, IAs were filed seeking interim compensation of rupees twenty five thousand (₹ 25,000.00) only (as the law stood at that time) in terms of section 140 of the Act. For some reason, however, no order was passed on the IAs and the Tribunal proceeded to examine the claimants' claim on merits under section 166 of the Act.

The Tribunal, in its order summarized the cases of each of the five claimants separately, noting the facts peculiar to the four deceased and the fifth injured occupant of the ill fated car. It also framed the issues arising in each case separately. In regard to Nagaraj, the son of the appellants, it noted that at the time of his death he was eighteen years old. According to the appellants, he worked at a sweetmeat stall and earned rupees eight hundred (₹ 800.00) only per month. He was going to Anjaneya temple in the car being driven by Basavaraj and in the accident he died on the spot. The appellants claimed compensation of rupees one lakh (₹ 1,00,000.00) only.

The first two issues in the case of Nagaraj, as in all the other cases, were answered by the Tribunal in the affirmative. On issue no.3 appellant no.1, the father of the deceased Nagaraj stated on oath that his son was aged eighteen years and used to work in the hotel of one

Contd...

Siddappa who paid him rupees thirty (₹ 30.00) only per day, but the Tribunal disbelieved him and rejected his testimony. On the basis of the post mortem report, the Tribunal held that Nagaraj, at the time of his death, was aged about fifteen years. It further held that there was no evidence to show that at the time of his death Nagaraj earned anything, pointing out that in paragraph 22 of the claim petition nothing material was mentioned about the loss of earning due to his death. Then, rather gratuitously it fixed the amount of compensation at rupees thirty thousand plus two thousand (₹ 30,000.00 + ₹ 2,000.00) observing as follows:

“Hence the maximum compensation that can be granted to the petitioner herein would be only about ₹ 30,000-00 as being just and reasonable and a sum of ₹ 2,000-00 toward funeral and obsequious expenses etc. and therefore the petitioners are granted sum total compensation amount of ₹ 32,000-00.”

Having, thus, put the worth of the life of Nagaraj at rupees thirty thousand (₹ 30,000.00) only the Tribunal proceeded to consider whether the appellants were entitled to receive even this amount from the owner of the car or the insurance company (second part of issue no. 3 and issue no. 4). It held that neither the owner of the car nor the insurance company was liable to pay anything to any of the claimants, including the appellants, because Basavaraj had taken out the car of his employer unauthorisedly and against his express instructions and had caused the accident by driving the car very rashly after consuming liquor. At the time of accident the car had been taken completely away from the control of its owner. In a sense it was stolen by the driver, even though temporarily. The accident was, thus, completely outside the insurance policy. No compensation was, therefore, payable to any of the claimants under section 166 of the Motor Vehicles Act.

Up to this stage no exception can be taken to the view taken by the Tribunal. But surprisingly the Tribunal also rejected the express prayer made on behalf of the appellants and other claimants to at least grant the ‘no fault compensation’ as provided under section 140 of the Act. The Tribunal discussed the issue over six pages in its judgment before turning down the claim. It seems to have taken the view, that had the claim for ‘no fault compensation’ been made at the beginning of the proceeding, it might have considered it favourably. But the claim was pressed at a belated stage when it was considering the claim for compensation under section 166 of the Act and more importantly had found that the owner of the car had no responsibility for the accident. In this connection, the Tribunal observed as follows:

“However, in these cases as already referred to above, if at the initial stage itself if the learned counsel Sri. M. Gnana Swamy had pressed the Tribunal to pass interim award on I.A.I in all the four cases, then the I.A.I filed in all four cases would have been definitely allowed and this Tribunal would have directed both the respondents 1 & 2 and more particularly respondent No.2 to deposit the interim compensation amount leaving open the liability aspect at the fag end of these cases i.e., at the arguments stage. Now that stage is already over and as such now this Tribunal has to consider equally as to whether at this stage as per the principle of no fault liability under s.140 of the Motor Vehicles Act, 1988, these petitioners are entitled for the interim in compensation amount.”

“Now as regards the no fault liability as already referred to above, perhaps the petitioners would have been granted the interim compensation amount at the initial stage, but now it cannot be done, since the merits of the cases are being dealt with after hearing the arguments at the final stage and the main cases are being disposed of on merits as such.”

“Hence in view of my finding that the car was being used totally outside the course of the employment of the driver of the car and totally without the knowledge and consent of the 1st respondent, I hold that even as regards this no fault liability claim also, the 1st respondent or for the matter 2nd respondent amount to any of the petitioner’s hearing. Hence this being the position, I am constrained to observe and hold that although as per the available evidence on record the petitioners are entitled for compensation amount as

Contd...

Notes

granted to them, in view of my earlier finding on issue No.3 in all the petitions, but all the same these petitions have got to be dismissed on account of the fact that neither the first respondent nor the second respondent is liable to pay compensation amount to any other petitioners herein.”

The appellants took the matter in appeal but the High Court in its brief order did not at all advert to this aspect of the matter.

Coming back to the order passed by the Tribunal, we are completely unable to appreciate the reasons assigned for denying the appellants the ‘no fault compensation’ as provided under section 140 of the Act. The Tribunal was gravely in error in taking the view that a claim for compensation under section 140 of the Act can succeed only in case it is raised at the initial stage of the proceedings and further that the claim must fail if the accident had taken place by using the car without the consent or knowledge of its owner. Section 140 is the first section of chapter X of the Act. It is a small chapter consisting of only five sections (from 140 to 144) and has the marginal heading “Liability without Fault in Certain Cases”. Section 140 reads as under:

In light of the discussions made above, we are unhesitatingly of the view, that the Tribunal was completely wrong in denying to the appellant, the compensation in terms of section 140 of the Act. We find and hold that the appellant (as well as the other 3 claimants) were fully entitled to no fault compensation under section 140 of the Act. We, accordingly, direct the insurance company to pay to the appellant ₹ 25,000/- along with simple interest @ 6% p.a. from the date of the order of the Tribunal till the date of payment. The other 3 claimants are not before this Court, but that is presumably because they are too poor to come to this Court. Since, we have allowed the claim of the appellants, there is no reason why this order should not be extended to the other 3 claimants as well. We, accordingly, do so. The insurance company is directed to make the payment as directed in this judgment within 3 months.

In the result, the appeal is allowed but with no order as to costs.

Question

Critically analyse the above case.

Source: <http://www.lawyersclubindia.com/judiciary/Workmen-s-Compensation-Act-1923-1977.asp#.UVVajlflRMg>

7.5 Summary

- The Workmen’s Compensation Act, 1923 is one of the earliest labor welfare and social security legislation enacted in India.
- It recognizes the fact that if a workman is a victim of accident or an occupational disease in course of his employment, he needs to be compensated.
- The Act does not apply to those workers who are insured under the Employees’ State Insurance Act 1948.
- The Act does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employees’ State Insurance Act, 1948 as disablement and dependants’ benefit are available under this Act.
- Section 53 of the Employees’ State Insurance Act provides:
An insured person or his dependents shall not be entitled to receive or recover whether from the employer of the insured person or from any other person any compensation or damages under the Workmen’s Compensation act 1923 or any other law for the time being in force or otherwise in respect of an employment injury sustained by the insured person as an employee under this Act.

- The Workmen's Compensation Act, aims to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen.
- It provides for payment by certain classes of employers to their workmen compensation for injury by accident.
The compensation shall be paid by the employer to a workman for any personal injury sustained by him in an accident arising out of and in the course of his employment.
- In case the compensation is not paid by the employer, the workman concerned or his dependants may claim the same by filing an application before the Commissioner for Workmen's Compensation.

7.6 Keywords

Commissioner: Commissioner means a Commissioner for Workmen's Compensation appointed under Section 20.

Compensation: Compensation is the total cash and non-cash payment offered by an employer to an employee in return for the services rendered to the company.

Contracting Out: A contract or agreement, whereby the workman relinquishes his right to compensation from the employer for the personal injury arising out of and in the course of employment, is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for, the payment of compensation.

Disablement: Disablement means loss of capacity to work or to move.

Total Disablement: It means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

Workman compensation: Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory relinquishment of the employee's right to sue his or her employer for the tort of negligence.

7.7 Review Questions

1. What is the object of the Workmen's Compensation Act, 1923?
2. Define workman.
3. "There is legal decision regarding the question who is a workman." Enumerate.
4. What is Disablement?
5. What are the various benefits payable under the Act?
6. What exactly is the meaning of the expression "arising out of and in the course of employment"?
7. What are the circumstances under which the employer is not liable to pay compensation for injury to a workman?
8. What are the powers of the Commissioner for Workmen's Compensation?
9. Write short note on claims and appeals.
10. What are the functions of the Commissioner?

Notes

Answers: Self Assessment

- | | |
|------------------------|----------------|
| 1. July 1, 1924 | 2. Schedule II |
| 3. State Governments | 4. Employers |
| 5. Commissioner | 6. ₹ 1000. |
| 7. Master and servant | 8. Disablement |
| 9. Partial Disablement | 10. True |
| 11. False | 12. True |
| 13. True | 14. True |
| 15. False | |

7.8 Further Readings



Books

Davidov, Guy & Langille, Brian (2011). *The Idea of Labour Law*. Oxford University Press.

Davis, Ja E (2012). *Labour Laws*. General Books.

Kumar, H.L. (2010). *Labour Laws*. Universal Law Publishing.

Rao, VSP (2008). *Industrial Relations & Labour Laws*. Excel Books.

Singh, B.D. (2009). *Labour Laws for Managers*. Excel Books India.



Online links

http://business.gov.in/legal_aspects/compensation_1923.php

<http://lawcommissionofindia.nic.in/51-100/Report62.pdf>

http://tppl.co.in/admin_panel_tppl_moon/files/Chapter%2015.pdf

<http://www.advocatekhoj.com/library/bareacts/workmenscompensation/index.php?Title=Workmens%20Compensation%20Act,%201923>

<http://www.citehr.com/9447-workers-compensation-act-1923-wanna-read.html>

<http://yehseeeyes.blogspot.com/2010/05/workmen-compensation-act-1923-becomes.html>

Unit 8: Rules Regarding the Workmen's Compensation Act

Notes

CONTENTS

Objectives

Introduction

8.1 Workmen's Compensation

8.1.1 Employer's Liability for Compensation [Section 3]

8.1.2 Notice and Claim for Compensation [Section 10]

8.2 Rules in Workmen's Compensation

8.2.1 Power of the State Government to make rules

8.2.2 Publication of Rules

8.2.3 Rules to give effect to Arrangements with other Countries for the Transfer of Money paid as Compensation

8.2.4 Rules made by Central Government to be laid before Parliament

8.3 Defences of the Employer

8.4 Amount of Compensation (Section 4)

8.4.1 Compensation for Death

8.4.2 Compensation for Permanent Total Disablement

8.4.3 Compensation for Permanent Partial Disablement

8.4.4 Compensation for Temporary Disablement

8.4.5 Compensation to be Paid when due and Penalty for Default

8.5 Distribution of Compensation (Section 8)

8.6 Enforcement of Act

8.6.1 Commissioners [Section 19]

8.6.2 Appointment of Commissioner [Section 20]

8.6.3 Power of Commissioner to Require Further Deposit in Cases of Fatal Accident [Section 22A]

8.6.4 Powers and Procedure of Commissioners [Section 23]

8.6.5 Appeals [Section 30]

8.6.6 Withholding of Certain Payments Pending Decision of Appeal [Section 30A]

8.7 Summary

8.8 Keywords

8.9 Review Questions

8.10 Further Readings

Notes

Objectives

After studying this unit, you will be able to:

- Explain the concept of workmen’s compensation
- Discuss the rules in workmen’s compensation
- Get an overview of the defences of the employer
- Describe the amount of compensation (Section 4)
- Discuss the distribution of compensation (Section 8)
- Get an overview of the enforcement of Act

Introduction

In the previous unit, we dealt with the main aspects regarding Workmen’s Compensation Act. The Workmen’s Compensation Act (Act VIII of 1923) came into force from 1st July, 1924. It applies to the whole of India, including the State of Jammu and Kashmir. The Act provides for the payment of compensation by certain classes of employers to their workmen, for injury by accidents. The Workmen’s Compensation Act does not apply to factories covered by the Employees State Insurance Act. The Amendment of 1976. The Workmen’s Compensation (Amendment) Act, 1976, was passed with the object of providing suitable scales of compensation for the higher wage levels beyond ₹ 500. The reason is that all wages have been increased. Before the amendment, the Act covered workmen whose wages did not exceed ₹ 500 per month. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand the rules relating to the Workmen’s Compensation Act.

8.1 Workmen’s Compensation

Following aspects are included in the Workmen’s Compensation:

8.1.1 Employer’s Liability for Compensation [Section 3]

An employer is liable to pay compensation to a workman:

- For personal injury caused to him by accident, and
- For any occupational disease contracted by him.

Personal Injury

Personal injury includes:

- (i) Must have been caused during the course of his employment; and
- (ii) Must have been caused by accident arising out of his employment.

An accident alone does not give a workman a right to compensation. To entitle him to compensation at the hands of the employers the accident must arise out of and in the course of his employment. The language in Section 3 shows that injury is caused by accident and not ‘by an accident’. So the injury should be caused by accident by some mishap, unexpected or unforeseen. The personal injury caused to the worker must have resulted in total or partial disablement of the workman for a period exceeding three days or it must have resulted in the death of the worker. The injury should not have been caused by accident which is directly attributable to:

- (i) The workman having been under the influence of drink or drugs at the time of the accident;
- (ii) Wilful disregard of instruction relating to safety precautions given by the employer; and/or
- (iii) The wilful disregard of the usage of the safety device or safety guard provided for the purpose of securing safety of the workman by the employer.

Notes

Occupational Disease

Section 3(2) of the Act also recognizes that the workman employed in certain types of industries of occupation risk exposure to certain occupational disease peculiar to that employment. This section states that the contracting of any of these occupational diseases shall be deemed to be:

- (i) An injury by accident within the meaning of the Act and compensation is payable to the workman who contracts such disease;
- (ii) The types of employment which exposes the workman to occupational disease as well as the list of occupational diseases are contained in Schedule III of the Act.

Schedule III is divided into three parts, viz., A, B and C. No specific period of employment is necessary for a claim for compensation with respect to occupational diseases mentioned in Part A. For diseases specified in Part B the workman must be in continuous service of the same employer for a period of six months in the employment specified in that part. For diseases in Part C the period of employment would be such as is specified by the Central Government for each of such employment whether in the service of one or more employers.



Example: If a workman employed in any employment mentioned in Part C of the Schedule II contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of Section 3 and such employment was under more than one employer then all the employers shall be liable for the payment of compensation in such proportion as the Commissioner in the circumstances may deem just.

8.1.2 Notice and Claim for Compensation [Section 10]

Section 10 of the Act prescribes that a claim for compensation shall be entertained by the Commissioner only after a notice of the accident has been given to him. Such notice should be given as soon as practicable after the date of the accident.



Notes

The claim of compensation however be preferred within 2 years from the date of accident or death. In case of deemed accident arising out of occupational disease the date of accident will be recorded as the first day on which the workman starts absenting himself continuously as a consequence of the disease.

Failure to give notice shall not bar the entertainment of the claim by the Commissioner under the following circumstances, namely:

- (i) If the death of a workman resulting from the accident occurred on the premises of the employer or at any place where the workman at the time of accident was working under the control of the employer and the workman died at such place or at such premises belonging to the employer and died without having left the vicinity of the premises or the place where the accident occurred; or

Notes

- (ii) If the employer or any of the several employers or his manager has knowledge of the accident from any other source at or about the time when it occurred.



Caution Every notice shall be served upon the employer. It may be served by delivering it at or sending it by registered post and addressed to the residence or any of office or place of business of the person on whom it is to be served. Where a workman has given a notice of accident he should submit himself for medical examination if required by the employer. And such medical examination shall take place within 3 days from the date of service of the notice of accident to the employer refusal to submit himself for medical examination will result in the suspension of the right of the workman for compensation during the period of refusal During the period of suspension of the right no compensation shall be paid to the workman.



Caselet

Sarda Gum & Chemicals vs. Union of India & Ors. (2012)
LLR 416

The petitioner industrial unit was aggrieved by the order passed by the regional Provident Fund Commissioner-II, Jodhpur and Appellate order passed by Employees Provident Fund Appellate Tribunal New Delhi, holding that the petitioner Unit is covered by the EPF Act, 1952 since number of employees found at the time in the industrial unit were more than 20. The Commissioner and the Tribunal had held that the petitioner was covered by the provisions of the said Act and was liable to pay provident fund contribution in respect of such 20 workmen. It was found that out of 21 who were said to be employed in the factory of the petitioner, 8 persons were temporarily labourers employed for the purpose of carrying on the repairs of the factory building and the Court observed that it cannot be held that they were employed for the normal business of the establishment. The Court further observed that it naturally depends upon the facts of each case as to whether the so called temporary workmen are regularly employed in connection with the normal and usual course of the business or they are engaged in the performance of some work which had no relation with the normal and regular course of business of the establishment. Even if casual or temporary workers are engaged occasionally or intermittently to meet some temporary or casual work, such workmen cannot be considered to be employees for the purpose of section 1 (3)(a) of the Act. The high Court held that unless temporary or casual workers are found to be regular employees of an industrial unit, the same cannot be included to make 20 workmen of an industrial unit for the purpose of determining whether the establishment is covered under the definition in section 1 (3)(a) of the Act. The full bench decision of the court found the impugned order of the Appellate Tribunal and the Regional Provident Fund Commissioner were found to be non speaking orders and deserve to be quashed. The court set aside the orders.

Source: <http://www.chadha-co.com/pdfs/C&Co-Labour-Law-Update-April-May-2012.pdf>

Self Assessment

State whether the following statements are true or false:

1. An accident alone give a workman a right to compensation.
2. Section 3(2) of the Act also recognizes that the workman employed in certain types of industries of occupation risk exposure to certain occupational disease peculiar to that employment.

3. The claim of compensation however be preferred within 3 years from the date of accident or death.

Notes

8.2 Rules in Workmen's Compensation

Following are the rules relating to the Workmen's Compensation Act:

8.2.1 Power of the State Government to make rules

- (1) The State Government may make rules to carry out the purpose of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters namely:-
 - (a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;
 - (b) for prescribing the intervals at which and the conditions subjects to which a workman may be required to submit himself for medical examination under sub-section (1) of section 11;
 - (c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases;
 - (d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;
 - (e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another;
 - (f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;
 - (g) for prescribing the form and manner in which memorandum of agreements shall be presented and registered;
 - (h) for the withholding by Commissioners whether in whole or in part of half-monthly payments pending decision on application for review of the same;
 - (i) for regulating the scales of costs which may be allowed in proceedings under this Act;
 - (j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act;
 - (k) for the maintenance by Commissioners of registers and records of proceedings before them;
 - (l) for prescribing the classes of employers who shall maintain notice books under sub-section (3) of section 10 and the form of such notice books;
 - (m) for prescribing the form of statement to be submitted by employers under section 10A;
 - (n) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner;
 - (o) for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts;

Notes

- (p) for prescribing the manner in which diseases specified as occupation diseases may be diagnosed;
 - (q) for prescribing the manner in which diseases may be certified for any of the purposes of this Act;
 - (r) for prescribing the manner in which and the standards by which incapacity may be assessed.
- (3) Every rule made under this section shall be laid as soon as may be after it is made before the State Legislature.

8.2.2 Publication of Rules

The power to make rules conferred by section 32 shall be subject to the condition of the rules being made after previous publication.

The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act 1897 (10 of 1897) as that after which a draft of rules proposed to be made under section 32 will be taken into consideration shall not be less than three months from the date on which the draft of proposed rules was published for general information.

Rules so made shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act.

8.2.3 Rules to give effect to Arrangements with other Countries for the Transfer of Money paid as Compensation

- (1) The Central Government may by notification in the Official Gazette make rules for the transfer to any foreign country of money deposited with a Commissioner under this Act which has been awarded to or may be due to any person residing or about to reside in such foreign country and for the receipt distribution and administration in any State of any money deposited under the law relating to workmen's compensation in any foreign country which has been awarded to or may be due to any person residing or about to reside in any State:

Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed orders determining its distribution and apportionment under the provisions of sub-sections (4) and (5) of section 8.

- (2) Where money deposited with a Commissioner has been so transferred in accordance with the rules made under this section the provisions elsewhere contained in this Act regarding distribution by the Commissioner of compensation deposited with him shall cease to apply in respect of any such money.

8.2.4 Rules made by Central Government to be laid before Parliament

Every rule made under this Act by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session of the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Self Assessment

Notes

Fill in the blanks:

4. The Government may make rules to carry out the purpose of this Act.
5. The power to make rules conferred by section shall be subject to the condition of the rules being made after previous publication.
6. Every rule made under this Act by the Central Government shall be laid as soon as may be after it is made before each

8.3 Defences of the Employer

Prior to the passing of this Act, the employer was liable to pay compensation only if he was guilty of negligence. Even in case of proved negligence, the employer could get rid of his liability by using any of the following defences:

1. **The Doctrine of Assumed Risks:** If the employee knew the nature of the risks he was undertaking when working in a factory, the employer had no liability for injuries. The court assumed in such case that the workman had voluntarily accepted the risks incidental to his work. The doctrine followed from the rule Volenti Non Fit Injuria, which means that one, who has volunteered to take a risk of injury, is not entitled to damages if injury actually occurs.
2. **The Doctrine of Common Employment:** Under this rule, when several Persons work together for a common purpose and one of them is injured by some act or omission of another, the employer is not liable to pay compensation for the injury.
3. **The Doctrine of Contributory Negligence:** Under this rule a person is not entitled to damages for injury if he was himself guilty of negligence and such negligence contributed to the injury.



Did u know? The three aforesaid defences and the rule “no negligence no liability made.” It almost impossible for an employee to obtain relief in cases of accident. The Workmen’s Compensation Act of 1923 radically changed the law.

According to this Act, the employer is liable to pay compensation irrespective of negligence. The Act looks upon compensation as relief to the workman and not as damages payable by the employer for a wrongful act or tort. Hence contributory negligence by the employee does not disentitle him from relief. For the same reason, it is not possible for the employer to plead to the defence of common employment or assumed risks for the purpose of avoiding liability. Thus the Act makes it possible for the workman to get compensation for injuries, unimpeded by the legal obstacles set up by the law of Torts.

Two ways of claiming compensation

An injured workman may, if he wishes, file a civil suit for damages against the employer. Section 3(5) of the Workmen’s Compensation Act, however, provides that if such a suit is filed, compensation cannot be claimed under the Act and if compensation has been claimed under the Act, or if an agreement has been entered into between the employer and the workman for the payment of .compensation, no suit can be filed in the civil court. Thus the workman has to choose between two reliefs –

- (i) civil suit for damages and
- (ii) claim for compensation under the Act. He cannot have both.

Notes

In a civil suit for damages, it is open to the employer to plead all the defences provided by the law of Torts. Therefore, a civil suit is a risky procedure for a workman and is rarely adopted. The legal position of workmen has, however, been improved by two Acts, viz., The Indian Fatal Accidents Act of 1855 and the Employers' Liability Act of 1938.

Self Assessment

State whether the following statements are true or false:

7. The employer was liable to pay compensation only if he was guilty of negligence.
8. According to this Act, the employer is not liable to pay compensation irrespective of negligence.
9. In a civil suit for damages, it is open to the employer to plead all the defences provided by the law of Torts.

8.4 Amount of Compensation (Section 4)

Section 4 of the Act prescribes the amount of compensation payable under the provisions of the Act. The amount of compensation payable to a workman depends on:

- (1) The nature of the injury caused by accident.
- (2) The monthly wages of the workman concerned, and
- (3) The relevant factor for working out lump-sum equivalent of compensation amount as specified in Schedule IV (as substituted by Amendment Act of 1984).

There is no distinction between an adult and a minor worker with respect to the amount of compensation. New Section 4 (as substituted by the Amendment Act of 1984) provides for compensation for:

- (1) Death;
- (2) Permanent total disablement;
- (3) Permanent partial disablement; and
- (4) Temporary disablement – total or partial.

8.4.1 Compensation for Death

Where death results from an injury, the amount of compensation shall be equal to 50 percent of the monthly wages of the deceased workman multiplied by the relevant factor, or ₹ 85,000 whichever is more. The formula for calculating the amount of compensation in case of death resulting from an injury will be as follows:

$$\frac{50 \text{ Monthly wages} \times \text{Relevant factor}}{100} \text{ or } ₹ 80,000 \text{ whichever is more}$$

8.4.2 Compensation for Permanent Total Disablement

Where permanent total disablement results from an injury, the amount of compensation payable shall be equal to 60 percent of the monthly wages of the injured workman multiplied by the relevant factor, or ₹ 90,000, whichever is more. The formula for calculating the amount of compensation in case of permanent total disablement resulting from an injury will be as follows:

$$\frac{60 \text{ Monthly wages} \times \text{Relevant factor}}{100} \text{ or } ₹ 90,000 \text{ whichever is more}$$

8.4.3 Compensation for Permanent Partial Disablement

In the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by the injury; and in other words, the percentage of compensation payable is proportionate to the loss of earning capacity permanently caused by the scheduled injury. Thus, if the loss of earning capacity caused by an injury specified in Part II of Schedule I is 30 percent, the amount of compensation shall be 30 percent of compensation payable in case of permanent total disablement. In the case of an injury not specified in Schedule I such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

8.4.4 Compensation for Temporary Disablement

A half monthly payment of the sum whether total or partial results equivalent to 25% of monthly wages of the from the injury workman to be paid in the manner prescribed.

8.4.5 Compensation to be Paid when due and Penalty for Default

Section 4A provides for the payment of compensation and the penalty for default. It provides that compensation shall be paid as soon as it falls due. Section 4 mandates employer to pay compensation amount as soon as it falls due to victim or his or her legal heirs.

However, where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of workman to make any further claim.

Self Assessment

Fill in the blanks:

10. Section of the Act prescribes the amount of compensation payable under the provisions of the Act.
11. There is no distinction between an adult and a minor worker with respect to the amount of
12. A half monthly payment of the sum whether total or partial results equivalent to of monthly wages of the from the injury workman to be paid in the manner prescribed.

8.5 Distribution of Compensation (Section 8)

Section 8 of the Act provides for the deposit of the compensation before the Commissioner, as also to the distribution of compensation by the Commissioner. Section 8 lays down following rules with regard to distribution of compensation:

- (1) No payment of compensation in respect of workman whose injury has resulted in death, and no payment of lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation.

Notes

- (2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.
- (3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.
- (4) On the deposit of any money under sub-section (1), as compensation in respect of a deceased workman the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependents to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied, after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid.
- (5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit or may, in the discretion of the Commissioner, be allotted to any one dependant.
- (6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a workman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.
- (7) Where any lumpsum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct.
- (8) Where a half-monthly payment is payable to a person under legal disability, the Commissioner may pay it to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.
- (9) Notice must be given to the parties affected.
- (10) Where under the previous para, the Commissioner varies an order on the ground that the payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid may be recovered by the procedure laid down for the recovery of arrears of land revenue.
- (11) The Commissioner may, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant, or for any other sufficient cause, vary his earlier orders regarding distribution or investment of compensation. But no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing because why the order should not be made.
- (12) The orders of the Commissioner regarding the distribution of compensation may be varied later if necessary.
- (13) Money payable to a woman or a person under a legal disability may be invested or otherwise dealt with as the Commissioner thinks fit.
- (14) Half-monthly payments payable to a person under a legal disability may be paid to a dependent of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

Self Assessment

Notes

State whether the following statements are true or false:

13. Section 10 of the Act provides for the deposit of the compensation before the Commissioner, as also to the distribution of compensation by the Commissioner.
14. The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.
15. Notice must be given to the parties affected.

8.6 Enforcement of Act

8.6.1 Commissioners [Section 19]

If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount of duration of compensation (including any question as to the nature or extent of disablement) the question shall in default of agreement be settled by a Commissioner. No Civil Court shall have jurisdiction to settle decided 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.

8.6.2 Appointment of Commissioner [Section 20]

The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification. Where more than one Commissioner has been appointed for any area the State Government may by general or special order regulate the distribution of business between them. Any Commissioner may for the purpose of deciding any matter referred to him for decision under this Act choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry. Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

8.6.3 Power of Commissioner to Require Further Deposit in Cases of Fatal Accident [Section 22A]

Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death and in the opinion of the Commissioner such sum is insufficient the Commissioner may by notice in writing stating his reasons call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.



Notes

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 the employer to deposit the deficiency.