

ECONOMIC AND LABOUR LAWS

PART B – LABOUR LAWS

STUDY XX - WORKMEN'S COMPENSATION ACT, 1923

LEARNING OBJECTIVES

The passing of the Workmen's Compensation Act in 1923 was the first step towards social security of workmen. It aims at providing financial protection to workmen and their dependants in case of accidental injury by means of payment of compensation by the employers. Therefore, it is essential for the students to be familiar with the general principles of workmen's compensation stipulated under the Act.

At the end of the study lesson, you should be able to understand:

- Object and scope
- Important Definitions
- Employer's liability for compensation
- Employer's liability when contractor is engaged
- Compensation
- Obligations and responsibility of an employer
- Procedure before the Commissioner
- Penalties
- Special provisions relating to Masters and Seamen
- Special provisions relating to Captains and other Members of Crew of Aircrafts
- Special provisions relating to Workmen Abroad of Companies and Motor Vehicles

OBJECT AND SCOPE

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

The Act extends to the whole of India.

DEFINITIONS

Some important definitions are given below:

i. *Dependant*

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

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

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

ii. *Employer*

The following persons are included in the definition of “employer”:

- a. any body of persons incorporated or not;
- b. any managing agent of the employer;
- c. legal representative of a deceased employer. Thus, one who inherits the estate of the deceased, is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him;

- d. any person to whom the services of a workman are temporarily lent or let on hire by a person with whom the workman has entered into a contract of service or apprenticeship. [Section 2(1)(e)]

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

iii. *Seaman*

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

iv. *Wages*

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

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

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

v. *Workman*

“Workman” has been defined under Section 2(1)(n) as follows:

1. “Workman” means any person who is —
 - i. a railway servant as defined in Clause (34) of Section 2 of the Railways Act, 1989 not permanently employed in any administrative, district or

sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

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

- b. a captain or other member of the crew of an aircraft,
- c. a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
- d. a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

ii. employed in any such capacity as is specified in Schedule II,

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

2. The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.
3. The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons:

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

DISABLEMENT

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

i. *Partial disablement*

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

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

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

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

Whether the disablement is temporary or permanent and whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in Part II of Schedule I. **In the case of *Sukhai v. Hukam Chand Jute Mills Ltd.*, A.I.R. 1957 Cal. 601, it was observed:**

“If a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsaleable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it

would otherwise fetch. The capacity of a workman may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost if such a result ensue by the reason of the results of an accident, although the accident has not really reduced the capacity of the workman to work. He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but had been turned away on account of the results of the accident visible on his person.”

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

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

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

Note to Schedule I—On the question whether eye is a member or limb as used in the note to Schedule I it was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary, it could be said that the words limb or member include any organ of a person and in any case it includes the eye (*Lipton (India) Ltd. v. Gokul Chandran Mandal*; 1981 Lab. I.C. 1300).

ii. *Total disablement*

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

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

Some judicial interpretations on the subject are as follows:

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

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

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

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

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

EMPLOYER'S LIABILITY FOR COMPENSATION

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

a. *In cases of occupational disease*

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

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

- iv. If it is proved:
 - a. that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and
 - b. that the disease has arisen out of and in the course of the employment;

the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section.

- v. The Central Government or the State Government after giving, by notification in the Official Gazette, not less than three months notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of Sub-section (2) shall apply in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.
- vi. Except as mentioned above no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

b. *In case of personal injury*

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

i. *Personal injury*

There must be personal injury caused to a workman.

Normally, Injury implies physical or bodily injury caused by an accident. However, such personal injury will also include nervous shock or break-down or mental strain. **In the case of *Indian News Chronicle v. Mrs. Lazarus*, A.I.R. 1961, Punj. 102, an electrician who had to go frequently to a heating room from a cooling plant, contracted pneumonia which resulted in his death. It was held that the injury caused by an accident is not confined to physical injury and the injury in the instant case was due to his working and going from a heating room to a cooling plant as it was his indispensable duty.**

ii. *Accident*

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

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

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

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

iii. *Arising out of employment and in the course of employment*

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

Arising out of employment

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

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

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

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

Arising in the course of employment

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

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

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

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

iv. *Theory of notional extension of employment*

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

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

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

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

v. *When employer is not liable*

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

- i. When the injury does not result in disablement for a period exceeding 3 days.
- ii. When the injury not resulting in death or permanent total disability is due to any of the following reasons:
 - a. the workman was at the time of accident, under the influence of drink or drugs, or
 - b. the workman wilfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing safety of workers, or

- c. the workman, wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workmen.

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

c. Suit for damages in a Court barred

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

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

EMPLOYER'S LIABILITY WHEN CONTRACTOR IS ENGAGED

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

- i. Sometimes, employer may engage a contractor instead of employing his own workman for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of workman engaged by him. If any injury is caused by an accident to any of these workers, the employer cannot be held liable because they are not employed by him and hence are not his workmen. But now Section 12(1) makes the employer liable for compensation to such workmen hired by the contractor under following circumstances:
 - a. The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).
 - b. The workmen were engaged in the course of or for the purpose of his trade or business.
 - c. The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.

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

- ii. According to Section 12(2), where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.
- iii. The above provision, however, does not prevent a workman from recovering compensation from the contractor instead of the employer, i.e., the Principal. [Section 12(3)]
- iv. This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be to execute the work or which are otherwise under his control or management. [Section 12(4)]

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

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

COMPENSATION

i. *Meaning of compensation*

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

ii. *Amount of compensation*

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

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

iii. *Compensation to be paid when due and penalty for default*

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

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

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

iv. *Method of calculating wages*

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

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

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

v. *Review of half-monthly payment*

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

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

vi. *Commutation of half monthly payments*

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

vii. *Distribution of compensation*

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

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

viii. *Compensation not to be assigned etc.*

Save as provided by this Act, no lump sum or half-monthly payment payable under this Act can be assigned, or charged or attached or passed to any person other than the workman by operation of law nor can any claim be set-off against the same. (Section 9)

ix. *Compensation to be first charge*

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

x. *Insolvency of employer and the compensation*

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

- i. Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme

of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under the employer.

- ii. If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.
- iii. Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman.

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

- iv. There shall be deemed to be included among the debts which under Section 49 of the Presidency Towns Insolvency Act, 1909, or under Section 61 of the Provincial Insolvency Act, 1920 or under Section 530 of the Companies Act, 1956, are in the distribution of property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.
- v. Where the compensation is half-monthly payment, the amount due in respect thereof shall, for the purposes of this Section, be taken to be the amount of the lump sum for which the half-monthly, payment could, if redeemable be redeemed if application were made for that purpose under Section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

- vi. The provisions of sub-section(iv) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3) but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as if referred to in sub-section (i).
 - vii. This Section shall not apply where a company is wound up voluntarily merely for purpose of reconstruction or of amalgamation with another company.
- xi. *Contracting out of compensation*

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

OBLIGATIONS AND RESPONSIBILITY OF AN EMPLOYER

- i. *Power of Commissioner to require from employers statements regarding fatal accidents*
 - a. Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workmans employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.
 - b. If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.
 - c. If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.
 - d. Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependents of the deceased workman, that it is open to the dependents to prefer a claim for compensation and may give them such other further information as he may think fit. (Section 10A)
- ii. *To submit reports of fatal accidents and serious bodily injuries*

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

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

- ii. The State Government may, by notification in the Official Gazette, extend the provisions of sub-section (i) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.
- iii. Nothing in this section shall apply to the factories to which the Employees' State Insurance Act, 1948, applies. (Section 10B)

NOTICE AND CLAIM

- a. No claim for compensation shall be entertained by a Commissioner unless the notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death. (Section 10)

Provided that:

- i. where the accident is the contracting of a disease the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease;
- ii. in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer;

- iii. if a workman who, having been employed in an employment for a continuous period specified under sub-section 3(2) in respect of that employment ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.
 - iv. The want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim:
 - a. if the claim is preferred in respect of the death of a workman resulting from an accident which occurred in the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him and the workman died on such premises, or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or
 - b. if the employer or any one of several employers or any persons responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred.
 - v. The Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure to give the notice or prefer the claim, as the case may be, was due to sufficient cause.
- b. Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.
 - c. The State Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

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

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

MEDICAL EXAMINATION

According to Section 11 of the Act:

- i. Where a workman has given notice of an accident, he shall, if the employer, before the expiry of 3 days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time as per the rules under the Act.
- ii. If a workman refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal, or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.
- iii. If a workman, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and officers himself for such examination.
- iv. Where a workman, whose right to compensation has been suspended under sub-section (ii) or sub-section (iii), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.
- v. Where under sub-section (ii) or sub-section (iii) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (d) of sub-section (i) of Section 4, the waiting period shall be increased by the period during which the suspension continues.
- vi. Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the workman

has not thereafter been regularly attended by a qualified medical practitioner or having been so attended had deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner, whose instructions he had followed, and compensation, if any, shall be payable accordingly.

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

PROCEDURE IN THE PROCEEDINGS BEFORE THE COMMISSIONER

i. Appointment of Commissioners

The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification. Where more than one Commissioner has been appointed for any area, the Government may by general or special order regulate the distribution of business between them. Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code. (Section 20)

Section 20(3) empowers the Commissioner to appoint or choose any person, possessing special knowledge of any matter relevant to the matter under inquiry, to assist him in holding the inquiry.

ii. Reference to Commissioner and his jurisdiction

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

- a. Liability of any person to pay compensation.
- b. Whether a person injured is or is not a workman?

- c. The nature and extent of disablement.
- d. The amount or duration of compensation.

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

iii. *Jurisdiction of Civil Court barred*

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

iv. *Venue of proceedings and transfer*

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

1. Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which:
 - a. the accident took place which resulted in the injury; or
 - b. the workman or in case of his death, the dependent claiming the compensation ordinarily resides; or
 - c. the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place,

without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the workman, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or workman in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner of agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

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

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

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

3. The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.
4. On receipt of a report from a Commissioner to whom any matter has been transferred for report under Sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.
5. The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

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

v. *Form of application*

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

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

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

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

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

iv. *Power of the Commissioner to require further deposit in case of fatal accident*

Where the Commissioner is of the opinion that any sum deposited by the employer as compensation payable on the death of a workman, is insufficient, he is empowered to

call upon, by a notice in writing stating his reasons, the employer to show cause why he should not make a further deposit within a stipulated period. If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable and requiring him to deposit the deficiency. (Section 22A)

vii. *Powers and procedure of Commissioners*

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

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

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

viii. *Appearance of parties*

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

ix. *Method of recording evidence*

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

Provided that:

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

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

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

x. *Costs*

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

However, the Commissioner must use his discretion judiciously.

xi. *Power to submit cases*

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

xii. *Registration of agreements*

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

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

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

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

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

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

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

xiii. *Effect of failure to register agreement*

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

APPEALS

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

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

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

applicable to appeals under the Section. No appeal shall lie unless the following requirements are fulfilled:

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

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

Withholding of certain payments pending decision of appeal

Where an employer makes an appeal under clause (a) of sub-section (1) of Section 30, the Commissioner may, and if so directed by the High Court, shall, pending the decision of the appeal, withhold payment of any sum in deposit with him. (Section 30A)

Recovery

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

PENALTIES

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

- a. Whosoever fails to maintain a notice book which he is required to maintain under Section 10(3); or
- b. Whosoever fails to send to the Commissioner a statement of fatal accidents which he is required to send under Section 10A(1); or
- c. Whosoever fails to send a report of fatal accidents and serious bodily injuries which he is required to send under Section 10B; or
- d. Whosoever fails to make a return of injuries and compensation which he is required to make under Section 16.

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

SPECIAL PROVISIONS RELATING TO MASTERS AND SEAMEN

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

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

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

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

- i. if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
- ii. if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and
- iii. if the deposition was made in the course of a criminal proceedings, on proof that the deposition was made in the presence of the person accused;

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

- d. No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping liable to defray the expenses of maintenance of the injured master or seaman.
- e. No compensation shall be payable under this Act in respect of any injury in respect of which provisions are made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention (Navy, Army, Air Force and Mercantile Marine) Act, 1939, or under War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Central Government.
- f. Failure to give a notice to make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceedings under this Act in respect of any personal injury, if:
 - i. an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and
 - ii. the State Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made makes provisions for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and
 - iii. the proceedings under this Act are commenced within one month from the date on which the said certificate of the State Government was furnished to the person commencing the proceedings.

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

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

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

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

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

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was

made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

SPECIAL PROVISIONS RELATING TO WORKMEN ABROAD OF COMPANIES AND MOTOR VEHICLES

This Act according to Section 15B shall apply:

- i. in the case of workmen who are persons recruited by companies registered in India and working as such abroad, and
- ii. persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 (59 of 1988) as drivers, helpers, mechanics, cleaners or other workmen, subject to the following modifications, namely:
 - 1. The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.
 - 2. In the case of death of the workman in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant:

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

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

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

COMPLIANCES UNDER THE ACT

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

1. There are workers and contractors, employed by the establishment who are covered under the provisions of this Act.
2. The factory/establishment has submitted to the ESI Corporation returns in the prescribed form containing the particulars relating to the persons employed as per the provisions of the Act, regulation and rules made in this behalf.
3. The establishment has compensated the workman for the personal injury caused to a workman by accident arising out of and in the course of his employment as per the provisions contained in the Act during the financial year.
4. During the year under review, there was no dispute in respect of any bonafide claims of the employees.
5. During the year under review, every bonafide claim was duly settled by the establishment.
6. There was no prosecution initiated against or show cause notices received by the Company and no fines or penalties or any other punishment was imposed on the Company during the financial year, for offences under the Act

SCHEDULE I

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

PART I

List of Injuries Deemed to Result in Permanent Total Disablement

<i>Sl. No.</i>	<i>Description of injury</i>	<i>Percentage of loss of earning capacity</i>

(1)	(2)	(3)
1.	Loss of both hands or amputation at higher sites	100
2.	Loss of a hand and foot	100
3.	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye sight is essential	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100
PART II List of Injuries Deemed to Result in Permanent Partial Disablement <i>Amputation Cases — Upper limbs — Either arm</i>		
1	Amputation through shoulder joint	90
2	Amputation below shoulder with stump less than 20.32 cms. from tip of acromion	80
3	Amputation from 20.32 cms. from tip of acromion to less than 4" below tip of olecranon	70
4	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43 cms. below tip of olecranon	60
5	Loss of thumb	30
6	Loss of thumb and its metacarpal bone	40
7	Loss of four fingers of one hand	50
8	Loss of three fingers of one hand	30
9	Loss of two fingers of one hand	20
10	Loss of terminal phalanx of thumb	20
10A	Guillotine amputation of tip of thumb without loss of bone	10
<i>Amputation Cases—Lower limbs</i>		
11	Amputation of both feet resulting in end-bearing stump	90
12	Amputation through both feet proximal to the metatarso - phalangeal joint	80
13	13. Loss of all toes of both feet through the metatarso - phalangeal joint	40
14	14. Loss of all toes of both feet proximal to the proximal inter phalangeal joint	30
15	15. Loss of all toes of both feet distal to the proximal inter - phalangeal joint	20

16	Amputation at hip	90
17	Amputation below hip with stump not exceeding 12.70 cms. in length measured from tip of great trenchanter	80
18	Amputation below hip with stump exceeding 12.70 cms. in length measured from tip of great trenchanter but not beyond middle thigh	70
19	Amputation below middle thigh to 8.89 cms. below knee	60
20	Amputation below middle thigh to 8.89 cms. below knee but not exceeding 12.70 cms.	50
21	Amputation below knee with stump exceeding 12.70 cms.	50
22	Amputation of one foot resulting in end-bearing	50
23	23. Amputation through one foot proximal to the metatarso-phalangeal joint	50
24	Loss of all toes of one foot through the metatarso- phalangeal joint	20
<i>Other injuries</i>		
25	Loss of one eye, without complications, the other being normal	40
26	Loss of vision of one eye without complications or disfigurement of eye-ball, the other being normal	30
26A	Loss of partial vision of one eye	10
<i>Loss of — A. Fingers of right or left hand Index finger</i>		
27	Whole	14
28	Two phalanges	11
39	One phalanx	9
30	Guillotine amputation of tip without loss of bone	5
<i>Middle finger</i>		
31	Whole	12
32	Two phalanges	9
33	One phalanx	7
34	Guillotine amputation of tip without loss of bone	4
<i>Ring or little finger</i>		
35	Whole	7
36	Two phalanges	6
37	One phalanx	5
38	Guillotine amputation of tip without loss of bone	2
<i>B. Toes of right or left foot great toe</i>		

39	Through metatarso-phalangeal joint	14
40	Part, with some loss of bone	3
<i>Any other toe</i>		
41	Through metatarso-phalangeal joint	3
42	Part, with some loss of bone	1
<i>Two toes of one foot, excluding great toe</i>		
43	Through metatarso-phalangeal joint	5
44	Part, with some loss of bone	2
<i>Three toes of one foot, excluding great toe</i>		
45	Through metatarso-phalangeal joint	6
46	Part, with some loss of bone	6
<i>Four toes of one foot, excluding great toe</i>		
47	Through metatarso-phalangeal joint	9
48	Part, with some loss of bone	3

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

LESSON ROUND-UP

- The Workmen's Compensation Act, 1923 is one of the important social security legislations. It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions.
- The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law.
- The Act provides for employers liability for compensation in case of occupational disease or personal injuries and prescribes the manner in which his liability can be ascertained.
- Amount of compensation is payable in the event of a workman meeting with an accident resulting into temporary or permanent disability or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with Schedule IV. Compensation shall be paid as soon as it falls due.
- In case of death, the minimum amount of compensation fixed is Rs. 80,000 and Rs. 90,000 in case of permanent total disablement. The existing wage ceiling for computation of maximum amount of compensation is Rs. 4000.
- Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to

the workman or his dependent as the case may be.

- Under the Act, the State Governments are empowered to appoint Commissioners for Workmen's Compensation for (i) settlement of disputed claims, (ii) disposal of cases of injuries involving death, and (iii) revision of periodical payments.
- The Act prescribes penalties for the contravention of the provisions of the Act which include fine up to Rs. 5,000.