

### 3.3 WORKMEN'S COMPENSATION ACT 1923

#### Introduction

This Act provides social security to workmen. Under this Act, a workman who dies or suffers disablement, partial or total, due to an accident is entitled to get compensation from his employer.

#### Applicability of the Act

A workman covered under ESI Act, 1948 is not entitled to get compensation under Workmen's Compensation Act, 1923. Thus, Act is applicable to those factories, mines, transport establishment, construction works, etc. Which are not covered under ESI Act, 1948.

#### Meaning of Workman

Workman means the following:

- (i) Railway servant"
- (ii) Crew of ship;
- (iii) Crew of aircraft;
- (iv) Driver, cleaner, helper or mechanic of motor vehicles;
- (v) Workman recruited abroad;
- (vi) Person employed in activities like manufacturing process, explosive, mines, shop loading/ unloading, construction, electricity generation and distribution, drivers, horticulture, circus.
- (vii) Persons employed in cultivation of land, fishing, rearing of livestock. If the number of persons employed there is more than 25.

Every employee including those employed through contractor who is engaged for the purpose of employer's business is eligible for workman's compensation. However, casuals employees and employees engaged in clerical capacity neither are nor covered.

In case of contract labour, the principle employer is liable to pay compensation in the same manner, as he is liable for his departmental labour, However, he is entitled to be indemnified by the contractor for such compensation. [Managing Director, Orissa State Warehousing Corporation V. Smt, Geetarani]

#### Employer's Liability for Compensation

An employer is liable to pay compensation if personal injury is caused to a workman ny accident arising out of and in the course of his employment.

However, an employer is not liable in the following.

- (1) Injury which results in total or partial disablement of workman up to 3 days;
- (2) Injury caused by an accident directly attributable to the following:
  - (a) Workman working under the influence of drinks or drugs;
  - (b) Willful disobedience of express order of safety;
  - (c) Willful removal of safety guards or devices.

However in a such cases, if the workman does or suffers permanent total disablement the employer will be liable.

Further, an employer is liable to a workman, if a workman contract any specified occupational disease while he is in the service of the employer for at least 6 months.

If may be noted that compensation is payable even when there is no fault of the employer; except the aforesaid cases where the compensation is not payable./ The compensation is payable even if it is found that the employee did not take proper precaution or he was careless or negligible in the performance of his work.

Amount of compensation payable

Compensation is payable to workman in case of partial or total disablement. It is payable to dependants of workman in case of death.

It may be noted that compensation is an amount equal to 50% of monthly wages deceased workman multiplied by a factor depending on the age of the workman (more than age, lower the compensation), subject to a minimum compensation of Rs. 80,000/-. In addition to this funeral expenses of Rs. 2,500/- are also paid.

In case of permanent of total disablement, compensation payable is an amount equal to 60% of monthly wages of disabled workman multiplied by a factor depending on the age of the workman (more the age, lower the compensation), subject to a minimum compensation of Rs. 90,000/-

In case of permanent partial disablement, compensation is paid based on percentage of loss of earning capacity.

### **Accident arising out of and in the course of employment.**

Accident arising out of employment: An accident arising out of employment implies a proximate and direct connection between the accidental injury and the employment. In this case, the compensation will be payable if the accident has occurred at the place where the workman was performing his duties.

Accident in the course of employment: An accident in the course of employment implies a casual connection between the accidental injury and the employment. In this case, for the payment of compensation it is not necessary that the accident occurred at the place where the workman was performing his duties, Further, it is also not necessary that the workman must be actually working at the time of his death.

It is well established that there must be some casual connection between the death of the worker and his employment. If the workman dies, as a natural result of the disease from which he was suffering then it will be considered that he has died of that disease as a wear and tear of his employment and hence no liability would be fixed upon the employer. However, if the employment is contributory cause or has accelerated the death, or if the reason of the death is not only the disease but also the disease coupled with the employment then it could be said that the death arose in the course of the employment and the employer would be liable.

### **Employer's liability when contractor is engaged**

Section 12 makes the employer liable for compensation to such workmen hired by the contractor under following circumstances:

- (a) The contractor is engaged to do a work which is part of the trade or business of the employer( called principal);
- (b) The workmen were engaged in the course of or for the purpose of his trade or business; and
- (c) The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.

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

**Important Points**

- 1) A workman who was on duty had gone to the canteen to take tea where he died. It has been held that the accidental injury arose in the course of employment and the period of recess did not disrupt the continuity of employment. [**Regional Director v. Batul Bibi**]
- 2) A factory worker suffering from a heart disease while coming out of the factory died inside the factory premises. The stress and strain of work were the accelerating factors to death and therefore the employer was liable to pay the compensation. [**D.N.K Project v. Smt. D. Buchitalli**]
- 3) A workman died on duty by heart attack after receiving continuous threats on his life from thieves who he prevented successfully. It has been held that his widow will be entitled to compensation under this Act. [**Smt. A. Seethamma v. G.M., SouthEastern Railways**]
- 4) Where an employee was under a contractual obligation to use only a particular means of transport, the area or field of employment would stand extended to the course of the said transport. Accident sustained by transport staff while traveling between depot and residence or vice versa must be treated arising in the course of employment. [**BEST Undertaking v. Mrs. Agnes**]
- 5) Where the deceased workman was standing in the queue waiting for the bus provided by the employer for reaching the place of work and was run over by the bus by which he was to travel it was held that the workman has died as result of employment injury. [**ESIC v. Sayeeda Khatoon Dannawal**]
- 6) It has been held that an employer will be liable to pay compensation if workman meets with an accident while proceeding to his workplace on a bicycle. [**Indian Rare Earth Ltd. v, Surinder Beevi**]
- 7) Where a mill worker was stabbed in a communal riot while he was returning home sometime after midnight after the night shift and died just at a short distance from the mill, . it was held that the case clearly falls within the meaning of employment injury. [**Ahmed Khan Pathan v. ESIC**]
- 8) If a workman suffers as a result of an injury from a physical defect which does not infact reduce his capacity to work but at the same time makes his labour unsaleable in any market. he can establish a right to compensation provided he proves that he had been turned away by a reasonable number of likely employers on account of such defect. [**Sukhai v. Hukam Chand Jute Mills Ltd.**]
- 9) If after the accident a worker has become disabled. and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement. [**General Manager, G.I.P. Rly. v. Shankar**]
- 10) If due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn, he is entitled to compensation for total disablement. [**Ball v. William Hunt & Sons Ltd.**]
- 11) In a case permanent partial disability caused to a workman in accident while working on ship, it was held that workman can be said to have lost his earning capacity even though

- getting same amount of wages as before. [**Mangru Palji v. Robinsons**]
- 12) Where a carpenter had amputated his left arm from elbow while working in the factory, it was held to be a case of total disablement. [**Pratap Narain Singh Deo v. Srinivas Sabata**]
  - 13) Where an electrician who had to go frequently to a heating room from a cooling plant, contracted pneumonia resulting in his death, it was held that the injury caused by an accident is not confined to physical injury and includes nervous shock or break down or mental strain. [**Indian News Chronicle v. Mrs. Lazarus**]
  - 14) Where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, it was held that the accident arose out of employment. [**Laxmibai Atmaram v. Bomba's Port Trust**]
  - 15) A workman while returning home after duty was murdered within the premises of the employer. It was held that there was a close and proximate connection between the accident and the employment and hence his wife was entitled to compensation. [**Naima Bibi v. Lodhne Colliery Ltd.**].
  - 16) Where the workman, a state employee, received injury while performing the electrification work of the town entrusted to state employees by the Municipal Board, it was held that the state and not the board was liable to pay compensation because execution of electrical project was not the ordinary, business of the Municipal Board .
  - 17) Where the cartman engaged by a Rice Mill to carry rice bags from mill to railway station met with an accident on a public road while returning back from railway station resulting in his death, it was held that the Mill Owner was liable to pay compensation.
  - 18) The Supreme Court held that there should be some connection, casual or direct, between the injury/accident and the employment in order to get the compensation under Workmen's Compensation Act. Where a workman has exposed himself to an added peril by his own imprudent act, then the employee will not be eligible for compensation. [**Machenzie v. I.M .. Issak**]