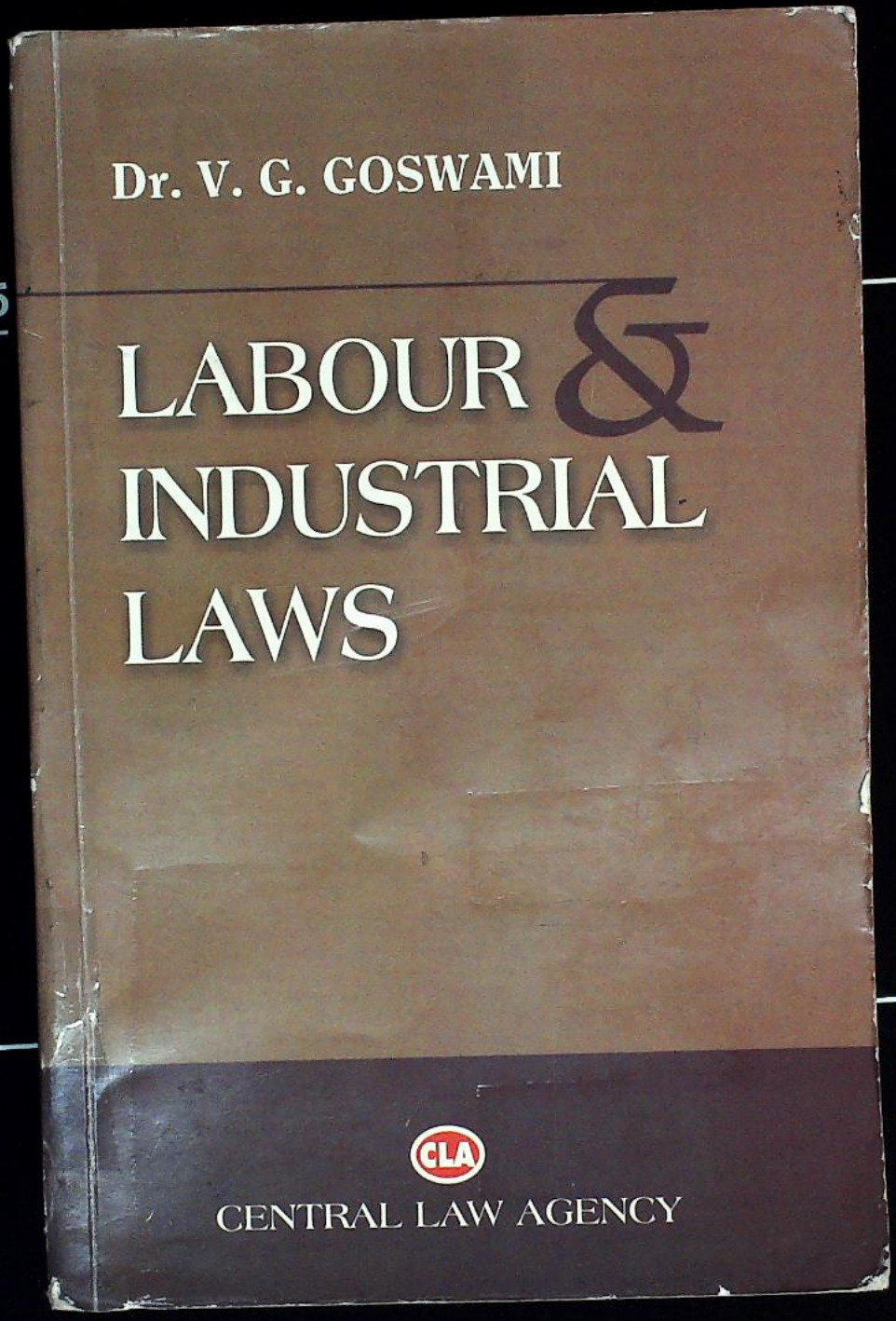
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EMPLOYEES' COMPENSATION ACT, 1923

1. A historical survey.—The law of workmen's compensation was introduced in India in 1923, twenty-six years after it has been introduced in England. To England it had come from Germany where it had been introduced in 1884 by the Iron Chancellor, Bismarck, who was the first among the European statesmen to understand fully the implications of the marxist challenge and to take some steps towards forestalling the threatened revolution of workers by providing for their security in various forms. One of the benefits secured to the workers by a new law was a right to receive compensation from their employer for injuries suffered in the course of employment, irrespectively of any fault or breach of duty on the part of the employers. It has been rightly remarked by Hon'ble Mr. Justice Phanibhusan Chakravarti, Ex-Chief Justice, Calcutta High Court,[1] that in England, however, the movement towards a law of workmen's compensation seems to have been caused by broad consideration of justice and humanity rather than a motive of neutralising the revolutionary potentialities of the working class by seeing actively to their contentment. In its scope too, the British Act of 1897 fell short of the German precedent in one respect. While the German Act required employers to indemnify injured workmen, or in the case of fatal accidents, their families, and it also set up an insurance system under which the employers were obliged to insure the risk, the British Act only made indemnification at prescribed rates obligatory, but left insurance of the risk to remain optional. The Workmen's Compensation Act enacted in 1923 when Britishers were the ruler of the country, the Indian Act naturally followed the British pattern which seems to have been adopted also in France and Belgium. In the case of America, it is interesting to find that the first State laws were declared unconstitutional and it was not till 1909 that the validity of a law of workmen's compensation was conceded by the courts. Since then, there have been both federal and State laws.

It will be useful to recall briefly how and why a law of workmen's compensation came to be enacted in England and what purposes it was intended to serve. It is a matter of history that from an early period upto the middle of the 18th century, the political and economic philosophy holding sway over Europe was 'mercantilism', according to which it was necessary and proper to exercise a strict control over private enterprise, whether joint or individual. Thus in England, taking the sphere of employment, alone, there were laws regulating the conditions of apprenticeship and service, fixing the rates of wages and restricting the movement of labour from one part of the country to another. Gradually, however, a reaction set in. Towards the middle of the 18th century, it began to be felt that there was too much of Government which was destroying individual initiative and affecting the prosperity of the nation. The feeling led to the evolution of the doctrine of the *laissez faire* which means "let things alone.". The doctrine asserted that individual welfare was not incompatible with national prosperity but, on the other hand, welfare of the individual was at the very foundation of the property of the nation and so the nation would be best served if the individual was allowed to pursue his self-interest without restriction from outside for, in that event, he would put forth his best efforts, willingly in

1. Introduction to J. N. Mallick's "Law of Workmen's Compensation in India" (1972), pp. vii to xii.

activities of his own choice for which he considered himself most fitted and would thus become a more productive member of the society. After it had been formulated the doctrine of *laissez faire* found a rapid and wide acceptance particularly in England, and it ushered in a period during which the agencies of production operated under conditions of complete economic freedom. In the sphere of employment the doctrine translated into terms of concrete policy, meant that every individual was free to enter any occupation or service that he might choose and that wages and other conditions of service were to be determined entirely by free bargaining between the employer and the employee. The bargain, thus concluded, would thereafter rule.

The experiment with a policy of complete economic freedom was carried on for a considerable period but, in the end, *laissez faire*, in its turn, began to reveal its own defects. Taking again the sphere of employment alone, it was found that not only were the employers imposing, in the name of freedom of contract, cruelly harsh terms on the employees who had no equal bargaining power and forcing them to work for unconsciously long hours and under appalling conditions but the employees had even no adequate means of relief against the employers for injuries sustained in their service. For death or disablement by industrial injuries, the only legal remedy that a workman or his dependants would seek was damages at common law, but that law afforded little real protection in the complicated circumstances of modern industry. At common law, workmen's claim could be allowed only if he was able to establish some negligence or breach of duty on the part of the employer as the sole cause of the accident resulting in the injury, but it was not easy to prove either of those torts, first because the courts' hesitating perhaps to saddle the growing industries with too much liability to the employee, were apt to construe the duties of the employer very narrowly and secondly, because in the majority of cases, the employer had ceased to be a human individual and come to be a limited company which it was difficult to find guilty of a tort. Apart from these hurdles in the way of proof, the workman had also to contend against the bar of contributory negligence which meant that if there was some negligence on his part which had contributed to the occurrence of the accident either wholly or to such an extent that it was not possible to determine whether his or the employer's negligence had been the decisive cause, he could not recover. There was, again, the doctrine of common employment or "the fellow-servants rule", as it is called in America. It meant that there was always an implied term in a contract of service that the servant agreed to accept the risk of injury from the negligence of a fellow servant and, consequently, when such negligence was the cause of the injury, he could not claim damages from the master. The result of these limitations was that an injured workman or, in the case of fatality, his dependants could rarely recover damages at common law, even if they were very able to carry on the expensive litigations upto the end, which again was not an easy matter. In that state of the conditions under which workmen were being compelled to work by their insensitive employers and the inadequacy of the relief available to them for injuries a reaction against the doctrine of the *laissez faire* inevitably set in and comprehensive series of labour legislation came gradually to be enacted with a view to liberating the workers from their helplessness against the power of the men who owned the factories and establishment where they worked. There was thus a reversion to control, though in modified form. First came the Factories Act which was directed at improving the conditions prevailing in the factories and compelling the employers to adopt suitable safety measures for the prevention of accidents. Next followed the Workmen's Compensation Act which provided for compulsory payment by the employer of some compensation, calculated by reference to the wages, for death or disablement of a

worker by accident while at his work, independently of any negligence or breach of duty on the part of the employer. Although contributory negligence was not wholly excluded by the Act, the rule of common employment was no bar to recovery of compensation under its provisions. When first enacted in 1897, the Act was limited to injuries caused directly by accidents and it covered only a few industries and occupations, but the list was enlarged by subsequent amendments and by a fresh Act passed in 1906, occupational diseases were added. The benefit of the Act was, however, limited, to workmen drawing remuneration upto a stated amount. Further laws of a beneficial character, such as an Act, providing for unemployment insurance soon followed, but it is not necessary to refer to them here. Nor is it necessary to refer to the various rules which the courts, keeping pace with the progressive social conscience of the people and taking increasing note of the difficulties of the workmen under the growing complexity of industrial organisations, came gradually to evolve in order to modify the rigour of the doctrines of contributory negligence and common employment.

Although the Workmen's Compensation Act was enacted to make it easier and cheaper for the workmen to obtain at least some compensation, it did not rid his chance of getting compensation altogether of uncertainty and difficulty. He had still to prove that the accident causing the inquiry had not only arisen in the course of his employment but had also arisen out of it and his claim could be defeated if it could be shown, except in cases of death or serious and permanent disablement, that he himself had been guilty of wilful misconduct which had led to the accident. When the Act of 1906 was replaced by a new Act in 1925 those provisions continued to be a part of the new statute as well. But public opinion was soon moving towards the view that the workmen's rights to compensation for industrial injuries should be placed on a more secure basis and the actual receipt of it should be made easier than under the Workmen's Compensation Act. Effect was at last given to that view by the National Insurance (Industrial Injuries) Act, 1946, which coming into force in 1948 replaced the Workmen's Compensation Act and introduced an insurance system under which insurance benefits were payable to victims of the industrial accidents and to sufferers from certain industrial diseases. All persons employed in Great Britain under a contract of service or apprenticeship were brought under the purview of the Act, whatever their earnings might be; and although the limitation that the accident must be one "arising out of and in the course of employment" remained the class of accidents satisfying that description was greatly enlarged by providing a number of statutory presumptions in favour of the injured workmen which were made available to him even in cases where he had disregarded the relevant regulations or disobeyed his master's orders, provided certain other conditions were fulfilled. The limitation contained in the Workmen's Compensation Act in regard to cases of the workmen's own negligence or disobedience was thus practically abolished, consistently, it would appear, with the abolition of contributory negligence by a separate Act. The solatium receivable by workmen was given the name of 'benefit' in lieu of 'compensation' and it was payable out of a fund to be built up with equal contributions by the employers and the employees and a further contribution by the State. *Lastly* wheres under the Workmen's Compensation Act the remedies under that Act and at common law were alternatives those under the National Insurance (Industrial Injuries) Act and at common law were made concurrent both being available to the workman, subject to adjustment of the damages awarded under common law. Unlike the Workmen's Compensation Act which was administered by the ordinary courts, the new Act was to be administered by the Ministry of National Insurance.

It will thus be seen that, in England, workmen's compensation has ceased to be a matter of a decree by the courts against the employer on proof of the necessary facts and has become an insured benefit obtainable from the State out of a special fund maintained for the purpose. From a position lying between tort and insurance, the basis of the workmen's claim has moved to be liability of the State as an insurer under something like a policy of accident insurance against death, disablement or disease caused by an industrial accident. This insurance seems to differ from accident insurance of the ordinary kind only in respect that for buying it, the workmen pays only a part of the premium. While the balance is paid by his employer and the State, the payment he receives in case of an accident is not large but, as already pointed out he is not limited to this particular form of relief and can both claim it and sue his employer at law for damages.

This is the short story of the history and development of workmen's compensation payable to the workers in England beautifully and critically traced by Hon'ble Mr. Justice Chakravarti. Therefore under common law an employer was liable for industrial accidents only in cases of his negligence. Employer's Liability Acts abolished or limited only certain defences. Proof of the employer's fault remained the basis of liability. Thus most of the industrial accidents were not touched and workmen could hardly get damages. As pointed out above Germany was the first country to solve the problem by declaring the cost of accidents as the liability on industry. Austria followed Germany in 1887. In England dissatisfaction with the Act of 1880 and the knowledge of the successful operation of the German laws culminated in the introduction of a Workmen's Compensation Bill which was passed by Parliament and become the Workmen's Compensation Act of 1897.[2] Thereafter there were certain other developments for the benefit of the workers as indicated above.

Similar dissatisfaction in the United States with the operation of employer's liability laws resulted in investigations by various government commissions. In 1910, New York became the first State to enact a workmen's compensation law sufficiently comprehensive to meet the problem effectively. By the end of the 19th century, the coincidence of increasing industrial injuries and decreasing remedies had produced in the United States a situation ripe for radical change, and when, in 1893, a full account of the German system written by John Graham Brooks was published as the fourth special Report of the Commissioner of Labour, legislators all over the country seized upon it as a clue to the direction which efforts at reform might take. Another stimulus was provided by the enactment of the first British Compensation Act in 1897, which later became the model of State Acts in many respects.

In 1910 the first New York Act was passed with compulsory coverage of certain hazardous employments. It was held unconstitutional in 1911 by the Courts of Appeals, on the ground that the imposition of liability without fault upon the employer was a taking of property without due process of law under the State and federal constitutions in *Ives* v. *South Buffalo Rly. Co.*[3]

In New York the Ives decision was answered by the adoption in 1913 by a constitutional amendment permitting a compulsory law[4] and such law was passed in the same year. In 1917 this compulsory law,[5] together with the law elective type[6] and the

2. G. M. Kothari, A Study of Industrial Law, p. 495.
3. 201 N Y 271 94 NE 431 (1911).
4. *New York Central Rly. Co.* v. *White*, 243 US 188 (1917).
5. *Hawkins* v. *Bleakly*, 243 US 210 (1917).
6. *Mountain Timber Co.* v. *State of Washington*, 243 US 219 (1917).

Washington exclusive-state fund-type law,[7] was held constitutional by the United States Supreme Court, and, with fears of constitutional impediments virtually removed, the compensation system grew and expanded with a rapidity that probably has no parallel in any comparable field of law. By 1920 all but eight States had adopted Compensation Acts and on January 1, 1949 the last State, Mississippi, came under the system. Extension of coverage had taken the form, not only of adding jurisdictions, but of broadening the boundaries of individual acts, as to persons, employments, and kinds of injury (particularly occupational disease) covered.

It has been nicely remarked that the Industrial Revolution brought in its train the multitude of the maimed the halt and blind. There was a rapid increase in diseases, deaths and injuries among industrial workers due to accidents. Against the soaring profits and the whirr, whirr of wheels, the dread shapes of betrayed, plundered, profaned and disinherited humanity cried for redress. The loss of human material lay where it fell on the workers themselves or their families. The voice of dolorous pitch did not reach the rich and even God seemed not to hear the cry of the children. The intoxication of swelling profits inhabited for a long time the capitalist economy in the matter of workmen's health and safety. The law sided with the prosperous employers in the booming factories against the destitution of disabled workmen or their dependants thrown upon society as mere objects of charity. Such social indifference could not last long. Such law could not last long. Liberal ideas and organised labour exerted pressure. Further the commercial prosperity of a colonial empire gradually became conscious of the hens at home laying the golden eggs.[8]

Under these circumstances in order to provide remedies to the working class the law of workmen's compensation has been developed in countries under the pressure of public opinion prevailing at the relevant times. The workmen's compensation is a mechanism for providing cash wage benefits and medical care to victims of work-connected injuries and for placing the cost of these injuries ultimately on the consumer, through the medium of insurance, whose premiums are passed on in the cost of the product.[9]

Professor Arthur Larson indicates the certain basic features of compensation such as :

(1) The basic operating principle is that an employee is automatically entitled to certain benefits whenever he suffers a "personal injury by accident arising out of and in the course of employment";

(2) Negligence and fault are largely immaterial, both in the sense that the employee's contributory negligence does not lessen his right and in the sense that the employer's complete freedom from faults does not lessen his liability;

(3) Coverage is limited to persons having the status of employees as distinguished from independent contractor;

(4) Benefits to the employee includes cash wage benefits, usually around one-half to two-thirds of his average weekly wage, and hospital and medical expenses; in death cases benefits for dependants are provided; arbitrary maximum and minimum limits are ordinarily imposed ;

(5) The employee and his dependants, in exchange for these modest but assured benefits give up their common law right to sue the employer for damages for any injury covered by the Act;

7. Arthur Larson, The Law of Workmen's Compensation, (1915), pp. 32-39.
8. J. N. Mallik, Law of Workmen's Compensation in India, p. 1.
9. Arthur Larson, Loc. cit. (Vol. 1), p. 1.

(6) The right to sue third persons whose negligence caused the injury remains, however, with the proceeds usually being applied first to reimbursement of the employer for the compensation out-lay, the balance (or most of it) going to the employee;

(7) Administration is typically in the hands of administrative commissions; and so far as possible, rules of procedure, evidence, and conflict of laws are relaxed to facilitate the achievement of the beneficent purposes of the legislation; and

(8) The employer is required to secure his liability through private insurance, State Fund insurance in some States, or "self-insurance" : thus the burden of compensation liability does not remain upon the employer but passes to the consumer, since compensation premiums, as part of the cost of production, will be reflected in the price of the product.

The ultimate social philosophy behind compensation liability is belief in the wisdom of providing, in the most efficient, most dignified and most certain form, financial and medical benefits for the victims of work-connected injuries which an enlightened community would feel obliged to provide in any case in some less satisfactory form and of allocating the burden of these payments to the most appropriate source of payment, the consumer of the product. In compensation, unlike tort, the only injuries compensated for are those which produce disability and thereby presumably affect earning power.[10]

This system of workmen's compensation was first adopted in Germany in 1884. In Great Britain the Workmen's Compensation Act was first introduced in 1897, by Joseph Chamberlain. It was followed by Acts of 1900, 1906, 1923 and 1925. In the United States of America, the State of Maryland had an Act in 1902, New York in 1910 and by 1921, forty-two States and three territories had enacted workmen's compensation laws and the Federal Government for its civil employees. In India the Act of 1923 came into operation in July, 1924.[11]

Workmen's Compensation Laws in India.—The question of granting compensation to workmen for fatal or serious accidents was first raised in India in 1884 and the need for proper legislation was emphasised by factory and mining Inspectors. But the question of framing legislation was taken up by the Government of India only in the end of 1920 and in 1921 public opinion on the subject was invited. In order to examine the question in some detail it was referred to a small committee composed of Legislative Assembly members, Employer's and worker's representatives and medical and insurance experts, which met in 1922.[12]

The committee's detailed recommendations for framing legislation were accepted and a Workmen's Compensation Act was passed in 1923. The measure followed the British Act in its main principles and in some of its details, but it contained a large number of provisions designed to meet the special conditions in India. This Act was the first step towards social security in India. This was followed by legislation enacted in several states for the protection of workers. Under these enactments the responsibility for payment of compensation rested with employer, a system which led to certain hardship. The Royal Commission on Labour reviewed the subject and made a number of recommendations as regard workmen's compensation. The Commission's recommendations involved the

10. A. Larson, The Law of Workman's Compensation, Vol. I.
11. J. N. Mallik, Law of Workman's Compensation in India, p. 2.
12. G. M. Kothari, A Study of Industrial Law, pp. 499-504.

substantial extension and enlargement of the rights the Act conferred and its revision in a number of matters of detail.

The general scheme of the Act is that the compensation should ordinarily be given to workmen who sustain personal injury by accidents arising out of and in the course of their employment. Compensation is also given in certain cases for occupational diseases as listed in the III Schedule. It may not be irrelevant to point out that the International Labour Organisation has also influenced the codification of workmen's compensation law as it has been remarked that the restrictions on import during the World War I gave rise to a considerable expansion of industries in the countries. The expansion was augmented by the victorious emergence of the allies as a result of which a good deal of capital was invested in the country. The Treaty of Versailles emphasised the fact that the failure of any nation to adopt human conditions is an obstacle in the way of other nations, which desires to improve the conditions in their own countries. It was felt that universal peace based on social justice was essential. In order to achieve this end, the International Labour Organisation was formed. The first session of the ILO met at Washington in 1919 and India as an original member of the League of Nations also participated. It was due to the influence of the International Labour Organisation that the Workmen's Compensation Act was passed.

Prior to the passing of the Act, compensation was payable in case of fatal accident. The Indian Fatal Accidents Act, 1855, is based on the English Act and enables certain heirs of the deceased persons to sue for damages when death is caused by an actionable wrong. This Act overrides the dictum that a personal action dies with the person injured, "*personalis motiureum persona*". The defence under the doctrine of common employment, by which the employer is not normally liable to pay damages to a workman, or the doctrine for an injury resulting from the default of another workman, or the doctrine of assumed risk, by which an employee is presumed to have accepted a risk if it is such that he ought to have known it to be part of the risks of his occupation were, however, open to the employer. The Royal Commission on Labour regarded both the doctrines as inequitable and recommended that measure should be enacted abrogating these defences. The result was the enactment of the Employer's Liability Act, 1938. The Act was amended by the Employers Liability (Amendment) Act, 1951 as it was found that the defence of common employment was still available to the employer due to the limited scope of Section 3(d). The defect was removed by the Amending Act of 1951.

Freedom from want and security against economic fear is one of the fundamental needs of our country. The Constitution affirms to all people of India, *inter alia*, social and economic justice, but this has yet to be secured by peaceful, social and legislative steps. It has been aptly said, "It is the function of an ideal welfare state to give to every citizen the opportunity of earning his living and freedom from fear—fear specially of economic ruin which can involve physical and even moral ruin".[13]

In order to provide social security to the working people various legislative steps have been taken in our country like other countries of the world. It may not be incorrect to say that the Workmen's Compensation Act, 1923 has been the first step towards social security in our country. The basic principle of this legislation is social justice.[14] Under these circumstances the Act was passed to provide social justice and social security to the workers who are working under dangerous and risky conditions of work in the factories.

13. K. D. Srivastava, *Commentaries on the Workmen's Compensation Act, 1923*, pp. 1-2.
14. V. V. Giri, *Loc. cit.*, p. 133.

2. Objects and Reasons.—The necessity for the passing of the Workmen's Compensation Act had been explained as follows in the statement of objects and reasons annexed to the then Bill which became the Act VIII of 1923.

The general principles of workmen's compensation had almost universal acceptance and India was then nearly alone amongst civilised countries without legislative measurers embodying those principles. For a number of years the more generous employers had been in the habit of giving compensation voluntarily, but this practice was by no means general. The growing complexity of industry in the 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.

An additional advantage of legislation of this type was that it increased the importance for the employer of providing adequate safety devices. This reduced the number of accidents to workmen in a manner that could not have been achieved by official inspection. Further, the employers were encouraged to provide adequate medical treatment for their workmen, to mitigate the effects of such accidents as do occur. The benefits so conferred on the workmen, added to the increased sense of security would render industrial life more attractive, and this would increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workman may also be expected. It was expected that a system of insurance would prevent the burden from pressing too heavily on any particular employer.

After a detailed examination of the question by the Government of India, Local Governments were addressed in July, 1921 and the 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 employer's and worker's association and the Government of India believed that public opinion was generally in favour of the legislation on the subject.

In June, 1922, a committee was constituted to consider the question of legislation. This committee was composed for the most part of members of the Imperial Legislature. 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 regarding the lines, which in its opinion, such legislation should follow. The Bill then introduced followed those recommendations closely. A number of supplementary provisions were added where necessary, but practically no variations of importance were made.

The Bill was referred to a Select Committee which made some alterations. Perhaps, the most important of them was the elimination of the provisions relating to employers' liability. They were not satisfied that it was either necessary or wise to retain those provisions in the Bill. They felt that the courts in India may not apply the judge-made doctrines of common employment and assumed risk. If these doctrines were accepted by the courts in India, they thought that legislation on the lines of the Employers Liability Act, 1880 (43 and 44 Vict. C 42) may have to be considered. But in that event the defences of common employment and assumed risk, if they are regarded as inequitable, should be removed not merely for the very limited classes of workmen to whom this Bill will apply, but for all workmen. On the whole, therefore, they were of opinion that it was wiser to restrict the scope of the present measure to workmen's compensation and avoid

anticipating a difficulty which may not arise, and for which the Bill, as drafted, contained only a partial remedy.

The general scheme of the Act is that compensation should ordinarily be given to workmen who sustain personal injuries by accidents arising out of and in the course of their employment. Compensation will also be given in certain limited circumstances for disease. The actual rates of compensation payable are fixed and in every case subject to a maxima.

A consistent endeavour has been made to give as little opportunity for disputes as possible. Throughout the Act in the definition adopted, the scales selected and the exceptions permitted, the great aim has been precision, in order that in as few cases as possible should the validity of a claim for compensation or the amount of that claim be open to doubt. At the same time, provisions have been made for special Tribunals to deal cheaply and expeditiously with any disputes that arise and generally to assist the parties in a manner which is not possible for the ordinary civil courts.[15]

The Workmen's Compensation Act, 1923 which came into force on the Ist July, 1924 has been amended several times to keep pace with the growing necessities felt by the working community in our country. The Act now extends to whole of India including the State of Jammu and Kashmir.

The provisions of the Act have been amended by the Workmen's Compensation (Amendment) Act, 1995 with a view to provide economic security in a better possible manner. By way of omission, insertion and substitution the provisions of Sections, 2, 4, 4-A, 8, 14, 18-A, 21, 22, 23, 30 and Schedules I, II, and III have been amended. The new Sections 15-A and 15-B have been inserted after Section 15 of the Workmen's Compensation Act, 1923. Section 15-A contains special provisions relating to captains and other members of crew of aircraft while Section 15-B contains special provisions relating to workmen abroad of companies and motor vehicles. These provisions extend the benefits of the Act to the workmen concerned in the specified conditions.

The amended provisions have come into force on September 15, 1995.[16]

In order to further amend the provisions of the Workmen's Compensation Act, 1923, the Workmen's Compensation (Amendment) Act, 2009 has been passed on 22.12.2009. It contains 10 sections which have amended the Principal Act drastically by way of substitution, insertion and omission.

The Amendment Act, 2009 has come into force on 18.1.2010.[16a]

The amendments made by the Amendment Act, 2009 have been incorporated in the book at relevant places.

2. Scope and Application.—The Employees' Compensation Act, 1923, applied, in the first instance only to workers employed otherwise than in clerical capacity and receiving monthly wages not exceeding rupees three hundred, in factories, mines and ports, to those engaged on the railways, tramways, on loading, unloading, or coaling ships at docks, etc. where mechanical power was used in a building trade, construction of bridges, telegraph and telephone lines and ports and over-head electric cables, in connection with sewers and in the brigade services. The Act also applied to specified occupational diseases and the

15. R. Muthrubuthan and R. Srinivasan. The Indian Factories and Labour Manual, (1958), pp. 470-71. For statement of objects and reasons, see Gazette of India , 1922 , Pt. V., p. 313 and for Report of the Joint Committee, see Gazette of India, 1923 Pt. V., p. 37.
16. Notification No. S. O. 778 (E), dated 12.9.1995.
16a. Ministry of Labour and Employment Notification No. S. O. 101 (E), dated 18.1.2010.

Government of India was empowered to extend the list of such diseases as well as to hazardous occupations.[17]

The present position of its application is that the workers other than workers, whose employment is of a casual nature and who are employed otherwise than for the purposes of employer's trade or business whether they are railway servants as defined in Section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as specified in Schedule II, or workers 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 are covered for purposes of this Act. It shows that the coverage has been extended from time to time to give protection and benefits of the Employees' Compensation law.

The State Government has been authorised to add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do. In that event the provisions of this Act shall thereupon apply within the State to such classes of persons. Provided that in making such addition the State Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.[18] However, in 1984 the provisions of the Act have been extended to cover all workers irrespective of the amount of their wages. It may be recalled that workers getting wages exceeding one thousand rupees were not covered, before this amendment.

It shows that the coverage has been extended and power of further extension has been vested in the State Government. At present Schedule II contains various employments the persons working wherein are workmen within the meaning of this Act and the provisions of this Act are applicable to them.

The employers are responsible to pay compensation on prescribed scales and the scales vary in cases of death, permanent total disablement, permanent partial disablement and temporary disablement. In case of death of a worker his dependants defined in Section 2 (d) such as a widow, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother, etc. are to receive compensation under the provisions of this Act. Schedule IV contains factors for working out lump sum equivalent of compensation amount payable to the workers in cases of death, permanent total disablement and temporary disablement. The Act makes provision for payment of compensation as a lump sum in case of permanent disablement or death while in case of temporary disablement it makes provision for half-monthly payment or compensation. One thing must be noted that with enactment of Employees Insurance Act, 1948 this Act does not apply to workers who are covered by the E.S.I. Act, 1948.

In *Bharagath Engineering* v. *R. Ranganayaki and another*,[19] the Supreme Court considered the statutory provisions of the ESI Act and held that the payment or non-payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential. The deceased employee was clearly an insured person and as the deceased person has suffered an employment injury, by operation of Section 53 of the ESI Act, proceedings under the Workmen's Compensation Act were excluded

17. G. M. Kothari, A Study of Industrial Law, p. 500.
18. Employees' Compensation Act, 1923, Section 2(3).
19. 2000 SCC (L&S) 786.

statutorily. The High Court was not justified in holding otherwise. Thus if person is covered under the ESI Act he cannot claim any benefit under the Workmen's Compensation Act, 1923.

Workmen's Compensation Law logically led to the codification of social insurance legislation like the National Insurance (Industrial Injuries) Act, 1946 in Great Britain and the Employees State Insurance Act, 1948 in India. This law of insurance replaces the liability of employer to pay workmen's compensation and it provides for a system of compulsory insurance against personal injuries caused by accidents. This system makes a provision for the constitution of insurance fund wherein the contributions are to be paid by the employers, the employees and the State. In India, the Workmen's Compensation Act has been fully replaced.[20] Section 53 of the ESI 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. Thus it shows that any person who is not insured under the provisions of E.S.I. Act, 1948 is entitled to get compensation under the provisions of the Workmen's Compensation Act, 1923 provided he fulfils conditions stipulated under this Act for becoming entitled to such compensation.

4. Definitions of certain important terms.—The Act under its Section 2(1) provides that unless there is anything repugnant in the subject or context :—

(1) Commissioner—Means a Commissioner for employee's compensation appointed under Section 20 of the Act.[21] Chapter III of the Act deals with the reference to Commissioners, appointment of Commissioners, venue of proceedings and transfer, form of application, powers of Commissioners to require further deposit in case of fatal accident, powers and procedure of Commissioners, power to submit cases etc.

(2) Compensation —Means compensation as provided for by the provisions of this Act.[22] Compensation is a lump sum provided to the workers in cases of death, permanent disablement or temporary disablement. It may be pointed out that in case of temporary disablement the mode of payment of compensation differs as it is payable in such an event in the form or recurring half monthly payments.

(3) Dependant.—Section 2(1) (d) provides that dependant means any of the following relatives of a deceased workman, namely :—

Class (i) a widow, a minor legitimate or adopted[23] son, an unmarried legitimate or adopted[24] daughter, or a widowed mother; and

Class (ii) if wholly dependant on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

Class (iii) if wholly or in part dependant on the earnings of the employee at the time of his death,

(a) a widower,

20. J. N. Mallik, Law of Workman's Compensation in India, p. 9.
21. The Employees' Compensation Act, 1923, Section 2(1) (b).
22. Ibid, Section 2 (1) (c).
23. Subs. by W. C. (Amendment) Act, 1995 w.e.f. 15.9.1995.
24. Ibid.

(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.[25] 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 grand parent if no parent of the employees is alive;

The following Explanation has been inserted by the W.C. (Amendment) Act, 1995, namely :

Explanation.—For the purposes 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.

The relatives of the deceased workman are divided into three classes. In class (i) includes a widow, a minor legitimate or adopted son, an unmarried legitimate daughter, or a widowed mother, These relatives are considered to be dependants of a workman, even if actually they are not dependant on the earnings of the employee. These persons would have a right to compensation irrespective of the fact, whether they were financially dependant on the deceased or not, while persons mentioned in class (ii) *i.e.* a son or a daughter who has attained the age of 18 years and who is infirm, must be wholly depandent on the earning of the workman at the time of his death. Thus the major son or daughter can get compensation only if they are able to prove that they were wholly depandent on the earnings of the employee at the time of his death and they are infirm.

Class (iii) includes relatives such as a widower, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, etc. The relatives in this category may get compensation only when they could establish that they were wholly or in part depandent on the earnings of the deceased employee at the time of his death.

It has been held that the widow of a deceased workman would not be disentitled to compensation on her remarriage. Subsequent event would not affect the claim of the dependant to compensation.[26]

Dependent "at the time of his death", the inclusion of these words in the definition fixes the moment to be regarded in determining the fact whether or not the claimant was dependent upon the deceased. If the claimant can show that there was primarily an obligation on the deceased to support the claimant out of his earnings, and that the claimant has no other means of subsistence upon which he can rely, or on which he was in fact relying, as a substitute for the obligation of the deceased, there is such dependency at the time of death as the statute contemplates.[27]

It has been held that it is necessary for an applicant who is the father of a deceased when he claims compensation, to establish that he is dependent either wholly or in part on the earnings of his deceased son. Where on the facts it is conceded by the conduct of the parties that he is so dependent, he is not disentitled from claiming compensation even

25. Subs. by W. C. (Amendment) Act, 1995 w.e.f. 15.9.1995.
26. *Ravuri Kotayya* v. *Dosari Nagavaradhanamma*, AIR 1962 A P 42.
27. *Coulthard* v. *Consett Iron Co.*, (1905) 2 K B 869.

though the fact is denied in the counter statement before the Commissioner and no positive proof is let in.[28]

The basic principle behind the dependency is that a person can claim compensation when he was really dependent on earnings of the workman at the time of his death. It may be pointed out that dependants mentioned in the first class need not to prove that they were dependents on the earnings of the deceased workman but the persons mentioned in the second and third classes must have to prove that they were wholly or partly dependent on the earnings of the deceased workman at the time of his death. This is quite just and equitable to make provision for payment of compensation in the event of death of a worker to the persons who do not have other means of subsistence.

In *Director (T & M)., D. N. K. Project* v. *Smt. D. Buchitalli*,[29] the question for consideration was whether the widowed sister of the deceased as well as the widowed mother-in-law would come within the definition of dependant. The High Court of Orissa observed that in view of the definition of the dependant "an un-married sister or a widowed sister if a minor" used in Section 2(1) (d) (iii) (d) cannot possibly permit a widowed sister even if major to come within the expression "an unmarried sister". Notwithstanding the fact that the Act is a beneficial legislation and should be construed liberally in favour of the workers, the language used is not susceptible of bringing in a widowed sister if a major within the ambit of Section 2(1) (d) (iii) (d) of the Act.

In *Ramji* v. *Lalit Kumar Bardya*,[30] where a driver of a tractor met with an accident in the course of and out of employment as result of which he was crushed under the tractor and died. The parents of the deceased employee claimed compensation. The Commissioner rejected the claim on the ground that they are not dependants within the meaning of Section 2(1) (d) (iii) (b) of the Act. It was observed that the parents who did not get any advantage from the earning of the deceased but were entitled to receive the same in normal circumstances, are included in the relevant definition clause of the word 'dependant'. Non-payment of wages due to the deceased deprived the parents of the benefits of the earnings of the deceased who was living jointly with them during his life time. His death deprived them of his monetary support for all times in future. Such parents should be held intended to be included in the definition of dependant.

In *Bai Mani Widow of Jakhlabhai Hurjibhai and others* v. *Executive Engineer Irrigation, Project Division, Baroda*,[31] the High Court after considering the facts in question observed that the word "trade" means commercial activity but the word "business" has a much wider connotation and covers activity which may not be commercial and may include the construction work carried out by Public Works Department. The legislature has advisedly used the term trade and business to cover not only commercial activity but also many other activities which would be covered under the term business. Hence the Executive Engineer of State of Gujarat and the contractor are jointly and severally liable to pay compensation. If there is complete disclaimer of the liability the respondents are liable to pay maximum penalty of 50%. If a party chooses to disclaim liability knowing that they cannot escape liability, it runs the risk of paying the maximum penalty. Consequently it was held that although the deceased employee was engaged by the contractor, the dependants of the deceased employee were entitled to compensation.

28. *Perianna Pillai* v. *Kuppa Goundan*, AIR 1954 Mad. 804.
29. (1989) I LLJ 259.
30. (1995) I LLJ 910 M P.
31. (1986) II LLJ 426 (Guj).

In *Param Pal Singh* v. *National Insurance Co.*,[32] where the deceased Jeet Singh *alias* Ajit Singh, a truck driver was driving the truck when it reached nearabout Nimiaghat, the deceased felt giddy therefore he parked the vehicle on the roadside near a hotel and fainted. He was declared brought dead in the hospital. The claimant, as an adopted son of the deceased claimed the compensation. The biological father gave him in adoption when he was three years old. However, the adoption was unregistered. The Supreme Court considered the validity of the adoption according to Hindu Law. Referring the celebrated decision of the Supreme Court in *Lakshman Singh Kothari* v. *Rup Kanwar*,[33] and requirement of the registration of an adoption deed with reference to Section 17 of the Registration Act and a decision dealing with the said provision in *Vishvanath Ramji Karale* v. *Ralibai Ramji Karale*,[34] that a deed of adoption as distinguished from authority to adopt does not require registration. The Supreme Court in this case also held that the deed of the adoption is not one of the documents mentioned in Section 17 (1) which mandatorily requires registration.

The contention was that the appellant had no *locus* to file the claim petition inasmuch as he was not a dependent. The Commissioner repelled the contention. Unfortunately the learned Judge in the impugned judgment was completely misled himself by rejecting the claim of adoption. The Supreme Court held that the conclusion of the learned judge in having held that the appellant was not the adopted son of the deceased cannot be sustained and the same is set aside.

"(4) [35]['employee' means a person, who is—

(i) a railway servant as defined in [clause (34) of Section 2 of the Railways Act; 1989,][36] not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as specified in Schedule II, or

[(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,

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;][37]

(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, includes a reference to his dependants or any of them.[38]

32. (2013) 1 SCC (L & S) 609.
33. AIR 1961 SC 1378. *M Gurudas* v. *Rasaranjan*, (2006) 8 SCC 367 relied on.
34. AIR 1931 Bom. 105, approved.
35. Ins. by Act 45 of 2009 Section 6 (1) as Section 2 (1) (dd).
36. Subs. by W. C. (Amendment) Act, 1995 (w.e.f. 15.9. 1995).
37. Ins. by W. C. (Amendment) Act, 1995 w.e.f. 15.9. 1995.
38. Employees' Compensation Act, 1923, Section (1) (n) [now (dd)].

The definition of the workman itself refers to the capacity of employment which is shown in the II Schedule. The Schedule has mentioned various persons employed in different types of employment for the purposes of this Act. But all these employments indicate manual labour. The persons employed in factories where a manufacturing process is carried on are all workmen unless it is shown that they are working there as clerks. Similarly, all persons employed on railway in connection with the operation of maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle. All the persons employed in manufacturing process carried on in factories are workmen such as persons employed in the construction, maintenance, repair or demolition of any building which is designed to be or has been more than one storey in height above the ground of twelve feet or more than the ground level to the annex of the roof; or any dam or embankment which is twelve feet or more in height from its lowest to its highest point of any road, bridge, tunnel or canal, etc., persons employed in the service of fire brigade or employed in the maintenance, repair or renewal of electric fitting in any building are workmen. Persons employed in a circus are also workmen. One thing is very remarkable that in this Schedule everywhere persons employed in clerical capacity have been excluded from the definition of workman.

Thus in order to determine the question whether a person employed is workman it is always necessary to look into the provisions of Schedule II. The persons employed for casual work or otherwise than for employer's trade or business were excluded but now with amendment made in 2000 this provision has been omitted with effect from 8-12-2000 thus now onwards persons working in such capacity may be included in the definition of workman.

In *Oriental Fire and General Insurance Co. Ltd. and another* v. *Union of India*,[39] where facts were that on 20th January, 1962 there was a collision between a goods train and a lorry belonging to the second plaintiff in O. S. 4 of 1967, Sub-Court, Adoni. The lorry was insured with the first plaintiff. The case of the plaintiff was that the lorry was crossing a railway gate when it was struck by a goods train. The lorry was damaged and the driver of the lorry and its cleaner and one of the coolies who were in the lorry died as a result of the injuries sustained during the accident. Another coolie who was in the lorry has lost his right arm and two other coolies received minor injuries. The case of the plaintiff was that the accident was a result of the negligence of the employees of the railway.

It was held that under Section 3 of the Workmen's Compensation Act if personal injury is caused to a workman by accident arising out of and in the course of employment his employer shall be liable to pay compensation in accordance with the provisions of this Chapter. The proviso says that the employer shall not be so liable (a) in respect of an injury which does not result in the total or partial disablement of the workman for a period exceeding three days and (b) in respect of injury not resulting in death caused by an accident which is directly attributable to certain causes mentioned in that proviso. It is seen from the section that liability is absolute and does not depend upon any negligence on the part of the employer. The only conditions that are to be satisfied are that the injury must be caused to a workman and the accident must arise out of and in the course of his employment. "Workman" is defined in Section 2(1) (n). Schedule II, gives a list of persons who are included in the definition of workman. It is sufficient to consider item one which says that any one who is employed, otherwise than in a clerical capacity or on a railway,

39. AIR 1975 AP 222.

in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle is a workman. The driver, the cleaner and the Hemalis would therefore, be 'workmen' within the meaning of the Act. Section 4 of the Act provides how the amount of compensation is to be computed. Section 4-A provides for the payment of compensation and the penalty for default. Section 8 provides for the deposit of compensation before the Commissioner, as also the distribution of compensation by the Commissioner. Section 10 provides how the Commissioner has to deal with the claim for compensation. If the employer disclaims liability, Section 10-A provides for enquiry by the Commissioner. Section 22-A enables the Commissioner to require the employer to make a further deposit if the compensation deposited is insufficient. Section 23 gives the Commissioner certain power of the Civil Court. Section 24 deals with the appearance of the parties and Section 25 provides for the recording of the evidence. Section 30 provides for appeals to the High Court from the order awarding compensation or disallowing a claim in certain cases.

It is thus seen that the procedure is prescribed for determining any payment of compensation to the injured workman by the employer under the Workmen's Compensation Act. If, orders have been passed regarding payment of compensation and the amount has been deposited, it must be presumed that all the conditions laid down in the Act are satisfied, including the fact that the Commissioner was satisfied that the injured were workmen within the meaning of the Act and that the accident arose out of and in the course of his employment.

In *Madan Mohan Verma* v. *Mohan Lal*,[40] where Mohan Lal was employed by Madan Mohan Verma as mechanic for installing a cotton ginning machine and chaff cutting machine on the daily wages of Rs. 15. While Mohan Lal was taking the trial of the chaff cutting machine his right hand got stuck into the teeth of gear roller of the machine and all his fingers and thumb of his right hand were cut off resulting in total disability of a permanent character affecting his future earning capacity as well. He was engaged for three days and the accident took place on third day. He claimed for compensation but the employer declined to give any compensation on the ground that Mohan Lal was not a workman because he sustained the injuries while he was cutting his own fodder and the employment was of casual nature. He was merely to install the machine and his employment ceased on third day when he sustained the injuries. The Commissioner rejected the case of employer. In appeal the Allahabad High Court held that fixation of the machine and taking of trials were all part of the business of the employer. The mere ground therefore that Mohan Lal had been employed merely to instal the machine could not take him out of the purview of the definition of workman.

In *Kocchappan* v. *Krishnan*,[41] it has been held that to come within the definition of workman it has to be ascertained whether the two ingredients mentioned within brackets under that sub-section are, on the facts of the case, conjunctively excluded in relation to the respondent. Those are (1) whose employment is of casual nature and (2) who is employed otherwise than for the purpose of the employer's trade or business. It is only when both the ingredients are together present does the exclusion operate. If the person was employed for the purpose of employer's trade or business, he would be workman even if his employment was of a casual nature. Likewise, if the employment was of a regular nature, the person

40. (1983) II LLJ 322 (Alld).
41. (1987) II LLJ 174 (Kerala).

...employee even if he was not employed for the purpose of trade or ...

... v. *Yeshuman* alias *Abraham*[42], where agriculture is one of the ... by the appellant society apart from managing orphanage, animals, ... centre, dairy farming, tailoring institute, etc. In connection with ... operations of the society paddy harvested had to be sifted, and for that ... machine was arranged and sifting was conducted. There occurred an ... during the course of sifting and as a result of which left hand of the respondent got ... the machine and sustained several injuries resulting in amputation of two ... The Commissioner awarded Rs. 36,028/- as compensation. The order of the ... was challenged. The High Court of Kerala held that the agricultural ... of the society would come within the term 'business' under Section 2 (1) (n). ... because the nature of appellant society is charitable it will not get absolved from ... under the Act, because the society in conducting a destitute home in conducting ... because it is more profitable to produce paddy by itself rather ... purchasing it from outside for feeding the children.

In *Kamala (Smt.)* v. *Varadaraja Setty, SR*,[43] where widow of a deceased employee filed ... against the order of the Commissioner rejecting her claim for compensation. The ... held that the Commissioner was wrong in taking the view that it has not been ... that death has not been caused on account of heart failure or on account of his ... and unloading work pressure. Death of the worker has taken place as proved by ... on record due to pressure of work resulting in injury to the workman's heart ... of the heart.

In *Zoo Authority of Karnataka* v. *Ranga*,[44] where the respondent was an employee of the Zoological Gardens and the zoo was transferred from the Government to the Zoo Authority. The question was whether the Zoo Authority or the Government was liable to pay compensation. It was held that with the transfer of Zoological Gardens to the Zoo Authority of Karnataka, a registered society, the respondent became an employee of the appellant. He necessarily ceased to be a Government servant and hence cannot claim compensation from the Government.

It was further held that under Item 22 of Schedule II of the Act, a person employed in keeping wild animals is a workman. Hence, the respondent who was keeping chimpanzee, a wild animal in the Zoo was a workman within the meaning of the Act as would entitle him to claim compensation for any injury suffered by him in an accident arising out of and in the course of employment under the appellant. The respondent who was attacked by chimpanzee making him suffer injuries was held entitled to compensation under the Act.

In *Sunil Industries* v. *Ram Chander Pradham*,[45] where Ist respondent was working as a ... operator with the appellant, Sunil Industries. While working on a press he sustained ... to his right index finger and thumb. The respondent filed a claim for compensation ... the Workmen's Compensation Act. It was contended by the appellant that the W.C. ... 1923 did not apply to the appellant's establishment.

The Appellant preferred an appeal under Section 30 of the W.C. Act, before the High ... of Punjab and Haryana. The appeal came to be dismissed *in limine* by the High Court.

42. (1998) I LLJ 744 (Kerala).
43. (1998) I LLJ 747 (Karn.).
44. (1999) I LLJ 257 (Karn.).
45. 2001 SCC (L&S) 1.

The appellant filed a civil appeal before the Supreme Court. The Supreme Court held that it is true that W.C. Act has been amended on a number of occasions. However, in spite of numerous amendments the legislature has purposely omitted to specifically provide that only a workman who is employed in a factory could make a claim. All that has been done is that in Schedule II of the W.C. Act, it is, *inter alia*, clarified that persons employed, otherwise than in a clerical capacity, in any premises wherein a manufacturing process is carried on, are workmen. It has not been denied that the workshop of the appellant would fall under clause (k) of Section 2 which defines manufacturing process. Therefore, the 1st respondent would be a workman within the meaning of the term as defined under the Workmen's Compensation Act. The appellant was liable to pay compensation in accordance with the provisions of W.C. Act, 1923.

In *Lakshminarayana Shetty* v. *Shantha and another*,[46] where the respondents were the daughter and wife of the deceased Ramu who was engaged by the appellant to paint the house. While he was doing the work, he unfortunately fell down and died. The claim for compensation under the Workmen's Compensation Act was denied, but on a writ petition filed in the High Court the same claim was allowed. The Supreme Court in appeal held that no reasons have been given by the High Court for coming to the conclusion that this was the case which fell within the domain of the Workmen's Compensation Act. There was apparently a contract between the appellant and Ramu whereby Ramu had undertaken the work of painting the house. Whether the action of the appellant by engaging a person in this manner makes him an employee or workman of the appellant, was a relevant question to be decided. The case did not fall within the four corners of the said Act and, therefore, the decision of the High Court was incorrect. Thus appeal was allowed and the order of the High Court was set aside.

It shows that in order that a person may be regarded as workman within the meaning of this Act following conditions must be fulfilled :

(a) The person concerned must be in the employment regular or otherwise.

(b) The person concerned to be a workman must be a railway servant as defined in clause (34) of Section 2 of the Railways Act, 1989, but persons who are permanently employed in administrative, direct or sub-divisional office of a railway are excluded from the definition of the workman. The persons who are railway servants but are not employed in any such capacity as is specified in Schedule II are also excluded from the definition of workman.

(c) The person concerned must be employed in any such capacity as specified in Schedule II.

(d) There must be a contract of employment between the person concerned and the employer. It is immaterial 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.

(e) The person concerned must not be a member of the Armed Forces of the Union.

In *Radhamony* v. *Secretary, Deptt. of Home Affairs*,[47] it has been observed that Section (2) (1) (n) read with Schedule II (XXV) would make it clear that the driver of a vehicle comes under the category of workmen under the Act. This is irrespective of the position

46. 2003 SCC (L&S) 1234.
47. (1995) I LLJ 376 (Kerala).

whether he is a driver of the Govt. vehicle or not. Thus deceased driver was held to be workman within the meaning of the Act.

It is not necessary for an employee to whom the provisions of the Bombay Shops and Establishments Act, 1948 applies to prove that he is a workman within the meaning of W.C. Act because Section 38-A itself contains a deeming provision.[48]

In *Om Prakash Batish* v. *Ranjit* alias *Ranbir Kaur and others,*[49] the appellant was the owner of a residential building which was situated by the side of an industrial establishment. The predecessor-in-interest of the respondents, Ram Lal suffered an accident coming in contact with a high tension electrical wire passing over the roof of the said M/s Chandrika Textiles.

The Commissioner held that the application for compensation was not maintainable as the deceased Ram Lal was not workman on the relevant date. The respondents preferred an appeal before the High Court in terms of Section 30 of the Act. The High Court proceeded on the basis that although an appeal under Section 30 of the Act lies only on substantial questions of law, however, misreading and misappreciation of evidence would also give rise to the one. Keeping in view the entire evidence the High Court viewed that deceased Ram Lal was employed with O.P. Batish and the accident occurred in the premises of O. P. Batish. Consequently a sum of Rs. 1,66,369.50 paise was awarded in favour of the respondents and the appellant was also liable to pay penalty of 50% of the said amount, *i.e.*, Rs. 83,184.76 paise.

Against the order of the High Court appeal was filed before the Supreme Court. The Supreme Court considered the definition of "workman" as provided in Section 2 (1) (n), as it stood on the date of accident and held that the ingredients of the said provisions are ; (i) the workman must not be employed as a casual workman ; (ii) his employment must be in connection with the employer's trade and business.

The Court placed reliance on record that the words beginning from "other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business" have been omitted by Act 46 of 2000. The workman in the present case was employed for a limited period for carrying out repair works in a residential house. The same does not, thus, answer the description of a workman as contained in the provisions of the Act. The Supreme Court observed, "we must also bear in mind that the very fact that the Act was amended is itself a pointer to show that Parliament intended to avoid a mischief which was prevailing. Applying the principles of mischief rule (*Heydon* case),[50] it must be held that prior to the amendment of the definition, the category of workman to which Ram Lal belonged did not come within the purview of the provisions of the Workmen's Compensation Act."

A bare reading of Section 2 (1) (n) of the Workmen's Compensation Act shows that the expression "workman" as defined in the Act does not cover a casual worker. There was also no definite material adduced to show that the claimant was employed for the purposes of the employer's trade or business.[51]

It must be kept in mind that amending Act No. 22 of 1984 has omitted the words "on monthly wages not exceeding one thousand rupees" with effect from 1.7.1984 which in

48. *Vasudev Anant Kulkarni* v. *Executive Engineer, Maharashtra State Electricity Board,* (1995) I LLJ 496.
49. (2009) 1 SCC (L&S) 136.
50. Heydon's case (1584) 3 Co. Rep. 7a : 76 ER 637 relied on.
51. *Central Mine Planning & Design Institute Ltd.* v. *Rampu Pasi and another,* 2006 SCC (L&S) 244.

consequence makes all persons employed in any such capacity as is specified in Schedule II workmen now irrespective of their wages. Prior to this amendment the persons although employed in any such capacity as is specified in Schedule II but who were getting monthly wages exceeding one thousand rupees were excluded from the definition of workman as contained in the Act.

It has been provided that 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.

The power has now been vested in the Central Government or the State Government to add more occupations to Schedule II if it is satisfied that the particular occupation is a hazardous occupation. For doing so the State Government is required to give three months' notice in the Official Gazette of its intention to do so and the provisions of this Act shall thereupon apply within the State to such classes of persons. Provided that in making such addition the State Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.[52]

It may be concludingly remarked that a person to be workman within the meaning of this Act, he has to prove that he fulfils the conditions as specified in Section 2 (1) (n) of the Workmen's Compensation Act now newly inserted definition of employee in Section 2 (1) (dd) and then he is eligible to claim compensation if he sustains any injury caused by accident arising out of and in the course of his employment and not otherwise.

(5) Employer.—It includes any body 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 workman has entered into a contract of service of apprenticeship, means such other person while the employee is working for him.[53]

It has been observed that the definition of the word 'employer' as contained in Section 2(1) (e) of the Act is not exhaustive. Even where the State Government was constructing a project of a Municipal Board, it would be liable to an injured employee who received injuries while he was engaged in work. Whether the Government is entitled to reimburse itself from the principal is another matter.[54]

It may be pointed out that the word 'employer' means any person who gives employment to any person. It includes not only natural persons, body of persons but legal artificial person. It also includes the managing agent of the employer or a legal representative of a deceased employer. When a master lends or lets on hire the services of his servant or apprentice to another person, the latter alone would be the employer so long as the workman is working for him.

In *Krishna Aiyer* v. *The Superintending Engineer, P.W.D., Madras,*[55] the private contractor doing government work hired government lorries with drivers at agreed rates, was held to be the employer of the drivers.

In *Zila Sahkari Kendriya Bank* v. *Shahzadi Begum and others,*[56] it was undisputed fact that when the accident took place the deceased driver was driving the jeep on election duty and the jeep was requisitioned under the authority of Distt. Election Officer. The question,

52. The Workmen's Compensation Act, 1923, Section 2(3), as amended in 1995.
53. The Employees' Compensation Act, Section 2(1) (e).
54. *Municipal Board, Almora* v. *Jasod Singh,* AIR 1960 All. 648.
55. AIR 1949 Mad 427.
56. (2007) 1 SCC (L&S) 525.

for decision was whether the owner of the jeep the cooperative bank or the requisitioning authority was liable for compensation under the W.C. Act.

The Supreme Court considered the definition of "employer" as contained in Section 2 (1) (e) and observed that the term "employer" has been defined under the Act. However, the term 'employee' has not been defined in the Act. The definition of 'employer', therefore, embraces within the fold not only a person who employs another either permanently or on temporary basis but also those who were in control of the workman temporarily lent or let on hire to them by the person with whom the workman has entered into a contract of service. It is, therefore, a broad definition.

It has been found as of fact by the Commissioner that the deceased was under the complete control of the requisitioning authority. The employer, thus, would be the requisitioning authority, namely, the State of M.P. It was held, therefore, that the requisitioning authority is liable to pay the amount of compensation. Although the State of M.P. is not a party, Respondent 2 was its employee and a jeep was requisitioned under the authority of District Election Officer, interest of justice would be subserved if the appellant is directed to be reimbursed in respect of the amount which has already been deposited by him in terms of the order of the Commissioner.

(6) Managing Agent.—Section 2 (1) (f) defines managing agent to mean 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. It has been held that the Chief Engineer of the P.W.D. who manages the department on behalf of government is managing agent of the government.[57] It has been observed in *Raghunath Sahai* v. *Sarup Singh*[58] that Section 2 (1) (f) of the Workmen's Compensation Act, contemplates two modes of constituting a managing agent—by appointment or by just one acting as a representative. The definition excludes an individual manager subordinate to the employer. 'Subordinate' means subordinate in law and not in fact. It was held that the appellant, as an uncle-in-law of the owner of the car Smt. Kampa Devi, may not in fact be subordinate to her and may be acting on his own initiative, but as an individual manager he is in law subordinate to the employer. Therefore he was not the managing agent of the employer as defined in Section 2 (1) (f) of the Act, and no order of compensation could be made against him. His appeal was allowed and the order awarding compensation against him was set aside.

(7) Minor.—Means a person who has not attained the age of 18 years.[59]

(8) Partial Disablement.—It has been defined under Section 2 (1) (g) to mean where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of his accident resulting in the disablement, and, where the disablement is of permanent nature, such disablement as reduces the 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.

It may be pointed out that when an accident occurs and the workman sustains injury, it results into loss of earning capacity of that workman. Such condition of incapacity of doing work is called disablement. If the earning capacity of a workman is reduced by the

57. P.W.D. v. *Kaunsa*, 1966 (12) FLR 135.
58. 1961 (3) FLR 445, 1962 (1) LLJ 19.
59. The Employees' Compensation Act, 1923, Section 2(1) (ff).

disablement merely in the particular employment in which he was engaged at the time of his accident, it is known as partial disablement of temporary nature, on the other hand if the earning capacity of a workman is reduced as a result of disablement in every employment which he was capable of undertaking at the time of the accident, it is known as partial disablement of permanent nature. Thus the distinguishing feature between the two is that in temporary partial disablement the earning capacity of a workman is reduced in the particular employment in which he was engaged when the accident took place but in permanent partial disablement the earning capacity of a workman is reduced in every employment which he was capable to undertake at the time of the accident. It has been expressly provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement. There are 48 injuries specified in Part II of Schedule I such as loss of one eye, without complications, the other being normal, loss of thumb etc.

In *Lipton (India) Ltd.* v . *Gokul Chandra Mondal*,[60] where Gokul Chandra Mondal, workman in the wage group of Rs. 300-400 per month under Lipton (India) Ltd., sustained an injury in the left eye by the fall of iron particles with the consequent loss of vision in an accident arising out of and in the course of employment. He filed an application before the Commissioner claiming a sum of Rs. 3780 as compensation at the rate of 30% loss of his earning capacity. The appellant denied permanent partial disablement because the workman remained disabled only for 14 days and thereafter he resumed his duties. The Commissioner after considering evidence adduced by both the parties including medical evidence came to the conclusion that the workman has sustained permanent partial disability in the left eye and so the workman was entitled to compensation at the rate of 30% loss of his earning capacity as fixed by item No. 26 of Part II of the First Schedule overruling the contention of the appellant that item 26 was not applicable and that compensation was to be determined under Section 4 (1) (c) (ii) and consequently he directed payment to him by the appellant of the sum of Rs. 3780/-. In appeal the High Court of Calcutta confirmed the view taken by the Commissioner and observed that we are unable to accept the contention that unless there is complete loss of vision of one eye item 26 is not attracted. Item 26 only refers to loss of vision of one eye. Loss of vision may be either total or partial. There is nothing in item 26 which excludes partial loss of vision. In a welfare legislation if any particular provision is capable of two interpretations, the one that is more favourable to the persons for whose benefit the legislation has been made should be adopted. There can be no doubt that partial loss of vision of one eye comes within the purview of item 26.[61]

(9) Total Disablement.—It has been defined to mean 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 of Schedule I where aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred percent or more.[62]

The analysis of the definition will show that total disablement may be of two kinds, first temporary total disablement and secondly, permanent total disablement. In temporary

60. (1982) I LLJ 255 (Cal).
61. (1982) I LLJ 255; *Raghuraj Singh* v. *Eastern Rly.*, (1967) LLJ 68 (Alld) followed.
62. Employees' Compensation Act, 1923, Section 2(1) (i).

total disablement the earning capacity of an employee is lost for a temporary period and in permanent total disablement the earning capacity of a workman is lost for all time or for ever. Of course, the earning capacity of a workman is lost either for temporary period or for ever with regard to all work which he was capable of performing at the time of the accident resulting in such disablement. It has been expressly provided that in total disablement hundred percent earning capacity is lost as a result of one injury or as a result of two or more injuries. The definition makes it clear 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 of Schedule I where 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. Thus in total disablement there are two main features. First, the employee becomes incompetent for all work which he was capable of performing at the time of the accident resulting in such disablement; Secondly, the loss of earning capacity of such workman is hundred percent or more.

Reading the definition of partial disablement and total disablement together it would show that in the case of scheduled injuries disablement is partial or total. Difficulty arises wholly in the case of non-scheduled injuries. Both total and partial disablement has reference to earning capacity. In the definition of partial disablement there is direct reference to the earning capacity of the employee while in the case of total disablement it is referred to in the case of scheduled injuries. Moreover, the underlying purpose of the Act is to make some provision for an employee who is disabled for earning by work. If there is such incapacity that he cannot get employment for any work he can undertake it would be total permanent disability. The words 'incapacitates a employee for all work' therefore cannot mean any and every work which he may do but mean such work as is reasonably capable of being sold in the market. In other words they do not mean "incapacitate to work." The words do not have reference to physical incapacity.

Loss of earning capacity has to be determined by taking into account the diminution or destruction of physical capacity as disclosed by the medical evidence, and then it has to be seen to what extent such diminution or destruction should reasonably be taken to have disabled the affected employee from performing the duties which a workman of his class ordinarily performs. The medical evidence as to physical capacity is an important factor in the assessment of loss of earning capacity. In the absence of medical evidence, by doctors examining the claimant on behalf of either side, it is difficult to measure the physical disability of the claimant and thus also the diminution or otherwise of the earning capacity.[63]

The certificate of a medical expert can only say what the injury is, its effect temporary or total on the limb and to an extent the physical incapacity of the man. It is however, for the court to find having regard to the evidence before it whether the workman has suffered partial or total disablement. The court must take into account the nature of the injury, the nature of the work which the workman was capable of undertaking and its availability to him, in this connection the employer's willingness to employ him in any other alternative employment may have relevance.[64]

It has been observed that total disablement is not established merely by proof of incapacity on the part of workman for the performance of his duties which he was doing at

63. *Bengal Coal Co. Ltd.* v. *Barhan Gope*, (1983) II LLJ 86 (Cal.); *Calcutta Licensed Measures Bengal Chambers of Commerce* v. *Mohd. Hussain*, AIR 1969 Cal 378 followed.
64. *Ahmad Abdul* v. *H. K. Sehgal*, 66 Bom. LR 450.

the time of the accident. What should be established is that there was incapacity for every other kinds of work which he was capable of performing at the time of the accident, whatever may be the nature of that work and whatever may be the income derivable therefrom.

Total disablement is established only where the earning capacity becomes totally inexistent and no medium of it remains. The meaning of the words 'incapacitates workman for all work' in clause (1) of Section 2 (1) is that the incapacity is not mere physical incapacity but incapacity to secure employment produced by the injury which caused that disablement. A workman losing the right hand is not precluded from claiming higher compensation on the basis of total disablement. He can take the plea of permanent total disablement.[65]

It has been observed by the Supreme Court in *Pratap Narain Singh Deo* v. *Shrinivas Sobata and another*,[66] that the expression total disablement has been defined ir Section 2 (1) of the Act. It has not been disputed that the injury was of such a nature as to cause permanent disablement to the respondent, and that the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows :

> "the injured workman in this case is carpenter by profession—by loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only."

This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to item 3 of Part II of Schedule I, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 4-1/2" below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established. Since the carpenter cannot work with one hand disablement caused to the workman is total and not partial.

In *V. Jayaraj* v. *T. P. Transport Corpn. Ltd.*,[67] where a conductor working in State owned transport corporation lost his hearing capacity due to shock received by him in an accident in the bus in which he was working. He claimed compensation under item 6 in Part I of Schedule I of the Workmen's Compensation Act. The Commissioner fixed the loss of earning capacity at 20% even though the medical certificate showed that there is 100% sensorineural hearing loss on right ear and 73.5% hearing loss on the 'eft ear. Hence the appeal under Section 30 of the Workmen's Compensation Act was filed.

It was held that loss of earning capacity has to be calculated in terms of permanent partial disability which the workman has been subjected to. The fact that the workman is continued in the employment and gets old wages will not absolve the employer from paying the compensation. The employer may continue him in the old post and give him old wages by way of grace, but that would not disentitle the employee to claim compensation. It was observed that fixing of loss of earning capacity at 20% by the Commissioner cannot be

65. *Managing Director, Canara Public Conveyance Co. Ltd.* v. *Usman Khan*, 1965 (II) FLR 248. .
66. AIR 1976 SC 222.
67. (1989) II LLJ 38 (Mad).

upheld. Having regard to the fact that the appellant had lost the hearing in the right ear at 100% and in the left ear at 73.5%, the loss of earning capacity, could be fixed at 60% which will come to Rs. 17640. Thus allowing the appeal the amount of compensation was enhanced by the High Court.

In *The Management of Sree Lalithambika Enterprises* v. *S. Kailasam*,[68] it has been held that loss of earning capacity is not confined to the present capacity. Merely because the employer pays the same salary to the workman, it cannot be stated that there is no loss of earning capacity. If the law were to be so, the employer can easily evade the provisions of the Act by continuing the employment on the same terms as were enjoyed by the workman prior to the accident. Nor again can it be said that if in future the workman is compelled to seek employment at reduced wages, he can claim compensation. That would result in the negation of the beneficial provisions of the Act. Further, if the management winds up its business, the workman will be in the lurch because no person will give employment to a person who had suffered the injury of loss of four fingers in the left hand. It was also held that accident taking place on a holiday in the course of cleaning the machinery is an accident in the course and out of employment.

In *Samir U. Parikh* v. *Sikander Zahiruddin*,[69] the question before the Court for decision was whether Workmen's Compensation Commissioner has power to assess loss of earning capacity more than what is provided in the Schedule against a particular injury. In this case the Commissioner determined the actual loss of earning capacity at 80 per cent even though the Schedule fixed it at 40 percent. The Bombay High Court held that the percentage of the loss of earning capacity stated against the injuries in Part II of Schedule I of the Act is only the minimum to be presumed in each case and the applicant is entitled to prove that the loss of earning capacity was more than the minimum so prescribed. The Commissioner is, therefore, empowered to come to his own conclusion with regard to the loss of earning capacity in each case on the basis of the evidence led before him. Hence the contention that the percentage of loss of earning capacity mentioned against the injuries in the Schedule is the maximum, that the Commissioner can presume in every case that he has no power to assess the loss over and above, it is not correct.

It is never necessary that in an accident the workman would not sustain injuries which have not been mentioned in the Schedule. In such cases the question of loss of earning capacity would be important and mode of determination must be known to all concerned to avoid injustice in such a situation. Naturally the Commissioner should depend upon medical evidence to that effect.

In *New India Assurance Co. Ltd.* v. *Kotam Appa Rao*,[70] where the disability certificate notes the extent of disability at 50% it is also noted, "Partial Permanent disability. He cannot drive the vehicle". It is clear from this that the workman cannot do any more work as driver of motor vehicles. The permanent partial disablement suffered by the workman is not by virtue of an injury specified in Part II of Schedule I to the Act. In view of the observation of the doctor that the driver would not be able to drive vehicles, the Commissioner could have held that the disablement in the instant case was total in view of the definition of total disablement in Section 2 (1) of the Act.

68. (1988) I LLJ 63 (Mad.).
69. (1984) II LLJ 90 (Bom). ; see also *Dredging Corpn. of India Ltd.* v. *P. K. Bhattacharjee*, (2014) 1 SCC (L & S) 757.
70. (1995) II LLJ 436 (A. P.); *National Insurance Co. Ltd.* v. *Mohd. Saleem Khan*, (1992) II LLJ 377. relied on.

It would seem that if the Commissioner is empowered to presume in each case on the basis of evidence led before him, loss of earning capacity more than what is mentioned in the Schedule the cases of partial disablement may be converted into total disablement if the presumed loss amounts to hundred percent. In court's view the due care and precaution must be taken in cases where the Commissioner deviates from the Schedule.

(10) Qualified Medical Practitioner.—Section 2 (1) (i) defines it to mean any person registered under any Central Act, or an Act of the legislature of a state providing for the maintenance of a register of medical practitioner, or, any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act.

(11) Seaman.—It has been defined to mean any person forming any part of the crew of any ship but does not include the master of the ship.[71]

(12) Wages.— Section 2 (1) (m) of the Act provides that wages includes 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 employee 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.

In addition to remuneration, the expression 'wages' would include any privilege or benefit capable of being estimated in money. It would not, however, include travelling allowance or the value of travelling concession or a contribution paid by the employer towards any pension or provident fund, or a sum paid to a workman to cover any special expenses entailed by him by the nature of his employment. Dearness allowance is covered by the definition of wages as it is attached continuously to the wages with a view to enhancing it to meet the rise in the cost of living. The amenities of free quarters and water are privileges and benefits enjoyed by a workman employed in a factory and as such should be covered by the definition.[72]

In Industrial Employment, however, bonus can no longer be regarded as merely a gratuitous payment by the employer. The observation of the Supreme Court in *Meenakshi Mills Ltd*,.[73] case would suggest that the claim for bonus is a matter of right of the workman and it is not dependent upon the willingness or otherwise of the employer to pay the same. If it is matter of right, then we do not see why it is not a 'benefit' within clause (m) of Section 2 (1) of the Workmen's Compensation Act. While construing these words, we must bear the purpose for enacting this provision in mind. Evidently, it was intended as a provision for workmen who suffered employment injuries and who would be rendered without any means of sustenance if they could not make the same earnings as before or fell completely out of employment. Even if it was a matter of some doubt, we would have been bound to construe the words liberally in order to advance the purpose of the Act. The word 'benefit' must be interpreted to mean all such benefits as a workman is entitled to have as of right.

Bonus is paid in most of the cases today on the collective efficiency of the employees as a whole, and it is not dependent upon the efficiency of any individual employee. Even apart from this merely because to some extent, it may depend upon the efficiency of a particular employee and may also depend upon the employer making some profit, it is impossible to

71. Employees' Compensation Act, 1923, Section 2 (1) (k).
72. *Godawari Sugar Mills Ltd.* v. *Shakuntala*, AIR 1948 Bom. 158.
73. *The Sree Meenakshi Mills Ltd.* v. *Their Workmen*, AIR 1958 SC 153.

sustain the contention that it is not a benefit which is capable of being estimated in money. Even the future earnings of an individual are difficult of being estimated exactly, because his being able to work continuously would be a matter of assumption. Section 5 of the Act has provided a method for the calculation of wages, and the principle would apply to the earning of bonus. It is well known that in trades and industries over and above the fixed wages, an employee or agent is paid commission on sales and the employer cannot suggest that the commission is not part of the earning of the employee or agent.

After observing the above in regard to expression wages and the question whether bonus may be included in wages, the Court held that the Commissioner was right in including bonus while computing the compensation payable to the workmen. Thus for the purposes of this Act bonus is included in the expression wages as defined by the Act.[74] In *Bharat Heavy Plate and Vessels Ltd.* v. *Commissioner of Workmen's Compensation and others*,[75] the Court observed that the definition of wages is comprehensive one and it includes overtime allowance drawn by the workman. Thus the expression 'wages' used in the Act includes any privilege or benefit which may be estimated in terms of money but it does not include a travelling allowance, or the value of travelling concession or a contribution made 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.

(13) Workman.—[76][* * *].

5. Employer's Liability for compensation.—The Act makes provision for payment of compensation technically known as employees' compensation in the event of a personal injury caused to a employee by accident arising out of and in the course of his employment. The question to be dealt with here is as to what are the conditions under which the employer is liable to pay compensation or what are the conditions under which an employee is entitled,to compensation and what are defences, if any which may be taken in order to avoid liability to pay compensation by the employer. Section 3 of the Act makes following provisions in this regard :—

(1) If a 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 workman for a period exceeding [three] days ;

(b) in respect of any injury, not resulting in death [or permanent total disablement][77] 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 wilful 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

74. *Maharashtra Sugar Mills Ltd.* v. *Astru Jaswant Tribhuvan*, 67 Bom. LR 893 (HC) : AIR 1966 Bom. 240. *K. R. Jagdesan* v. *Indian Cromp Rubber Factory*, (1997) II LLJ 536 (Kerala).
75. (1983) I LLJ 477 (Alld).
76. The definition of "workman" has been omitted by the Workmen's Compensation (Amendment) Act, 2009 (w.e.f. 18-1-2010).
77. The W. C. (Amendment) Act, 1995 w. e. f. 15.9.1995.

(iii) the wilful 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 employees.

(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 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 sub-section 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.

(2-A) 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 compensation in such proportion as the Commissioner, may, in the circumstances, deem just.

It may be noted that for sub-section (3) the following sub-section has been substituted by the W. C. (Amendment) Act, 1995 with a view to empower Central Government as well to add to Schedule.

"(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

(i) The employee must have sustained personal injury.—The compensation is payable in cases of personal injury caused to the employee by accident arising out of and in the course of his employment. The expression 'personal injury' had not been defined. Personal injury is a bodily injury or a physical injury to which would also include abnormal mental conditions. Personal injury includes any harmful change in the body. It need not involve physical trauma, but may include such injuries as disease, sunstroke, nervous collapse, traumatic neurosis, hysterical paralysis, and neurasthenia.[78]

The expression 'personal injury' does not only mean physical injury but it may include a mental strain or mental disbalance. In *Indian News Chronicle Ltd.* v. *Luis Lazarus*,[79] where a workman was under duty as an electrician to go to heating room and from there to a cooling room frequently where the temperature was kept very low. While on duty the workman went to the cooling room and thereafter fell ill and subsequently died of pneumonia. The court held that the word 'injury' in Section 3 of the Workmen's Compensation Act does not mean mere physical injury but may include a strain which causes a chill. The death of the workman was due to personal injury.

The expression 'personal injury' is wider than bodily injury. It includes all physical injuries. It also includes all mental strains or mental tension or mental illness or psychological diseases, provided such mental conditions have arisen by accidents arising out of and in the course of his employment.

Similarly, a death from heat stroke has also been held to be personal injury entitling the dependant to compensation.[80] What is important is that the result of injury must be such as to either kill a workman or partially or totally incapacitate him from work for a period exceeding three days.[81] Thus if an injury is sustained whether physical or mental by accident arising out of and in the course of his employment the workman becomes entitled to compensation, provided the injury results in either death of the workman or it results into his partial or total disablement for a period exceeding a period of three days. If it results into death of the workman the compensation becomes payable to his dependants.

Injury caused to his personality which may affect his earning capacity is personal injury and it does not only mean physical injury because personality does not only mean physical appearance or bodily appearance but personality means the sum total of traits of his behaviour including mental and psychological traits. Thus, an injury which reduces his capacity to earn is personal injury whether it is physical or otherwise. A workman becomes entitled to compensation if it is caused to him by an accident arising out of and in the course of his employment provided he is disabled for a period exceeding three days.[82]

(ii) The personal injury must have been caused by an accident.—The second essential requirement for making an employee entitled to compensation is that the personal injury must have been caused by an accident arising out of and in the course of his employment. The expression 'accident' has also not been defined under the provisions of the Act. But it generally means some unexpected event happening without design, even if it be found that there was negligence on the part of the workman concerned. If the work in which the workman is engaged is within his employment; the question of negligence, great or small, is irrelevant. If the workman is doing an act within the scope of his employment, no amount of

78. Larson, A., The Law of Workman's Compensation, Vol. I., p. 613.
79. AIR 1951 Punj. 102.
80. Mrs. *Santan Fernandez* v. *B. P. (India) Ltd.*, 58 Bom. LR 149.
81. G. M. Kothari, A Study of Industrial Law, p. 509.
82. *Lipton (India) Ltd.* v. *Gokul Chandra Mondal*, (1982) I LLJ 255 (Cal).

negligence on his part can change his action into a non-employment job, so as to exempt the employer from liability to pay compensation. Where accident is caused to a motor bus, which dashed against a tree as a result of its being driven by the driver rashly and negligently resulting in injuries to the driver leading to his death, it must be held that his death is caused by an accident, and the employer would be liable to pay compensation under Section 3 (1) of the Act. The fact that the driver was negligent or that he committed a breach of the provisions of the Motor Vehicles Act or the rules thereunder while driving the bus, are not factors which would affect the rights to claim compensation.[83]

It is settled law that the term 'accident' means some unexpected event happening without design, *i.e.*, an unlooked for mishap or untoward event. Under Section 3 (1) of the Act, the injury must not only arise 'in the course of' but also 'out of' the employment. Proof of the one without the other will not bring a case within the Act. What has to be considered is the employment as such—its nature, its conditions, its obligations and its incidents. It must appear that there is some causative connection between the injury and something peculiar to the employment. The court is directed to look at what has happened proximately, and not to search for causes or conditions lying behind, as would be the case if negligence on the part of the employer has to be established. The employee must in order to bring his case within the Act show that he was at the time of the injury engaged in the employer's business or in furthering that business and was not doing something for his own benefit or accommodation. A workman will be acting in the course of his employment when he travels in the conveyance provided by his employer."[84]

It has been observed that the word 'accident' is used in the popular and ordinary sense and means a mishap or an untoward event not expected or designed. What the Act really intends to convey is what might be expressed as an accidental injury. It includes not only such occurrences such as collisions, tripping over floor obstacles, falls of roofs, but also less obvious ones causing injury, *e.g.*, strain which causes repture, exposure to a draught causing chill, exertion in stokehold causing applexy and shock causing neurasthenia. But the common factor in all these cases is some concrete happening at a definite point of time and incapacity resulting from the happening. Since Section 3 provides that the accident must arise out of and in the course of the workman's employment, the accident in order to give rise to a claim of compensation must have some casual relation to the workman's employment and must be due to a risk incidental to that employment. Further it would not be necessary that the workman should be able to locate the accident in order to succeed his claim under Section 3.[85]

In *Vai Diva Kaluji* v. *Silver Cotton Mills Ltd.*,[86] where a workman had worked for 8 hours on a hot day and died. The Bombay High Court held that the death must have been accelerated by the strain of the work. When he died due to heart failure within six hours after his collapse the court came to the conclusion that the death must have been caused in course of his employment. Similarly in *Jayaram Motor Service* v. *Pitchammal*,[87] where a night watchman had died 90 minutes after return from work the High Court of Madras held that if a workman died even after leaving the work as a result of stress and strain which he suffered earlier during the period of work a connection is established between the

83. *Padam Debi* v. *Raghunath Ray*, AIR 1960 Orissa 207.
84. *Janki Ammal* v. *Divisional Engineer, High Ways, Kozhikode*, (1956) 2 MLJ 19.
85. *Bai Shakri* v. *New Manekchowk Mills Co.*, AIR 1961 Guj. 34.
86. (1956) I LLJ 740 (Bom).
87. (1982) 2 LLJ 149 (Mad.).

employment and his death. Though the death occurred one and half hour after the employee ceased to do his work it can only be said that the stress and strain sustained by him during the course of his work had contributed to his death.

In *United India Insurance Co.* v. *C. S. Gopalakrishnan*,[88] where a workman, a bus conductor died of heart attack while sleeping in the vehicle, after a strenuous schedule. The bus crew had to sleep in the vehicle at the halting place where no shelter was provided for the bus or for the crew.

It was held that though there should be casual connection between the employment and the death in the unexpected way, in order to bring the accident within Section 3, it is not necessary that it should be established that the workman died as a result of exceptional strain or some exceptional work that he did on the day in question. If the nature of the work and hours of work caused great strain to the employee and that strain caused the unexpected death, it can be said that the workman died as a result of accident which has arisen in the course of his employment. Since the minor child of the deceased workman has not been made a party to the appeal which is a fatal defect, on that ground also the appeal must fail.

In *Sungarbai* v. *General Manager, Ordnance Factory, Jabalpur*,[89] where the court was required to construe Section 3 (1) of the Act. The leading judgment was delivered by Shri G. P. Singh, J. It was held that an accident means an untoward mishap which is not expected and designed by the workman and an injury would mean any physiological injury, external or internal. The words 'arising out of an employment' mean the injury suffered during the course of employment from risk incidental to duties of service, which unless so engaged the workman would not have otherwise suffered. There should be casual relationship between accident and employment. A number of cases were considered including that the Supreme Court and the High Courts of Bombay and Gujarat and the English Authorities. Their Lordships overruled the case of *Parwatibai* v. *Raj Kumar Mills*,[90] and held that it was necessary to prove exceptional strain of work causing the heart attack. Shri G.P. Singh, J., summarised his conclusions as follows :

(a) 'Accident' means an untoward mishap which is not expected or designed by the workman and injury means physiological injury.

(b) 'Accident' and 'injury' are distinct in cases where accident is an event happening internally to a man, *e.g.*, when a workman falls from a ladder and suffers injury. But accident may be an event happening internally to a man and in such cases 'accident' and 'injury' coincide. Such cases are illustrated by bursting of an aneurism, failure of heart and the like while the workman is doing his normal work.

(c) Physiological injury suffered by a workman due mainly to the progress of a disease unconnected with employment, may amount to an injury arising out of and in the course of employment if the work which the workman was doing at the time of the occurrence of the injury contributed to its occurrence.

(d) The connection between the injury and the employment may be furnished by ordinary strain of ordinary work if the strain did in fact contribute to or accelerate or hasten the injury.

88. (1989) II LLJ 30 (Kerala).
89. 1976 MP LJ 356.
90. (1959) II LLJ 65.

(e) The burden to prove the connection of employment with the injury is on the applicant, but he is entitled to succeed if on a balance of probabilities a reasonable man might hold that the more probable a conclusion is that there was a connection.

In *National Mineral Development Corpn.* v. *Bindi Bai*,[91] where one Sukhru Ram Nagesh, working in the second shift complained of chest pain. Thereafter he suffered a heart attack and fell down about 150 feet above the ground. He was declared dead. The respondent claimed compensation worth Rs. 78000/-. The Court held that the cause of heart attack was physical stress and strain sustained by the deceased while working at the height of 150 feet on the conveyer. Thus the causal link is provided for the event of death.

In *Pratap Narain Singh Deo* v. *Shrinivas Sabata and another*,[92] where Pratap Narain Singh Deo, was a proprietor of two cinema halls in Jaipur, District Koraput Orissa. One Srinivas Sabata was working as a carpenter for doing some ornamental work in a cinema hall of the appellant when he fell down, and suffered injuries resulting in the amputation of his left arm from elbow. He served a notice on the appellant demanding payment of compensation as his regular employee. The appellant sent a reply stating that the respondent was a casual contractor, and that the accident has taken place solely because of his own negligence. The respondent then made a personal approach for obtaining the compensation, but to no avail. He therefore made an application to the Commissioner for Workmen's Compensation respondent No. 2, stating that he was a regular employee of the appellant, his wages were rupees 120 per mensem he had suffered the injury in the course of his employment and was entitled to compensation under the Workmen's Compensation Act, 1923.

The Commissioner held that the injury had resulted in the amputation of the left arm of the respondent above the elbow. The respondent was a carpenter by profession and "by loss of his left hand above the elbow he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only". He therefore adjudged him to have lost "100% of his earning capacity". On that basis, he calculated the amount of compensation at rupees 9,800 and ordered payment of penalty to the extent of 50% together with interest at 6% per annum, making a total of rupees 15,092.

The appellant felt aggrieved and filed a writ petition in the High Court of Orissa, but it was dismissed summarily on October 10, 1969, he, therefore, filed an appeal in the Supreme Court by special leave.

The Supreme Court held that Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under Section 3 (5) because of the institution of a suit in a civil court for damages in respect of the injury, against the employer or any other person. The employer, therefore, became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by accident which admittedly arose out of and in the course of the employment. Consequently the appeal was dismissed by the Supreme Court.

(iii) *The accident must have arisen out of and in the course of his employment.*—The most important essential requirement is that an accident which causes personal injury to the

91. (1998) I LLJ 85 (MP).
92. AIR 1976 SC 222.

workman must arise out of and in the course of his employment. It has been very correctly observed that the phrase "arising out of and in the course of the employment" is taken from the English Act originally appearing in the Act of 1897. It has been adopted in the American and Dominion Act. It also occurs in New Zealand Act, and has the same meaning as that of the English Act. There is hardly any general principle which can be evolved to explain and define the phrase 'arising out of employment', but attempts have been made to explain it by classification, *viz.*, to the nature, condition, obligations and incidents of the employment. Where in a given case, an accident arises on the one hand out of the injured person's employment although he has conducted himself in it carelessly or improperly, on the other hand, arises not out of his employment but out of the fact that he has outside the scope of it, or has added to it some extraneous peril of his own making or has temporarily suspended it while he pursues some excuses of his own, or has quitted it altogether, are all questions which, after as they arise, are susceptible of different answers by different minds as explained by several well-known judges and jurists, and are always questions of nicety. So it is here, I doubt if any universal test can be found. Analogies, not always so close as they seem to be at first sight, are often resorted to, but in the last analysis each case is decided on its own facts."

There is, however, in the opinion of Lord Summer in the case *Lancashire and Yorkshire Railway Co.* v. *Heighley*[93] one test, which is always at any rate applicable, is this : " was it part of the injured person's employment of hazard, to suffer or to do which caused his injury ? If yes, the accident arose out of his employment, if any, it did not". The word 'employment' again is not to be defined in a narrow manner by reference only to the duties of the workman; but the character conditions, incidents and special risks involved in employment would have to be taken into consideration in order to find out whether the accident arose out of and in the course of the workman's employment.[94]

It has been held in *Ravuri Kotayya* v. *Dasari Negavardhanamma*,[95] that following principles can be applied in order to determine whether an accident has arisen out of and in the course of employment of the workman or not :

(1) That the workman was in fact employed on, or performing the duties of his employment at the time of the accident;

(2) That the accident occurred at or about the place where he was performing these duties, or where the performance of these duties required him to be present:

(3) That the immediate act which led to or resulted in the accident had some form of causal relation with the performance of these duties, and such causal connection could be held to exist if the immediate act which led to the accident is not so remote from the sphere of his duties or the performance thereof, as to be regarded as something foreign to them.

Professor A. Larson has laid down four lines of interpretation of " arising out of employment" which are as under :

(a) Peculiar or increased risk doctrine.—This, in some form or other has in the past been announced by most courts as the controlling rule. Under this doctrine, injury arises out of the employment only when it arises out of a hazard peculiar to or increased by that employment, and not common to people generally. The doctrine in practice has produced many exclusions which are difficult to reconcile with the purposes of compensation

93. (6) 1917 AC 352 (372).
94. *Golden Soap Factory (P) Ltd.* v. *Nakul Chandra Mandal*, 1963 (2) LLJ 580 (HC).
95. AIR 1962 AP 42.

legislation, most conspicuously in the 'street risk' cases and cases of injury by lightening, freezing, sunstroke and the like.

(b) *Actual risk doctrine.*— Under this doctrine, more and more courts are saying "we do not care whether this risk was also common to the public, if in fact it was a risk of this employment". It is more defensible rule than the preceding one, since there is no real statutory basis for insisting upon a peculiar or increased risk, as long as the employment subjected claimant to the actual risk that injured him. One effect is to permit recoveries in most street risk cases and in a much greater proportion to act of God cases.

(c) *Positional Risk Doctrine.*—Few courts have been willing to accept the full implications of the positional risk. That an injury arises out of the employment if it would not have occurred but for the fact that the conditions and obligations of the employment placed claimant in the position where he was injured. However, it is not uncommon for the test to be approved and used in particular situation. This theory supports compensation, for example, in cases of stray bullets, roving lunatics and other situations in which the employment's only connection with the injury is that its obligations place the employee in the particular place at the particular time when he was injured by some neutral force meaning by "neutral" neither personal to the claimant nor distinctly associated with the employment.

(d) *Proximate cause.*—The three preceding lines of interpretation are the ones which figure prominently in modern compensation law. However, the proximate cause test cannot be ignored entirely here, since it appears in some of the older cases and since the test, and the philosophy on which it rests, still occasionally crop up in opinions and tests. The proximate cause test would demand that harms be foreseeable as the hazard of this kind of employment and that the chain of causation be not broken by any independent intervening cause, such as an act of God.

The courts in India also have decided many cases and found that each case must be decided on its own merits. It has been observed in *Bhagubi* v. *General Manager, Central Railway, Bombay,*[96] that there must be causal connection between the accident and the employment in order that the court can say that the accident arose out of the employment of the deceased. The cause contemplated is the proximate cause and not any remote cause. If the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of the peril which he has to face, then the causal connection is established between the accident and the employment. The fact that the employee shares that peril with other members of the public is an irrelevant consideration. The peril which he faces must not be something personal to him, the peril must be incidental to his employment. He must not by his own act add to the peril or extend the peril. Once the peril is established, it is for the employer then to establish either that the peril was brought about by the employee himself, that he added or extended the peril, or that the peril was not a general peril but a peril personal to the employee. Let us see the facts.

The deceased was employed in the Central Railway at a station and he lived in the railway quarters adjoining the railway station. It was found as a fact that the only access for the deceased from his quarters to the railway station was through the compound of the railway quarters. One night the deceased left his quarters a few minutes before midnight in order to join duty and immediately thereafter he was stabbed by some unknown person.

96. AIR 1955 Bom. 105.

There was no evidence that the employee was done to death because some one was interested in killing him. It was held that the accident arose out of the employment.

It has been observed that in order to establish that the person injured was in the course of employment, the first ingredient necessary is that he must have been on duty at the time and must be supposed to do work whether he is doing that work or not, or he was doing some other work is immaterial but if he is supposed to do some work then he would be deemed to be in the course of employment.[97] The ambit and scope of the man's employment has to be looked at in relation to the contract which he made with the employer. The test in fact applicable in such cases is whether it was or was not a part of the injured person's employment to hazard or suffer or do that which caused his death. Where the workman when he met with his death was doing the very thing which he was employed to do the mere fact that he had no right to work in the place where he was when he met his death does not mean that the accident did not arise out of and in the course of the employment and the employer would in such cases be liable to pay compensation under Section 3 of the Act.[98] It has been held that 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 which it was his duty to carry out. Therefore, even when a workman is resting or having his food, or taking his tea or proceeding from the place of his employment to his residence, and an accident occurs, the accident is regarded as arising out of and in the course of the employment.[99]

In *Saurashtra Salt Manufacturing Co.* v. *Bai Valu Raja,*[100] the Supreme Court has explained the maxim 'arising out of and in the course of the employment' where the facts were in short as follows. The workmen employed in that salt manufacturing company while returning home after finishing their work had to go by public path, then through a sandy area in the open public land and finally across a creek through a ferry boat. The workman while crossing the creek in a public ferry boat which capsized due to bad weather was drowned. On a claim for compensation under the provisions of the Workmen's Compensation Act, the Supreme Court considered the circumstances of the case and held :

As a rule, the employment of a workman does not commence until he has reached the place of employment, and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well settled, however, that this is subject to the theory of 'notional extension' of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work.

When a workman is on the public road, or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him.

It was held that it is an error to suppose that the deceased workmen in this case were still in the course of their employment when they were crossing the creek through public

97. *Divisional Superintendent, N.R.* v. *Umrao,* AIR 1960 All. 383.
98. *Bhurangya Coal Co. Ltd.* v. *Sahebjan Mian,* AIR 1956 Pat 229.
99. *Sri Krishna Rice and Flour Mills* v. *Challapalli Chittamma,* 1961 (2) LLJ 260.
100. AIR 1958 SC 881.

ferry boat. The accident which took place resulting in the death of so many workmen, was unfortunate, but, for that accident, the appellant cannot be made liable.

In *Mackinnon Mackenzie and Company (P) Ltd.* v. *Ibrahim Mohd. Issak*,[101] where Sheikh Hussain Ibrahim was employed as a seaman on the ship. He complained of pain in the chest and consulted the doctor who examined him but nothing abnormal could be detected clinically. The medical officer on ship prescribed some medicine for him, and he reported fit for work on the next day. Later on he complained of insomnia and pain in the chest for which the medical officer prescribed sedative tablets. He took the medicine. He was seen near the bridge of the ship at about 2.30 a.m. when the ship was in the Persian Gulf. He was sent back but at 3 a.m. he was seen on the Tween Deck when he told a seaman on duty that he was going to bed, at 6.15 a.m. he was found missing and a search was made, the dead body, was not found. There was no direct evidence of his death.

The Supreme Court held that in order to come within the Workmen's Compensation Act, the injury by accident must arise both out of and in the course of employment. The expression 'in the course of the employment' means in the course of the work which the workman is employed to do and is incidental to it. The words "arising out of employment' are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered. In other words, there must be a causal relationship between the accident and the employment. The expression 'arising out of the employment" is again not confined to the mere nature of the employment. It applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors, the workman is brought within the zone of special danger, the injury would be one which arises 'out of employment'. To put it differently, 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 an added peril by his own imprudent act. In the case of death caused by accident, the burden of proof rests upon the workman to prove that the accident, arose out of the employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief, must necessarily prove it by direct evidence.

The essentials may be inferred when the facts proved justify the inference.

The Supreme Court setting aside the decision of the Bombay High Court in this case held that the Additional Commissioner did not commit any error of law in reaching his finding and the High Court was not justified in reversing it. There was no material for holding that the seaman met with his death on account of an accident which arose out of employment.

The expression 'out of employment' refers to service of the workman and the expression 'in the course of the employment' refers to the duties which are to be performed by the workman while he is in service of the employer. In order to give rise to a claim for compensation both the things must be looked into. The injury sustained by the workman must be by accident which must have occurred while the workman is in the service of the employer and must have been supposed to do his duties at the time when the accident took place and he must be supposed to be there only due to performance of his duties, and not otherwise. In other words, there must be a causal connection between the accident and the employment. If there is no causal relationship between the two the accident cannot be called to have arisen out of and in the course of the employment.

101. AIR 1970 SC 906.

In *Raj Dulari* v. *Superintending Engineer, Punjab State Electricity Board*,[102] where a work-charged employee under the PSEB was engaged in fixing electric wire on either side of a road. A bus belonging to Punjab Road Transport Corporation came to a high speed and dragged the electric wires hanging on the road with the result the pole on which he was working was broken from the middle and he fell down and died instantaneously. The Commissioner dismissed the claim in view that the deceased employee worked beyond the duty hours at his own risk and therefore the death was not in the course of employment. The appeal was filed against the order of the Commissioner.

It was held that if the work had been left at the spot as it was, the result would have been that the wires would have been on the roads causing much more damage. By asking the employee to continue the work even beyond the duty hours the assistant line-man acted with responsibility. If a workman continues to work whether upto the duty hours or beyond on a job directed by his superiors he continues to be on duty and in the course of employment. Therefore the deceased was on duty in the course of his employment when the accident took place and his widow is entitled to compensation.

It has been observed in *Trustees of the Port of Bombay* v. *Yamuna Bai*,[103] that two conditions are required to be satisfied for the application of Section 3 of the Workmen's Compensation Act. First, personal injury must be caused to a workman by accident arising out of his employment, and secondly, it must be caused to him in the course of his employment. While the expression 'in the course of employment' suggests the point of time, the expression 'arising out of his employment' suggests both the time as well as the place of his employment. The words 'arising out of his employment' are certainly wide enough to cover a case where there may not be a direct connection between the injury caused as a result of an accident and the employment of the workman.

In this case a carpenter was employed in workshop in Alexandera Dock in the Port of Bombay along with certain other workmen also besides him. One day while the carpenter was sitting on his table to do his work, a bomb exploded and consequently he sustained injuries and he died later on. It was held that as the place where he was working was a dangerous place by reason of the existence of a bomb, it must be held that the accident resulting in his death arose out of and in the course of his employment and the claim for compensation was sustainable.

It has been observed by the Supreme Court that the expression 'arising out of employment' is not confined to the mere nature of the employment. It applies to employment as such to its nature, its conditions, its obligations, and its incidents. If, by reason of any of those factors, the workman is brought within the zone of special danger the injury would be one which arises out of employment.[104]

In *Shakuntala Chandrakant Shreshthi* v. *Prabhakar Maruti Garvali and another*,[105] the deceased son of the appellant was working as a cleaner in a vehicle belonging to Respondent 1. He was travelling in the said vehicle at night. He suddenly developed chest pain. He was admitted to the Government hospital where the doctor declared him dead. It

102. (1989) II LLJ 132 (Punj. & Har.).
103. AIR 1952 Bom. 382.
104. *Mackinnon Mackenzie and Co. Private Ltd.* v. *Ibrahim Mohd. Issak*, AIR 1970 SC 1906.
105. *Mackinnon Mackenzie and Co. Private Ltd.* v. *Ibrahim Mohd. Issak*, AIR 1970 SC 1906. *Regional Director, ESI Corpn* v. *Francis De Costa*, 1996 SCC (L&S) 1361 ; (2008) 1 SCC (L&S) 964 ; *Mackinnon Mackenzie & Co. (P) Ltd.* v. *Agnes*, AIR 1964 SC 193 ; *G.M., B E S T Undertaking* v. *Ashwini Ademma* v. *Plant Engineeer*, 2006 SCC (L&S) 1166 ; *Jyothi Ademma* v. *Ibrahim Mohd. Issak*, AIR 1970 SC 1906 relied on.

was not disputed that the incident had occurred while the deceased was performing his duties. In autopsy the cause of death was opined as cardiac arrest. No injury on his body was found.

It was observed by the Supreme Court that the injury suffered should be a physiological injury.

An accident may lead to death but that an accident has taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. In case of this nature to prove that accident has taken place, factors which would have to be established, *inter alia*, are :

(i) stress and strain arising during the course of employment;

(ii) nature of employment;

(iii) injury aggravated due to stress and strain.

The deceased was travelling in a vehicle. The same by itself cannot give rise to an inference that the job was strenuous. Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident.

A person may be suffering from a heart attack disease although he may not be aware of the same.

The Commissioner came to the conclusion that the death took place during the course of employment but no evidence has been brought on record to show that it had a causal connection between accident and serious injury so as to fulfil the requirements of the terms "out of employment". A stray statement made by the appellant that the deceased had died while working in the vehicle and stress or strain of the work did not appear to have any foundation. It was held that the ultimate conclusion of the High Court may be correct. The Supreme Court did not interfere with the judgment but directed that in the event any amount has been paid to the appellant the same need not be refunded. The appeal was dismissed accordingly.

In *Secretary, Ministry of Defence and others* v. *Ajit Singh*,[106] the respondent who was enrolled in the military service filed a suit for declaration that he is entitled to disability pension with effect from 31.3.1990. According to him, during the course of his service, he has sustained 20% disability on account of electric shock suffered by him while he was on casual leave. On account of this he was declared medically unfit and ultimately discharged on 31.3.1990. The stand of the present appellant was that he suffered an electric shock while he was on casual leave and working in his house near the tubewell. In any event he had not completed 10 years. Therefore, there is no question of granting any disability pension. The trial Court held that he was entitled to disability pension. Same was maintained in appeal by the District Judge and the High Court. Placing reliance on the decisions of Supreme Court in *Union of India* v. *Keshar Singh*[107] and *Union of India* v. *Surender Singh Rathore*[108] is submitted by the appellants that the disability is not attributable to or aggravated by military service. In addition, he had not completed the period of requisite service and therefore, is not entitled to disability service. The respondent submitted that the High Court's view does not suffer from any infirmity. Keeping in view abovementioned cases it was held by the Supreme Court that the judgment

106. (2009) 2 SCC (L&S) 336.
107. (2008) 2 SCC (L&S) 940.
108. (2008) 2 SCC (L&S) 185 relied on.

of the High Court is clearly unsustainable and was set aside. However, if any payment has been made by way of disability pension shall not be recovered. The appeal was allowed accordingly.

In *Steel Authority of India Ltd.* v. *Madhusudan Das and others*,[109] where Bhagirathi Das (the deceased father of Respondent 1) was the employee of the appellant. He was on C-3 shift duty on 10.2.1996. He was asked to continue in the morning duty on 11.2.1996. While working he suddenly collapsed and was declared dead at the spot. He left behind his two wives, two married daughters, one unmarried daughter and three sons. Respondent 1 is the son through the second wife and one Goverdan Dass is the son through his first wife.

Indisputedly, the settlement was arrived at by and between the management and the workmen in terms of Section 12 (3) of the Industrial Disputes Act, 1947. Indisputedly, the provision for appointment on compassionate ground is provided for in the Memorandum of Settlement of Wages and Benefits, 1989.

The core question for consideration before the Supreme Court was whether Bhagirathi Das died in an accident arising out of and in the course of employment.

The Supreme Court observed that the averments made in the writ petition did not suggest that any accident had taken place resulting in death of Bhagirathi Das. It was also not suggested that he died as a result of stress of work. It has also not been pointed out that he was employed in a hazardous job which resulted in his death. It is true that he was asked to work in continuous shift. It is informed that the rule covering the subject is that it was up to the employee concerned to accept the offer of the management or not to accept. The management, thus, could not force him to continue to perform his duties in the morning shift. It was necessary for the Respondent 1 to plead in the writ petition that the death of Bhagirathi Das occurred because of stress in the work or his work was otherwise hazardous in nature. Even before the Division Bench, such a contention had not been raised. The Division Bench despite the same held that the petitioner-appellant is entitled to the compassionate appointment.

The appellant being State within the meaning of Article 12 of the Constitution of India, while making recruitments, is bound to follow the rules framed by it. Appointment of dependant of a deceased employee on compassionate ground is a matter involving policy decision. The Division Bench, however, proceeded on the premise that the employer was bound to provide appointment in all cases involving death of an employee. The Supreme Court held that the Division Bench was not correct in its view.

The Supreme Court in a large number of cases has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor *viz.*, that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is concession, not a right.

Respondent 1 placed strong reliance on a decision of the Supreme Court in *Balbir Kaur* v. *SAIL*.[110] The Court distinguished the case and observed that such a provision was made

109. (2009) 2 SCC (L&S) 378.
110. (2000) 2 SCC (L&S) 767.

as a measure of social benefit but it does not lay down a legal principle that the Court shall pass an order to that effect despite the fact that the conditions precedent therefor have not been satisfied.

The Supreme Court deciding the question held that in a case of this nature it was required to be pleaded and proved that the death occurred in an accident.

The Supreme Court in *ESI Corpn.* v. *Francis De Costa*[111] referred to, with approval, the decision of Lord Wright in *Dover Navigation Co. Ltd.* v. *Isabella Craig*,[112] wherein it was held that there are a large number of English and American decisions, some of which have been taken note of in *ESI Corpn.* v. *Francis De Costa* in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The provisions are : (i) There must be causal connection between the injury and the accident and the accident and the work done in the course of employment, (ii) The onus is upon the applicant to show that it was the work and resulting strain which contributed to or aggravated the injury, (iii) If the evidence brought on record establishes the greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case."

In *Oriental Insurance Co. Ltd.* v. *Sorumai Gogoi*,[113] the Supreme Court observed : (paras 21 and 22).

"21. In *Jyothi Ademma* v. *Plant Engineer*,[114] also this Court held (paras 6-7) :

"6. Under Section 3 (1) it has to be established that there was some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable."

"7. The expression "accident" means an untoward mishap which is not expected or designed "injury" means physiological injury. In *Fenton* v. *Thorley and Co. Ltd.*,[115] it was observed that the expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, LC in *Joint District School Board of Management* v. *Kelly*,[116] as follows :

"..... I think that the context shows that in using the word "designed" Lord Macnaghten was referring to designed by the sufferer."

111. (1996) SCC (L&S) 1361.
112. 1940 AC 190.
113. (2008) 1 SCC (L&S) 1078.
114. (2006) SCC (L&S) 1166.
115. 1903 A C 443 (HL).
116. 1914 AC 667 (HL) ; *SBI* v. *Anju Jain*, (2008) 2 SCC (L&S) 724 ; *Umesh Kumar Nagpal* v. *State of Haryana*, 1994 SCC (L&S) 930 ; *GM (D&PB)* v. *Kunti Tiwari*, 2004 SCC (L&S) 943 ; *Punjab National Bank* v. *Ashwani Kumar Taneja*, 2004 SCC (L&S) 938 ; *Mohan Mahto* v. *Central Coal Field Ltd.*, (2007) 2 SCC (L&S) 951 ; *Shakuntala Chandrakant Shresti* v. *Prabhakar Maruti Garvali*, (2008) 1 SCC (L&S) 964 relied on.

"22. Furthermore the rights of the parties were required to be determined as on the date of the accident, namely, 9.10.1996. It is, therefore, difficult to hold that a subsequent event and that too by raising a presumption in terms of Section 108 of the Evidence Act can give rise to fructification of claim, save and except in very exceptional cases."

After considering various cases on the point the Supreme Court in this case (*Steel Authority of India Ltd.* v. *Madhusudan Das*[117]) held that for the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly, and the appeal was allowed.

In *Oriental Insurance Co. Ltd.* v. *Sorumai Gogoi and others*[118] the issue was whether the employer was liable under the Workmen's Compensation Act. The Commissioner allowed claim of first and second respondents on the ground that the workman was not heard alive for the last seven years and therefore presumption of death would arise under Section 108 of the Evidence Act. The High Court upheld the Commissioner's award. The Supreme Court held that if some miscreants have taken away the driver along with the vehicle or have murdered him, it is an offence. It, except in certain situations, does not give rise to a presumption that the death had occurred arising out of and in the course of employment. Some evidence should have been adduced in that behalf. The presumption under Section 108 of the Evidence Act could have been invoked by the criminal Court for dropping the criminal case that he is dead. The said provisions could not have been invoked for the purpose of grant of compensation under the Workmen's Compensation Act, 1923. Section 3 of the Act would be attracted only when the conditions precedent therefor are fulfilled and not otherwise. For reasons aforementioned judgment of the High Court upholding the award of the Commissioner, W.C. Act was reversed by the Supreme Court and the appeal was allowed.

Recently in *Param Pal Singh* v. *National Insurance Co.*[119] the Supreme Court held that the entitlement to claim compensation is dependent on fulfilment of the stipulations contained in Section 3 (1) of the Workmen's Compensation Act. While dealing with the case law on the point the Supreme Court observed that there are decisions of the English Courts as early as of the year 1903 onwards stating that an unlooked for mishap or an untoward event which is not expected or designed should be construed as falling within the definition of an "accident" and in the event of such "untoward" "unexpected" event resulting in a personal injury caused to the workman in the course of his employment in connection with the trade and business of his employer, the same would be governed by the provisions of Section 3 of the Workmen's Compensation Act. Such a legal principle evolved from time immemorial got the seal of approval of this Court and for this purpose we can refer to the celebrated decision in *Ritta Franandes*.[120] After referring to the decision of the House of Lords in *Clover, Clayton & Co. Ltd.* v. *Hughes*,[121] this Court in Ritta Farnandes, referred to the relevant passage in the decision of the House of Lords in para 4 :

117. (2009) 2 SCC (L & S) 378.
118. (2008) 1 SCC (L&S) 1078 ; *Mackmnon Mackenzie and Co. (P) Ltd.* v. *Ibrahim Issak*, (1969) 2 SCC 57 ; *Jyothi Ademma* v. *Plant Engineer*, 2006 SCC (L&S) 1166 ; *Kerala SEB* v. *Valsala K.*, 2000 SCC (L&S) 50 ; *Oriental Insurance Co. Ltd.* v. *Khajuni Devi*, 2003 SCC (L&S) 802 relied on.
119. (2013) 1 SCC (L & S) 609.
120. *Mackinnon Mackenzie & Co. (P) Ltd.* v. *Ritta Farnandes*, 1969 ACJ 419 (SC).
121. 1910 AC 242 : (1908-10) All ER Rep 220 (HL).

"4. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in *Clover, Clayton & Co. Ltd.* v. *Hughes*,[122] where the deceased, whilst tightening a nut with a spanner, fell back on his hand and died. The County Court Judge found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His decision was upheld both by the Court of Appeal and the House of Lords : (AC p. 246)

Thereafter the Supreme Court considered some other relevant leading decisions on the point namely *Shakuntala Chandrakant Shreshti* v. *Prabhakar Maruti*,[123] *Malikarjuna G. Hiramath* v. *Oriental Insurance Co. Ltd.*,[124] *Sundarbai* v. *Ordinance Factory*,[125] *Mackinnon Mackenzie & Co. (P.) Ltd.* v. *Ibrahim Mahmmed Issak*[126] etc. where various principles have been laid down for determining the liability of the employer under Section 3 of the Workmen's Compensation Act, 1923.

Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was *causal connection* to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45-year-old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 km away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life-span. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

Having regard to the evidence placed on record there was no scope to hold that the deceased was simply travelling in the vehicle and that there was no obligation for him to undertake the work of driving. On the other hand, the evidence as stood established proved the fact that the deceased was actually driving the truck and that in the course of such driving activity as he felt uncomfortable he safely parked the vehicle on the side of the road near a hotel soon whereafter he breathed his last. In such circumstance, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside.

122. 1910 AC 242 : (1908-10) All ER Rep 220 (HL).
123. (2008) 1 SCC (L&S) 964.
124. (2010) 2 SCC (L&S) 332.
125. 1976 Lab. IC 1163 (MP).
126. (1969) 2 SCC 607.

The appeal was allowed. The order impugned was set aside. The order of the Commissioner for Workmen's Compensation was restored and there was no order as to costs.

(iv) *The personal injury caused to the employee must have resulted either, in the total or partial disablement of the workman for a period exceeding three days or it must have resulted in the death of the workman.*—In order to give rise to rightful claim for compensation it is also necessary that the personal injury caused to the workman must result in the total or partial disablement for a period exceeding three days or the workman must have died due to personal injury caused to the workman concerned by accident arising out of and in the course of employment. The proviso to Section 3 (1) expressly excluded the liability of the employer in cases contained therein. It says, the employer shall not be liable in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days or in the death of the workman. As preamble of the Act shows that it is placed on the statute book to provide for compensation for injuries sustained in accidents during the course of employment by workmen of certain classes of employers. Injuries are classified by the Act in four categories, namely, those resulting in (i) permanent total disablement, (ii) permanent partial disablement, (iii) temporary total disablement and (iv) temporary partial disablement.[127] All these expressions have been explained already in this Act and Employees' State Insurance Act. Here one thing is to be kept in mind that for compensation injury must result either into death of the workman or disablement of any type mentioned herein exceeding three days.

Notional Extension of Employer's premises.—As a general rule the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded.[128] The effect is that the personal injury sustained by a workman while he is on the way to the place of his employment or on the way to his home from the place of employment resulting in the partial or total disablement of the workman does not make him entitled to the compensation for accident causing that personal injury is not regarded to have arisen out of and in the course of his employment.

It is now well settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. When a workman is on a public road or a public place or public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there.

The theory of notional extension is intended to extend the area of employer's premises to cover accidents while a workman is on the way to his place of work and also while he is on the way to his home from the place of employment. The question as to how far an employer is liable for compensation for accidents taking place in the journey of the workman from home to the place of work and from place of work to home has been the subject of controversy. This controversial problem is said to have been finally settled by the House of Lords in England in *St. Helens Colliery Company Ltd.* v. *Hewitson*.[129] The facts of the case were as follows :

127. *Samir U. Prukash* v. *Sikander Zahiruddin*, (1984) 2 LLJ 90 (Bom).
128. *Saurashtra Salt Manufacturing Co.* v. *Bai Balu Raja*, AIR 1958 SC 881.
129. 1924 AC 59.

A workman employed at a colliery was injured in railway accident while travelling in a special collier's train. The respondent-workman was engaged by the appellant in 1910. On October 10, 1921, the date of accident, he was employed at Siddick Colliery. He resided at Maryport, which was four miles from the St. Helen Colliery and six miles from the Siddick Colliery. Under agreements dated November 20, 1882, and August 9, 1907 made between the appellant and the London and North Western Railway Company, the railway company provided special train for the conveyance of the appellant's workmen to and from their collieries and Maryport at a monthly charge to the appellants according to scale dependent upon the number of their workmen using the train, and the appellant covenanted to indemnify the railway company against claim for their workmen in respect of accidents, injury or loss while using the train. The workman intended to use the train was required to sign an indemnity form by which he agreed not to make any claim against the railway company for damage or accidental injury while travelling by the specified trains. After signing such form he received from the appellants, a pass entitling him to travel by the trains and the workman was charged with a sum representing less than the full amount of the agreed fare and this sum was deducted week by week from his wages. All the workmen did not travel by these trains, some walked and some went by omnibus.

On October 10, 1921, the respondent, who had travelled from Maryport to the Colliery by a train starting at 5-20 a. m. to join the morning shift by one of the special trains, and in the course of his journey the engine was derailed with the result that the carriage in which the respondent was travelling was overturned and he was injured. The country court judge made an award in the respondent's favour following the decision in *Cremins* v. *Guest Keen and Nettlefold*.[130] Ultimately the House of Lords held that there being no obligation on the workman to use the trains, the injury did not arise in the course of employment within the meaning of Workmen's Compensation Act, 1906.

Thus theory of notional extension of the employer's premises applies only in cases where the conveyance facility is provided to the workmen by the employer and the workmen are under duty to avail it in view of the terms of their contract of service. If the transport facility provided by the employer is the only means of conveyance then it may not be expressly provided in the contract of service because in that situation it may be the implied term of their contract of service to avail it due to necessity.

General Manager, B. E. S. T. Undertaking v. *Mrs. Agnes.*,[131] is very important case on the point. The facts of the case in short were, that the Bombay Municipal Corporation carried on a public utility service in Greater Bombay and for the purposes employed certain drivers to drive the buses. The transport service was managed by the Electricity Supply and Transport Committee. One of the drivers on 20th July, 1957 finished his work for the day at about 7-45 p.m. at Jogeshwari Bus Depot. In order to reach his residence at Santa Cruz he boarded another bus which collided with a stationary lorry parked at an awkward angle on the road near Erla Bridge, Andheri. Consequently he was thrown out on the road and injured. He was sent to the hospital for treatment but unfortunately expired on 26th July, 1957. The compensation was claimed by his widowed wife pleading that the accident has arisen out of and in the course of employment. Ultimately the case came to the Supreme Court for decision. It was observed by the Supreme Court that under Section 3 (1) of the Act injury must be caused to the workman by accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease depends upon the facts of each case. But the courts have agreed that the employment does not necessarily end when the 'down tool' signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension as both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport. Though at the beginning the expression duty was strictly interpreted, but later decisions have taken a liberal construction of the term duty. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion.

130. (1908) 1 Kâ 469.
131. AIR 1964 SC 193.

After discussing the relevant rules of the B.E.S.T. Undertaking and facts of the case the Supreme Court observed : "The decisions relating to accidents occurring to an employee in a factory or in premises belonging to the employer providing ingress or egress to the factory are not of much relevance to a case where an employee has to operate over a large area in a bus which is in itself an integrate part of a fleet of buses operating in the entire area. Though the doctrine of reasonable or notional extension of employment developed in the context of specified workshops, factories or harbours, equally applies to a bus service the doctrine necessarily will have to be adopted to meet its peculiar requirements. While in a case of a factory, the premises of the employer which give ingress or egress to the factory is a limited one, in the case of a city transport service, by analogy, the entire fleet of buses forming the service, would be the premises. An illustration may make our point clear. Suppose, in view of the long distances to be covered by the employees, the corporation, as a condition of service, provides a bus for collecting all the drivers from their houses so that they may reach their depots in time and to take them back after the day's work so that after the heavy work till about 7 p.m. they may reach their home without further strain on their health. Can it be said that the said facility is not one given in the course of employment? It can be said that it is the duty of the employees in the interest of the services to utilise the said bus both for coming to the depot and going back to their homes. If that be so, what difference would it make if the employer, instead of providing a separate bus, throws open his entire fleet of buses for giving the employees the said facility? They are given that facility not as members of public but as employees; not as a grace but as of right because efficiency of the service demands it. We would therefore hold that a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment." It was further observed that as the free transport is provided in the interest of service having regard to the long distance, a driver has to go to depot from his house and *vice versa*. The use of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as a part of his duty. He is not exercising the right as a member of the public, but only as one belonging to a service. In such circumstances the court held that the accident arose in the course of employment giving rise to the claim of compensation.

Thus the doctrine of notional extension applies where means of conveyance is provided by the employer and the employee is under duty under the contract of service to use that facility or where use of that facility is a proved necessity giving rise to an implied obligation on the part of the employee.

It has been observed in *Works Manager, Carriage and Wagon Shop, E. I. Railway* v. *Mahabir*,[132] that environmental accidents, *i.e.*, accident resulting from the surroundings in which workman is employed or through which he has to reach his place of work in order to carry out his obligation to his employer also fall within the scope of the phrase arising out of and in the course of employment.

In this case, a workman, who lived in a village close to a Malhaur railway station used to come free of charge to Lucknow Junction every morning from Malhaur with other employees in workmen's special train provided by the railway and proceed to the Alam Bagh workshop after covering a distance of about a mile from the junction after crossing the railway line. This was the shorter route as compared to other routes available to reach the workshop. Thus this route was used as a matter of routine for going to the workshop and coming from the place of work.

On the day of accident Mahabir after finishing his work at 5-30 a.m. was returning as usual to the Lucknow Junction station from the same route in order to catch passenger train. When he was within a short distance of the station platform he crossed the line and while he was doing so he was run over by a shunting engine at about 6-30 a.m. As a result of the accident his legs were crushed and they had to be amputated later on.

It was held that the accident arose out of and in the course of his employment within Section 3 (1) of the Act. Section 122 of the Railways Act, did not apply because he could not be regarded as trespasser. He was a railway employee and the route taken by him was the route he was usually using for the purpose. It was a route used by similarly circumstanced employees of the railway. It was held that the word 'employment' is of wider import than the work or duty. The expression 'in the course of employment' means not only actual work which the man is employed to do but what is incidental to it, in the course of his service. The expression is not to be regarded as confined to the nature of the employment. It applies to employment as such, *i.e.*, to its nature, its condition, its obligations, and its incidents. It would include not only the period when he is doing the work actually allotted to him but also the time when he is at a place where he would not be but for his employment.

In *Rajanna* v. *Union of India*,[133] the theory of notional extension was explained. In this case a security assistant in the Special Protection Group (SPG) attached to the Cabinet Secretariat sustained injuries resulting in permanent partial disablement in a motor accident when he was travelling from staff quarters to South Block for duty in the official SPG vehicle provided for the purpose. He claimed *ex-gratia* payment in accordance with the circular dated June 13, 1986, of the Cabinet Secretariat of the Central Government providing for grant of *ex-gratia* payment to the SPG personnel. The Central Administrative Tribunal rejected the claim of Rs. 50,000/- on the ground that the injuries were not sustained while performing actual VIP Security duty. Thus the civil appeal by special leave was filed.

The Supreme Court ruled that the principle under the Workmen's Compensation Act, 1923 for determining whether an accident arose out of and in the course of employment of the workman should be equally applicable to the circular since both have the same object. It

132. AIR 1994 All 132.
133. (1995) II LLJ 824 SC. *Saurashtra Salt Manufacturing Co.* v. *Bai Balu Raja*, (1958) II LLJ 249; *Mackinon Mackenzie and Co. Pvt. Ltd.* v. *Ibrahim Mohammed Issak*, (1970) I LLJ 16 SC; *Lancashire and Yorkshire Rly. Co.* v. *Highley*, 1917 AC 352; Halsbury's Laws of England, Vol. 33 4th Edn. 695 relied on.

was observed that on these facts, it cannot be doubted that there would be notional extension of the actual duty to include the journey of this kind in the official SPG vehicle between the staff quarters and South Block. There can be no doubt that there was a causal relationship between the accident in which the appellant sustained injuries and his employment in the SPG for the actual VIP Security Duty. In our opinion, the meaning of the expression "actual VIP Security Duty" in the circular must be the same as that of the words "in the course of the employment" in Workmen's Compensation Act and therefore, the test for determining the liability for payment under the circular should also be the same. "We are constrained to observe that the authorities concerned must adopt a humane approach and construe the circular liberally to advance its objects instead of taking such a rigid and pedantic stand. Unless properly implemented, the scheme in the circular would be frustrated resulting in failure to achieve the avowed purpose".

Similarly, in *TNCS Corpn.* v. *S. Poomalai*,[134] where an employee was murdered in communal riot while he was coming to the rice mill for attending the work, it was held, the deceased employee met with his death which has arisen during the course of his employment, therefore appellant is entitled to compensation.

In *Regional Director, ESI Corpn.* v . *Francis De Costa*,[135] where Francis De Costa met with an accident on June 26, 1971 while he was on his way to his place of employment. The accident occurred at a place which was about one kilometre away to the north of the factory, at 4-15 p.m. It has been stated that the duty-shift of De Costa would have commenced at 4-30 p.m. He was going to the factory by his bicycle. He was hit by a lorry belonging to his employers and sustained fracture in the collar bone. His claim for disablement benefit was allowed by the ESI Court. The appeal filed against that order was dismissed by the High Court of Kerala. At the instance of the Regional Director, ESI Corpn., the case went upto Supreme Court. In deciding that case the Supreme Court observed : "The definition given to 'employment injury' in sub-section (8) of Section 2 envisages a personal injury to an employee caused by an accident or an occupational disease 'arising out of and in the course of employment'. Therefore, the employee in order to succeed in this case will have to prove that the injury he has suffered arose out of and was in the course of his employment. Both the conditions will have to be fulfilled before he could claim any benefit under the Act." It was further observed that "if the employee's work-shift begins at 4-30 p.m. any accident before that time will not be in the course of his employment. The journey to the factory may have been undertaken for working at the factory at 4-30 p.m. but this journey was certainly not in the course of employment. If the employment begins from the moment the employee sets out from his house for the factory, then, even if the employee stumbles and falls down at the door step of his house, the accident will have to be treated as to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided. The casual connection between the accident and the employment has not been established".

In *Commissioner, Kovilpatti Municipality* v. *Tamilarasan and others*,[136] the High Court of Madras observed, that Subbiah, the deceased in this case did not receive injuries out of

134. (1995) I LLJ 378.
135. 1996 SCC (L & S) 1361 : (1997) I LLJ 34; *South Maitland Railways Pty Ltd.* v. *James*, 67 CLR 496 relied on; *R.* v. *National Insurance Commr.*, (1997) 2 All. ER 420; *Saurashtra Salt Manufacturing Co.* v. *Bai Valu Raja*, AIR 1958 SC 881 followed; *GM, BEST Undertaking* v. *Agnes*, AIR 1964 SC 193; *Bhagubai* v. *Central Rly.*, (1954) II LLJ 403 (Bom.). distinguished.
136. (1998) II LLJ 683; *Regional Director, ESI Corpn.* v. *Francis De Costa*, (1997) I LLJ 34 (SC) followed.

his employment. 'Out of' in this context must mean caused by employment. A mere road accident, while an employee is on his way to his place of employment cannot be said to have its origin in his employment in the factory. It was not possible to hold that the deceased workman, having died as a result of injuries received in an attack while he was on a public road, sustained injuries resulting in his death in the course of and arising out of his employment.

On the basis of the above discussion it may be concludingly remarked that the doctrine of notional extension of the employer's premises is a doctrine which extends the coverage of the accidents caused to the workman while they are on the way to or from the place of their work or place of employment where they are to perform their duties. According to this doctrine the employer's premises includes an area which the workman passes and repasses in going to and in leaving the actual place of his work. There may be some reasonable extension in both time and place and the workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. But in order to apply this theory of notional extension the workman is to prove that he was at the place of accident because of terms of contract of service either expressly contained therein or by implication. For example, if the workman is under duty to use the means of conveyance provided by the employer in order to reach his place of work and to reach his home after finishing his work expressly under a term contained in the contract of service, he will be entitled to compensation if personal injury is sustained by him by accident while he is using that means of conveyance. He can also claim benefit of the theory if he can successfully prove that there was no other route or means of conveyance except that which he used for the purpose in which accident has taken place.

This doctrine is intended to give benefit of compensation to the workmen for injuries caused by accidents when they are not at the place of their actual work but are actually going to or coming from their place of work. It extends the area of coverage of accidents while otherwise are not covered in expression 'accidents arising out of and in the course of employment'.

Defences available to an employer for claiming exemption from liability for compensation.—Proviso to Section 3 (1) of the Employees Compensation Act expressly provides that the employer shall not be so liable for compensation :

(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, 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 wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful 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 workmen.

It would be duty of the employee to show that the injury for which he claims compensation has resulted in the total or partial disablement for a period exceeding three days. The total and partial disablement have already been explained. On the other hand, it is a valid defence available to an employer to plead that the personal injury which had admittedly been caused to the employee by accident arising out of and in the course of his employment has not resulted in the total or partial disablement of the workman for a period exceeding three days. If it could be proved, the employer is not liable for compensation under Section 3(1) of the Act.[137] The basis of such exemption from the liability is that it is very difficult to avoid minor accidents where the workmen are doing their work with the help of complicated machinery. If the accident is serious the employer is liable if it is not a serious one he is not liable. The test is that if the personal injury has resulted in the total or partial disablement of a workman for a period exceeding three days, the accident would be a serious one and the workman can claim compensation under the provisions of the Act. This is an exception where an employer may disown his liability for compensation.

The employer can take defences contained in proviso (b) to Section 3 (1) of the Act only in cases where the personal injury has not resulted in death of the workman. But he can take these defences in case where the personal injury caused to a workman by accident arising out of and in the course of employment has resulted in the total or partial disablement of the workman concerned for a period exceeding three days. In such cases the employer can plead that the accident which caused personal injury to a workman is directly attributable to—

(i) the workman having been at the time of the accident under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purposes of securing the safety of workmen.

The proviso (b) to Section 3 (1) of the Act covers cases where a workman performs his duty after having taken drink or drugs and due to intoxication he is not in sound condition to work. The workman in such condition may cause accident under influence of drink or drugs. In order to claim exemption the employer must show that the workman who sustained injury by accident was at the time of accident under influence of drink or drugs. The employer may succeed in his defence only if he can establish that the accident causing injury to the workman was directly attributable to the workman having been at the time of the accident under the influence of drink or drugs.

There are certain rules expressly framed or orders expressly given to be followed by the workmen while doing their work or performing their respective duties. The rules and orders are made with a view to secure safety of the workmen. Proviso (b) (ii) to Section 3 (1) of the Act provides that if there is wilful disobedience to such orders or rules expressly made the employer shall not be liable for compensation if he can successfully establish that the accident causing personal injury to the employee is directly attributable to the wilful disobedience of such rules or orders.

It has been observed in *Bhurangya Coal Co. Ltd.* v. *Sahebjan Mian*,[138] 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 the disobedience of any

137. *The Oriental Fire and General Insurance Co. Ltd. and another* v. *Union of India*, AIR 1975 AP 222.
138. AIR 1956 Pat 299.

rule or order is not material at all so long as it can be reasonably held that the accident arose out of and in the course of the employment. In order to bring a case under proviso (b) (ii) to Section 3 (1) of the Act, a number of conditions have to be fulfilled :—

First—that there was a rule or order which the workman disobeyed not merely that there was a notice on the spot ;

Secondly—that the rule or order was in force at the time of accident;

Thirdly—that the substantial purpose of the rule or order was that of securing the safety of workman as such;

Fourthly—that the order or rule was couched in words which on their face fairly and clearly indicated that purpose ;

Fifthly—that its terms were brought to the notice of the particular workman who was the individual injured in a case;

Sixthly— that the order or rule was disobeyed by the individual;

Seventhly—that the disobedience of the rule or order by that workman was wilful and deliberate and not only the result of mere negligence or due to a mistaken mode of doing a particular task or due to a wrong decision in an emergency;

Eighthly— that the accident was directly attributable to the aforesaid disobedience.

If all the above conditions can be proved by the employer to have been present he can disown his liability claiming defence contained in the proviso (b) (ii) to Section 3 (1) of the Act.

In order to secure safety of the workmen certain safety guards or other devices are placed and maintained in the workshops where the workmen are engaged in performance of their duties. The employer is not liable to pay compensation if he is able to establish that workman concerned has wilfully removed or disregarded such safety guards or safety devices which he knew to have been provided for the purpose of securing the safety of workmen.

A man does a thing wilfully when he does it intentionally because he expects some benefit to himself, either some convenience or easy way of doing of work and so forth. Mere negligence of the worker cannot be regarded as wilful disobedience by the workman to an order expressly given. Contributory negligence on the part of the employee does not exonerate the employer from liability to compensate the employee if the accident could not have been avoided by the exercise of ordinary care and diligence.[139] Thus, in order to disown the liability for compensation the employer has to establish that the workman has wilfully removed or disregarded a particular safety guard or device provided for the purpose of securing the safety of workmen and the fact that such safety guards or devices were provided for the purpose of safety of workmen was known to him. It may be again pointed out that such defence is available to the employee where the personal injury does not result in the death of the workman. If the personal injury caused by an accident arising out of and in the course of his employment has resulted into death of the workman the question whether he wilfully removed or disregarded the safety devices becomes irrelevant. Even if it is established that the workman wilfully removed or disregarded the safety devices which he knew to have been placed for the safety of workmen the employer is not exempted from his liability for compensation.

139. *Bhurangya Coal Co. Ltd.* v. *Sahebjan Mian*, AIR 1956 Pat 299.

(2) Employer's liability in cases of occupational diseases.—The Act makes provision for payment of compensation in two cases, first in cases of personal injury caused to an employee by accident arising out of and in the course of employment and secondly in cases of occupational diseases. The relevant provisions are contained in sub-sections (2), (3) and (4) of Section 3 of the Act. It would be desirable to discuss these provisions in detail. Schedule III contains a list of diseases which are known as occupational diseases.

These diseases are called occupational diseases since they are contracted because of the occupation of a person concerned. Such diseases are peculiar to the occupation of a person. Schedule III is divided in three parts, namely, Part A, Part B and Part C. The workman is entitled to compensation only if the conditions contained in these sub-sections are satisfied. With regard to disease mentioned in Part B of Schedule III, there is a further requirement to be satisfied, namely that the workman contracting the disease must have been in the service of the employer concerned for a continuous period of not less than six months. With regard to diseases mentioned in Part C of Schedule III the workman must have been in the continuous service of one or more employers for such period as the Central Government may specify.[140]

Diseases as contained in Part A of Schedule III.—Section 3 (2) of the Act provides that 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 employment, the contracting of any disease shall be deemed to be an injury by accident within the meaning of this section, and unless contrary is proved the accident shall be deemed to have arisen out of and in the course of his employment.

Diseases as contained in Part B of Schedule III.—It has been provided that if an employee while 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 the contracting of disease shall be deemed to be an injury by an 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. Under these circumstances the employer shall be liable to pay compensation to the workman.

It has been further provided that if it is proved that an employee who having served under any employer in any employment specified in Part B of a Schedule III for a continued period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part 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 and the employer shall be liable to pay compensation to the employee concerned.

Diseases as contained in Part C of Schedule III.—It has been provided that 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

140. The Employees' Compensation Act, 1923, Section 3(2).

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.

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

It has been further provided that if it is proved that an employee 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 sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part C as an occupational disease 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.

It makes clear that the employee who contracts occupational disease after he has left his employment may get compensation if the above conditions are satisfied.

Section 3 (2-A) of the Act gives power to the Commissioner to fix the extent of liability of the employer in cases where the employee has worked in an establishment belonging to different employers because all the employers shall be liable to pay compensation. It provides 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.

The Act under its Section 3 (3) authorises the State Government in case of employment specified in Part A and Part B of Schedule III and the Central Government in the case of employment specified in Part C of Schedule III to add any description of employment to the employments specified in Schedule III indicating in the case of employments added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments. Section 3 (3) of the Act provides that the State Government in the case of employment specified in Part A and Part B of Schedule III, and the Central Government in the case of employments specified in Part C of that Schedule, 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 employment 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 as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

Section 3 (4) of the Act speaks of diseases which are not specified in the Schedule III and puts limits on the payment of compensation. It provides that save as provided by sub-sections (2), (2-A), and (3), no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to specific injury by accident arising out of and in the course of his employment. Thus the employee must prove that the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment in order to get compensation.

These are conditions under which the compensation is payable to the employee under the provisions of Section 3 of the Workmen's Compensation Act.

Alternate Remedy under Section 3 (5) of the Act.—Sub-section (5) of Section 3 speaks of alternate remedies. The employee who is entitled to get compensation under the provisions of Section 3 of the Act has alternate remedies. He can claim compensation under the provisions of the Act or he may file a suit in the Civil Court for damages in respect of the injury against the employer or any other person but he cannot avail both, compensation under the provisions of the Act and damages by instituting a suit in the Civil Court.

Section 3 (5) provides 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 a workman 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 made 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.

Thus the right to compensation is taken away under sub-section (5) of Section 3 because of the institution of a suit in a Civil Court for damages in respect of the injury against the employer or any other person.[141] On one hand Section 3 (5) of the Workmen's Compensation Act bars an application for compensation under the said Act if the claimant has instituted any proceedings in a Civil Court. Similarly, Section 110-AA of the Motor Vehicles Act states that notwithstanding anything contained in Workmen's Compensation Act, where the death of or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act the person entitled to compensation may claim such compensation under either of those Acts but not under both.[142] The provision is intended to give protection to the employer against double payment. It makes clear that if the workman files a suit in the Civil Court for damages he has no right to claim compensation under the provisions of the Act. Similarly, if he has instituted a claim for compensation in respect of the injury before a Commissioner under the provisions of the Act no suit for damages is maintainable in Civil Court, remedies are alternative in nature.

If the claim for compensation made under Motor Vehicles Act could not be entertained by the Claims Tribunal or want of proof in respect of negligence of the driver causing accident Section 110-A of the M.V. Act can never be applied so as to bar claim for compensation under W.C. Act, 1923. Even if the deceased was himself driving the tractor negligently leading to the accident, claim for compensation under W.C. Act may still be

141. *Pratap Narain Singh Deo* v. *Shrinivas Sabata and another*, AIR 1976 SC 222.
142. *M. P. Rajya Parivahan Nigam, Bhopal and others* v. *Sahli Bai*, AIR 1990 MP 239.

maintainable against the employer or against the Insurance Company if the deceased died as a result of an accident which took place during the course of employment.[143]

6. Amount of Compensation.—Section 4 of the Act provides how the amount of compensation is to be computed.[144] It contains principles on which compensation is to be determined. The amount of compensation is awarded with reference to monthly wages in accordance with the provisions of Section 4 and other provisions of the Act. The amount of compensation varies in cases of death, permanent total disablement, permanent partial disablement, and temporary disablement whether total or partial in nature. It may be recalled that the compensation was payable in case of monthly wages not exceeding Rs. 1000. However, for the purpose of coverage of workmen the wage limit had been removed by the Amendment Act No. 22 of 1984 with effect from 1.7.1984. But it had been laid down that if the workman covered is getting the wages exceeding Rs. one thousand [now eight thousand][145] per month, for the purposes of calculation of the amount of compensation it shall be deemed that he is getting Rs. one thousand [now eight thousand][146] only and exceeding amount shall not be taken into account. Thus in order to calculate the amount of compensation, first of all the amount of monthly wages of the employee concerned is to be taken into account. The provisions of Section 4 of the Act may be classified with reference to injuries on account of which the compensation is claimed. The injuries are as under :

(1) Injury resulting in Death.

(2) Injury resulting in Permanent total disablement.

(3) Injury resulting in Permanent partial disablement.

(4) Injury resulting in temporary disablement whether total or partial.

The amount of compensation is determined in accordance with the provisions of Section 4 and other provisions contained in Schedule IV of the Act in cases of death, permanent total disablement, permanent partial disablement, and temporary disablement.

(1) Compensation in case of death.—Section 4 of the Act dealing with the amount of compensation had been amended in the year 1984 and the amendment had come into force on 1.7.1984. The provisions of Section 4 are subject to other provisions of this Act. Section 4 (1) (a) provides that where death results from the injury the amount of compensation shall be an amount equal to forty per cent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of twenty thousand rupees, whichever is more.

By Workmen's Compensation Amendment Act 30 of 1995 this provision was amended with a view to enhance the amount of compensation substituting the words "fifty percent" and "fifty thousand rupees" for 'forty percent' and 'twenty thousand rupees' respectively with effect from 15-9-1995. The provision has been further amended in 2000 to enhance the minimum amount of compensation from Rs. fifty thousand to Rs. eighty thousand with effect from 8-12-2000.

The amount of compensation has been again enhanced from eighty thousand rupees to one lakh and twenty thousand rupees by Amendment Act, 2009 with effect from 18.1.2010.[147]

143. *Neelabai Mahadeo Salunke* v. *Shyam Rao Tatoba Pawar*, (1995) I LLJ 833.
144. *The Oriental Fire and General Insurance Co. Ltd.* v. *Union of India*, AIR 1975 AP 222.
145. *Vide* notification S.O. 101(E), dated 18.1.2010.
146. Ibid.
147. Ibid.

For the purposes of clause (a) 'relevant factor' in relation to an employee means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the employee on his last birthday immediately preceding the day on which the compensation fell due.[148]

Thus the wages of an employee must be kept in mind while compensation is being computed and the terms of Schedule IV must be followed. It has been observed that where according to the evidence on record it was proved that the deceased workman was getting Rs. 300 per month and under Schedule IV of the Act for the death of the workman getting between Rs. 200 and Rs. 300 the quantum prescribed being 18,000 the Tribunal ought to have fixed the liability of insurance company under Section 110-B of M. V. Act at Rs. 18,000. The accidents claims Tribunal was, therefore, wrong in awarding compensation of Rs. 34,000 to the claimant and fixing liability joint and severally on all respondents including insurance company.[149]

In *Mandulova Satyanarayana* v. *B. Lokeshwari and others*,[150] where in an accident the driver and the cleaner sustained bodily injuries and died. The insurance company had covered the liability in respect of death of driver and cleaner to the extent of Rs. 50,000/-. It has been held by the High Court of Andhra Pradesh that the provisions contained in Section 110-AA of the Motor Vehicles Act, 1939 are beneficial and intended to enable the workmen or the legal representative of the deceased workmen to claim higher compensation if the same can be awarded either under the Motor Vehicles Act or under the Workmen's Compensation Act. If the liability of the insurance company is restricted to that specified under the Workmen's Compensation Act, the object of Section 110-AA of the Motor Vehicles Act would be frustrated. In the present case, the amount of compensation awarded is Rs. 25,000/-. In as much as the Insurance Company has undertaken the liability to the extent of Rs. 50,000/- the company is liable to pay the entire amount of Rs. 25,000/-.

Concept of disablement.—Though the observations were made in a case relating to Motor Vehicles Act, 1988 but are relevant to understand the conceptions of disablement and earning capacity. The Supreme Court observed in *Ramchandrappa* v. *Royal Sundaram Alliance Insurance Co. Ltd.*[151] that the term "disability as so used, ordinarily means loss or impairment of earning power and has been held not to mean member of body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation Disablement benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case.

The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon loss of particular faculties or members or use of such members, ordinarily in accordance with a definite Schedule. The compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the

148. Employees' Compensation Act, Explanation I to Section 4(1).
149. *The New India Assurance Company Ltd.* v. *Smt. Meenaxi and others*, AIR 1981 Kant 68.
150. AIR 1991 AP 323.
151. (2011) 13 SCC 236. followed in *Kavita* v. *Deepak and others*, (2012) 2 SCC (L & S) 711.

incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

In *Gobind Yadav* v. *New India Insurance Co. Ltd.*,[152] it has been observed by the Supreme Court that the principles laid down in *Arvind Kumar Mishra* v. *New India Assurance Co. Ltd.* and *Raj Kumar* v. *Ajay Kumar* must be followed by all the Tribunals and the High Courts in determining the quantum of compensation to the victims of the accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

(2) Compensation in case of Permanent Total Disablement.—Section 4 (1) (b) provides that where permanent total disablement results from the injury the amount of compensation shall be equal to fifty percent of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of twenty four thousand rupees, whichever is more.

By W. C. (Amendment) Act, 1995 this provision was amended with a view to enhance the amount of compensation in case of permanent total disablement resulting from the injuries sustained. For the words, "fifty percent" and "twenty four thousand rupees", the words "Sixty percent" and "sixty thousand rupees" were respectively substituted in the context of growing prices day by day.

The minimum amount of compensation payable in cases of permanent total disablement had been further enhanced from rupees sixty thousand to rupees ninety thousand by amendment made in 2000 with effect from 8-12-2000.[153] The Amendment Act, 2009 has enhanced this amount from ninety thousand rupees to one lakh forty thousand rupees. However, the percentage as modified in 1995 for the purposes of calculation of amount of compensation had not been amended.

After Section (1) (b) the following proviso has been inserted namely :

> "Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in Clauses (a) and (b)."

The perusal of this proviso makes it clear that now no amendment for enhancement of the amount of compensation shall be required to be made by the Parliament as now the Central Government is empowered to enhance from time to time the amount of compensation under Clauses (a) and (b) of Section 4 (1) by notification in the Official Gazette.

The existing Explanation II to Clause (b) has been omitted by the Amendment Act, 2009 which was a deeming clause providing that where the monthly wages of an employee exceed four thousand rupees his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be four thousand rupees only.

However, a new sub-section namely (1B) has been inserted in place of the provision contained in the explanation authorising the Central Government to specify, by notification in the Official Gazette for the purposes of sub-section (1) such monthly wages in relation to an employee as it may consider necessary.

152. (2012) 1 SCC (L & S) 422. *Arvind Kumar Mishra* v. *New India Assurance Co. Ltd.*, (2010) 10 SCC 254; and *Raj Kumar* v. *Ajay Kumar*, (2011) 1 SCC 343 , relied on.

153. Subs. for "Sixty thousand rupees" by Act 46 of 2000, S. 3 (w.e.f. 8-12-2000).

In exercise of powers conferred by sub-section (1B) of Section 4 the Central Government has specified eight thousand rupees as monthly wages for the purposes of sub-section (1) of the said section by notification dated 31.5.2010 in the Official Gazette, *vide* S.O. 1258 (E) dated 31.5.2010. The relevant sub-section (1B) is added after sub-section (1A) of Section 4.

(3) Compensation in case of Permanent Partial Disablement.—Section 4 (1) (c) of the Act under its clauses (i) and (ii) deals with the amount of compensation in cases of permanent partial disablement either caused by injuries specified in Part II of Schedule I or caused by injuries other than specified therein. It provides that where permanent partial disablement results from the injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury.

However, where such disablement is caused by injury other than specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

In order to find out the amount of compensation in cases of permanent partial disablement, it would be necessary to calculate the amount of compensation in case of permanent total disablement with reference to the age of the injured employee, his monthly wages multiplied by relevant factor as indicated in Schedule IV and then the amount so obtained shall be determined in proportion to loss of earning capacity of the injured employee as specified in Part II of the First Schedule in respect of injury in question.

In order to clarify the position in cases where the workman sustains more injuries than one from the same accident, Explanation I to Section 4 (1) (c) has been added. It provides that where more injuries than one are caused by the same accident the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries. It simply means that compensation in such a case shall not be more than what would have been payable in the case of permanent total disablement.

In the process of assessment of loss of earning capacity in cases of permanent partial disablement caused by injuries which are not specified in Schedule I, it has been clearly provided in Explanation II to Section 4(1) (c) that in assessing the loss of earning capacity for the purposes of sub-clause (ii) the qualified medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule I.

If injuries sustained are not scheduled injuries, compensation has to be determined on the basis of loss of earning capacity under Section 4 (1) (c) of the Act. The loss of earning capacity has to be assessed by a qualified medical practitioner. The Commissioner cannot disregard the assessment made by a qualified medical practitioner. However, if he does not accept the certificate, he can refer the party to Medical Board for expert opinion and report or to call a second medical report.[154]

154. *New India Assurance Co. Ltd.* v. *Sreedharan*, (1955) II LLJ 362 (Kerala); *United India Insurance Co. Ltd.* v. *Sethu Madhavan*, (1993) I LLJ 142 ; *New India Assurance Co. Ltd.* v. *Randi Lachaya and another*, (1995) I LLJ 770 (Orissa).

It has been held in *C. David* v. *G. C. Mishra*,[155] that while assessing compensation, the Court has to see whether the earning capacity of the injured has been reduced in every employment and not merely in particular employment in which he was engaged at the time of accident. That is the reason why Section 4 (1) (c) (ii), Explanation II of the Act mandates that in case of non-scheduled injury the qualified medical practitioner while assessing the loss of earning capacity shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule I. Loss of earning capacity in non-scheduled injuries has to be determined on the basis of evidence adduced by the parties.

In *Kerala Minerals and Metals Ltd.* v. *Raman Nair*,[156] the Court held that the loss of earning power should not be confined only to the present capacity because it is contended by the management that at the same salary the workman is continued in employment. If this were to be the law, the employer can easily evade the provisions of the Act by continuing the employment on the same terms as were enjoyed by the workmen prior to the accident. The Act is to provide security to the workmen who sustain partial incapacity resulting in the earning capacity. This statutory protection is independent of the acts of grace or mercy which the employer might show him. In the welfare state, the protection afforded to the workmen cannot be allowed to rest on the mercies of the employer. If the employer does so, it is commendable, but the workman still has a stake in his employment which is guaranteed to him under the Act. Therefore, the loss in earning capacity has to be calculated in terms of the permanent partial disability to which the workman has been subjected to. It would not be by comparison between the wages drawn by the workman from his employer before and after the accident.

The High Court of Kerala in this case expressing respectful agreement with the Division Bench judgement of the Madras High Court in Management of *Sree Lalithambika Enterprises* v. *S. Kailasam*,[157] High Court of Rajasthan in *Executive Engineer, P.W.D., Udaipur* v. *Narain Lal*,[158] dismissed all the three appeals.

In *Amar Nath Singh* v. *Continental Constructions Ltd.*,[159] where the appellant lost his left eye and made claim as having lost his complete vision in that eye but medically it was assessed that loss of vision was only 80%. The Compensation Commissioner assessed the compensation payable to him as 100% under Schedule I, Part I at Item 4. (Loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential). The High Court reduced it to 30% relying upon the provisions under Item 26 of Part II Schedule I (*i.e.*, loss of vision of one eye, without complications or disfigurement of eye ball, the other being normal).

It was contended before the Supreme Court that the reduction made by the High Court is improper. The appellant relied upon the decision in *Pratap Narain Singh Deo.* v. *Srinivas Sabnta*,[160] wherein the case of amputation of left arm from the elbow causing total disablement to perform the work of carpenter was discussed and contended in the present case that there is a loss of one eye and the earning capacity of the appellant has been reduced from what he was capable of earning at the time of accident, as a result of

155. (1997) II LLJ 844 (Ori); *Obra Thermal Power Station, U. P. State Electricity Board* v. *Workmen's Compensation Commr.*, (1997) II LLJ 292 (All).
156. (1998) I LLJ 933 (Kerala).
157. (1988) I LLJ 63.
158. (1978) I LLJ 141.
159. 2002 SCC (L&S) 1040.
160. 1976 SCC (L&S) 52 distinguished.

disablement. The contention was refuted and submitted that the appellant himself has been claiming that he was fit for work and his evidence discloses the same, and in the circumstances the view taken by the Commissioner is incorrect and that of High Court is justified. After an overall assessment of the matter the Supreme Court directed that out of Rs. 1,97,000 deposited in the High Court towards compensation and penalty, which has been withdrawn by the appellant, a sum of Rs. 1,00,000 shall be retained by the appellant while a balance of Rs. 97,000 shall be refunded to the respondent in six months in different instalments, if he so chooses. The order of the Commissioner as well as High Court was modified to that effect.

In *Orissa State Electricity Board* v. *Kedar Charan Lenka*,[161] the High Court of Orissa explaining and distinguishing "loss of earning" and "loss of earning capacity" observed that these two concepts have conceptual difference. In case, there is no loss of earning and there is continuance of engagement, reference to Section (4) (1) (c) (ii) of the Act is necessary to appreciate the distinction. The plea of employers that in case of continuance of engagement and non-reduction in earning, compensation is not payable has not found with favour with courts. As observed by House of Lords in case of *Ball* v. *William Bunt and Sons Ltd.*,[162] that the Act regarded a workman only as a wage earner and was concerned not with physical pain or suffering or disfigurement to which a workman might be subjected by accident; but only with the loss of power to earn wages resulting from the injury. After due consideration of the rulings the court observed that the plea that in case of continuance of engagement and non-reduction in earning, compensation is not payable cannot be accepted. In considering loss of earning capacity in case of permanent/partial disablement the comparison between the wages drawn by the workmen before and after the accident from his employer at the time of accident is not a determinative factor. If that be so, a running employer to tide over liability may offer a temporary employment to the claimant workman to deprive the latter of his entitlement under the Act. That would be against the legislative intent. The intent is to consider loss of earning capacity in such cases.

Now by amendment made in 1995 a new provision, namely, sub-section (1-A), a *non-obstante* clause having overriding effect on the provisions of Section 4 (1) has been inserted which is as follows :

"(1-A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to an employee in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the employee in accordance with the law of that country".

The following sub-section has been inserted by Amendment Act, 2009 with effect from 18.1.2010 namely :—

"(1B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary."

(4) Compensation in case of Temporary Disablement.—Section 4 (1) (d) deals with the amount of compensation in cases of temporary disablement whether of total or partial nature. It has been provided that where temporary disablement, whether total or

161. (1997) II LLJ 1058 (Orissa).
162. 1912 AC 486; *Fairloy* v. *John Thomson*, 1973 (2) Lloyd's Sop. 40.

partial, results from the injury the compensation shall be paid in the form of a half monthly payment of the sum equivalent to twenty-five percent of monthly wages of the employee in accordance with the provisions of sub-section (2) of Section 4.

Sub-section (2) lays down that the half monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day (i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more ; or (ii) after the expiry of waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half monthly during the disablement or during a period of five years, whichever period is shorter.

It has been further provided that there shall be deducted from any lump sum or half monthly payments to which the employee is entitled the amount of payment or allowance which the employee has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half monthly payment as the case may be,[163] and no half monthly payments shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the employee before the accident exceeds half the amount of such wages which he is earning after the accident.[164] Any payment or allowance which the employee has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso,[165] so such amount shall not be deducted from any lump sum or half monthly payments to which the employee is entitled.

After sub-section (2) of Section 4 following sub-section has been inserted by Amendment Act, 2009 namely :—

"(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment."

This sub-section does not mention any amount as such. It simply provides that actual medical expenditure incurred by the employee concerned for treatment of injuries caused during the course of employment shall be reimbursed. The actual amount may be ascertained by bills and vouchers concerned.

Section 4 (3) provides that on the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half month a sum proportionate to the duration of the disablement in that half month.

A new provision has been inserted by amendment made in 1995 after sub-section (3) as sub-section (4) which is as under :

"(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of one thousand rupees for payment of the same to the eldest surviving dependent of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure." The above amount payable under Section 4 (4) has been enhanced from rupees one thousand to rupees two thousand five hundred by amendment made in 2000 with effect from 8-12-2000. This amount has again been enhanced

163. Proviso (a) to Section 4(2).
164. Proviso (b) to Section 4(2).
165. Explanation to Provisos (a) and (b) to Section 4(2).

by amendment in 2009 substituting the words "not less than five thousand rupees" payable under Section 4 (4) of the Act and further a proviso has been inserted to empower the Central Government to enhance the amount specified in this sub-section by notification in the Official Gazette from time to time.

It may be concludingly remarked that in order to compute the amount of compensation payable under the provisions of this Act the factors which are very relevant for consideration are the nature of injury, result of the injury, the nature of the disablement, age and the wages of the employee, terms of the Schedule I and Schedule IV.

7. Compensation to be paid when due and penalty for default.—Section 4-A provides for the payment of compensation and the penalty for default. It provides that compensation shall be paid as soon as it falls due.[166] Section 4 mandates employer to pay compensation amount as soon as it falls due to victim or his or her legal heirs.[167]

However, where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the employee to make any further claim.[168]

In order to ensure payment of compensation, a statutory sanction has been incorporated by the amendment made in 1995 by substituting a new provision for sub-section (3) of Section 4-A of the Principal Act which is comparatively more rigorous than earlier one as under :

"(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(a) direct that the employer shall in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve percent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer, shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty percent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

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

It may be noted that Section 4-A (3-A) has been again substituted by Act 46 of 2000 keeping in view the welfare of the workmen which reads as under:

"(3-A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be."

166. The Employees' Compensation Act, 1923, Section 4-A (1).
167. *Traffic Manager, New Managalore Port Trust Regd. Cargo Handling Workers Adm. Wing* v. *Radha B. and others*, (1998) II LLJ 764.
168. The Employees' Compensation Act, 1923, Section 4-A(2).

Prior to this amendment the interest was required to be paid to workman or his dependant the penalty was required to be credited to the State Government but now onwards with effect from 8-12-2000 both the interest and the penalty shall be paid to the workman or to his dependant, as the case may be.

In *Pratap Narain Singh Deo* v. *Shrinivas Sabata and another*,[169] it was held by the Supreme Court that it was the duty of the appellant, under Section 4-A (1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4-A for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, the Court had no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty. He ordered the payment of penalty to the extent of 50% together with interest at 6% per annum making a total of rupees 15,092.[170]

In *United India Insurance Co. Ltd.* v. *Alavi*,[171] the Full Bench of the Kerala High Court had to settle a conflict between two Bench divisions on the question as to whether the amendment of the Workmen's Compensation Act made in 1995, enhancing, in particular, the amount of compensation and rate of interest payable under Sections 4 and 4-A of the original Act would or would not apply to claims arising upon accident occurring before September, 15, 1995, that is, the date on which the amendment came into force.

It is well settled rule of construction that no provisions in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that when the provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended. It was thus held that the amended Sections 4 and 4-A of the Workmen's Compensation Act, 1923, enhancing the amount of compensation and the rate of interest be not applicable to claim originated in respect of death or permanent total disablement of workman resulting from accidents which occurred prior to September 15, 1995, the date on which the amended provisions came into effect. In the light of the above finding the Court held that the claimants in all these appeals are not entitled to get the benefits of amended provisions.

In *Kerala State Electricity Board.* v. *Valsala K. and another*,[172] where the neat question involved in special petitions before the Supreme Court was whether the amendment of Sections 4 and 4-A with effect from 15-9-1995 enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or

169. AIR 1976 SC 222.
170. See also, *Madan Mohan Verma* v. *Mohan Lal*, (1983) II LLJ 322 (Alld.); *Bai Mani, widow of Jakhalabhai Hurjibhai and others* v. *Executive Engineer, Irrigation Project Division Six, Baroda*, (1986) II LLJ 426 (Guj).
171. (1998) 2 LLJ 896 (Kerala).
172. 2000 SCC (L&S) 50.

permanent disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995.

It was observed by the Supreme Court that various High Courts in the country, while dealing with the claim for compensation under Workmen's Compensation Act have uniformly taken the view the relevant date for determining the rights and liabilities of the parties is the date of accident. The attention of the Supreme Court was drawn to a full Bench decision of the Kerala High Court in *United India Insurance Co. Ltd.* v. *Alavi*,[173] wherein the Full Bench considered the same question and examined relevant case law on the point. It took the view that injured workman becomes entitled to get compensation the moment he suffers personal injuries and it is the amount of compensation payable on the date of accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant. The Court held that the full Bench Decision of the Kerala High Court, to the extent it is in accord with the judgment of the larger Bench of this Court in *Pratap Narain Singh Deo* v. *Srinivas Sabata*,[174] lays down the correct law and we approve it.

In *Oriental Insurance Co. Ltd.* v. *V. Khajuni Devi*,[175] the Supreme Court held that the law in regard to the relevant date for determining the rights and liabilities under the Workmen's Compensation Act has been settled by a three-judge Bench of the Court in *Kerala SEB* v. *Valsala K.*[176] In this case the decision of the two-judge bench in *New India Assurance Co. Ltd.* v. *V.K. Neelakandan*,[177] stands overruled and the instant judgment under appeal having been on specific reliance on an overruled judgment, the Court did not find force in the submission that Valsala case has its application in all force in the contextual facts. In that view of the matter as declared in Valsala case should be made applicable in the instant case. The date of accident and not the date of adjudication of the claim is the relevant date for the purpose.

The maximum rate of interest statutorily fixed under Section 4-A (3) cannot be enhanced. Thus if the Commissioner awards higher rate of interest it would not be justified and the excess amount of interest shall be refunded to the employer.[178]

Liability of the employer and the Insurance Company.—In order to be on safer side the employers get insurance cover to meet the requirement of payment of compensation to the employee injured by accidents arising out of and in the course of their employment. How far the insurance company can be held liable in such situations needs proper consideration.

In *New India Assurance Co. Ltd.* v. *Shiv Singh and another*,[179] where the Commissioner allowed the claim and held the insurance company liable to pay the compensation. The Commissioner also held that the Insurance Co. was liable to pay interest as also penalty over and above the principal amount of compensation. The appeal filed thereafter by the insurance company under Section 30 of the Workmen's Compensation Act in the High Court of Punjab and Haryana was dismissed. Similar matter was considered by the

173. *United India Insurance Co. Ltd.* v. *Alavi*, (1998) 1 KLT 951 (FB).
174. 1976 SCC (L&S) 52 followed; *New India Assurance Co. Ltd.* v. *V.K. Neelakandan*, overruled.
175. 2003 SCC (L&S) 802.
176. 2000 SCC (L&S) 50 : (1999) 8 SCC 254.
177. (1999) 8 SCC 256.
178. *Div. Forest Officer* v. *Baijanti Bai and others*, (1995) I LLJ 897 (MP).
179. 2000 SCC (L&S) 899.

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arately. The fact, which spoke for itself shows that the owner of the tractor, joined
ds with the claimant for laying a claim only against the insurer. The claim was not *bona*
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l Insurance Company was directed for payment to Respondent 1. The award of the
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menting upon the order of the High Court summarily passed the Supreme Court
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question of hearing the learned standing counsel for the State does not arise.
without the application of mind and is also non-reasoned. Reasons introduce
n order. Even in administrative orders Lord Denning, MR. in *Breen* v.
Engg. Union[195] observed, "The giving of reasons is one of the fundamental of
istration". In *Alexander Machinery (Dudley) Ltd.* v. *Crabtree*,[196] it was
ilure to give reasons amounts to denial of justice. Reasons are live links
of the decision-taker to the controversy in question and the decision or
ed at. Reasons substitute subjectivity by objectivity". Right to reason is an
rt of a sound judicial system. Another rationale is that the affected party
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set aside and remitted to the High Court for fresh consideration in
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gri Siddakka and others v. *Oriental Insurance Co. Ltd. and another*,[197] in
Court ruled that since in this case the factual position has not been
would be appropriate to deal with the matter afresh. Accordingly, the
o the High Court to decide afresh.

nal Insurance Co. Ltd. v. *Saju P. Paul*,[198] the Supreme Court observed
isconstrued the proviso following sub-section (1) of Section 147 of
88. What is contemplated by the proviso to Section 147 (1) is that
required to cover liability in respect of death or bodily injury
ee arising out of and in the course of his employment other than a
the Workmen's Compensation Act, 1923. The claimant was

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New India Assurance Co. Ltd. v. *Asha Rani*, (2003) 2 SCC 223 ; *National*
eti Bharatamma, (2008) 1 SCC 423 and *Oriental Insurance Co. Ltd.* v.
03) 2 SCC 339, followed.

Supreme Court in *Ved Prakash Garg* v. *Premi Devi*,[180] where it held that the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Compensation Commissioner under the W.C. Act on the conjoint operation of Section 3 and Section 4-A, sub-section (3) (a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Commissioner under Section 4-A (3) (b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be liability of the insured employer alone. In view of the above Supreme Court held that the appellant Insurance Company is not liable to pay the amount of penalty.

It has been held by the Supreme Court in *Kashbhai Rambhai Patel* v. *Shanbhai Somabhai Parmar and others*,[181] that Ratan Singh conductor and the second driver who were working with the appellant, died on 11-12-1984 in an accident when the trolley which was loaded with grass upturned while being driven by the son of the appellant. The claim under the W.C. Act, was allowed by the Commissioner who also ordered interest and penalty against the Insurance company as well. The controversy involved in this case is covered by the decision of the Supreme Court in *Ved Prakash Garg* v. *Premi Devi*,[182] in which it was held that the insurance company would not be liable for penalty. The liability in respect of interest, however could be burdened on the insurance company. In view of the above the Supreme Court held that the insurance company would not be liable for the amount of penalty, but so far as the interest is concerned, all the appellants as also Appellant-4 the insurance company would be liable.

In *L. R. Ferro Alloys Ltd.* v. *Mahavir Mahto and another*,[183] where an accident took place in the factory of the appellant while Mahto was pouring water for cooling a hot slab when the slab burst causing burn injuries on his face resulting in loss of sight in both eyes. On the claim application the Commissioner determined the amount payable as compensation. In addition, he also quantified the penalty and interest payable for the delayed payment. The matter was carried in appeal where the Division Bench dismissed the appeal holding that it was not maintainable in view of the decision in *Chhaya Rani* v. *Dhan Devi*.[184] In appeal the Supreme Court referred in *Ved Prakash Garg* v. *Premi Devi*,[185] and observed that in *Ved Prakash case* the Supreme Court after examining the entire scheme of the Act held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation along with interest will have to be made good jointly by insurance company with the insured employer. But the penalty imposed on the insured employer is on account of his personal fault, the insurance company cannot be made liable to reimburse the same. Hence the compensation with interest is payable by the insurance company but not penalty. Following the said decision the order of the High Court was modified and appeal was allowed partly.

In *K. Janardhan* v. *United India Insurance Co. Ltd.*,[186] the question of disability on account of accident has been discussed. The appellant claimant, a tanker driver, met with

180. (1997) 8 SCC 1 followed.
181. 2000 SCC (L&S) 1105.
182. (1997) 8 SCC 1.
183. 2002 SCC (L&S) 1117.
184. (1997) 2 All PLR 147.
185. (1997) 8 SCC 1 followed.
186. (2008) 2 SCC (L&S) 733.

an accident with a tractor coming from the opposite side. As a result of accident, the appellant driver suffered serious injuries and also an amputation of the right leg up to the knee joint. He moved an application before the Commissioner.

The Commissioner considering the prayer determined the compensation payable to him at Rs. 2,49,576 and interest @ 12% per annum thereon from the date of accident.

An appeal was taken to High Court by Insurance Company. The High Court accepting the plea of the insurance company reduced the compensation. Aggrieved claimant came to the Supreme Court.

The appellant raised only one argument that claimant being a tanker driver, the loss of his right leg *ipso facto* meant a total disablement as understood in terms of Section 2 (1) (1) of the Workmen's Compensation Act and as such he was entitled to have his compensation computed on that basis. In support of this plea, the learned Counsel has placed reliance on *Pratap Narain Singh Deo* v. *Srinivas Sabata*.[187]

The Supreme Court applying the ratio of the cited judgment to the facts of the instant case held that the appellant has also suffered a 100% disability and incapacity in earning his keep as a tanker driver as his right leg had been amputed from the knee. Additionally, a perusal of Sections 8 and 9 of the Motor Vehicles Act, 1988 would show that the appellant would now be disqualified from even getting a driving licence. Therefore, the appeal was allowed and the order of the Commissioner was restored and the judgment of the High Court was set aside.

In *Kamla Chaturvedi* v. *National Insurance Co. and others*,[188] the Commissioner under W.C. Act awarded a sum of Rs. 2,21,370 along with interest at the rate of 12% per annum. The liability to make the payment was fixed on Insurance Company. In appeal the High Court accepted the stand and held that the direction for payment of interest by the insurance company was not sustainable, however the interest could be recovered from the employer. The High Court placed reliance on the judgment of the Supreme Court in *New India Assurance Co. Ltd.* v. *Harshadbhai Amrutbhai Modiniya*,[189] where it was found that as a matter of fact that the contract itself provided that the interest and/or penalty imposed on the insurer on account of his/her failure to make payment of amount payable under the Act is not to be paid by the insurer.

The Supreme Court considered the ruling in *Ved Prakash Garg* v. *Premi Devi*[190] where the Supreme Court observed that the insurance company is liable to pay not only the principal amount of compensation payable by the insurer employer but also interest thereon if ordered by the Commissioner to be paid to the insured employee. The insurance company is liable to meet the claim for compensation along with interest as imposed on the insured employer by the Act on conjoint operation of Sections 3 and 4-A (3) (a) of the Act. It was however held that it was the liability of the insured employer alone in respect of additional amount of compensation by way of penalty under Section 4-A(3) (b) of the Act.

The *New India Assurance Co.* case, *Ved Prakash Garg* case was distinguished on facts. It was observed that in the said case the Court was not concerned with a case where an accident had occurred by use of motor vehicle in respect thereof the contract of insurance will be governed by the provisions of the Motor Vehicles Act, 1988.

187. 1976 SCC (L&S) 52.
188. (2009) 1 SCC (L&S) 198.
189. (2006) 5 SCC 192 : 2006 SCC (L&S) 973.
190. (1997) 8 SCC 1.

In the instant case the position is different. The accident in question arose on account of vehicular accident and the provisions of Motor Vehicles Act are clearly applicable.

The Supreme Court considered the question as to from which date it would be paid. The Supreme Court applied the principles laid down in *National Insurance Co. Ltd.* v. *Mubasir Ahmad*,[191] where the Court held : "9. Interest is payable under Section 4-A (3) if there is default in paying the compensation due under the Act within one month from the date it fell due. The question of liability under Section 4-A was dealt with by this Court in *Mathur Singh* v. *Jashwant Singh*.[192] By amending Act 30 of 1995, Section 4-A of the Act was amended, *inter alia*, fixing the minimum rate of interest to be simple @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of interest 12% as fixed by the High Court cannot be faulted but the period as fixed by it, is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of claim. This appears to be so because Section 4-A (1) prescribed that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when the employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise.

The Supreme Court in the instant case (*Kamla Chaturvedi*) held that the liability for interest would be in terms of what has been stated in para 9 of judgment of aforementioned *Mubasir Ahmad* case. The appeal was allowed to the aforesaid extent.

In *Gottumukkala Appala Narsimha Raju* v. *National Insurance Co. Ltd.*,[193] a tractor belonged to Smt. G.V. Lakshmi, the wife of deceased Bangaru Raju. Respondent 1 was the insurer of the said vehicle. An accident took place and B. Raju died in that accident, while driving the said tractor. The petition was against the owner of the tractor Smt. Lakshmi. The owner of tractor being wife of the deceased contended that they were living separately prior to date of accident and the tractor being insured with the first respondent, she was not liable to pay any compensation. The first respondent, the National Insurance Co. contended that as the deceased and the owner were husband and wife, therefore, the deceased was not a workman within the meaning of Section 2 (1) (n) of the Act. Despite the fact that no contract of employment was brought on record the Commissioner held that the claimants were entitled to Rs. 2,11,659 by way of compensation. An appeal against the order of the Commissioner was allowed holding that no award could be passed against the insurer by the Commissioner. Hence the present appeal was filed in the Supreme Court.

191. (2007) 1 SCC (L&S) 643. Followed in *U.P.S.R.T.C.* v. *Satnam Singh*, (2013) 2 SCC (L&S) 641.
192. (1998) 9 SCC 134.
193. (2008) 2 SCC (L&S) 662 ; *National Insurance Co. Ltd.* v. *Mastan*, 2006 SCC (L&S) 401 and *New India Assurance Co. Ltd.* v. *Harshadbhai Amrutbhai Modhiya*, 2006 SCC (L&S) 973 relied on.

It was observed by the Supreme Court that it is wholly absurd to suggest that the husband would be "workman" of his wife in absence of any specific contract. The Court had no doubt in its mind that only for the purpose of proceeding under the Workmen's Compensation Act, 1923 appellants had concocted the story of husband and wife living separately. The fact, which spoke for itself shows that the owner of the tractor, joined hands with the claimant for laying a claim only against the insurer. The claim was not *bona fide*.. The appeal, therefore, being devoid of the merit, was dismissed.

In *National Insurance Co. Ltd.* v. *Gulab Nabi and another*,[194] a claim petition was filed under Section 4 of the Act against the owner of offending vehicle and the appellant N. Insurance Company. The Commissioner directed the payment of Rs. 2,68,000 to the respondent 1 along with interest @ 12%. In terms of Section 20 of the Act, the appellant National Insurance Company was directed for payment to Respondent 1. The award of the Commissioner was questioned before the High Court in an appeal which was dismissed summarily. The appellant N. Insurance Co. challenged the order passed by the Division Bench of Allahabad High Court summarily before the Supreme Court.

Commenting upon the order of the High Court summarily passed the Supreme Court observed that non-application of the mind is clear from the fact that since the State was not a party, the question of hearing the learned standing counsel for the State does not arise. The order is without the application of mind and is also non-reasoned. Reasons introduce clarity in an order. Even in administrative orders Lord Denning, MR. in *Breen* v. *Amalgamated Engg. Union*[195] observed, "The giving of reasons is one of the fundamental of good administration". In *Alexander Machinery (Dudley) Ltd.* v. *Crabtree*,[196] it was observed : "Failure to give reasons amounts to denial of justice. Reasons are live links between mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity". Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. Above being the position the order of High Court was set aside and remitted to the High Court for fresh consideration in accordance with law.

In *Harijan Mangri Siddakka and others* v. *Oriental Insurance Co. Ltd. and another*,[197] in appeal the Supreme Court ruled that since in this case the factual position has not been examined in detail, it would be appropriate to deal with the matter afresh. Accordingly, the matter was remitted to the High Court to decide afresh.

In *Manager, National Insurance Co. Ltd.* v. *Saju P. Paul*,[198] the Supreme Court observed that the High Court misconstrued the proviso following sub-section (1) of Section 147 of Motor Vehicles Act, 1988. What is contemplated by the proviso to Section 147 (1) is that the policy shall not be required to cover liability in respect of death or bodily injury sustained by an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923. The claimant was

194. (2008) 2 SCC (L&S) 1014.
195. (1971) 1 All ER 1148 (CA).
196. 1974 ICR 120 (NIRC).
197. (2010) 1 SCC (L&S) 473.
198. (2013) 1 SCC (L &S) 399 ; *New India Assurance Co. Ltd.* v. *Asha Rani*, (2003) 2 SCC 223 ; *National Insurance Co. Ltd.* v. *Chollett Bharatamma*, (2008) 1 SCC 423 and *Oriental Insurance Co. Ltd.* v. *Deereddy Konda Reddy*, (2003) 2 SCC 339, followed.

admittedly not driving the vehicle nor was he engaged in driving the said vehicle. Merely because he was travelling in the cabin would not make his case different from any other gratuitous passenger. The High Court was wrong in holding that the Insurance Company shall be liable to indemnify the owner of the vehicle and pay compensation to the claimant as directed in the award by the Tribunal.

In *Oriental Insurance Co. Ltd.* v. *Dyamavva and others*,[199] the Supreme Court has considered provisions of Sections 8 and 10 of the Workmen's Compensation Act and also options available to claim compensation either under M.V. Act, 1988 or under Workmen's Compensation Act but not under both.

After citing the provisions of Sections 8 and 10 of the Workmen's Compensation Act, 1923 it has observed that sub-sections (1) to (3) of Section 8 extracted above leave no room for any doubt that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen's Compensation Commissioner. Payment made by the employer directly to the dependants is not recognised as a valid disbursement of compensation. The procedure envisaged in Section 8 of the Workmen's Compensation Act, 1923 can be invoked only by the employer for depositing compensation with the Workmen's Compensation Commissioner.

As against the aforesaid, where an employer has not suo motu initiated action for payment of compensation to an employee or his/her dependants, in spite of an employee having suffered injuries leading to the death, it is open to the dependants of such employee to raise a claim for compensation under Section 10 of the Workmen's Compensation Act, 1923. Sub-section (1) of Section 10 prescribes the period of limitation for making such a claim as two years from the date of occurrence (or death). The remaining sub-sections of Section 10 of the Workmen's Compensation Act, 1923 delineate the other procedural requirements for raising such a claim.

Having perused the aforesaid provisions and determined their effect, it cleanly emerges that the Port Trust had initiated proceedings for paying compensation to the dependants of the deceased Yalgurdappa B. Goundar "suo motu" under Section 8 of the Workmen's Compensation Act, 1923. For the aforesaid purpose, the Port Trust had deposited a sum of Rs. 3,26,140 with the Workmen's Compensation Commissioner on 4.11.2003.

The procedure under Section 8 aforesaid (as noticed above) is initiated at the behest of the employer "suo motu", and as such, in our view cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. The position would have been otherwise if the claimants had moved an application under Section 10 of the Workmen's Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen's Compensation Act. Suffice it to state that no such application was ever filed by the respondent claimants herein under Section 10 aforesaid. In the above view of the matter, it can be stated that the respondent claimants having never exercised their option to seek compensation under Section 10 of the Workmen's Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under Section 166 of the Motor Vehicles Act, 1988.

199. (2014) 1 SCC (L&S) 716.

In the aforesaid view of the matter, we hereby affirm the determination rendered by the Motor Accidents Claims Tribunal, Bagalkot and the High Court in awarding compensation quantified at Rs. 11,44,440 to the claimant. The Motor Accidents Claims Tribunal, Bagalkot, as also the High Court, ordered a deduction therefrom of a sum of Rs. 3,26,140 (paid to the claimants under the Workmen's Compensation Act, 1923). The said deduction gives full effect to Section 167 of the Motor Vehicles Act, 1988, inasmuch as, it awards compensation to the respondent claimants under the enactment based on the option first exercised, and also ensures that the respondent claimants are not allowed dual benefit under the two enactments.

In view of the reasons recorded and finding no merit in the instant appeal the Supreme Court affirmed the judgment rendered by the High Court and dismissed the appeal accordingly.

8. Method of calculating wages.—The amount of compensation is calculated with reference to wages of the employee. So it varies in cases of permanent total disablement, permanent partial disablement, temporary disablement and in case of death and it also varies from person to person. The method of calculating wages has been given in the provisions of Section 5 of the Act.

In this Act and for the purposes of this Act the expression "monthly wages" means the amount of wages deemed to be payable for a month's service whether the wages are payable by the month, or by whatever other period or at piece rates, and calculated in accordance with the following principles, namely:—[200]

(a) where the workman has during a continuous period of not less than twelve 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 one twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

(b) where the whole of the continuous period of service immediately preceding the accident during which the employee was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the employee shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality;

(c) in other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b), the monthly wages shall be thirty times the total wages earned in respect of 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.

A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days.[201]

It has been observed in *Pestonji Bhikaji* v. *Asi Bai*,[202] that clause (a) of Section 5 of the Act obviously, only covers a case where there has been continuous employment under the

200. Employees' Compensation Act, 1923, Section 5.
201. Explanation to Section 5.
202. AIR 1949 Sind 50.

same master during the period of 12 months preceding the accident. Where a tindal was employed for a few days with one employer and when the particular piece of work was completed, he was engaged by another employer, his service would be of a casual nature not covered by clause (a) of Section 5, or its Clause (c). Clause (a) of Section 5 which covers cases where the workman was continuously employed under one master, but whose service with that master was less than one month and also cases of casual employers. There are two alternative methods of calculation of monthly wages prescribed in Section 5(b). The workman upon whose wages the computation is to be based as contemplated by the first part of clause (b) is not a casual labour but one between whom and his employer there existed for a continuous period of 12 months the relationship of master and servant; one who might for the purpose of brevity be referred to as regular employee, one who worked under the same master and whose own monthly wages would be computable under clause (a). Since the tindal does not come under the category of such regular employees this first method of computation would not apply and his monthly wages have therefore to be computed according to the second method provided in clause (b) which with the context will read "the monthly wages of the workman shall be deemed to be the average monthly amount which during the 12 months immediately preceding the accident was being earned by a workman employed on similar work in the same locality". These words manifestly include wages from any source and any employer.

9. Review.—The compensation is paid in case of disablement of the employee. The condition of the disability may change later on and they may review the earning capacity. The compensation is dependent on the loss of earning capacity. If the condition of the employee improves the employer may like to make an application for review and if the condition of the employee deteriorates he himself may like to make an application for a fresh calculation of compensation. Section 6 of the Act permits review in such cases. So the aggrieved party may make application for review.

Section 6 (1) 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 employee accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the employee or subject to rules made under this Act, on application made without such certificate.

Any half-monthly payment, may, on review under this section subject to the provisions of this Act, 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 employee is entitled less any amount which he has received already by way of half-monthly payments.[203]

Thus in such cases the amount of compensation paid already by way of half-monthly instalments will be deducted from the amount to be paid in case of permanent disablement to the employee.

Application for review of a half-monthly payment under Section 6 of the Act may be made without being accompanied by a medical certificate[204] in the following cases :

(a) by the employer, on the ground that since the right to compensation was determined the workman's wages have increased ;

203. The Employees' Compensation Act, 1923, Section 6(2).
204. The Employees' Compensation Rules, 1924, Rule 3.

(b) by the workman, on the ground that since the right to compensation was determined his wages have diminished;

(c) by the workman, on the ground that the employer having commenced to pay compensation, has ceased to pay the same, notwithstanding the fact that there has been no change in the workman's condition such as to warrant such cessation;

(d) either by the employer or by the workman on the ground that the determination of the rate of compensation for the time being in force was obtained by fraud or undue influence or other improper means;

(e) either by the employer or by the workman on the ground that in the determination of compensation there is a mistake or error apparent on the face of the record.

If, on examining an application for review by an employer in which the reduction or discontinuance of half-monthly payments is sought it appears to the Commissioner that there is reasonable ground for believing that the employer has a right to such reduction or discontinuance, he may at any time issue an order withholding the half-monthly payments in whole or in part pending his decision on the application.

10. Commutation of half-monthly payments.— It has been provided 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 six 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.[205]

So far as the procedure of application for commutation is concerned it has been provided that where application is made to the Commissioner under Section 7 for the redemption of a right to receive half-monthly payments by the payment of a lump-sum, the Commissioner shall form an estimate of the probable duration of the disablement and shall award a sum equivalent to the total of the half monthly payments which would be payable for the period during which he estimates that the disablement will continue, less one-half per cent of that total for each month comprised in that period.[206]

Provided that fractions of a rupee, included in the sum so computed shall be disregarded.

When in any case to which sub-rule (1) applies the Commissioner is to form an approximate estimate of the probable duration of the disablement he may from time to time, postpone a decision on the application for a period not exceeding two months at any one time.[207]

11. Distribution of Compensation.—Section 8 of the Act provides for the deposit of the Compensation before the Commissioner, as also to the distribution of compensation by the Commissioner. Section 8 lays down the following rules with regard to distribution of compensation :

(1) No payment of compensation in respect of an employee whose injury has resulted in death, and no payment of lump sum as compensation to an employee or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no

205. The Employees' Compensation Act, 1923 Section 7.
206. The Workmen's Compensation Rules, 1924, Rule 5(1).
207. The Workmen's Compensation Rules, 1924, Rule 5(2).

such payment made directly by an employer shall be deemed to be a payment of compensation.

But in the case of deceased employee, an employer may make to any dependent advances on account of compensation (of an amount equal to three months wages of such employee and so much of such amount)[208] as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1), as compensation in respect of a deceased employee the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied, after an inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.[209]

(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased employee or any of them in such proportion as the Commissioner thinks fit or may, in the discretion of the Commissioner, be allotted to any one dependant.

In *Suchitra Devi (Smt.)* v. *Presiding Officer, Labour Court*,[210] where validity of deduction from the compensation under the Act was considered by the Supreme Court in appeal before it. The appeal was a sequel to an accident which took place on 27.12.1975 in Chasnala Colliery of the Indian Iron and Steel Co. Ltd. In that tragedy 270 workmen whose heirs were before the Labour Court died in the accident. Immediately after the tragedy a sum of Rs. 10,000/- was given to the each families of those workmen. Later on claims of heirs under Workmen's Compensation Act were adjudicated and each of them were allowed certain amount by the authority. The appellant, a wife of one of the workmen who died in the tragedy, was awarded Rs. 21,600. After deducting Rs. 10,000 which was paid at the time of accident, a sum of Rs. 11,600 was paid to the appellant. The appellant filed an application before the Workmen's Compensation Commissioner, Dhanbad that the deduction of Rs. 10,000 out of the compensation amount of Rs. 21,600 was illegal. The Commissioner referred the matter alongwith 259 other cases to the Presiding Officer, Labour Court, Bokaro Steel City for adjudication. The Labour Court dealt with 270 cases and came to conclusion that the deduction of Rs. 10,000 from the compensation amount of each of the workmen was justified. Thus the appeal by way of special leave was filed before the Supreme Court against the order of the Labour Court as upheld by the High Court. The writ petition was dismissed by the High Court *in limine*. Their Lordships of the

208. Amended proviso to Section 8(1) (w.e.f. 15-9-1995).
209. Amended Section 8(4) (w.e.f. 15.9.1995).
210. 1996 SCC (L & S) 828.

Supreme Court observed : "We do not wish to go into the question whether the management rightly deducted Rs. 10,000 from the compensation amount or not. Keeping in view the ghastly tragedy and the misery which must have fallen on the family of the deceased workmen, we are of the view that deduction was wholly unjustified." Therefore, the Supreme Court setting aside the order of the Labour Court and High Court allowed the appeal directing the management to pay a sum of Rs. 10,000 to each of the workmen's heirs/family with 12% interest from 1.1.1983.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not an employee or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half monthly payment is payable to any person under legal disability, the Commissioner may, of his own motion or an application made to him in this behalf, order that the payment be made during the disability to any dependant of the employee or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the employee.

(8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(9) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in Section 31.

These rules are to be followed in cases where the compensation is to be deposited with and also govern the distribution of the compensation by the Commissioner.

12. Compensation not to be assigned, attached or charged.—Section 9 of the Act provides that save as provided by this Act, no lump-sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the employee by operation of law, nor shall any claim be set off against the same.

The provision is intended to safeguard the interest of the employee who are entitled to compensation under the provisions of this Act. His amount of compensation whether payable as a lump sum or by way of half-monthly instalments cannot be assigned, or charged or liable to attachment or pass to any person other than the employee in any way. No claim can be set off against the same. Thus the provision makes it imperative that the

amount of compensation is to be paid to the employee entitled for it without any delay or difficulties. The dependants of a deceased employee have statutory right, to receive the compensation in case of death of the employee concerned.

13. Notice and claim.—In order that an employee may be entitled to compensation he must give notice of accident in writing to the employer. Such notice must be given as soon as practicable after the happening of the accident.

Every such notice must contain (1) the name and address of the person injured, (2) it must state in ordinary language the cause of the injury, and (3) it must indicate the date on which the accident happened.

The notice of accident must 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 employee was employed.[211]

It has been provided that the State Government may require that any prescribed class of employers shall maintain at their premises at which employee are employed a notice book in the prescribed form, which shall be readily accessible at all reasonable time to any injured employee employed on the premises and to any person acting *bona fide* on this behalf.[212]

A notice under Section 10 of the Act 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.[213]

A claim for compensation must be preferred before the Employees' Compensation Commissioner within two years of the occurrence of the accident, or in case of death, within two years from the date of death. Unless notice of the accident has been given in the manner provided as soon as practicable after the happening of the accident and unless the claim is preferred within two years of the occurrence of the accident or in case of death within two years from the date of death, no claim for compensation shall be entertained by a Commissioner.[214]

But where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of Section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease.[215]

It has been further provided that in case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the date on which the employee gives notice of the disablement to his employer.[216]

But if an employee who, having been employed in an employment for a continuous period, specified under sub-section (2) of Section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that

211. The Employees' Compensation Act, 1923, Section 10(2).
212. *Ibid.*, Section 10(3).
213. Section 10(4).
214. Section 10(1).
215. Proviso to Section 10(1).
216. The Employees' Compensation Act, 1923, proviso to Section 10(1).

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.[217]

It has been provided that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim by the Commissioner in the following cases:[218]

(a) if the claim is preferred in respect of the death of an employee resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee 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 person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred.

Although the period of limitation has been fixed for giving notice to the employer and for preferring claim for compensation but 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 above, 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.

It makes clear that the Section 10 lays down the rules in respect of notice of the accident to be given and rules in accordance with which the period of limitation may be counted for giving notice of the accident and for preferring claim to compensation before the Commissioner. It has been observed in *Makhanlal Marwari* v. *Audh Beharilal*,[219] that the scheme of Section 10 is that a notice of the accident to the employer is necessary before a claim for compensation can be entertained by the Commissioner. But there are exceptions to this general rule. These exceptions are where the employer had knowledge of the accident from any other source at or about the time when it occurred, want of notice will not obstruct the entertainment of a claim. Another exception is where the Commissioner is satisfied that the failure to give notice was due to sufficient cause.

14. Power to require from employers statements regarding fatal accidents.—The Commissioner has been given power to make enquiry regarding fatal accidents. Section 10-A provides in this regard as under:

(1) Where a Commissioner receives information from any source that a an employee 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 employee's 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 employee, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) 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.

217. Proviso III to S. 10 (1).
218. Provisos (a) and (b) to Section 10(1) (w.e.f. 15.9.1995)
219. AIR 1959 All. 586.

(3) 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.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased employee, that it is open to the dependant to prefer a claim for compensation and may give them such other further information as he may think fit.

Section 10-A lays down the procedure to be followed where the Employees' Compensation Commissioner receives information from any other source that a an employee had died as a result of an accident arising out of and in the course of his employment. It lays down procedure in cases where the employer disclaims liability for compensation. It has been observed that if the employer disclaims his liability for compensation Section 10-A provides for enquiry by the Commissioner.[220]

15. Report of fatal accidents and serious bodily injuries.—Section 10-B (1) provides that 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 the accident occurring on 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.

But where the State Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.[221]

The expression 'serious bodily injury' means any 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.[222]

Section 10-B (2) provides that the State Government may, by a notification in the official Gazette, extend the provisions of sub-section (1) 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.

Section 10-B (3) provides that nothing in this section shall apply to the factories to which the Employee's State Insurance Act, 1948, applies.

Keeping in view the expression, 'any law for the time being in force' as used in Section 10-B (1) it may be pointed out that under Section 88 of the Factories Act, 1948, the manager of the factory is under duty to send notice of accidents where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of 48 hours or more immediately following the accident or which is of such nature as may be prescribed in this behalf. Fatal accidents are covered by that section. Consequently in the case of fatal accident occurring in a factory report of the same will have to be sent to the Commissioner. The report is required to be submitted in the prescribed form. Report must contain the following informations :[223]

220. *The Orient Fire and General Insurance Co. Ltd and another* v. *Union of India*, AIR 1972 AP 222.
221. The Employees' Compensation Act, 1923, proviso to Section 10-B (1).
222. Explanation to Section 10-B (1).
223. The Workmen's Compensation Rules 1924, Rule 11 Form EE.

(a) time of the accident,

(b) place where the accident occurred,

(c) manner in which deceased was/were employed at the time,

(d) cause of the accident,

(e) any other relevant particulars.

In addition to this information, the name, sex, age, nature of employment and full postal address of the deceased employee are required to be supplied as these are the relevant particulars.[224]

16. Medical examination.—Section 11 of the Act contains the following provisions regarding medical examination :

(1) Where an employee has given notice of an accident he shall, if the employer before the expiry of three 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 employee who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time :

Provided that an employee shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If an employee, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time refuses to submit himself for examination by 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.

(3) If an employee, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination 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 offers himself for such examination.

(4) Where an employee, whose right to compensation has been suspended under sub-section (2) or sub-section (3), 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 employee.

(5) Where under sub-section (2) or sub-section (3) 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 (1) of Section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured employee 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

224. G.M. Kothari, A Study of Industrial Law, p. 517.

of such medical practitioner, then, if it is proved that the employee has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has 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 employee had been regularly attended by a qualified medical practitioner, whose instructions he had followed, and compensation, if any, shall be payable accordingly.

The Rule 14 lays down that when such employee is present at the employer's premises, and the employer offers to have him examined free of charge by a qualified medical practitioner who is so present, the employee shall submitt himself for examination forthwith.[225]

In cases where Rule 14 as stated above does not apply, the employer may[226]—

(a) send the medical practitioner to the place where the employee is residing for the time being in which case the employee shall submit himself for medical examination on being requested to do so by the medical practitioner, or

(b) send to the employee an offer in writing to have him examined free of charge by a qualified medical practitioner, in which case the employee shall submit himself for medical examination at the employer's premises or at such other place in the vicinity as is specified in such offer and at such time as is so specified :

Provided that—

(i) the time so specified shall not, save with the express consent of the employee, be between the hours 7 p.m. and 6 a.m.; and

(ii) in case where the employee's condition renders it impossible or inadvisable that he should leave the place where he is residing for the time being, he shall not be required to submit himself for medical examination save at such place.

So far as the medical examination of woman worker is concerned, it has been provided that no woman shall without her consent be medically examined by a male practitioner, save in the presence of another woman. No woman shall be required to be medically examined by male practitioner if she deposits a sum sufficient to cover the expenses of examination by a female practitioner.[227] Thus the woman workers are examined by female medical practitioner in the above case.

17. Contracting.—Section 12 of the Act deals with the liability of the contractor in certain cases. It contains the following provisions in this regard :

(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person referred to as the contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any

225. The Workmen's Compensation Rules, 1924, Rule 14.
226. Ibid., Rule 15.
227. Ibid.

compensation which he would have been liable to pay if that employee had been immediately employed by him ; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

In *Bhutabhai Angad Bhai* v. *Gujarat Electricity Board*,[228] their Lordships held that in our opinion, the main object of enacting Section 12 of the Act is to secure compensation to the employees who have been engaged through the contractor by the principal employer for its ordinary part of business, which in ordinary course, the principal employer is supposed to carry out by its own servants.

In *Century Minerals and Chemicals Pvt. Ltd.* v. *Koli Gordhan Laxman Bhai*,[229] it was held that "if any workman suffers any injury, as a result of an accident, arising out of and in the course of employment, obviously the employer is liable to pay compensation to the workman under the provisions of Section 3 of the Act. There must be an employer and employee relationship between the person against whom the compensation is claimed and the workman. But, in many cases, persons who want to get the work done try to avoid their liability by contracting with someone else to provide labour to execute the work and then to contend that as there is no employer and employee relationship between the workman who suffered injury therefore, they are not liable to pay any amount of compensation. To prevent such escape from liability from the payment of compensation, Parliament in its wisdom has designedly provided special provision under Section 12 of the Act.

In *Century Chemicals and Oils Pvt. Ltd.* v. *Esther Maragatham and others*,[230] the Madras High Court considered the aforementioned cases and held that even if there is no direct employer and employee relationship between the appellant and the deceased, in view of Section 12 (1) of the Act, both are to be made liable as the deceased was a skilled labourer employed by the contractor in the trade and business activities of the appellant.

(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 employee 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 the relation of a contractor from whom the employee 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.

In *Executive Engineer, P.W.D.* v. *Subhiah Baicker and another*,[231] it was held by the High Court of Madras that merely because Section 12 (2) of the Act contemplates the contractor giving an indemnity to the principal employer, in case the principal employer is made liable in respect of compensation it cannot be said that the Additional Commissioner cannot pass an award against the principal employer. If the argument of the principal employer is accepted, then in no case a direct award can be passed against the principal employer. That will run counter to Section 12 of the Act. When the legislature has specifically provided that an award for compensation is to be passed directly against the

228. (1987) 2 ACJ 987; *Asstt. Director of Horticulture Div.* v. *Andi and Another*, (1997) II LLJ 568 (Mad.).
229. 1991 ACJ 761.
230. (1998) II LLJ 473 (Mad.).
231. (1983) II LLJ 320.

principal employer and the principal employer is given a right of indemnification as against the contractor the Additional Commissioner is entitled to pass an award granting compensation either in full or in part directly against the principal employer on condition that the principal employer will get indemnified by the contractor.

In *K. Koodalingam* v. *Supdt. Engineer, PWD.*,[232] where P.W.D. engaged contractor for construction of canal who engaged workmen to do the work. The workmen died in landslide while at work. It was held that P.W.D. is liable to pay compensation as principal employer and is entitled to be indemnified by the contractor in terms of Section 12 of the Act.

(3) Nothing in this section shall be construed as preventing an employee from recovering compensation from the contractor instead of the principal.

(4) 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.

18. Remedies of employer against stranger.—Where an employee has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof the person by whom the compensation was paid and any person who has been called on to pay an indemnity under Section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.[233]

19. Insolvency of employer.—Section 14 of the Act deals with the liability of insurer of the employer in cases of his insolvency. But this section applies only when the employer has entered into a contract of insurance in this regard with the insurer. Section 14 contains the following provisions in this regard :

(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any employee, 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 employee 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 employer, so however, that the insurers, shall not be under any greater liability to the employee than they would have been under the employer.

(2) If the liability of the insurers to the employee is less than the liability of the employer to the employee, the employee may prove for the balance in the insolvency proceedings or liquidation.

(3) 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

232. (1995) I LLJ 334 (Kerala).
233. The Employees' Compensation Act, 1923, Section 13.

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 employee :

Provided that the provisions of this sub-section shall not apply in any case in which the employee fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) 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 [234][Section 530 of the Companies Act, 1956] are in the distribution of the property of an insolvent or the distribution of the assets of a company being wound up to be paid in priority to all others 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.

(5) Where the compensation is a 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 applications 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.

(6) The provisions of sub-section (4) 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 is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

The scope of Section 14 has been discussed by the courts in several cases. In *United India Insurance Company* v. *Gangadharan Nair*,[235] it has been held that Section 14 was understood as excluding the insurer from liability to employees under the Workmen's Compensation Act excepting a case where the employer became insolvent or made or composed the scheme for arrangement with his creditors or winding up proceedings were commenced in cases where the employer was a company. The purpose of this provision is that in such circumstances the right of the workman shall not be defeated and the insurer can be substituted in the place of the insolvent employer. It does not operate as a prohibition, against any proceeding before the Workman's Compensation Commissioner, involving insurer who is liable under a contract of insurance to discharge the liability of the employer to compensate the workman according to the provisions of the Act. Section 14 is only an enabling provision and it cannot operate as a prohibition against the insurer being proceeded against before the Workman's Compensation Commissioner. Section 101 of the Motor Vehicles Act contains similar provision and it does not enable the insurer to disclaim liability.

234. Ins. by W.C. (Amendment) Act, 1995, w.e.f. 15.9.1995.
235. (1987) 1 LLJ 448 (Kerala). See also *United India Fire and General Insurance Co. Ltd.* v. *Joseph, Marium*, (1979) ACJ 349; *United India Fire and General Insurance Co. Ltd.* v. *P.M. Ishammal*, (1979)

In *Div. Manager, Oriental Insurance Co. Ltd.* v. *Zareena Bee*,[236] it has been held that in view of Section 14 of the Act wherein the liability of insurer comes into play only when the employer becomes insolvent and not otherwise. Section 4-A of the Act itself spells out the liability for the consequence of non-compliance of the award made as against the employer. The implication of either Section 4-A or Section 14 of the Act cannot rope in the insurer to absolute liability at all events.

Thus Insurance Company is bound to indemnify the insured and satisfy the award unless it has statutory defences available to it in law.[237] Now there is settled law on the point that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay is part and parcel of legal liability to pay compensation on default of payment of that amount within one month. Therefore claim for compensation along with interest will have to be made the good jointly by the insurance company with the insured employer. But the penalty imposed on the insured employer is on account of his personal fault, the insurance company cannot be made liable to reimburse the same. Thus compensation with interest is payable by the insurance company but not penalty.[238]

20. Compensation to be first charge on assets transferred by employer.—It has been provided that where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefore accrued before the date of transfer, has been paid, such amount shall, notwithstanding anything 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.[239] Thus if any employer transfers his assets before any amount due in respect of compensation but liability of which has accrued before the date of transfer, such amount shall be the first charge on that part of the assets so transferred as consists of immovable property notwithstanding anything contained in any other law for the time being in force.

21. Special provisions relating to masters and seamen.—The Employees' Compensation Act contains certain special provisions to be applied in the case of employee who are masters of ships or seamen. Section 15 of the Act provides that this Act shall apply in the case of employees who are masters of ships or seamen subject to the following modifications, namely[240] :

(1) 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 seamen to give any notice of the accident.

(2) 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 :

ACJ 448 ; *New India Assurance Co. Ltd.* v. *Parmeshwari Amma*, ILR 1976 (1) Kerala 237 ; *National Insurance Co. Ltd.* v. *Jabunbi*, (1984) ACJ 741.

236. (1997) II LLJ 1133.

237. *Rajasthan P.K. Transport Co.* v. *Commr., Workmen's Compensation*, (1997) I LLJ 970 (Delhi).

238. *LR Ferro Alloys Ltd.* v. *Mahavir Mahto and another*, 2002 SCC (L&S) 1117.

239. The Employees' Compensation Act, 1923, Section 14-A.

240. The Employees' Compensation Act, 1923, Section 15 [clauses (1) to (6)].

Provided that the Commissioner may entertain any claim of 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 master or seaman is discharged or left behind in any part of India or in any 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—

(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 ; and

(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.

(4) 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.

(5) No compensation shall be payable under this Act in respect of any injury in respect of which provision is 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 Allowances (Indian Seamen, etc.) Scheme, 1941, made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939, or under the War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Central Government.

(6) Failure to give a notice or make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceeding under this Act in respect of any personal injury, if—

(a) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause ; and

(b) 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 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

(c) 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.

By amendment made in 1995 the following two new sections, namely, sections 15-A and 15-B have been inserted with effect from 15.9.1995.

22. Special provisions relating to captains and other members of crew of aircraft.—This Act shall apply in the case of employees who are captains or other members of the crew of aircraft 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 :

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 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.

23. Special provisions relating to employees abroad of companies and motor vehicles.—This Act shall apply—

(i) in the case of employee 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 to 1988) as drivers, helpers mechanics, cleaners or other employee, 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 employee 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 employee 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 was so made."

24. Returns as to compensation.—The State Government has been authorised to direct that every person employing employees or that any specified class of such persons, shall, send at such time and in such form and to such authority as may be specified in the notification issued by the Government, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation, as the State Government may direct.[241]

25. Contracting out.—In order to provide protection to the ignorant employee it has been provided that any contract or agreement whether made before or after the commencement of this Act, whereby an employee relinquishes any right of compensation from the employer for personal injuries arising out of and 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.[242] Thus any agreement between the employer

241. The Employees' Compensation Act, 1923, Section 16.
242. The Employees' Compensation Act, 1923, Section 17.

and the worker in which it has been agreed to remove or reduce the liability to pay compensation is null and void whether made before or after the commencement of this Act. It has been observed that under Section 17 any agreement which has the effect on the workman of relinquishing his legitimate rights, is viewed with disfavour, and consequently any such contract is regarded as null and void. Hence the Commissioner cannot rely on any compromise between the workmen and the employer as a defence to claim under the Act.[243]

In *Roshan Deen* v. *Preetilal*,[244] where Roshan Deen, a young man of 25 made a claim on the respondent who was running a flour mill-cum-sugar cane factory for a sum of Rs. 7 lakhs. Roshan Deen was a workman on a monthly salary of Rs. 1500/ per month. On an ill-fated day he was operating a machine of the mill, but in a sudden tweak he got himself snapped in the shaft of a column and was crushed by a fast rotating machine and was ruinously injured. He was rushed to a private hospital and from there, to the PGI, Chandigarh. Enough it is to say that he did not die of the injuries. He filed a petition before the Commissioner claiming compensation of Rs. 5 Lakhs plus medical expenses of Rs. 2 lakhs.

The respondent repudiated all the above averments including the very basis of the claim that the appellant was a workman of his mill. He stated that no such accident has taken place nor had the appellant sustained any injuries whatsoever. While the claim petition was pending an application was filed in which it was stated, *inter alia*, that the appellant and the respondent had entered into an agreement with each other and hence, the appellant did not want to pursue any claim against the respondent, and on the strength of the said agreement, requested the Commissioner to record the agreement. The application was signed by the respondent and the signature was authenticated by an advocate. But there was no signature of the appellant, instead a thumb impression was seen affixed which was identified by Advocate R. Singh. On the basis of this agreement Commissioner on 12.3.99 dismissed the claim of the appellant as settled/withdrawn. On 16-4-1999 the appellant filed a petition before the Commissioner praying for recalling the above order, as fraud has been committed in this case by his Advocate Shri Rajpal Panwar. However, the respondent asserted that the appellant has withdrawn his claim on his own. He reiterated that the appellant was never employed by him and denied having played any fraud on him.

The Commissioner thereupon passed an order on 11.10.1999 after referring to Section 17 of the Act which declares any agreement by which a workman relinquishes any right to get compensation from the employer for personal injury as null and void.

The respondent challenged the said order before the High Court under Article 227. Learned single judge of the High Court, despite his attention was drawn to Section 17 of the Act, went to the extent of observing that no fraud was played on the appellant. The only consolation provided by the learned single judge to the crippled human being was that Roshan Deen may adopt other legal remedy under law against this order.

The Supreme Court observed, "what is other remedy which the appellant could adopt is not even indicated by the learned single judge and we are unaware of any other possible legal remedy which could even be contemplated by the appellant. The legislative protection conferred on an injured workman as per Section 17 of the Act, or the decision of the Supreme Court in *United India Insurance Co. Ltd.* v. *Rajendra Singh* which were brought on to the notice of learned single Judge, did not make any impact on him. He sidelined the

243. *Federation of Labour Co-operative Ltd.* v. *Polayya*, 1961 (I) LLJ 365 (SC).
244. 2002 SCC (L&S) 97.

legislative mandate and bypassed the binding decision and proceeded to overturn the correct decision rendered by the Commissioner. Thus, the hands of the High Court had snatched away the solace provided by the Commissioner to a semi-handless and semi-legless person. The power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not thwart it as explained in *State of UP* v. *Distt. Judge, Unnao*.[245]

It was further observed by the Supreme Court that the High Court permitted the revival of an absolutely unjust order, both on facts and on law, which deprived a person of his legitimate right to have his claim decided in accordance with the provisions of the Statute. A reading of Section 17 of the Act would amplify the above position. After quoting Section 17 the Court observed that in this context it is necessary to point out that Section 28 of the Act contains a provision for registration of agreements. Even the said provision shows that an agreement should be for disbursement of the amount payable as compensation" and if any such agreement is arrived at, the section requires that a memorandum thereof shall be sent by the employer to the Commissioner who shall record the memorandum in a register in the prescribed manner. One of the clauses in the provision indicates that if it appears to the Commissioner that an agreement ought not to be registered "by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means", the Commissioner has the power to refuse to record the memorandum of the agreement. Section 29 contains a mandate that if the memorandum of any agreement is not sent to the Commissioner, as required by the preceding 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".

Section 4 of the Act gives specifications how to quantify the amount of compensation payable to the workman. Clause (b) of sub-section (1) thereof says:

> "Where permanent total disablement results from the injury, an amount equal to sixty percent of the monthly wages of the injured workman multiplied by the relevant factor" shall be the amount of compensation". Relevant factor means the factor specified in second column of Schedule IV. If the age of the claimant as stated in his application is taken into account the relevant factor would be a figure nearing 217.

It was thus explicitly clear that the agreement reported before the Commissioner which led to the order dated 19-3-1999 had burgeoned in fraud. The whole deliberations before the Commissioner on 19-3-1999 smack of a fraud of a superlative degree played on the Commissioner.

The learned single judge seems to have entertained a notion that once a Commissioner happened to pass an order, however illegal, unjust or inequitable it be, or even if the Commissioner was convinced that the order was wangled from him by playing a fraud on him he would be helpless and the parties thereto would also be helpless except to succumb to such fraud. It was in this context that the decision cited before the learned single judge required consideration by him. In *United India Insurance Co. Ltd.* v. *Rajendra Singh*,[246] Supreme Court had held thus:

> "Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to

245. AIR 1984 SC 1401.
246. 2000 SCC (Cri) 726.

recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim"

After making the aforementioned observations the Supreme Court set aside the order of the Commissioner dated 19-3-1999 holding it to be the by-product of fraud and cheating and restored the order of the Commissioner dated 11-10-1999 directing the Commissioner to expedite the proceedings and dispose of the claim. The Court directed the Bar Council of India to hold enquiry into the allegations made against the Advocate Rajpal Panwar as to whether he had played a chicanery to defraud the petitioner by obtaining his thumb impression and paying him Rs. 95,000 pursuant to a decision of the Commissioner.

26. Penalties.—The Act makes provision for penalties in cases of violation of the provisions of the Act. It under its Section 18-A provides that whoever—

(a) fails to maintain a notice book which he is required to maintain under sub-section (3) of Section 10, or

(b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of Section 10-A, or

(c) fails to send or report which he is required to send under Section 10-B, or

(d) fails to make a return which he is required to make under Section 16, shall be punishable with fine which may extend to five hundred rupees (after amendment now five thousand rupees w.e.f. 15.9.1995).

No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is made within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner.[247]

27. Employees' Compensation Commissioners.—For the purpose of deciding the question of the liability of any person to pay compensation under the Act, the calculation of amount of compensation and other relevant matters, State Government has appointed Workmen's Compensation Commissioners. These appointments are made for different local areas. As a matter of fact, the provisions of the Act are implemented by the Commissioners so appointed for the purpose.

(1) Reference to Commissioners.—If any question arises in any proceeding under this Act as to the liability of any person to pay compensation including any question as to whether a person injured is or is not an employee or as to the amount or duration of compensation including any question as to the nature or extent of disablement the question shall, in default of agreement be settled by a Commissioner.[248] It makes clear that the following questions, in default of agreement, are to be settled by the Commissioner :

(i) The question as to the liability of any person to pay compensation.

(ii) The question as to whether a person injured is or is not a workman within the meaning of this Act.

(iii) The question as to the amount or duration of compensation.

(iv) The question as to the nature or extent of disablement.

The matters referred to above are within the jurisdiction of the Commissioner of that particular area. It has been observed that jurisdiction to decide the loss of earning capacity

247. The Employees' Compensation Act, 1923, Sections 18-A (1) and (2).
248. The Employees' Compensation Act, 1923, Section 19 (1).

of an injured workman is with the Commissioner. Medical evidence being only opinion, will not be decisive of the question. The Commissioner has to independently give a finding as to the extent of the loss of earning capacity. If at the invitation of the parties the Commissioner goes outside his jurisdiction and refers, what should have been properly his decision, to the decision of the medical board or some other agency, he acts extra *cursum curiae* and the parties will be bound by the opinion of the referee and there will be no right to appeal.[249]

In *Gurnam* v. *Commissioner, Workmen's Compensation and others,*[250] it has been held that in view of expression contained in Rule 32 of the Workmen's Compensation Rules, 1924, the Commissioner cannot modify or amend order though he can correct the clerical and arithmetical mistakes arising out of the accidental slip or omission. He cannot reduce the compensation amount awarded.

Section 19 of the Workmen's Compensation Act does not altogether bar the consideration of the question as to whether a person injured is or is not a workman. On the language of Section 19, where the point is a moot point and where the evidence might indicate that the employee was not a workman it cannot be said that the Commissioner would have no jurisdiction to decide the point before deciding about the compensation payable.[251]

It has been observed by the Supreme Court in *Pratap Narain Singh Dev* v. *Shrinivas Sabata,*[252] that in case of a personal injury caused to a workman by an accident which arises out of and in the course of employment, unless the right to compensation is taken away under sub-section (5) of Section 3 the employer becomes liable to pay the compensation as soon as the aforesaid personal injury is caused to the workman. Section 19 only provides for settlement by the Commissioner of any question regarding liability of any person to pay compensation or the amount or duration of compensation, in default of any agreement, if such question arises in any proceeding under the Act. The section does not have the effect of suspending the liability of an employer to pay compensation under Section 3 till after the settlement contemplated under Section 19. It is the duty of the employer to pay compensation under Section 4-A (1) at the rate provided by Section 4 as soon as the personal injury is caused to the workman. Where the employer fails to do so and also makes no provisional payment under Section 4 (2) but challenges the jurisdiction of the Commissioner, the employer is liable to pay interest and penalty.

Jurisdiction of the Civil Court barred.—It has been provided that 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.[253] It has been observed by the Supreme Court in *Kamala Mills Ltd.* v. *State,*[254] that in cases where the exclusion of the Civil Court's jurisdiction is expressly provided for the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it, may be relevant but cannot be decisive. If it appears that a statute creates a special right or liability and provides for the determination of the right and liability to be dealt with by Tribunals specially

249. *Proprietor, Swarnambiga Motor Service* v. *M. Muthuswami,* AIR 1959 Mad. 559.
250. (1998) I LLJ 987 (Pun & Har.).
251. *Ram Niwas Khandelwal* v. *Mst. Mariam,* AIR 1951 Pat 260.
252. AIR 1976 SC 22.
253. The Employees' Compensation Act, 1923, Section 19 (2).
254. AIR 1965 SC 1942.

constituted in that behalf and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

Section 19 (2) of the Act does not apply unless the question is such as it must necessarily be dealt with under the provisions of the Act. The Act does not lay down or define the matters which are exclusively within the jurisdiction of the Act. The employer's liability which is given in Section 3 is in respect of accidents caused to a workman and which arises out of and in the course of employment. The accident which is contemplated by the Act or which should lie within the exclusive jurisdiction of the Commissioner is one which is caused otherwise than by negligence or misconduct. In the case of accidents resulting from negligence or misconduct, the provisions of the Act may, if chosen by the person aggrieved, be taken advantage of, but if such a person decides to file a civil suit that suit cannot be deemed to be barred by the provisions of Section 19 (2) of the Act.[255]

It has been observed in *The Oriental Fire and General Insurance Co. Ltd. and another* v. *Union of India*,[256] that the right to indemnity is no doubt, conferred by Section 13, but the Act does not provide for a remedy. In such a case the person on whom such a right is conferred is entitled to look to the Civil Court for his remedy. Section 19 (2) of the Act bars the jurisdiction of the Civil Court only in respect of a question which is by or under the Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under the Act. The question as to whether a stranger is liable to indemnify the person who has deposited compensation is not a question, which is by or under the Act to be decided or dealt with by the Commissioner. The suit also is not to enforce any liability incurred under the Act. The liability to be indemnified cannot be said to be a liability under the Act as such liability can only be referred to a liability determined after the Commissioner has settled, decided or dealt with under the Act.

It has further been observed that under Section 12 (1) of the Act where principal contracts with any other person for execution by or under the contract of the whole or any part of any work, the principal is liable to pay to any workman the compensation which he would have been liable to pay if that workman had been immediately employed by him. Section 12 (2) provides that where the principal is liable to pay compensation he shall be entitled to be indemnified by the contractor and all questions as to the right to and amount of any such indemnity shall, in default of agreement be settled by the Commissioner. It is, therefore, seen that in the case of a claim for indemnity by a principal against the contractor in respect of compensation paid by him, Section 12 (2) expressly provides that such questions have to be settled by the Commissioner. Therefore, by reason of Section 19 (2) the Civil Court has no jurisdiction to settle, decide or deal with such a question which by Section 12 (2) is required to be settled, decided or dealt with by the Commissioner. But the case of indemnity against a stranger conferred under Section 13 of the Act stands on different footing. There is no provision in the Act enabling the Commissioner to settle the question of indemnity between a person and stranger, as had been provided in the case of indemnity between a principal and a contractor.

Section 13 consists of two parts : the first part says that a person who is legally liable to pay damages or compensation to the workman and who has paid compensation under the

255. The Dominion of India, New Delhi v. Kaniz Fatma, 1961 (2) LLJ 197.
256. AIR 1975 AP 22.

provisions of the Act is entitled to be indemnified by the person who is so legally liable ; the second part says that a person who is called upon to pay an indemnity under Section 12 is himself entitled to be indemnified by the person who is legally liable to pay the damages. This is a case which comes within the first part of Section 13. In either of the two cases provided under Section 13, the Act does not provide machinery for settlement of the question by the Commissioner. It is only in a case coming under Section 12 (2) where a principal is liable to pay compensation and is entitled to be indemnified, the question as to the right to and the amount of indemnity is to be settled by the Commissioner.

In *Yashwant Rao* v. *Sampat*,[257] it has been observed by the High Court of Madhya Pradesh that the word 'court' as used in Section 115, C.P.C. is used in a narrow sense, meaning only Civil Court in a normal hierarchy of courts. The word 'court' as it occurs in Section 115 will not include tribunals which are established under special Acts and exercise special jurisdiction. Indeed, the features of a court and tribunal are very much similar. Both are vested with the judicial powers of the State. Both are empowered to give binding decisions. The procedure is also similar except this that the procedure of a court is regularly prescribed, whereas the procedure of a tribunal may not be that strictly prescribed. But the approach adopted by a tribunal is the same as adopted by a court. The main distinction between a court and a tribunal is that a court is a tribunal constituted by the State as a part of the ordinary hierarchy of courts. A tribunal, on the other hand, is constituted under a special Act to exercise some jurisdiction.

The view taken is strongly supported by the decision in *Sawat Ram Prasad Mills* v. *Vishnu Pandorang*,[258] which is a Divisional Bench case decided by Justice Hidayatullah and Justice R. Kaushalendra Rao. The same view was taken by a Full Bench of the Allahabad High Court in *H.C.D. Mathur* v. *E.I. Railway*.[259] In both these cases it was held that the authority invested with jurisdiction under the Payment of Wages Act, 1936, is not a court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure. Although these decisions do not deal with the provision of the Commissioner under the Workmen's Compensation Act, yet the principles laid down in them are fully applicable here. The main question is whether the word 'court' in Section 115 of the Code of Civil Procedure also includes tribunals, or whether it is restricted to civil courts subordinate to the High Court. So far as this broad question is concerned, the matter is fully dealt with in both these decisions and we respectfully agree with the opinion expressed in them that the word 'court' in Section 115 is restricted to civil courts and does not include tribunal.[260]

(2) Appointment of Commissioners.—Section 20 of the Employees' Compensation Act contains the following provisions in respect of appointment of Commissioners—

(1) The State Government may by notification in the Official Gazette, appoint any person to be a Commissioner for Employees' compensation for such area as may be specified in the notification.

The Amendment Act, 2009 has amended the provisions of Section 20 of the Act prescribing qualifications for appointment to the post of the Commissioners under the Act. Section 8 of the Amendment Act.

257. AIR 1979 MP 21.
258. AIR 1950 Nag. 14.
259. AIR 1950 All. 80.
260. *Yashwant Rao* v. *Sampat*, AIR 1979 MP 21.

In view thereof the State Government may by notification in the Official Gazette appoint any person to be a Commissioner under the Act—

(i) who is or has been a member of a State Judicial Service for a period of not less than five years, or

(ii) who is or has been an advocate or a pleader for not less than five years; or

(iii) who is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personnel management, human resource development and industrial relations.

The notification issued by the State Government for appointment is required to specify the area of his jurisdiction. Before the amendment of 2009 no qualifications were laid down for appointment. This amendment intends to prescribe knowledge of law which is quite necessary for arriving just and appropriate decisions in cases coming for adjudication before the Commissioners.

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

In *Deputy Labour Commissioner, Orissa Bhubaneshwar* v. *Abhimanyu Gouda and another*,[261] where one Smt. Dukhi Jena filed a claim petition before the Deputy Labour Commissioner-cum-Commissioner for Workmen's Compensation, claiming compensation from respondent 1, Abhimanyu Gouda on the ground that her husband was a khalasi in a truck belonging to Gouda. He met with a fatal accident. The appellant exercised his jurisdiction as Commissioner and awarded an amount of Rs. 8,000/- by way of compensation. The respondent 1 being aggrieved by the order filed an appeal in the High Court of Orissa. The High Court allowed the appeal holding that the appellant, Deputy Labour Commissioner, Orissa at Bhubaneshwar had no jurisdiction to entertain claim. The appellant moved a review application but it failed. Thus matter came before the Supreme Court in appeal for decision. The moot question involved was one of the jurisdiction of the Deputy Labour Commissioner. The Supreme Court observed that it is true that the accident had taken place near Rourkela. The notification was issued by the State of Orissa on 2-7-196. in exercise of powers conferred on the State under Section 20 (1). The officers listed therein in column (1) were ordered to be Commissioners for Workmen's Compensation with respective jurisdiction as specified in column (2) of the said notification against each of the listed officers. At column (2) in the said notification was listed the Deputy Labour Commissioner, Orissa, Bhubaneshwar, the appellant and the area of his jurisdiction is shown to be the whole of the State of Orissa. Therefore, the appellant had jurisdiction to entertain the claims for workmen's compensation in connection with the accidents arising in any part of State of Orissa for which the claims were to be lodged under the Act against the employer. If this Notification had been seen by the High Court it could never have held that the appellant had no jurisdiction to entertain the claim petition. It is not disputed that though the accident took place in 1974 the aforesaid notification of 2-7-1965 held the field. Therefore, there is no escape from the conclusion that the appellant at the relevant time in 1974 when the accident took place had jurisdiction to entertain the claims petition. Thus, the Supreme Court setting aside the impugned order of the High Court allowed the appeal accordingly.

261. 1998 SCC (L&S).

(3) Any Commissioner may for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

Section 20 (3) provides that the Commissioner may, for purpose of deciding any matter referred to him for decision under the Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under enquiry to assist him in holding the enquiry. But without adopting that mode Commissioner cannot on his own assess the compensation on mere conjecture. The power is there to the Commissioner to refer the workman to any other expert for opinion. Of course, he can summon the doctor when there is ambiguity in the certificate as to the loss of earning capacity and examine him or he can refer the workman to Medical Board for examination and report.[262]

(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

(3) Venue of proceedings and transfer.—Section 21 of the Act makes the following provisions in respect of venue of proceedings and transfer of cases from one Commissioner to another on the ground that the case before him may be more conveniently dealt with by any other Commissioner :

For sub-section (1) of Section 21 the following sub-sections have been substituted by the Amendment made in 1995 with effect from 15.9.1995 with a view to clarify the jurisdiction of the Commissioner for deciding claim of compensation :

"(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 employee or in case of his death, the dependant 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 employee, being the 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 the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or 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.

In *Morgina Begum* v. *M.D., Hanuman Plantation Ltd.*,[263] the controversy involved was whether the Commissioner, Workmen's Compensation, Tezpur had jurisdiction to entertain

262. *New India Assurance Co. Ltd.* v. *Sreedharan*, (1995) II LLJ 362; *United India Insurance Co. Ltd.* v. *Sethu Madhavan*, (1993) I LLJ 142.

263. (2008) 2 SCC (L&S) 458.

the claim petition or not. The relevant provisions are contained in Section 21 of the Act. The Supreme Court considered the same and observed that there is no dispute that the accident in the present case took place at Nagaon and hence the Commissioner at Nagaon also had jurisdiction to entertain the claim petition. However, in the instant case the claim petition was filed at Tezpur because both the claimants, *i.e.*, the father and the mother of deceased Mohd. Rajik Ahmad, started residing at Tezpur with their son-in-law after the death of their son Mohd. Rajik Ahmad. The question to be decided in this case is when the accident took place at Nagaon and the claimants were residing at the time of death of their son at Nagaon but after the death of their son, they had shifted to Tezpur can the Commissioner at Tezpur legitimately entertain the claim petition.

Section 21 (1) (b) clearly provides that the claim petition may be filed by the claimant where the claimant ordinarily resides. The expression "ordinarily resides" means where the person claiming compensation normally resides at the time of filing the claim petition. The provision to Section 21 (1) which is also relevant for present controversy, provides that in case Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, entertains the claim petition then he shall give a notice to the Commissioner having jurisdiction over the area and the State Government concerned. The amended Section 21 has been specifically introduced in the Act by amending Act 30 of 1995 with effect from 15.9.1995 in order to benefit and facilitate the claimant.

The idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claims not necessarily at the place where the accident took place but also at the place where they ordinarily reside. The amendment in 1995 was done with a very laudable object, otherwise it could cause hardship to the claimant to claim compensation under the Act. It is not possible for poor workmen or their dependents who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of accident for filing a claim petition, because of the financial and other hardship. It would entail the poor claimant travelling from one place to another for getting compensation. Labour statutes are for the welfare of the workmen. It was pointed out by the Supreme Court that it has been held in *Bharat Singh* v. *New Delhi Tuberculosis Centre*,[264] that welfare legislation should be given a purposive interpretation safeguarding the rights of the havenots rather than giving a literal construction. In case of doubt the interpretation in favour of the worker should be preferred.

Approving the view taken by the High Courts of Orissa and Andhra Pradesh it was held that a claimant can apply before the Commissioner having jurisdiction over the area where the claimant ordinarily resides and it is not always necessary to prefer a claim where the accident has taken place. In the present case the claimants are ordinarily residing at Tezpur and hence the Commissioner, Tezpur has jurisdiction to entertain claim petition. The Commissioner, Tezpur has also given notice to the Commissioner, Nagaon as well as the State Government in compliance with the proviso to Section 21 (1) of the Act. In these circumstances, the Commissioner, Workmen's Compensation, Tezpur had jurisdiction to entertain claim petition of the appellants.

264. 1986 SCC (L&S) 335 relied on *S.K. Saukat Ali* v. *Commr. for Workmen's Compensation-cum-Dy. Labour Commissioenr*, (1999) 2 TAC 638 (Orissa) confirmed : *Noorjahan* v. *National Insurnce Co. Ltd.*, (1999) 3 TAC 276 (AP) confirmed.

(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 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 :

[265][* * *]

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto 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.

(4) Form of application.—The employee or in case of his death his dependants may apply to the Commissioner for compensation payable under the provisions of the Act.

(1) 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 provisions of this Act, be made before the Commissioner.[266]

(1-A) Subject to the provisions of sub-section (1) no application for the settlement of any matter by a Commissioner other than an application by a dependant or dependants for compensation shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

It simply means that if the parties are able to settle matter of compensation between themselves, the application may not be made because in that case the agreement made by them will govern their rights and liabilities.

An application for compensation under the Workmen's Compensation Act is not an application under the general law, but an application under a special statute. No application under a special statute can be made unless the right to make such an application has been given by such statute itself. The right under the Act is not something

265. On enforcement of S. 10 of Amending Act 30 of 1995 second proviso had been omitted.

266. The Employees' Compensation Act, 1923, Section 22 (1) as substituted by amendment in 1995, w.e.f. 15.9.1995.

like the common law right to damages. It is a creature of the Act itself and can be claimed only in the manner and to the extent that the Act prescribes and permits.[267]

Section 2^ (2) deals with the form of the application and contents to be mentioned in such application. It provides that 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 or order which the applicant claims;

(b) in the case of a claim for compensation against an employer the 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 dependants for compensation, a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

Section 22(3) states that 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. Thus in order to give facility to the employees who are illiterate or unable to furnish required information the Commissioner has power to get the application prepared by some other person if the employee so desires.

(5) Power of Commissioner to require further deposit in cases of fatal accidents.—Section 22-A(1) provides that where any sum has been deposited by an employer as compensation payable in respect of an employee whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

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 the employer to deposit the deficiency.[268]

(6) Powers and Procedure of Commissioner—Section 23 of the Act deals with the powers of the Commissioner and procedure to be followed by the Commissioner in cases before him. It provides that the Commissioner shall have all the powers of the Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the Commissioner shall be deemed to be Civil Court for all the purposes of Section [269][195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)].

It makes clear that Section 23 gives the Commissioner certain powers of a Civil Court. The Commissioner has to function like a judicial body. It has been observed that the relevant section of the Act and the rules framed under it make it clear that the enquiry contemplated in the matter of decided disputes as to apportionment of compensation among

267. *Angus Co. Ltd.* v. *Couthi*, AIR 1955 Cal. 616.
268. The Employees' Compensation Act, 1923, Section 22-A (2).
269. Substituted by amendment made in 1995 (w.e.f. 15.9.1995).

dependants should be an open enquiry in which the contesting parties may participate. The rules provide framing of issues. The enquiry is to be conducted in accordance with the provisions of Section 23 and Rule 41. When the claim is contested there is no meaning in taking *ex parte* evidence and arriving at a decision on the basis of such *ex parte* evidence. Where the Commissioner did act like that and further did not apply his mind to the evidence given on the side of the rival claimants, his order cannot be accepted as judicial order.[270]

(7) Appearance of Parties before the Commissioner.— Section 24 of the Act deals with the appearance of parties. It provides in this regard that 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 examinations 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 a registered Trade Union or by an Inspector appointed under sub-section (1) of Section 8 of the Factories Act, 1948, or under sub-section (1) of Section 5 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.[271]

The Section makes it clear as to who can appear before the Commissioner on behalf of the party concerned. In view of the provisions of Section 24 following persons may appear in the proceedings before the Commissioner[272] :

(i) A legal practitioner, or

(ii) An official of an Insurance Company, or

(iii) An official of a registered Trade Union, or

(iv) An Inspector appointed under Section 8 of the Factories Act, or

(v) An officer appointed under Section 5 of the Mines Act, or

(vi) An officer specified by the State Government in this behalf provided he has been so authorised in writing, or

(vii) With the permission of the Commissioner or any other person so authorised.

But for purposes of his examination as a witness the employee concerned has to appear personally.

(8) Method of recording evidence.—Section 25 of the Act provides for the recording of the evidence. It says that 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 part of the record.

But 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 :

Provided further, that the evidence of any medical witness shall be taken down as nearly as may be, word for word.

270. *The Oriental Fire and General Insurance Co. Ltd.* v. *Union of India*, AIR 1975 AP 222.
271. *Arul Raj* v. *Eliru Kutti*, AIR 1960 Kerala 223.
272. *The Oriental Fire and General Insurance Co.* v. *Union of India*, AIR 1975 AP 222.

After considering any written statement and the result of any examination of the parties, the Commissioner shall ascertain upon what material proposition of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend. In recording the issues, the Commissioner shall distinguish between those issues which in his opinion concern points of fact and those which concern points of law.[273]

In order to provide speedy justice the time-limit of three months from the date of reference has been fixed. The new section 25-A has been inserted after in Section 25 of the Act namely :—

"***25A. Time Limit for disposal of cases relating to compensation.***—The Commissioner shall dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee."

(9) Costs.—It has been provided under Section 26 that all costs incidental to any proceedings before a Commissioner shall, subject to rules made under this Act, be in the discretion of the Commissioner. If the Commissioner is satisfied that the applicant is unable, by reason of poverty, to pay the prescribed fees, he may remit any or all of such fees. If the case is decided in favour of the applicant, the prescribed fees, which, had they not been remitted, would have been due to be paid, may be added to the costs of the case and recovered in such manner as the Commissioner in his order regarding costs may direct.[274]

(10) Power to submit cases.—A Commissioner has been given power under Section 27 of the Employees' Compensation Act, 1923 to submit any question of law for the decision of the High Court, if he thinks fit. If he does so, he is under duty to decide the question in conformity with such decision.

(11) Registration of agreement—Section 28 deals with cases where the employer and employees make an agreement regarding amount of compensation payable to the worker under the Act and in such cases the provision of Section 28 requires registration of such agreement so that genuineness of such agreement may be considered.

Section 28 (1) provides that where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability, a memorandum thereof shall be sent by the employer to the Commissioner, who shall on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner.

But no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned. The Commissioner has power to rectify the register at any time. Where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable to a woman or a person under a legal disability, ought not to be registered by reason of the inadequacy of the sum or amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

273. The Employees' Compensation Rules, 1924, Rule 28.
274. The Employees' Compensation Rules, 1924, Rule 34.

An agreement for the payment of compensation which has been registered under sub-section (1) of Section 28 shall be enforceable under this Act notwithstanding anything contained in Indian Contract Act, 1872, or in any other law for the time being in force.[275]

If there is a valid agreement, the Commissioner has no power to give judgment ignoring the agreement. Commissioner cannot embark on the merits of the case if the agreement is genuine. Hence the Commissioner can be directed to consider the question of registering the agreement. Non-consideration of the agreement is an error of law which vitiates the decision.

However, if a finding is arrived at unsupported by any material, it would be a surmise and would thus be a question of law to be examined by court under Section 30 of the Employees' Compensation Act. When the material on record would not reasonably lead to the finding of fact a question of law would arise. Similarly where material piece of evidence has not been taken into consideration which, if considered, would negate the finding of fact, a question of law would arise. Misreading an evidence will also be question of law. Whether a workman is totally disabled is a question of fact.

Thus in order to be governed by the terms of the agreement made with the worker, the employer is under duty to get the agreement registered in accordance with the provisions of Section 28 of the Act. However the Commissioner may refuse to register such agreement if he finds that the agreement has been obtained by improper means.[276]

(12) Effect of failure to register agreement.[277]—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 employee by way of compensation whether under the agreement or otherwise.

Thus if the employer fails to get the memorandum registered as required by Section 28 he becomes liable to pay compensation as payable under the provisions of this Act and not according to un-registered agreement.

(13) Appeals.—Section 30 (1) of the Act provides that 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 4-A;

(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 employee, or disallowing any claim of a person alleging himself to be such dependant;

275. The Employees' Compensation Act, 1929 S. 28 (2) ; *See Roshan Deen* v. *Preeti Lal*, 2002 SCC (L&S) 97.
276. *Managing Director, O.R.T. Co. Ltd.* v. *Rama Mohan Rao*, (1988) I LLJ 200 (Orissa).
277. Section 29.

(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.

But in the following cases such appeal shall not lie :[278]

(i) the appeal shall not lie against any order unless a substantial question of law is involved in the appeal, and

(ii) in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than 300 rupees,

(iii) in any case in which the parties have agreed to abide by the decision of the Commissioner, or

(iv) in a case in which the order of the Commissioner gives effect to an agreement arrived at by the parties, or

(v) no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

It has been observed in *Nathamuni Gounder* v. *The State of Tamil Nadu*,[279] that it is an age-old principle of law that the right of appeal is not a natural right attaching to any litigation. A right of appeal as such does not exist and cannot be assumed unless expressly given by statute or by rules having the force of statute. It being a creature of statute, the right of appeal can always be limited by law which gives that right and the provisions of the statute setting the conditions for preferring an appeal cannot be bad in law. Even if a statute denies a right of appeal, that statute cannot be held to be a bad legislation.

It has been held that no appeal shall lie even against those specified orders unless substantial question of law is involved in appeal.[280] Section 30 in effect empowers appellate court to interfere with the findings by Commissioner only in case of substantial error of law.[281] In *Gangireddy V. Rao and another* v. *New India Assurance Co. Ltd.*,[282] the High Court of Andhra Pradesh held that even when the insurer prefers an appeal under Section 30 (1) (a) of the Act, the memorandum of appeal has to be accompanied by a certificate of the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. In the absence of such a certificate which is required by the 3rd proviso to Section 30 (1) of the Act, the appeal under clause (a) preferred by the insurer does not lie and is liable to be rejected on that ground. The Court refused to accept the plea of the insurer that the said provision is attracted only when employer prefers an appeal and not the insurer.

278. Employees' Compensation Act, proviso to Section 30 (1).
279. (1986) II LLJ 423 (Madras).
280. *Chhaya Rani* v. *Dhan Dei*, (1998) I LLJ 1122 (Pat.); *Dwarka Arm Factory* v. *Khaja Hussain*, (1998) I LLJ 15 (Karn.). See also *T.S. Shylaja* v. *Oriental Insurance Co.*, (2014) 1 SCC (L&S) 359 where the order of the Commissioner was restored as there was no substantial question of law involved.
281. *Traffic Manager, New Mangalore Port Trust Regd. Cargo Handling Workers, Adm. Wing* v. *Radha B and others*, (1998) II LLJ 764.
282. (1998) I LLJ 1011; *Mahendra Kumar* v. *Real Fab. Autonagar*, 1996 (2) An WR 96; *Golak Mills* v. *Commissioner for Workmen's Compensation*, 1994 ACJ 1099 (Kant); *A. A. Raja Muniuddin* v. *Indian Railways*, 1993 ACJ 235 (SC) followed. See also *Oriental Insurance Co. Ltd* v. *Renu Devi*, (1997) II LLJ 10 (Pat.).

It has been held by the Supreme Court in *Om Prakash Batish* v. *Ranjit* alias *Ranbir Kaur and others*,[283] that Section 30 of the Act provides that an appeal shall lie to the High Court on substantial question of law. A substantial question of law will carry the same meaning as is commonly understood. Distinction sought to be made that substantial question of law for the purpose of a first appeal and one for second appeal would be different, cannot be accepted. A right to appeal under the Act is provided, both to the management as also the workman. It is difficult to hold that whereas for the workman the High Court shall exercise a wider jurisdiction but in the event the employer is appellant, its jurisdiction would be limited. The High Court unfortunately proceeded on the basis that appreciation of evidence would also give rise to a substantial question of law.

It was clarified that in a proceeding initiated under the Act, the provisions of the CPC or of the Evidence Act are not applicable. The Commissioner could lay down his own procedure. He could, for the purpose of arriving at the truth, rely upon such documents which were produced before it.

In *EMM Tex Synthetics* v. *Om Prakash and another*,[284] it has been observed by the Supreme Court that in the absence of any specified form of certificate indicated in the Act and the Rules, it cannot be said that the certificate produced by the appellant was not in compliance with Section 30 of the Act. It is admitted fact that the appellant had deposited the awarded amount by way of a demand draft duly received by the office of the Commissioner. DD was deposited alongwith a covering letter and the receipt was given on its copy. The High Court had refused to accept it as a certificate under the Act and therefore, dismissed the appeal. The Supreme Court ruled that in the absence of any specified form of certificate, a proof of deposit of compensation would be substantial compliance with Section 30 of the Act. Therefore, the appellant could not be thrown out on such a technical ground. Setting aside the judgment the High Court was requested to decide the appeal in accordance with the law and pass reasoned order within six months from the date of supply of a copy of this order.

(14) Period of Limitation.—The period of limitation for an appeal under this section is sixty days.[285] The provisions of Section 5 of the Limitation Act, 1963, shall be applicable to appeal under Section 30 of the Act.[286]

In *Lakshmi and others* v. *Dy. Commissioner of Labour*,[287] the question of condonation of delay was considered. The High Court of Madras held that in a country, which is abound with illiterate masses, it cannot be expected of a class IV employee widow and minor children to seek appropriate remedy as provided by the law within the period of limitation. The Court allowed the appeal accordingly directing the Commissioner, Workmen's Compensation to decide on merits.

So far as the question of condonation of delay is concerned the jurisdiction is conferred on the court to condone the delay provided it is satisfied that sufficient cause for delay has been explained.[288]

283. (2009) 1 SCC (L&S) 136.
284. (2009) 2 SCC (L&S) 371.
285. The Employees' Compensation Act, 1923, Section 30 (2).
286. The Employees' Compensation Act, 1923, Section 30 (3) (as amended in 1995 w.e.f. 15.9.1995).
287. (1998) I LLJ 158.
288. *Dwarka Arm Factory, Bellari* v. *Khaja Hussain R.*, (1998) II LLJ 15 (Karnataka); See also *Oriental Insurance Co. Ltd.* v. *Sunderbai*, (1998) I LLJ 37 (MP).

(15) Withholding of certain payments pending decision of appeal.[289]—Where an employer makes an appeal under Section 30 (1) (a), the Commissioner may and if so directed by the High Court shall, withhold payment of any sum in deposit with him, pending the decision of the appeal.

(16) Recovery.—The Commissioner has been authorised to recover an amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise as arrears of land revenue. The Commissioner is deemed to be a public officer within the meaning of Section 5 of the Revenue Recovery Act, 1890, while he is engaged in the proceedings of recovery of such amount.[290]

RULE MAKING POWER OF THE GOVERNMENT

1. Power of the State Government to make rules.—The State Government has been authorised to make rules to carry out the purposes of this Act.[291] It has been provided that in particular and without prejudice to the generality of the foregoing power given under sub-section (1) of Section 32, such rules may provide for all or any of the following matters, namely[292] :

(a) for prescribing-intervals at which and the conditions subject to which an application for review may be made under Section 6 when not accompanied by a medical certificate;

(b) for prescribing the intervals at which and the conditions subject to which an employee may be required to submit himself for medical examination under sub-section (1) of Section 11;

(c) for prescribing the procedure to be followed by Commissioner in the disposal of cases under this Act and by the parties in such cases;

(d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;

(e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased employee and for the transfer of money so invested from one Commissioner to another ;

(f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;

(g) for prescribing the form and manner in which memorandum of agreements shall be presented and registered ;

(h) for the withholding by Commissioners, whether in whole or in part of half-monthly payments pending decision on applications for review of the same;

(i) for regulating the scales of costs which may be allowed in proceedings under this Act;.

(j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act;

(k) for the maintenance by Commissioners of registers and records of proceedings before them;

289. Section 30-A.
290. The Employees' Compensation Act, 1923, Section 31.
291. Section 32 (1).
292. Section 32 (2).

(l) for prescribing the classes of employers who shall maintain notice books under sub-section (3) of Section 10, and the form of such notice-books;

(m) for prescribing the form of statement to be submitted by employers under Section 10-A.

(n) for prescribing the cases in which the report referred to in Section 10-B may be sent to an authority other than the Commissioner;

(o) for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts;

(p) for prescribing the manner in which diseases specified as occupational diseases may be diagnosed;

(q) for prescribing the manner in which diseases may be certified for any of the purposes of this Act;

(r) for prescribing the manner in which and the standards by which incapacity may be assessed.

It has been provided that every rule made under this section shall be laid, as soon as may be, after it is made before the State Legislature.

2. Publication of Rules.—It has been provided that power to make rules conferred by Section 32 is subject to the condition of the rules being made after previous publication.[293] The date to be specified in accordance with clause (3) of Section 23 of the General Clauses Act, 1897, as that after which the draft of rules proposed to be made under Section 32 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.[294] It has been further provided that rules so made are required to be published in the Official Gazette and on such publication, the rules shall have effect as if enacted in this Act.[295] Thus rules are required to be made after publication and again the rules so made are required to be published in the Official Gazette and only such rules shall have effect as if enacted in the Act.

3. Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.—The Central Government has been authorised to make rules by notification in the Official Gazette for the transfer to any foreign country of money deposited with a Commissioner under this Act which has been awarded to or may be due to any person residing or about to reside in such foreign country and for the receipt, distribution and administration in any State of any money deposited under the law relating to Employees' compensation in any foreign country which has been awarded to, or may be due to any person residing or about to reside in any State.[296] Thus Section 35 (1) deals with the rule-making power of the Central Government in respect of transfer of money which is awarded to any person who is residing or about to reside in any foreign country.

It has been further provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed order determining its distribution and apportionment under the provisions of Sections 8 (4) and (5) of the Act.[297]

293. The Employees' Compensation Act, 1923, Section 34 (1).
294. Ibid, Section 34 (2).
295. Ibid, Section 34 (3).
296. The Employees' Compensation Act, 1923, Section 35 (1).
297. The Employees' Compensation Act, 1923, Proviso to Section 35 (1).

Section 35 (2) lays down that, where money deposited with the Commissioner has been so transferred in accordance with the rules made under this section, the provisions elsewhere contained in this Act regarding distribution of compensation by the Commissioner deposited with him shall cease to apply in respect of any such money.

4. Rules made by Central Government to be laid before Parliament.—Every rule made under this Act by the Central Government is required to be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions. If before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.[298]

Section 36 requires that rules made by the Central Government be laid before the Parliament. Once the rules are laid before Parliament, their validity relates back to the time when they were made and published. The law does not provide that they would come into operation only after they were placed before the Parliament. Even if the Houses of the Parliament agree that rule should not be made or the rule has been modified by the Parliament such annulment or modification does not affect the validity of anything previously done under that rule.[299]

It may be concludingly remarked that all the provisions of the Act are geared to provide protection and benefits to the working people in cases of accidents arising out of and in the course of their employment in the form of compensation payable under the provisions of the Act.

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298. Section 36.
299. Din Mohd. v. State of Gujarat, AIR 1966 SC 385.

PAYMENT OF WAGES ACT, 1936

1. Significance and Historical Background

"In an economy where even minimum wages are not paid to the workers, the need to protect the wages earned by them has greatest significance". The Act is considered to be an important social security step towards the welfare of the working class in order to remedy mischiefs played by the employers. Before the codification of Payment of Wages Act, there were several unfair labour practices pertaining to the payment of wages. The employers did not make payment of wages in definite form, that is sometimes they made payment of wages in cash and sometimes in kind. The wages were paid after much delay which resulted into poverty and growing indebtedness. Not only this the employers made so many deductions out of wages earned by the employees and ultimately they paid only a very meagre part of it.

At that time wages were paid on varying periods though the monthly system was most prevalent. Impositions of fines was a fairly general practice in perennial factories and railways. There used to be other deductions from the wages paid to the workers such as, for medical attendance, education, reading rooms, interest on advance of their own wages, charities and religious purposes selected by the employer, etc. A common practice in the Cotton Mills was the handing over to the weaver of cloth from his own loom spoilt in the course of manufacture and the deduction from his wages of the wholesale selling price. Another practice followed in some mills was the deduction of two days' pay for one day's absence. The payment of wages was considerably uncertain in regard to time and amount. Through these unfair labour practices the capitalists tried their level best to exploit the labour class as much as they could.

The workers united and made several demands for regular payment of wages in definite form and without unlawful deductions. For the first time in 1925, a private Bill entitled "Weekly Payment Bill" was introduced in the Legislative Assembly. The Bill sought, to remedy some of the unfair labour practices. However, it could not be passed and was withdrawn on assurance of the Government that it would codify a law for regular payment of wages and would check unlawful deductions and other malpractices adopted by the employers.

In 1926, the Government of India addressed the local Governments with a view to ascertain the position with regard of the delays which occurred in the payment of the wages to persons employed in industry, and the practice of imposing fines on them. The investigations and enquiries revealed the existence of abuses in both directions and the material collected was placed before the Royal Commission on labour which was set up in 1929 to look into the matter. Its report revealed that the imposition of fines and making unlawful deductions from the wages of the poor workers was the order of the day in the Railways and the factories. The Commission recommended that legislation regarding deductions from wages and fines was necessary and desirable. Important recommendations of the Commission[1] were with regard to fines, deductions for damage or loss, deductions in

1. G. M. Kothari, loc, cit, pp. 346-47.