

ECONOMIC AND LABOUR LAWS

PART B – LABOUR LAWS

STUDY XVI - PAYMENT OF BONUS ACT, 1965

LEARNING OBJECTIVES

The Payment of Bonus Act, 1965 provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. The students must be familiar with the basic legal framework envisaged under the Act to understand the main principles involved in the grant of bonus to workers.

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

- Scope and application of the Act
- Eligibility for bonus and its payment
- Bonus linked with production
- Exemption
- Compliances under the Act
- Offences and penalties

INTRODUCTION

The term “bonus” is not defined in the Payment of Bonus Act, 1965. Webster's International Dictionary, defines bonus as “something given in addition to what is ordinarily received by or strictly due to the recipient”. The Oxford Concise Dictionary defines it as “something to the good into the bargain (and as an example) gratuity to workmen beyond their wages”. The purpose of payment of bonus is to bridge the gap between wages paid and ideal of a living wage.

OBJECT AND SCOPE OF THE ACT

The object of the Act is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith. **Shah J. observed in *Jalan Trading Co. (Pvt.) Ltd. v. Mill Mazdor Sabha*, AIR 1967 S.C. 691, that the “object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the**

scheme of “set-off” and “set on” not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity”.

On the question whether the Act deals only with profit bonus, it was observed by the Supreme Court in *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, (1976) II LLJ 186, that “bonus” is a word of many generous connotations and, in the Lord’s mansion, there are many houses. There is profit based bonus which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from long, continued usage leading to a promissory and expectancy situation materialising in a right. There is attendance bonus and what not. The Bonus Act speak and speaks as a whole Code on the sole subject of profit based bonus but is silent and cannot, therefore, annihilate by implication, other distinct and different kinds of bonuses, such as the one oriented on custom. The Bonus Act, 1965 as it then stood does not bar claims to customary bonus or those based on conditions of service. Held, a discerning and concrete analysis of the scheme of the Bonus Act and reasoning of the Court leaves no doubt that the Act leaves untouched customary bonus.

The provision of the Act have no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually, statutory bonus and customary bonus operate in two fields and do not clash with each other (*Hukamchand Jute Mills Limited v. Second Industrial Tribunal, West Bengal*; 1979-I Labour Law Journal 461).

APPLICATION OF THE ACT

According to Section 1(2), the Act extends to the whole of India, and as per Section 1(3) the Act shall apply to

- a. every factory; and
- b. every other establishment in which twenty or more persons are employed on any day during an accounting year.

Provided that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette apply the provisions of this Act with effect from such accounting year as may be specified in the notification to any establishment including an establishment being a factory within the meaning of sub-clause (ii) of clause (m) of Section 2 of the Factories Act, 1948 employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.

Save as otherwise provided in this Act, the provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year:

Provided that in relation to the State of Jammu and Kashmir, the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year shall be construed as reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year.

Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year, or, as the case may be, the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year [Section 1(4)].

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty, or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3).

ACT NOT TO APPLY TO CERTAIN CLASSES OF EMPLOYEES

Section 32 of this Act provides that the Act shall not apply to the following classes of employees:

- i. employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;
- ii. seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;
- iii. employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
- iv. employees employed by an establishment engaged in any industry called on by or under the authority of any department of Central Government or a State Government or a local authority;
- v. employees employed by

- a. the Indian Red Cross Society or any other institution of a like nature including its branches;
 - b. universities and other educational institutions;
 - c. institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;
- vi.*
- vii. employees employed by the Reserve Bank of India;
- viii. employees employed by
 - a. the Industrial Finance Corporation of India;
 - b. any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;
 - c. the Deposit Insurance Corporation;
 - d. the National Bank for Agriculture and Rural Development;
 - e. the Unit Trust of India;
 - f. the Industrial Development Bank of India;
- (fa) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
- (fb) the National Housing Bank;
- g. any other financial Institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure; (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any concession given to it by the Government; and (iv) any other relevant factor;
- ix. employees employed by inland water transport establishments operating on routes passing through any other country.

Apart from the above, the appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and if it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto. It may also impose such conditions while according the exemptions as it may consider fit to impose.

IMPORTANT DEFINITIONS

Accounting Year

“Accounting Year” means

- i. in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;
- ii. in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
- iii. in any other case
 - a. the year commencing on the 1st day of April; or
 - b. if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced;

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit.
[Section 2(1)]

Allocable Surplus

It means—

- a. in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;
- b. in any other case sixty per cent of such available surplus. [Section 2(4)]

Available Surplus

It means the available surplus under Section 5. [Section 2(6)]

Award

“Award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal Constituted under the Industrial Disputes Act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under Section 10A of that Act or under that law. [Section 2(7)]

Corporation

“Corporation” means any body corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society. [Section 2(11)]

Employee

“Employee” means any person (other than an apprentice) employed on a salary or wages not exceeding Rs. 10,000^{*1} per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied. [Section 2(13)]

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

Employer

“Employer” includes:

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

Establishment in Private Sector

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

Establishment in Public Sector

It means an establishment owned, controlled or managed by:

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

Salary or Wage

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

- i. any other allowance which the employee is for the time being entitled to;
- ii. the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
- iii. any travelling concession;
- iv. any bonus (including incentive, production and attendance bonus);
- v. any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- vi. any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
- vii. any commission payable to the employee. [Section 2(21)]

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

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

Establishment — Meaning of

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

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

CALCULATION OF AMOUNT PAYABLE AS BONUS

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

i. Computation of gross profits

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

- a. in the case of banking company be calculated in the manner specified in the First Schedule.

- b. in any other case, be calculated in the manner specified in the Second Schedule.
- ii. *Deductions from gross profits*

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

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

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

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

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

- iii. *Calculation of direct tax payable by the employer*

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

- a. in calculating such tax no account shall be taken of
 - i. any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

- ii. any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of Section 32 of the Income-tax Act;
 - iii. any exemption conferred on the employer under Section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of Section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;
- b. where the employer is a religious or a charitable institution to which the provisions of Section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- c. where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income.

iv. *Computation of available surplus*

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

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

- a. the gross profits for that accounting year after deducting therefrom the sums referred to in Section 6; and
- b. an amount equal to the difference between
 - i. the direct tax, calculated in accordance with the provisions of Section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
 - ii. the direct tax calculated in accordance with the provisions of Section 7 in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year. (Section 5)

ELIGIBILITY FOR BONUS AND ITS PAYMENT

i. *Eligibility for bonus*

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. (Section 8) **An employee suspended but subsequently reinstated with full back wages can not be treated to be ineligible for bonus for the period of suspension. [Project Manager, Ahmedabad Project, ONGC v. Sham Kumar Sahegal (1995) 1 LLJ 863]**

ii. *Disqualification for bonus*

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

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

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

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

iii. *Payment of minimum bonus*

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

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

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

iv. *Maximum bonus*

1. Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that Section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.
2. In computing the allocable surplus under this Section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that Section. (Section 11)

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

Where the salary or wage of an employee exceeds three* thousand and five hundred rupees per mensem, the bonus payable under Section 10 or 11 shall be calculated as if his salary or wage were three*thousand and five hundred rupees per mensem. (Section 12)

v. *Proportionate reduction in bonus in certain cases*

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he had worked in that accounting year, shall be proportionately reduced. (Section 13)

vi. *Computation of number of working days*

For the purposes of Section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:

- a. he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment;
- b. he has been on leave with salary or wage;
- c. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- d. the employee has been on maternity leave with salary or wage, during the accounting year. (Section 14)

vii. *Set on and set off of allocable surplus*

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

THE FOURTH SCHEDULE
(See Sections 15 and 16)

In this Schedule, the total amount of bonus equal to 8.33 per cent of the annual salary or wage payable to all the employees is assumed to be Rs. 1,04,167. Accordingly, the maximum bonus to which all the employees are entitled to be paid (Twenty per cent of the annual salary or wage of all the employees) would be Rs. 2,50,000.

<i>Year</i>	<i>Amount equal to sixty per cent or sixty-seven percent, as the case may be, of available surplus allocable as bonus</i>	<i>Amount payable as bonus</i>	<i>Set on or set off of the year carried forward</i>	<i>To set on set off carried forward</i>
(1)	(2)	(3)	(4)	(5)
	Rs.	Rs.	Rs.	Rs. of (year)
1.	1,04,167	1,04,167 ^{**b}	NIL	NIL
2.	6,35,000	2,50,000	Set on 2,50,000 ^{*a}	Set on 2,50,000 (2)
3.	2,20,000	2,50,000 ^{*a}	NIL	Set on

		(Inclusive of 30,000 from year 2)		2,20,000	(2)
4.	3,75,000	2,50,000 ^{*a}	Set on	Set on	
			1,25,000	2,20,000	(2)
				1,25,000	(4)
5.	1,40,000	2,50,000	NIL	Set on	
		(Inclusive of 1,10,000 from year 2)		1,10,000	(2)
				1,25,000	(4)
6.	3,10,000	2,50,000 ^{*a}	Set on	Set on	
			60,000	NIL [£]	(2)
				1,25,000	(4)
				60,000	(6)
7.	1,00,000	2,50,000	Nil	Set on	
		(Inclusive of 1,25,000 from year 4 and 25,000 from 6 year)		35,000	(6)
8.	Nil	1,04,167 ^{**b}			
	(due of loss)	(Inclusive of 35,000 from 6 year)	Set off	Set off	(8)
			69,167	69,167	
9.	10,000	1,04,167 ^{*a}	Set off	Set off	
			69,167	69,167	(8)
				94,167	(9)
10.	2,15,000	1,04,167 ^{*a}	Nil	Set off	
		(After setting off 67,167 from year 8 and 41,666 from year 9)		52,501	(9)

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

- in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.
3. The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.
 4. Where in any accounting year any amount has been carried forward and set on or set off under this Section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

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

viii. *Adjustment of customary or interim bonus*

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

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

ix. *Deductions of certain amounts from bonus*

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

x. *Time limit for payment of bonus*

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

xi. *Recovery of bonus from an employer*

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

Provided that every such application shall be made within one year from the date on which the money become due to the employee from the employer:

Provided further that, any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

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

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

BONUS LINKED WITH PRODUCTION OR PRODUCTIVITY

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

POWER OF EXEMPTION

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

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

COMPLIANCES UNDER THE ACT

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

1. The total number of employees who are entitled to bonus in department/undertaking (a) are and (b) are
2. The total number of employees who are not entitled to bonus in view of their having worked for less than thirty days during the accounting year in case of department (a) are and (b) are
3. The Establishment did not pay bonus to employees in view of their dismissal from service for (a) fraud or (b) riotous behaviour on the premises of Establishment or (c) theft, misappropriation or sabotage of any property of the establishment.
4. The Establishment has made deductions from the amount of bonus payable under PBA in respect of employees in view of their being found guilty of misconduct causing financial loss to the Establishment. The quantum of deduction was only to the extent of amount of loss suffered by the Establishment.

5. The Establishment has computed the gross profit and available surplus in accordance with the provisions of the Act read with the rules made thereunder.
6. In relation to the year ended 31st March 2000, the Establishment paid bonus in cash/cheque(s) or electronic clearance system (ECS) or other electronic mode to its employees at the rate of which is not less than the minimum statutory requirement as specified under PBA on 15th January 2000, which is within eight months from the close of the accounting year.
7. During the accounting year, the Establishment opened a separate bank account for transfer of unpaid/unclaimed bonus in respect of employees who have either not been paid bonus for any reason or not collected their bonus for the accounting year ended on 31st March 2004 with Bank (Branch) The unpaid/unclaimed bonus has been deposited with the concerned welfare Board.
8. During the year, the Establishment transferred on to Labour Welfare Fund a sum of Rs. being the unpaid/unclaimed bonus of employees, whose entitlement under PBA remained unpaid/unclaimed since being the last date on which the bonus was to be paid to those for the year ended 31st March 2000.
9. In relation to the year ended 31st March 2000, the Establishment has filed Annual Return with the Inspector appointed under the Act on , which is within thirty days from the date of payment of bonus under Section 19 of the PBA.

PENALTIES

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

OFFENCES BY COMPANIES

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

Further, if an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is

attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be proceeded against and punished accordingly. (Section 29)

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

LESSON ROUND-UP

- The Payment of Bonus Act provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.
- It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year. The Act does not apply to certain classes of employees specified therein.
- The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees.
- Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.
- An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for fraud; or riotous or violent behaviour while on the premises of the establishment; or theft, misappropriation or sabotage of any property of the establishment.
- Every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year.
- In case of newly set up establishments provisions have been made under Section 16 for the payment of bonus.
- If there is a dispute regarding payment of bonus pending before any authority under Section 22, all amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer, within a month from the date from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
- In any other case, the bonus should be paid within a period of eight months from the close of the accounting year.
- If any dispute arises between an employer and his employee with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or any corresponding law relating to investigation and settlement of industrial disputes in

force in a State and provisions of that Act, shall, save as otherwise expressly provided, apply accordingly.

- The Act enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act.

FOOTNOTES

* Clause (vi) providing employees employed through contractors on building operation has been deleted by Payment of Bonus (Amendment) Ordinance, 2007

*¹ Inserted by Payment of Bonus (Amendment) Ordinance, 2007.

*² Inserted by Payment of Bonus (Amendment) Ordinance, 2007.

Notes: *a Maximum

**b Minimum

£ The balance of Rs. 1,10,000 set on from year 2 lapses.

ECONOMIC AND LABOUR LAWS

PART B – LABOUR LAWS

STUDY XVII - PAYMENT OF GRATUITY ACT, 1972

LEARNING OBJECTIVES

The Payment of Gratuity Act provides for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments. Gratuity is a lump sum payment made by the employer as a mark of recognition of the service rendered by the employee when he retires or leaves service. The object of this lesson is to impart knowledge to the students about the legal frame work pertaining to payment of gratuity.

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

- Application of the Act
- Important definitions
- When gratuity is payable
- Amount of gratuity payable
- Forfeiture of gratuity
- Controlling authority and the appellate authority
- Obligations and rights of the employer
- Compliances under the Act

INTRODUCTION

“Gratuity” is a retrial benefit. It is a lump sum payment made by an employer to an employee in consideration of his past service when the employment is terminated. In the case of employment coming to an end due to retirement or superannuation, it enables the affected employee to meet the new situation which quite often means a reduction in earnings or even total stoppage of earnings. In the case of death of an employee, it provides much needed financial assistance to the surviving members of the family. Gratuity schemes, therefore, serve as instruments of social security and their significance in a developing country like India where the general income level is low cannot be over emphasised.

APPLICATION OF THE ACT

Application of the Act to an employed person depends on two factors. Firstly, he should be employed in an establishment to which the Act applies. Secondly, he should be an “employee” as defined in Section 2(e).

ESTABLISHMENTS TO WHICH THE ACT APPLIES

According to Section 1(3), the Act applies to:

- a. every factory, mine, oilfield, plantation, port and railway company;
- b. every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- c. such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months as the Central Government may, by notification specify in this behalf.

In exercise of the powers conferred by clause (c), the Central Government has specified Motor transport undertakings, Clubs, Chambers of Commerce and Industry, Inland Water Transport establishments, Solicitors offices, Local bodies, Educational Institutions, Societies, Trusts and Circus industry, in which 10 or more persons are employed or were employed on any day of the preceding 12 months, as classes of establishments to which the Act shall apply.

A shop or establishment to which the Act has become applicable once, continues to be governed by it, even if the number of persons employed therein at any time after it has become so applicable falls below ten. (Section 3A)

WHO IS AN EMPLOYEE?

According to Section 2(e), employee means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semiskilled, or unskilled, manual, or supervisory, technical or clerical work, whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity but does not include any such person who holds a post under the Central or a State Government and is governed by any other Act or by any rules providing for payment of gratuity. **The wage ceiling of Rs. 3,500/- which was earlier in the Act has been removed. With the removal of ceiling on wage every employee will become eligible for gratuity, irrespective of his wage level w.e.f. 24th May, 1994. Teacher was held to be not an employee (LAB 1C Pat 365)**

under the Act. The teachers are clearly not intended to be covered by the definition of ‘employee’. [Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer, LLJ (2004) SC]

OTHER IMPORTANT DEFINITIONS

Appropriate Government

“Appropriate Government” means:

- i. in relation to an establishment:
 - a. belonging to, or under the control of, the Central Government,
 - b. having branches in more than one State,
 - c. of a factory belonging to, or under the control of the Central Government.
 - d. of a major port, mine, oilfield or railway company, the Central Government.
- ii. in any other case, the State Government. [Section 2(a)]

It may be noted that many large establishments have branches in more than one State. In such cases the ‘appropriate Government’ is the Central Government and any dispute connected with the payment or non-payment of gratuity falls within the jurisdiction of the ‘Controlling Authority’ and the ‘Appellate Authority’ appointed by the Central Government under Sections 3 and 7.

A Company Secretary should know whether the ‘appropriate Government’ in relation to his establishment is the Central Government or the State Government. He should also find out who has been notified as the ‘Controlling Authority’ and also who is the ‘Appellate Authority’. It may be noted that any request for exemption under Section 5 of the Act is also to be addressed to the ‘appropriate Government’. It is, therefore, necessary to be clear on this point.

Continuous Service

According to Section 2A, for the purposes of this Act:

1. An employee shall be said to be in ‘continuous service’ for a period if he has, for that period been in un-interrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as

break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), layoff, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

2. Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer:
 - a. for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:
 - i. one hundred and ninety days in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
 - ii. two hundred and forty, days in any other case;
 - b. for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than:
 - i. ninety five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
 - ii. one hundred and twenty days in any other case;

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

- i. he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
- ii. he has been on leave with full wages, earned in the previous year;
- iii. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- iv. in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

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

Service is not continuous, in case of legal termination of service and subsequent re-employment. **Gratuity cannot be claimed on the basis of continuous service on being taken back in service after break in service of one and a half year on account of termination of service for taking part in an illegal strike, where the employee had accepted gratuity for previous service and later withdrawn from the industrial dispute (*Baluram v. Phoenix Mills Ltd.*, 1999 CLA Bom.19).**

Family

Family, in relation to an employee, shall be deemed to consist of:

- i. in case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any,
- ii. in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. [Section 2(h)]

Explanation: Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption lawful, such child shall be deemed to be excluded from the family of the employee.

Retirement

“Retirement” means termination of the service of an employee otherwise than on superannuation. [Section 2(q)]

Superannuation

“Superannuation” in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment. [Section 2(r)]

Wages

“Wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. [Section 2(s)]

WHEN IS GRATUITY PAYABLE?

According to Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- a. on his superannuation, or
- b. on his retirement or resignation, or
- c. on his death or disablement due to accident or disease.

***Note:** The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.*

Further, the period of continuous service is to be reckoned from the date of employment and not from the date of commencement of this Act (CLA-1996-III-13 Mad.). **Mere absence from duty without leave can not be said to result in breach of continuity of service for the purpose of this Act. [Kothari Industrial Corporation v. Appellate Authority, 1998 Lab IC, 1149 (AP)]**

TO WHOM IS GRATUITY PAYABLE?

It is payable normally to the employee himself. However, in the case of death of the employee, it shall be paid to his nominee and if no nomination has been made, to his heirs and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

AMOUNT OF GRATUITY PAYABLE

Gratuity is calculated on the basis of continuous service as defined above i.e. for every completed year of service or part in excess of six months, at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is Rs. 3,50,000/-.

NOMINATION

An employee covered by the Act is required to make nomination in accordance with the Rules under the Act for the purpose of payment of gratuity in the event of his death. The rules also provide for change in nomination.

FORFEITURE OF GRATUITY

The Act deals with this issue in two parts. Section 4(6)(a) provides that the gratuity of an employee whose services have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss or caused. The right of forfeiture is limited to the extent of damage. In absence of proof of the extent of damage, the right of forfeiture is not available (LLJ- II-1996-515 MP).

Section 4(6)(b) deals with a case where the services of an employee have been terminated:

- a. for riotous and disorderly conduct or any other act of violence on his part, or
- b. for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases the gratuity payable to the employee may be wholly or partially forfeited. Where the service has not been terminated on any of the above grounds, the employer cannot withhold gratuity due to the employee. **Where the land of the employer is not vacated by the employee, gratuity cannot be withheld** (*Travancore Plywood Ind. v. Regional JLC, Kerala, 1996 LLJ-II-14 Ker.*). **Assignment of gratuity is prohibited, it cannot be withheld for non vacation of service quarters by retiring employees** (*Air India v. Authority under the Act, 1999 CLA 34 Bom. 66*).

EXEMPTIONS

The appropriate Government may exempt any factory or establishment covered by the Act or any employee or class of employees if the gratuity or pensionary benefits for the employees are not less favourable than conferred under the Act.

THE CONTROLLING AUTHORITY AND THE APPELLATE AUTHORITY

The controlling authority and the Appellate Authority are two important functionaries in the operation of the Act. Section 3 of the Act says that the appropriate Government may by notification appoint any officer to be a Controlling Authority who shall be

responsible for the administration of the Act. Different controlling authorities may be appointed for different areas.

Section 7(7) provides for an appeal being preferred against an order of the Controlling Authority to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

RIGHTS AND OBLIGATIONS OF EMPLOYEES

Application for Payment of Gratuity

Section 7(1) lays down that a person who is eligible for payment of gratuity under the Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer. Rule 7 of the Payment of Gratuity (Central) Rules, 1972, provides that the application shall be made ordinarily within 30 days from the date gratuity becomes payable. The rules also provides that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before 30 days of the date of superannuation or retirement.

A nominee of an employee who is eligible for payment of gratuity in the case of death of the employee shall apply to the employer ordinarily within 30 days from the date of the gratuity becomes payable to him. [Rule 7(2)]

Although the forms in which the applications are to be made have been laid down, an application on plain paper with relevant particulars is also accepted.

The application may be presented to the employer either by personal service or be registered post with acknowledgement due. An application for payment of gratuity filed after the period of 30 days mentioned above shall also be entertained by the employer if the application adduces sufficient cause for the delay in preferring him claim. Any dispute in this regard shall be referred to the Controlling Authority for his decision.

RIGHTS AND OBLIGATIONS OF THE EMPLOYER

Employers Duty to Determine and Pay Gratuity

Section 7(2) lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.

Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the person to whom it is payable.

Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10 per cent per annum:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

Dispute as to the Amount of Gratuity or Admissibility of the Claim

If the claim for gratuity is not found admissible, the employer shall issue a notice in the prescribed form to the applicant employee, nominee or legal heir, as the case may be, specifying reasons why the claim for gratuity is not considered admissible. A copy of the notice shall be endorsed to the Controlling Authority.

If the disputes relates as to the amount of gratuity payable, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him. According to Section 7(4)(e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made

- i. to the applicant where he is the employee; or
- ii. where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

RECOVERY OF GRATUITY

Section 8 provides that if the gratuity payable under the Act is not paid by the employer within the prescribed time, the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same together with the compound interest thereon at such rate as the Central Government may be notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

“Provided that the the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act".

PROTECTION OF GRATUITY

Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. This relief is aimed at providing payment of gratuity to the person or persons entitled there to without being affected by any order of attachment by an decree of any Court.

COMPLIANCES UNDER THE ACT

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

1. The Establishment has observed the following while paying the gratuity to the persons who are entitled to it:
 - a. It has paid gratuity at the rate of fifteen days wages for every completed year of service or part thereof in excess of six months, calculated on the rates of wages last drawn by the employee concerned. Since the employees of the establishment are monthly rated employees, the fifteen days wages were calculated by dividing the monthly rates of wages drawn by him by twenty-six and multiplying the quotient by fifteen.

OR

Since the employees were employed on piece rate basis, the gratuity was paid at the rate of fifteen days wages for every completed year of service calculated at an average total wages during a period of three months immediately preceding the termination of employment.

OR

Since the Registered Establishment is a seasonal establishment, gratuity was paid at the rate of seven days for each season.

- b. In the event of death or disablement of any employee due to accident or disease, the gratuity was paid without the requirement of five years of continuous service.
 - c. In the event of death, the gratuity was paid to nominees or legal heir(s) or where the person entitled was a minor, the gratuity was deposited with the Controlling Authority.
 - d. The maximum amount of gratuity paid to any employee did not exceed Rs. 3,50,000/-.
- 3. The Establishment made deductions from the gratuity in respect of those employees who were liable for any act, wilful omission or negligence, which caused damages or loss to, or destruction of, property of the Registered Establishment. The total deductions were only to the extent of loss or damages so caused.
- 4. The Establishment also made deductions from the gratuity in respect of an employee whose services were terminated for an offence involving moral turpitude.
- 5. The Establishment has paid its liability under PGA within thirty days from the date it became payable.
- 6. The Establishment has deposited with the Controlling Authority the liability under PGA to the extent admitted by it, which was disputed by the person entitled to it. The Establishment has, accordingly, made application to the Controlling Authority for the settlement of dispute.
- 7. (a) The Establishment sent Notice to the person entitled to gratuity under the PGA within fifteen days from the date of receipt of application for gratuity from such person with the directions to collect the gratuity within thirty days from the date of receipt of application.
 - b. Where the Establishment did not admit its liability under the PGA, it has specified the reasons for the same
 - c. Copies of Notices under clause (a) and (b) were also endorsed to the Controlling Authority.
- 8. The liability of gratuity was settled in cash or at the request of the person claiming by Demand Draft or Banker's Cheque. Where the amount of gratuity was less than Rs. 1,000/-, the same was sent by Postal Money Order. The Controlling Authority was given details of all payments made.

LESSON ROUND-UP

- The Act is applicable to every factory, shop or an establishment, in which ten or more persons are employed, or were employed on any day of the proceeding twelve months.
- A shop or establishment to which the Act has become applicable shall continue to be governed by the Act even if the number of persons employed falls below 10 at any subsequent stage.
- An employee is eligible for receiving gratuity payment only after he has completed five years of continuous service. This condition of five years is not necessary if the termination of the employment of an employee is due to death or disablement. The maximum amount of Gratuity payable is Rs. 3.5 lakhs.
- Each employee is required to nominate one or more member of his family, as defined in the Act, who will receive the gratuity in the event of the death of the employee.
- Any person to whom the gratuity amount is payable shall make a written application to the employer. The employer is required to determine the amount of gratuity payable and give notice in writing to the person to whom the same is payable and to the controlling authority thereby specifying the amount of gratuity payable.
- The employer is under obligation to pay the gratuity amount within 30 days from the date it becomes payable. Simple interest at the rate of 10% p.a. is payable on the expiry of the said period.
- Gratuity can be forfeited for any employee whose services have been terminated for any act, willful omission or negligence causing damage or destruction to the property belonging to the employer. It can also be forfeited for any act which constitutes an offence involving moral turpitude.
- If any person makes a false statement for the purpose of avoiding any payment to be made by him under this Act, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both. If an employer contravenes any provision of the Act, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with a fine, which may vary from ten thousand rupees to twenty thousand rupees.

ECONOMIC AND LABOUR LAWS

PART B – LABOUR LAWS

STUDY XVIII - EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

LEARNING OBJECTIVES

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation to provide for the institution of Provident Fund, Pension Fund and Deposit Linked Insurance Fund for employees working in factories and other establishments. Students must have knowledge of the provisions of this Act to be aware of the statutory obligations under the Act.

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

- Application of the Act
- Important definitions
- Schemes under the Act
- Determination of moneys due from employers
- Protection against attachment
- Exemption and compliances

INTRODUCTION

Provident Fund schemes for the benefit of the employees had been introduced by some organisations even when there was no legislation requiring them to do so. Such schemes were, however, very few in number and they covered only limited classes/groups of employees. In 1952, the Employees Provident Funds Act was enacted to provide institution of Provident Fund for workers in six specified industries with provision for gradual extension of the Act to other industries/classes of establishments. The Act is now applicable to employees drawing pay not exceeding Rs. 6,500/- per month. The Act extends to whole of India except Jammu and Kashmir. The term pay includes basic wages with dearness allowance, retaining allowance (if any), and cash value of food concession.

The following three schemes have been framed under the Act by the Central Government:

- a. The Employees' Provident Fund Schemes, 1952;
- b. The Employees' Pension Scheme, 1995; and
- c. The Employees' Deposit-Linked Insurance Scheme; 1976.

The three schemes mentioned above confer significant social security benefits on workers and their dependents.

APPLICATION OF THE ACT

According to Section 1(3), the Act, subject to the provisions of Section 16, applies:

- a. to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed; and
- b. to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months notice of its intention to do so by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

The Central Government can extend the provisions of the Act to any establishment [including the co-operative society to which under Section 16(1) the provisions of the Act are not applicable by notification in Official Gazette when the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to them [Section 1(4)]. However, before notification is made, parties can opt out of such an agreement (1996 20 CLA 25 Bom.). Once an establishment falls within the purview of the Act, it shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty. [Section 1(5)] Where an establishment to which this Act applied was divided among the partners, the Act would continue to apply to the part of each ex-partner even if the number of persons employed in each part is less than twenty (1986 2 LLJ 137). Where as a result of real and bona fide partition among the owners, an establishment was disrupted and separate and distinct establishments come into existence, allottees with no regular employee, cannot be saddled with liability to pay minimum administrative charges as before (1993 1 LLN 698). For compliance with the Act and the scheme, for an establishment there should be an employer and one or more employees are required to be in existence atleast. When there is not even one employee, it would be difficult to contend that the Act continues to apply to the establishment (1998 LLJ 1 Kar. 780).

The constitutional validity of this Act was challenged on the ground of discrimination and excessive delegation. It was held that the law lays down a rule which is applicable to all the factories or establishments similarly placed. It makes a reasonable classification without making any discrimination between factories placed in the same class or group (*Delhi Cloth and General Mills v. R.P.F. Commissioner* A.I.R. 1961 All. 309).

The liability to contribute to the provident fund is created the moment the Scheme is applied to a particular establishment. **On the question whether casual or temporary workmen should be included for the purpose of ascertaining the strength of workmen in terms of Section 1(3) it was held by the Rajasthan High Court in *Bikaner Cold Storage Co. Ltd. v. Regional P.F. Commissioner, Rajasthan*, 1979 Lab. I.C. 1017, that persons employed in the normal course of the business of the establishment should be considered as the persons employed for the purposes of Section 1(3)(a) and persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular feature of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to the applicability of Section 1(3)(a). In the case of *P.F. Inspector v. Hariharan*, AIR 1971 S.C. 1519, the Supreme Court held that casual workers are not covered under Section 1(3).**

Section 1(3)(b) empowers the Central Government to apply the Act to trading or commercial establishments whether, such establishments are factories or not.

Non-applicability of the Act to certain establishments

Section 16(1) of the Act provides that the Act shall not apply to certain establishments as stated thereunder. Such establishments include (a) establishments registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, employing less than 50 persons and working without the aid of power; or (b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or (c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

According to Section 16(2), if the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official

Gazette, and subject to such conditions as may be specified in the notification, exempt that class of establishments from the operation of this Act for such period as may be specified in the notification.

The date of establishment of a factory is the date when the factory starts its manufacturing process. A change in the ownership does not shift the date of establishment. A mere change in the partnership deed, does not mean that a new business has come into existence for the purpose of Section 16(1) (*P.G. Textile Mills v. Union of India* (1976) 1 LLJ 312).

IMPORTANT DEFINITIONS

To understand the meaning of different Sections and provisions thereto, it is necessary to know the meaning of important expressions used therein. Section 2 of the Act explains such expressions which are given below:

i. *Appropriate Government*

“Appropriate Government” means:

- i. in relation to those establishments belonging to or under the control of the Central Government or in relation to an establishment connected with a railway company, a major port, a mine or an oil field or a controlled industry, or in relation to an establishment having departments or branches in more than one State, the Central Government; and
- ii. in relation to any other establishment, the State Government. [Section 2(a)]

ii. *Basic Wages*

“Basic Wages” means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

- i. the cash value of any food concession;
- ii. any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house- rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- iii. any presents made by the employer. [Section 2(b)]

iii. *Contribution*

“Contribution” means a contribution payable in respect of a member under a Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies. [Section 2(c)]

iv. *Controlled Industry*

“Controlled Industry” means any industry the control of which by the Union has been declared by the Central Act to be expedient in the public interest. [Section 2(d)]

v. *Employer*

“Employer” means

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

vi. *Employee*

“Employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person

- i. employed by or through a contractor in or in connection with the work of the establishment;
- ii. engaged as an apprentice, not being an apprentice engaged under Apprentices Act, 1961 or under the standing orders of the establishment. [Section 2(f)]

The definition is very wide in its scope and covers persons employed for clerical work or other office work in connection with the factory or establishment. The inclusive part of the definition makes it clear that even if a person has been employed through a

contract in or in connection with the work of the establishment, he would yet fall within the description of employee within the meaning of the Act.

The dominant factor in the definition of `employee in Section 2(f) of the Act is that a person should be employed in or in connection with the work of the establishment. Sons being paid wages are employees (*Goverdhanlal v. REPC* 1994 II LLN 1354). In case of doubt whether a particular person is an employee or not, both the parties should be heard by the Commissioner before deciding the issue (1976-II Labour Law Journal, 309).

The definition of employee in Section 2(f) of the Act is comprehensive enough to cover the workers employed directly or indirectly and therefore, wherever the word employee is used in this Act, it should be understood to be within the meaning of this definition (*Malwa Vanaspati and Chemical Co. Ltd. v. Regional Provident Fund Commissioner, M.P. Region, Indore*, 1976-I Labour Law Journal 307).

The definition of “employee”, includes a part-time employee, who is engaged for any work in the establishment, a sweeper working twice or thrice in a week, a night watchman keeping watch on the shops in the locality, a gardener working for ten days in a month, etc. (*Railway Employees Co-operative Banking Society Ltd. v. The Union of India*, 1980 Lab. IC 1212). The Government of India, by certain notification extended the application of Act and EPF scheme to beedi industry. It was held that the workers engaged by beedi manufacturers directly or through contractors for rolling beedi at home subject to rejection of defective beedies by manufacturers, were employees (1986 1 SCC 32). But working partners drawing salaries or other allowances are not employees. When members of cooperative society do work in connection with that of society and when wages are paid to them, there would be employer-employee relationship and such member-workers would be covered under the definition (1998 LLJ I Mad. 827).

vii. *Exempted Employee*

It means an employee to whom a Scheme or the Insurance Scheme as the case may be would, but for the exemption granted under Section 17, have applied. [Section 2(ff)]

viii. *Exempted Establishment*

It means an establishment in respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme as the case may be whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein. [Section 2(fff)]

ix. *Factory*

It means any premises including the precincts thereof, in any part of which a manufacturing process is being carried on or ordinarily so carried on, whether with the aid of power or without the aid of power. [Section 2(g)]

x. *Fund*

It means Provident Fund established under the Scheme. [Section 2(h)]

xi. *Industry*

It means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under Section 4. [Section 2(i)]

xii. *Insurance Fund*

It means the Deposit-Linked Insurance Fund established under sub-section (2) of Section 6-C. [Section 2(i-a)]

xiii. *Insurance Scheme*

It means the Employees Deposit-Linked Insurance Scheme framed under sub-section (1) of Section 6-C. [Section 2(i-b)]

xiv. *Manufacture or Manufacturing Process*

It means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. [Section 2(i-c)]

xv. *Member*

“Member” means a member of the Fund. [Section 2(j)]

xvi. *Occupier of a Factory*

It means the person, who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory. [Section 2(k)]

xvii. *Pension Fund*

“Pension Fund” means the Employees Pension Fund established under sub-section (2) of Section 6A. [Section 2(kA)]

xviii. *Pension Scheme*

“Pension Scheme” means the Employees Pension Scheme framed under sub-section (1) of Section 6A. [Section 2(kB)]

xix. *Scheme*

It means the Employees’ Provident Fund Scheme framed under Section 5. [Section 2(l)]

xx. *Superannuation*

“Superannuation”, in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years. [Section 2(ll)]

Different departments or branches of an establishment

Where an establishment consists of different departments or branches situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. (Section 2A)

SCHEMES UNDER THE ACT

In exercise of the powers conferred under the Act, the Central Government has framed the following three schemes:

A. Employees Provident Fund Scheme

The Central Government has framed a Scheme called Employees Provident Fund Scheme. The Fund vests in and is administered by the Central Board constituted under Section 5A.

Administration of the Fund

- a. Board of Trustees or Central Board: Section 5A provides for the administration of the Fund. The Central Government may by notification in the Official Gazette constitute with effect from such date as may be specified therein, a Board of Trustees, for the territories to which this Act extends.

The Employees Provident Fund Scheme contains provisions regarding the terms and conditions subject to which a member of the Central Board may be appointed and of procedure of the meetings of the Central Board. The Scheme also lays down the manner in which the Board shall administer the funds vested in it however subject to the provisions of Section 6AA and 6C of the Act. The Board also performs functions under the Family Pension Scheme and the Insurance Scheme.

Class of employees entitled and required to join Provident Fund

Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

The term “excluded employee” has been defined in para 2(f) of the Employees’ Provident Fund Scheme, 1952 as follows:

‘Excluded employee’ means:

- i. an employee who, having been a member of the Fund, withdraw the full amount of his accumulations in the Fund under clause (a) or (c) of subparagraph 69;
- ii. an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds five thousand rupees per month.

Explanation: “Pay” includes basic wages with dearness allowance retaining allowance (if any) and cash value of food concession admissible thereon.

- iii. An apprentice.

Explanation: An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.

Contributions

As per Section 6, the contribution which shall be paid by the employer to the Fund shall be 10%, of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the employees contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make

contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act. The Government has raised the rate of Provident Fund Contribution from the current 8.33% to 10% in general and in cases of establishments specially notified by the Government, from 10% to 12% with effect from September 22, 1997.

Each contribution shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.

Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working.

The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for no exception under which a specified employer can avoid his mandatory liability (*State v. S.P. Chandani*, AIR 1959 Pat. 9).

Investment: The amount received by way of Provident Fund contributions is invested by the Board of Trustees in accordance with the investment pattern approved by the Government of India. The members of the Provident Fund get interest on the money standing to their credit in their Provident Fund Accounts. The rate of interest for each financial year is recommended by the Board of Trustees and is subject to final decision by the Government of India.

Advances/Withdrawals: Advances from the Provident Fund can be taken for the following purposes subject to conditions laid down in the relevant paras of the Employees Provident Fund Scheme:

1. Non-refundable advance for payment of premia towards a policy or policies of Life Insurance of a member;
2. Withdrawal for purchasing a dwelling house or flat or for construction of a dwelling house including the acquisition of a suitable site for the purpose, or for completing/continuing the construction of a dwelling house, already commenced by the member or the spouse and an additional advance for additions, alteration or substantial improvement necessary to the dwelling house;
3. Non-refundable advance to members due to temporary closure of any factory or establishment for more than fifteen days, for reasons other than a strike or due to non-receipt of wages for 2 months or more, and

refundable advance due to closure of the factory or establishment for more than six months;

4. (i) Non-refundable in case of:
 - a. hospitalisation lasting one month or more, or
 - b. major surgical operation in a hospital, or
 - c. suffering from T.B., Leprosy, Paralysis, Cancer, Mental derangement or heart ailment, for the treatment of which leave has been granted by the employer;
- ii. Non-refundable advance for the treatment of a member of his family, who has been hospitalised or requires hospitalisation, for one month or more:
 - a. for a major surgical operation; or
 - b. for the treatment of T.B., Leprosy, Paralysis, Cancer, mental derangement or heart ailment;
5. Non-refundable advance for daughter/sons marriage, self-marriage, the marriage of sister/brother or for the post matriculation education of son or daughter;
6. Non-refundable advance to members affected by cut in the supply of electricity;
7. Non-refundable advance in case property is damaged by a calamity of exceptional nature such as floods, earthquakes or riots;
8. Withdrawals for repayment of loans in special cases; and
9. Non-refundable advance to physically handicapped members for purchasing an equipment required to minimise the hardship on account of handicap.

Final withdrawal: Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuation, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement, certain discharges from employment under Industrial Disputes Act, 1947, transfer to an establishment/factory not covered under the Act.

In other cases, with permission of commissioner or any subordinate officer to him, a member is allowed to draw full amount when he ceases to be in employment and has not been employed in any establishment to which the Act applies for a continuous period of atleast 2 months. This requirement of 2 months waiting period shall not apply in cases of female members resigning from service for the purpose of getting married.

B. Employees' Pension Scheme

Under Section 6A, Government has introduced a new pension scheme styled Employees' Pension Scheme, 1995 w.e.f. 16.11.1995, in place of Family Pension Scheme, 1971.

The Employees' Pension Scheme is compulsory for all the persons who were members of the Family Pension Scheme, 1971. It is also compulsory for the persons who become members of the Provident Fund from 16.11.1995 i.e. the date of introduction of the Scheme. The PF subscribers who were not members of the Family Pension Scheme, have an option to join this Pension Scheme. The Scheme came into operation w.e.f. 16.11.1995, but the employees, including those covered under the Voluntary Retirement Scheme have an option to join the scheme w.e.f. 1.4.1993.

Minimum 10 years contributory service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of 58 years. Pension on a discounted rate is also payable on attaining the age of 50 years. Where pensionable service is less than 10 years, the member has an option to remain covered for pensionary benefits till 58 years of age or claim return of contribution/ withdrawal benefits.

The Scheme provides for payment of monthly pension in the following contingencies (a) Superannuation on attaining the age of 58 years; (b) Retirement; (c) Permanent total disablement; (d) Death during service; (e) Death after retirement/ superannuation/permanent total disablement; (f) Children Pension; and (g) Orphan pension.

The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service.

The formula for calculation of monthly members pension is as under:

$$\text{Members Pension} = \frac{\text{Pensionable Salary} \times (\text{Pensionable Service} + 2)}{70}$$

To illustrate, if the contributory service is 33 years and pensionable salary is Rs. 5,000 per month, the above formula operates as given below:

$$\text{Members Pension} = \frac{\text{Rs. 5,000} \times (33 + 2)}{70} = \text{Rs. 2,500 p.m.}$$

In case where the contributory service is less than 20 years but more than 10 years, monthly pension is required to be determined as if the member has rendered eligible service of 20 years. The amount so arrived shall be reduced at the rate of 3 per cent for every year by which the eligible service falls short of 20 years, subject to maximum reduction of 25 per cent.

A separate formula for pension has been prescribed for the members of the ceased Family Pension Scheme, 1971. In the case of members who contributed to the Family Pension Scheme for 24 years, the minimum amount of pension will be Rs. 500 per month. Depending upon the retirement date, the amount of pension for such members may go even beyond Rs. 800 per month. The Family Pension members retiring in November, 1995 after having membership of only 10 years will also get a minimum pension of Rs. 265 p.m. In addition such Family Pension members will get back their full provident fund including the employers share along with interest accumulated in their account upto 15.11.1995.

- a. The rate of minimum widow pension is Rs. 450 p.m. The maximum may go upto Rs. 2,500 p.m. payable as normal members pension on completion of nearly 33 years of service. Family pension upto Rs. 1,750 p.m. is also payable to the widow of the member who has contributed only for one month to the pension fund.
- b. In addition to the widow pension, the family is also entitled to children pension. The rate of children pension is 25 per cent of widow pension for each child subject to a minimum of Rs. 115 p.m. per child payable upto two children at a time till they attain the age of 25 years.
- c. If there are no parents alive, the scheme provides for orphan pension @ 75 per cent of the widow pension payable to orphans subject to the minimum of Rs. 170 p.m. per orphan.

The scheme has been amended making dependent parents eligible for pension. Further disabled children are also made eligible for life long pension.

Under the Pension Scheme, the employees have an option to accept the admissible pension or reduced pension with return of capital. In the case of employee opting for 10% less pension than the actual entitlement, the scheme provides for return of capital equivalent to 100 times of the original pension in the event of death of the pensioner. For example, if the monthly pension is Rs. 2,000 p.m. and the employee opts for reduced pension of Rs. 1,800 the family will have refund of the capital amounting to

Rs. 2,00,000 on death of the pensioner. In addition, the widow and two children will continue to get pension for life or upto the age of 25 years, as the case may be.

Under the Scheme, neither the employer nor the employee is required to make any additional contribution. A Pension Fund has been set up from 16.11.95, and the employers share of PF contribution representing 8.33% of the wage is being diverted to the said Fund. All accumulations of the ceased Family Pension Fund have been merged in the Pension Fund. The Central Government is also contributing to the Pension Fund at the rate of 1.16% of the wage of the employees.

C. Employees' Deposit-Linked Insurance Scheme

The Act was amended in 1976 and a new Section 6C was inserted empowering the Central Government to frame a Scheme to be called the Employees' Deposit-Linked Insurance Scheme for the purpose of providing life insurance benefit to the employees of any establishment or class of establishments to which the Act applies.

The Central Government has accordingly framed the Employees' Deposits-Linked Insurance Scheme, 1976. It came into force on the 1st August, 1976.

1. *Application of the Scheme:* The Employees Deposit-Linked Insurance Scheme, 1976 is applicable to all factories/establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies.

All the employees who are members of the Provident Funds in both the exempted and the unexempted establishments are covered under the scheme.

2. *Contributions to the Insurance Fund:* The employees are not required to contribute to the Insurance Fund. The employers are required to pay contributions to the Insurance Fund at the rate of 1% of the total emoluments, i.e., basic wages, dearness allowance including, cash value of any food concession and retaining allowance, if any.
3. *Administrative expenses:* The employers of all covered establishments are required to pay charges to the Insurance Fund, at the rate of 0.01% of the pay of the employee-members for meeting the administrative charges, subject to a minimum of Rs. 2/- per month.
4. *Nomination:* The nomination made by a member under the Employee Provident Fund Scheme 1952 or in the exempted provident fund is treated as nomination under this scheme. Provisions of Section 5 have overriding effect and will override the personal laws of the subscriber in the matters of nominations (LLJ I 1996 All. 236).

5. *Payment of assurance benefit:* In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations. In case the average balance exceeds Rs. 25,000, the amount payable shall be Rs. 35,000 plus 25% of the amount of such excess subject to a ceiling of Rs. 65,000.
6. *Exemption from the Scheme:* Factories/establishments, which have an Insurance Scheme conferring more benefits than those provided under the statutory Scheme, may be granted exemption, subject to certain conditions, if majority of the employees are in favour of such exemption.

DETERMINATION OF MONEYS DUE FROM EMPLOYERS

i. Determination of money due

Section 7A vests the powers of determining the amount due from any employer under the provisions of this Act and deciding the dispute regarding applicability of this Act in the Central Provident Fund Commissioner, Additional Provident Fund Commissioner, Deputy Provident Fund Commissioner, or Regional Provident Fund Commissioner. For this purpose he may conduct such inquiry as he may deem necessary.

Central Government has already constituted Employees Provident Fund Appellate Tribunal, consisting of a presiding officer who is qualified to be a High Court Judge or a District Judge with effect from 1st July, 1997 in accordance with provisions of Section 7D. The term, service conditions and appointment of supporting staff are governed by Sections 7E to 7H. Any person aggrieved by order/notification issued by Central Government/authority under Sections 1(3), 1(4), 3, 7A(1), 7C, 14B or 7B (except an order rejecting an application for review) may prefer an appeal. The tribunal shall prescribe its own procedure and have all powers vested in officers under Section 7A.

The proceedings before the tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for Section 196 of Indian Penal Code and Civil, 1908, it shall be deemed to be a Civil Court for all purposes of Section 195 and Chapter XXVI of Code of Procedure. The appellant can take assistance of legal practitioner and the Government shall appoint a presenting officer to represent it. Any order made by the Tribunal finally disposing of the appeal cannot be questioned in any Court.

ii. Mode of recovery of moneys due from employers

Section 8 prescribes the mode of recovery of moneys due from employers by the Central Provident Fund Commissioner or such officer as may be authorised by him by notification in the Official Gazette in this behalf in the same manner as an arrear of land revenue. Recovery of arrears of Provident Fund cannot be effected from unutilised part of cash-credit of an industrial establishment (1998 LAB IC Kar 3044).

iii. *Recovery of moneys by employers and contractors*

Section 8A lays down that the amount of contribution that is to say the employer's contribution as well as the employee's contribution and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor, may be recovered by such employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

A contractor from whom the amounts mentioned above, may be recovered in respect of any employee employed by or through him, may recover from such employee, the employee's contribution under any scheme by deduction from the basic wages, dearness allowance and retaining allowance, if any, payable to such employee. However, notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to above from the basic wages, dearness allowance and retaining allowance payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

iv. *Measures for recovery of amount due from employer*

The authorised officer under this Act shall issue a certificate for recovery of amount due from employer to the Recovery Officer. The Recovery Officer has got the powers to attach/sell the property of employer, call for arrest and detention of employer, etc. for effecting recovery. The employer cannot challenge the validity of the certificate. The authorised officer can grant time to the employer to make the payment of dues.

The Central Provident Fund Commissioner may require any person, from whom amount is due to the employer, to pay directly to the Central Provident Fund Commissioner/Officer so authorised and the same will be treated as discharge of his liability to the employer to the extent of amount so paid. (Sections 8B to 8G)

v. *Priority of payment of contributions over other debts*

Section 11 of the Act provides that the contribution towards Provident Fund shall rank prior to other payments in the event of employer being adjudicated insolvent or where

it is a company on which order of winding up has been made. The amount shall include:

- a. the amount due from the employer in relation to an establishment to which any Scheme or Insurance Scheme applies in respect of any contribution payable to the Fund, or the Insurance, damages recoverable under Section 14B, accumulations required to be transferred under sub-section (2) of Section 15 or any charges payable by him under any other provisions of this Act or of any provision of the Scheme or the Insurance Scheme; or
- b. the amount due from employer in relation to an exempted establishment in respect of any contribution to the Provident Fund or any Insurance Fund in so far as it relates to exempted employees under the rules of the Provident Fund, or any Insurance Fund or any contribution payable by him towards the Pension Fund under Sub-section (6) of Section 17, damages recoverable under Section 13B or any charges payable by him to the appropriate Government under any provisions of this Act or any of the conditions specified under Section 17.

EMPLOYER NOT TO REDUCE WAGES

Section 12 prohibits an employer not to reduce directly or indirectly the wages of any employee to whom the Scheme or the Insurance Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund or life insurance to which the employee is entitled under the terms of employment, express or implied, simply by reason of his liability for the payment of any contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme.

TRANSFER OF ACCOUNTS

Section 17A(1) of the Act provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtain re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund, or as the case may be, in the Provident Fund of the establishment left by him shall be transferred within such time as may be specified by Central Government in this behalf to the credit of his account in the Provident Fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that Provident Fund permit such transfer.

Sub-section (2) further provides that where as employee employed in an establishment to which this Act does not apply, leaves his employment and obtain re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the Provident Fund of the establishment left by him, may, if the employee so desires and also rules in relation to such Provident Fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the Provident Fund of the establishment in which he is re-employed.

PROTECTION AGAINST ATTACHMENT

Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. Sub-section (1) of Section 10 provides that the amount standing to the credit of any member in the Fund or any exempted employee in a Provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to or have any claim on any such amount.

It is further provided in sub-section (2) that any amount standing to the credit of a member in the Fund or of an exempted employee in a Provident Fund at the time of his death and payable to his nominee under the Scheme or the rules of the Provident Fund shall, subject to any deduction authorised by the said scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. There is a statutory vesting of the fund on dependents after the death of the subscriber which on such vesting becomes absolute property of dependent and cannot be held to have inherited by dependent.

The above provision shall apply in relation to the Employees' Pension Scheme or any other amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the fund.

POWER TO EXEMPT

Section 17 authorises the appropriate Government to grant exemptions to certain establishments or persons from the operation of all or any of the provisions of the Scheme. Such exemption shall be granted by notification in the Official Gazette subject to such conditions as may be specified therein.

COMPLIANCES UNDER THE ACT

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

1. The factory/ establishment is covered by the provisions of this Act with effect from.....

Or

The factory / establishment is covered under the provisions of this Act by a notification dated given by the government in the official gazette.

2. The establishment has duly paid its contribution to Employees' Provident Fund, Employees' Family Pension Scheme, Employees' Deposit Linked Insurance Scheme set up under the Act during the financial year.
3. The establishment has set up a separate Provident Fund Trust and has complied with the provisions of the Act during the financial year.
4. The establishment has sent a consolidated return within fifteen days of the commencement of the Employees' Provident Fund Scheme to the commissioner during the financial year.

Or

The establishment has no employees entitled to become members of the Employees' Provident Fund during the financial year. Therefore, the establishment has duly filed the 'NIL' return to the Commissioner.

5. During the year under review, the establishment has duly filed returns with the Commissioner in respect of employees qualifying to become members of the Employees' Provident Fund and employees leaving the service during the financial year.
6. The establishment has sent a consolidated return within three months of the commencement of the Employees' Pension Scheme to the commissioner.

Or

The establishment has no employees entitled to become members of the Employees' Family Pension Fund during the financial year. Therefore the establishment has duly filed the 'NIL' return to the Commissioner.

7. The establishment has also duly sent to the commissioner, the consolidated annual contribution statement showing the total amount of recoveries made during the year from the wages of each member and the total amount contributed by the employer in respect of each such member during the financial year.
8. 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.

LESSON ROUND-UP

- The Employee's Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation enacted for the purpose of instituting a Provident Fund for employees working in factories and other establishments.
 - The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and in some other contingencies.
 - Presently, the following three Schemes are in operation under the Act : Employees' Provident Funds Scheme, 1952; Employees' Deposit Linked; Insurance Scheme, 1976; Employees' Pension Scheme, 1995.
 - The Act is applicable to factories and other classes of establishments engaged in specific industries, classes of establishments employing 20 or more persons.
 - The Central Government is empowered to apply the provisions of this Act to any establishment employing less than 20 persons after giving not less than two months notice of its intent to do so by a notification in the official gazette.
 - Once the Act has been made applicable, it does not cease to be applicable even if the number of employees falls below 20. An establishment/factory, which is not otherwise coverable under the Act, can be covered voluntarily with mutual consent of the employers and the majority of the employees under Section 1(4) of the Act.
 - Thus, membership of the fund is compulsory for employees drawing a pay not exceeding Rs. 6500 per month (at the time of joining). Every employee employed in or in connection with the work of a factory or establishment shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.
 - The employees drawing more than Rs.6500/- per month at the time of joining may become member on a joint option of the employer and employee.
 - Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. The Act authorises the appropriate Government to grant exemptions to certain establishments or persons from the operation of all or any of the provisions of the Scheme.
-

FOOTNOTES

^{*a} Pensionable Salary will be average of last 12 months pay.

ECONOMIC AND LABOUR LAWS

PART B – LABOUR LAWS

STUDY XIX - EMPLOYEES' STATE INSURANCE ACT, 1948

LEARNING OBJECTIVES

The Employees' State Insurance Act was promulgated by the Parliament of India in the year 1948. It was the first major legislation on Social Security in independent India to provide certain benefits to the employees in the organized sector in case of sickness, maternity and employment injury. It is important for the students to be thoroughly acclimatized with this branch of law to know its practical significance.

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

- Application of the Act
- Important definitions
- Employees' State Insurance
- Employees' State Insurance Scheme
- Administration ESI Corporation
- Benefits
- ESI Court
- Exemption and compliances

INTRODUCTION

The Employees' State Insurance Act, 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury and also makes provisions for certain other matters in relation thereto. The Act extends to the whole of India. The Central Government is empowered to enforce the provisions of the Act by notification in the Official Gazette, to enforce different provisions of the Act on different dates and for different States or for different parts thereof [Section 1(3)]. The Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories [Section 1(4)]. According to the proviso to Section 1(4) of the Act, nothing contained in sub-section (4) of Section 1 shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act. Section 1(5) of the Act empowers the appropriate Government to extend any of the provisions of the Act to any other establishment or

class of establishments, industrial, commercial, agricultural or otherwise. However, this can be done by the appropriate Government, only in consultation with the Employees' State Insurance Corporation set up under the Act and, where the appropriate Government is a State Government, it can extend the provisions of the Act with the approval of the Central Government.

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

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

The coverage under the Act is at present restricted to employees drawing wages not exceeding Rs. 10,000 per month.

IMPORTANT DEFINITIONS

i. Appropriate Government

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

ii. Confinement

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

iii. Contribution

“Contribution” means the sum of money payable to the Corporation by the principal employer in respect of an employees and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act. [Section 2(4)]

iv. *Dependent*

“Dependent” under Section 2(6A) of the Act 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 18 years and is infirm;
- iii. if wholly or in part dependent on the earnings of the insured person at the time his death:
 - a. a parent other than a widowed mother,
 - b. a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,
 - c. a minor brother or an unmarried sister or a widowed sister if a minor,
 - d. a widowed daughter-in-law,
 - e. a minor child of a pre-deceased son,
 - f. a minor child of a pre-deceased daughter where no parent of the child is alive or,
 - g. a paternal grand parent if no parent of the insured person is alive.

v. *Employment Injury*

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

It is well settled that an employment injury need not necessarily be confined to any injury sustained by a person within the premises or the concern where a person works. Whether in a particular case the theory of notional extension of employment would

take in the time and place of accident so as to bring it within an employment injury, will have to depend on the assessment of several factors. There should be a nexus between the circumstances of the accident and the employment. On facts no case could be an authority for another case, since there would necessarily be some differences between the two cases. Therefore, each case has to be decided on its own facts. It is sufficient if it is proved, that the injury to the employee was caused by an accident arising out of and in the course of employment no matter when and where it occurred. There is not even a geographical limitation. **The accident may occur within or outside the territorial limits of India. However, there should be a nexus or casual connection between the accident and employment. The place or time of accident should not be totally unrelated to the employment** (*Regional Director, E.S.I. Corpn. v. L. Ranga Rao*, 1982 I-L.L.J. 29). Where an employee who is on his way to factory meets with an accident, one K.M. from the place of employment, the Court held that the injury cannot be said to be caused by accident arising out of and in the course of his employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory (*Regional Director ESI v. Francis de Costa*, 1997 LLJ I 34 SC).

In *E.S.I. Corpn. Indore v. Babulal*, 1982 Lab. I.C. 468, the M.P. High Court held that injury arose out of employment where a workman attending duty in spite of threats by persons giving call for strike and was assaulted by them while returning after his duty was over. A worker was injured while knocking the belt of the moving pulley, though the injury caused was to his negligence, yet such an injury amounts to an employment injury (*Jayanthilal Dhanji Co. v. E.S.I.C.*, AIR AP 210).

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

vi. *Employee*

“Employee” according to Section 2(9) means any person employed for wages in connection with the work of a factory or establishment to which this Act applies and:

- i. who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of the factory or establishment, whether such work is done by employee in the factory or establishment; or elsewhere, or
- ii. who is employed by or through a immediate employer on the premises of the factory or establishment or under the supervision of the principal

- employer or his agent, on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
- iii. whose services are temporarily lent or let on hire to the principal employer by the person with whom the person, whose services are so lent or let on hire, has entered into a contract of service;

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

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period shall continue to be an employee until the end of that period. The Central Government has since prescribed by a Notification under Rule 50 of the E.S.I. Rules, 1950 the wage limit for coverage of an employee under Section 2(9) of the Act as Rs. 10,000 per month. Further, it is provided that an employee whose wages (excluding remuneration for overtime work) exceed Rs. 10,000 a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the period.

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

Section 2(9) contains two substantive parts. Unless the person employed qualifies under both, he is not an employee. First, he must be employed in or in connection with the work of an establishment. The expression in connection with the work of an

establishment ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of establishment. Some nexus must exist between the establishment and the work of employee but it may be a loose connection. The test of payment of salary or wages is not a relevant consideration. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment.

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

vii. *Exempted Employee*

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

viii. *Principal Employer*

“Principal Employer” means the following:

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

ix. *Family*

“Family” 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. [Section 2(11)]

x. *Factory*

“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.

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

xi. *Immediate Employer*

“Immediate Employer” means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer

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

xii. *Insurable Employment*

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

xiii. *Insured person*

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

xiv. *Permanent Partial Disablement*

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

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

xv. *Permanent Total Disablement*

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

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

xvi. *Seasonal Factory*

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

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

xvii. *Sickness*

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

xviii. *Temporary Disablement*

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

(xix) *Wages*

xix. *Wages*

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

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

Wages include other additional remuneration paid at intervals not exceeding two months wages. It is question of fact in each case whether sales commission and incentive are payable at intervals not exceeding two months (*Handloom House Ernakulam v. Reg. Director, ESIC*, 1999 CLA 34 SC 10). Travelling allowance paid

to employees is to defray special expenses entitled on him by nature of his employment. It does not form part of wages as defined under Section 2(22) of the E.S.I. Act. Therefore, employer is not liable to pay contribution on travelling allowance. [*S. Ganesan v. The Regional Director, ESI Corporation, Madras*, 2004 Lab.I.C 1147]

REGISTRATION OF FACTORIES AND ESTABLISHMENTS UNDER THIS ACT

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

EMPLOYEES' STATE INSURANCE

Section 38 of the Act makes compulsory that subject to the provisions of the Act all the employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution. Such insured persons are entitled to get certain benefits from that fund which shall be administered by the Corporation. Any dispute will be settled by the Employees' Insurance Court.

ADMINISTRATION OF EMPLOYEES' STATE INSURANCE SCHEME

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

EMPLOYEES' STATE INSURANCE CORPORATION

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

Constitution

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

Powers and duties of the Corporation

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

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

Appointment of Regional Boards etc.

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

WINGS OF THE CORPORATION

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

Standing Committee

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

Power of the Standing Committee

The Standing Committee has to administer affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation subject to the general superintendence and control of the Corporation. The standing Committee acts as an executive body for administration of Employees State Insurance Corporation. Medical Benefit Council

Section 10 empowers the Central Government to constitute a Medical Benefit Council. Section 22 determines the duties of the Medical Benefit Council stating that the Council shall:

- a. advise the Corporation and the Standing Committee on matters relating to administration of medical benefit, the certification for purposes of the grant of benefit 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.

EMPLOYEES' STATE INSURANCE FUND

Creation of Fund

Section 26 of the Act provides that 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. The Corporation may accept grants, gifts, donations from the Central or State Governments, local authority, or any individual or body whether incorporated or not, for all, or any of the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government. Such account shall be operated on by such officers who are authorised by the Standing Committee with the approval of the Corporation.

Purposes for which the Fund may be expended

Section 28 provides that Fund shall be expended only for the following purposes:

- i. payment of benefits and provisions of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charge, and costs in connection therewith;

- ii. payment of fees and allowances to members of the Corporation, the Standing Committee and 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 officers 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 provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families, their families;
- v. payment of contribution 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 the assets and liabilities;
- vii. defraying the cost (including all expenses) of Employees 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 execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims 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 measure 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.

CONTRIBUTIONS

The contributions have to be paid at such rates as may be prescribed by the Central Government. The present rates of contribution are 4.75 percent and 1.75 percent of

workers wages by employers and employees respectively. The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable. 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.

Principal employer to pay contributions in the first instance

According to Section 40 of the Act, it is incumbent upon the principal employer to pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employers contributions and the employees contribution. However, he can recover from the employee (not being an exempted employee) the employees contribution by deduction from his wages and not otherwise. Further Section 40 provides that the principal employer has to bear the expenses of remitting the contributions to that Corporation.

According to Section 39(5) of the Act, if any contribution payable 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 12 per cent per annum or at such higher rate as may be specified in the regulations, till the date of its actual payment. However, according to proviso to sub-section (5) of Section 39, higher interest specified in the regulations should not exceed the lending rate of interest charged by any scheduled bank. It may be noted that any interest recoverable as stated above may be recovered as an arrear of land revenue or under newly introduced Sections 45-C to 45-I of the Act.

Recovery of contribution from immediate employer

According to Section 41, principal employer who has paid contribution in respect of an employee employed by or through an immediate employer is entitled to recover the amount of contribution so paid (both employers and employees contribution) 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. However the immediate employer is entitled to recover the employees contribution from the employee employed by or through him by deduction from wages and not otherwise. The immediate employer is required to maintain a 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. He is not required to have separate account with ESI (LAB IC 1999 Kar 1369).

Method of payment of contribution

Section 43 provides for the Corporation to make regulations for payment and collection of contribution payable under this Act and such regulations may provide for:

- a. the manner and time for payment of contribution;
- 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;
- c. the date by which evidence of contributions having been paid is to be received by the Corporation;
- d. the entry in or upon books or cards or particulars of contribution paid and benefits distributed in the case of the insured persons to whom such books or card relate; and
- e. 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.

BENEFITS

Under Section 46 of the Act, the insured persons, their dependants are entitled to the following benefits on prescribed scale:

- a. periodical payments in case of sickness certified by medical practitioner;
- b. periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement;
- c. periodical payment to an insured person suffering from disablement as a result of employment injury;
- d. periodical payment to dependants of insured person;
- e. medical treatment and attendance on insured person;
- f. payment of funeral expenses on the death of insured person at the prescribed rate of Rs. 1,500/-.

General provisions relating to Benefits

Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.

An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

EMPLOYEES' INSURANCE COURT (E.I. COURT)

Constitution

Section 74 of the Act provides that 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. The Court shall consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I. Court. The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area and may regulate the distribution of business between them.

Matters to be decided by E.I. Court

i. Adjudication of disputes

The Employees' Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.

ii. Adjudication of claims

The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

Proceedings in both the above cases can be initiated by filing application in the prescribed form by the employee or his dependent or employer or the corporation depending who has cause of action.

No Civil Court has power to decide the matters falling within the purview/ jurisdiction of E.I. Court.

EXEMPTIONS

The appropriate Government may exempt any factory/establishment from the purview of this Act, as well as any person or class of persons employed in any

factory/establishment, provided the employees employed therein are in receipt of benefits superior to the benefits under the Act. Such exemption is initially given for one year and may be extended from time to time. The applicant has to submit application justifying exemption with full details and satisfy the concerned Government.

COMPLIANCES UNDER THE ACT

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

1. The factory/establishment is covered by the provisions of this Act with effect from
2. During the year under review, the provisions of this Act continued to have effect notwithstanding any reduction in the employees below the Statutory Minimum.
3. The factory/establishment had made an application to the regional office within 15 days from the date on which this Act became applicable and the Employer's code number is
4. The factory/establishment/class of factory/class of establishment is exempted from complying with the provisions of the Act/any specified area from the operation of this Act vide notification issued by the appropriate government in the official gazette, during the financial year.
5. The factory/establishment has number of employees as defined under section 2 (9) of the Act during the said financial year.
6. All the employees in the factory/establishment to which this Act applies have been insured in the manner provided by the Act.
7. The total contribution (both employer and employee share) at the rates prescribed by the central government was deposited in with the designated branches of..... Bank on or before 21st of the month following the calendar month in which the wages fall due during the financial year.
8. 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.

LESSON ROUND-UP

- The law relating to employees' State Insurance is governed by the Employees' State Insurance Act, 1948.
- The objective of the act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to provide for certain other matters

in relation there to.

- The Act is applicable to all factories including factories belonging to the Government other than seasonal factories. The appropriate Government may after giving a notice of not less than six months and by notification in the official Gazette, extend the application of the Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Once the Act becomes applicable, the Act shall continue to apply irrespective of the reduction in number of employees or cessation of manufacturing process with the aid of power.
- Every factory or establishment to which this Act applies has to be registered within the specified time and the regulations made in this behalf.
- All the employees in factories or establishments to which this Act applies shall be insured in prescribed manner. Such insured persons shall pay contributions towards Insurance Fund through their employers who will also pay their own contribution.
- The ESI Act authorises Central Government to establish Employees State Insurance Corporation for administration of the Employees State Insurance Scheme. Such Corporation shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said name.
- 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
- The insured persons, their dependants are entitled to various benefits on prescribed scale. Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment.
- The Act empowers State Government to constitute an Employees Insurance Court. The Employees Insurance Court has jurisdiction to adjudicate disputes, namely, whether any person is an employee under the Act, rate of wages/contribution, as to who is or was the principal employer, right of a person to any benefit under the Act.
- The EI Court also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

FOOTNOTES

* The Employees State Insurance Corporation has enhanced the wage ceiling for the purpose of coverage of employees under the ESI Scheme from Rs. 7,500 to Rs. 10,000 per month. The new wage ceiling came into force from 1st October, 2006, The enhancement of wage ceiling follows the notification dated 22nd September, 2006 by the Central Government.

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.