

THE EMPLOYEES STATE INSURANCE ACT, 1948

Sec.	Title	Page No
	<u>CHAPTER I</u> - PRELIMINARY	
1	Short title, extent, commencement and application	5
2	Definitions	7
2A	Registration of factories and establishments	23
	<u>CHAPTER II</u> - CORPORATION, STANDING COMMITTEE AND MEDICAL BENEFIT COUNCIL	
3	Establishment of Employees' State Insurance Corporation	23
4	Constitution of Corporation	24
5	Term of office of members of the Corporation	25
6	Eligibility for re-nomination or re-election	25
7	Authentication of orders, decisions, etc.	25
8	Constitution of Standing Committee	25
9	Term of office of members of Standing Committee	26
10	Medical Benefit Council	26
11	Resignation of membership	27
12	Cessation of membership	27
13	Disqualification	28
14	Filling of vacancies	28
15	Fees and allowances	28
16	Principal officers	29
17	Staff	29
18	Powers of the Standing Committee	30
19	Corporation's power to promote measures for health, etc. of insured persons	31
20	Meetings of Corporation, Standing Committee & Medical Benefit Council	31
21	Supersession of the Corporation and Standing Committee	31
22	Duties of Medical Benefit Council	32
23	Duties of Director General and the Financial Commissioner	32
24	Acts of Corporation, etc. not invalid by reason of defect in constitution, etc.	32
25	Regional Boards, Local Committees, Regional and Local Medical Benefit Councils	32
	<u>CHAPTER III</u> FINANCE AND AUDIT	
26	Employees' State Insurance Fund	33
27	Grant by the Central Government	33
28	Purposes for which the fund may be expended	33

28A	Administrative expenses	35
29	Holding of property, etc.	35
30	Vesting of the property in the Corporation	35
31	Expenditure by Central Government to be treated as a loan	35
32	Budget estimates	36
33	Accounts	36
34	Audit	36
35	Annual report	36
	Budget, audited accounts and the annual report to be placed before	36
36	Parliament	
37	Valuation of assets and liabilities	37
	<u>CHAPTER IV</u> CONTRIBUTIONS	
38	All employees to be insured	37
39	Contributions	37
40	Principal employer to pay contributions in the first instance	38
41	Recovery of contribution from immediate employer	39
42	General provisions as to payment of contributions	39
43	Method of payment of contribution	40
44	Employers to furnish returns and maintain registers in certain cases	40
45	Inspectors, their functions and duties	41
45A	Determination of contributions in certain cases	42
45B	Recovery of contributions	43
45C	Issue of certificate to the Recovery Officer	43
45D	Recovery Officer to whom certificate is to be forwarded	43
45E	Validity of certificate and amendment thereof	44
	Stay of proceedings under certificate and amendment or	45
45F	withdrawal thereof	
45G	Other modes of recovery	45
45H	Application of certain provisions of the Income Tax Act	48
45I	Definitions	48
	<u>CHAPTER V</u> BENEFITS	
46	Benefits	48
47	When person eligible for sickness benefit (Repealed)	50
48	When person deemed available for employment	50
49	Sickness benefit	50
50	Maternity benefit	50
51	Disablement benefit	50
51A	Presumption as to accident arising in course of employment	51
51B	Accidents happening while acting in breach of regulations, etc.	51
51C	Accidents happening while travelling in employer's transport	51
51D	Accidents happening while meeting emergency	52
52	Dependants' benefit	52
52A	Occupational disease	52

53	Bar against receiving or recovery of compensation or damages under any other law	53
54	Determination of question of disablement	54
54A	References to Medical Boards and appeals to Medical Appeal Tribunals and Employees' Insurance Courts	54
55	Review of decisions by Medical Board or Medical Appeal Tribunal	55
55A	Review of dependants' benefit	56
56	Medical benefit	56
57	Scale of medical benefit	57
58	Provision of medical treatment by State Government	57
59	Establishment and maintenance of hospitals, etc. by Corporation	58
59A	Provision of medical benefit by the Corporation in lieu of State Government	58
	GENERAL	
60	Benefit not assignable or attachable	59
61	Bar of benefits under other enactments	59
62	Persons not to commute cash benefits	59
63	Persons not entitled to receive benefit in certain cases	59
64	Recipients of sickness or disablement benefit to observe conditions	59
65	Benefits not to be combined	60
66	Corporation's right to recover damages from employer in certain cases	60
67	Corporation's right to be indemnified in certain cases	60
68	Corporation's rights where a principal employer fails or neglects to pay any contribution	60
69	Liability of owner or occupier of factories, etc. for excessive sickness benefit	61
70	Repayment of benefit improperly received	62
71	Benefit payable up to and including day of death	62
72	Employer not to reduce wages, etc.	62
73	Employer not to dismiss or punish employee during period of sickness, etc.	62
	<u>CHAPTER V-A</u> TRANSITORY PROVISIONS	
73A	Employer's special contribution	63
73B	Special tribunals for decision of disputes or questions under this Chapter where there is no Employees' Insurance Court	64
73C	Benefits under Chapter V to depend upon employee's contribution	64
73D	Mode of recovery of employer's special contribution	65
73E	Power to call for additional information or return	65
73F	Power to exempt to be exercised by Central Government alone in respect of employer's special contributions	65

73G	Application of certain provisions of this Act to employer's special contribution	65
73H	Power to remove difficulties	65
73I	Duration of Chapter VA	65
	<u>CHAPTER VI</u> ADJUDICATION OF DISPUTES AND CLAIMS	
74	Constitution of Employees' Insurance Court	66
75	Matters to be decided by Employees' Insurance Court	67
76	Institution of proceedings, etc.	69
77	Commencement of proceedings	69
78	Powers of Employees' Insurance Court	70
79	Appearance by legal practitioners, etc.	71
80	Benefit not admissible unless claimed in time	71
81	Reference to High Court	71
82	Appeal	72
83	Stay of payment pending appeal	72
	<u>CHAPTER VII</u> PENALTIES	
84	Punishment for false statements	72
85	Punishment for failure to pay contributions, etc.	73
85A	Enhanced punishment in certain cases after previous conviction	74
85B	Power to recover damages	74
85C	Power of Court to make orders	76
86	Prosecutions	76
86A	Offences by companies	76
	<u>CHAPTER VIII</u> MISCELLANEOUS	
	Exemption of a factory or establishment or class of factories or establishments	77
87		
88	Exemption of persons or class of persons	78
89	Corporation to make representation	78
	Exemption of factories or establishments belonging to government or any local authority	78
90		
91	Exemption from one or more provisions of the Act	78
91A	Exemptions to be either prospective or retrospective	79
91B	Misuse of benefits	79
91C	Writing off of losses	79
92	Power of Central Government to give directions	79
93	Corporation officers and servants to be public servants	79
93A	Liability in case of transfer of establishment	80
94	Contributions, etc., due to Corporation to have priority over other debts	80
94A	Delegation of powers	80
95	Power of Central Government to make rules	81
96	Power of State Government to make rules	84
97	Power of Corporation to make regulations	85

98	Corporation may undertake duties in Part B States	88
99	Medical care for the families of insured persons	88
99A	Power to remove difficulties	88
100	Repeal and saving	88
	SCHEDULE I <i>[Omitted]</i>	89
	SCHEDULE II	89
	SCHEDULE III	94

THE EMPLOYEES STATE INSURANCE ACT, 1948

(Act No 34 of 1948)

AN ACT TO PROVIDE FOR CERTAIN BENEFITS TO EMPLOYEES IN CASE OF SICKNESS, MATERNITY AND EMPLOYMENT INJURY AND TO MAKE PROVISION FOR CERTAIN OTHER MATTERS IN RELATION THERETO

WHEREAS it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto;

It is hereby enacted as follows:--

CHAPTER I **PRELIMINARY**

1. Short title, extent, commencement and application

(1) This Act may be called the Employees' State Insurance Act, 1948.

(2) It extends to the whole of India.

(3) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof .

(4) It shall apply, in the first instance, to all factories (including factories belonging to the government) other than seasonal factories:

PROVIDED that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

(5) The appropriate government may, in consultation with the Corporation and where the appropriate government is a State Government, with the approval of

the Central Government, after giving six months' notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise:

PROVIDED that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.

(6) A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.

COMMENTS

Where by some club not only sporting facilities but a kitchen is also maintained, wherein a big number of members come, it is not necessary that they are participating only in sports activities, they are also entertaining themselves and their guests by partaking beverages and tea served by the club. Activity in the kitchen has a direct connection with the activities carried on in the rest of the club premises. It is necessary that the club be registered under ESI Act as regards all the employees engaged by the club irrespective of the fact in which department they are working. Cricket Club of India satisfies the definition of the term 'factory' under s. 2(12) of the Act hence covered by it.-- *Cricket Club of India v. ESI Corporation* 1994 (69) FLR 19.

The scheme of the Act does not provide that the provisions should be made applicable to all the areas and all the establishments at one stroke or to none at all. It would defeat beneficial scheme prescribed by the Act. The power conferred on the State Government under s. 1(5) of the Act can be exercised only with the approval of the Central Government, and therefore, it cannot be said that the limit of extension only to certain areas out of the areas covered under s. 1(3) of the Act would amount to encroachment of the powers of the Central Government. Sec. 1(5) does not indicate that the approval must be sought from the Central Government only after the expiry of the period mentioned in the notice of intention but there are circumstances to indicate that such approval must be secured beforehand. Requirement of s. 1(5) is that State Government can extend the scheme provided Central Government gives approval and after consultation with the corporation.-- *ESI Corpn. v. Fariyar Hotel (P) Ltd.* 1989 (1) LLJ 356.

Where in an establishment activities like that of clearing and forwarding is going on, it would fall within the expression "shop" even though clearing of documents is done in customs house meant for export and import of goods. Person involved in such business is catering to the needs of exporters and importers and others wanting to carry the goods further.-- *AIR 1993 SC 252* .

Sec. 1(4) in the first instance is made applicable to all the factories. The Act envisages the extension of benefit to the employees in other establishments or class of establishments, industrial, commercial or otherwise. The extension of benefit is to be done by means of a notification by the appropriate government. Thus the benefits conferred by the Act cover a large area of employees than what the Factories Act and the akin legislation intended. -- *Cochin Shipping Company v. Employees' State Insurance Corporation 1992 (65) FCR 676*.

It is not actually necessary that the delivery of the goods to the purchaser should take place at the premises in which the business of buying or selling is carried on to constitute the said premises into a shop. The delivery of the goods sold to the purchaser is only one aspect of trading activities. Negotiation of the terms of sale, carrying on the survey of the goods imported, arranging for the delivery of the goods sold, collection of the price of the goods sold, etc. are all trading activities. If orders are received at a place which ultimately fructify with sales and the resulting trading activity is directed from there, that place comes to be known as a "shop"-- *Cochin Shipping Co. v. ESI Corporation 1992 (65) FLR 676*.

Anyone having product may approach advertising agency. The advertising agency will prepare an advertising campaign for him utilising the services of the experts it employs in this behalf. It sells the campaign to the client and receives the price thereof. Indubitably, the price will depend upon the nature of the campaign but that does not make any great difference. Essentially, the advertising agency sells its expert services to a client to enable the client to launch an effective campaign of his products without staining the language, the premises of an advertising agency can be said to be a "shop"--*ESI Corporation v. R.K. Swamy 1993 (67) FLR 1145 : 1993 (2) CLR 1068*.

2. Definitions

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

(1) "appropriate government" means, in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;

(2) [* * *]

(3) "confinement" means labour resulting in the issue of a living child or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead;

(4) "contribution" means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;

(5) [* * *]

(6) "Corporation" means the Employees' State Insurance Corporation set up under this Act;

(6A) "dependant" means any of the following relatives of a deceased insured person, namely,--

(i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter;

(ia) a widowed mother;

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;

(iii) if wholly or in part dependent on the earnings of the insured person at the time of his death,--

(a) a parent other than a widowed mother,

(b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,

(c) a minor brother or an unmarried sister or a widowed sister if a minor,

(d) a widowed daughter-in-law,

(e) a minor child of a pre-deceased son,

(f) a minor child of a pre-deceased daughter where no parent of the child is alive,
or

(g) a paternal grand-parent if no parent of the insured person is alive;

(7) "duly appointed" means appointed in accordance with the provisions of this Act or with the rules or regulations made thereunder;

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

(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and--

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment; but does not include--

(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month:

PROVIDED that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month at any time after (and not before) the beginning of the

contribution period, shall continue to be an employee until the end of that period;

(10) "exempted employee" means an employee who is not liable under this Act to pay the employee's contribution;

(11) "family" means all or any of the following relatives of an insured person, namely,--

(i) a spouse;

(ii) a minor legitimate or adopted child dependent upon the insured person;

(iii) a child who is wholly dependent on the earnings of the insured person and who is--

(a) receiving education, till he or she attains the age of twenty-one years,

(b) an unmarried daughter;

(iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;

(v) dependent parents;

(12) "factory" means any premises including the precincts thereof--

(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.

but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed;

(13) "immediate employer", in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory, or an establishment to which this Act applies or under the supervision of

the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor;

(13A) "insurable employment" means an employment in a factory or establishment to which this Act applies;

(14) "insured person" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act;

(14A) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(14AA) "manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948;

(14B) "miscarriage" means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any mis-carriage, the causing of which is punishable under the Indian Penal Code;

(15) "occupier" of the factory shall have the meaning assigned to it in the Factories Act, 1948;

(15A) "permanent partial disablement" means such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement:

PROVIDED that every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement;

(15B) "permanent total disablement" means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement:

PROVIDED that permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more;

(15C) "power" shall have the meaning assigned to it in the Factories Act, 1948;

(16) "prescribed" means prescribed by rules made under this Act;

(17) "principal employer" means--

(i) in a factory, the owner or occupier of the factory, and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948; the person so named;

(ii) in any establishment under the control of any department of any government in India, the authority appointed by such government in this behalf or where no authority is so appointed, the head of the department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment;

(18) "regulation" means a regulation by the Corporation;

(19) "Schedule" means a Schedule to this Act;

(19A) "seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year--

(a) in any process of blending, packing or repacking of tea or coffee; or

(b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify;

(20) "sickness" means a condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds;

(21) "temporary disablement" means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury;

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

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge.

(23) "wage period" in relation to an employee means the period in respect of which wages are ordinarily payable to him whether in terms of the contract of employment, express or implied or otherwise.

(24) all other words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947, shall have the meanings respectively assigned to them in that Act.

COMMENTS

Section 2(1)

In a public sector corporation, a canteen is being managed by a contractor with the help of employees working with him and within the premises of the corporation maintaining the canteen under Factories Act, 1948. In such a case, the appropriate government will be Central Government.-- *General Employees Association v. UOI* 1992 (1) LLJ 242.

As regards Food Corporation which is set up under s. 17 of the Food Corporation Act, the State Government would be the appropriate government.-- *Food Corporation of India v. Labour Court* 1992 (64) FLR 286.

Section 2(6)(A)

If there is none of the relatives mentioned in s. 2(6A), dependant's benefit as laid down under s. 52 of the Act shall become payable to other dependants of the deceased as per First Schedule of the Act.-- 1993 (1) *APLJ (HC)* 312.

Considering the provisions of ss. 2(6A), 46(1)(d) and 52 and para 9(a) of the First Schedule, a parent including widowed mother is only entitled to 3/10th of the full rate of benefit of dependants. Where the benefits are given at full rate in accordance with para 6(a) of the First Schedule, that is wrong.-- 1993 (2) *CLR* 42.

Section 2(8)

Although no definition has been given under the Act for the term "accident" yet the word "accident" bears somewhat different meaning while used in connection with the Act. It means only such accident which arises out of and in the course of employment resulting in personal injury whereby physical or earning capacity of the employee is reduced or extinguished. Corporation can be made liable for compensation for the death or injury of an employee, only for that injury which is consequent of an accident arising out of and in the course of his employment. Where the employment has nothing to do with the incident or accident or in acceleration of the causes of death or personal injury compensation cannot be claimed under the Act.-- 1992 (64) *FLR* 508.

It cannot be that the theory of notional extension is reduced to a mathematical formula of distance and time. Where an employee is injured outside the premises of employer if the theory of notional extension would apply is dependent upon the facts and circumstances of each case. Where the employee attended the factory, signed the lay-off register, passed out of gate and stopped in public road for reaching her house, when she was hit by a scooter, keeping in view both the time and distance, the theory of notional extension can well be applied and the injury sustained must be taken as employment injury within the meaning of s. 2(8).-- 1991 (2) *LLN* 181.

In order that a liability arises under s. 2(8), what is required is that there is a causal connection between the employment and the injury caused by the accident. In a case an employee was attacked by his enemies while the employee was returning home from the place of his duties. The motive behind the attack was personal enmity on the issue of cultivation of land. The corporation cannot be made liable for compensation as the factum of nexus between employment and the assault by the enemies was lacking.-- 1992 *Lab IC* 1490 .

Where a laid-off employee after signing the lay-off register was coming out of the factory premises and when crossing the road was hit by a scooter, injuries sustained by him were taken as covered during the course of employment on the basis of theory of notional extension.-- *Satya Sharma v. ESI Corporation* 1991 (63) FLR 339 .

Where an employee, in order to perform his duty in the factory premises, while waiting for the bus met with an accident and died, it was held that the accident occurred in an area to which theory of notional extension applied and he was on his way going to the place of work, his dependants were entitled to accident benefits under the Act.-- 1991 (1) LLJ 247 .

In case a driver possesses sub-normal eyesight or does not possess required vision, it would not fall within an employment injury, nor it would come within occupational disease under the Act. There is no provision for compensation for a disability in the performance of a particular job. Compensation may be provided to them on an altogether different basis suitable to such peculiar loss, for example premature retirement has become a necessity on account of they being rendered unfit to work as drivers.-- *Anand Behari v. Rajasthan State Road Transport Corpn.* 1991 (62) FLR 81.

Section 2(9)

In whatever manner the word "employee" under s. 2(9) be construed, liberally or restrictively, the construction cannot go to the extent of ruling out the function and role of the immediate employer or obliterating the distance between the principal employer and the immediate employer. In some situation he is cut off. He is the one who stumbles in the way of direct nexus being established, unless statutorily fictioned, between the employee and the principal employer. He is the one who in "a given situation is the principal employer to the employee, directly employed under him. If the work by the employee is conducted under the immediate gaze or overseeing of the principal employer or his agent, subject to other conditions as envisaged being fulfilled he would be an employee for the purpose of s. 2(9).-- *CES Corporation Ltd. v. Subash Chandra Bose* 1992 (1) LLJ 475.

The definition of the word "employee" provided that it shall include any person employed by or through a contractor in or in connection with the work of establishment including the work performed elsewhere than the factory itself, including the dwelling house of a home worker, as also that the manufacturing operation, simple as it was, performed by illiterate workers, young and old, subjecting to rejection and acceptance was by itself an effective degree of supervision and control, establishing the relationship of master and servant.--*P.M. Patel & Bros. v. Union of India* 1986 (1) SCC 32.

A work that is conducive to the work of the factory or establishment or that is necessary for the augmentation of the work of the factory or establishment will be incidental or preliminary to or connected with the work of the factory or establishment. The casual employees shall also be brought within it and are entitled to the benefits which the Act grants. The casual labour employed to construct additional buildings for expansion of the factory are the employees under the Act.-- *Regional Director, ESIC v. South India Flour Mills Ltd.* 1986 (53) FLR 178.

Employees engaged for repairs, site clearing, construction of buildings, etc. of the principal employer are employees within the meaning of s. 2(9) of the Act.--*Kirloskar Pneumatic Co. Ltd. v. ESI Corporation* 1987 (70) FJR 199.

Where the employees are working in the execution of the works, repairs and maintenance thereof in connection with the generation, transmission and distribution of the electrical energy by the corporation, the corporation would be the principal employer. Immediate employees execute the work etc. under the supervision of the corporation as its agents. And their employees work under the supervision of the principal employer, corporation. Hence s. 2(9)(ii) of the Act covers them.-- *CES Corporation Limited v. Subash Chandra Bose* 1992 (1) LLJ 475.

The work of construction of additional building required for the expansion of a factory must be held to be ancillary, incidental or having some relevance to or link with the object of the factory. It is not correct to say that such work must always have some direct connection with the manufacturing process that is carried on in the factory. The expression "work of the factory" should also be understood in the sense of any work necessary for the expansion of the factory or establishment or for augmenting or increasing the work of the factory or establishment.-- *Regional Director, ESI Corporation v. South India Flour Mills (P) Ltd.* AIR 1986 SC 237 .

The expression "employed for wages or in connection with the work of a factory or establishment" is of very wide amplitude and its generality is not in any way prejudiced by the expression and includes any person employed for wages or any work connected with the administration of the factory or establishment or in connection with sale or distribution of the products of the factory or establishments. The word "includes" in the statutory definition of a term is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction. In order to determine whether the employees of the company working at its branch sales offices and carrying on acts of sale and distribution of goods manufactured by the company as well as the goods produced by the foreign company are "employees" what is pertinent is not whether they are "principally" and primarily engaged in sale and distribution of

the products of the company but whether the business of sale and distribution either "principally" or "marginally" of the products of the foreign company is being done on behalf of the company. If the main business of the company itself at the branch sales offices, is to sell and distribute products of foreign company and the employees working have been employed by the company basically in connection with this work, it would be difficult to hold that the employees at branch sales offices are not "employees" within the meaning of the term defined in s. 2(9) of the Act notwithstanding the fact that the sale and distribution of the products of the company at such offices are only marginal.-- *Director General, ESI Corporation v. Scientific Instrument Co. Ltd.* 1995 Lab. IC 651 .

Where a Managing Director had no contract of employment with the company but one of the other directors also working in the capacity of purchase officer had such contract of employment, the director having the contract could be treated as employee but the Managing Director having no such contract of employment could not be treated as employee under s. 2(9) of the Act.-- 1991 Lab IC 765 .

For the purpose of s. 2(9) of the Act, the question whether the employees of the immediate employer work within the factory or the premises of the principal employer or else where is not totally irrelevant. If such an interpretation is arrived at, a material part of s. 2(9)(ii) would become redundant and otiose.-- 1991 Lab. IC 17.

Where the registered office of the company is outside the State but two of the branches of the company doing the same business fall within the State and neither of them is exercising any control or supervision over the other, nor is their work inter-connected, the two branches cannot be clubbed together in order to bring them within the purview of the Act.-- 1991 (1) LLJ 541 .

In the case of an establishment having its registered office in Andhra Pradesh, regional office in Bombay and branches spreading all over India, it was held that as the Act was not in force in the State of Maharashtra under s. 1(5) as regards the business of the establishment no contribution for employees working in Bombay branch or any where in the State of Maharashtra was payable. The words "elsewhere" occurring in s. 2(9)(1) would apply only when there is a Notification issued under s. 1(5). If it had not been so, every regional office of the corporation would become authorized to apply the Act to an entity outside the State. The fact that Regional Director in Kerala State forms the opinion that the establishment in Kerala is covered under the Act, the employees working in the Bombay region or in the State of Maharashtra would not be automatically covered.-- 1993 (2) CLR 855 .

In case there is no contract of service in existence between the principal employer or the immediate employer and the workman, and the workers are on assignment occasionally, they would not be treated as employee under s. 2(9) of the Act. Where a salesman of cold drink company takes the trucks carrying the crates of bottles to their customers having two permanent workers to unload the truck, but on account of two permanent loaders not available, hires some colliers, such colliers cannot be treated as employees of the manufacturer of the cold drinks. The reason being that there is no contract of service between the manufacturer or its salesman and the temporarily appointed colliers.-- *Park Bottling Co. (P) Ltd. v. R. D. ESIC* 1989 (2) *Cur. LR* 320.

If the work by a worker is conducted under the immediate gaze or overseeing of the principal employer or his agent, subject to other conditions as envisaged being fulfilled, he would be an employee notifying the definition of the expression "employee" as laid down under the Act. In the textual sense "supervision of the principal employer or his agent is on the work at the places envisaged and the word "work" can neither be construed so broadly to be the final act of acceptance or rejection of work, nor so narrowly so as to be supervision at all times and at each and every steps of the work."-- *Calcutta Electricity Supply Co. Ltd. v. S.C. Bose* AIR 1992 SC 573.

Where the work of fixing the marble is extended to a contractor by a marble manufacturing company, duty of the contractor is only to complete the work while marble, cement etc., is supplied by the manufacturing company, workers employed by the contractor would be the employees of the factory as under s. 2(9) of the Act.-- 1992 (2) *CLR* 881.

There is no such difference as that of casual or temporary or permanent employee for the expression "employee" as defined under s. 2(9) of the Act. It is so wide as to include even a casual employee who is employed just for a day for wages. The test being whether the person is employed for wages on any work which is connected with the work of a factory or establishment which bears the application of the Act except those exempted by the definition.-- *ESI Corporation v. Suvarna Saw Mills* 1980 (57) *FJR* 154.

In an employment there is necessarily a contract of service which makes the person entering into service of an employer in connection with the operations which the establishment he is engaged in, carries on. Such employment may be so short as on daily wages. Still there is no fetter calling him an employee. But where the engagement is casually in connection with processes which are not integral, incidental preliminary to or connected with the operations of the establishment, then despite the fact that such an engagement is for a longer period, such casually employed workman cannot be termed as "employee" as

defined under s. 2(9) of the Act.-- *ESI Corporation v. Narahari Rao* 1987 (70) FJR 160.

Once the society is independent of its members and has a separate legal existence apart from its members, then there is no bar for the society employing its members and there being a contract of employment between the society and its members. If such a contract of employment is entered into between the society and its members then the members so employed should be taken to have two independent capacities, one as a member of the society and the other as an employee of the society.-- *Pondicherry State Weavers Co-operative Society Ltd. v. Regional Director, ESI Corporation* 1983 (1) LLN 88.

The apprentices under any scheme as the name suggests come to learn the tricks of the trade and may not count much so far as the output of the factory is concerned, with that end in view, the apprentices are exempted from the operation of laws relating to labour unless the State Government thought otherwise.-- *Regional Director ESIC v. M/s Arudyog* 1987 (1) LLJ 292.

Section 2(12)

'Shop' liberally interpreted would take in any place where services are rendered, it will not go to the extent of including the premises where basically and mainly "intellectual activity is taking place" and things are not sold or purchased a concept which is peculiar to a shop.-- *Dattaram Advertising (P) Ltd. v. Maharashtra, ESIC* 1986 (2) LLN 346.

Even a place where services are rendered or performed will be a shop should be confirmed to a situation where the services are sold for any person who wants to avail of the same and were made available on payment of a stipulated price with no variation according to volume, nature, quality or complexity of work involved in the matter.--*Hindu Jea Band v. ESI Corporation* 1987 (1) LLN 778.

An advertising agency rendering services to its customers by way of giving advertising materials with the help of skilled professionals in the field and the services in fact being in the form of consultation and advice, agency would not be covered by the term "shop".-- *KPB Advertising (P) Ltd. v. ESI Corporation* 1989 (1) LLN 76.

Where a department of publication and press run by the university concerned is engaged in the printing of text books, journals, registers, forms, etc., that would amount to manufacturing process.-- *Osmania University v. ESI Corporation* 1986 (1) LLN 72 .

Servicing of vehicles with a view to its use by the customer or repairing of the batteries so that they are used in vehicles amounts to manufacturing process.-- *Bara Nagar Service Station v. ESI Corporation* 1989 (58) FLR 698.

Finding of the court whether the place is a factory within the meaning of s. 2(12) of the Act is a finding of fact.-- 1992 (47) DLT 17 . It matters very little whether the factory or establishment is run with any profit making motive or not. So long as the manufacturing process is being carried on with the aid of power by employing twenty or more employees for wages it would come within the meaning of "factory" as defined in s. 2(12) of the Act.-- 1994 (2) LLJ 780.

Where a society engaged in bleaching, dyeing and mercerising of grey cloth using water not brought by employing power, and the use of power is only when the effluent is discharged in the river, it was held that there being no nexus between the manufacturing activity and the treatment and eventual discharge of the effluent, use of the power was not for any manufacturing process.-- *ESI Corporation v. Vyankateh Co-operative Processors Society Ltd.* 1993 Lab IC 1736.

Section 2(14AA)

The meaning of the expression "manufacturing process" cannot be imported into from the definition given to the expression in some other Act. Total significance is to be given to the definition as is given to the expression in the Act alone.--*Ravi Shanker Sharma v. State of Rajasthan* 1993 Lab. IC 987. Where the process of cooking food is going on in the kitchen annexed to the club, the act of preparation amounts to "manufacturing process".-- *Cricket Club of India v. ESI Corporation* 1994 Lab IC 1213.

Where there was no manufacturing of articles nor the hotel was manufacturing any article with the aid of power except maintaining one refrigerator to preserve milk and curd, and as there was no using of power in the kitchen for making the eatables and the refrigerator had been kept only for preservation of milk and curd, there was no manufacturing process.-- *Ritz Hotel v. ESI Corpn.* 1995 (1) Mah. LJ 63.

Act of stone crushing with the employment of more than ten employees and with the aid of power amounts to manufacturing process.-- *Larsen and Toubro Ltd. v. State of Orissa* 1992 Lab. IC 1513.

Section 2(15)

Where the ultimate control over the affairs of a factory is not with the directors and there is non-submission of the contribution card, a complaint moved as regards this against the directors of the company is liable to be quashed.--*Sauri*

Adhikari v. ESI Corporation 1992 (1) LLN 777. Though the designation is as that of the principal employer but affairs of the factory are not extended to him, such person cannot be termed as principal employer-- *ESI Corporation v. G.N. Mathur* 1993 Lab. IC 1867.

The difference between "permanent partial disablement" and "permanent total disablement" though subtle, is quite discernible in a scrutiny of both. Ofcourse the common feature in both is that there should be permanent disablement. But where the case is of "partial disablement" the consequence of disablement should only have reduced his earning capacity in the employment. And in the case of "total disablement" the disablement should have rendered him incapacitated to do the work which he was capable of performing earlier. The degree of incapacity in the case of partial disablement is less. A mere reduction in the earning capacity is enough to make it a case of partial disablement, whereas the incapacity must be of a full measure in the total disablement. But such incapacitation is only with reference to "all work which he was capable of performing at the time of accident". In other words ,even if the incapacity does not affect his readiness to acquire skill or dexterity to do some other new work, the position does not improve as for him in deciding whether the disablement can be rated less.-- *Regional Director ESI Corpn. v. K.P. Gopi* 1995 Lab. IC 1239.

Section 2(17)

Just for the fact that a letter is signed by the managing director on behalf of his corporation or is having his sitting in the premises of the factory does not mean that he is also "principal employer" as defined, so that he is brought within the expression "principal employer" as defined it is essential to establish that he was in possession of contribution cards and also having the responsibility of sending the contribution cards in accordance with the provisions of the Act and the rules made thereunder.-- *ESI Corporation v. M.P. Roongta* 1988 (2) LLN 834.

All the directors can't be deemed to be the occupier but only those having the ultimate control over the affairs of the company, so that there is the fixation of ultimate liability or responsibility as regards the affairs of the company. Where there is no Managing Director managing the affairs of the company and in ultimate control over the affairs of the factory, none of the Directors can be regarded as the principal employer within the meaning of s. 2(17) of the ESI Act.-- *Smt. Gauri Adhikari v. ESI Corporation* 1992 (64) FLR 665.

Whosoever is there with the designation as that of the "occupier" must be deemed as having ultimate control over the affairs of the factory within the contemplation of the Factories Act, 1948 hence "principal employer" within the meaning of ESI Act.-- *ESI Corporation v. G.N. Mathur* 1991 (63) FLR 115.

Section 2(19A)

By 1966 amendment, scope of the definition of the expression "seasonal factory" is enlarged which is obvious from the words added as "include a factory" using of the word "include" in statutory definitions enlarges the meaning of the preceding words or phrases. When used that way, words or phrases must be interpreted as comprehending not only their natural sense but also such other things as are added by interpretation clause.-- *AIR 1992 SC 129* .

Section 2(22)

The expression "other additional remuneration" if any paid implies that the said remuneration is not payable under any contract of employment express or implied. This is so because, while the first part of the definition refers to remuneration under the contract of employment the second part does not refer to remuneration under any such contract. Thus the expression does not refer to remuneration payable under any contract but refers to such remuneration which is payable at the will of the employer.-- *Wellman (India) (P) Ltd. v. ESI Corporation 1993 (67) FLR 1208*.

Bonus paid or payable by the respondent to its employees under the successive settlements and agreements between them cannot be regarded as remuneration paid or payable to the employees in fulfilment of the term of the contract of employment.-- *Regional Director, ESI Corporation v. Bata Shoe Company (P) Ltd. 1986 (1) LLJ 138* .

Only such additional remuneration as are paid beyond the terms of the contract and at intervals not exceeding two months, can be wages under ESI Act. --*S.T. Reddier v. Regional Director 1989 (59) FLR 313*.

In spite of the fact that bonus paid to the employees under the scheme has been designated as incentive bonus in the scheme such payment amounts only an ex-gratia payment that the employer has made and cannot be said to be an additional remuneration or wages as falling within the expression "wages".-- *M.P. State Road Transport Corporation Ltd. v. ESI Corporation* 1991 (62) FLR 517.

Wages paid for the holidays are wages as defined.-- *R.D., ESI Corporation v. Raj Keshaw Co.* 1991 Lab. IC 1991 Lab. IC 1989.

Overtime wages could not be treated as "wages" for the purpose of contribution under the Act.-- *Hind Art Press v. ESI Corporation* 1990 (1) LLJ 195.

"Collection bhatta" by reason of its production incentive allowance constitutes "wages".-- *ESI Corporation v. K.P. Vinod* 1991 (63) FLR 563.

Where in a case Director worked in the capacity of purchase officer and for that was paid a regular honorarium, it was held that honorarium amounted to "wages" and Director as "employee".-- *Frontier Motor Car Co. v. RD, ESI Corporation* 1991(2) LLN 678.

2A. Registration of factories and establishments

Every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.

CHAPTER II

CORPORATION, STANDING COMMITTEE AND MEDICAL BENEFIT COUNCIL

3. Establishment of Employees' State Insurance Corporation

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the administration of the scheme of employees' state insurance in accordance with the provisions of this Act a Corporation to be known as the Employees' State Insurance Corporation.

(2) The Corporation shall be a body corporate by the name of Employees' State Insurance Corporation having perpetual succession and a common seal and shall by the said name sue and be sued.

4. Constitution of Corporation

The Corporation shall consist of the following members, namely:--

- (a) a Chairman to be appointed by the Central Government;
- (b) a Vice-Chairman to be appointed by the Central Government;
- (c) not more than five persons to be appointed by the Central Government,
- (d) one person each representing each of the States in which this Act is in force to be appointed by the State Government concerned;
- (e) one person to be appointed by the Central Government to represent the Union Territories;
- (f) ten persons representing employers to be appointed by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government;
- (g) ten persons representing employees to be appointed by the Central Government in consultation with such organisations of employees as may be reorganised for the purpose by the Central Government;
- (h) two persons representing the medical profession to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government [* * *];
- (i) three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States; and
- (j) the Director-General of the Corporation ex-officio.

5. Term of office of members of the Corporation

(1) Save as otherwise expressly provided in this Act, the term of office of members of the Corporation, other than the members referred to in clauses (a), (b), (c), (d) and (e) of section 4 and the ex officio member, shall be four years, commencing from the date on which their appointment or election is notified:

PROVIDED that a member of the Corporation shall, notwithstanding the expiry of the said period of four years, continue to hold office until the appointment or election of his successor is notified.

(2) The members of the Corporation referred to in clauses (a), (b), (c), (d) and (e) of section 4 shall hold office during the pleasure of the government appointing them.

6. Eligibility for re-nomination or re-election

An outgoing member of the Corporation, the Standing Committee, or the Medical Benefit Council shall be eligible for re-appointment or re-election as the case may be.

7. Authentication of orders, decisions, etc.

All orders and decisions of the Corporation shall be authenticated by the signature of the Director General of the Corporation and all other instruments issued by the Corporation shall be authenticated by the signature of the Director General or such other officer of the Corporation as may be authorized by him.

8. Constitution of Standing Committee

A Standing Committee of the Corporation shall be constituted from among its members, consisting of--

(a) A Chairman, appointed by the Central Government;

(b) three members of the Corporation appointed by the Central Government;

(bb) three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification in the Official Gazette, specify from time to time;

(c) (eight) members elected by the Corporation as follows--

[* * *]

(ii) three members from among the members of the Corporation representing employers;

(iii) three members from among the members of the Corporation representing employees;

(iv) one member from among the members of the Corporation representing the medical profession; and

(v) one member from among the members of the Corporation elected by Parliament;

(d) the Director General of the Corporation, ex officio.

9. Term of office of members of Standing Committee

(1) Save as otherwise expressly provided in this Act, the term of office of a member of the Standing Committee, other than a member referred to in clause (a) or clause (b) or clause (bb) of section 8, shall be two years from the date on which his election is notified:

PROVIDED that a member of the Standing Committee shall, notwithstanding the expiry of the said period of two years, continue to hold office until the election of his successor is notified:

PROVIDED FURTHER that a member of the Standing Committee shall cease to hold office when he ceases to be a member of the Corporation.

(2) A member of the Standing Committee referred to in clause (a) or clause (b) or clause (bb) of section 8 shall hold office during the pleasure of the Central Government.

10. Medical Benefit Council

(1) The Central Government shall constitute a Medical Benefit Council consisting of--

(a) the Director General, Health Services, ex officio, as Chairman;

(b) a Deputy Director General, Health Services, to be appointed by the Central Government;

(c) the medical commissioner of the Corporation, ex officio;

(d) one member each representing each of the States (other than Union Territories) in which this Act is in force to be appointed by the State Government concerned;

(e) three members representing employers to be appointed by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government;

(f) three members representing employees to be appointed by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government; and

(g) three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government.

(2) Save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clauses (a) to (d) of sub-sec. (1), shall be four years from the date on which his appointment is notified :

PROVIDED that a member of the Medical Benefit Council, shall, notwithstanding the expiry of the said period of four years continue to hold office until the appointment of his successor is notified.

(3) A member of the Medical Benefit Council referred to in clauses (b) and (d) of sub-section (1) shall hold office during the pleasure of the government appointing him.

11. Resignation of membership

A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to the Central Government and his seat shall fall vacant on the acceptance of the resignation by that government.

12. Cessation of membership

(1) A member of the Corporation, the Standing Committee or the Medical Benefit Council shall cease to be a member of that body if he fails to attend three consecutive meetings thereof:

PROVIDED that the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, may, subject to rules made by the Central Government in this behalf, restore him to membership.

(2) Where in the opinion of the Central Government any person appointed or elected to represent employers, employees or the medical profession on the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, has ceased to represent such employers, employees, or the medical profession, the Central Government may, by notification in the Official Gazette, declare that with effect from such date as may be specified therein such person shall cease to be a member of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be.

(3) A person referred to in clause (i) of section 4 shall cease to be a member of the Corporation when he ceases to be a Member of Parliament.

13. Disqualification

A person shall be disqualified for being chosen as or for being a member of the Corporation, the Standing Committee or the Medical Benefit Council--

(a) if he is declared to be of unsound mind by a competent court; or

(b) if he is an undischarged insolvent; or

(c) if he has directly or indirectly by himself or by his partner any interest in a subsisting contract with, or any work being done for, the Corporation except as a medical practitioner or as a shareholder (not being a director) of a company; or

(d) if before or after the commencement of this Act, he has been convicted of an offence involving moral turpitude.

14. Filling of vacancies

(1) Vacancies in the office of appointed or elected members of the Corporation, the Standing Committee and the Medical Benefit Council shall be filled by appointment or election, as the case may be.

(2) A member of the Corporation the Standing Committee or the Medical Benefit Council appointed or elected to fill a casual vacancy shall hold office only so long as the member in whose place he is appointed or elected would have been entitled to hold office, if the vacancy had not occurred.

15. Fees and allowances

Members of the Corporation, the Standing Committee and the Medical Benefit Council shall receive such fees and allowances as may from time to time be prescribed by the Central Government.

16. Principal officers

(1) The Central Government may, in consultation with the Corporation, appoint a director general and a financial commissioner.

(2) The director general shall be the chief executive officer of the Corporation.

(3) The director general and the financial commissioner shall be whole-time officers of the Corporation and shall not undertake any work unconnected with their office without the sanction of the Central Government and of the Corporation.

(4) The director general or the financial commissioner shall hold office for such period, not exceeding five years, as may be specified in the order appointing him. An outgoing director general or financial commissioner shall be eligible for re-appointment if he is otherwise qualified.

(5) The director general or the financial commissioner shall receive such salary and allowances as may be prescribed by the Central Government.

(6) A person shall be disqualified from being appointed as or for being The Director General or the Financial Commissioner if he is subject to any of the disqualifications specified in section 13.

(7) The Central Government may at any time remove the director general or the financial commissioner from office and shall do so if such removal is recommended by a resolution of the Corporation passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the total strength of the Corporation.

17. Staff

(1) The Corporation may employ such other staff of officers and servants as may be necessary for the efficient transaction of its business, provided that the sanction of the Central Government shall be obtained for the creation of any post the maximum monthly salary of which exceeds such salary as may be prescribed by the Central Government.

(2)(a) The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such

as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

PROVIDED that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

(b) In determining the corresponding scales of pay of the members of the staff under clause (a), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decision thereon shall be final.

(3) Every appointment to posts (other than medical posts) corresponding to Group A and Group B posts under the Central Government , shall be made in consultation with the Union Public Service Commission:

PROVIDED that this sub-section shall not apply to an officiating or temporary appointment for a period not exceeding one year :

PROVIDED FURTHER that any such officiating or temporary appointment shall not confer any claim for regular appointment and the services rendered in that capacity shall not count towards seniority or minimum qualifying service specified in the regulations for promotion to next higher grade.

(4) If any question arises whether a post corresponds to a Group A and Group B post under the Central Government, the question shall be referred to that government whose decision thereon shall be final.

18. Powers of the Standing Committee

(1) Subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.

(2) The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.

(3) The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.

19. Corporation's power to promote measures for health, etc. of insured persons

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

20. Meetings of Corporation, Standing Committee & Medical Benefit Council

Subject to any rules made under this Act, the Corporation, the Standing Committee and the Medical Benefit Council shall meet at such times and places and shall observe such rules or procedure in regard to transaction of business at their meetings as may be specified in the regulations made in this behalf.

21. Supersession of the Corporation and Standing Committee

(1) If in the opinion of the Central Government, the Corporation or the Standing Committee persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, that government may, by notification in the Official Gazette, supersede the Corporation, or in the case of the Standing Committee, supersede, in consultation with the Corporation, the Standing Committee:

PROVIDED that before issuing a notification under this sub-section, the Central Government shall give a reasonable opportunity to the Corporation or the Standing Committee, as the case may be, to show cause why it should not be superseded and shall consider the explanations and objection, if any, of the Corporation or the Standing Committee, as the case may be.

(2) Upon the publication of a notification under sub-section (1) superseding the Corporation or the Standing Committee, all the members of the Corporation or the Standing Committee, as the case may be, shall, as from the date of such publication, be deemed to have vacated their offices.

(3) When the Standing Committee has been superseded, a new standing Committee shall be immediately constituted in accordance with section 8.

(4) When Corporation has been superseded, the Central Government may--

(a) immediately appoint or cause to be appointed or elected new members to the Corporation in accordance with section 4 and may constitute a new Standing Committee under section 8;

(b) in its discretion, appoint such agency, for such period as it may think fit, to exercise the powers and perform the functions of the Corporation and such agency shall be competent to exercise all the powers and perform all the functions of the Corporation.

(5) The Central Government shall cause a full report of any action taken under this section and the circumstances leading to such action to be laid before Parliament at the earliest opportunity and in any case not later than three months from the date of the notification superseding the Corporation or the Standing Committee as the case may be.

22. Duties of Medical Benefit Council

The Medical Benefit Council shall--

(a) advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;

(b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and

(c) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

23. Duties of Director General and the Financial Commissioner

The director general and the financial commissioner shall exercise such powers and discharge such duties as may be prescribed. They shall also perform such other functions as may be specified in the regulations.

24. Acts of Corporation, etc. not invalid by reason of defect in constitution, etc.

No act of the Corporation, the Standing Committee or the Medical Benefit Council shall be deemed to be invalid by reason of any defect in the constitution of the Corporation, the Standing Committee or the Medical Benefit Council, or on the ground that any member thereof was not entitled to hold or continue in office by reason of any disqualification or of any irregularity in his appointment or election, or by reason of such act having been done during the period of any vacancy in the office of any member of the Corporation, the Standing Committee or the Medical Benefit Council.

25. Regional Boards, Local Committees, Regional and Local Medical Benefit Councils

The Corporation may appoint regional boards, local committees and regional and local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations.

CHAPTER III FINANCE AND AUDIT

26. Employees' State Insurance Fund

(1) All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act.

(2) The Corporation may accept grants, donations and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

(3) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit of an account styled the account of the Employees' State Insurance Fund.

(4) Such account shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

27. Grant by the Central Government

[Omitted by Act 44 of 1966, section 12 (w.e.f. 17-6-1967)]

28. Purposes for which the fund may be expended

Subject to the provisions of this Act and of any rules made by the Central Government in that behalf, the Employees' State Insurance Fund shall be expended only for the following purposes, namely:--

(i) payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the

provisions of this Act and defraying the charges and costs in connection therewith;

(ii) payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the regional boards, local committees and regional and local Medical Benefit Councils;

(iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;

(iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;

(v) payment of contributions to any State Government, [* * *] local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, their families including the cost of any building and equipment in accordance with any agreement entered into by the Corporation;

(vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;

(vii) defraying the cost (including all expenses) of the Employees' State Insurance Courts set up under this Act;

(viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;

(ix) payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;

(x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;

(xi) defraying expenditure, within the limits prescribed, on measures for the improvement of the health and welfare of insured persons and for the

rehabilitation and re-employment of insured persons who have been disabled or injured; and

(xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

28A. Administrative expenses

The types of expenses which may be termed as administrative expenses and the percentage of the income of the Corporation which may be spent for such expenses shall be such as may be prescribed by the Central Government and the Corporation shall keep its administrative expenses within the limit so prescribed by the Central Government.

29. Holding of property, etc.

(1) The Corporation may, subject to such conditions as may be prescribed by the Central Government, acquire and hold property both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it and do all things necessary for the purposes for which the Corporation is established.

(2) Subject to such conditions as may be prescribed by the Central Government, the Corporation may from time to time invest any moneys which are not immediately required for expenses properly defrayable under this Act and may, subject as aforesaid, from time to time re-invest or realise such investments.

(3) The Corporation may, with the previous sanction of the Central Government and on such terms as may be prescribed by it, raise loans and take measures for discharging such loans.

(4) The Corporation may constitute for the benefit of its staff or any class of them, such provident or other benefit fund as it may think fit.

30. Vesting of the property in the Corporation

All property acquired before the establishment of the Corporation shall vest in the Corporation and all income derived and expenditure incurred in this behalf shall be brought into the books of the Corporation.

31. Expenditure by Central Government to be treated as a loan

[Omitted by Act 44 of 1966, section 12 w.e.f. 17-6-1967.]

32. Budget estimates

The Corporation shall in each year frame a budget showing the probable receipts and the expenditure which it proposes to incur during the following year and shall submit a copy of the budget for the approval of the Central Government before such date as may be fixed by it in that behalf. The budget shall contain provisions adequate in the opinion of the Central Government for the discharge of the liabilities incurred by the Corporation and for the maintenance of a working balance.

33. Accounts

The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.

34. Audit

(1) The accounts of the Corporation shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Corporation to the Comptroller and Auditor-General of India.

(2) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of government accounts and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Corporation.

(3) The accounts of the Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Corporation which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor General.

35. Annual report

The Corporation shall submit to the Central Government an annual report of its work and activities.

36. Budget, audited accounts and the annual report to be placed before Parliament

The annual report, the audited accounts of the Corporation together with the report of the Comptroller and Auditor-General of India thereon and the comments of the Corporation on such report under section 34 and the budget as finally adopted by the Corporation shall be placed before Parliament [***] .

37. Valuation of assets and liabilities

The Corporation shall, at intervals of five years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government:

PROVIDED that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

CHAPTER IV

CONTRIBUTIONS

38. All employees to be insured

Subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.

39. Contributions

(1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(2) The contributions shall be paid at such rates as may be prescribed by the Central Government:

PROVIDED that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989.

(3) The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act.

(4) The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

(5)(a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment:

PROVIDED that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45C to section 45-I.

Explanation : In this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

COMMENTS

Contribution which the management is liable to make under s. 39 has to be made by the management on its own accord for the fact that payment is not conditional on any demand by the ESI Corporation.-- ESI Corporation v. Amalgamations Repco Ltd. 1983 (2) LLJ 193.

There can be the making of a demand for remitting contribution for a period that is prior to the date of insurance.-- Bombay Ammonia v. ESI Corporation 1991 Lab. IC 1893.

40. Principal employer to pay contributions in the first instance

(1) The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.

(2) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made thereunder, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise :

PROVIDED that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period.

(3) Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5) The principal employer shall bear the expenses of remitting the contributions to the Corporation.

COMMENTS

All the directors are excluded and even those directors who are designated as occupier, from the liability to be proceeded against in case there is some lapse exhibited by the company in respect of the remittances of the employer and employee's share of contributions under the ESI Act.-- ESI Corporation v. G.N. Mathur 1991 (63) FLR 115.

There can be the conviction of the person accused for the non-compliance of the submission of the contribution cards to the corporation under s. 85(a) of the Act.-- ESI Corporation v. S.C. Sarkar 1986 (68) FJR 217.

41. Recovery of contribution from immediate employer

(1) A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

(1A) The immediate employer shall maintain register of employees employed by or through him as provided in the regulations and submit the same to the principal employer before the settlement of any amount payable under sub-section (1).

(2) In the case referred to in sub-section (1), the immediate employer shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to sub-section (2) of section 40.

42. General provisions as to payment of contributions

(1) No employee's contribution shall be payable by or on behalf of an employee whose average daily wages during a wage period are below such wages as may be prescribed by the Central Government.

Explanation : The average daily wages of an employee shall be calculated in such manner as may be prescribed by the Central Government.

(2) Contribution (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each wage period in respect of the whole or part of which wages are payable to the employee and not otherwise.

43. Method of payment of contribution

Subject to the provisions of this Act, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Act and without prejudice to the generality of the foregoing power such regulations may provide for--

(a) the manner and time of payment of contributions;

(b) the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed;

(bb) the date by which evidence of contributions having been paid is to be received by the Corporation;

(c) the entry in or upon books or cards of particulars of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards relate; and

(d) the issue, sale custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been lost, destroyed or defaced.

44. Employers to furnish returns and maintain registers in certain cases

(1) Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(2) Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.

(3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf.

45. Inspectors, their functions and duties

(1) The Corporation may appoint such persons as Inspectors, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.

(2) Any Inspector appointed by the Corporation under sub-section (1) (hereinafter referred to as Inspector), or other official of the Corporation authorised in this behalf by it may, for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with--

(a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of this Act; or

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said Inspector or other official has reasonable cause to believe to be or to have been an employee;

(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises;

(e) exercise such other powers as may be prescribed.

(3) An Inspector shall exercise such functions and perform such duties as may be authorised by the Corporation or as may be specified in the regulations.

COMMENTS

Prevention of the contravention of the provisions of the Act falls within the duty of the Inspector, a power that this s. 45 confers and in case of infringement to take appropriate steps under the Act.-- *Vidya Sagar Kejriwal v. ESI Corporation* 1991 (62) FLR 17.

45A. Determination of contributions in certain cases

(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any Inspector or other official of the Corporation referred to in sub-section (2) of section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment :

PROVIDED that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

(2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45B or the recovery under section 45C to section 45-I .

COMMENTS

Section 45A gives the power to the Corporation so as to determine whether the employer is liable for contribution, similarly it is for the employer to raise that he does not have to pay any contribution and to make him taking the matter to the court.-- *Smith India Granite Corporation v. ESI Corporation* 1986 (1) LLN 588.

In case there is a failure on the part of the employer to produce the records Corporation has got the power to make assessment under s. 45A, recovery of which can be made under s. 45B of the Act. But in those cases where the records are produced the assessment has to be done in accordance with s. 75(2)(a) of the Act.-- *R.S. Ganesh Das Dhomi Mal v. ESI Corporation* 1988 (56) FLR 111.

Where there is an action to determine what is the contribution and for the recovery of the same, taken under s. 45A of the Act, there is no period of limitation prescribed under the Act.-- *Kirloskar Pneumatic Co. Ltd. v. ESI Corporation* 1987 (1) LLN 906.

It is only optional for the Corporation to serve show cause notice before the proceedings under s. 45A are launched. Proceedings would not stand vitiated on account of absence of notice.-- *A.P. Handloom Weavers' Co-operative Society Ltd. v. ESI Corporation* 1988 (2) LLJ 515 .

45B. Recovery of contributions

Any contribution payable under this Act may be recovered as an arrear of land revenue.

45C. Issue of certificate to the Recovery Officer

(1) Where any amount is in arrears under this Act, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned below--

(a) attachment and sale of the movable or immovable property of the factory or establishment or, as the case may be, the principal, or immediate employer;

(b) arrest of the employer and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the factory or establishment or, as the case may be, the employer:

PROVIDED that the attachment and sale of any property under this section shall first be effected against the properties of the factory or establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorised officer may issue a certificate under sub-section (1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

45D. Recovery Officer to whom certificate is to be forwarded

(1) The authorised officer may forward the certificate referred to in section 45C to the Recovery Officer within whose jurisdiction the employer--

(a) carries on his business or profession or within whose jurisdiction the principal place of his factory or establishment is situate; or

(b) resides or any movable or immovable property of the factory or establishment or the principal of immediate employer is situate.

(2) Where a factory or an establishment or the principal or immediate employer has property within the jurisdiction of more than one Recovery Officers and the Recovery Officer to whom a certificate is sent by the authorised officer--

(a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction; or

(b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the manner prescribed by the Central Government and specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the factory or establishment or the principal or immediate employer has property or the employer resides, and thereupon that Recovery Officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.

45E. Validity of certificate and amendment thereof

(1) When the authorised officer issues a certificate to a Recovery Officer under section 45C, it shall not be open to the factory or establishment or the principal or immediate employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorised officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The authorised officer shall intimate to the Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (2) or any amendment made under sub-section (4) of section 45F.

45F. Stay of proceedings under certificate and amendment or withdrawal thereof

(1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time, for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the authorised officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceedings under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of a further proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorised officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

45G. Other modes of recovery

(1) Notwithstanding the issue of a certificate to the Recovery Officer under section 45C, the Director General or any other officer authorised by the Corporation may recover the amount by any one or more of the modes provided in this section.

(2) If any amount is due from any person to any factory or establishment or, as the case may be, the principal or immediate employer who is in arrears, the Director General or any other officer authorised by the Corporation in this behalf may require such person to deduct from the said amount the arrears due from such factory or establishment or, as the case may be, the principal or immediate employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Corporation:

PROVIDED that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908.

(3) (i) The Director General or any other officer authorised by the Corporation in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the factory or establishment or, as the case may be, the principal or immediate employer or any person who holds or may subsequently hold money for or on account of the factory or establishment or, as the case may be, the principal or immediate employer, to pay to the Director General either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the factory or establishment or, as the case may be, the principal or immediate employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the principal or immediate employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the principal or immediate employer at his last address known to the Director General or, as the case may be, the officer so authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Director General or the officer so authorised.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to

the principal or immediate employer or that he does not hold any money for or on account of the principal or immediate employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer on the date of the notice, or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less.

(vii) The Director General or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Director General or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section and the person so paying shall be fully discharged from his liability to the principal or immediate employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the principal or immediate employer after the receipt of a notice under this sub-section shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer so discharged or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Director General or the officer so authorised, he shall be deemed to be a principal or immediate employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 45C to 45F and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 45C.

(4) The Director General or the officer authorised by the Corporation in this behalf may apply to the court in whose custody there is money belonging to the principal or immediate employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(5) The Director General or any officer of the Corporation may, if so authorised by the Central Government by general or special order, recover any arrears of

amount due from a factory or an establishment or, as the case may be, from the principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961.

45H. Application of certain provisions of the Income Tax Act

The provisions of the Second and the Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount of contributions, interests or damages under this Act instead of to the income-tax:

PROVIDED that any reference in the said provisions and the rules to the "assessee" shall be construed as a reference to a factory or an establishment or the principal or immediate employer under this Act.

45I. Definitions

For the purposes of sections 45C to 45H :

(a) "authorised officer" means the Director General, Insurance Commissioner, Joint Insurance Commissioner, Regional Director or such other officer as may be authorised by the Central Government, by notification in the Official Gazette;

(b) "recovery officer" means any officer of the Central Government, State Government or the Corporation, who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a recovery officer under this Act.

CHAPTER V BENEFITS

46. Benefits

(1) Subject to the provisions of this Act, the insured persons, their dependents or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely,--

(a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf (hereinafter referred to as sickness benefit);

(b) periodical payments to an insured woman in case of confinement or miscarriage, or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);

(c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit);

(e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit); and

(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as funeral expenses):

PROVIDED that the amount of such payment shall not exceed such amount as may be prescribed by the Central Government and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.

(2) The Corporation may, at the request of the appropriate government, and subject to such conditions as may be laid down in the regulations, extend the medical benefit to the family of an insured person.

COMMENTS

Merely because the benefits to be received are postponed it cannot amount that there is no quid pro quo. Only after the availability of sufficient nucleus there can be the expectation of compensating return.-- *Gasket Radiators Ltd. v. ESI Corporation* 1980 (50) FLR 426.

The Corporation is conferred with the power to recover arrears of contributions from the employer along with damages/interest on the contribution that remained due. Correspondingly it is under an obligation to pay with interest the arrears of benefits to the insured employees or his dependents.-- *ESI Corporation v. Bhag Singh* 1989 (2) LLJ 126.

47. [* * *]

48. When person deemed available for employment

[Omitted by Act 44 of 1966, section 20 (28-1-1968)]

49. Sickness benefit

The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.

50. Maternity benefit

The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.

51. Disablement benefit

Subject to the provisions of this Act [* * * *]

(a) a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government ;

(b) a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government:

[* * *]

COMMENTS

In case there is sub-normal eyesight or the required vision is lost to a driver, it would not be covered by the provisions of the Act as an employment injury or as an occupational disease for the apparent reason that the Act contains no

provision to grant Compensation in the case of a disability to continue a particular job.-- *Anand Bihari v. Rajasthan State Road Transport Corporation* 1991 (62) FLR 81.

ESI court while taking a decision upon the disablement question is never prevented from estimating and finding its own percentage of loss of earning capacity which the insured person suffers and determine the extent of disablement benefit to which the insured person is entitled, when it finds that such injury is outside the description of one or the other injury which is described in the Second Schedule of the Act.-- *Regional Director, ESI Corporation v. S. Sarvanam* 1990 (60) FLR 165 .

51A. Presumption as to accident arising in course of employment

For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

COMMENTS

The Corporation is under a bounden duty to come forward on its own and to help the dependants of an insured employee who died in the course of his employment and whose death arises out of such employment.-- *Harjinder Kaur v. ESI Corporation* 1987 (55) FLR 772.

51B. Accidents happening while acting in breach of regulations, etc.

An accident shall be deemed to arise out of and in the course of an insured person's employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if

(a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or on without instructions from his employer, as the case may be; and

(b) the act is done for the purpose of and in connection with the employer's trade or business.

51C. Accidents happening while travelling in employer's transport

(1) An accident happening while an insured person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to

or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if

(a) the accident would have been deemed so to have arisen had he been under such obligation; and

(b) at the time of the accident, the vehicle

(i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and

(ii) is not being operated in the ordinary course of public transport service.

(2) In this section "vehicle" includes vessel and an aircraft.

51D. Accidents happening while meeting emergency

An accident happening to an insured person in or about any premises at which he is for the time-being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.

52. Dependants' benefit

(1) If an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependants' benefit shall be payable at such rates and for such period and subject to such conditions as may be prescribed by the Central Government to his dependants specified in sub-clause (i), and sub-clause (ia) and sub-clause (ii) of clause (6A) of section 2.

(2) In case the insured person dies without leaving behind him the dependants as aforesaid, the dependants' benefit shall be paid to the other dependants of the deceased at such rates and for such period and subject to such conditions as may be prescribed by the Central Government .

52A. Occupational disease

(1) If an employee employed in any employment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease

peculiar to that employment or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an 'employment injury' arising out of and in the course of employment.

(2) (i) Where the Central Government or a State Government, as the case may be, adds any description of employment to the employments specified in Schedule III to the Workmen's Compensation Act, 1923, by virtue of the powers vested in it under sub-section (3) of section 3 of the said Act, the said description of employment and the occupational diseases specified under that sub-section as peculiar to that description of employment shall be deemed to form part of the Third Schedule.

(ii) Without prejudice to the provisions of clause (i), the Corporation after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification add any description of employment to the employments specified in the Third Schedule and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively and thereupon the provisions of this Act shall apply, as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(3) Save as provided by sub-sections (1) and (2), no benefit shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(4) The provisions of section 51A shall not apply to the cases to which this section applies.

53. Bar against receiving or recovery of compensation or damages under any other law

An insured person or his dependants 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.

COMMENTS

Section 53 of the ESI Act does not bar the remedy under s. 110A of the Motor Vehicles Act, 1939.-- *Deputy General Manager KSRTC v. Gopal Mudaliar* 1983 (46) FLR 194.

54. Determination of question of disablement

Any question--

- (a) whether the relevant accident has resulted in permanent disablement; or
- (b) whether the extent of loss of earning capacity can be assessed provisionally or finally; or
- (c) whether the assessment of the proportion of the loss of earning capacity is provisional or final; or
- (d) in the case of provisional assessment, as to the period for which such assessment shall hold good,

shall be determined by a medical board constituted in accordance with the provisions of the regulations and any such question shall hereafter be referred to as the "disablement question".

54A. References to Medical Boards and appeals to Medical Appeal Tribunals and Employees' Insurance Courts

(1) The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a medical board for determination of the disablement question and if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally assessed, it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.

(2) If the insured person or the Corporation is not satisfied with the decision of the medical board, the insured person or the Corporation may appeal in the prescribed manner and within the prescribed time to--

(i) the medical appeal tribunal constituted in accordance with the provisions of the regulations with a further right of appeal in the prescribed manner and within the prescribed time to the Employees' Insurance Court, or

(ii) the Employees' Insurance Court directly :

PROVIDED that no appeal by an insured person shall lie under this sub-section if such person has applied for commutation of disablement benefit on the basis of the decision of the medical board and received the commuted value of such benefit :

PROVIDED FURTHER that no appeal by the Corporation shall lie under this sub-section if the Corporation paid the commuted value of the disablement benefit on the basis of the decision of the medical board.

COMMENTS

In the case of an injury which is not covered by any part of the schedule loss of earning capacity is to be decided on evidence and the opinion which the Medical Board gives in this regard would be final and binding between the parties. Tribunal in such cases has to pass an award that is in conformity with the decision of the Medical Board.-- *ESI Corporation v. Hari Hajra* 1989 (1) LLN 665.

55. Review of decisions by Medical Board or Medical Appeal Tribunal

(1) Any decision under this Act of a medical board or a medical appeal tribunal may be reviewed at any time by the medical board or the medical appeal tribunal, as the case may be, if it is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or mis-representation by the employee or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent).

(2) Any assessment of the extent of the disablement resulting from the relevant employment injury may also be reviewed by a medical board, if it is satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the results of the relevant injury:

PROVIDED that an assessment shall not be reviewed under this sub-section unless the medical board is of opinion that having regard to the period taken into account by the assessment and the probable duration of the aggravation aforesaid, substantial injustice will be done by not reviewing it.

(3) Except with the leave of a medical appeal tribunal, an assessment shall not be reviewed under sub-section (2) on any application made less than five years, or in the case of a provisional assessment, six months, from the date thereof and on such a review the period to be taken into account by any revised assessment shall not include any period before the date of the application.

(4) Subject to the foregoing provisions of this section, a medical board may deal with a case of review in any manner in which it could deal with it on an original

reference to it, and in particular may make a provisional assessment notwithstanding that the assessment under review was final; and the provisions of section 54A shall apply to an application for review under this section and to a decision of a medical board in connection with such application as they apply to as a case for disablement benefit under that section and to a decision of the medical board in connection with such case.

55A. Review of dependants' benefit

(1) Any decision awarding dependants' benefit under this Act may be reviewed at any time by the Corporation if it is satisfied by fresh evidence that the decision was given in consequence of non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) or that the decision is no longer in accordance with this Act due to any birth or death or due to the marriage, re-marriage or cesser of infirmity of, or attainment of the age of eighteen years by, a claimant.

(2) Subject to the provisions of this Act, the Corporation may, on such review as aforesaid, direct that the dependants' benefit be continued, increased, reduced or discontinued.

56. Medical benefit

(1) An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

(3) A person shall be entitled to medical benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations:

PROVIDED that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations :

PROVIDED FURTHER that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to

payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement:

PROVIDED ALSO that an insured person, who has attained the age of superannuation, and his spouse shall be eligible to receive medical benefit subject to payment of contribution and such other conditions as may be prescribed by the Central Government.

Explanation : In this section, "superannuation", in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment.

57. Scale of medical benefit

(1) An insured person and (where such medical benefit is extended to his family) his family shall be entitled to receive medical benefit only of such kind and on such scale as may be provided by the State Government or by the Corporation, and an insured person or, where such medical benefit is extended to his family, his family shall not have a right to claim any medical treatment except such as is provided by the dispensary, hospital, clinic or other institution to which he or his family is allotted, or as may be provided by the regulations.

(2) Nothing in this Act shall entitle an insured person and (where such medical benefit is extended to his family) his family to claim re-imbursement from the Corporation of any expenses incurred in respect of any medical treatment, except as may be provided by the regulations.

58. Provision of medical treatment by State Government

(1) The State Government shall provide for insured persons and (where such benefit is extended to their families) their families in the State, reasonable medical, surgical and obstetric treatment:

PROVIDED that the State Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.

(2) Where the incidence of sickness benefit payment to insured persons in any State is found to exceed the all-India average, the amount of such excess shall be

shared between the Corporation and the State Government in such proportion as may be fixed by agreement between them:

PROVIDED that the Corporation may in any case waive the recovery of the whole of any part of the share which is to be borne by the State Government.

(3) The Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment that should be provided to insured persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines and staff) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to insured persons between the Corporation and the State Government.

(4) In default of agreement between the Corporation and any State Government as aforesaid the nature and extent of the medical treatment to be provided by the State Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that government, shall be determined by an arbitrator (who shall be or shall have been a Judge of the High Court of a State appointed by the Chief Justice of India and the award of the arbitrator shall be binding on the Corporation and the State Government.

59. Establishment and maintenance of hospitals, etc. by Corporation

(1) The Corporation may, with the approval of the State Government, establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of insured persons and (where such medical benefit is extended to their families) their families.

(2) The Corporation may enter into agreement with any [* * *] local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and (where such medical benefit is extended to their families) their families, in any area and sharing the cost thereof.

59A. Provision of medical benefit by the Corporation in lieu of State Government

(1) Notwithstanding anything contained in any other provision of this Act, the Corporation may, in consultation with the State Government, undertake the responsibility for providing medical benefit to insured persons and where such medical benefit is extended to their families, to the families of such insured persons in the State subject to the condition that the State Government shall

share the cost of such medical benefit in such proportion as may be agreed upon between the State Government and the Corporation.

(2) In the event of the Corporation exercising its power under sub-section (1), the provisions relating to medical benefit under this Act shall apply, so far as may be, as if a reference therein to the State Government were a reference to the Corporation.

GENERAL

60. Benefit not assignable or attachable

(1) The right to receive any payment of any benefit under this Act shall not be transferable or assignable.

(2) No cash benefit payable under this Act shall be liable to attachment or sale in execution of any decree or order of any Court.

61. Bar of benefits under other enactments

When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

62. Persons not to commute cash benefits

Save as may be provided in the regulations no person shall be entitled to commute for a lump sum any disablement benefit admissible under this Act.

63. Persons not entitled to receive benefit in certain cases

Save as may be provided in the regulations, no person shall be entitled to sickness benefit or disablement benefit for temporary disablement on any day on which he works or remains on leave or on a holiday in respect of which he receives wages or on any day on which he remains on strike.

64. Recipients of sickness or disablement benefit to observe conditions

A person who is in receipt of sickness benefit or disablement benefit (other than benefit granted on permanent disablement)--

(a) shall remain under medical treatment at a dispensary, hospital, clinic or other institution provided under this Act and shall carry out the instructions given by the medical officer or medical attendant in charge thereof;

(b) shall not while under treatment do anything which might retard or prejudice his chances of recovery;

(c) shall not leave the area in which medical treatment provided by this Act is being given, without the permission of the medical officer, medical attendant or such other authority as may be specified in this behalf by the regulations; and

(d) shall allow himself to be examined by any duly appointed medical officer [* *] or other person authorized by the Corporation in this behalf.

65. Benefits not to be combined

(1) An insured person shall not be entitled to receive for the same period--

(a) both sickness benefit and maternity benefit; or

(b) both sickness benefit and disablement benefit for temporary disablement; or

(c) both maternity benefit and disablement benefit for temporary disablement.

(2) Where a person is entitled to more than one of the benefits mentioned in subsection (1), he shall be entitled to choose which benefit he shall receive.

66. Corporation's right to recover damages from employer in certain cases

[Omitted by Act 44 of 1966, section 29, w.e.f. 17-6-1967]

67. Corporation's right to be indemnified in certain cases

[Omitted by Act 44 of 1966, section 29 w.e.f. 17-6-1967].

68. Corporation's rights where a principal employer fails or neglects to pay any contribution

(1) If any principal employer fails or neglects to pay any contribution which under this Act he is liable to pay in respect of any employee and by reason thereof such person becomes disentitled to any benefit or entitled to a benefit on a lower scale, the Corporation may, on being satisfied that the contribution should have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been entitled, if the failure or neglect had not occurred and the Corporation shall be entitled to recover from the principal employer either--

(i) the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer; or

(ii) twice the amount of the contribution which the employer failed or neglected to pay whichever is greater.

(2) The amount recoverable under this section may be recovered as if it were an arrear of land revenue or under section 45C to section 45I.

69. Liability of owner or occupier of factories, etc. for excessive sickness benefit

(1) Where the Corporation considers that the incidence of sickness among insured persons is excessive by reason of--

(i) insanitary working conditions in a factory or establishment or the neglect of the owner or occupier of the factory or establishment to observe any health regulations enjoined on him or under any enactment; or

(ii) insanitary conditions of any tenements or lodgings occupied by insured persons and such insanitary conditions are attributable to the neglect of the owner of the tenements or lodgings to observe any health regulations enjoined on him by or under any enactment,

the Corporation may send to the owner or occupier of the factory or establishment or to the owner of the tenements or lodgings, as the case may be, a claim for the payment of the amount of the extra expenditure incurred by the Corporation as sickness benefit; and if the claim is not settled by agreement, the Corporation may refer the matter, with a statement in support of its claim, to the appropriate government.

(2) If the appropriate government is of opinion that a prima facie case for inquiry is disclosed, it may appoint a competent person or persons to hold an inquiry into the matter.

(3) If upon such inquiry it is proved to the satisfaction of the person or persons holding the inquiry that the excess in incidence of sickness among the insured persons is due to the default or neglect of the owner or occupier of the factory or establishment or the owner of the tenements or lodgings, as the case may be, the said person or persons shall determine the amount of the extra expenditure incurred as sickness benefit, and the person or persons by whom the whole or any part of such amount shall be paid to the Corporation.

(4) A determination under sub-section (3) may be enforced as if it were a decree for payment of money passed in a suit by a Civil Court.

(5) For the purposes of this section, "owner" of tenements or lodgings shall include any agent of the owner and any person who is entitled to collect the rent of the tenements or lodgings as a lessee of the owner.

70. Repayment of benefit improperly received

(1) Where any person has received any benefit or payment under this Act when he is not lawfully entitled thereto, he shall be liable to repay to the Corporation the value of the benefit or the amount of such payment, or in the case of his death his representative shall be liable to repay the same from the assets of the deceased, if any, in his hands.

(2) The value of any benefits received other than cash payments shall be determined by such authority as may be specified in the regulations made in this behalf and the decision of such authority shall be final.

(3) The amount recoverable under this section may be recovered as if it were an arrears of land revenue or under section 45C to section 45I.

71. Benefit payable up to and including day of death

If a person dies, during any period for which he is entitled to a cash benefit under this Act, the amount of such benefit up to and including the day of his death shall be paid to any person nominated by the deceased person in writing in such form as may be specified in the regulations or, if there is no such nomination, to the heir or legal representative of the deceased person.

72. Employer not to reduce wages, etc.

No employer by reason only of his liability for any contributions payable under this Act shall, directly or indirectly reduce the wages of any employee, or except as provided by the regulations, discontinue or reduce benefits payable to him under the conditions of his service which are similar to the benefits conferred by this Act.

73. Employer not to dismiss or punish employee during period of sickness, etc.

(1) No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period

he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

(2) No notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (1) shall be valid or operative.

COMMENTS

Where the name of the workman is removed from the muster roll that would amount to termination of service and such termination is retrenchment within the meaning of s. 2(oo) of the Industrial Disputes Act, 1947.-- *Madhabananda Jena v. Orissa State Electricity Board* 1990 (1) LLJ 463.

Factually speaking bar contained in s. 73 of the Act only requires the employer not to dismiss or terminate. In the case of voluntary abandonment there is no question of the application of s. 73.-- *Guest Keen Williams Ltd. v. P.O. Labour Court* 1992 (1) CLR 433.

CHAPTER V-A TRANSITORY PROVISIONS

73A. Employer's special contribution

(1) For so long as the provisions of this Chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the Corporation a special contribution (hereinafter referred to as the employer's special contribution) at the rate specified under sub-section (3).

(2) The employer's special contribution shall, in the case of a factory or establishment situate in any area in which the provisions of both Chapters IV and V are in force, be in lieu of the employer's contribution payable under Chapter IV.

(3) The employer's special contribution shall consists of such percentage, not exceeding five per cent of total wage bill of the employer, as the Central Government may, by notification in the Official Gazette, specify from time to time:

PROVIDED that before fixing or varying any such percentage the Central Government shall give by like notification not less than two months' notice of its intention so to do and shall in such notification specify the percentage which it proposes to fix or, as the case may be, the extent to which the percentage already fixed is to be varied :

PROVIDED FURTHER that the employer's special contribution in the case of factories or establishments situate in any area in which the provisions of both Chapters IV and V are in force shall be fixed at a rate higher than that in the case of factories or establishments situate in any area in which the provisions of the said Chapters are not in force.

(4) The employer's special contribution shall fall due as soon as the liability of the employer to pay wages accrues, but may be paid to the Corporation at such intervals, within such time and in such manner as the Central Government may, by notification in the Official Gazette, specify, and any such notification may provide for the grant of a rebate for prompt payment of such contribution.

Explanation : "Total wage bill" in this section means the total wages which have accrued due to employees in a factory or establishment in respect of such wage periods as may be specified for the purposes of this section by the Central Government by notification in the Official Gazette.

73B. Special tribunals for decision of disputes or questions under this Chapter where there is no Employees' Insurance Court

(1) If any question or dispute arises in respect of the employer's special contribution payable or recoverable under this Chapter and there is no Employees' Insurance Court having jurisdiction to try such question or dispute, the question or dispute shall be decided by such authority as the Central Government may specify in this behalf.

(2) The provisions of sub-section (1) of section 76, sections 77 to 79 and 81 shall, so far as may be, apply in relation to a proceeding before an authority specified under sub-section (1) as they apply in relation to a proceeding before an Employees' Insurance Court.

73C. Benefits under Chapter V to depend upon employee's contribution

The payment of the employee's contribution for any week in accordance with the provisions of Chapter IV in any area where all the provisions of that Chapter are in force shall, for the purpose of Chapter V, have effect as if the contributions payable under Chapter IV in respect of that employee for that week had been paid, and shall accordingly entitle the employee as an insured person to the benefits specified in Chapter V if he is otherwise entitled thereto.

Explanation : In the case of an exempted employee, the employee's contribution shall be deemed to have been paid for a week if the Corporation is satisfied that

during that week the employer's contribution under Chapter IV would have been payable in respect of him but for the provisions of this Chapter.

73D. Mode of recovery of employer's special contribution

The employer's special contribution payable under this Chapter may be recovered as if it were an arrear of land revenue.

73E. Power to call for additional information or return

Without prejudice to the other provisions contained in this Act, the Corporation may, for the purpose of determining whether the employer's special contribution is payable under this Chapter or for determining the amount thereof, by general or special order, require any principal or immediate employer or any other person to furnish such information or returns to such authority, in such form and within such time as may be specified in the order.

73F. Power to exempt to be exercised by Central Government alone in respect of employer's special contributions

Notwithstanding anything contained in this Act, the Central Government may, having regard to the size or location or the nature of the industry carried on in, any factory or establishment or class of factories or establishments from the payment of the employer's special contribution under this Chapter and nothing contained in section 87 and 91 inclusive shall be deemed to authorise any State Government to grant any such exemption.

73G. Application of certain provisions of this Act to employer's special contribution

Save as otherwise expressly provided in this Chapter, the provisions of Chapter IV, section 72 and Chapter VII and any rules and regulations made under this Act shall, so far as may be, apply in relation to the payment or recovery of employer's special contributions, the penalties specified in connection therewith and all other matters incidental thereto as they would have applied in relation to an employer's contribution if this Chapter were not in force and the employer's contribution had been payable under this Act.

73H. Power to remove difficulties

[Repealed by the Act 44 of 1966, w.e.f. 17-6-1967.]

73-I. Duration of Chapter VA

The Central Government may, by notification in the Official Gazette, (vide SO No. 173(E) dt. 26-3-1973) direct that the provisions of this Chapter shall cease to have effect on such date as may be specified in the notification, not being a date earlier than three months from the date of the notification :

PROVIDED that on the provisions of this Chapter so ceasing to have effect the provisions of section 6 of the General Clauses Act, 1897, shall apply as if the provisions of this Chapter had then been repealed by a Central Act.

CHAPTER VI

ADJUDICATION OF DISPUTES AND CLAIMS

74. Constitution of Employees' Insurance Court

(1) The State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local area as may be specified in the notification.

(2) The Court shall consist of such number of Judges as the State Government may think fit.

(3) Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(5) Where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them.

COMMENTS

The power of the State Government to constitute an ESI Court includes the power to reconstitute it. Thus the power of reconstitution of an ESI Court also has to be exercised in the same manner as the power of constitution; namely by notification in the Official Gazette. Neither constitution nor reconstitution of an ESI Court can become effective before the date of the publication of the notification under sub-s. (1) of s. 74 of the Act in the Official Gazette. The material date is the date of publication in the Official Gazette.-- ESI Corporation v. Tilak Dhari 1995 Lab. IC 2403.

75. Matters to be decided by Employees' Insurance Court

(1) If any question or dispute arises as to--

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation under section 55A on a review of any payment of dependant's benefits, or

[* * *]

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act,

such question or dispute subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (2A), the following claims shall be decided by the Employees' Insurance Court, namely:--

(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

[* * * * *];

- (d) claim against a principal employer under section 68;
- (e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and
- (f) any claim for the recovery of any benefit admissible under this Act.

(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:

PROVIDED that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

COMMENTS

Where there is the filing of a suit after the payment of court fee, the suit at that stage cannot be dismissed without considering and deciding an issue as regards the sustainability of a statutory bar which the defendant may raise.-- P. Asokan v. Western Indian Plywood Ltd. 1987 (1) LLJ 182.

It is within the power of the tribunal to correct the mistakes or even set aside the ex parte orders. Such inherent powers must be vested in the authority, otherwise it would not be in a position to exercise its judicial or quasi-judicial functions in a

proper manner so that the cause of justice is advanced.-- Modi Steel Unit v. ESI Corporation 1989 (59) FLR 176.

It is not for the Corporation to dismiss the claim on the ground of limitation that the claim for benefit was not in accordance with the regulation made in that behalf within a period of 12 months after the claim became due.-- Radhey Shyam Chintamani v. ESI Corporation, 1989 (1) LLN 931.

76. Institution of proceedings, etc.

(1) Subject to the provisions of this Act and any rules made by the State Government, all proceedings before the Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose.

(2) If the Court is satisfied that any matter arising out of any proceedings, pending before it can be more conveniently dealt with by any other Employees' Insurance Court in the same State, it may, subject to any rules made by the State Government in this behalf, order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other Court the records connected with that matter.

(3) The State Government may transfer any matter pending before any Employees' Insurance Court in the State to any such Court in another State with the consent of the State Government of that State.

(4) The Court to which any matter is transferred under sub-section (2) or sub-section (3) shall continue the proceedings as if they had been originally instituted in it.

77. Commencement of proceedings

(1) The proceedings before an Employees' Insurance Court shall be commenced by application.

(1A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation : For the purpose of this sub-section,--

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the

claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;

(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time:

PROVIDED that no claim shall be made by the Corporation after five years of the period to which the claim relates;

(c) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation.

COMMENTS

Where after the scrutiny of the claim by the Corporation, the claim is denied by the Corporation, then and only then considering the language of s. 77, cause of action arises to an insured person so as to commence the proceedings before the ESI Court.-- ESI Corporation v. Moti Lal 1995 (71) FLR 82.

Where by an employee a claim is made before the Corporation and the claim is accepted but in part, it would be taken that the Corporation has refused to make payment to the extent the claim of the employee has not been accepted.-- ESI Corporation v. Kailash Narain 1995 (71) FLR 10.

78. Powers of Employees' Insurance Court

(1) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a Civil Court within the meaning of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(2) The Employees' Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.

(3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the Court.

(4) An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.

COMMENTS

Initiation of proceedings under Article 226 of the Constitution cannot be thrown out on the sole ground of availability of an alternative remedy at the stage of appeal.-- S.C. Bose v. ESI Corporation 1991 (60) FLR 539.

The position of the ESI court is as that of domestic tribunal. The court has to decide the questions in regard to entitlement of disablement benefit and the claim for recovery of benefit and while deciding the court acts in the capacity of exercising original jurisdiction and not as a court of appeal or a civil court reviewing a decision of domestic tribunal-- 1992 (74) LT 280.

79. Appearance by legal practitioners, etc.

Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance Court (other than appearance of a person required for the purpose of his examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such person or with the permission of the Court, by any other person so authorised.

80. Benefit not admissible unless claimed in time

[Omitted by Act 44 of 1966, section 34, w.e.f. 28-1-1968.]

81. Reference to High Court

An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

82. Appeal

(1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under this section.

COMMENTS

Presentation of an appeal before the High Court from an order of the ESI Court depends upon the involvement of substantial question of law. The question whether a particular person is an employee or not is a question of fact and has to be decided on the assessment of facts.-- ESI Corporation v. Charan Auto Agencies 1991 (63) FLR 562.

Where an application for setting aside the order met with a dismissal on the ground of non-production of evidence, though normal opportunities were given, evidence was denied and the order announced, held as no substantial question of law is involved in appeal, the same cannot be maintained.-- 1990(1) ACC 287.

Sub-s. (2) of s. 82 of the Act states that an appeal shall lie to the High Court from an order of ESI Court if it involves substantial question of law which means that this court while exercising appellate powers under s. 82 of the Act cannot interfere with the finding of fact based on appreciation of evidence recorded by the Insurance Court. The question whether or not certain employee answers the description of "employee" in cl.9 of s. 2 of the Act is a pure question of fact.-- Oriental Paper Mills v. Regional Director, ESI Corporation 1995 Lab. IC 212.

83. Stay of payment pending appeal

Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that Court may, and if so directed by the High Court shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.

CHAPTER VII **PENALTIES**

84. Punishment for false statements

Whoever, for the purpose of causing any increase in payment or benefit under this Act, or for the purpose of causing any payment or benefit to be made where no payment or benefit is authorised by or under this Act, or for the purpose of avoiding any payment to be made by himself under this Act or enabling any

other person to avoid any such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two thousand rupees, or with both :

PROVIDED that where an insured person is convicted under this section, he shall not be entitled for any cash benefit under this Act for such period as may be prescribed by the Central Government.

85. Punishment for failure to pay contributions, etc.

If any person--

- (a) fails to pay any contribution which under this Act he is liable to pay, or
- (b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or
- (c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or
- (d) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or
- (e) fails or refuses to submit any return required by the regulations, or makes a false return, or
- (f) obstructs any Inspector or other official of the Corporation in the discharge of his duties, or
- (g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided,

he shall be punishable--

(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but--

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees:

PROVIDED that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.

COMMENTS

The principle is that where the discretion to apply the provision of a particular statute is left with the government or with one of the highest officers it will be presumed that the discretion vested in such authority will not be abused. The government or such authority is in a position to have all the relevant and necessary information in relation to each kind of establishment, the nature of defaults made by the employer and the necessity to decide whether the damages to be imposed should be exemplary or not. The object of ss. 85A and 85B of the ESI Act is to authorise the Regional Director of ESI Corporation to impose exemplary or punitive damages and thereby prevent the employees from making default.-- ESI Corporation v. M/s Venkatachalam Condiments 1995 (2) LLJ 1144.

85A. Enhanced punishment in certain cases after previous conviction

Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to two years and with fine of five thousand rupees :

PROVIDED that where such subsequent offence is for failure by the employer to pay any contribution which under this Act he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to five years but which shall not be less than two years and shall also be liable to fine of twenty-five thousand rupees.

85B. Power to recover damages

(1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations:

PROVIDED that before recovering such damages, the employer shall be given a reasonable opportunity of being heard :

PROVIDED FURTHER that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in regulations.

(2) Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue or under sections 45C to 45-I.

COMMENTS

It is wrong to assume that there cannot be levied any damages or penalty from the defaulting employer unless the Corporation suffers an actual loss for the default committed by the employer. No loss except the loss of interest is suffered by the Corporation where there is a default committed by the establishment that is covered by the Act. Section 85(B) of the Act enables the Corporation to levy damages in the nature of penalty subject to ceiling prescribed under the said section.-- Joint Regional Director, ESI Corporation v. Ganesh Foundry (P) Ltd. 1995 (1) LLJ 180 .

Sec. 85B of the Act conferring discretion in the Regional Director as regards imposition of penalty calls for objective exercise within the limit pointed out in that section and such exercise must be apparent in the order. It is very much essential to find out what is the guilty conduct on the part of the party so that there is justification behind the imposition of damages.-- Regional Director, ESI Corporation v. Shakthi Tiles 1989(58) FLR 17.

Sec. 85B being penal in nature, it is obligatory for the authority to act in a judicious manner to determine the question after assessment of all the relevant factors and not in a cursory manner. Where the employer does not offer any explanation to the show cause it would not mean that the authority is absolved from the obligation of assessment that is cast upon it.-- Beema Manufacturers (P) Ltd. v. Regional Director ESI Corporation 1991 (62) FLR 743 .

The levy of damages as per s. 85(B)(1) is a levy in the nature of penalty to teach a lesson to the defaulter. Though the expression "damages" is used in the said section, the said expression could not be restricted to mean damages as understood in a contractual or tortious action.-- National Jute Manufacturers Corporation Ltd. v. ESI Corporation 1992 Lab. IC 2217 .

85C. Power of Court to make orders

(1) Where an employer is convicted of an offence for failure to pay any contribution payable under this Act, the Court may, in addition to awarding any punishment by order, in writing require him within a period specified in the order (which the Court may if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution in respect of which the offence was committed, and to furnish the return relating to such contributions.

(2) Where an order is made under sub-section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the Court, but if, on the expiry of such period or extended period, as the case may be, the order of the Court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punishable with imprisonment in respect thereof under section 85 and shall also be liable to pay fine which may extend to one thousand rupees for every day after such expiry on which the order has not been complied with.

86. Prosecutions

(1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner or of such other officer of the Corporation as may be authorised in this behalf by the Director-General of the Corporation.

(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under this Act.

(3) No court shall take cognisance of any offence under this Act except on a complaint made in writing in respect thereof.

COMMENTS

Employers deducting the contribution of the employees are deemed to be entrusted with the amount of contribution so deducted. In case the amount of contribution is not deposited by the employer, he would be deemed to have dishonestly misappropriated the said amount within the meaning of explanation to section 405 of the Indian Penal Code.-- *Shambhu Nath Agarwal v. ESI Corporation* 1990(2) LLJ 100.

86A. Offences by companies

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

PROVIDED that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,

(i) "company" means any body corporate and includes a firm and other associations of individuals; and

(ii) "director" in relation to--

(a) a company, other than a firm, means the managing director or a whole-time director;

(b) a firm means a partner in the firm.

CHAPTER VIII MISCELLANEOUS

87. Exemption of a factory or establishment or class of factories or establishments

The appropriate government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time.

COMMENTS

The appropriate government while taking decision upon the question of exemption of a factory has to conclude whether the benefits which the employer provides are substantially similar or superior to the benefits which the Act provides. It would be reasonable to give a hearing so as to satisfy the mind of the government in this regard.-- Orissa Industries Ltd. v. Union of India 1992(1) LLJ 182.

88. Exemption of persons or class of persons

The appropriate government may, by notification in the Official Gazette and subject to such conditions as it may deem fit to impose, exempt any persons or class of persons employed in any factory or establishment, or class of factories or establishments to which this Act applies from the operation of the Act.

COMMENTS

Legislature never intended the imposition of double penalty on the factories or establishments. Keeping that in view and avoidance of harassment, sections 87, 88 and 91 have been incorporated under the Act.-- 1992 Lab. IC 2404.

Power to grant exemption to the factories or establishment in a specified area has been conferred upon the State Government alone. Declaration to effectuate that cannot be sought from Insurance Court.-- 1992 Lab. IC 1825.

89. Corporation to make representation

No exemption shall be granted or renewed under section 87 or section 88, unless a reasonable opportunity has been given to the Corporation to make any representation it may wish to make in regard to the proposal and such representation has been considered by the appropriate government.

90. Exemption of factories or establishments belonging to government or any local authority

The appropriate government may, after consultation with the Corporation, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment belonging to [* *] any local authority, from the operation of the Act], if the employees in any such factory or establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

91. Exemption from one or more provisions of the Act

The appropriate government may, with the consent of the Corporation, by notification in the Official Gazette, exempt any employees or class of employees in any factory or establishment or class of factories or establishments from one or more of the provisions relating to the benefits provided under this Act.

91A. Exemptions to be either prospective or retrospective

Any notification granting exemption under section 87, section 88, section 90 or section 91 may be issued so as to take effect either prospectively or retrospectively on such date as may be specified therein.

91B. Misuse of benefits

If the Central Government is satisfied that the benefits under this Act are being misused by insured persons in a factory or establishment, that Government may, by order, published in the Official Gazette, disentitle such persons from such of the benefits as it thinks fit:

PROVIDED that no such order shall be passed unless a reasonable opportunity of being heard is given to the concerned factory or establishment, insured persons and the trade unions registered under the Trade Unions Act, 1926 having members in the factory or establishment.

91C. Writing off of losses

Subject to the conditions as may be prescribed by the Central Government, where the Corporation is of opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount.

92. Power of Central Government to give directions

(1) The Central Government may give directions to a State Government as to the carrying into execution of this Act in the State.

(2) The Central Government may, from time to time, give such directions to the Corporation as it may think fit for the efficient administration of the Act, and if any such direction is given, the Corporation shall comply with such direction.

93. Corporation officers and servants to be public servants

All officers and servants of the Corporation shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

93A. Liability in case of transfer of establishment

Where an employer, in relation to a factory or establishment transfers that factory or establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer:

PROVIDED that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

COMMENTS

Section 93A using the expression "employer" requires an interpretation in reference with the definition of the "principal employer" as laid down under s. 2(17) of the Act. And the term "employer" under s. 93A of the Act indicates towards the owner of the factory.-- *Vemly Hotels v. Kuldeep Singh* 1987 (59) FLR 182.

94. Contributions, etc., due to Corporation to have priority over other debts

There shall be deemed to be included among the debts which, under section 49 of the Presidency-Towns Insolvency Act, 1909, or under section 61 of the Provincial Insolvency Act, 1920, or under any law relating to insolvency in force in the territories which, immediately before the 1st November, 1956 were comprised in a Part B State, or under section 530 of the Companies Act, 1956), are in the distribution of the property of the insolvent or in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, the amount due in respect of any contribution or any other amount payable under this Act the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the winding up, as the case may be.

94A. Delegation of powers

The Corporation, and, subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation.

COMMENTS

Very wide powers of delegation are conferred upon the Corporation by this s. 94A. While exercising discretion, powers may be conferred by the Corporation upon its subordinates. Such a direction may well be to either exercise such power itself or there may be in addition a condition of authorising another to do so.-- Rameshwar Jute Mills Ltd. v. Union of India 1986 (1) LLN 387.

Sec. 94A gives authority to the Corporation to delegate its power and does not empower any sub-delegation and in the case of delegation of judicial or quasi judicial power as is contained in s. 85B (1) of the Act, s. 94A has to be strictly construed.-- 1981 (59) FJR 343.

95. Power of Central Government to make rules

(1) The Central Government may, after consultation with the Corporation and subject to the condition of previous publication, make rules not inconsistent with this Act for the purpose of giving effect to the provisions thereof.

(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) the limit of wages beyond which a person shall not be deemed to be an employee;

(ab) the limit of maximum monthly salary for the purpose of sub-section (1) of section 17;

(ac) the manner in which appointments and elections of members of the Corporation, the Standing Committee and the Medical Benefit Council shall be made;

(b) the quorum at meetings of the Corporation, the Standing Committee and the Medical Benefit Council and the minimum number of meetings of those bodies to be held in a year;

(c) the records to be kept of the transaction of business by the Corporation, the Standing Committee and the Medical Benefit Council;

(d) the powers and duties of the Director General and the Financial Commissioner and the conditions of their service;

(e) the powers and duties of the Medical Benefit Council;

(ea) the types of expenses which may be termed as administrative expenses, the percentage of income of the Corporation which may be spent for such expenses;

- (eb) the rates of contributions and limits of wages below which employees are not liable to pay contribution;
- (ec) the manner of calculation of the average daily wage;
- (ed) the manner of certifying the certificate to recover amount by the Recovery Officer;
- (ee) the amount of funeral expenses;
- (ef) the qualifications, conditions, rates and period of sickness benefit, maternity benefit, disablement benefit and dependents benefit;
- (eg) the conditions for grant of medical benefits for insured persons who cease to be in insurable employment on account of permanent disablement;
- (eh) the conditions for grant of medical benefits for persons who have attained the age of superannuation;
- (ei) the manner in which and the time within which appeals may be filed to medical appeal tribunals or Employees' Insurance Courts;
- (f) the procedure to be adopted in the execution of contracts;
- (g) the acquisition, holding and disposal of property by the Corporation;
- (h) the raising and repayment of loans;
- (i) the investment of the funds of the Corporation and of any provident or other benefit fund and their transfer or realisation;
- (j) the basis on which the periodical valuation of the assets and liabilities of the Corporation shall be made;
- (k) the bank or banks in which the funds of the Corporation may be deposited, the procedure to be followed in regard to the crediting of moneys accruing or payable to the Corporation and the manner in which any sums may be paid out of the Corporation funds and the officers by whom such payment may be authorised;
- (l) the accounts to be maintained by the Corporation and the forms in which such accounts shall be kept and the times at which such accounts shall be audited;

(m) the publication of the accounts of the Corporation and the report of auditors, the action to be taken on the audit report, the powers of auditors to disallow and surcharge items of expenditure and the recovery of sums so disallowed or surcharged;

(n) the preparation of budget estimates and of supplementary estimates and the manner in which such estimates shall be sanctioned and published;

(o) the establishment and maintenance of provident or other benefit fund for officers and servants of the Corporation;

(oa) the period of non-entitlement for cash benefit in case of conviction of an insured person;

(p) any matter which is required or allowed by this Act to be prescribed by the Central Government.

(2A) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interest of any person other than the Corporation to whom such rule may be applicable.

(3) Rules made under this section shall be published in the Official Gazette and thereupon shall have effect as if enacted in this Act.

(4) Every rule made under this section 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 or 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.

COMMENTS

The rule is valid with effect from the date on which it is brought in force and it will stand confirmed, notified or annulled as the case may be if both the Houses concur modify or annul the same.-- 1992(2) Ker LT 910.

The requirement of placing the rule before each House of Parliament while in session, for a duration of 30 days, whether the said 30 days comprise in one

session or two or more successive sessions is not such a condition precedent which is to be followed before the rule is brought into force. Provisions of s. 95(4) in clear terms lay down that if both the Houses reach an agreement as regards any modification in the rule or where there is an agreement to the effect that the rules should not be made, the rule shall have effect only in such modified form or be of no effect at all.-- Tata Employees Union v. Union of India 1993 (1) LLJ 580.

96. Power of State Government to make rules

(1) The State Government may, after consultation with the Corporation and, subject to the condition of previous publication, make rules not inconsistent with this Act in regard to all or any of the following matters, namely--

(a) the constitution of Employees' Insurance Courts, the qualifications of persons who may be appointed Judges thereof, and the conditions of service of such Judges;

(b) the procedure to be followed in proceedings before such Courts and the execution of orders made by such Courts;

(c) the fee payable in respect of applications made to the Employees' Insurance Court, the costs incidental to the proceedings in such Court, the form in which applications should be made to it and the particulars to be specified in such applications;

(d) the establishment of hospitals, dispensaries and other institutions, the allotment of insured persons or their families to any such hospital, dispensary or other institution;

(e) the scale of medical benefit which shall be provided at any hospital, clinic, dispensary or institution, the keeping of medical records and the furnishing of statistical returns;

(f) the nature and extent of the staff, equipment and medicines that shall be provided at such hospitals, dispensaries and institutions;

(g) the conditions of service of the staff employed at such hospitals, dispensaries and institutions; and

(h) any other matter which is required or allowed by this Act to be prescribed by the State Government.

(2) Rules made under this section shall be published in the Official Gazette and thereupon shall have effect as if enacted in this Act.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.

97. Power of Corporation to make regulations

(1) The Corporation may, subject to the condition of previous publication, make regulations, not inconsistent with this Act and the rules made there under, for the administration of the affairs of the Corporation and for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely--

(i) the time and place of meetings of the Corporation, the Standing Committee and the Medical Benefit

Council and the procedure to be followed at such meetings;

(ia) the time within which and the manner in which a factory or establishment shall be registered;

(ii) the matters which shall be referred by the Standing Committee to the Corporation for decision;

(iii) the manner in which any contribution payable under this Act shall be assessed and collected;

(iiia) the rate of interest higher than twelve per cent on delayed payment of contributions;

(iv) reckoning of wages for the purpose of fixing the contribution payable under this Act;

(iva) the register of employees to be maintained by the immediate employer;

(ivb) the entitlement of sickness benefit or disablement benefit for temporary disablement on any day on which person works or remains on leave or on holiday and in respect of which he receives wages or for any day on which he remains on strike;

- (v) the certification of sickness and eligibility for any cash benefit;
 - (vi) the method of determining whether an insured person is suffering from one or more of the diseases specified in the Third Schedule;
 - (vii) the assessing of the money value of any benefit which is not a cash benefit;
 - (viii) the time within which and the form and manner in which any claim for a benefit may be made and the particulars to be specified in such claim;
 - (ix) the circumstances in which an employee in receipt of disablement benefit may be dismissed, discharged, reduced or otherwise punished;
 - (x) the manner in which and the place and time at which any benefit shall be paid;
 - (xi) the method of calculating the amount of cash benefit payable and the circumstances in which and the extent to which commutation of disablement and dependant's benefits, may be allowed and the method of calculating the commutation value;
 - (xii) the notice of pregnancy or of confinement and notice and proof of sickness;
 - (xiia) specifying the authority competent to give certificate of eligibility for maternity benefit;
 - (xiib) the manner of nomination by an insured woman for payment of maternity benefit in case of her or her child's death;
 - (xiic) the production of proof in support of claim for maternity benefit or additional maternity benefit;
 - (xiii) the conditions under which any benefit may be suspended;
 - (xiv) the conditions to be observed by a person when in receipt of any benefit and the periodical medical examination of such person;
 - (xv) [* * * * *]
 - (xvi) the appointment of medical practitioners for the purposes of this Act, the duties of such practitioners
- and the form of medical certificates;

(xvia) the qualifications and experience which a person should possess for giving certificate of sickness;

(xvib) the constitution of medical boards and medical appeal tribunals;

(xvii) the penalties for breach of regulations by fine (not exceeding two days' wages for a first breach and not exceeding three days' wages for any subsequent breach) which may be imposed on employees;

(xviia) the amount of damages to be recovered as penalty;

(xviib) the terms and conditions for reduction or waiver of damages in relation to a sick industrial company;

(xviii) the circumstances in which and the conditions subject to which any regulation may be relaxed, the extent of such relaxation, and the authority by whom such relaxation may be granted;

(xix) the returns to be submitted and the registers or records to be maintained by the principal and immediate employers, the forms of such returns, registers or records, and the times at which such returns should be submitted and the particulars which such returns, registers and records should contain;

(xx) the duties and powers of Inspectors and other officers and servants of the Corporation;

(xxi) the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of the officers and servants of the Corporation other than the Director General and Financial Commissioner;

(xxii) the procedure to be followed in remitting contributions to the Corporation; and

(xxiii) any matter in respect of which regulations are required or permitted to be made by this Act.

(2A) The condition of previous publication shall not apply to any regulations of the nature specified in clause (xxi) of sub-section (2).

(3) Regulations made by the Corporation shall be published in the Gazette of India and thereupon shall have effect as if enacted in this Act.

(4) Every regulation shall, as soon as may be, after it is made by the Corporation, be forwarded to the Central Government and the government shall cause a copy

of the same to be laid 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 or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation 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 regulation.

98. Corporation may undertake duties in Part B States

[Repealed by Act 53 of 1951, section 26.]

99. Medical care for the families of insured persons

At any time when its funds so permit, the Corporation may provide or contribute towards the cost of medical care for the families of insured persons.

99A. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions or give such directions, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

(2) Any order made under this section shall have effect notwithstanding anything inconsistent therewith in any rules or regulations made under this Act.

100. Repeal and saving

If, immediately before the day on which this Act comes into force in any part of the territories which, immediately before the 1st November, 1956, were comprised in a Part B State, there is in force in that part any law corresponding to this Act, that law shall, on such day, stand repealed:

PROVIDED that the repeal shall not affect--

(a) the previous operations of any such law, or

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law; or

(c) any investigation or remedy in respect of any such penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

PROVIDED FURTHER that subject to the preceding proviso anything done or any action taken under any such law shall be deemed to have been done or taken under the corresponding provision of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.

SCHEDULE I

[* * *]

SCHEDULE II

[Section 2(15A) and (15B)]

PART I

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT TOTAL DISABLEMENT

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

PART II

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT

Amputation--Upper limbs (either arms)

<i>Sl. No.</i>	<i>Description of injury</i>	<i>%age of loss of earning capacity</i>
7.	Amputation through shoulder joint	90
8.	Amputation below shoulder with stump less than 20.32 cm. from tip of acromion	80
9.	Amputation from 20.32. cm. from tip of acromion to less than 11.43.com below tip of olecranon.	70
10.	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43.cm. below tip of olecranon.	60
11.	Loss of thumb	30
12.	Loss of thumb and its metacarpal bone	40
13.	Loss of four fingers of one hand	50
14.	Loss of three fingers of one hand	30
15.	Loss of two fingers of one hand	20
16.	Loss of terminal phalanx of thumb	20
16A	Guillotine amputation of the tip of the thumb without loss of bone	10

Amputation--Lower limbs

17.	Amputation of both feet resulting in end-bearing stumps	90
18.	Amputation through both feet proximal to the metatarsophalangeal joint	80
19.	Loss of all toes of both feet through the metatarso-phalangeal	40
20.	Loss of all toes of both feet proximal to the proximal interphalangeal joint	30
21.	Loss of all toes of both feet distal to the proximal interphalangeal joint	20
22.	Amputation at hip	90
23.	Amputation below hip with stump not exceeding 12.70cm. in length measured from tip of great trochanter	80
24.	Amputation below hip with stump exceeding 12.70cm. in length measured from tip of great trochanter but not beyond middle thigh	70
25.	Amputation below middle thigh to 8.89cm below knee	60
26.	Amputation below knee with stump exceeding 8.89 cm. but not exceeding 12.70 cm.	50
27.	Amputation below knee with stump exceeding 12.70 cm.	50
28.	Amputation of one foot resulting in end-bearing	50
29.	Amputation through one foot proximal to the metatarsophalangeal joint	50
30.	Loss of all toes of one foot through metatarso-phalangeal joint	20
Other Injuries		
31.	Loss of one eye. without complications, the other being normal	40
32.	Loss of vision of one eye without complications or disfigurement of eye-ball, the other being normal	30
32A	Partial loss of vision of one eye	10

LOSS OF

A--Fingers of right or left hand
Index finger

SCHEDULE III

COMMUTATION VALUES FOR PERMANENT DISABLEMENT BENEFIT [Regulation 76B]

<i>Age as on last birthday of insured person on the date on which the application for commutation is received in the appropriate office</i>	<i>Factor with which the daily rate of benefit is to be multiplied</i>	<i>Age as on last birthday of insured person on the date on which the application for commutation is received in the appropriate office</i>	<i>Factor with which the daily rate of benefit is to be multiplied</i>
17 years and below	5690	49 years	4400
18 years	5670	50 years	4330
19 years	5660	50 years	4250
20 years	5640	52 years	4180
21 years	5620	53 years	4100
22 years	5600	54 years	4020
23 years	5580	55 years	3930
24 years	5560	56 years	3850
25 years	5540	57 years	3760
26 years	5510	58 years	3670

27 years	5480	59 years	3590
28 years	5460	60 years	3500
29 years	5420	61 years	3400
30 years	5390	62 years	3310
31 years	5360	63 years	3220
32 years	5320	64 years	3130
33 years	5280	65 years	3030
34 years	5240	66 years	2940
35 years	5200	67 years	2850
36 years	5160	68 years	2750
37 years	5110	69 years	2660
38 years	5070	70 years	2570
39 years	5020	71 years	2470
40 years	4970	72 years	2380
41 years	4910	73 years	2290
42 years	4860	74 years	2200
43 years	4800	75 years	2120
44 years	4740	76 years	2030
45 years	4670	77 years	1950
46 years	4610	78 years	1860
47 years	4540	79 years	1780
48 years	4470	80 years	1700

EMPLOYEES' STATE INSURANCE (CENTRAL) RULES, 1950

In exercise of the powers conferred by section 95 of the Employees' State Insurance Act, 1948 (XXXIV) of 1948), the Central Government is pleased to make the following rules, :

CHAPTER I

1. Short title and extent

(1) These rules may be called the Employees' State Insurance (Central) Rules, 1950.

(2) They extend to the whole of India.

2. Definitions

In these rules, unless there is anything repugnant in the subject or context,

(1) "the Act" means the Employees' State Insurance Act, 1948 (34 of 1948);

(1A) "average daily wages during a contribution period" means, in respect of any employee for the purpose of the daily rate of sickness benefit, maternity benefit, disablement benefit and dependant's benefit, the sum equal to one hundred and fifteen per cent of the aggregate amount of wages payable to him during that period, divided by the number of days (including paid holidays and leave days) for which such wages were payable.

(1B) "average daily wages during a wage period" means--

(a) in respect of an employee who is employed on time-rate basis, the amount of wages which would have been payable to him for the complete wage period had he worked on all the working days in that wage period, divided by 26 if he is monthly rated, 13 if he is fortnightly rated, 6 if he is weekly rated and 1 if he is daily rated;

(b) in respect of an employee employed on any other basis, the amount of wages earned during the complete wage period in the contribution period divided by the number of days in full or part for which he has worked for wages in that wage period:

PROVIDED that where an employee receives wages without working on any day during such period, he shall be deemed to have worked for 26, 13, 6 or 1 days or day if the wage period be a month, a fortnight, a week or a day respectively.

Explanation : Where any night shift continues beyond midnight, the period of the night shift after midnight shall be counted for reckoning the day worked as part of the day preceding;

(1C) "benefit period" means the period not exceeding six consecutive months corresponding to the contribution period, as may be specified in the regulations;

(2) "chairman" means the Chairman of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be;

(2A) "contribution period" means the period not exceeding six consecutive months, as may be specified in the regulations;

(3) "form" means a form appended to these Rules;

(4) "fund" means the Employees' State Insurance Fund;

(5) "government securities" means government securities as defined in the Indian Securities Act, 1920;

(6) "immovable property" includes land, benefits to arise out of land, things attached to the earth, or permanently fastened to anything attached to the earth;

(7) "movable property" means property of every description except immovable property;

(7A) "standard benefit rate" means the daily rate of benefit specified in rule 54;

(8) "state medical commissioner" means a duly registered medical practitioner including a medical officer in the service of the State Government appointed as such by the Corporation;

(9) "year" shall mean the financial year, that is to say, the period beginning from the first of April and ending with the thirty-first of March of the year following;

(10) all other words and expressions shall have the meanings respectively assigned to them in the Act.

CHAPTER II

2A. Election of Members of Parliament to the Corporation

The House of the People (Lok Sabha) and the Council of States (Rajya Sabha) shall elect in such manner as the Speaker of the House of the People or as the case may be, the Chairman of the Council of States may direct, two members of the House of the People (Lok Sabha) and one member of the Council of States (Rajya Sabha) to be members of the Corporation.

3. Election of members of the Standing Committee

(1) The Chairman of the meeting shall, at a meeting of the Corporation at which it is proposed to elect members of the Standing Committee under clause (c) of section 8, invite members to propose names from among members of the Corporation belonging to the group from which election is to be made. The names proposed shall be duly seconded by another member of the Corporation.

(2) If the number proposed from any group for election does not exceed the number of vacancies to be filled from that group, the persons whose names have been so proposed shall be declared elected to the Standing Committee.

(3) If the number proposed for election from a group exceeds the number of vacancies to be filled therefrom, each member of the Corporation present at the meeting shall be given a ballot paper containing the names of all the candidates proposed and he shall be required to vote thereon for as many candidates from group as there are vacancies to be filled up. Not more than one vote shall be given in favour of any candidate. If any member votes for more candidates than there are vacancies in the group or gives more than one vote in favour of any one candidate, all his votes shall be deemed to be invalid.

(4) The persons getting the highest number of votes shall be declared by the Chairman, at the meeting or as soon thereafter as possible, as duly elected to the Standing Committee:

PROVIDED that where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared to be elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Chairman and in such manner as he may determine.

(5) If any question shall arise as to the validity of any election it shall be referred to the Central Government whose decision in the matter shall be final.

4. Restoration to membership

(1) A member of the Corporation, the Standing Committee, or the Medical Benefit Council, who ceases to be a member by virtue of section 12, shall be informed of such cessation by a letter sent to him by registered post. The letter shall also indicate that if he desires restoration to membership, he may apply therefor within thirty days from the receipt of the letter.

(2) The application under sub-rule (1) shall indicate the reasons which prevented him from attending three consecutive meetings and shall be addressed to the Chairman concerned.

(3) The application shall be placed before the next meeting of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, and if a majority of the members present at such meeting are satisfied that the reasons for failure to attend three consecutive meetings are adequate, he shall be restored to membership immediately after a resolution to that effect is adopted.

(4) The benefit of restoration to membership as provided for in this rule shall be allowed to a member only once during any one term as a member.

5. Fees and allowances of members

(1) Subject to the provisions of sub-rules (2) and (3), every non-official member of the Corporation, Standing Committee or the Medical Benefit Council shall be allowed travelling and daily allowance for attending the meetings of the Corporation or the Standing Committee or the Medical Benefit Council, as the case may be, at the following rates:--

(i) Travelling allowance:

(A) A non-official member residing at the place where a meeting is held shall be allowed the actual expenditure incurred by him on conveyance subject to the maximum of rupees fifty for each day on which he attends one or more meetings;

(B) A non-official member, not residing at the place where a meeting is held, shall be allowed to draw:

(a) actual expenditure incurred by him on air journey by economy (tourist) class; or

(b) actual expenditure incurred by him on journey, by rail, by second class A.C., two-tier sleeper or first class, as the case may be;

(c) actual fare or expenditure incurred on road journey by taxi or own car or auto-rickshaw or bus (other than an air-conditioned bus) but not exceeding the rates notified by the concerned Director of Transport for journey by taxi or auto-rickshaw. When the journey is performed between places connected by railway, mileage would be limited to what would have been admissible to the member under clause (b) of this item.

(ii) Daily allowance:

(A) A non-official member residing at a place where a meeting is held shall not be entitled to any daily allowance;

(B) A non-official member, not residing at a place where a meeting is held shall be paid daily allowance at the rate of Rs. 150 (rupees one hundred and fifty only) per day if the member stays in a hotel and Rs. 100 (rupees one hundred only) per day if the member does not stay in a hotel:

PROVIDED that the daily allowance shall be calculated for the entire absence from the normal place of residence of the non-official member on calendar day basis; i.e., midnight to midnight as under:

For absence not exceeding 6 hours Nil

For absence exceeding 6 hours but not exceeding 12 hours 70%

For absence exceeding 12 hours 100%

(2) A non-official member of the Corporation or Standing Committee or the Medical Benefit Council who is a Member of Parliament or a Member of State Legislature shall be paid travelling allowance and daily allowance in accordance with the provisions of the Salary, Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954), or the respective provisions of the law pertaining to the members of the concerned State Legislature.

(2A) Travelling and daily allowance shall be allowed if a member certifies that he has not drawn any travelling or daily allowance from any other sources in respect of the journey and halt for which the claim is made.

(2B) The daily and travelling allowance shall also be payable in respect of the meetings of any sub-committee set up by the Corporation, the Standing Committee or the Medical Benefit Council.

(3) For attending a meeting of the Corporation, the Standing Committee, Medical Benefit Council or meetings of a Sub-Committee set up by the corporation, Standing Committee or the Medical Benefit Council, an official member of the Central Government shall draw his travelling allowance from his department on a scale admissible to him under the Central Government rules and the amount so drawn shall, on a demand being made therefor by the Central Government, be reimbursed by the Corporation to that Government.

(4) Payments shall not be made to a non-official member earlier than the last date upon which the allowance is claimed. The travelling allowance for both the onward and return journeys will be included in the travelling allowance bill and the payment made thereof treated as final, irrespective of the date of completion of the journey. The Director-General, Employees' State Insurance Corporation will, however, obtain a formal intimation from the non-official member to the effect that the return journey has, in fact, been completed.

6. Minimum number of meetings

- (1) The Corporation and the Medical Benefit Council shall meet at least twice each year.
- (2) The Standing Committee shall meet at least four times each year.
- (3) The Chairman may, whenever he thinks fit, and shall, within fifteen days of the receipt of a requisition in writing from not less than one half of the members of the body concerned, call a meeting thereof.
- (4) Any requisition made under this rule shall specify the object of the meeting proposed to be called.

7. Roll of members

- (1) The Corporation shall maintain a roll of members separately for the Corporation, the Standing Committee and the Medical Benefit Council. The name and the address of each member shall be stated therein.
- (2) If a member changes his address, he shall notify such change to the Corporation for the correction of his address in this roll.

8. Notice of meeting and list of business

- (1) The Chairman shall decide the date, time and place of every meeting. A notice of not less than twenty-one days from the date of issue shall ordinarily be given to every member of each meeting of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be. Such notice may be given to every member by post or in any other suitable manner. A list of business proposed to be transacted shall, after approval by the Chairman, be posted along with the notice. Brief notes on each item of the agenda shall be sent along with the agenda or as soon thereafter as possible. If it is necessary to convene an emergency meeting, a reasonable notice thereof shall be given to every member.
- (2) No business other than that for which a meeting is convened shall be considered at that meeting, except with the permission of the Chairman of the meeting.

9. Chairman of the meeting

The Chairman, or in his absence the Vice-Chairman, if any, of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, shall preside at the meetings. In the event of the absence of both the Chairman and Vice-Chairman, if any, the members present may elect one from amongst themselves to preside.

10. Quorum

No business shall be transacted at any meeting unless a quorum of fifteen members in the case of the Corporation, five members in the case of the Standing Committee and seven members in the case of the Medical Benefit Council, is present:

PROVIDED that if at any meeting there is not a sufficient number of members present to form a quorum, the Chairman of the meeting may adjourn the meeting to a date not later than seven days from the date of the original meeting and it shall thereupon be lawful to dispose of the business at such adjourned meeting irrespective of the number of members attending.

11. Disposal of business

Any business which requires consideration by the Corporation, the Standing Committee or the Medical Benefit Council shall be considered at a meeting thereof :

PROVIDED that the Chairman may, if he thinks fit, direct that the necessary papers may be referred for opinion to all members :

PROVIDED FURTHER that the decision on any question which is so referred shall be acted upon if supported by not less than a two-thirds majority of the members of the body concerned. In other cases or where the Chairman so decides, the question shall be considered at a duly convened meeting.

12. Proceedings of the meetings

(1) The proceedings of each meeting, showing inter alia the name of the members present thereat, shall be forwarded to each member of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, and to the Central Government as soon after the meeting as possible and in any case not later than four weeks after the meeting.

(2) The minutes of each meeting shall be confirmed with such modifications as may be considered necessary at the next meeting.

13. Minutes books

(1) The minutes of a meeting of the Corporation, the Standing Committee and the Medical Benefit Council shall be kept in separate books (hereinafter referred to as minute books) and shall be signed by the Chairman of the meeting at which proceedings are confirmed.

(2) A copy of the minutes so confirmed shall be forwarded to the Central Government within fifteen days from the date of such confirmation.

(3) The minutes books shall be kept open at the principal office of the Corporation during office hours on working days for inspection free of charge by any member of the Corporation.

(4) The minutes book of the Medical Benefit Council shall be kept open at the principal office of the Corporation during office hours on working days for inspection free of charge by any member of the Medical Benefit Council.

14. Powers and duties of the Medical Benefit Council

The powers and duties of the Medical Benefit Council shall be--

(1) to advise the Corporation in regard to the constitution, setting up duties and powers of the regional and local Medical Benefit Councils;

(2) to make recommendations to the Corporation in regard to--

(i) the scale and nature of medical benefit provided at hospitals, dispensaries, clinics and other institutions and the nature and the extent of the medicines, staff and equipment which shall be maintained at such institutions and the extent to which these fall short of the desired standard;

(ii) the medical formulary for use in connection with the medical benefit provided under the Act;

(iii) medical certification, including the procedure and the forms for such certification, statistical returns, registers and other medical records;

(iv) measures undertaken for the improvement of the health and welfare of insured persons, and the rehabilitation and re-employment of insured persons, disabled or injured.

(3) to advise the Corporation on any matter relating to the professional conduct of any medical practitioner employed for the purpose of providing medical benefit under the Act.

15. Salaries, allowances and conditions of service of the Director General and Financial Commissioner

(1) The Director General shall be in the scale of pay of Rs. 22400-24500 and the Financial Commissioner shall be in the scale of pay of Rs. 18400-22400.

(2) The Director General and the Financial Commissioner shall receive dearness allowance, city compensatory allowance, house rent allowance, travelling allowance and other allowance, at such rates, and such provident fund, leave and medical benefits as may be sanctioned for the officers of the Central Government drawing similar salary at the place where they are posted :

PROVIDED that where the Director General or the Financial Commissioner is a person already in the service of the Corporation, he shall be entitled to pension, gratuity and other superannuation benefits to which he would have been otherwise entitled but for his appointment as the Director General or the Financial Commissioner :

PROVIDED FURTHER that the pay, allowances and conditions of service of the Director General or the Financial Commissioner, if he is a person already in the service of the

government, shall be such as may be determined by the Central Government in each individual case.

16. Powers and duties of the Director General

(1) The powers and duties of the Director General shall be--

(i) to act as the Chief Executive Officer of the Corporation;

(ii) [* * *]

(iii) to convene, under the orders of the Chairman, meetings of the Corporation, the Standing Committee and the Medical Benefit Council in accordance with the Act and the rules and to implement the decisions reached at the meetings;

(iv) to enter into contracts on behalf of the Corporation in accordance with the Act or the rules or regulations made thereunder, or the general or special instructions of the Corporation or the Standing Committee;

(v) to furnish all returns and documents required by the Act or the Rules to the Central Government and to correspond with the Central Government and the State Governments upon all matters concerning the Corporation;

(vi) to undertake such other duties and to exercise such other powers as may from time to time be entrusted or delegated to him.

(2) The Director General may, with the approval of the Standing Committee, by general or special order, delegate any of his powers or duties under the rules or the regulations or under any resolution of the Corporation or the Standing Committee, as the case may be, to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subjected to such restrictions, limitations and conditions, if any, as the Director-General may, with the approval of the Standing Committee impose.

17. Powers and duties of the Insurance Commissioner

18. Powers and duties of the Medical Commissioner

19. Powers and duties of the Financial Commissioner

The powers and duties of the Financial Commissioner shall, subject to the control of the Director-General be--

(i) to maintain the accounts of the Corporation and to arrange for the compilation of accounts by the collection of returns from the centre and regions;

(ii) to prepare the budget of the Corporation;

(iii) to arrange for internal audit of the accounts of the centres and regions and of the receipt and payments thereat;

(iv) to make recommendations for the investment of the funds of the Corporation; and

(v) to undertake such other duties and to exercise such other powers as may, from time to time, be entrusted or delegated to him.

20. Creation of posts by the Corporation

The powers for creation of posts vested in the Corporation under sub-section (1) of section 17 of the Act shall be exercised by the Corporation in relation to posts carrying maximum scale of pay of Rs. 14300-18300.

21. Bank or banks for depositing the fund

(1) All moneys accruing or payable to the Fund shall be received by such officers of the Corporation as may be authorised by it in this behalf. The amount so received shall as soon as practicable be acknowledged by a receipt in Form I and deposited in the Reserve or the State Bank of India or any of its subsidiaries or the Nationalised Banks to the account of the Fund:

PROVIDED that any moneys may also be paid directly to the account of the Fund in any such bank.

Explanation : "Nationalised Bank" means a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

(2) The receipt book in Form I shall be numbered serially by machine and the unused forms shall be kept in the custody of the Financial Commissioner or such other officer of the Corporation as may be authorised by the Corporation in this behalf.

22. Procedure for crediting moneys to the banks

(1) All moneys accruing or payable to the Corporation shall be credited to the approved bank and not utilised directly for any purpose.

(2) The bank or banks shall be required at the end of every calendar month to furnish to the Corporation or such officer as may be authorised by it in this behalf, a statement of

the amounts deposited in and withdrawn from the Fund during the month. These statements shall be examined by the Director General before the expiry of a period of two months following the period to which the statements relate.

23. Purpose and manner of payment out of the fund

(1) The accounts of the Fund shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

(2) No payment shall be made by the bank or banks out of the Fund except on a cheque signed by such officers as may be authorised under sub-rule (1).

(3) Any payment in excess of one hundred rupees shall be made by means of a cheque signed as aforesaid and not in any other way unless specifically authorised by the Standing Committee:

PROVIDED that payment of salaries to the employees of the Corporation drawing a basic salary not exceeding rupees two hundred and fifty a month may be made in cash.

(4) No payment shall be made out of the Fund unless the expenditure is covered by a current budget grant:

PROVIDED that in the absence of a current budget grant, the Corporation may authorise payments either generally or for any particular case:

PROVIDED FURTHER that the payment of benefits to insured person under the provisions of the Act and of the pay and allowances of duly sanctioned posts shall not be withheld for want of a sanctioned budget grant.

23A. Promotion of measures for the improvement of health and welfare of insured persons

For the promotion of measures for the improvement of health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured, the Corporation may incur an expenditure up to a limit of rupees five lakhs per year from the Employees' State Insurance Fund.

24. Circumstances in which cheques may be drawn

Before any person authorised under rule 23 signs a cheque, he shall satisfy himself that the sum for which the cheque is drawn is--

(i) required for a purpose or work specifically sanctioned by the proper authority and covered by a current budget grant; and

(ii) required for any payment referred to and specified under section 28:

PROVIDED that in the absence of a current budget grant the Corporation may authorise payment either generally or for any particular case :

PROVIDED FURTHER that the payment of benefits to insured persons under the provisions of the Act and of the pay and allowances of duly sanctioned posts shall not be withheld for want of a sanctioned budget grant.

25. Acquisition of property

Subject to the provisions of rule 29 and such conditions, as may, from time to time, be laid down by the Corporation, the Director General may, for the purposes of this Act, acquire on behalf of the Corporation movable or immovable property :

PROVIDED that sanction of the Standing Committee shall be required for the exchange of any immovable property, for taking of any property on lease for a term exceeding twelve months, or for the acceptance of any gift or bequest of property burdened by an obligation.

26. Disposal of property

Subject to the provisions of rule 29 and such conditions as may be laid down by the Corporation from time to time, the Director-General may--

(i) dispose of, by sale or exchange, any movable property belonging to the Corporation, the value of which does not exceed ten thousand rupees in each case, or grant for any term not exceeding twelve months a lease of any immovable property belonging to the Corporation;

(ii) with the sanction of the Standing Committee, lease, sell or otherwise dispose of any movable or immovable property belonging to the Corporation.

27. Investment, transfer or realisation of the fund

(1) All moneys belonging to the Fund which are not immediately required for expenses properly defrayable under the Act, may, subject to the approval of the Standing Committee, be invested by the Director-General--

(i) in government securities including Treasury Deposit Receipt; or

(ii) in securities mentioned or referred to in clauses (a) to (d) section 20 of the Indian Trusts Act, 1882 (2 of 1882); or

(iii) as fixed deposit in the Reserve or the State Bank of India or any of its subsidiaries or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

(2) Money belonging to the Fund shall not be invested in any other manner except with the prior approval of the Central Government.

(3) Any investment made under this rule may, subject to the provisions of sub-rules (1) and (2), be varied, transposed, or realised from time to time :

PROVIDED, however, that if such variation, transposition or realisation is likely to result in a loss, the prior approval of the Central Government shall be obtained.

Explanation : The approval of the Central Government shall not be required merely on the ground that the value of the security on its maturity is less than the price at which it was purchased.

(4) The Central Government may, at any time, direct the vacation in part or in whole, or prohibit investment, in any security or class of securities or any land or building.

(5) All dividends, interest or other sums received in respect of any investment shall, as soon as possible after receipt, be paid into or credited to the account of the Fund.

(6) The expenses of, or the loss, if any, arising from any investment shall be charged to the Fund and the profit, if any, from the sale of any investment shall also accrue to the Fund.

(7) The approval under sub-rules (1) and (2) of the Standing Committee or the Central Government, as the case may be, may be given with or without any conditions either generally or in any particular case.

28. Raising and repayment of loans

(1)(i) The Corporation may, in pursuance of a resolution passed at a meeting of the Standing Committee, and with the prior approval of the Central Government, raise loans for the purposes of the Act.

(ii) In particular and without prejudice to the generality of the foregoing power, the Corporation may raise loans--

(a) for the acquisition of land and/or the raising of buildings thereon; or

(b) to repay a loan raised under this rule; or

(c) for any other purpose approved by the Central Government.

(2) All loans under this rule shall be obtained--

(i) from the Central Government on such rates of interest and such terms as to the time and method of repayment as the Central Government may specify; or

(ii) with the approval of the Central Government, from the Reserve or the State Bank of India or any of its subsidiaries or any other scheduled bank.

(3) Where a loan is obtained from the Reserve Bank of India or the State Bank of India or any of its subsidiaries as provided in clause (ii) of sub-rule (2), the Corporation may, with the approval of the Central Government, grant mortgages of all or any of the property vested in it for securing the repayment of the sums so advanced, with interest.

(4) All payments due from the Corporation for interest on and repayment of loans shall be made in such manner and at such time as may have been agreed upon:

PROVIDED that the Corporation may apply any sums which can be so applied, in repaying any amount due in respect of the principal of any loan although the repayment of the same may not be due.

(5) No expenditure incurred out of loan shall be charged by the Corporation to capital, except with the previous sanction (or under the direction) of the Central Government.

(6) The Corporation shall submit to the Central Government an annual statement by the thirtieth of April each year showing the loans raised and repayments made during the preceding year.

29. Procedure for execution of contracts

(1) The Corporation may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Act.

(2) Every contract made under or for any purpose of the Act shall be made on behalf of the Corporation--

(i) by the Director General; or

(ii) subject to such conditions as it may specify by such member or officer of the Corporation as it may authorise :

PROVIDED that the prior sanction of the Standing Committee shall be obtained in respect of any contract involving an expenditure exceeding rupees five lakhs.

(3) Every contract entered into by any person as provided in sub-rule (2) shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged :

PROVIDED that the common or official seal, as the case may be, of the Corporation shall be affixed to every contract for amounts exceeding one thousand rupees.

30. Seal

(1) The common seal of the Corporation shall remain in the custody of the Director-General and shall not be affixed to any instrument except in the presence of the Director-General or two members of the Standing Committee, and the Director-General or the said two members shall sign the contract in token of the fact that the same was sealed in his or their presence.

(2) The Corporation shall have for use at each of such other of its offices, as it may specify, an official seal which shall be a facsimile of the common seal of the Corporation with the addition of the name of the office where it is to be used.

(3) The official seal shall not be affixed to any instrument except in the presence of such person or persons as the Standing Committee may authorise in this behalf and such person or persons shall sign the instrument in token of the fact that the same was sealed in his or their presence.

(4) An instrument to which an official seal is duly affixed shall bind the Corporation as if it had been sealed with the common seal of the Corporation.

21. Bank or banks for depositing the fund

(1) All moneys accruing or payable to the Fund shall be received by such officers of the Corporation as may be authorised by it in this behalf. The amount so received shall as soon as practicable be acknowledged by a receipt in Form I and deposited in the Reserve or the State Bank of India or any of its subsidiaries or the Nationalised Banks to the account of the Fund:

PROVIDED that any moneys may also be paid directly to the account of the Fund in any such bank.

Explanation : "Nationalised Bank" means a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

(2) The receipt book in Form I shall be numbered serially by machine and the unused forms shall be kept in the custody of the Financial Commissioner or such other officer of the Corporation as may be authorised by the Corporation in this behalf.

22. Procedure for crediting moneys to the banks

(1) All moneys accruing or payable to the Corporation shall be credited to the approved bank and not utilised directly for any purpose.

(2) The bank or banks shall be required at the end of every calendar month to furnish to the Corporation or such officer as may be authorised by it in this behalf, a statement of the amounts deposited in and withdrawn from the Fund during the month. These

statements shall be examined by the Director General before the expiry of a period of two months following the period to which the statements relate.

23. Purpose and manner of payment out of the fund

(1) The accounts of the Fund shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

(2) No payment shall be made by the bank or banks out of the Fund except on a cheque signed by such officers as may be authorised under sub-rule (1).

(3)

Any payment in excess of one hundred rupees shall be made by means of a cheque signed as aforesaid and not in any other way unless specifically authorised by the Standing Committee:

PROVIDED that payment of salaries to the employees of the Corporation drawing a basic salary not exceeding rupees two hundred and fifty a month may be made in cash.

(4) No payment shall be made out of the Fund unless the expenditure is covered by a current budget grant:

PROVIDED that in the absence of a current budget grant, the Corporation may authorise payments either generally or for any particular case:

PROVIDED FURTHER that the payment of benefits to insured person under the provisions of the Act and of the pay and allowances of duly sanctioned posts shall not be withheld for want of a sanctioned budget grant.

23A. Promotion of measures for the improvement of health and welfare of insured persons

For the promotion of measures for the improvement of health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured, the Corporation may incur an expenditure up to a limit of rupees five lakhs per year from the Employees' State Insurance Fund.

24. Circumstances in which cheques may be drawn

Before any person authorised under rule 23 signs a cheque, he shall satisfy himself that the sum for which the cheque is drawn is--

(i) required for a purpose or work specifically sanctioned by the proper authority and covered by a current budget grant; and

(ii) required for any payment referred to and specified under section 28:

PROVIDED that in the absence of a current budget grant the Corporation may authorise payment either generally or for any particular case :

PROVIDED FURTHER that the payment of benefits to insured persons under the provisions of the Act and of the pay and allowances of duly sanctioned posts shall not be withheld for want of a sanctioned budget grant.

25. Acquisition of property

Subject to the provisions of rule 29 and such conditions, as may, from time to time, be laid down by the Corporation, the Director General may, for the purposes of this Act, acquire on behalf of the Corporation movable or immovable property :

PROVIDED that sanction of the Standing Committee shall be required for the exchange of any immovable property, for taking of any property on lease for a term exceeding twelve months, or for the acceptance of any gift or bequest of property burdened by an obligation.

26. Disposal of property

Subject to the provisions of rule 29 and such conditions as may be laid down by the Corporation from time to time, the Director-General may--

(i) dispose of, by sale or exchange, any movable property belonging to the Corporation, the value of which does not exceed ten thousand rupees in each case, or grant for any term not exceeding twelve months a lease of any immovable property belonging to the Corporation;

(ii) with the sanction of the Standing Committee, lease, sell or otherwise dispose of any movable or immovable property belonging to the Corporation.

27. Investment, transfer or realisation of the fund

(1) All moneys belonging to the Fund which are not immediately required for expenses properly defrayable under the Act, may, subject to the approval of the Standing Committee, be invested by the Director-General--

(i) in government securities including Treasury Deposit Receipt; or

(ii) in securities mentioned or referred to in clauses (a) to (d) section 20 of the Indian Trusts Act, 1882 (2 of 1882); or

(iii) as fixed deposit in the Reserve or the State Bank of India or any of its subsidiaries or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

(2) Money belonging to the Fund shall not be invested in any other manner except with the prior approval of the Central Government.

(3) Any investment made under this rule may, subject to the provisions of sub-rules (1) and (2), be varied, transposed, or realised from time to time :

PROVIDED, however, that if such variation, transposition or realisation is likely to result in a loss, the prior approval of the Central Government shall be obtained.

Explanation : The approval of the Central Government shall not be required merely on the ground that the value of the security on its maturity is less than the price at which it was purchased.

(4) The Central Government may, at any time, direct the vacation in part or in whole, or prohibit investment, in any security or class of securities or any land or building.

(5) All dividends, interest or other sums received in respect of any investment shall, as soon as possible after receipt, be paid into or credited to the account of the Fund.

(6) The expenses of, or the loss, if any, arising from any investment shall be charged to the Fund and the profit, if any, from the sale of any investment shall also accrue to the Fund.

(7) The approval under sub-rules (1) and (2) of the Standing Committee or the Central Government, as the case may be, may be given with or without any conditions either generally or in any particular case.

28. Raising and repayment of loans

(1)(i) The Corporation may, in pursuance of a resolution passed at a meeting of the Standing Committee, and with the prior approval of the Central Government, raise loans for the purposes of the Act.

(ii) In particular and without prejudice to the generality of the foregoing power, the Corporation may raise loans--

(a) for the acquisition of land and/or the raising of buildings thereon; or

(b) to repay a loan raised under this rule; or

(c) for any other purpose approved by the Central Government.

(2) All loans under this rule shall be obtained--

(i) from the Central Government on such rates of interest and such terms as to the time and method of repayment as the Central Government may specify; or

(ii) with the approval of the Central Government, from the Reserve or the State Bank of India or any of its subsidiaries or any other scheduled bank.

(3) Where a loan is obtained from the Reserve Bank of India or the State Bank of India or any of its subsidiaries as provided in clause (ii) of sub-rule (2), the Corporation may, with the approval of the Central Government, grant mortgages of all or any of the property vested in it for securing the repayment of the sums so advanced, with interest.

(4) All payments due from the Corporation for interest on and repayment of loans shall be made in such manner and at such time as may have been agreed upon:

PROVIDED that the Corporation may apply any sums which can be so applied, in repaying any amount due in respect of the principal of any loan although the repayment of the same may not be due.

(5) No expenditure incurred out of loan shall be charged by the Corporation to capital, except with the previous sanction (or under the direction) of the Central Government.

(6) The Corporation shall submit to the Central Government an annual statement by the thirtieth of April each year showing the loans raised and repayments made during the preceding year.

29. Procedure for execution of contracts

(1) The Corporation may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of the Act.

(2) Every contract made under or for any purpose of the Act shall be made on behalf of the Corporation--

(i) by the Director General; or

(ii) subject to such conditions as it may specify by such member or officer of the Corporation as it may authorise :

PROVIDED that the prior sanction of the Standing Committee shall be obtained in respect of any contract involving an expenditure exceeding rupees five lakhs.

(3) Every contract entered into by any person as provided in sub-rule (2) shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged :

PROVIDED that the common or official seal, as the case may be, of the Corporation shall be affixed to every contract for amounts exceeding one thousand rupees.

30. Seal

(1) The common seal of the Corporation shall remain in the custody of the Director-General and shall not be affixed to any instrument except in the presence of the Director-General or two members of the Standing Committee, and the Director-General or the said two members shall sign the contract in token of the fact that the same was sealed in his or their presence.

(2) The Corporation shall have for use at each of such other of its offices, as it may specify, an official seal which shall be a facsimile of the common seal of the Corporation with the addition of the name of the office where it is to be used.

(3) The official seal shall not be affixed to any instrument except in the presence of such person or persons as the Standing Committee may authorise in this behalf and such person or persons shall sign the instrument in token of the fact that the same was sealed in his or their presence.

(4) An instrument to which an official seal is duly affixed shall bind the Corporation as if it had been sealed with the common seal of the Corporation.

CHAPTER V

31. Preparation and submission of annual budget estimates

(1) The budget estimates of the Corporation for each financial year beginning on the first of April and ending on the thirty-first of March next shall be prepared by the Chief Accounts Officer in such form as the Central Government may, from time to time, direct and shall be submitted with his recommendations by the Director General to the Standing Committee for approval at a meeting of the Standing Committee to be held before the 1st of February of the preceding year.

(2) A copy of the budget estimates shall be sent to each member of the Standing Committee and of Corporation at least seven clear days before the meeting of the Standing Committee or Corporation at which these estimates are to be considered.

(3) The Standing Committee shall consider and approve the budget estimates with such changes as it may consider necessary.

(4) The budget estimates as approved by the Standing Committee shall be placed before a meeting of the Corporation to be held before the twentieth of February of the preceding year.

(5) The budget estimates as passed by the Corporation shall be authenticated by affixing the common seal of the Corporation and shall be submitted to the Central Government under section 32, not later than the first of March next following.

(6) It shall be open to the Central Government to make such alterations in the budget estimates as may be considered necessary before according approval.

(7) The budget estimates as finally adopted by the Corporation and as approved by the Central Government shall be placed before the Parliament by the administrative ministry concerned in the month of March preceding the financial year to which the estimates relate and shall be published in the Official Gazette.

31A. Administrative expenses

(1) The expenditure incurred by the Corporation on the following items shall be termed as administrative expenses under section 28 of the Act, namely:

(i) payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees;

(ii) payment of salaries, leave and joining time allowances, travelling and compensatory and other allowances, bonus, gratuities and compassionate allowances pension, contribution to the Provident fund or other benefit funds of officers and employees of the corporation;

(iii) defraying expenses on depreciation and maintenance of staff cars, office buildings, staff quarters, hiring of accommodation, purchase of furniture, office equipments, stationery, printing and other expenditure in respect of offices of the corporation;

(iv) defraying expenses towards membership subscription to International Organisation, and other services for the purposes of giving effect to the provisions of the Act;

(v) defraying the cost (including all expenses) of the auditing accounts of the corporation and of the valuation of its assets and liabilities;

(vi) defraying the cost (including all expenses) of the Employees' State Insurance Courts set up under the Act;

(vii) payment of any sums under any contract entered into for the purposes of this Act by the corporation or the Standing Committee or by any officer duly authorised by the corporation or the Standing Committee in that behalf;

(viii) payment of sums under any decree, order or award of any court or Tribunal against the corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceedings or claim instituted or made against the corporation;

(ix) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;

(x) defraying the expenditure in connection with publicity, of the ESI Scheme, including printing of publicity materials, courses relevant to the purposes of the Act;

(xi) defraying the expenditure on conducting evaluation studies on various aspects of functioning of the ESI Scheme.

(2) The percentage of the total revenue income of the corporation which may be spent every year on its administrative expenses beginning with the year 1997-98 shall not exceed fifteen per cent.

32. Supplementary estimates

The Standing Committee may cause a supplementary estimate to be prepared and submitted to the Corporation, if in respect of any financial year further expenditure is likely to be incurred. Every such supplementary estimate shall be considered and sanctioned by the Corporation and submitted to the Central Government in the same manner as if it were an original annual estimate, not later than the fifteenth of February of the financial year to which it relates. The provisions of rule 31 shall, so far as may be, apply to such supplementary estimate.

33. Reappropriation

(1) If the Director-General finds in the course of the year that there is likely to be an excess of expenditure over the sanctioned budget estimate under any head, he shall examine the allotment under each head of the budget estimate with the object of discovering probable savings under any other head and effecting a re-appropriation. Where such re-appropriation is feasible, he may sanction the re-appropriation subject to such conditions as may be laid down by the Central Government from time to time.

(2) Funds shall not be re-appropriated to meet expenditure on a new service not contemplated in the budget estimates except with the prior approval of the Central Government.

(3) No re-appropriation shall be permitted between the grant sanctioned for administrative expenses, two-thirds of which shall be met by the Central Government, and a grant sanctioned for any other expenditure.

34. Maintenance of accounts

The Corporation shall maintain complete and accurate accounts in such form as the Standing Committee may, with the approval of the Central Government, specify from time to time. The books shall be balanced on the thirty-first of March each year.

35. Revenue accounts

The Corporation shall prepare revenue accounts for the financial year ended on the thirty first of March and balance sheet as on the thirty-first of March, by the thirty-first of May:

PROVIDED that on the application of the Corporation, the Central Government may extend the said date by a period not exceeding thirty days:

PROVIDED FURTHER that the Corporation may, and if so required by the Central Government shall, cause to be prepared the revenue accounts and the balance sheet for any other period or as on any other date.

36. Auditing of accounts

[Omitted by GSR 76, dt. 22-1-1991, w.e.f. 1-2-1991]

37. Production of accounts before the Comptroller and Auditor General of India

The annual accounts shall be set out and produced before the Comptroller and Auditor General of India for scrutiny on or before the fifteenth of June each year following the close of the financial year to which they relate :

PROVIDED that on the application of the Corporation the Central Government may extend the said date by a period not exceeding thirty days.

38. Powers of Comptroller and Auditor General of India

The Corporation shall submit all accounts to the Comptroller and Auditor General of India as required by them. The Comptroller and Auditor General of India may--

(i) by written notice, require the production before them or before any officer subordinate to them, of any document which they may consider necessary for the proper conduct of their audit;

(ii) by written notice, require any person accountable for, or having the custody or control of any such document, to appear in person before them or before any officer subordinate to them; and

(iii) require any person so appearing before them or before any officer subordinate to them to make and sign a declaration with respect to such document or to answer any question or prepare and submit any statement.

39. Report of Comptroller and Auditor General of India

The report of the Comptroller and Auditor General of India on the annual accounts shall be submitted to the Corporation on such date and in such form as the Central Government may specify in this behalf and they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Corporation's affairs and in case they have called for any explanation or information from the Corporation or any of its officers, whether it has been given and whether it is satisfactory.

40. Consideration of reports

(1) The annual report on the work and activities of the Corporation (excluding the unaudited accounts for the year incorporated therein) shall be considered by the Standing Committee and shall be placed for adoption at a meeting of the Corporation to be held before the tenth of December following the close of the financial year concerned.

(2) The annual accounts relating to a financial year together with the report of the Comptroller and Auditor General of India thereon shall be considered by the Standing Committee and shall be placed for adoption at a meeting of the Corporation to be held before the tenth December following the close of the financial year concerned:

PROVIDED that the report of the Comptroller and Auditor General of India is received by the twentieth November following the year to which it pertains.

41. Authentication of annual accounts and reports

The annual accounts together with the report of the Comptroller and Auditor General of India thereon and the annual report on the work and activities of the Corporation as adopted by the Corporation shall be authenticated by affixing the common seal of the Corporation and four copies thereof together with the comments of the Corporation on the report of the Comptroller and Auditor General shall be submitted to the Central Government not later than the twentieth December following the close of the financial year concerned for being placed before the Parliament :

PROVIDED that if the report of the Comptroller and Auditor General of India is not received by the twentieth November following the financial year to which it pertains, the annual accounts together with the report of the Comptroller and Auditor General of India thereon shall be submitted to the Central Government separately from the annual report on the work and activities of the Corporation.

42. Cost of audit

The cost of audit shall be paid by the Corporation by such date as may be specified by the Central Government.

43. Publication of accounts

[Omitted by GSR 76, dt. 22-1-1991, w.e.f. 1-2-1991.]

44. Impropriety or irregularity in accounts

(1) The auditors shall submit to the Corporation and the Central Government a separate statement, if necessary, in regard to--

(i) any material impropriety or irregularity which they may observe in the expenditure, or in the recovery of moneys due to, or in the accounts of the Corporation; or

(ii) any loss or waste of money or other property owned by or vested in the Corporation which has been caused by neglect or misconduct, with the names of the persons who in their opinion are directly or indirectly responsible for such loss or waste.

(2) The Standing Committee shall forthwith remedy any defect or irregularity that may be pointed out by the auditors and shall report to the Central Government the action taken by it thereon within ninety days of the receipt of the report of the auditors :

PROVIDED that if there is a difference of opinion between the Standing Committee and the auditors, or if the Standing Committee does not remedy any defect or irregularity within a reasonable period, the Central Government may, and on a reference specifically made thereof, shall pass such orders thereon as they think fit and the Standing Committee shall thereafter, take action in accordance therewith within such time as may be specified by the Central Government.

45. Disallowance of expenditure incurred and surcharge for loss or deficiency

(1) The Standing Committee or any authority authorised by it in this behalf may, after giving the person concerned an opportunity to submit an explanation, and after considering any such explanation, disallow any item of account contrary to the provisions of the Act or of the rules or regulations made thereunder, and surcharge the same on the person making or authorising the making of payment of such account and shall charge against any person accounting, the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person :

PROVIDED that no certificate made by the authority authorised by the Standing Committee shall have effect unless it is approved by the Standing Committee.

(2) The Standing Committee shall state in writing its reasons for every disallowance, surcharge or charge made or approved by it and shall serve a certificate of the amount

due and a copy of the reasons for its decision on the person against whom the certificate is made and shall also furnish copies thereof to the Central Government.

(3) Any person aggrieved by a certificate made under this rule may, within one month from the date of the service of certificate on him under sub-rule (2), file an application to the Central Government for setting aside or modifying the disallowance, surcharge or charge in respect of which the certificate was made.

(4) On receipt of application under sub-rule (3) or on its own motion, the Central Government may, after making such inquiry as may be necessary, pass such order as it thinks fit either confirming, modifying or setting aside the disallowance, surcharge or charge in respect of which the certificate was made and the Standing Committee shall thereupon take action in accordance with such order within such time as may be specified by the Central Government.

(5) The Central Government may by order direct that all further action under the certificate made under this rule shall be stayed until the disposal of the matter pending before it under sub-rule (4).

46. Recovery of amounts certified to be due

(1) Every sum certified to be due from any person by the Standing Committee or if the certificate has been modified by the Central Government, the sum shown to be due from such person in the modified certificate, shall be paid by such person to the Corporation within three months after he has been served with the certificate of the Standing Committee; or within such longer time as may be allowed by the Central Government, any such sum, if not so paid, shall be recovered as if it were an arrear of land revenue.

(2) Any sum or part of a sum so paid or recovered, the certificate in respect of which is set aside or modified, shall, as the case may require, be wholly or partly refunded to the person who paid it.

CHAPTER VI

47. Establishment of Provident Fund

The Corporation shall establish, maintain and contribute to a Provident Fund called the Employees' State Insurance Corporation Provident Fund (hereinafter referred to as the Provident Fund) in respect of its employees other than those whose services are placed at the disposal of the Corporation by the Central or State Government.

48. Administration of the Provident Fund

The Provident Fund shall be administered by the Standing Committee of the Corporation or by any other Committee approved by it for the purpose and subject to such conditions as it may deem fit to impose.

49. Framing of Provident Fund Regulations

The Corporation may, subject to the previous approval of the Central Government, make regulations to provide for all other matters incidental to or necessary for the Provident Fund.

50. Wage limit for coverage of employees under the Act

The wage limit for coverage of an employee under sub-clause (b) of clause (9) of section 2 of the Act shall be seven thousand and five hundred rupees a month:

PROVIDED that an employee whose wages (excluding remuneration for overtime work) exceed seven thousand and five hundred rupees a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of that period.

51. Rates of contribution

The amount of contribution for a wage period shall be in respect of--

(a) employer's contribution, a sum (rounded off to the next higher multiple of five paise) equal to four and three-fourth per cent of the wages payable to an employee; and

(b) employee's contribution, a sum (rounded off to the next higher multiple of five paise) equal to one and three-fourth per cent of the wages payable to an employee.

52. Exemption from payment of employee's contribution

The average daily wages during a wage period for exemption from payment of employee's contribution under section 42 shall be up to and inclusive of rupees fifty.

53. Writing off of losses

(1) Where the Corporation is of the opinion that the amount of contribution, interest and damages due to the Corporation has become irrecoverable, the Corporation or any other officer authorised by it in this behalf, may sanction the writing off of the said amount, subject to the following conditions, namely:--

(i) establishment or factory has been closed for more than five years and the whereabouts of the employer cannot be ascertained, despite all possible efforts;

(ii) decree obtained by the Corporation could not be executed successfully for want of sufficient assets of the defaulting employer; or

(iii) claim for contribution is not fully met by--

(a) the Official Liquidator in the event of factories or establishments having gone into liquidation; or

(b) the Commissioner of Payments in the event of unit being nationalised or taken over by the government.

54. Daily rate of benefit

Daily rate of benefit (hereinafter referred to as the "Standard benefit rate", in respect of group of employees specified in the first column of the table below shall be the amount respectively specified in the corresponding entry in the second column thereof.

TABLE

<i>Sl. No.</i>	<i>Average daily wages are</i>	<i>Standard benefit rate (in Rs)</i>
1.	Below Rs. 28	14 or full average daily wage whichever is less
2.	Rs. 28 and above but below Rs. 32	16
3.	Rs. 32 and above but below Rs. 36	18
4.	Rs. 36 and above but below Rs. 40	20
5.	Rs. 40 and above but below Rs. 48	24
6.	Rs. 48 and above but below Rs. 56	28
7.	Rs. 56 and above but below Rs. 60	30
8.	Rs. 60 and above but below Rs. 64	32
9.	Rs. 64 and above but below Rs. 72	36
10.	Rs. 72 and above but below Rs. 76	38
11.	Rs. 76 and above but below Rs. 80	40
12.	Rs. 80 and above but below Rs. 88	44
13.	Rs. 88 and above but below Rs. 96	48
14.	Rs. 96 and above but below Rs. 106	53
15.	Rs. 106 and above but below Rs. 116	58
16.	Rs. 116 and above but below Rs. 126	63
17.	Rs. 126 and above but below Rs. 136	68
18.	Rs. 136 and above but below Rs. 146	73
19.	Rs. 146 and above but below Rs. 156	78
20.	Rs. 156 and above but below Rs. 166	83
21.	Rs. 166 and above but below Rs. 176	88
22.	Rs. 176 and above but below Rs. 186	93
23.	Rs. 186 and above but below Rs. 196	98
24.	Rs. 196 and above but below Rs. 206	103
25.	Rs. 206 and above but below Rs. 216	108
26.	Rs. 216 and above but below Rs. 226	113
27.	Rs. 226 and above but below Rs. 236	118
28.	Rs. 236 and above but below Rs. 250	125
29.	Rs. 250 and above but below Rs. 260	130.00

55. Sickness benefit

(1) Subject to the provisions of the Act and the regulations, a person shall be qualified to claim sickness benefit for sickness occurring during any benefit period if the contribution in respect of him were payable for not less than seventy-eight days in the corresponding contribution period and shall be

entitled to receive such benefit at the daily standard benefit rate for the period of his sickness:

PROVIDED that in case of a person who becomes an employee within the meaning of the Act for the first time and for whom a shorter contribution period of less than 156 days is available, he shall be qualified to claim sickness benefit if the contribution in respect of him were payable for not less than half the number of days available for working in such contribution period:

PROVIDED FURTHER that sickness benefits shall not be paid to any person for more than ninety-one days in any two consecutive benefit periods.

(2) The daily rate of sickness benefits in respect of a person during any benefit period shall be the "standard benefit rate" specified in rule 54 corresponding to the average daily wages of that person during the corresponding contribution period.

56. Maternity benefits

(1) An insured woman shall be qualified to claim maternity benefits for a confinement occurring or expected to occur in a benefit period, if the contributions in respect of her were payable for not less than seventy days in the immediately preceding two consecutive contribution periods.

(2) Subject to the provisions of the Act and the regulations, if any, an insured woman who is qualified to claim maternity benefits in accordance with sub-rule (1) shall be entitled to receive it at the daily rate specified in sub-rule (5) for all days on which she does not work for remuneration during a period of twelve weeks of which not more than six weeks shall precede the expected date of confinement:

PROVIDED that where the insured woman dies during her delivery or during the period immediately following the date of her delivery for which she is entitled to maternity benefits, leaving behind in either case, the child, maternity benefits shall be paid for the whole of that period but if the child also dies during the said period, then for the days up to and including the day of the death of the child, to the person nominated by the insured woman, in such manner as may be specified in the regulations, and if there is no such nominee, to her legal representative.

(3) An insured woman who is qualified to claim maternity benefits in accordance with sub-rule (1) shall, in case of miscarriage or medical termination of pregnancy, be entitled, on production of such proof, as may be required under the regulations, to

maternity benefits at the rates specified in sub-rule (5), for all days on which she does not work for remuneration during a period of six weeks immediately following the date of her miscarriage or medical termination of pregnancy.

(4) An insured woman who is qualified to claim maternity benefits in accordance with sub-rule (1), in case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage or medical termination of pregnancy shall, on production of such proof as may be required under the regulations, be entitled, in addition to the maternity benefits, payable to her under any other provisions of the Act, for all days on which she does not work for remuneration to maternity benefits at the rates specified in the sub-rule (5) for all days on which she does not work for remuneration during an additional period not exceeding one month.

(5) The daily rate of maternity benefits payable in respect of confinement occurring or expected to occur during any benefit period shall be equal to twice the "standard benefit rate" specified in rule 54 corresponding to the average daily wages in respect of the insured woman during the corresponding contribution period or rupees twenty, whichever is higher.

56A. Medical bonus to an insured woman and an insured person in respect of his wife shall be paid a sum of rupees two hundred and fifty per case as medical bonus on account of confinement expenses:

PROVIDED that the confinement occurs at a place where necessary medical facilities under the Employees' State Insurance Scheme are not available.

57. Disablement benefits

(1) A person shall be qualified to claim disablement benefits for temporary disablement for not less than three days (excluding the days of accident) for the period of such disablement sustained as an employee under the Act.

(2) A person shall be qualified to claim periodical payment for permanent disablement sustained as an employee under the Act, whether total or partial, for such disablement:

PROVIDED that where permanent disablement, whether total or partial, has been assessed provisionally for a limited period or finally, the benefit provided under this rule shall be payable for that limited period, or as the case may be, for life.

(3) (a) The daily rate of disablement shall be forty per cent more than the standard benefit rate specified in rule 54 rounded to the next higher multiple of five paise corresponding to the average daily wages in the contribution period corresponding to the benefit period in which the employment injury occurs.

(b) Where an employment injury occurs before the commencement of the first benefit period in respect of a person, the daily rate of disablement shall be--

(i) where a person sustains employment injury after the expiry of the first wage period in the contribution period in which the injury occurs, the rate, forty per cent more than the standard benefit rate rounded off to the next higher multiple of five paise corresponding to the wage group in which his average daily wages during that wage period fall;

(ii) where a person sustains employment injury before the expiry of the first wage period in the contribution period in which the injury occurs, the rate, forty per cent more than the standard benefit rate, rounded off to the next higher multiple of five paise corresponding to the group in which wages are actually earned or which would have been earned, had he worked for a full day on the date of accident, fall.

Explanation : Disablement benefit calculated as aforesaid shall be called "full rate".

(4) The disablement benefits shall be payable to insured person as follows:

(a) for temporary disablement, at the full rate;

(b) for permanent total disablement, at the full rate;

(c) for permanent partial disablement resulting from an injury specified in Part II of the Second Schedule, at such percentage of the full rate which would have been payable in the case of permanent total disablement, as specified in the said Schedule as being the percentage of the loss of earning capacity caused by the injury;

(d) for permanent partial disablement resulting from an injury not specified in Part II of the Second Schedule, at such percentage of the full rate payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

Explanation : Where more injuries than one are caused by the same accident, the rate of benefit payable under clauses (c) and (d) shall be aggregated but not so in any case as to exceed the full rate and in cases of disablement not covered by clauses (a), (b), (c) and (d) at such rate, not exceeding the full rate, as may be provided in the regulations.

58. Dependants' benefits

(1) Dependants' benefit shall be paid to the dependants of the insured person who dies as a result of an employment injury, in the following manner:--

(A) In the case of death of the insured person, the dependants' benefits shall be payable to his widow, children and widowed mother as follows:--

(a) to the widow during life until remarriage, an amount equivalent to three-fifths of the full rate and, if there are two or more widows, the amount payable to the widows as aforesaid shall be divided equally between the widows;

(b) to each legitimate or adopted son, an amount equivalent to two-fifths of the full rate until he attains the age of eighteen years:

PROVIDED that in the case of a legitimate or adopted son who is infirm and who is wholly dependent on the earnings of the insured person at the time of his death, dependants' benefits shall continue to be paid while the infirmity lasts;

(c) to each legitimate or adopted unmarried daughter, an amount equivalent to two-fifths of the full rate until she attains the age of eighteen years or until marriage, whichever is earlier:

PROVIDED that in the case of legitimate or adopted unmarried daughter who is infirm and is wholly dependent on the earnings of the insured person at the time of his death, dependants' benefit shall continue to be paid while the infirmity lasts and she continues to be unmarried:

PROVIDED FURTHER that if the total of the dependants' benefit distributed among the widow or widows and legitimate or adopted children and widowed mother of the deceased person as aforesaid exceeds at any time the full rate, the share of each of the dependants shall be proportionately reduced, so that the total amount payable to them does not exceed the amount of disablement benefits at the full rate.

(d) to the widowed mother during life an amount equivalent to two-fifth of the full rate.

(B) In case the deceased person does not leave a widow or legitimate or adopted child or widowed mother, dependant's benefit shall be payable to other dependants as follows:

(a) to a parent other than the widowed mother or grand-parent, for life, at an amount equivalent to three-tenths of the full rate and if there are two or more parents (other than widowed mother) or grand-parents the amount payable to the parents (other than widowed mother) or grand-parents as aforesaid shall be equally divided between them;

(b) to any other--

(i) male dependant, until he attains the age of eighteen years,

(ii) female dependant, until she attains the age of eighteen years or until marriage, whichever is earlier or if widowed, until she attains eighteen years of age or remarriage, whichever is earlier;

at an amount equivalent to two-tenths of the full rate:

PROVIDED that if there be more than one dependant under clause (b), the amount payable under this clause shall be equally divided between them.

(2) (a) The daily rate of dependant's benefit shall be forty per cent more than the "standard benefit rate" specified in rule 54 rounded off to the next higher multiple of five

paise corresponding to the average daily wages in the contribution period corresponding to the benefit period in which the employment injury occurs.

(b) Where an employment injury occurs before the commencement of the first benefit period in respect of a person, the daily rate of dependant's benefit shall be :

(i) where a person sustains employment injury after the expiry of the first wage period in the contribution period in which the injury occurs, the rate, forty per cent more than the standard benefit rate rounded off to the next higher multiple of five paise corresponding to the wage group in which his average daily wages during that wage period fall;

(ii) where a person sustains employment injury before the expiry of the first wage period in the contribution period in which the injury occurs, the rate, forty per cent more than the standard benefit rate, rounded off to the next higher multiple of five paise corresponding to the group in which wages actually earned or which would have been earned had he worked for a full day on the date of accident/fall.

Explanation : Dependant's benefit rate calculated as aforesaid shall be called "full rate".

59. Funeral expenses

The amount of funeral expenses for the purpose of clause (f) of sub-section (1) of section 46 of the Act shall be two thousand and five hundred rupees.

60. Medical benefits to insured person who ceases to be in an insurable employment on account of permanent disablement

An insured person who ceases to be in an insurable employment on account of permanent disablement caused due to an employment injury shall be eligible to receive medical benefits for himself and his spouse at the scale prescribed under the Act and the regulations made thereunder till the date on which he would have vacated the employment on attaining the age of superannuation, had he not sustained such permanent disablement, subject to--

(i) the production of proof by such an insured person that he ceased to be in an insurable employment on account of permanent disablement due to employment injury to the satisfaction of such officer as may be authorised by the Corporation; and

(ii) the payment of contribution at the rate of ten rupees per month in lump sum for one year at a time in advance to the concerned office of the Corporation in the manner prescribed by it.

61. Medical benefits to retired insured persons

An insured person who leaves the insurable employment on attaining the age of superannuation after being insured for not less than five years, shall be eligible to

receive medical benefits for himself and his spouse at the scale prescribed under the Act and the regulations made thereunder, subject to--

(i) the production of proof of his superannuation and having been in the insurable employment for a minimum of five years to the satisfaction of such officer as may be authorised by the Corporation; and

(ii) the payment of contribution at the rate of ten rupees per month in lump sum for one year at a time in advance to the concerned office of the Corporation in the manner prescribed by it.

62. Bar on grant of cash benefits

Where an insured person is convicted under section 84 of the Act, he shall not be entitled to any cash benefit admissible under the Act for a period of three months for first conviction and six months for each subsequent conviction from the date of receipt of judgement of the court in the concerned office of the Corporation.

FORM I BANK OR BANKS FOR DEPOSITING THE FUNDS [Rule 21]

Book. No.	Receipt No.	Book. No.	Receipt No.
Received from	the sum of Rs.	Received from	the sum of Rs.
(in words)	on account of	(in words)	on account of
Rs.		Rs.	
Chief A/c. Officer/Authorised Officer		Chief A/c. Officer/Authorised Officer	
Entered in Cash Book, Page No.		Employees' State Insurance Corporation	

Accountant

FORM II

APPLICATION TO MEDICAL APPEAL TRIBUNAL [Rule 20A(2)]

To

Chairman of Medical Appeal Tribunal, Insurance No.....

I, (full name of appellant) of (address of appellant)

Appeal against the decision on.....(date) of the medical board at (address) notified to me by letter (from.....) dated....., that:--

*(1) there is no appreciable disablement;

* (2) the disablement should continue to be treated as temporary and the next date when the case should be referred to the Medical Board is; or

* (3) the disablement can be declared to be of a permanent nature; and

(i) the extent of loss of earning capacity can be assessed provisionally or finally,

(ii) the assessment of the proportion of loss of earning capacity whether provisional or final; and

(iii) in case of provisional assessment, the period for which such assessment shall hold good.

The following are the grounds of my appeal:

List of documents, if any :

Date.....

Signature of appellant

**Delete whichever does not apply.*

The statement of facts contained in this application is to the best of my knowledge and belief true and correct.

Signature of appellant

EMPLOYEES' STATE INSURANCE (GENERAL) REGULATIONS, 1950

An exercise of the powers conferred by section 97 of the Employees' State Insurance Act, 1948 (34 of 1948), the Employees' State Insurance Corporation is pleased to make the following regulations, the same having been previously published as required by sub-section (1) of the said section, namely: --

CHAPTER I

1. Short title and extent

(1) These regulations may be called the Employees' State Insurance (General) Regulations, 1950.

(2) They extend to the whole of India.

2. Definitions

In these regulations, unless the context otherwise requires--

- (a) "Act" means the Employees' State Insurance Act, 1948 (34 of 1948);
- (b) "appointed day" means with reference to any area, factory or establishment, the day from which the whole of Chapters IV and V of the Act apply to such area, factory or establishment, as the case may be;
- (c) "appropriate office", "appropriate local office" or "appropriate regional office", shall mean with reference to any action taken under these regulations, such office of the Corporation as may be specified for that purpose under a general or special order of the Corporation;
- (d) "Central rules" means the rules made by the Central Government under section 95 of the Act;
- (e) [* * *]
- (f) [* * *]
- (g) "employer" means the principal employer as defined in the Act;
- (h) "employer's code number" means the registration number allotted by the appropriate regional office to a factory or establishment for the purposes of the Act, the rules and these regulations;
- (i) "factory or establishment" means a factory or an establishment to which the Act applies;
- (j) "form" means a form appended to these regulations;
- (k) "identity card" means a permanent identity card issued by the appropriate office to an insured person for identification for the purposes of the Act, the rules and these regulations;
- (kk) "family identity card" means a card issued by the appropriate office to an insured person for identification of his family for the purposes of the Act, the rules and these regulations;
- (l) "inspector" means a person appointed as such by the Corporation under section 45 of the Act;
- (m) "instructions" means instructions or orders issued by the Corporation or by such officer or officers of the Corporation as may be authorised by the Corporation in this behalf;

(n) "insurance medical officer" means a medical practitioner appointed as such to provide medical benefit and to perform such other functions as may be assigned to him and shall be deemed to be a duly appointed medical practitioner for the purposes of Chapter V of the Act;

(o) "insurance number" means a number allotted by the appropriate office to an employee for the purposes of the Act, the rules and these regulations;

(p) "local office" and "regional office" shall mean, according to the context, such subordinate office of the Corporation, set up at such place and with such jurisdiction and functions as the Corporation may, from time to time determine;

(q) "local office manager" means a person appointed by the Corporation as such or the office-in-charge of a local office;

(r) "state rules" means the rules made by a State Government under section 96 of the Act;

(s) "regional director" means a person appointed by the Corporation as such for a specified region;

(t) "registered midwife" means a person who is registered as a midwife under any law in force in any State providing for registration of nurses and midwives;

(u) "rules" means rules made by the Central or a State Government under the Act;

(v) "specified" means specified by instructions issued from time to time by the Corporation or any authorised officer;

(w) "Year" means a calendar year except when specifically stated otherwise;

(x) All other words and expressions have the meanings respectively assigned to them in the Act or the rules, as the case may be.

3. The manner in which the Corporation may exercise its powers

(1) Where a regulation empowers the Corporation to specify, prescribe, provide, decide or determine anything or to do any other act, such powers may be exercised by a resolution of the Corporation or subject to the provisions of section 18 of the Act by a resolution of the Standing Committee :

PROVIDED that the Corporation or the Standing Committee may delegate any of the powers under these regulations to a sub-committee or to such officers of the Corporation as it may specify in that behalf:

PROVIDED FURTHER that no power shall be delegated under this regulation which under the Act is required to be exercised by the Corporation only.

(2) Any appointment to be made by the Corporation under these regulations shall be made by the Director General or by such other officers as may be authorised in this behalf by the Standing Committee.

3A. Exercise of powers by an office

Where a power is to be exercised by the appropriate office or appropriate local office or appropriate regional office it shall be exercised by the officer for the time being in charge thereof or by such other officer as may be authorised for the purpose under general or special orders of the Director-General.

4. Contribution and benefit periods

Contribution periods and the corresponding benefit periods shall be as under :

<i>Contribution period</i>	<i>Corresponding benefit period</i>
1st April to 30th September	1st January of the year following to 30th June
1st October to 31st March of the year following	1st July to 31st December.

PROVIDED that in the case of a person who becomes an employee within the meaning of the Act for the first time, the contribution period shall commence from the date of such employment in the contribution period current on that day and the corresponding benefit period for him shall commence on the expiry of the period of nine months from the date of such employment.

5. [* * *]

6. Meetings of the Corporation, the Standing Committee and the Medical Benefit Council

The meetings of the Corporation, the Standing Committee and the Medical Benefit Council shall be held in accordance with the Central Rules at such time and place as may be fixed by Chairman concerned.

7. Decision by majority

Every matter coming up for decision before a meeting of the Corporation, the Standing Committee or the Medical Benefit Council shall be decided by a majority of persons present and voting at the time of the meeting and in case of equality of votes the Chairman of the meeting shall have an additional casting vote.

8. Mode of exercising vote

The votes shall be taken by show of hands and the names of persons voting in favour and against any proposition shall be recorded only if any member present requests the Chairman to do so.

9. Matters to be brought before the Corporation

In addition to the matters which are, under any specific provision of the Act or the Central Rules, required to be placed before the Corporation, the following matters shall be referred to the Corporation for its decision :

- (a) regulations under section 97 and amendments thereto before final publication;
- (b) any measures proposed under section 19 of the Act;
- (c) any proposal to extend medical benefit to families under sub-section (2) of section 46;
- (d) any dispute proposed to be referred to arbitration under sub-section (4) of section 58;
- (e) any proposal to set up hospitals under section 59;
- (f) any proposal to grant exemption under section 91;
- (g) any proposal to enhance benefits under section 99;
- (h) any other matter which the Corporation or its Chairman may direct the Standing Committee or the Director-General to place before the Corporation.

10. Regional Boards

(1) A Regional Board may be set up for each State or Union Territory by the Chairman of the Corporation and shall consist of the following members, namely :--

- (a) a Chairman to be nominated by the Chairman of the Corporation in consultation with the State Government or the administration of the Union Territory;
- (b) a Vice-Chairman to be nominated by the Chairman of the Corporation in consultation with the State Government or the Administration of the Union Territory.
- (c) one representative of the State or the Union Territory to be nominated by the State Government or the Administration of the Union Territory;

(d) (i) the Administrative Medical Officer or any other Officer directly in charge of the Employee's State Insurance Scheme in the State or the Union Territory, ex officio;

(ii) the Regional Deputy Medical Commissioner of the Corporation, ex officio;

(e) one representative each of the employers and employees from the State or the Union Territory to be nominated by the Chairman of the Corporation in consultation with such organisation of the employers and the employees as may be recommended for the purpose by the State Government or the Union Territory;

(f) members of the Corporation other than the Chairman and the Vice-Chairman and officials, if any, amongst those nominated by the Central Government under clause (c) of section 4 of the Act, residing in the State or the Union Territory, ex officio;

(g) members of the Medical Benefit Council nominated by the Central Government under clauses (e), (f) and (g) of section 10 of the Act residing in the State or the Union Territory, ex officio :

PROVIDED that where the Chairman of the Corporation so considers it to be expedient he may nominate such additional representatives of employers, and employees, not exceeding three from each side, with a view to providing for the adequate representation of important organisations and included in the nominations of the State Governments, or the Union Territory and to maintain parity between the number of representatives of such employers and employees:

PROVIDED FURTHER that the Chairman of the Corporation shall nominate such additional representatives of employers and employees not exceeding three from each side where the number of representatives of employers and employees including the ex officio members, is less than three each.

(2) A Regional Board may, if it considers it desirable, co-opt the officer-in-charge of a sub-regional officer set up within its boundaries and/or a member of the medical profession in the region and the person(s) so co-opted shall continue to be member(s) during the pleasure of the regional board.

(3) The regional director or officer-in-charge of the regional office shall be the member secretary of the Board.

(4) (i) Save as expressly provided in this regulation, the term of office of the members of the regional board referred to in clause (e) of and the proviso to sub-regulation (1), shall be three years commencing from the date on which their nomination is notified, provided that the members of the regional board, shall, notwithstanding the expiry of the said period, continue to hold office until the nomination of their successors is notified.

(ii) Save as expressly provided in this regulation, the members of the regional board referred to in clause (c) of sub-section (1) shall hold office during the pleasure of the State Government nominating them.

(iii) A member of the regional board referred to in clause (f) of sub-regulation (1) shall cease to hold office when he ceases to be a member of the Corporation or ceases to reside in that area.

(iv) Any member referred to in clause (i) of this sub-regulation nominated to fill a casual vacancy shall hold office for the remainder of the term of office of the member in whose place he is nominated.

(v) An outgoing member shall be eligible for renomination.

(5) A member of the regional board referred to in clause (e) of and the proviso to sub-regulation (1) above, may resign his office by notice in writing to the Chairman of the Corporation, through the Chairman, Regional Board, and his seat shall fall vacant on the acceptance of the resignation.

(6) (i) A member of the regional board referred to in clause (e) of and the proviso to sub-regulation (1) shall cease to be a member of the Board if he fails to attend three consecutive meetings thereof provided that his membership may be restored by the Chairman of the Corporation on his being satisfied as to the unavoidable nature of the circumstances which led to his non-attendance.

(ii) When any person nominated to represent an employer's or employee's organisation on the Regional Board has ceased to represent such organisation, the Chairman of the Corporation may, by notification in the Gazette of India, declare that such person shall cease to be a member thereof with effect from such date as may be specified therein.

(7) The members of the Regional Board shall receive such fees and allowances as may be prescribed by the Central Government for members of the Corporation.

(8) A member shall be disqualified for being nominated or for being a member of the Regional Board--

(i) if he is declared to be of unsound mind by a competent court; or

(ii) if he is an undischarged insolvent; or

(iii) if before or after the commencement of the regulations he has been convicted of an offence involving moral turpitude.

(9) The Secretary shall, with the approval of the Chairman, fix the date, time and place of, and also draw up the agenda for, every meeting. Notice of not less than ten days from the date of posting shall ordinarily be given to every member for each meeting, provided that if it is necessary to convene an emergency

meeting, a reasonable notice thereof shall be given to every member. No matter other than that included in the agenda shall be considered except with the permission of the Chairman.

(10) No business shall be transacted at any meeting unless there is a quorum of not less than one-third of the number of the members on the Board:

PROVIDED that if at any meeting, sufficient number of members are not present to form a quorum, the Chairman may adjourn the meeting to a date not later than seven days from the date of original meeting and it shall thereupon be lawful to dispose of the business at such adjourned meeting irrespective of the number of members present.

(11) All matters shall be decided by a majority of persons present and voting and in case of equality of votes, the Chairman shall have a casting vote or a second vote.

(12) The Chairman or in his absence the Vice-Chairman of the Regional Board shall preside at the meetings. In the event of the absence of both the Chairman and the Vice-Chairman the members present may elect one from amongst themselves to preside.

(13) (i) The minutes of each meeting showing inter alia the names of the members present thereat shall be forwarded to all members of the Regional Board as soon after the meeting as possible and in any case not later than fifteen days from the date of the meeting.

(ii) The records of the minutes of each meeting shall be signed by the Chairman after confirmation with such modifications as may be considered necessary at the meeting, at which the minutes are confirmed.

(14) A Regional Board shall perform the following functions in respect of the Region for which it is set up :

(a) Such administrative and/or executive functions as may, from time to time, be entrusted or delegated to it by a resolution, by the Corporation or the Standing Committee.

(b) To make recommendations from time to time in regard to changes which may in its opinion be advisable in the Act, Rules and Regulations and forms and procedures to be followed in the running of the scheme.

(c) To decide within the broad framework of the general decisions and programme of priorities of the Corporation, the following matters, provided that where the specific approval of the Corporation or the appropriate government is required, such approval shall be taken :

(i) Extension of the scheme to other categories of establishments in accordance with the order of priorities laid down by the Corporation;

- (ii) extension of scheme to new areas and extension of medical care to families;
 - (iii) adoption of special measures to meet peculiar conditions in the area;
 - (iv) improvement in benefits;
 - (v) provision of indoor medical treatment;
 - (vi) measures and arrangements for the rehabilitation of insured persons in the area, who are permanently disabled;
 - (vii) securing compliance by employers with the various provisions of the Employees' State Insurance Act, the Regulations and other rules and instructions;
- (d) To review from time to time the working of the Scheme in the State both on the medical side as well as cash benefit side and to advise the Corporation and State Government on measures to improve the working of the Scheme both in regard to payment of cash benefits and administration of medical benefit and in particular to promote preventive health measures, safety and personal hygiene and to review and check lax certification and other abuses of the scheme.
- (e) To look into general grievances, complaints and difficulties of insured persons, employers, etc. as it may consider necessary;
- (f) To advise the Corporation on such matters as may be referred to it for advice by the Standing Committee or the Director General.

The Regional Board may set up suitable sub-committees for carrying out any of its functions and may seek the assistance or advice of local committees where necessary.

(15) (i) If in the opinion of the Corporation, the Regional Board persistently makes default in performing the duties imposed on it by or under this regulation or abuses its powers, the Corporation may by notification in the Gazette of India supersede the Regional Board.

(ii) Upon the publication of a notification under clause (i) above superseding the Regional Board, all the members of the Regional Board shall from the date of such publication be deemed to have vacated their offices.

(iii) When the Regional Board has been superseded the Corporation may--

(a) immediately constitute a new Regional Board in accordance with this regulation; or

(b) appoint such agency for such period as it may think fit to exercise the powers and perform the functions of the Regional Board and such agency shall

be competent to exercise all powers and perform all the functions of the Regional Board.

10A. Local committees

(1) A local committee may be set up for such area as may be considered appropriate by the Regional Board and shall consist of the following members, namely--

- (a) a Chairman to be nominated by the Chairman, Regional Board,
- (b) an official of the State to be nominated by the State Government;
- (c) the Administrative Medical Officer-in-charge of the scheme in the area concerned, ex officio, or any other medical officer nominated by him;
- (d) such number, not being less than two and not or more than four of representative of employers in the area as may be considered appropriate by the Chairman, Regional Board, to be nominated by him, in consultation with such employers' organisations as may be recommended for the purpose by the State Government;
- (e) an equal number of representatives of employees in the area to be nominated by the Chairman, Regional Board, in consultation with such organisations of employees as may be recommended for the purpose by the State Government;
- (f) an official of the Corporation to be nominated by the Director-General, who shall also act as Secretary to the Committee :

PROVIDED that where the Chairman, Regional Board, so considers it to be expedient, he may nominate such additional representatives of employers and employees, not exceeding two from each side, with a view to providing for the adequate representation of important organisations not included in the nominations of the State Government and to maintaining the parity between the number of representatives of such employers and employees :

PROVIDED FURTHER that in any area in which medical care is provided through a panel system, a local committee may co-opt a member representing the local insurance medical practitioners.

(2) (i) The term of office of the members of a local committee nominated under clauses (d) and (e) of sub-regulation (1) shall be three years, commencing from the date on which their nomination is notified, provided that such members shall, notwithstanding the expiry of the said period, continue to hold office until the nomination of their successor is notified.

(ii) The members of a local committee nominated under clauses (b), (c) and (f) of sub-regulation (1) shall hold office during the pleasure of the authority nominating them.

(3) A member of a local committee may resign his office by notice in writing to the Chairman, Regional Board, and his seat shall fall vacant on the acceptance of the resignation.

(4) (i) A member of a local committee shall cease to be a member of the committee if he fails to attend three consecutive meetings thereof provided that his membership may be restored by the Chairman, Regional Board, on being satisfied as to the unavoidable nature of the circumstances which led to his non-attendance.

(ii) Where in the opinion of the State Government any person nominated to represent employers or employees on a local committee has ceased to represent such employers or employees, the Chairman, Regional Board, may declare that such person shall cease to be a member thereof with effect from such date as may be specified by him.

(5) The members of the committee shall receive such fees and allowances as may be specified by the Central Government.

(6) The Secretary, shall, in consultation with the Chairman, fix the date, time and place, of, and also draw up the agenda for every meeting. Notice of not less than seven days shall ordinarily be given to every member for such meeting. No matter other than that included in the agenda shall be considered except with the permission of the Chairman.

(7) No business shall be transacted at any meeting of a committee unless there is a quorum of not less than one-third of the number of the members of the committee.

(8) All matters at a meeting of a local committee shall be decided by a majority of persons present at the meeting and voting, and in case of equality of votes, the Chairman shall have a casting vote or a second vote.

(9) A local committee shall perform the following functions in respect of the area for which it is set up, namely--

(a) to discuss local problems in regard to the Employees' State Insurance Scheme so as to secure its efficient working with the full co-operation of all parties concerned and to make recommendations;

(b) to refer such complaints as it may consider necessary to the Regional Director concerned, or in the case of complaints concerning medical benefit, to the State Government or such authority as that government may nominate for the purpose; and

(c) to advise the Corporation or the Regional Board concerned on such matters as may be referred to it for advice.

CHAPTER II

COLLECTION OF CONTRIBUTIONS, ETC.

10B. Registration of factories or establishments

(1) The employer in respect of a factory or an establishment to which the Act applies for the first time and to which an employer's code number is not yet allotted and the employer in respect of a factory or an establishment to which the Act previously applied but has ceased to apply for the time being, shall furnish to the appropriate regional office not later than 15 days after the Act becomes applicable, as the case may be, to the factory or establishment, a declaration or registration in writing in Form 01 (hereinafter referred to as Employer's Registration Form).

(b) The employer shall be responsible for the correctness of all the particulars and information required for and furnished on the employer's registration form.

(c) The appropriate regional office may direct the employer who fails to comply with the requirements of paragraph (a) of this regulation within the time stated therein, to furnish to that office employer's registration form duly completed within such further time as may be specified and such employer shall, thereupon, comply with the instructions, issued by that office in this behalf.

(d) Upon receipt of the completed employer's registration form, the appropriate Regional Office shall, if satisfied that the factory or the establishment is one to which the Act applies, allot to it an employer's code number (unless the factory or the establishment has already been allotted an Employer's Code Number) and shall inform the employer of that number.

(e) The employer shall enter the employer's code number on all documents prepared or completed by him in connection with the Act, the rules and these regulations and in all correspondence with the appropriate office.

11. Declaration by persons in employment on appointed day

The employer in respect of a factory or an establishment shall require every employee in such factory or establishment to furnish and such employee shall on demand furnish to him either before or on the appointed day correct particulars required for the purpose of Form 1 (hereinafter referred to as the Declaration Form). Such employer shall enter the particulars in the Declaration Form including the temporary Identification Certificate, and obtain the signature or the thumb-impression of such employee and also complete the form as indicated thereon.

12. Declaration by persons engaged after the appointed day

(1) The employer in respect of a factory or an establishment shall, before taking any person into employment in such factory or establishment after the appointed day, require such person (unless he can produce an Identity Card or other document in lieu thereof issued to him under these regulations) to furnish

and such person shall on demand furnish to him correct particulars required for the Declaration Form including the Temporary Identification Certificate. Such employer shall enter the particulars in the Declaration Form including the Temporary Identification Certificate and obtain the signature or the thumb-impression of such person and also complete the form as indicated thereon.

(2) Where an Identity Card is produced under such sub-regulation (1), the employer shall make relevant entries thereon.

13. [* * *]

14. Declaration form to be sent to appropriate office

The employer shall send to the appropriate office by registered post or messenger, all declaration forms without detaching the temporary identification certificate prepared under these regulations together with a return in duplicate in Form 3 within 10 days of the date on which the particulars for the declaration forms were furnished.

15. Allotment of insurance number

On receipt of the return required under regulation 14, the appropriate office shall promptly allot an insurance number to each a person in respect of whom the Declaration Form has been received unless it finds that the person had already been allotted an insurance number. The temporary identification certificate with insurance numbers marked thereon shall be detached and returned to the employer along with one copy of Form 3. The employer shall deliver the temporary identification certificate to the employee to whom it relates, after obtaining his signature or thumb-impression thereon except in the case of an employee to whom a certificate of employment has been issued under Regulation 17A. The Insurance Number allotted by the regional office to an employee and indicated in the copy of Form 3 returned to the employer, shall be entered by the employer on the register of employees (Form 7) and return of contributions.

15A. Registration of families

On the issue of notification under regulation 95A, specifying the date from which the family of an insured person shall also be entitled to medical benefit under the Act, every insured person who has not furnished the particulars of his family at the time of his registration under the Act, shall furnish to the employer correct particulars in respect of his family in Form 1A. The employer shall enter the particulars in the form and obtain the signature or the thumb-impression of such person and complete the form as indicated thereon and send it to the appropriate office within 10 days of the date on which the particulars were furnished.

15B. Changes in family

An insured person shall intimate all changes in the membership of the family as defined under the Act, to the employer within 15 days of such change having occurred and the employer shall enter such particulars in Form 1B and shall forward it to the appropriate office within 10 days of the date on which the particulars were furnished.

16. The Corporation to receive assistance from employers

An employer shall render all necessary assistance which the Corporation may require in connection with the registration of his factory or establishment and the registration of his employees and specially for photographing such employees and affixing the photographs to the identity cards.

17. Identity cards

The appropriate office shall arrange to have an identity card prepared in Form 4 for each person in respect of whom an insurance number is allotted and shall include in such card the particulars of the family entitled to medical benefit under regulation 95A and shall send all such identity cards to the employer. Such employer shall if and when the employee has been in his service for 3 months, obtain the signature or thumb-impression of the employee on the identity card and shall after making relevant entries thereon, deliver the identity card to him. The employer shall obtain a receipt from the employee for the Identity Card. The Identity Card in respect of an employee who has left employment before 3 months shall not be given to him, but shall be returned to the appropriate office as soon as possible. The Identity Card shall not be transferable.

17A. Issue of a certificate of employment

If an insured person happens to need medical care before the temporary identification certificate is issued to him, the employer shall issue a certificate of employment in such form as may be specified by the Director General to such person on demand. Such certificate shall also be issued on demand, if an insured person loses his temporary identification certificate before the receipt of the identity card.

17B. Issue of permanent acceptance card

In areas where the Director General considers it appropriate, the appropriate Office shall also supply a permanent acceptance card for each employee in such form as the Director General may specify along with the identity card and this shall also be delivered to the employee. Permanent acceptance card for the employee who has left employment before 3 months shall not be given to him but returned to the appropriate office along with the identity card as soon as possible.

18. Loss of identity card

In case of loss, defacement or destruction of an identity card, the insured person shall report the matter to the appropriate local office, and the Corporation may issue a duplicate copy of the identity card subject to such conditions and payment of such fees as may be determined by the Director-General.

19 to 24. *[Omitted dt. 5-1-1985, w.e.f. 27-1-1985]*

25. *[Omitted, dt. 9-3-1983, w.e.f. 26-3-1983]*

26. Return of contributions to be sent to appropriate office

(1) Every employer shall send a return of contributions in quadruplicate in Form 6 along with receipted copies of challans for the amounts deposited in the Bank, to the appropriate office by registered post or messenger, in respect of all employees for whom contributions were payable in a contribution period, so as to reach that office as--

(a) within 42 days of the termination of the contribution period to which it relates;

(b) within 21 days of the date of permanent closure of the factory or establishment, as the case may be;

(c) within 7 days of the date of receipt of requisition in that behalf from the appropriate office.

(2) For the purposes of section 77 of the Act, the due date by which the evidence of contributions having been paid must reach the Corporation shall be the last of the days respectively specified in clauses (a), (b) and (c) of sub-regulation (1).

27. Issue of certificate of contributions

An employer shall, on demand from the appropriate office, issue certificate of contributions paid or payable in respect of an insured person in such form as may be specified by the Director General.

28. *[* * *]*

29. Payment of contribution

Contribution payable under the Act shall, except when otherwise provided, be paid into a Bank duly authorised by the Corporation.

30. *[* * *]*

31. Time for payment of contribution

An employer who is liable to pay contributions in respect of any employee shall pay those contributions within 21 days of the last day of the calendar month in which the contributions fall due;

PROVIDED that where a factory/establishment is permanently closed, the employer shall pay contribution on the last day of its closure:

PROVIDED that an employer may opt, in such manner as may be prescribed, by the Director-General for payment of amount in advance towards contribution to be adjusted against contributions payable by him (including employees' contribution) for a wage period so that the balance of advance amount continues to be more than the contributions due and payable at the end of the concerned wage period. Such an employer shall furnish in the prescribed proforma (Form 6A), a six monthly statement of contributions payable and paid in advance with the balance left at the end of each month along with return of contributions to the appropriate Regional Office of the Corporation.

31A. Interest on contribution due, but not paid in time

An employer who fails to pay contribution within the periods specified in regulation 31, shall be liable to pay simple interest at the rate of 15 per cent per annum in respect of each day of default or delay in payment of contribution.

31B. Recovery of interest

Any interest payable under regulation 31A may be recovered as an arrear of land revenue or under section 45C to section 45-I of the Act.

31C. Damages on contributions or any other amount due, but not paid in time

If an employer who fails to pay contribution within the periods specified under regulation 31, or any other amount payable under the Act, the corporation may recover damages, not exceeding the rates mentioned below, by way of penalty:--

<i>Period of delay</i>	<i>Maximum rate of damages in % per annum of the amount due</i>
(i) Less than 2 months	5%
(ii) 2 months and above but less than 4 months	10%
(iii) 4 months and above but less than 6 months	15%
(iv) 6 months and above	25%

PROVIDED that the Corporation, in relation to a factory or establishment which is declared as sick industrial company and in respect of which a rehabilitation scheme has been sanctioned by the Board for Industrial and Financial Reconstruction, may--

(a) in case of change of management including transfer of undertaking(s) to workers' co-operative(s) or in case of merger or amalgamation of sick industrial company with a healthy company, completely waive the damages levied or leviabale;

(b) in other cases, depending on its merits, waive up to 60 per cent damages levied or leviabale;

(c) in exceptional hard cases, waive either totally or partially the damages levied or leviabale.

32. Register of employees

(1) Every employer shall maintain a register in Form 7 in respect of every employee of his factory or establishment.

(1A) Register of employees engaged by immediate employer : Every immediate employer shall maintain a register in Form 7 in respect of every employee engaged by him and submit the same to the principal employer before the settlement of any amount payable under sub-section (1) of section 41 of Act.

(2) Every employer shall preserve every register maintained under this regulation after it is filled, for a period of five years from the date of last entry therein.

(3) The employer shall give a reasonable opportunity to any of his employees, if he so desires, to see entries in respect of such employee in this register once a month.

33. Other modes of payment of contribution

Subject to the directions of the Standing Committee, the Director-General may, if he thinks fit and subject to such terms and conditions as he may impose, approve of any arrangement, whereby contributions are paid at times or in a manner other than those specified in these regulations and such arrangement may include provision for the payment to the Corporation of such fees as may be determined by him to represent the estimated additional expenses to Corporation, and may require such deposit of money by way of security as he may determine.

34. [* * *]

35. [* * *]

36. Employment for part of a wage period

Where an employee is employed by an employer for part of a wage period, the contributions in respect of such wage period, shall fall due on the last day of the employment by such employer in that wage period.

37 . [* * *]

38. Scheme by joint employers

Where an employee is ordinarily employed by two or more employers in a wage period the employers of such an employee may, if they think fit, submit to the Corporation a scheme for the payment of the contributions in respect of such employee and the Corporation may, if it is satisfied that the scheme is such as will secure the due payment of the contributions, approve such a scheme subject to such terms and condition as it may think necessary :

PROVIDED that if no such scheme is submitted to or approved by the Corporation, the Corporation may specify that any one of such employers shall be treated as the employer for the purposes of the provisions of the Act and the regulation relating to contributions, and in such a case the contribution for any wage period shall fall due on the last day of the wage period on which an employee was employed by the employer so specified.

39. Reckoning of wages of employee employed by two or more employers in the same wage period

Where an employee is employed by an employer for only a part of the wage period or where an employee is employed by two or more employers in a wage period, only the wages payable to him for the days up to and including the day on which the contribution falls due for that wage period shall be taken into account in reckoning wages for the purposes of determining the average daily wages of the employee for that wage period.

40. Refund of contribution erroneously paid

(1) Any contribution paid by a person under the erroneous belief that the contributions were payable by that person under that Act may be refunded without interest by the Corporation to that person, if application to that effect is made in writing before the commencement of the benefit period corresponding to the contribution period in which such contribution was paid.

(2) Where any contribution has been paid by a person at a rate higher than that at which it was payable the excess of the amount so paid over the amount payable may be refunded without interest by the Corporation to that person, if application to that effect is made before the commencement of the benefit period corresponding to the contribution period in which such contribution was paid.

(3) In calculating the amount of any refund to be made under this regulation there may be deducted the amount, if any, paid to any person by way of benefit

on the basis of the contribution erroneously paid and for the refund of which the application is made.

(4) Where the whole or part of the amount of any contribution referred to in sub-regulations (1) and (2), was recovered from an immediate employer or deducted from the wages of an employee by the principal employer, he shall, on getting the refund of the amount due from the Corporation, be liable to pay back the amount so recovered or deducted to the person from whom the amount was so recovered or deducted.

(5) Applications for refund under this regulation shall be made in such form and in such manner and shall be supported by such documents as the Director-General may, from time to time, determine.

41 to 43. [* * *]

CHAPTER III

BENEFITS CLAIMS

44. Claims for benefits

Every claim for a benefit payable under the Act shall be made in writing, in accordance with these regulations, to the appropriate Local Office on the form appropriate for the purpose of the benefit for which the claim is made or in such other manner as the appropriate office may, subject to its being in writing, accept as sufficient in the circumstances of any particular case or class of cases. Assistance for filling in the form of claim in case of insured persons who cannot do so themselves shall be provided at the local offices of the Corporation.

45. When claim becomes due

A claim for any benefit under the Act shall for the purposes of section 77 of the Act, become due on the following days--

(a) For sickness benefit or for disablement benefit for temporary disablement for any period, on the date of the issue of the medical certificate in respect of such periods; provided that in cases where a person is not entitled to sickness benefit for the first two days of sickness, the due date shall be deferred by such days.

(b) For maternity benefit--

(i) in case of confinement, on the date of issue, in accordance with these regulations, of certificate of expected confinement or on the day six weeks preceding the expected date of confinement so certified whichever is later or, if no such certificate is issued, on the date of confinement; and

(ii) in case of miscarriage and in case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, on the date of issue of the medical certificate of such miscarriage or sickness, as the case may be;

(c) for first payment of disablement benefit for permanent disablement, on the date in which an insured person is declared as permanently disabled in accordance with the Act and these regulations; and

(d) for first payment of dependants' benefit, on the date of the death of the insured person in respect of whose death, the claim for such benefit arises or, where disablement benefit was payable for that date, on the date following the date of death or, where the beneficiary becomes entitled to a claim on any subsequent date, on the date on which he becomes so entitled;

(e) for subsequent payments of disablement benefit for permanent disablement and for subsequent payments of dependant's benefit, the last day of the month to which the claim relates;

(f) for funeral expenses on the date of the death of the insured person in respect of whose death the claim for such benefit arises.

46. Availability of claim forms

Claim forms shall be available to intending claimants from such persons and such offices of the Corporation as it may appoint or authorise for the purpose, and shall be supplied free of charge.

47. Claim on wrong form

Where a claim for any benefit has been made on an approved form other than the form appropriate to the benefit claimed, the Corporation may treat the claim as if it was made on the appropriate form:

PROVIDED that the Corporation may in any such case require the claimant to complete the appropriate form.

48. Evidence in support of claim

Every person who makes a claim for any benefit shall, in addition to the medical certificate and other forms specifically required under these regulations, furnish such other information and evidence for the purpose of determining the claim as may be required by the appropriate office, and, if reasonably so required, shall for that purpose attend at such office or place as the appropriate office may direct.

49. Defective claim

If, in the absence of due signature or of due certification, a claim is defective on the date of its receipt by an office of the Corporation, the office of the Corporation may in its discretion refer the claim to the claimant and if the form is returned duly signed and/or certified within three months from the date on which it was so referred, the office may treat the claim as if it had been duly made in the first instance.

50. Claim for inappropriate benefit

Where it appears that a person who has made a claim for any benefit payable under the Act, may be entitled to a benefit other than that which he has claimed, any such claim may be treated as a claim in the alternative for that other benefit.

51. Authority for certifying eligibility of claimants

The authority which is to certify the eligibility of claimants shall be the appropriate local office in respect of maternity, sickness, temporary disablement benefits and funeral expenses and the appropriate Regional Office, in respect of permanent disablement and dependant's benefits.

52. Benefits when payable

(1) Any benefit payable under the Act shall be paid--

(a) in the case of sickness benefit not later than 7 days;

(b) in the case of funeral expenses not later than 15 days;

(c) in the case of first payment in respect of maternity benefit not later than 14 days;

(d) in the case of the first payment in respect of Temporary Disablement Benefit not later than one month;

(e) in the case of first payment of Permanent Disablement Benefit not later than one month;

(f) in the case of first payment of Dependents' Benefits not later than 3 months,

after the claim therefore together with the relevant medical or other certificates and any other documentary evidence which may be called for under these Regulations has been furnished completed in all particular to the appropriate office.

(2) Second and subsequent payments in respect of any maternity, temporary disablement, permanent disablement or dependents' benefit shall be paid along with the first payment in respect thereof or within the calendar month following

the month to the whole or part of which they relate, whichever is later subject to production of any documentary evidence which may be required under these regulations.

(3) Where a benefit payment is not made within the time limits specified in sub-regulations (1) and (2) above, it shall be reported to the appropriate Regional Office and shall be paid as soon as possible.

(4) Benefits under the Act shall be paid in cash at a Local Office on such days and working hours, as may be fixed by the Director-General, or such other officer of the Corporation, as may be authorised by him from time to time in this behalf, or, at the option of the claimant and subject to deduction of the cost of remittance, by means of postal money orders or other orders payable through a post office, or by any other means, which the appropriate office may in the circumstances of any particular case consider appropriate :

PROVIDED that the Corporation may waive the deduction of the cost of remittance in such cases as the Director-General may, from time to time, specify.

(5) Where the payment of a benefit is to be made at a local office, such office may insist upon the production of the identity card or other document issued in lieu thereof in respect of the insured person.

52A. Abstention verification

(1) Every employer shall furnish to the appropriate office such information and particulars in respect of the abstention of an insured person from work for which sickness benefit or disablement benefit for temporary disablement, as provided under the Act has been claimed or paid, in Form No. 28 and within such time as the said office may in writing require in the said form.

(2) Every employer shall furnish to the appropriate office such information and particulars in respect of the abstention of an insured woman from work for which maternity benefit as provided under the Act has been claimed or paid, in Form 28A and within such time as the said office may in writing require in the said form.

CERTIFICATION AND CLAIMS FOR SICKNESS AND TEMPORARY DISABLEMENT

53. Evidence of sickness and temporary disablement

Every insured person, claiming sickness benefit or disablement benefit for temporary disablement, shall furnish evidence of sickness or temporary disablement in respect of the days of his sickness or temporary disablement by means of a medical certificate given by an insurance medical officer in accordance with these regulations in the form appropriate to the circumstances of the case :

PROVIDED that in areas where arrangements for medical benefit under the Employees' State Insurance Act have not been made or otherwise if in its opinion the circumstances of a particular case so justify, the Corporation may accept any other evidence of sickness of temporary disablement in the form of a certificate issued by the medical officer of the State Government, local body or other medical institution, or a certificate issued by any registered medical practitioner containing such particulars and attested in such manner as may be specified by the Director-General in this behalf.

54. Persons competent to issue medical certificate

No medical certificate under these regulations shall be issued except by the Insurance Medical Officer to whom an insured person has been allotted or by an Insurance Medical Officer attached to a dispensary, hospital, clinic or other institution to which an insured person is allotted and such Insurance Medical Officer shall examine and if in his opinion the condition of the insured person so justifies, issue to such insured person free of charge, any medical certificates reasonably required by such insured person under or for the purposes of the Act or any other enactment for these regulations :

PROVIDED that an Insurance Medical Officer may issue a medical certificate under these regulations to a insured person who is not allotted to him or to the dispensary, hospital, clinic or other institution to which he is attached, if such officer is satisfied that in the circumstances of any particular case the insured person cannot reasonably be expected to get medical benefit from the Insurance Medical Officer or the dispensary, hospital, clinic or other institution to which such insured person has been allotted; and such certificate shall also be issued free of charge :

PROVIDED FURTHER that an insured person shall not be granted a medical certificate unless he produces to the Insurance Medical Officer his identity card or some other "documents" as under these regulations, may have been issued in lieu thereof.

55. Medical certificate

The appropriate form of a medical certificate shall be filled in ink or otherwise as may be specified by the Director-General by the Insurance Medical Officer in his own handwriting and shall contain a concise statement of the disease or disablement which in the opinion of the Insurance Medical Officer necessitates abstention from work on medical grounds or renders the person temporarily incapable of work. The statement of the disease or disablement in the medical certificate shall specify the nature thereof as precisely as the Insurance Medical Officer's knowledge of the condition of the insured person at the time of the examination permits.

56. Time of granting medical certificate

(a) An Insurance Medical Officer shall give the medical certificate to an insured person at the time of the examination to which it relates; where he is prevented from so doing he shall send the certificate to the insured person within twenty-four hours thereafter.

(b) No further medical certificate relating to the same examination shall be issued, except where a duplicate of such certificate is required, in which case it shall be issued free of charge and clearly marked "duplicate".

57. Medical certificate on first examination

Where the examination is the first examination in respect of a spell of sickness or a spell of temporary disablement, the medical certificate shall be in the form of a first certificate (Form 8) and shall be only in respect of the date of examination:

PROVIDED that where the insured person, who needs abstention from work on the day of examination, states that he has been actually sick or temporarily disabled on a day earlier than the date of his first examination, the Insurance Medical Officer may, if he is satisfied as to the truth of the statement that the insured person was unable to present himself for medical examination earlier for reasons beyond his control, certify incapacity for work on the date preceding the date of examination:

PROVIDED FURTHER that where in the opinion of the insurance medical officer, the insured person is likely to become fit to resume work on a date not later than the third day after the date of the examination, the first certificate may be issued in respect of the entire spell of sickness or temporary disablement, and, in such a case, it shall specify the date on which the insured person will, in his opinion, be fit to resume work; such a certificate shall, notwithstanding anything contained in the regulations, be also treated as a final certificate.

58. Final medical certificate

If at the date of the examination to which a medical certificate other than a first certificate relates, the insured person in the opinion of the insurance medical officer is, or will become on a date not later than the third day after that date, fit to resume work, that certificate shall be in the form of a final certificate (Form 9).

59. Intermediate certificate

If the final certificate is not issued within seven days of the date of the first certificate, an insured person shall, except where the case is covered by regulation 61, submit certificates in the form of intermediate certificates (Form 10) at intervals of not more than seven days each, commencing from the date of the first certificate.

60. Final medical certificate before commencing work for wages

Every insured person shall obtain a medical certificate in the form of a final certificate before he takes up any work for wages.

61. Intermediate certificate for a longer period

When temporary disablement or sickness has continued for not less than twenty-eight days and the Insurance Medical Officer is satisfied that such disablement or sickness is likely to continue for a long period and that, owing to the nature of the disablement or sickness examination and treatment at intervals of more than one week will be sufficient, the insured person may, unless otherwise directed by the appropriate office, furnish medical certificates in the form of special intermediate certificate (Form 11) at intervals of such longer periods not exceeding four weeks as may be specified by the Insurance Medical Officer.

62 . [Omitted]

63. Form of claim for sickness or temporary disablement

An insured person intending to claim sickness benefit or disablement benefit for temporary disablement shall submit to the appropriate local office by post or otherwise, a claim for benefit in one of the Forms 12, 13 and 14, appropriate to the circumstances of the case together with the appropriate medical certificate :

PROVIDED that where only one claim in Forms 13 and 14 is submitted in respect of more than one certificate, such Form 13 or 14 shall be deemed to be appropriate to all such certificates.

64. Failure to submit medical certificate

If a person who intends to claim sickness benefit or disablement benefit for temporary disablement fails to submit to the appropriate local office by post or otherwise the first medical certificate or any subsequent medical certificate within a period of three days from the date of issue of such certificate he shall not be eligible for that benefit in respect of any period (i) in the case of a first certificate, more than three days before the date on which the certificate is submitted to the appropriate local office; (ii) in the case of a subsequent certificate, more than fourteen days before the date on which such subsequent certificate is submitted to the appropriate local office :

PROVIDED that the appropriate regional office or other office as authorised by the Director-General may relax all or any of the provisions of this regulation in any particular case, if it is satisfied that the delay in submitting a certificate was due to bona fide reasons.

DISABLEMENT BENEFIT

65. Notice of accident

(i) Every insured person who sustains personal injury caused by accident arising out of and in the course of his employment in a factory or establishment shall give notice of such injury either in writing or orally, as soon as practicable after the happening of the accident :

PROVIDED that any such notice required to be given by an insured person may be given by some other person acting on his behalf.

Explanation : No such notice shall be required to be given by an insured person if an employment injury is caused by any Occupational Disease specified in Schedule III to the Workmen's Compensation Act, 1923.

(ii) Every such notice shall be given to the employer or to a foreman or to other official under whose supervision the insured person is employed at the time of the accident or any other person designated for the purpose by the employer and shall contain the appropriate particulars.

(iii) Any entry of the appropriate particulars of the accident made in a book kept for the purpose in accordance with the next following regulation shall, if made as soon as practicable after the happening of the accident by the insured person or by some other person acting on his behalf, be sufficient notice of the accident for the purposes of these regulations.

(iv) In this regulation and the next following regulation, the expression 'appropriate particulars' means the particulars indicated below--

(a) full name, insurance number, sex, age, address, occupation, department and shift of the injured person;

(b) date and time of accident;

(c) place where accident happened;

(d) cause and nature of injury;

(e) name, address and occupation of the person giving the notice, if he is other than the injured person;

(f) a statement of what exactly the injured person was doing at the time of injury;

(g) name, address and occupation of two persons who were present at the spot when accident happened; and

(h) remarks, if any.

66. Maintenance of accident book

Every employer shall--

- (i) keep a book readily accessible (hereinafter called 'the Accident Book') in Form 15, in which the appropriate particulars of any accident causing personal injury to an insured person may be entered;
- (ii) preserve every such book when it is completed for a period of five years from the date of the last entry thereon :

PROVIDED that it shall be necessary to enter in the said Accident Book particulars of any employment injury caused by an occupational disease specified in Schedule III to the Workmen's Compensation Act, 1923.

67. Notice otherwise than by an entry in accident book

If notice of an employment injury under regulation 65 is given otherwise than by an entry in the accident book it shall be the duty of the employer or any other person to whom such notice is given under that regulation to make an appropriate entry in the book in respect of the accident to which the notice relates immediately after such notice is received, and where the notice is received otherwise than in writing, read over the particulars to the person who gives the notice and obtains his signature or thumb-impression on the accident book.

68. Report of accident by an employer

Every employer shall send a report in Form 16 to the nearest Local Office and to the nearest insurance medical officer--

- (i) immediately if the injury is serious, i.e. it is likely to cause death or permanent disablement or loss of a member; and
- (ii) in any other case within 24 hours after the receipt of the notice under regulation 65 or of the time when the accident came to the notice of the employer or of a foreman or other official under whose supervision the insured person was employed at the time of the accident or any other person designated for the purpose by the employer :

PROVIDED that in case of a serious injury, and particularly when the injury results in death at the place of employment, the report to the Insurance Medical Officer and the Local Office shall be sent through a special messenger, or otherwise, as speedily as may be practicable under the circumstances :

PROVIDED FURTHER that where a report of the accident is made by the employer under the Factories Act, 1948, the report to the local office and to the insurance medical officer may be made in the same form as is prescribed under

the Factories Act, 1948, provided that all the additional information required under Form 16 is added thereto :

PROVIDED FURTHER that it shall not be necessary for the employer to send a report in Form 16 if an employment injury is caused by any occupational disease specified in Schedule III to the Workmen's Compensation Act, 1923; but the employer shall furnish on demand to the appropriate local office, within such reasonable period as may be specified, such information and particulars as shall be required of the nature of and other relevant circumstances relating to any employment specified in Schedule III to the Workmen's Compensation Act, 1923.

69. Employer to arrange first aid

Every employer shall arrange for such first aid and medical care and transport for obtaining such aid and care as the circumstances of the accident may require till the injured person is seen by the Insurance Medical Officer and such employer shall be entitled to reimbursement in respect of expenses thereby incurred by him but not exceeding such scale of expenses as may be specified by the Corporation from time to time :

PROVIDED that if the employer is required to provide such medical aid free of charge under any other enactment, he shall not be entitled to any reimbursement of expenses.

70. Employer to furnish further particulars of accident

Every employer shall furnish to the appropriate office such further information and particulars of an accident and within such time as the said office may, in writing, require.

71. Directions by the Corporation

Every claimant for and every beneficiary in receipt of disablement benefit shall comply with every direction given to him by the appropriate regional office which requires him either--

(i) to submit himself to a medical examination by such medical authority as may be appointed by that office for the purpose of determining the effect of the relevant employment injury or the treatment appropriate to the relevant injury or loss of faculty, or

(ii) to attend any vocational training courses or industrial rehabilitation courses provided by any institution maintained by any government, local authority or any public or private body, recognised for the purpose by the Corporation and considered appropriate by it in his case.

72. Reference to a Medical Board

A reference to the Medical Board may be made--

(a) at any time not later than twelve months, in cases where claim for temporary disablement benefit is made for an employment injury, from the date of the final certificate issued in respect of the spell of temporary disablement commencing on or immediately after the day of the occurrence of that injury, or from the date of the occurrence of an employment injury in cases where temporary disablement benefit not having been claimed, for permanent disablements is made on the basis thereof by the appropriate regional office, at the instance of the disabled person or the employer or any recognised employee's union :

PROVIDED that such reference may be made by the appropriate regional office after the expiry of the period prescribed as aforesaid if it is satisfied that the applicant was prevented by sufficient cause from applying for the making of the reference in time :

PROVIDED FURTHER that in the event of the claim for Temporary Disablement Benefit being rejected by the Corporation but afterwards granted by the Employees' Insurance Court in respect of injuries resulted in permanent disablement, the limit of 12 months will apply from the date of the order of the Employees' Insurance Court granting the claim of the insured person for Temporary Disablement Benefit, or

(b) by the Corporation,

(i) at any time, on the recommendation of an insurance medical officer, and

(ii) on its own initiative, after the expiry of the period of twenty-eight days from the first date on which the claimant was rendered incapable of work by the relevant employment injury.

73. Report of Medical Board

The Medical Board shall after examining the disabled person send its decision on such form as may be specified by the Director General, to the appropriate regional office. The disabled person shall be informed in writing of the decision of the Medical Board and the benefit, if any, to which the disabled person shall be entitled.

74. Occupational disease

Any question whether an employment injury is caused by an occupational disease specified in the Third Schedule to the Act shall be determined by a Special Medical Board which shall examine the disabled person and send a report in such form as may be prescribed by the Director General in this behalf to the appropriate Regional Office stating--

(a) whether the disabled person is suffering from one or more of the diseases specified in the said schedule;

- (b) whether the relevant disease has resulted in permanent disablement;
- (c) whether the extent of loss of earning capacity can be assessed provisionally or finally;
- (d) the assessment of the proportion of loss of earning capacity and in case of provisional assessment, the period for which such assessment shall hold good.

All assessments which are provisional may be referred to the Special Medical Board for review by the appropriate regional office not later than the end of the period taken into account by the provisional assessment. Any decision of the Special Medical Board may be reviewed by it at any time. The disabled person shall be informed in writing of the decision of the Special Medical Board by the appropriate regional office and the benefit, if any, to which the insured person shall be entitled.

75. Constitution of Medical Board/Special Medical Boards

Medical Boards for the purposes of the Act and the Special Medical Boards for the purposes of regulation 74 shall be constituted by the Corporation and where it so desires it may approach the State Government for setting up the same and shall consist of such persons, have such jurisdiction and follow such procedure as the Director-General may from time to time decide.

76. Appeal Tribunals

For the purposes of regulation 74, an Appeal Tribunal shall be constituted by the State Government and shall consist of a judicial officer of the State Government being a person other than the judge of an Employees' Insurance Court, who shall be assisted by the following persons to be selected by him as assessors--

- (a) One or more medical experts;
- (b) One or more officials of or members of trade union or unions.

76A. Submission of claims for permanent disablement benefit

An insured person who has been declared to be permanently disabled by a Medical Board or by an Appeal Tribunal shall submit, by post or otherwise, to the appropriate local office a claim, covering, except in the case of a first payment, a period of one or more complete calendar months in Form 25 for claiming permanent disablement benefit.

76B. Commutation of permanent disablement benefit

- (1) An insured person whose permanent disablement has been assessed as final and who has been awarded permanent disablement benefit at a rate not

exceeding Rs. 5.00 per day may apply for commutation of permanent disablement benefit into a lump sum :

PROVIDED that the insured person whose permanent disablement has been assessed as final and the benefit rate exceeds Rs. 5.00 per day may also apply for commutation of permanent disablement benefit into lump sum subject to the condition that the total commuted value of the lump sum permanent disablement benefit does not exceed Rs. 30,000 at the time of commencement of final award of his permanent disability :

PROVIDED FURTHER that the cases falling under clause (3) of this regulation where commutation has been refused because the insured person did not have average expectation of life, shall not be reopened.

(2) Where such an application is made within 6 months of the date on which he can opt for commutation hereafter called the "date of possible option" the permanent disablement benefit shall be commuted into a lump sum.

(3) Where such an application is made after expiry of six months from the date of possible option, the permanent disablement benefit may be commuted into lump sum if the Corporation is satisfied that the insured person has an average expectation of life for his age. For this purpose, the insured person shall, if so required by the appropriate office, present himself for examination by such medical authority as the Director-General may, by general or special order, specify.

(4) For the purpose of this regulation, the date of possible option shall mean--

(i) in the case of a person who, on the date on which this regulation comes into force, is in receipt of permanent disablement benefit covered by sub-regulation

(1) the date of coming into force of this regulation;

(ii) in the case any other insured person, the date on which assessment of permanent disablement covered by sub-regulation (1), is communicated to him by the appropriate regional office.

(5) The amount of lump sum admissible under this regulation shall be determined by multiplying the daily rate of permanent disablement benefit by the figure indicated in column 2 of the Schedule III to these regulations, corresponding to the age on last birthday of the insured person on the date on which his application for commutation is received in the appropriate office and on and from that date the permanent disablement benefit shall cease to be payable to him:

PROVIDED that where no proof of age has been submitted as required by the appropriate office or if submitted, has not been accepted as satisfactory by the appropriate office, the corresponding age as aforesaid of the insured person shall be the age as estimated by the Medical Board on the date of examination adjusted by the period intervening between the date of examination by the

Medical Board and the date on which the application for commutation was received in the appropriate office :

PROVIDED FURTHER that the age so estimated by the Medical Board shall also operate against any proof of age that may be submitted after the time allowed for the purpose to the insured person by the appropriate office before reference of his case of the Medical Board.

DEPENDANTS' BENEFIT

77. Report of death of insured person by employment injury

In case of death of an insured person as a result of an employment injury--

- (a) if the death occurs at the place of employment the employer shall, and
- (b) if the death occurs at any other place, a dependant intending to claim dependants' benefit shall, or
- (c) any other person present at the time of death may,

immediately report the death to the nearest local office and to the nearest dispensary, hospital, clinic or other institution where medical benefit under the Act is available.

78. Disposal of body of an insured person dying by employment injury

Where an insured person dies as a result of an employment injury sustained as an employee under the Act, the body of the insured person shall not be disposed of until the body has been examined by an Insurance Medical Officer, who will also arrange a post mortem examination, if considered necessary, in co-operation with any other existing agency :

PROVIDED that if an Insurance Medical Officer is unable to arrive for the examination within 12 hours of such death the body may be disposed of after obtaining a certificate from such medical officer or practitioner as may be available :

PROVIDED FURTHER that nothing contained in this regulation shall be in derogation of any power conferred on a coroner under any law for the time being in force or on the officer-in-charge of a police station or some other police officer under section 174 of the Code of Criminal Procedure, 1973 (2 of 1974).

79. Issue of death certificate

An insurance medical officer attending the disabled person at the time of his death or the insurance medical officer who examines the body after the death or the Medical Officer who attended the insured person in a hospital or other

institution where such disabled person die, shall issue free of charge a death certificate in Form 17 to the dependants of the deceased and shall send a report to the appropriate regional office.

80. Submission of claim for dependants' benefit

(1) A claim for dependants' benefit shall be submitted to the appropriate local office by post or otherwise in Form 18 by the dependant or dependants concerned or by their legal representative or, in case of a minor, by his guardian, and such claim shall be supported by documents proving--

(i) that the death is due to an employment injury;

(ii) that the person claiming is a dependant entitled to claim as provided in rule 58 of the Employees' State Insurance (Central) Rules, 1950.

(iii) the age of the claimant;

(iv) the infirmity of the dependant claiming to be infirm within the purview of rule 58 of the Employees' State Insurance (Central Rules, 1950 by a certificate of such medical or other authority as the Director General may, by a general or special order specify in this behalf.

PROVIDED that where the appropriate regional office is satisfied about the bona fides of the applicant or about the truth of the facts relating to any of the matters mentioned above, one or more of the documents may be dispensed with.

(2) The following may be accepted as proof of age--

(a) certified extract from an official record of births showing the date and place of birth and father's name;

(b) original horoscope prepared soon after birth;

(c) certified extract from baptismal register;

(d) certified extract from school record showing the date of birth and father's name;

(e) such other evidence as may be acceptable to the appropriate Regional Office in the circumstances of a particular case.

81. Notice for dependants' benefit

On receipt of a claim or claims for dependants' benefit in respect of the death of an insured person and, after making such inquiries as may be necessary about the circumstances and cause of death and about all persons, who may be

entitled to dependants' benefit, the appropriate regional office shall issue by registered post to such other persons, if any, as appear on enquiry to be entitled to dependants' benefit, and who have not yet submitted a claim for such benefit a notice for submission of claims for dependants' benefit within a period of thirty days from the date of such notice. The notice shall indicate inter alia the relevant provisions of the Act and regulations and the procedure for submission of a claim for dependents' benefit.

82. Intimation of decision regarding dependants' benefit

As soon as possible after the expiry of the period during which claims can be submitted in terms of the notice issued under regulation 81, the appropriate Regional Office shall intimate by registered post the decision of the Corporation in regard to the claim of each of the dependants in writing to the dependants concerned or to his legal representative, or, in the case of a minor, to his guardian.

83. Date of accrual of dependants' benefit

The dependant's benefit shall accrue from the date of the death in respect of which the benefit is payable, or, where disablement benefit was payable for that date from the date following the date of death.

83A. Submission of claims for periodical payments of dependants' benefit

Each dependant whose claim for dependants' benefit is admitted under regulation 82, shall submit to the appropriate local office, by post or otherwise, a claim covering, except in the case of first or a final payment, a period of one or more complete calendar months in Form 18A. Such claim may be made by the legal representative of a beneficiary or in the case of a minor by his guardian.

84. Review of dependants' benefit

(1) The amounts payable as dependants' benefit in respect of the death of any insured person may be reviewed by the appropriate regional office at its own initiative, and shall be so reviewed if an application is made to that effect, under any of the following circumstances--

(a) if any of the beneficiaries ceases to be entitled to the dependants' benefit by reason of marriage, re-marriage, death, age or otherwise, or

(b) if a fresh dependant is admitted to the claim for dependants' benefit by the birth of a posthumous child, or

(c) if, after the previous decision as to the distribution of the dependants' benefit was taken, some facts materially affecting such distribution come to light.

(2) Any review under this regulation shall be made after giving due notice by registered post to each of the dependants, stating therein the reasons for the

proposed review and giving them an opportunity to submit objections, if any, to such review.

(3) Subject to the provisions of the Act and these regulations, the appropriate regional office may, as a result of such review, commence, continue, increase, reduce or discontinue from such date as it may decide the share of any of the dependants.

85. *[Omitted]*

86. Appointment of another guardian

If at any time the appropriate regional office is satisfied that a child who is in receipt of dependants' benefit is being neglected by his guardian, not being a guardian appointed under the Guardian and Wards Act, 1890; and the child's share of the dependants' benefit is not being properly spent on his or her maintenance, the appropriate regional office may direct that such share may be paid subject to such conditions as it may specify to such other person as it deems fit and as in its opinion would utilise it for the care and maintenance of the child.

MATERNITY BENEFIT

87. Notice of pregnancy

An insured woman, who decides to give notice of pregnancy before confinement, shall give such notice in Form 19 to the appropriate local office by post or otherwise and shall submit, together with such notice, a certificate of pregnancy in Form 20 given in accordance with these regulations on a date not earlier than seven days before the date on which such notice is given.

88. Claim for maternity benefit commencing before confinement

Every insured woman claiming maternity benefit before confinement shall submit to the appropriate local office by post or otherwise--

(i) a certificate of expected confinement in Form 21 given in accordance with these regulations, not earlier than fifteen days before the expected date of confinement;

(ii) a claim for maternity benefit in Form 22 stating therein the date on which she ceased or will cease to work for remuneration; and

(iii) within thirty days of the date on which her confinement takes place, a certificate of confinement in Form 23 given in accordance with these regulations.

89. Claim for maternity benefit only after confinement or for miscarriage

Every insured woman claiming maternity benefit for miscarriage shall within 30 days of the date of the miscarriage, and every insured woman claiming maternity benefit after confinement, shall submit to the appropriate office by post or otherwise a claim for maternity benefit in Form 22 together with a certificate of confinement or miscarriage in Form 23 given in accordance with these regulations.

89A. Claim for maternity benefit after the death of an insured woman leaving behind the child

For the purposes of the proviso to sub-section (2) of section 50 of the Act, the person nominated by the deceased insured woman on Form 1 or on such other Form as may be specified by the Director General in this behalf and if there is no such nominee, the legal representative, shall submit to the appropriate office by post or otherwise a claim for maternity benefit, as may be due, in Form 24-A within 30 days of the death of the insured woman together with a death certificate in Form 24B given in accordance with these Regulations.

89B. Claim for maternity benefit in case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage

(1) Every insured woman claiming maternity benefit in case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, shall submit to the appropriate office by post or otherwise a claim for benefit in one of the Forms 12A, 13A and 14A appropriate to the circumstances of the case together with the appropriate medical certificate in Form 8,9,10 or 11, as the case may be, given in accordance with the Regulations.

(2) The provisions of regulations 55 to 61 and 64 shall, so far as may be, apply in relation to a claim submitted and a certificate given in accordance with this regulation as they apply to certification and claims under those regulations.

90. Other evidence in lieu of a certificate

The Corporation may accept any other evidence in lieu of a certificate of pregnancy, expected confinement, confinement death during maternity, miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage by an Insurance Medical Officer, if in its opinion, the circumstances of any particular case so justify.

91. Notice of work for remuneration

Except as provided in regulation 89B every insured woman who has claimed maternity benefit shall give notice in Form 24 if she does work for remuneration on any day during the period for which maternity benefit would be payable to her but for her working for remuneration.

92. Date of payment of maternity benefit

Maternity benefit shall be payable from the date from which it is claimed provided that such date does not precede the expected date of confinement by more than forty-two days, and that no work is undertaken by the insured woman for remuneration.

93. Disqualification for maternity benefit

An insured woman may be disqualified from receiving maternity benefit if she fails without good cause to attend for or to submit herself to medical examination when so required; and such disqualification shall be for such number of days as may be decided by the authority authorised by the Corporation in this behalf :

PROVIDED that a woman may refuse to be examined by other than a female doctor or midwife.

94. Authority which may issue certificate

No certificate required under any of the regulations 87 to 89B shall be issued except by the insurance medical officer to whom the insured woman has or had been allotted or by an insurance medical officer attached to a dispensary, hospital, clinic or other institution to which the insured woman is or was allotted and such insurance medical officer shall examine and if in his opinion if the condition of the woman so justifies or in case of death of the insured woman or the death of the child, if satisfied about such death issue to such insured woman or in case of her death to her nominee or legal representative, as the case may be, free of charge any such certificate when reasonably required by such insured woman or her nominee or legal representative, as the case may be, under or for the purpose of the Act or any other enactment or these regulations :

PROVIDED that such Officer may issue a certificate, as aforesaid, under these regulations, to or in respect of an insured woman who is or was not allotted to him or to the dispensary, hospital, clinic or other institution to which such officer is attached, if such Officer is attending the woman for prenatal care, for confinement, for miscarriage or for sickness arising out of pregnancy, confinement, premature birth of child or miscarriage or in case of death, was attending the deceased insured woman or the child at the time of death of the insured woman or the child :

PROVIDED FURTHER that a certificate of pregnancy, of expected confinement, or confinement or miscarriage required under these regulations may be issued by a registered midwife which shall be accepted by the Corporation on counter-signatures by the Insurance Medical Officer :

PROVIDED that such Officer may issue a certificate of pregnancy, expected confinement or confinement under these regulations to an insured woman who is not allotted to him or to the dispensary, hospital, clinic or other institution to

which such officer is attached, if such officer is attending the woman for prenatal care or for confinement :

PROVIDED FURTHER that a certificate of pregnancy, of expected confinement or of confinement required under these regulations may be issued by a registered midwife which shall be accepted by the Corporation on counter signature by the Insurance Medical Officer.

95. Obligations of insurance medical officer

Nothing in these regulations shall relieve an insurance medical officer to whom an insured woman has been allotted, or an insurance medical officer attached to the dispensary, hospital, clinic or other institution to which an insured woman is allotted of the obligation to examine and if in her opinion the condition of the woman so justifies, issue free of charge a certificate of pregnancy, of expected confinement, or confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage during any period in which such insured woman is obtaining treatment or attendance from any other person or from any other hospital or institution.

MEDICAL BENEFIT TO FAMILIES

95A. Medical benefit to families of insured persons

(1) Medical benefit may be extended to the families of insured persons from such date as the Corporation may, in consultation with State Government, notify.

(2) The family of an insured person shall become entitled to medical benefit from the day the insured person himself becomes entitled to medical benefit and shall continue to be so entitled so long as the insured person is entitled to receive medical benefit for himself, or in the case of death of the insured person till such date up to which the insured person would have remained entitled to medical care, had he survived.

(3) The nature and scale of medical benefit to which the family of an insured person shall be entitled shall be such as may be specified by the State Government in consultation with the Corporation from time to time.

(4) The appropriate office shall arrange to prepare a family identity card for each insured person who is entitled to medical benefit for his family in Form 4A, and shall send all such identity cards to his employer. Such employer shall obtain the signature or thumb-impression of the employee on the family identity card and shall deliver the same to the employee and obtain a receipt therefor.

FUNERAL EXPENSES

95B. Report of death of insured person

In case of death of an insured person--

- (a) if the death occurs at the place of employment, the employer shall, and
- (b) if the death occurs at any other place, the person entitled and intending to claim funeral expenses shall, or
- (c) any other person present at the time of death may, immediately report the death to the local office of the deceased insured person.

95C. Issue of death certificate

An insurance medical officer attending the insured person at the time of death or the insurance medical officer who examines the body after the death or the medical officer who attended the insured person in a hospital or other institution where such insured person died, shall issue free of charge a death certificate in Form 17 to the person entitled and intending to claim funeral expenses.

95D. Other evidence in lieu of a certificate

The Corporation may accept any other evidence in lieu of a death certificate by Insurance Medical Officer if in its opinion, the circumstances of any particular case so justify.

95E. Submission of claim for funeral expenses

(1) A claim to funeral expenses shall be submitted to the appropriate local office by post or otherwise in Form 25A by the claimant entitled under the Act and in case of a minor, by his guardian, and such claim shall be supported by documents proving--

- (i) the death of the deceased person,
- (ii) that the person claiming is the eldest surviving member of the family of the deceased insured person and incurred the expenditure necessary for the funeral of the deceased, or
- (iii) in case the claimant is other than the eldest surviving member of the family--
 - (a) that the deceased insured person did not have a family or that the deceased insured person was not living with his family at the time of his death; and
 - (b) that the claimant actually incurred the expenditure claimed on the funeral of the deceased insured person :

PROVIDED that where the appropriate office is satisfied about the bona fides of the applicant or about the truth of the facts relating to any of the matters mentioned above, one or more of the documents may be dispensed with.

(2) The following may be accepted as proof for purposes of clauses (ii) and (iii) of sub-regulation (1) of this regulation--

A declaration of the claimant duly countersigned by--

(i) an officer of the Revenue, Judicial or Magisterial Departments of Government; or

(ii) a Municipal Commissioner; or

(iii) a Workmen's Compensation Commissioner; or

(iv) the Head of Gram Panchayat under the official seal of the Panchayat; or

(v) the employers of the deceased insured person; or

(vi) any other evidence or declaration acceptable to the appropriate office in the circumstances of a particular case.

CHAPTER IV

MISCELLANEOUS

96. Authority for determining benefits

The authority for determining for purposes of sub-section (2) of section 70 of the Act, the value of benefits other than cash payment shall be the Medical Commissioner of the Corporation.

96A. Reimbursement of expenses incurred in respect of medical treatment

Claims for reimbursement of expenses incurred in respect of medical treatment of insured person and (where such medical benefit is extended to his family) his family may be accepted in circumstances and subject to such conditions as the Corporation may by general or special order specify.

97. Discontinuation or reduction of benefits

An employer may discontinue or reduce benefits payable to his employees under conditions of their service which are similar to the benefits conferred by the Act to the extent specified below, namely--

(a) from the date of the commencement of the first benefit period following the appointed day for his factory or establishment--

(i) sick leave on half pay to the full extent;

(ii) such proportion of any combined general purposes and sick leave on half pay as may be assigned as sick leave but in any case not exceeding 50 per cent of such combined leave;

(b) any maternity benefits granted to women employees to the extent to which such women employees may become entitled to the maternity benefit under the Act :

PROVIDED that where an employee avails himself of any leave from the employer for sickness, maternity or temporary disablement, the employer shall be entitled to deduct from the leave salary of the employee the amount of benefit to which he may be entitled under the Act for the corresponding period.

98. Discharge, etc. of employee under certain conditions

If the conditions of service of any employee so allow, an employer may discharge or reduce on due notice an employee--

(i) who has been in receipt of disablement benefit for temporary disablement, after he has been in receipt of such benefit for a continuous period of six months or more;

(ii) who has been under medical treatment for sickness other than tuberculosis, leprosy, mental and malignant diseases or has been absent from work as a result of illness duly certified in accordance with these regulations to arise out of the pregnancy or confinement rendering the employee unfit for work, after the employee has been under such treatment or has been absent from work for a continuous period of six months or more;

(iii) who has been under medical treatment for any of the following diseases, duly certified in accordance with these regulations, after the employee has been under such treatment for a continuous period of 18 months or more, notwithstanding provisions of clauses (i) and (ii) :

DISEASES

I. Infectious Diseases

1. Tuberculosis

2. Leprosy
3. Chronic Empyema
4. Bronchiactesis
5. Interstitial Lung Disease
6. Aids

II. Neoplasms

7. Maligant Diseases

III. Endocrine Nutritional and Metabolic Disorders

8. Diabetes mellitus with proliferative retinopathy/diabetic foot/nephropathy

IV. Disorders of Nervous System

9. Monoplegia
10. Hemiplegia
11. Paraplegia
12. Hemiparesis
13. Intracranial Space Occupying Lesion
14. Parkinson's disease
15. Spinal Cord Compression
16. Myaesthesia Gravis/Neuromuscular Dystrophies

V. Diseases Of Eye

17. Immature Cataract with vision 6/6 or less
18. Detachment of Retina
19. Glaucoma

VI. Diseases of Cardiovascular System

20. Coronary Artery Disease

(a) Unstable Angina

(b) Myocardial infarction with ejection less than 45%

21. Congestive Heart Failure:

22. Cardiac Valvular Diseases with failure/complications

23. Cardiomyopathies

24. Heart Disease with Surgical Intervention along with complications

VII. Chest Diseases

25. Chronic Obstructive Lung Disease (COPD) with congestive heart failure (Cor Pulmonale)

VIII. Diseases of the Digestive System

26. Cirrhosis of liver with ascities/chronic active hepatitis

IX. Orthopaedic Diseases

27. Dislocation of vertebra/prolapse of intervertebral disc

28. Non-union or delayed union of fracture

29. Post Traumatic Surgical amputation of lower extremity

30. Compound fracture with chronic osteomyelitis

X. Psychoses

31. Sub-group under this are listed for clarification

(a) Schizophrenia

(b) Endogenous depression

(c) Manic Depressive psychosis (MDF)

(d) Dementia

XI. Others

32. More than 20% burns with infection/complication

Chronic Renal Failure

34. Reynaud's disease/Burger's disease.

99. Suspension of sickness or temporary disablement benefit

Sickness benefit or disablement benefit for temporary disablement may be suspended, if a person who is in receipt of such benefit fails to comply with any of the requirements of section 64 of the Act, and such suspension shall be for such number of days as may be decided by the authority authorised by the Director-General in this behalf.

99A. Sickness or temporary disablement benefit during strike

No person shall be entitled to sickness benefit or disablement benefit for temporary disablement on any day on which he remains on strike except in the following circumstances--

(i) if a person is receiving medical treatment and attendance as an indoor patient in any Employees' State Insurance Hospital or a hospital recognised by the Employees' State Insurance Corporation for such treatment; or

(ii) if a person is entitled to receive extended sickness benefit for any of the diseases for which such benefit is admissible; or

(iii) if a person is in receipt of sickness benefit or disablement benefit for temporary disablement immediately preceding the date of commencement of notice of the strike given by the employees' Union(s) to the management of the factory/establishment.

(iv) If an insured person/insured woman has undergone operation on account of vasectomy/tubectomy, he/she shall be entitled to enhanced sickness benefit on any day on which he/she remains on leave during the period of strike or remains on leave, or on holiday for which he/she receives wages.

100. Relaxation

The Director-General may by special or general order relax any regulation under such circumstances and subject to such conditions, as he may deem fit.

101. [Omitted]

102. Certain officers to have powers of inspection

The Director-General, the Insurance Commissioner, the Joint Insurance Commissioner, a Deputy Insurance Commissioner, a Regional Director, a Deputy Regional Director, an Assistant Insurance Commissioner, and Assistant Regional Director and a Local Office Manager shall have all the powers of an

Inspector specified in sub-sec. (2) of sec. 45 of the Act. In addition to the officers mentioned above, the Director General may, by a written order, confer upon any employee of the Corporation or any government officer the powers of an inspector for such period or periods as he may think fit.

102A. Inspection book

(i) Every principal employer shall maintain a bound inspection book and shall be responsible for its production, on demand by an inspector or any other officer of the Corporation duly authorised to exercise the powers of an Inspector irrespective of the fact whether the principal employer is present in the factory or establishment or not during the inspection.

(ii) A note of all irregularities and illegalities discovered at the time of inspection indicating therein the action, if any, proposed to be taken against the principal employer together with the orders for their remedy or removal passed by an inspector or any other officer of the Corporation duly authorised to exercise the powers of an inspector, shall be sent to the principal employer who shall enter the note and orders in the inspection book.

(iii) Every principal employer shall preserve the inspection book maintained under this regulation, after it is filled, for a period of 5 years from the date of the last entry therein.

103. Medical benefit during disablement

A person who is in receipt of disablement benefit shall be entitled to medical benefit while he is in receipt of such benefit :

PROVIDED that after the disablement has been declared as a permanent disablement, the person shall not be entitled to medical benefit, if he is not otherwise entitled to such benefit, except, in respect of any medical treatment which may be rendered necessary on account of the employment injury from which the disablement resulted.

103A. Medical benefit after contribution ceases to be payable

(1) A person on becoming an insured person for the first time shall be entitled to medical benefit for a period of 3 months provided that where such a person continues for 3 months or more to be an employee of a factory or establishment to which the Act applies, he shall be entitled to medical benefit till the beginning of the corresponding benefit period.

(2) The person in respect of whom contributions have been paid in a contribution period for not less than half the number of days in the said contribution period shall be entitled to medical benefit till the end of the corresponding benefit period:

PROVIDED that in case of a person who becomes an employee within the meaning of the Act, for the first time, and for whom a shorter contribution period of less than 156 days is available, he shall be entitled to medical benefit till the end of the corresponding benefit period if the contributions in respect of him were payable for not less than half the number of days available for working in such contribution period:

PROVIDED FURTHER that where a person suffering from any of the following diseases, before the commencement of the spell of sickness in which any such disease was diagnosed being in continuous service for a period of two years or more or where he did not have two years continuous service but by virtue of relaxation granted by the authority competent in this behalf, the insured person qualifies to claim extended Sickness benefit, he shall be entitled to Medical Benefit till the end of the relevant extended benefit period:

I. Infectious Diseases

1. Tuberculosis
2. Leprosy
3. Chronic Empyema
4. Bronchiactesis
5. Interstitial Lung Disease
6. Aids

II. Neoplasms

7. Maligant Diseases

III. Endocrine Nutritional and Metabolic Disorders

8. Diabetes mellitus with proliferative retinopathy/diabetic foot/nephropathy

IV. Disorders of Nervous System

9. Monoplegia
10. Hemiplegia
11. Paraplegia
12. Hemiparesis
13. Intracranial Space Occupying Lesion

- 14. Parkinson's disease
- 15. Spinal Cord Compression
- 16. Myasthenia Gravis/Neuromuscular Dystrophies

V. Diseases Of Eye

- 17. Immature Cataract with vision 6/6 or less
- 18. Detachment of Retina
- 19. Glaucoma

VI. Diseases of Cardiovascular System

- 20. Coronary Artery Disease
 - (a) Unstable Angina
 - (b) Myocardial infarction with ejection less than 45%

21. Congestive Heart Failure:

- 22. Cardiac Valvular Diseases with failure/complications
- 23. Cardiomyopathies
- 24. Heart Disease with Surgical Intervention along with complications

VII. Chest Diseases

- 25. Chronic Obstructive Lung Disease (COPD) with congestive heart failure (Cor Pulmonale)

VIII. Diseases of the Digestive System

- 26. Cirrhosis of liver with ascities/chronic active hepatitis

IX. Orthopaedic Diseases

- 27. Dislocation of vertebra/prolapse of intervertebral disc
- 28. Non-union or delayed union of fracture
- 29. Post Traumatic Surgical amputation of lower extremity
- 30. Compound fracture with chronic osteomyelitis

X. Psychoses

31. Sub-group under this are listed for clarification

- (a) Schizophrenia
- (b) Endogenous depression
- (c) Manic Depressive psychosis (MDF)
- (d) Dementia

XI. Others

32. More than 20% burns with infection/complication

Chronic Renal Failure

34. Reynaud's disease/Burger's disease.

(3) An insured person, whose title to medical benefit has ceased under this regulation shall again be entitled to medical benefit from the date of his re-employment as an employee under the Act by a factory or establishment to which the Act applies, if he produces a certificate from the employer in the form which may be specified by the Director-General for the purposes, such an insured person shall, unless he is covered by sub-regulation (2), be entitled to medical benefit till the commencement of the benefit period corresponding to the contribution period in which he is re-employed.

(4) An employer shall, on demand, issued the certificate referred to in sub-regulation (3) to an employee who has been employed by him after cessation of his previous insurable employment.

103B. Medical benefit to insured person who ceases to be in insurable employment on account of permanent disablement

(1) An insured person who ceases to be in insurable employment on account of permanent disablement caused due to employment injury shall continue to receive medical benefit for himself and his/her spouse till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement, if produces a certificate from the employer/a declaration in the form which may be specified by the Director-General for the purpose.

(2) Medical benefit to retired insured persons--An insured person who has attained the age of superannuation shall be eligible to receive medical benefit for himself and his/her spouse, if he produces a certificate from the employer in the form which may be specified by the Director-General for the purpose.

(3) An employer shall, on demand, issue the certificate as referred to in sub-regulations (1) and (2) to an employee who had been employed by him.

104. Production of document for medical benefit

A person intending to claim medical benefit, and who is otherwise entitled to such benefit, shall produce his identity card or such other document as may have been issued in lieu thereof at the time of claiming such benefit if demanded by the insurance medical officer and if he fails to do so medical benefit may be refused to him.

105. Further certificates

Where any question arises as to the correctness of any certificate by virtue of which an insured person claims, or is entitled to, any benefit under the Acts, he shall, on being so required in writing or otherwise by the appropriate office submit himself, with a view to obtaining a further certificate, to medical examination by such medical authority as the Corporation may appoint in this behalf. If the further certificate specifies the date on which the insured person is or will be fit to resume work, any certificate which is or has been issued by the insurance medical officer for the same spell of incapacity shall, to the extent to which it relates to any period after and including the said date on the further certificate, be deemed not to have been issued in accordance with these regulations and such further certificate shall, notwithstanding anything contained in these regulations, be deemed to be a final certificate issued under regulations 58 and 60.

Notwithstanding anything contained in these regulations, such further certificate in so far as it relates to sickness or temporary disablement, may be issued at such interval and in respect of such periods as may be specified by such medical authority.

106. Change of circumstances to be notified

Every person to whom any benefit is payable under the Act shall, as soon as may be practicable, notify the appropriate office of any change of circumstance which he may be expected to know and which might affect the continuance of his right to receipt of such benefit.

107. Certificate in respect of a person claiming permanent disablement benefit

Every person whose claim for any permanent disablement benefit has been admitted shall submit at six-monthly intervals, with the claim for December and June every year, a certificate in Form 26 attested by such authority or persons and in such manner as may be specified by the Director-General.

107A. Declaration by and certificate in respect of a person claiming dependants' benefit

Every person whose claim for any dependants' benefit has been admitted shall submit at six-monthly intervals, with the claim for December and June every year, a declaration and a certificate in Form 27 attested by such authority or person and in such manner as may be specified by the Director-General.

107B. Personal attendance of a person claiming permanent disablement benefit or dependants' benefit

In the case of claimant for permanent disablement benefit or dependants' benefit, the appropriate local office manager may require personal attendance and due identification of any claimant, other than a person incapacitated by bodily illness or infirmity or a purdanashin lady at the appropriate Local Office or at any other office of the Corporation provided that such appearance shall not be required more frequently than once in every six months.

108 . *[Omitted w.e.f. 15-6-1991]*

109. Submission of additional information by employer or insured person

Employer or insured person, as the case may be, shall, on demand from the appropriate office submit information in such form as may be specified by Director General.