

# Employees Compensation Act, 1923

FY LLB sem I  
M. Datta

Definition [Section 2]

20/11/17

Set-I

(1) Section 2(b) → Commissioner.

Commissioner means a Commissioner of Compensation appointed under Section 20.

(2) Section 2(i)(d) → Dependant.

Dependant means and of the following relatives of a deceased [employee] namely —

(1) A widow, a minor [legitimate or adopted] son, an unmarried [legitimate or adopted] daughter or a widowed mother and

(2) A son and daughter and they have to fulfil the following conditions —

(i) They must be wholly dependant on the earning of the deceased [employee] at the time of his time.

(ii) They must be infirm

(iii) They must have attained the age of 18 years.

(3) The following relatives are included in the category of dependants provided they are wholly or part dependant on

the earning of the employee at the time of his death. —

- (i) a widower
- (ii) a parent other than a widowed mother.
- (iii) a minor illegitimate son, an unmarried illegitimate daughter or a daughter if married and a minor or if widowed and a minor.
- (iv) a minor brother or an unmarried sister or a widowed sister if a minor.
- (v) a widowed daughter-in-law.
- (vi) a minor child of a pre-deceased son.
- (vii) a minor child of a pre-deceased daughter where no parent of the child is alive. or
- (viii) a paternal grandparent. & if no parent of an employee is alive.

Section 2(1) (dd) → Employee

Employee means a person who is —

- (i) a railway servant not permanently employed in any administrative district and not employed in any such capacity as specified in Schedule II.

(ii) (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.

Section 2(1)(e) -> Employer.

It includes any the following.

(1) any body of person whether incorporated or not.

(2) any managing agent of an employer.

(3) legal representative of a deceased employer.

(4) when the services of an employee are temporarily lent 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.

### Section 2(i) (j) → Managing Agent.

It means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business but does not include an individual manager subordinate to an employer.

### Section 2(i) (j) → Minor

Means any person who has not attained the age of 18 years is a minor.

### Section 2(i) (k) → Seaman.

"Seaman" means any person forming part of the crew of any ship but does not include the master of ship.

The word 'person' includes both male and female.

## Section - 2(1)(m) → wages

The term "wages" as defined includes any privilege or benefit which is capable of being estimated in money. The definition is not exhaustive. The following are not wages :-

- (a) Travelling allowances or the value of any travelling concession.
- (b) Contribution paid by the employer of an employee towards
  - (i) any person or
  - (ii) any provident fund.
- (c) Any sum paid to an employee to cover any special expenses incurred on him by the nature of his employment.
- (d) Leave carried forward to next year.

# Disablement .

Set-II

FYLLB Sem-I  
Prof. Megha Dorkar

loss of earning capacity

reduction of earning capacity .

## Disablement

Total

Partial

Temporary

Permanent

Temporary .

Permanent

Disablement means loss of capacity to work or to move. Disablement of an employee may result in loss of his earning capacity or reduction of his earning capacity .

Reduction of earning capacity means that employee is not able to earn as much as he used to earn before his accident or disablement .

Disablement may be partial or total. Further, it may be permanent or temporary .

## (I) Partial Disablement — S. 2 (1) (g)

Partial disablement means any disablement as reduces the earning capacity of an employee as a result of some accident. Partial Disablement may be total or permanent.

(a) Temporary Partial Disablement means any disablement as which reduces the earning of an employee in the employment in which he was engaged at the time of accident.

(b) Permanent Partial Disablement is the one which reduces this earning capacity of an employee in every employment which he was capable of undertaking at the time of injury.

The time of disablement suffered by an employee can be determined only from the facts of the given case. But it is provided by the fact that every injury is specified in Part II of the Schedule I shall be deemed to result in Permanent Partial Disablement.

Whenever an injury mentioned in

Schedule I is suffered by an employee as a result of an accident he is entitled to get compensation. 48 injuries have been mentioned in Part II of schedule I.

### Total Disablement.

Total disablement means such disablements whether temporary or permanent as incapacitates an employee for all work which he was capable of performing at the time of an accident. It is deemed to result from every injury is specified in Part I of schedule I.

6 injuries are mentioned in Part I of schedule I.

It is also deemed to result from any ~~contribution~~ combination of injuries specified in Part I of schedule I where the aggregate percentage of the loss of earning capacity as specified in Part II against those injuries amount to 100% or more.

## Employers Liability For Compensation. [Section 3].

Set - IV

Prof M.D.  
FYUG Sem 4T

The liability of an employer to pay compensation is limited and is subject to the provision of the Act. The liability of the employer to pay compensation is dependent upon the following four conditions :- [Section 3(1)]

- (1) Personal Injury must have been caused to an employee.
- (2) Such injury must have been caused by an accident.
- (3) The accident must have arisen out of and in the course of employment.
- (4) The injury must have resulted either in death of the employee or his total or partial disablement for a period exceeding 3 days.

II The employer shall not be liable to pay compensation in the following cases:-

(1) If the injury does not result in total or partial disablement for a period exceeding 3 days. [s. 3(1)(a)]

(2) In respect of an injury not resulting in death or permanent total disablement the

Employer can plead -

- (i) The employee was at the time of accident under the influence of drinks or drugs.
- (ii) If the employee wilfully disobeys an order expressly given to him or if the ~~workman~~ <sup>employee</sup> wilfully disobeyed a rule expressly for the purpose of securing the safety of the employee. [3(1)(b)]

### Exception (i)

Intoxication by drink or drugs or wilful disobedience of certain rules and orders or wilful removal of safety devices are not applicable in case of fatal accident. The reason is that when an employee dies it is extremely difficult for legal heir or dependant to rebut the evidence that the accident was caused by the misconduct of the deceased.

No Compensation shall be payable to an employee in respect of any disease if the disease is not directly attributed to a specific injury by an accident arising out of and in the course of employment.

Out of Employment → Meaning - S.N (a)

An accident arising out of

papers casual connection between accident and employment. Employment should be the distinctive and the proximate cause of the personal injury. In other words, injury must be the direct result of and must be connected with the employment.

(b) In the Course of Employment → Meaning. S-P

The term implies the duration of employment. In order to claim it is essential that the employee at the time of accident must be in the process of doing something in discharge of his duties under the contract of service. In other words, a ~~an~~ employee is considered to be acting in the course of employment where he is engaged to do something for which he is employed.

(II) Employer's liability in case of occupational Diseases — [Section 3(2)] (8)

The employee employed in certain occupation or exposed to certain diseases which are inherent in those occupation contracting ~~out~~ of an occupational disease is deemed (consider) to be an injury by accident and as such an employer is liable to pay compensation.

provided the disease ~~at~~ contracted must be an occupational disease peculiar to the employment specified in Schedule III.

Extract from Schedule III.

(1) Part A — Five occupational diseases are mentioned in Part A.

An employer is liable to pay compensation when a employee is employed by him and contract any of these five disease at any time.

(2) Part B → 27 Diseases are mentioned in Part B.

Here an employer is liable if an employee contract any of these 27 diseases while in his service for a continuous period of not less than six months. This period of six months does not include period of service under any other employer in some kind of employment.

(3) Part C → 6 Diseases are mentioned in Part C.

Here an employee is entitled to get compensation if he has been in service of one or more employers for such continuous period as the Central Govt. may specify. If he contracts any disease specified therein as an occupational disease peculiar to that employment.

case of any Employment mentioned in Part C of Schedule III where there are more than one employers, the provision authorises the Commissioner to fix up the extent of responsibility of different employers in respect of the amount of compensation payable to an employee. [Section 3(2-A)]

IV) The employer is liable to pay compensation only if the disease can be directly attributed to a specific injury by accident arising out of and in the course of employment. [Section 3(4)]

Alternative Remedy - [S. 3(5)]

No claim for compensation shall be maintainable by an employee in respect of any injury if he has already instituted a civil proceedings for damages in respect of the same injury against the employer or any other person. So also no suit for damages shall be instituted by an employee in any court of law in respect of an injury in the following two circumstances: -

(a) if such employee has made a claim to compensation in respect of such injury before a Commissioner or

(b) if the amount of compensation in respect of the injury has been settled by an

agreement between the employee and the employer in accordance with the provision of the Act. [Section 3(5)].

In case of an injury caused by an accident an employee has the following alternative remedies:-

- (i) he can claim compensation under his Act or
- (ii) he can claim damages in tort or
- (iii) he can claim under the Employer's liability Act.

The Theory of Notional Extension of Time and Place

This theory was laid down by the Supreme Court in

Samarth Saltmfg. Co. Company.

413.

Bai Valu Raja & others.

AIR 1958 SC. 881.

According to this theory in certain circumstances an employer is liable for injury to his employee ~~whether~~ even when the ~~workman~~ employee is away from the premises at the time of accident.

An employee is ordinarily considered to begin his employment as soon as he reaches the place of work where he is supposed to be doing his work.

It does not continue when the employee has left the place of employment which is excluded.

eg:- If the factory hours are from 8.A.M to 4 P.M, the employment commences at 8.A.M. and ceases at 4 P.M.

This is subject to the theory of Notional Extension of the employer premises so as to include in it an area which the employee passes or repasses in going to and leaving the actual place of work, so that there may be reasonable extension in both time and place of work. The fact and circumstances of each case have to be examined carefully to determine whether the accident arose out of or in the course of employment of a employee, keeping in view this theory of Notional Extension.

Although, the place and time of employment are subject to a Notional Extension, the same cannot always be extended to the employee residence and the place of work.

If an accident occurs on a public road in a public transport or vehicle on the way to and from work, the employee is like any other member in the public and such accident cannot be like any accident arising out of and in the course of employment.

eg:- When a means of transport is provided by the employer for the purpose of work and the ~~workman~~ employee

used that transport, the time during which the transport is used by the employee is also included in the course of employment.

### CASE LAW

BEST UNDERTAKING.

V/S

MRS. AGNES.

AIR 1964 SC 193.

A bus driver employed by the BEST undertaking and was returning home after completion of his duty by a ~~best~~ bus of BEST, according to the rules.

The bus met with an accident and that the bus driver died.

The court held that the widow of that employee was ~~not~~ entitled to compensation.

S.N  
Section 12 → Contracting.

As per Section 12(1), where any person in the course of or for the purpose of trade or business, contracts with any other person for execution of any work which is ordinary for the part of the trade or business of the principal, the principal shall be liable to pay compensation to any <sup>employee</sup> ~~workman~~ employed in the execution of work.

In other words, the principal employer is liable to the employees of his contractor to pay compensation. But an employee is not prevented from recovering compensation from the contractor instead of the principal employer.

An employee is entitled to claim compensation from the principal, if he is able to satisfy the following condition:-

(1) The principal must have contracted with the contractor for the execution by the contractor of the whole or part of any work.

(2) Such work must ordinarily be part of the principal's trade or business and the contract must have been made in the

course of his business or for the purpose of his trade or business.

(3) The employee employed in the execution of the work must have been injured by accident arising out of and in the course of his employment.

(4) Injury must have been caused to the employee within or about the vicinity of the employer's premises.

However, according to S. 12(2) Principal employer is entitled to be indemnified by the contractor from whom the employee could have recovered compensation.

All question as to the right to and the amount of any such indemnity, in default of agreement or settle by the Commissioner.

## Commissioners

Section 19 :- Reference to Commissioners.

- (1) If any question arises in any proceeding under this Act between an employer and employee :-
- (a) liability of any person to pay compensation.
  - (b) whether an injured person is an employee or not.
  - (c) The Quantum of compensation.
  - (d) Duration of compensation.
  - (e) Nature of disablement or extent of disablement.

The above question may be decided by the parties among themselves by agreement. In default of the agreements, the above questions have to be settled by the Commissioner.

- (2) No civil court ~~may~~ <sup>shall</sup> have the ~~power~~ jurisdiction to settle, decide or deal with any question, which is under this Act, required to be dealt with by the Commissioner.

Section 20 → Appointment of the Commissioners.

Commissioners are to be appointed by the State Government by notification in the official gazette. ~~The~~

The State Govt. may appoint any person :-

Section 21 → Venue of Proceeding and Transfer

- (1) Where any matter is referred to the Commissioner under this Act. The matter shall be for the area which the Commissioner is appointed
- (a) due to accident took place which resulted in the injury.
- OR
- (b) the employee or case in his death the dependant claiming the compensation ordinary resides
- OR
- (c) the Employer has his registered office.

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

(1) without giving notice in the prescribed manner by the Central Govt. or the State Govt.

Provided further where the employee being a master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company meets with an accident outside India any such matter may be done by or before the Commissioner for which the owner or agent of the ship, aircraft or motor vehicle

OR

(b) carries on business

(c) the registered office of the company is situate, as the case may be.

### TRANSFER OF RECORDS. [Section 21(1-A)]

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 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.

### Section 24(2)

If in any case a Commissioner is satisfied that it can be more conveniently dealt with by other Commissioner whether in the same State or not, he may transfer such matter to such other Commissioner. Any such transfer by the Commissioner is subject to any rules made under this Act.

A case may be transferred for report or disposal. When a case is transferred for report, it appears that the Commissioner is bound to ~~dis~~ dispose of the case in conformity with the report received. When a case is transferred for disposal, the Commissioner is required to send the complete

## Section 22 :- → Form of Application.

S.22 provides that where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provision of this Act, be made before the Commissioner.

S.22(1) A provides that ~~subject~~ no application for the settlement of any matter by a Commissioner, other than an application by a dependant or dependants for compensation shall be deemed unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

An application shall be made to the Commissioner in the form prescribed by the Act. It must be accompanied with the prescribed fee and contain the following particulars:-

(1) A concise statement of the circumstances in which the application is made and the relief or order which the applicant claims.

(2) In case of claim for compensation against an employer, the date of serving of notice of the accident on the employer, and if such notice has not been served in due time, reason for such omission.

reward of the case together with all sums in his hand, or invested by him for the benefit of any party to the proceedings.

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

Any Commissioner to whom any matter is transferred for report shall subject to the rules made under this Act, inquire into it and send his report.

But if the matter is transferred for disposal, he may continue the proceedings in the same manner as if it would have originally commenced before him.

On receipt of the report from the transferee Commissioner, the Commissioner who transferred it shall decide the matter in conformity with the report.

Further, the State Govt. may also transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

C.L.:- Morgina Begum v/s Managing Director, Hamman Plantation Ltd.

(2008) ILLJ 305(SC)

The SC held that the claimants were allowed to file a claim of compensation in the place of residents.

(3) The name and address of the parties.

(4) Except in case of application by dependants for compensation —

(a) a concise statement of the matters on which ~~has~~ agreement has been reached.

(b) a concise statement of those matters on which agreement has not been reached.

Section 22(3) provides that if the applicant is illiterate or for any other reason is unable to furnish the required information in writing, he can take the necessary direction from the Commissioner for preparing his claim.

The application, if the applicant so desires, may be prepared under the direction of the Commissioner.

Section 22-A → Power of the Commissioner to require further deposit in cases of fatal accidents.

Under Section 22-A the Commissioner is authorised to call for additional amount as deposit in case of fatal accidents.

In case of ~~Death~~ Injury resulting in Death where any sum has been deposited by the employer as compensation payable to the employee and the Commissioner is of the opinion that the sum so deposited is insufficient he may serve a Notice in writing upon the employer to show cause why ~~he~~ should he not deposit a further sum.

- (2) The employer may be required to deposit this further sum within the time stated in the notice.
- (3) The Commissioner should also communicate in his notice to the employer the reason that compelled him to ask for such further deposit.
- (4) The Employer can prefer an objection against any such notice served upon him by the Commissioner.
- (5) If the employer does not prefer objections or fail to show cause to the satisfaction of the Commissioner, the Commissioner may