ANALYSIS OF THE EMPLOYERS LIABILITY FOR COMPENSATION UNDER THE WORKMEN'S COMPENSATION ACT, 1923

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INTRODUCTION

The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, rendered it advisable that they should be protected, as far as possible from hardship arising from accidents. After a detailed examination of the question by the Government of India, Local Governments were addressed in July 1921, and provisional views of the Government of India were published for general information. The advisability of legislation had been accepted by the great majority of Local Governments and of employers and workers' associations and the Government of India believed that public opinion generally is in favour of legislation. In June, 1922 a committee was convened to consider the question. After considering the numerous replies and opinions received by the Government of India, the committee was unanimously in favour of legislation, and drew up detailed recommendations. On the recommendations of the committee the Workmen's Compensation Bill was introduced in the Legislature. The Workmen's Compensation Bill having been passed by the Legislature received its assent on the 5th March, 1923. It came into force on 1st day of July, 1924.[1] The Workmen's Compensation Act, 1923 is one of the earliest labour welfare and social security legislation enacted in India. It recognizes the fact that if a workman is a victim of accident or an occupational disease in course of his employment, he needs to be compensated. The Act does not apply to those workers who are insured under the Employees State Insurance Act, 1948. Section 53 of the Employees State Insurance Act provides that an insured person or his dependents shall not be entitled to receive or recover whether from the employer of the insured person or from any other person any compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time being in force or otherwise in respect of an employment injury sustained by the insured person as an employee under this Act.[2]

[1] The Workmen's Compensation Act, 1923 (8 of 1923), as amended by Act No. 22 of 1984.
[2] http://www.shodhganga.inflibnet.ac.in (Visited on February 20,2018).

The scheme of the Workmen's Compensation Act is not to compensate the worker in lieu of wages. The general principle is that a worker who suffers an injury in the course of his employment, which results in a disablement, should be entitled to compensation and in the case of a fatal injury his dependents should be compensated.[3]

EMPLOYER'S LIABILITY FOR COMPENSATION

Employer's liability for compensation has been given under Chapter II[4] which deals with Workmen's Compensation.

Employer's Liability in Cases of Personal Injury

Section 3(1) of the Act states that-

"3. Employer's liability for compensation. -

(1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

Provided that the employer shall not be so liable –

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the willful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee."[5]

Therefore, as per Section 3 of the Act, the employer is liable to pay compensation if the worker is injured by accident that:

[3] Alternative Law Forum, *The Workmen's Compensation Act* (Alternative Law Forum, Bangalore, 2005).
[4] The Workmen's Compensation Act, 1923 (8 of 1923), as amended by Act No. 22 of 1984.
[5] *Ibid.*

- arises out of (i.e. while engaged in work), and;
- in the course of his employment (i.e. during work hours), and;
- such an injury results in disablement of the worker.

If three conditions are met, the employer of an establishment covered by the Act, is bound to pay compensation. While the second condition, i.e. during work hours is easy to prove, the first condition (i.e., the accident occurred while engaged in work) has been difficult to establish in certain cases.[6] Section 2(c) of the Act states that – "(c) "compensation" means compensation as provided for by this Act."

Section 2(dd) states that "employee" means a person, who is—

- a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or,
- (a) a master, seaman or other members of the crew of a ship,

  (b) a captain or other member of the crew of an aircraft,

  (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

  (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or,
- employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependents or any of them.

As per section 2(e) "employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him.

Further, a person can be said to be an employer of another if there is a contract of employment between the two. It should be direct and immediate and not indirect and

[6] *Supra* Note 3 at 2.

remote.[7] In order to establish the relationship of employer and employee a contract of service is usually necessary whether the contract is express or implied. [8]

ESSENTIAL CONDITIONS

In *Kalayni P. v. Divisional Manager, Southern Railway (Personal Branch), Divisional Office, Madras*, the court observed that in order to attract section 3 (1) of the Act, following three conditions must be fulfilled:

- personal injury;
- accident; and
- arising out of and in the course of employment.[9]

The following are the essential conditions to claim compensation under the aforementioned section.

I. There must be an Employment

The word "Employment" has not been defined anywhere in the Act but in the ordinary sense it implies an existence of a contract between an employer and an employee on the basis of which any work is executed and wages are paid. In *Chintaman Rao v. State of M.P.*[10] the Court held that employment means a contract of service between the employer and employee wherein the employee agrees to serve the employer under his control and supervision.

II. There must be a Personal Injury

The term "personal injury" has not been defined anywhere in the Act. It ordinarily means a physiological injury. It includes physical as well as mental injuries. In *Indian News Chronicle v. Mrs. Lazarus*[11] the court held that injury caused by accident is not confined to physical injury but may include a strain which causes a chill. The death of the workman was due to personal injury.

III. Personal Injury must have been caused by an Accident

[7] S.N. Misra, *Labour and Industrial Laws* 422 (Central Law Publications, Allahabad, 28th edn., 2016).
[8] S.N. Misra, *Labour and Industrial Laws* 423 (Central Law Publications, Allahabad, 28th edn., 2016).
[9] 2004 LLR 207 (Mad HC): 2004 1 LLJ 49.
[10] AIR 1958 SC 388
[11] AIR 1961 Punj. 102.

The expression "accident" has not been defined in the act. It means any unexpected mishap, untoward event, or consequence brought about by some unanticipated or undersigned act which could not be provided against. In *Bai Shakri v. New Manekchow Mills Co.*[12] the court held that where a series of tiny accidents, each producing some unidentifiable results and operating cumulatively to produce the final condition of injury constitute together an accident within the meaning of this section. In *Divisional Personal Officer, Western Railway v. Asluya Segam*[13], where death was accelerated on account of stress and strain of the working condition, it is not necessary that there should be a direct connection between the cause of death and the nature of duties. Even if a casual connection between the two can be shown then the dependents of the deceased would be entitled to claim compensation from the employer. In *Leela Devi v. Ramlal Rahu*[14], the court held that injury sustained by a workman must be a physical injury on account of accident.

IV. The Accident must arise out of and in the course of Employment

The Court in *Oriental Insurance Co. Lid. v. Nanguli Singh*, held that the expression ―arising out of employment‖ means that there must be a casual relationship between the accident and the employment. If the accident has occurred on account of the risk which is an incident of employment, it has to be held that the accident has arisen out of the employment[15]. In *Executive Engineer 19th Div. R.C.P., Bikaner v. Heeraram* it was held that, the words ―out of employment‖ is not limited to mere nature of the employment, but it (arising out of employment) applies to its nature, its conditions and obligations and its incidents. An accident which occurs on account of a risk, which is an incident of employment, then the claim for compensation can succeed provided the workman has not exposed himself to an added peril by his own imprudent act[16]. When the Commissioner is deciding whether an injury resulted from an accident that 'arose out of and in the course of employment' for the purpose of awarding compensation, as a general rule, employment of a worker does not begin until he has reached the place of employment and does not continue when s/he has left it. But this is subject to the theory of 'notional extension' both in time and place, and a worker may be regarded as in the his/her course of employment even though s/he hasn't reached or has left the employer's premises.[17] In recent times, the courts have been relying on a limited idea of 'notional extension of the workplace'. Thus, they have not been including accidents that occurred while the worker was on route to his/her place of work, within the ambit of accidents that have arisen "out of and in the

[12] AIR 1970 SC 222
[13] 1994 LLR 11 (Raj).
[14] 1990 LLR 213 (HP)
[15] 1995 LLJ HC ORS (298).
[16] 1982 (44) RR 179 Raj
[17] *Supra* Note 3 at 2.

course of work" which was the earlier jurisprudence and was necessary in order to claim compensation.[18] In *Commr. Kovilpatti Municipality, Kovilapati v. Tamilarasan and anr.*[19], a worker was attacked by some miscreants on his way to work and died as a result of injuries sustained. The Madras High Court relying on the Supreme Court judgement in *Regional Director v. Francis Decosta*[20] (a judgement which dealt with an employee covered under the Employee's State Insurance Act) held that the deceased was on the road as a member of the public and was definitely not there in the course of his employment and hence his dependents were not awarded compensation. As per the judgement in Francis Decosta, the employment of the worker does not commence until he has reached his place of employment.[21]

Subsequently some High Court decisions have expanded the expression 'arising out of and in the course of employment' in a manner which is beneficial for workers. Presented below are a few judgements in brief:

In another Madras High Court judgement of that year - *Mgmt. Of Pannimedu Estate, Tata Tea Ltd. P.O. Valparai v. Chandra*[22]. the Court held that the woman worker who was assaulted and injured in that case was entitled to compensation. The court ruled that as the incident occurred while she was near the muster to get assigned to her place of work, it must be held to have occurred on account of the risk which is in the course of employment and hence is compensable (i.e. compensation can be paid).

In *State Bank of India v. Vijay Laxmi*[23], the deceased employee while travelling by public transport to his place of work met with a fatal accident. Nothing has been brought on record that the employee was not obliged to travel in any particular manner under the terms of the employment nor he was travelling in the official transport. Held, no casual connection between accident and employment could be established. Hence, the claimant is not entitled to any compensation.

Similarly, in *M.L. Aneja's case*[24], the Rajasthan High Court opined that where injury is caused to a worker by any person including a coworker within the master's premises (unless the master has no reasonable apprehension of the assailant's entry) the accident must be held to have occurred 'in the course of and arising out of employment'. Even though this was not what may traditionally be considered a hazard that implicit in and connected to the nature of the work. In this case the employee was stabbed by another employee.

[18] *Ibid*
[19] 1998 LLJ (002) 0683 Mad.
[20] 1996 Lab I C 2720
[21] *Supra* Note 3 at 2.
[22] 1998 (002) LLJ 0693 Mad
[23] 1998 LLR 319
[24] 1999 (002) CLR 0062 Raj

However, the employee did not get compensation because being a clerk he did not come within the definition of 'workman' under this Act.[25]

In a 1999 Orissa High Court judgement - *Steel Authority of India, Rourkela, Appellant v. Sabitri Nayak*[26] the court held that the deceased workmen's wife, Sabitri Nayak, was entitled to compensation as a dependent of the deceased. The court held that as the death occurred due to the strain and stress undergone during employment, it is deemed to arise out of and in the course of employment. In this case the deceased worker fell from the bus while on his way to work. While such an injury normally does not result in death, the worker had heart problems due to work- related stress and the fall caused a heart attack.[27]

Further, a person may be 'in the course of his employment' not only when he is actually discharging his duty to his employer. It also includes matters which are incidental to it. Therefore, in cases where a worker meets with an accident during periods of rest, or acts when the worker is satisfying bodily needs of food, drink and even tobacco the injury can be regarded as being in the course of employment.[28]

V. Disablement or Death

To claim compensation under section 3(1) it is essential that the personal injury caused to workman must result in total or partial disablement for a period exceeding three days or ultimately in his death.

Section 2(g) of the Act states that "partial disablement" means- "where the disablement is of a temporary nature, such disablement as reduces the earning capacity of an employee in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement."

Further, section 2(l) states that- "total disablement means such disablement, whether of a temporary or 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 Schedule I or from any combination of injuries specified in Part II

[25] *Supra* Note 3 at 2.
[26] 1999 (002) CLR 0062 ORI
[27] *Supra* Note 3 at 2.
[28] *Ibid.*

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."

It must be noted that total disability (i.e. 100% disability) has a different meaning under the Workmen's Compensation Act as compared to its meaning in normal language. According to the Act, disability is determined with reference to the work that the worker was doing immediately before accident took place and if the resulting injury leaves him incapable of performing any work of a similar nature then his disability is considered as 100%.[29]

In *Sadashiv Krishna Adke v. M/s Time Trader* an accident left a worker- a coolie with a defect in his leg and as a result unfit to perform the work of a coolie. Legally he can be considered 100% disabled. The court stated that the incapacity to earn is to be determined with reference to the work, the worker was doing at the time of accident.[30]

The Act provided under Proviso to section 3(1) certain defenses which are available to employer to claim exemption from liability for compensating. A shortcoming of the same is that the term drinks or drugs and willful disobedience have not been defined under the Act. This leaves a wide area for interpretation and even misuse of the provisions by the employer.

In the case of *Bhurangya Coal Co. Ltd. V. Sahebjan Mian*[31] the court held that proviso (b) (ii) to section 3(1) applies to only those cases of injuries which do not result in death. Where, therefore, the injury has resulted in death, the question as to disobedience of any rule or order is not material at all so long as it can reasonably be held that the accident arose out of and in the course of employment.

In *National Insurance Company Limited v. Prembhai Patel and Ors*[32]., the Court held that the appellant insurance company was not liable to satisfy the entire award of compensation made in favor of claimant respondents but only such part thereof as would cover liability under the Employee's Compensation Act, 1923.

OCCUPATIONAL DISEASE

Section 3(2) of the Act deals with "occupational disease. It states that-

"(2) If an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that

[29] *Supra* Note 3 at 2.
[30] 1992 I LLJ 877 (Bom)
[31] AIR 1956 Pat 299
[32] (2005) II LLJ 1109 (SC)

employment, or if an employee, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment.

Provided that if it is proved, --

(a) that an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section.

Provided further that if it is proved that an employee who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this subsection for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section."

The expression "occupational disease" has not been defined in the Act. An "occupational disease" while in service, is a disease that inflicts workers in that particular occupation in which such person was employed in and resulting from exposure to a hazardous working atmosphere, particular to that employment. If a worker contracts such a disease then the employer is liable to pay compensation, provided that the worker was employed by him for a continuous period as prescribed. An occupational disease that is contracted in the course of employment will fall within the meaning of an 'accident' for the purposes of this Act. In the case of such a disease being contracted, the employer will be liable to pay compensation

to the affected worker. The occupational diseases for which compensation is payable are specified in the lists attached to the Act- i.e. Part A, B and C of Schedule III[33]

Some examples of occupational Diseases: (i) Skin diseases caused by physical, chemical or biological agents. (ii) Bronchopulmonary disease caused by flax, hemp and sisal dust (Byssinosis). (iii) Occupational asthma caused by recognized sensitizing agents inherent to the work process.[34]

POWER OF COMMISSIONERS IN CASE PERSON EMPLOYEED UNDER TWO EMPLOYERS

Section 3(2A) of that Act states that- "If an employee employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such 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 the circumstances, deem just." In this situation the Commissioner has been given the authority and power to fix the extent of liability for different employers in respect of one employee who has worked under all of them.

POWERS OF CENTRAL GOVERNMENT AND STATE GOVERNMENT

As per section 3(3)- "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." Therefore, this section empowers the Central and the State Government to add any description of employments to the employments specified in Schedule III along with the diseases which shall be deemed to be the occupational disease for the respective employments. For this, not less than three months' notice must be given by the government of its intention of doing so. The provision is self-explanatory and is devoid of any lacunae.

[33] *Supra* Note 3 at 2.
[34] *Ibid.*

SAVINGS CLAUSE

Section 3(4) provides that-

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

This sub-section is in the nature of a savings clause and prevents the operation of payment of compensation in those cases where the disease is not directly attributable to a specific injury which arose out of and in the course of employment.

DEBARRING ALTERNATIVE REMEDY

Section 3(5) of the Act states that- "Nothing herein contained shall be deemed to confer any right to compensation on an employee in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by an employee in any Court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the employee and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act"

The aforementioned section imposes a bar on the recovery by the employee of compensation twice for the same injury. It is not only a success to a claim that bars subsequent claim to compensation, but if an employee has brought even an unsuccessful claim against his employer he would be debarred from making any alternative claim in respect of the same injury.[35]

In *S. Sappaiah Chettiar v. Chinnathurai and Another*[36] the court held that where the employee has done nothing more than to file a claim and withdrew it before the proceedings actually commenced and which commencement would only be effective after giving notice to the opposite party, there has been no such election as would debar the employee's dependent from seeking any other alternative claim available to him.

[35] S.N. Misra, *Labour and Industrial Laws* 462 (Central Law Publications, Allahabad, 28th edn., 2016).
[36] AIR 1957 Mad 216.

The above provision has been made to protect the employer from making payment twice and thus this provision ensures that no inconvenience is caused to the him.

LIABILITY IN CASE OF INSOLVENCY

In the case where the employer of the worker has entered into an agreement with insurers, to pay compensation and subsequently the employer becomes bankrupt, then in the event of any accident happening, the employer's liabilities will be transferred to the insurers, and they would be treated as the employers of the aggrieved worker for the purpose of paying compensation. In cases where employers have insured their liabilities under the workmen's compensation act, the insurers have to pay compensation to workers getting injured.[37] It happens irrespective of whether the employer is bankrupt or not. If he has taken insurance to cover claims arising out of workers' accidents, the insurance company will be responsible to pay compensation. It is interesting that in such cases were an employer has taken insurance, the employer will back the worker's claim against the insurance company! Naturally, as they are not responsible to pay the worker compensation which responsibility has shifted to the Insurance Company. The practice of taking insurance is common only amongst the bigger contractors/ companies. However, they will be no more liable to the worker than the original employer. If the liability of the insurers is to be less than that of the original employers, then the worker can claim the balance amount from the insolvency proceedings. In the case of the compensation being half monthly payments, the insurers may convert that to an appropriate lump sum and pay that compensation to the worker.[38]

CONCLUSION

The Employees Compensation Act, 1923 brought into picture the critical conditions of the employees who were working in various industries. The main reason for the enactment of the Act, as can be deciphered from the Statement of Objects and reasons is to provide workmen and their dependents some relief in case of accidents, arising out of and in the course of employment and causing either death or disablement of workmen as a measure of relief and social security. The Act is not devoid of any shortcoming yet it is a positive step in regard to compensating workmen. This piece of legislation therefore provides a frugal measure of social security for those who need it the most. The liability of the employer to compensate the workmen or his dependent is a positive step in fulfilling the mandate of the Indian Constitution. It has further strengthened the belief in human rights of all persons and in a country where industries are still growing rather than flourishing, it is important to enforce the provisions of this Act properly.

[37] *Supra* Note 3 at 2.
[38] The Workmen's Compensation Act, 1923 (8 of 1923), s. 14