

Workmen's Compensation Act, 1923

February 19, 2013

1. Short title, extent and commencement.—

(1) This Act may be called the Workmen's Compensation Act, 1923.

¹[(2) It extends to the whole of India ²[***]].

(3) It shall come into force on the first day of July, 1924.

1. Subs. by the A.O. 1950, for sub-section (2).

2. The words "except the State of Jammu and Kashmir" omitted by Act 51 of 1970, sec. 2 and Sch. (w.e.f. 1-9-1971).

2. Definitions.—

(1) In this Act, unless there is anything repugnant in the subject or context,—

¹[***]

(b) "Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20;

(c) "compensation" means compensation as provided for by this Act;

²[(d) "dependant" means any of the following relatives of deceased workman, namely:—

(i) a widow, a minor ¹[legitimate or adopted] son, an unmarried ³[legitimate or adopted] daughter or a widowed mother; and

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

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

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter ⁴[legitimate or illegitimate or adopted] if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or



(h) a paternal grandparent if no parent of the workman is alive;]

⁵[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.]

(e) “employer” 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 a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;

(f) “managing agent” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person’s trade or business, but does not include an individual manager subordinate to an employer;

State Amendment

West Bengal.—in section 2, in sub-section (1), after clause (f), insert the following clause, namely:—

“(ff) ‘medical reference’ means a qualified medical practitioner appointed under section 24A as a medical reference for the purposes of this Act”.

[Vide Bengal Act 6 of 1942, sec. 3 (w.e.f. 19-11-1942).]

⁶[(ff) “minor” means a person who has not attained the age of eighteen years;]

(g) “partial disablement” means, 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 the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified ⁷[in Part II of Schedule I] shall be deemed to result in permanent partial disablement;

(h) “prescribed” means prescribed by rules made under this Act;

(i) “qualified medical practitioner” means any person registered ⁸[***] under any ⁹[Central Act, Provincial Act, or an Act of the Legislature of a ¹⁰[State]] providing for the maintenance of a register of medical practitioners, or, in 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[***]

(k) “seaman” means any person forming part of the crew of any ¹²[***] ship, but does not include the master of ¹³[the] ship;



(l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement:

¹⁴[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 thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. or more;]

(m) "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 workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(n) "workman" means any person ¹⁵[***] who is—

(i) a railway servant as defined in ¹⁶[clause (34) of section 2 of the Railways Act, 1989 (24 of 1989)] not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

¹⁷[(ia) (a) a master, seaman or other member of the crew of a ship,

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

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

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;]

(ii) employed ¹⁸[***] ¹⁸[***] 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 ²⁰[the Armed Forces of the Union] ²¹[***]; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department²²[acting on behalf of the Government] shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

²³[(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons:

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.]



comments

Basis for calculation of compensation

The basis for calculation of compensation is monthly "wages"; Zubeda Bano v. Maharashtra Road Transport Corporation, 1990 LLR 287 (Bom).

"Batta" does not amount to "wages" for computing compensation

"Batta" paid to a workman per day to cover special expenses incurred by him due to nature of his employment does not amount to "wages" for the purposes of computing compensation; New India Assurance Co. Ltd., Hyderabad v. Kotam Appa Rao, 1995 LLR 609 (AP).

Conditions for treating a person as workman

From the definition of 'workman' given in section 2 (1) (n) of the Act, it is clear that for not treating a person as workman, two conditions are required to be proved namely that his employment is of casual nature and he is not employed for the purpose of employee's trade or business and the onus is on the employer to prove these conditions; Mangala Ben v. Dalip Motwani, 1998 LLR 656.

Power of Commissioner to award more compensation

The Commissioner has power to award compensation more than what is claimed by the workman if the facts do warrant such an award; Karnataka State Road Transport Corporation v. B.T. Somasekharaiah, 1994 LLR 251 (Karn).

Salesman in arrack shop is a workman

A salesman in an arrack shop is a 'workman' in view of clause (iii) of Schedule II as defined under section 2 (1) (n) of the Act; Mathew Joseph v. Johay Sunny, 1995 LLR 390 (Ker).

Workman does not include his heirs and legal representatives

The workman defined in section 2 (1) (n) of the Act does not include any of his heirs and legal representatives; Sumuben v. Patel Industries, 1994 LLR 338 (Guj).

- 1. Clause (a) omitted by Act 8 of 1959, sec. 2 (w.e.f. 1-6-1959).**
- 2. Subs. by Act 8 of 1959, sec. 2, for clause (d) (w.e.f. 1-6-1959).**
- 3. Subs. by Act 30 of 1995, sec. 2, for "legitimate" (w.e.f. 15-9-1995).**
- 4. Subs. by Act 30 of 1995, sec. 2, for "legitimate or illegitimate" (w.e.f. 15-9-1995).**
- 5. Ins. by Act 30 of 1995, sec. 2 (w.e.f. 15-9-1995).**
- 6. Ins. by Act 8 of 1959, sec. 2 (w.e.f. 1-6-1959).**
- 7. Subs. by Act 64 of 1962, sec. 2, for "in Schedule I" (w.e.f. 1-2-1963).**
- 8. Certain words omitted by Act 8 of 1959, sec. 2 (w.e.f. 1-6-1959).**



9. Subs. by the A.O. 1950, for the words "Act of the Central Legislature or of any Legislature in a Province of India".

10. Subs. by the A.O. (No. 3) Order, 1956, for "Part A State or Part B State".

11. Clause (j) omitted by Act 15 of 1933, sec. 2.

12. The word "registered" omitted by Act 15 of 1933, sec. 2.

13. Subs. by Act 15 of 1933, sec. 2, for "any such".

14. Subs. by Act 64 of 1962, sec. 2, for the proviso (w.e.f. 1-2-1963).

15. Certain words omitted by Act 46 of 2000, sec. 2 (w.e.f. 8-12-2000).

16. Subs. by Act 30 of 1995, sec. 2, for "section 3 of the Indian Railways Act, 1890 (9 of 1890)" (w.e.f. 15-9-1995).

17. Ins. by Act 30 of 1995, sec. 2 (w.e.f. 15-9-1995).

18. The words "either by way of manual labour or" omitted by Act 15 of 1933, sec. 2.

19. The words "on monthly wages not exceeding one thousand rupees" omitted by Act 22 of 1984, sec. 2 (w.e.f. 1-7-1984).

20. Subs. by the A.O. 1950, for "His Majesty's naval, military or air forces".

21. The words "or of the Royal Indian Marine Service" omitted by the A.O. 1937.

22. Subs. by the A.O. 1937, for "of the Government".

23. Subs. by Act 30 of 1995, sec. 2, for sub-section (3) (w.e.f. 15-9-1995).

3. Employer's liability for compensation.—

(1) If personal injury is caused to a workman 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 ¹[three] days;

(b) in respect of any ²[injury, not resulting in death ³[or permanent total disablement]] caused by] an accident which is directly attributable to—

(i) the workman 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 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 purpose of securing the safety of workman, ⁴[***].



5[***]

⁶[(2) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, 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 a workman 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 provided, the accident shall be deemed to have arisen out of, and in the course of, the employment:

⁷[Provided that if it is proved,—

(a) that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule II 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 a workman 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.]

⁸[(2A) If a workman 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.]

(3) ⁹[The Central Government or the State Government], by notification in the Official Gazette, after giving, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply ¹⁰[in the case of a notification by the Central Government, within the territories to which this Act extends, or, in case of a notification by the State Government, within the State] ¹¹[***] as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.]

(4) Save as provided by ¹²[sub-sections (2), (2A)] and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is ¹³[***] directly attributable to a specific injury by accident arising out of and in the course of his employment.



(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman 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 come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

COMMENTS

Connection between accident and employment

The deceased employee while travelling by public transport to his place of work met with a fatal accident. Nothing has been brought on record that the employee was obliged to travel in any particular manner under the terms of the employment nor he was travelling in the official transport. Held, no casual connection between accident and employment could be established. Hence, the claimant is not entitled to any compensation; *State Bank of India v. Vijay Laxmi*, 1998 LLR 319.

Death during the course of employment

If the deceased employee met with his death while he was going to his place of work and the death has arisen during the course of employment, then the employer is liable for compensation; *T.N.C.S. Corporation Ltd. v. S. Poomalai*, 1995 LLR 63 (Mad): 1995 I LLJ HC MDS (378).

Entitlement to claim compensation

Where death was accelerated on account of stress and strain of the working condition, it is not necessary that there should be a direct connection between the cause of death and the nature of duties. Even if a casual connection between the two can be shown then the dependants of the deceased would be entitled to claim compensation from the employer; *Divisional Personal Officer, Western Railway v. Ashiya Begam*, 1994 LLR 11 (Raj).

Injury must be physical injury

Injury sustained by a workman must be a physical injury on account of accident; *Leela Devi v. Ramlal Rahu*, 1990 LLR 213 (HP).

Liability for compensation

(i) In order to attract section 3 (1) of the Act, following three conditions must be fulfilled:—

(a) personal injury;

(b) accident; and

(c) arising out of and in the course of employment; *Kalayni P. v. Divisional Manager, Southern Railway (Personal Branch), Divisional Office, Madras*, 2004 LLR 207 (Mad HC): 2004 I LLJ 49.

(ii) It is no doubt true that in order to succeed in an application for getting compensation under section 3 of the Act the following points are required to be established:—



- (1) that the accident must arise out of and in the course of the workman's employment;
- (2) there must be causal connection between the injury and the accident and the work done in the course of the employment;
- (3) the workman has to say that while doing a part of his duty or incidental thereto it has resulted into an accident.

It is necessary that the workman must be actually working at the time of the injury or the accident. Therefore, the three factors, that there must be injury, which must be caused in an accident, it must be caused in the course of and out of the employment must be established; Branch Manager, New India Assurance Co. Ltd. v. Siddappa, Major, 2004 LLR 731 (Kant HC).

Meaning of the expression "arising out of employment"

(i) The expression "arising out of employment" means that there must be casual relationship between the accident and the employment. If the accident has occurred on account of the risk which is an incident of employment, it has to be held that the accident has arisen out of the employment; Oriental Insurance Co. Ltd. v. Nanguli Singh, 1995 LLJ HC ORS (298).

(ii) The words "out of employment" is not limited to mere nature of the employment, but it (arising out of employment) applies to its nature, its conditions and obligations and its incidents. An accident which occurs on account of a risk, which is an incident of employment, then the claim for compensation can succeed provided the workman has not exposed himself to an added peril by his own imprudent act; Executive Engineer 19th Div. R.C.P., Bikaner v. Heeraram, 1982 (44) FLR 179 Raj: 1980 Raj LW 412.

- 1. Subs. by Act 8 of 1959, sec. 3, for "seven" (w.e.f. 1-6-1959).**
- 2. Subs. by Act 15 of 1933, sec. 3, for "injury to a workman resulting from".**
- 3. Ins. by Act 30 of 1995, sec. 3 (w.e.f. 15-9-1995).**
- 4. The word "or" omitted by Act 5 of 1929, sec. 2.**
- 5. Clause (c) omitted by Act 5 of 1929, sec. 2.**
- 6. Subs. by Act 8 of 1959, sec. 3, for sub-sections (2) and (3) (w.e.f. 1-6-1959).**
- 7. Ins. by Act 64 of 1962, sec. 3 (w.e.f. 1-2-1963).**
- 8. Subs. by Act 64 of 1962, sec.3, for sub-section (2A) (w.e.f. 1-2-1963).**
- 9. Subs. by Act 30 of 1995, sec. 3, for certain words (w.e.f. 15-9-1995).**
- 10. Ins. by Act 30 of 1995, sec. 3 (w.e.f. 15-9-1995). 11. Certain words omitted by Act 51 of 1970, sec. 2 and Sch. (w.e.f. 1-9-1971).**
- 12. Subs. by Act 8 of 1959, sec. 3, for "sub-section (2)" (w.e.f. 1-6-1959).**
- 13. The words "solely and" omitted by Act 15 of 1933, sec. 3.**



4. Amount of compensation.—

¹Amount of compensation.

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:—

(a) Where death results from the injury .

an amount equal to ²[fifty per cent.] of the monthly wages of the deceased workman multiplied by the relevant factor;

or

an amount of ³⁴[eighty thousand rupees]], whichever is more;

(b) Where permanent total disablement results from the injury

an amount equal to ⁵[sixty per cent.] of the monthly wages of the injured workman multiplied by the relevant factor;

or

an amount of ⁶⁷[ninety thousand rupees]], whichever is more;

Explanation I.—For the purposes of clause (a) and clause (b) “relevant factor” in relation to a workman 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 workman on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II.—Where the monthly wages of a workman exceed 8[four thousand rupees], his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be 8[four thousand rupees] only;

(c) Where permanent partial disablement result from the injury

(i) in the case of an 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; and

(ii) in the case of an injury not 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;

Explanation I.—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.

Explanation II.—In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;



(d) Where temporary disablement whether total or partial results from the injury

a half monthly payment of the sum equivalent to twenty-five per cent of mostly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

9[(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman 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 workman in accordance with the law of that country.]

(2) 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 a 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:

Provided that—

(a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman 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; and

(b) no half-monthly payment shall in any case exceed the amount, if any by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation.—Any payment or allowance which the workman 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.

(3) 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.]

⁹[(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 ¹⁰[two thousand and five hundred rupees] for payment of the same to the eldest surviving dependant 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.]

COMMENTS

Assessment of loss of earning capacity by the qualified medical practitioner

The incorporation of words "assessment of loss of earning capacity by the qualified medical practitioner" in section 4 (1) (c) (ii) have some purpose and it is not a case of ambiguity at all. So long as there is no provision which enables the Commissioner to determine the compensation



ignoring the medical practitioner's report, there is no question of avoiding it by Commissioner unless he wants a second report from the Medical Board; *New India Assurance Co. Ltd. v. Sreedharan*, 1995 LLR 376 (Ker).

Interference by High Court

The interference by High Court with the order of recall by Commissioner for Workmen's Compensation on the ground of fraud by workman is unjustified both on fact and the law; *Roshan Deen v. Preeti Lal*, AIR 2002 SC 33.

- 1. Subs. by Act 22 of 1984, sec. 3, for section 4 (w.e.f. 1-7-1984).**
- 2. Subs. by Act 30 of 1995, sec. 4, for "forty per cent." (w.e.f. 15-9-1995).**
- 3. Subs. by Act 30 of 1995, sec. 4, for "twenty thousand rupees" (w.e.f. 15-9-1995).**
- 4. Subs. by Act 46 of 2000, sec. 3, for "fifty thousand rupees" (w.e.f. 8-12-2000).**
- 5. Subs. by Act 30 1995, sec. 4, for "fifty per cent." (w.e.f. 15-9-1995).**
- 6. Subs. by Act 30 of 1995, sec. 4, for "twenty-four thousand rupees" (w.e.f. 15-9-1995).**
- 7. Subs. by Act 46 of 2000, sec. 3, for "sixty thousand rupees" (w.e.f. 8-12-2000).**
- 8. Subs. by Act 30 of 1995. sec. 4, for "one thousand rupees" (w.e.f. 15-9-1995) and again subs. by Act 46 of 2000, sec. 3, for "two thousand rupees" (w.e.f. 8-12-2000).**
- 9. Ins. by Act 30 of 1995, sec. 4 (w.e.f. 15-9-1995).**
- 10. Subs. by Act 46 of 2000, sec. 3, for "one thousand rupees" (w.e.f. 8-12-2000).**

4A. Compensation to be paid when due and penalty for default.—

¹[4A. Compensation to be paid when due and penalty for default.—(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases 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 workman to make any further claim.

²[(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 per cent 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 per cent 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).

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

COMMENTS

Defaulting employer to pay additional amount of compensation

Sub-section (3) of section 4A read with clauses (a) and (b) thereof, makes it clear that additional amount of compensation can be levied against the defaulting employer by way of penalty if it is shown that there is no justification for the delay on his part in making good the compensation amount to the claimant; Ved Prakash Garg v. Premi Devi, JT 1997 (8) SC 229.

Delayed payment or deposit of compensation entails interest as well as penalty

Delayed payment or deposit of compensation entails interest @ 6 % p.a. as well as penalty not exceeding 50% of the amount; Jayanti Lal & Co. v. Garesia Rajvirba, (1992) 1 Lab IC 1225 (Guj).

Payment of compensation either to the workman or to deposit it with the Commissioner

Section 4A (2) makes it clear that, in the first place, the employer has to accept the extent of his liability for payment of compensation and on that basis he has to make payment either to the workman or to deposit with the Commissioner. The requirement of this sub-section is payment to the workman and not to any other person including his heirs and legal representatives. It takes within its sweep the case where the workman has not breathed his last on account of the accident met with by him in the course of his employment; Sumuben v. Patel Industries, 1994 LLR 338 (Guj).

Sub-section (3) of section 4A is a beneficial provision

It is apparent that sub-section (3) of section 4A is beneficial provision made for the benefit of the employee, having regard to the scheme of the Act, the provision for payment of interest and of penalty have been enacted with a view to deter the employer from taking pleas and avoiding payment of the compensation which becomes payable; Divisional Forest Officer v. Baijanti Bai, 1995 I LLJ MP (837).

Sub-section (3) of section 4A is not applicable for fixing rate of interest in a claim under the Motor Vehicles Act.

Section 4A(3) of the Workmen's Compensation Act is not applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act; Abati Bezbaruah v. Dy. Director General, GSI, (2003) 3 SCC 148.



1. Ins. by Act 8 of 1959, sec. 5 (w.e.f. 1-6-1959).

2. Subs. by Act 30 of 1995, sec. 5, for sub-section (3) (w.e.f. 15-9-1995).

3. Subs. by Act 46 of 2000, sec. 4, for sub-section (3A) (w.e.f. 8-12-2000).

5. Method of calculating wages—

5. Method of calculating wages.—¹[***] ²[In this Act and for the purposes thereof 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] as follows, namely:—

(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;

³[(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be ⁴[***] the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality;]

⁵[(c)]⁶[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 the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

⁷[***]

Explanation.—A period of service shall, for the purposes of ⁸[this ⁹[section]] be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

¹⁰[***]

1. The brackets and figure “(1)” omitted by Act 9 of 1938, sec. 4.

2. Subs. by Act 13 of 1939, sec. 2, for “For the purposes of this Act the monthly wages of a workman shall be calculated” (w.r.e.f. 30-6-1934).

3. Ins. by Act 15 of 1933, sec. 5. 4. The words “deemed to be” omitted by Act 13 of 1939, sec. 2 (w.r.e.f. 30-6-1934).

5. Clause (b) re-lettered as clause (c) by Act 15 of 1933, sec. 5.

6. Subs. by Act 8 of 1959, sec. 6, for “in other cases” (w.e.f. 1-6-1959).

7. Proviso omitted by Act 15 of 1933, sec. 5.



8. Subs. by Act 5 of 1929, sec. 3, for "this section".

9. Subs. by Act 9 of 1938, sec. 4, for "sub-section".

10. Sub-section (2) added by Act 5 of 1929, sec. 3 and omitted by Act 15 of 1933, sec. 5.

6. Review.—

(1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) 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 workman is entitled less any amount which he has already received by way of half-monthly payments.

7. Commutation of half-monthly payments.—

Any right to receive half-monthly payments may, be 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.

8. Distribution of compensation.

8. Distribution of compensation.—¹[(1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

²[Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation ³[of an amount equal to three months' wages of such workman and so much of such amount] 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), ⁴[as compensation in respect of a deceased workman] the Commissioner ⁵[***] 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 any 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.

⁶[(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependant of the deceased workman 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.

(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 a woman 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 a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the workman.]

⁷[(8)] Where an 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 to 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 the 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.

⁸[(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.]

State Amendments

Andhra Pradesh.—In section 8, after sub-section (4), insert the following proviso, namely:—

“Provided that in respect of a workman belonging to an establishment to which the Andhra Pradesh Labour Welfare Fund Act, 1987 applies, the Commissioner shall pay the said balance of the money into the fund constituted under that Act in lieu of repaying to the employer.”

[Vide Andhra Pradesh Act 34 of 1987, sec. 40 (w.e.f. 1-5-1988).]

Goa.—Same as in Andhra Pradesh except the name of the Act is Goa, Daman and Diu Labour Welfare Fund Act, 1986.

[Vide Goa Act 4 of 1987, sec. 40 (w.e.f. 26-1-1990).]



COMMENTS

Employer not to pay compensation directly to the deceased heirs and legal representatives

No compensation has to be paid in respect of a workman whose injury has resulted in death except by deposit with the Commissioner and no such payment made directly by an employer shall be deemed to be a payment of compensation; the employer should not make any payment of compensation directly to the deceased's heirs and legal representatives or to any of them; Sumuben v. Patel Industries, 1994 LLR 338 (Guj).

Object of section 8

(i) Section 8 of the Act is designed to protect the heirs and legal representatives of the deceased workman against any kind of exploitation or fraud likely to be practised on them by or on behalf of the employer or any third party; Sumuben v. Patel Industries, 1994 LLR 338 (Guj).

(ii) Section 8 of the Act lays down the format for quantum of compensation payable by an employer when an employee meets with an accident. Its object is that unscrupulous employer should not take advantage of the ignorance of the employee in making payment of a paltry sum. Therefore the Act safeguards the interest of the workers and any private payment will not discharge the statutory obligation; May-field Estate Nalhollah Nilgiris v. Krishan, 1984 (48) FLR.

1. Subs. by Act 5 of 1929, sec. 4, for sub-sections (1) to (3).

2. Subs. by Act 15 of 1933, sec. 6, for the proviso.

3. Subs. by Act 30 of 1995, sec. 6, for certain words (w.e.f. 15-9-1995).

4. Ins. by Act 5 of 1929, sec. 4.

5. Certain words omitted by Act 30 of 1995, sec. 6 (w.e.f. 15-9-1995).

6. Subs. by Act 5 of 1929, sec. 4, for the sub-sections (5) to (7).

7. The sub-section (6) re-numbered as sub-section (8) by Act 5 of 1929, sec. 4. 8. Ins. by Act 5 of 1929, sec. 4.

9. Compensation not to be assigned, attached or charged.—

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 workman by operation of law nor shall any claim be set off against the same.

10. Notice and claim.—

(1)¹[No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within ²[two years] of the occurrence of the accident or in case of death within ²[two years] from the date of death:]



Provided that 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 workman was continuously absent from work in consequence of the disablement caused by the disease:

³[Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman 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 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:]

⁴[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the ⁵[entertainment of a claim]—

(a) if the claim is ⁶[preferred] in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer ⁷[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 workman was employed] had knowledge of the accident from any other source at or about the time when it occurred:]

Provided further that the Commissioner may ⁸[entertain] and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been ⁹[preferred], in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or ¹⁰[prefer] the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon ¹¹[any one of] several employers, or upon any person ¹²[***] responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

¹³[(3) The State Government may require that any prescribed class of employers shall maintain at these premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice book is maintained, by entry in the notice book.]

COMMENTS

Liability of insurance company



Insurance company cannot escape liability simply because the notice was not issued to the Insurance Company. Notice to the owner of the vehicle is good enough; Ram Karan v. Vijayanand, 1995 LLR 69 (MP).

Posthumous registration for purposes of insurance is an insured person

An employee suffering employment injury granted posthumous registration for the purposes of insurance is nonetheless an insured person; Bharagath Engineering v. R. Raganayaki, (2003) 2 SCC 138.

- 1. Subs. by Act 9 of 1938, sec. 5, for certain words.**
- 2. Subs. by Act 8 of 1959, sec. 8, for "one year" (w.e.f. 1-6-1959).**
- 3. Ins. by Act 64 of 1962, sec. 5 (w.e.f. 1-2-1963).**
- 4. Ins. by Act 15 of 1933, sec. 7.**
- 5. Subs. by Act 9 of 1938, sec. 5, for "maintenance of proceedings".**
- 6. Subs. by Act 9 of 1938, sec. 5, for "made".**
- 7. Ins. by Act 9 of 1938, sec. 5.**
- 8. Subs. by Act 9 of 1938, sec. 5, for "admit".**
- 9. Subs. by Act 9 of 1938, sec. 5, for "instituted".**
- 10. Subs. by Act 9 of 1938, sec. 5, for "institute".**
- 11. Subs. by Act 7 of 1924, sec. 2 and Sch. I, for "any one or".**
- 12. The word "directly" omitted by Act 9 of 1938, sec. 5.**
- 13. Subs. by Act 15 of 1933, sec. 7, for sub-section (3).**

[10A. Power to require from employers statements regarding fatal accidents.

¹[10A. Power to require from employers statements regarding fatal accidents.— (1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman'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 workman, 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.

(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 workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

1. Ins. by Act 15 of 1933, sec. 8.

10B. Reports of fatal accidents and serious bodily injuries.

¹[10B. Reports of fatal accidents and serious bodily injuries.—(1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death ²[or serious bodily injury], the person required to give the notice shall, within seven days of the death ²[or serious bodily injury], send a report to the Commissioner giving the circumstances attending the death ²[or serious bodily injury]:

Provided that 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.

³[Explanation.—“Serious bodily injury” means an injury which involves, or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.]

(2) The State Government may, by 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.]

³[(3) Nothing in this section shall apply to factories to which the Employees’ State Insurance Act, 1948 (34 of 1948), applies.

1. Ins. by Act 15 of 1933, sec. 8.

2. Ins. by Act 8 of 1959, sec. 9 (w.e.f. 1-6-1959).

3. Added by Act 8 of 1959, sec. 9 (w.e.f. 1-6-1959).

11. Medical examination.—

(1) Where a workman 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 of such examination, and any workmen 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 a workman 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 a workman, 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 a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, 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 a workman, 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 workman.

(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 workman has refused to be attended by a qualified medical practitioner whom services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, ¹[if it is proved that the workman 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 workman had been regularly attended by a qualified medical practitioner ²[whose instructions he had followed], and compensation, if any, shall be payable accordingly.

COMMENTS

Determination of loss of earning capacity

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 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; *Bengal Coal Co. Ltd. v. Barhan Gopel*, 1983 II LLJ 86 Cal.

Medical examination

(i) It is the responsibility of the employer to press for medical examination of the workman receiving injuries in an accident; *Madhya Pradesh Mining Corporation v. Munda Kol*, 1990 LLR 115 (MP).

(ii) No doubt section 11 provides that medical examination can be ordered by the Commissioner under the Workmen's Compensation Act but it has been held that it is the responsibility of the



employer to press for the medical examination of the workman; Madhya Pradesh Mining Corporation through Manager Mines, Satve v. Munda Kol Son, of Kutti, 1990 LLR 115 (MP).

1. Subs. by Act 9 of 1938, sec. 6, for certain words.

2. Ins. by Act 9 of 1938, sec. 6.

12. Contracting

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 contract with any other person (hereinafter in this section 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 workman employed in the execution of the work any compensation which he would have been liable to pay if that workman 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 workman under the employer by whom he is immediately employed. Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to a 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 workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall in default of agreement be settled by the Commissioner. Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal. 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.



13. Remedies of employer against stranger.—

Where a workman 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.

14. Insolvency of employer.—

(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under the employer.

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

(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 apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman:

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give the 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 (3 of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under ¹[section 530 of the Companies Act, 1956 (1 of 1956)], are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(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.

COMMENTS

Section 14 does not operate as a prohibition against any proceeding

Section 14 does not operate as a prohibition against any proceedings before the Workmen's Compensation Commissioners invoking the insurer who is liable under a contract of insurance to discharge the liability of the employer to compensate the workmen, according to the provisions of the Workmen's Compensation Act. *United India Insurance Co. v. Gangadharan Nair*, (1987) LLJ 448.

1. Subs. by Act 30 of 1995, sec. 7, for "section 230 of the Indian Companies Act, 1913 (7 of 1913)" (w.e.f. 15-9-1995).



14A. Compensation to be first charge on assets transferred by employer.

¹[14A. Compensation to be first charge on assets transferred by employer.—Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefor accrued before the date of the 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.]

1. Ins. by Act 8 of 1959, sec. 10 (w.e.f. 1-6-1959).

15. Special provisions relating to masters and seamen. —

15. Special provisions relating to masters and seamen. —This Act shall apply in the case of workmen who are masters of ¹[***] ships or seamen 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 master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within 2[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:

3[Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.]

(3) Where an injured master or seaman is discharged or left behind in any part of 4[India or] 5[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.



6[***]

7[(4)] No 8[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 9[***] relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

10[(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 (2 & 3 Geo. 6, c. 83), 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 proceedings 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 provision for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and

(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.]

1. The word "registered" omitted by Act 15 of 1933, sec. 10.

2. Subs. by Act 8 of 1959, sec. 11 for "six months" (w.e.f. 1-6-1959).

3. Added by Act 8 of 1959, sec. 11 (w.e.f. 1-6-1959).

4. Ins. by the A.O. 1950.

5. Subs. by Act 22 of 1984, sec. 4, for "His Majesty's dominions or in any other foreign country" (w.e.f.1-7-1984).

6. Clause (4) omitted by Act 9 of 1938, sec. 7.

7. Clause (5) re-numbered as clause (4) by Act 9 of 1938, sec. 7

8. Subs. by Act 7 of 1924, sec. 2 and Sch. I, for "monthly payment".

9. The words and letters "in Part A States and Part C States" omitted by Act 3 of 1951, sec. 3 and Sch.

10. Subs. by Act 1 of 1942, sec. 2, for clause (5) (w.e.f. 3-9-1939). Earlier clause (5) was inserted by Act 42 of 1939, sec. 2.



15A. Special provisions relating to captains and other members of crew of aircrafts.

¹[15A. Special provisions relating to captains and other members of crew of aircrafts.—This Act shall apply in the case of workmen who are captains or other members of the crew of aircrafts subject to the following modifications, namely:—

(1) The notice of the accident and the claim for compensation may, except where the person injured is the captain of the aircraft, be served on the captain of the aircraft and 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 had 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 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;

(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.]

1. Ins. by Act 30 of 1995, sec. 8 (w.e.f. 15-9-1995).

15B. Special provisions relating to workmen abroad of companies and motor vehicles.

¹[15B. Special provisions relating to workmen abroad of companies and motor vehicles.—This Act shall apply—



(i) in the case of workmen who are persons recruited by companies registered in India and working as such abroad, and

(ii) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 (59 of 1988) as drivers, helpers, mechanics, cleaners or other workmen, subject to the following modifications, namely:—

(1) The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.

(2) In the case of death of the workman in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim had not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured workman is discharged or left behind in any part of India or in any other country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence—

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;

(c) if the deposition was made in the course of a criminal proceeding, 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.]

1. Ins. by Act 30 of 1995, sec. 8 (w.e.f. 15-9-1995).

16. Returns as to compensation.—

16. Returns as to compensation.—The ¹[State Government] may, by notification in the Official Gazette, direct that every person employing workmen, 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, 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 ¹[State Government] may direct.



1. The words "G.G. in C." have successively been substituted by the A.O. 1937 and the A.O. 1950 to read as above.

17. Contracting out.—

Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

COMMENTS

Interference by High Court

The interference of High Court with the order of recall on the ground of fraud by workman by Commissioner for Workman Compensation unjustified both on fact and law; Roshan Deen v. Preeti Lal, AIR 2002 SC 33.

Legislative mandate cannot be bypassed in exercise of supervisory and extraordinary jurisdiction under article 227 of the Constitution

The Legislative mandate to protect rights of workman cannot be bypassed in exercise of supervisory and extraordinary jurisdiction under article 227 of Constitution; Roshan Deen v. Preeti Lal, (2002) 1 SCC 100.



18. Proof of age.—

[Rep. by the Workmen's Compensation (Amendment) Act, 1959 (8 of 1959), section 12 (w.e.f. 1-6-1959).]

18A. Penalties.—

¹[18A. Penalties.—(1) 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 10A, or

(c) fails to send a 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 ²[five thousand] rupees.

(2) 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 ³[within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner].

1. Ins. by Act 15 of 1933, sec. 11.

2. Subs. by Act 30 of 1995, sec. 9, for "five hundred" (w.e.f. 15-9-1995).

3. Subs. by Act 64 of 1962, sec. 6, for certain words (w.e.f. 1-2-1963).

19. Reference to Commissioners.

(1) If any question arises in any proceedings 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 a workman) 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 ¹[a Commissioner].

(2) 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.

COMMENTS

Liability of the employer

The liability of the employer arises as soon as the injury is caused and at any subsequent occasion. It cannot be suspended; *State of Punjab v. Vidya Devi*, (1990) II LLN 579 (P&H).

Liability of the insurance company

If the insurance company has agreed to discharge the liability of the employer under the Workmen's Compensation Act, the liability of the insurance company to indemnify the insurer shall have to be determined by the Commissioner for Workmen's Compensation in the very same proceedings by virtue of the provisions contained in section 19(1) of the Act; *Razak Haji Jumma v. United India Insurance Co.*, 1995 (I) LLJ 168 (Bom).

Scope of expression "any person"

The insurer also will come within the scope of "any person" contemplated in section 19 of the Act and thus within the jurisdiction of the Workmen's Compensation Commissioner; *New India Assurance Co. Ltd. v. Joseph*, 2000 (I) LLJ 1063 (Ker): (1999) 96 FJR 575.

Scope of sub-section (2)

The scope and scheme of sub-section (2) is not to take away from the civil court its jurisdiction to give relief in tort, but to provide alternate optional remedy for certain classes of persons in certain special circumstances and for certain happenings. There are two requirements, which need to be satisfied by the Commissioner to act under this Act— (1) the party must forego its right under the common law of the land, (2) the facts giving jurisdiction to the Commissioner must also exist side by side. When these two conditions are strictly fulfilled, the Act seeks to bar jurisdiction of the civil court on the aspects, namely, settling, deciding and dealing with any question involved in the proceeding; *Gangnani & Co. v. Saraswati*, 2001 (II) LLJ 1022 (Bom): 2001 (II) CLR 842.

Section 19 does not take away the jurisdiction of the civil court

Section 19 of the Act does not take away the jurisdiction of the civil court to grant relief in tort since section 5 indicates that the workman has an option to claim compensation either under



the Workmen's Compensation Act or can take recourse to the civil court for damages and the injuries sustained by him; Minerals & Chemicals v. Thevan, 1991 (II) LLN 951 (Ker).

1. Subs. by Act 15 of 1933, sec. 12, for "the Commissioner".

20. Appointment of Commissioners..—

(1) The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such ¹[***] area as may be specified in the notification.

²[(2) Where more than one Commissioner has been appointed for any ¹[***] area, the State Government may, by general or special order, regulate the distribution of business between them.]

³[(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.

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

1. The word "local" omitted by Act 64 of 1962, sec. 7 (w.e.f. 1-2-1963).

2. Ins. by Act 15 of 1933, sec. 13.

3. Sub-sections (2) and (3) re-numbered as sub-sections (3) and (4) by Act 15 of 1933, sec. 13.

21. Venue of proceedings and transfer—

21. Venue of proceedings and transfer.— ¹[(1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which—

(a) the accident took place which resulted in the injury; or

(b) the workman or in case of his death, the 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 workman, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a workman in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a



Commissioner for the area in which the owner 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.

(1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.]

(2) If a Commissioner is satisfied ²[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:

³[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:]

⁴[***]

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire therein 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[(5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.]

1. Subs. by Act 30 of 1995, sec. 10, for sub-section (1) (w.e.f. 1-10-1996), vide S.O. 677(E), dated 25th September, 1996.

2. Subs. by Act 9 of 1938, sec. 9, for certain words.

3. Ins. by Act 9 of 1938, sec. 9.

4. Second proviso omitted by Act 30 of 1995, sec. 10 (w.e.f. 1-10-1996), vide S.O. 677(E), dated 25th September, 1996.

5. Ins. by Act 15 of 1933, sec. 14.

22. Form of application..—

22. Form of application.—¹[(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.



(1A) Subject to the provisions of sub-section (1), no application for the settlement] of any matter by Commissioner ²[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.

(2) ³[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) ⁴[except in the case of an application by dependants for compensation] a concise statement of the matters on which agreement has and ⁵[of] those on which agreement has not been come to.

(3) 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.

1. Subs. by Act 30 of 1995, sec. 11, for "(1) No application for the settlement" (w.e.f. 15-9-1995).

2. Ins. by Act 15 of 1933, sec. 14.

3. Subs. by Act 15 of 1933, sec. 15, for "Where any such question has arisen, the application".

4. Ins. by Act 15 of 1933, sec. 15.

5. Subs. by Act 37 of 1925, sec. 2 and Sch. I, for "on".

22A. Power of Commissioner to require further deposit in cases of fatal accident.

¹[22A. Power of Commissioner to require further deposit in cases of fatal accident.—(1) Where any sum has been deposited by an employer as compensation payable in respect of a workman 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.

(2) 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.]



1. Ins. by Act 15 of 1933, sec. 16.

23. Powers and procedure of Commissioners.—

The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 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, ¹[and the Commissioner shall be deemed to be a Civil Court for all the purposes of²[section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)]]].

COMMENTS

Award of compensation by Workmen's Compensation Commissioner

It is within the competence of the Workmen's Compensation Commissioner and he is also bound to award compensation as prescribed under Schedule 4 read with sec. 4 (1) (a) of the Act even if heirs of deceased workman claim less compensation than prescribed under the Act and the Schedule; Mostt., Chhatiya Devi Gowalin v. Rup Lal Sao, 1978 Lab IC 1368: 1978 BLR 502; 1978 ACJ 481; 1978 BJR 622.

Principle of waive or acquiescence

Even if the claimant has made a claim of lesser amount than due, his right to claim or the power of the Commissioner to enhance the compensation is neither waived nor curtailed since the principle of waive or a acquiescence has no application to such type of cases; Balavandra Patra v. Chief Engineer Orissa, 1987 (I) LLN 634; Mohd. Koya v. Balan, 1987 (I) LLN 353.

Refusal by Commissioner to record memorandum of agreement

Where it appears to the Commissioner that an agreement as to the payment of lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation to a workman or a person under a legal disability ought not to be registered because of 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 may refuse to record the memorandum of the agreement. He may pass such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances; Amarshi Jeram v. M/s. Hazarat and Co., AIR 1962 Guj 262: 1962 II LLJ 187.

1. Added by Act 5 of 1929, sec. 5.

2. Subs. by Act 30 of 1995, sec. 12, for "section 195 and of Chapter xxxv of the Code of Criminal Procedure, 1898 (5 of 1890)" (w.e.f. 15-9-1995).

24. Appearance of parties.—

¹[24. Appearance of parties.—Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company or a registered



Trade Union or by an Inspector appointed under sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), or under sub-section (1) of section 5 of the Mines Act, 1952 (35 of 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.]

State Amendments

West Bengal.—After section 24, insert the following sections, namely:—

"24A. Reference of disputed medical questions to a medical referee.—(1) If any question arises in any proceedings under this Act pending before the Commissioner as to—

- (a) the nature and extent of the permanent disablement of a workman, or
- (b) the duration of his temporary disablement, or
- (c) whether the incapacity of a workman is due to personal injury by accident, or
- (d) whether a workman has contracted any occupational disease specified in Schedule III,

the question shall, in default of agreement, on the joint application of both parties or on the application of either party in the prescribed manner, and on payment in the prescribed manner by the parties, or the party making the application, as the case may be, of the prescribed fees and expenses, be referred by the Commissioner to a medical referee appointed by him in his discretion from amongst the medical practitioners included in the list prepared under section 24B:

Provided that where an application is made by only one of the parties, if the Commissioner is of the opinion that the question is one which ought not on account of the exceptional difficulty of the case or of any other sufficient reason be referred to a medical referee, he may after recording his reasons in writing reject the application:

Provided further that if the parties themselves jointly select any medical practitioner included in the said list for appointment as the medical referee, the Commissioner shall, on payment of the prescribed fees and expenses in the prescribed manner, appoint that medical practitioner:

Provided further that a medical practitioner whose services have been used for the medical treatment of an injury by accident to a workman, or of an occupational disease specified in Schedule III contracted by such workman, by or on behalf of such workman or his employer or by or on behalf of any insurers interested in any proceeding under this Act arising out of such injury or disease, shall not act as a medical referee in any proceedings under this Act in respect of such injury or disease.

(2) The Medical referee to whom such a reference is made under sub-section (1) shall, in accordance with the prescribed rules, require the workman to submit to a medical examination by him or under his personal direction and shall personally or with such medical assistance as he may deem necessary examine the workman medically and send to the Commissioner who has made the reference a report in respect of the question specifically mentioned in the order of reference.

(3) If a workman refuses to submit himself for medical examination by or under the personal direction of the medical referee to whom a reference has been made under this section, or if a workman in any way obstructs the medical examination by or under the personal direction of the medical referee the workman's right to compensation under this Act and his right to continue any proceedings under this Act shall be suspended until such examination has taken place.



(4) In any proceedings under this Act in which evidence is recorded, the report of the medical referee shall as between the parties to the proceedings be conclusive proof of the facts related therein within the meaning of section 4 of the Indian Evidence Act, 1872:

Provided that such report shall not so be regarded as conclusive proof of the facts related therein if in the particular proceedings the Commissioner, either of his own motion or on application being made to him by either party, for reasons to be recorded by him in writing, deems it expedient in the interests of justice to allow the parties to adduce further evidence on such facts.

24B. List of qualified medical practitioners for appointment as medical referees.— The State Government shall prepare a list of qualified medical practitioners who may be appointed as medical referees under section 24A and shall publish the said list in the Official Gazette”.

[Vide Bengal Act 6 of 1942, sec. 4 (w.e.f. 19-11-1942).]

1. Subs. by Act 8 of 1959, sec. 14, for section 24 (w.e.f. 1-6-1959).

25. Method of recording evidence.—

The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record:

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form 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.

26. Costs.—

All costs, incidental to any proceedings before a Commissioner shall, subject to rules made under this Act, be in the discretion of the Commissioner.

27. Power to submit cases.—

A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

28. Registration of agreements.—

(1) 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 ¹[to a woman, or a person under a legal disability] ²[***] 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:

Provided that—

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

³[***]

(c) the Commissioner may at any time rectify the register;

(d) 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, ¹[to a woman or a person under a legal disability] ⁴[***] 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 ⁵[and may make such order], including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872 (9 of 1872), or in any other law for the time being in force.

COMMENTS

Receipt of payment of compensation has to be registered

Section 28 mandates that a receipt of payment of compensation has to be registered; Naggapattinam Import and Export Corporation v. K. Lakshmi, (1992) 65 FLR 928 (Mad).

1. Subs. by Act 5 of 1929, sec. 6, for "to a person under a legal disability".

2. The words "or to a dependant", rep. by Act 7 of 1924, sec. 3 and Sch. II.

3. Clause (b) omitted by Act 5 of 1929, sec. 6.

4. The words "or to any dependant", rep. by Act 7 of 1924, sec. 3 and Sch. II.

5. Subs. by Act 7 of 1924, sec. 2 and Sch. I, for "or may make such order".

29. Effect of failure to register agreement.—

Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

30. Appeals.—

(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:—

(a) an order as 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;



1[(aa) an order awarding interest or penalty under section 4A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and 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 three hundred rupees:

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

²[Provided further that 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.]

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of ³[the Limitation Act, 1963 (36 of 1963)], shall be applicable to appeals under this section.



COMMENTS

Interference by High Court

In appeal under section 30, the High Court can interfere, if a party is able to prove that the findings are perverse in the sense that either of the findings are without any material on record or it is totally opposed to the material on record; T.S. Prabhu v. Bhavani Poojary, 2003 LLR 162 (Kant HC) 2003 LR 26.

Jurisdiction to entertain an appeal

The appellate court has no jurisdiction to entertain an appeal unless the same involves a substantial question of law; Nisan Springs (Pvt.) Ltd v. Om Jain, 1990 LLR 93 (MP).

Substantial question of law

(i) The mere difficulty of applying the facts to the law will not amount to a substantial question of law; Asmath Bedi (dead) v. Marlmuthu, 1990 LLR 450 (Mad).

(ii) An appeal against the order of the Compensation Commissioner lies only when a substantial question of law is involved; Mangala Ben v. Dalip Motwani, 1998 LLR 656.

(iii) Scope of section 30 of the Workmen's Compensation Act for entertaining the appeal against the order passed by the Commissioner is very limited. The said section 30 very clearly provides that the award of the Commissioner passed under the aforesaid Act can be challenged in the

appeal where substantial question of law are involved; General Manager, C.C. Ltd. v. Bhim Yadav, 2003 LLR 574 (Jhk HC).

1. Ins. by Act 8 of 1959, sec. 15 (w.e.f 1-6-1959).

2. Added by Act 15 of 1933, sec. 17

3. Subs. by Act 30 of 1995, sec. 13, for "the Indian Limitation Act, 1908 (9 of 1908)" (w.e.f. 15-9-1995).

30A. Withholding of certain payments pending decision of appeal.—

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

1. Ins. by Act 15 of 1933, sec. 18.

31. Recovery.—

The Commissioner may recover as an arrear of land-revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890 (1 of 1890).

State Amendment

West Bengal.—After section 31, insert the following section, namely:—

"31A. Application of section 36 of Act XVIII of 1879 to touts in office of the Commissioner.—

(1) The provisions of section 36 of the Legal Practitioners Act, 1879, shall subject to the provisions of this section, be applicable, so far as may be, to the framing and publication of a list of touts to the exclusion of touts included in the list from the precincts of the Court of the Commissioner and to the arrest, detention, trial and punishment of such touts.

(2) A Commissioner shall, for the purposes of the said section 36, be deemed to be an authority referred to in sub-section (1) of that section.

(3) For the purposes of this section "tout" means—

(a) "tout" as defined in clause (a) of section 3 of the Legal Practitioners Act, 1879; or

(b) a person who habitually frequents the precincts of the Court of a Commissioner—

(i) for the purpose of procuring work as an agent under section 24, or



(ii) otherwise than as a party to or a witness in any proceedings before the Commissioner or as a bona fide agent appointed under section 24."

[Vide Bengal Act 5 of 1942, sec. 12.]

32. Power of the State Government] to make rules.—

32. Power of the ¹[State Government] to make rules.—(1) The 1[State Government] may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:—

(a) for prescribing the 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 a workman 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 Commissioners 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 workman 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 memoranda 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; ²[***].

³[***]

⁴[(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;

(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; ⁵[***]

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



6[(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.]

7[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.]

State Amendment

West Bengal.—In section 32, in sub-section (2), after clause (f), insert the following clauses, namely:—

“(ff) for prescribing the procedure relating to the refence of medical questions to medical referees under sub-section (1) of section 24A;

(ff-1) for regulating the procedure relating to the medical examination of a workman by or under the personal direction of a medical referee and the submission of the report of such medical referee, under sub-section (2) of section 24A;

(ff-2) for prescribing and determining the fees and expenses payable in connection with references of medical questions to medical referees under sub-section (1) of section 24A.”

[Vide Bengal Act 6 of 1942, sec. 5 (w.e.f. 19-11-1942).]

1. The words “G.G. in C.” successively substituted by the A.O. 1937 and the A.O. 1950 to read as above.

2. The word “and” omitted by the A.O. 1937

3. Clause (i) omitted by A.O. 1937.

4. Clauses (a) to (f) of section 33 after being re-lettered as clauses (i) to (n) respectively were added to sec. 32 by A.O. 1937.

5. The word “and” ins. by A.O. 1937 and omitted by Act 58 of 1960, sec. 3 and Sch. II.

6. Ins. by Act 8 of 1959, sec. 16 (w.e.f. 1-6-1959).

7. Ins. by Act 4 of 1986, sec. 2 and Sch. II (w.e.f. 15-5-1986).

33. Power of Local Government to make rules.

33. Power of Local Government to make rules.—[Rep. by the A.O. 1937.]



34. Publication of rules.—

(1) The power to make rules conferred by ¹[section 32] shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897) as that after which a draft of rules proposed to be made under section 32 ²[***] 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.

(3) Rules so made shall be published in ³[***] the Official Gazette ⁴[***], and on such publication, shall have effect as if enacted in this Act.

1. Subs. by the A.O. 1937, for "sections 32 and 33".

2. The words and figures "or section 33" omitted by the A.O. of 1937.

3. The words "the Gazette of India or" omitted by the A.O. of 1937.

4. The words "as the case may be" omitted by the A.O. of 1937.

35. Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.—

¹[35. Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.—²[(1)] The Central Government may, by notification in the Official Gazette, make rules for the transfer ³[***] ⁴[to any foreign country] of money ⁵[deposited with] a Commissioner under this Act ⁶[which has been awarded to or may be due to], any person residing or about to reside in ⁷⁸[such foreign country]] and for the receipt ⁹[, distribution] and administration in ¹⁰[any State] of any money ¹¹[deposited] under the law relating to workmen's compensation ¹²[***] ¹³[***] ⁴[in any foreign country,] ¹⁴[which has been awarded to, or may be due to] any person residing or about to reside in ¹⁰[any State]:]

¹⁵[Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned under the Commissioner receiving the sum has passed orders determining its distribution and apportionment under the provisions of sub-sections (4) and (5) of section 8.

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

1. Ins. by Act 15 of 1933, sec. 20.

2. Section 35 re-numbered as sub-section (1) of that section by Act 7 of 1937, sec. 2.

3. The words and letter "to any Part B State or" omitted by Act 3 of 1951, sec. 3 and Sch.



4. Subs. by Act 22 of 1984, sec. 5, for certain words (w.e.f. 1-7-1984).

5. Subs. by Act 7 of 1937, sec. 2, for "paid to".

6. Subs. by Act 7 of 1937, sec. 2, for "for the benefit of".

7. Subs. by Act 3 of 1951, sec. 3, and Sch., for "such State, part or country".

8. Subs. by Act 22 of 1984, sec. 5, for "such part or country" (w.e.f. 1-7-1984).

9. Ins. by Act 7 of 1937, sec. 2.

10. Subs. by Act 3 of 1951, sec. 3, and Sch., for "a Part A State or Part C State".

11. Subs. by Act 7 of 1937, sec. 2, for "awarded".

12. The words and letter "in any Part B State" omitted by Act 3 of 1951, sec. 3 and Sch.

13. The word "or" omitted by Act 36 of 1957, sec. 3 and Sch. II.

14. Subs. by Act 7 of 1937, sec. 2, for "and applicable for the benefit of".

15. Added by Act 7 of 1937, sec. 2.

36. Rules made by Central Government to be laid before Parliament.—

¹[36. Rules made by Central Government to be laid before Parliament.— Every rule made under this Act by the Central Government shall 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 thirty days which may be comprised in one session or in ²[two or more successive sessions, and 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 the 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.]

1. Ins. by Act 64 of 1962, sec. 8 (w.e.f. 1-2-1963).

2. Subs. by Act 65 of 1976, sec. 3, for certain words (w.e.f. 21-5-1976).

SCHEDULE I—

¹[SCHEDULE I

[See sections 2(1) and (4)]

²[PART I

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT

TOTAL DISABLEMENT]

Serial No.	Description of Injury	Percentage of loss of earning
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		capacity
1.	Loss of both hands or amputation at higher sites	100
2.	Loss of a hand and a foot	100
3.	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential .	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100

³[PART II

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT

PARTIAL DISABLEMENT]

Serial No.	Description of Injury	Percentage of loss of earning capacity
	<i>Amputation cases—upper limbs (either arm)</i>	
⁴ 1.	Amputation through shoulder joint	90
⁴ 2.	Amputation below shoulder with stump less than 3[20.32 Cms.] from tip of acromion	80
⁴ 3.	Amputation from ⁵ [20.32 Cms.] from tip of acromion to less than ⁶ [11.43 Cms.] below tip of olecranon	70
⁴ 4.	Loss of a hand or of the thumb and four fingers of one hand or amputation from ⁶ [11.43 Cms.] below tip of olecranon	60
⁴ 5.	Loss of thumb	30
⁴ 6.	Loss of thumb and its metacarpal bone	40
⁴ 7.	Loss of four fingers of one hand	50
⁴ 8.	Loss of Three fingers of one hand	30
⁴ 9.	Loss of two fingers of one hand	20
⁴ 10.	Loss of terminal phalanx of thumb	20
⁷ 10A.	Guillotine amputation of tip of thumb without loss of bone	10



1. Subs. by Act 8 of 1959, sec. 17, for the Schedule (w.e.f. 1-6-1959).

2. Subs by Act 64 of 1962, sec. 9, for the heading "LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT" (w.e.f. 1-2-1963).

3. Ins. by Act 64 of 1962, sec. 9 (w.e.f. 1-2-1963).

4. Entries 7 to 54 re-numbered as 1 to 48 by Act 64 of 1962, sec. 9 (w.e.f. 1-2-1963).

5. Subs. by Act 30 of 1995, sec. 14, for "8" " (w.e.f. 15-9-1995).

6. Subs. by Act 30 of 1995, sec. 14, for "4½" " (w.e.f. 15-9-1995).

Serial No.	Description of Injury	Percentage of loss of earning capacity
<i>Amputation cases—lower limbs</i>		
¹ 11.	Amputation of both feet resulting in end bearing stumps .	90
¹ 12.	Amputation through both feet proximal to the metatarsophalangeal joint	80
¹ 13.	Loss of all toes of both feet through the metatarso-phalangeal joint	40
¹ 14.	Loss of all toes of both feet proximal to the roximal interphalangeal joint	30
¹ 15.	Loss of all toes of both feet distal to the proximal inter-phalangeal joint	20
¹ 16.	Amputation at hip	90
¹ 17.	Amputation below hip with stump not exceeding ² [12.70 Cms.] in length measured from tip of greats trenchanter	80
¹ 18.	Amputation below hip with stump exceeding ² [12.70 Cms.] in length measured from tip of great trenchanter but not beyond middle thigh	70
¹ 19.	Amputation below middle thigh to ³ [8.89 Cms.] below knee	60
¹ 20.	Amputation below knee with stump exceeding ³ [8.89 Cms.] but not exceeding ² [12.70 Cms.]	50
¹ 21.	Amputation below knee with stump exceeding ² [12.70 Cms]	50
¹ 22.	Amputation of one foot resulting in end bearing	50
¹ 23.	Amputation through on foot proximal to the metatarsophalangeal joint	50
¹ 24.	Loss of all toes of one foot through the metatarso-phalangeal joint	20
<i>Other injuries</i>		
¹ 25.	Loss of one eye, without complications, the other being normal	40



¹ 26.	Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal	30
⁶ 26A.	Loss of partial vision of one eye	10
<i>A—Fingers of right or left hand Index finger</i>		
¹ 27.	Whole	14
¹ 28.	Two phalanges	11
¹ 29.	One phalanx	09
¹ 30.	Guillotine amputation of time without loss of bone.	05

1. Entries 7 to 54 re-numbered as 1 to 48 by Act 64 of 1962, sec. 9 (w.e.f. 1-2-1963).

2. Subs. by Act 30 of 1995, sec. 14, for "5" " (w.e.f. 15-9-1995).

3. Subs. by Act 30 of 1995, sec. 14, for "3½" " (w.e.f. 15-9-1995).

4. Subs. by Act 30 of 1995, sec. 14 for "40" (w.e.f. 15-9-1995).

5. Subs. by Act 30 of 1995, sec. 14, for "30" " (w.e.f. 15-9-1995).

6. Ins. by Act 30 of 1995, sec. 14 (w.e.f. 15-9-1995).



Serial No.	Description of Injury	Percentage of loss of earning capacity
<i>Middle finger</i>		
¹ 31.	Amputation of both feet resulting in end bearing stumps .	12
¹ 32.	Amputation through both feet proximal to the metatarsophalangeal joint	09
¹ 33.	Loss of all toes of both feet through the metatarso-phalangeal joint	07
¹ 34.	Loss of all toes of both feet proximal to the roximal interphalangeal joint	04
<i>Ring or little finger</i>		
¹ 35.	Loss of all toes of both feet distal to the proximal inter-phalangeal joint	07
¹ 36.	Amputation at hip	06
¹ 37.	Amputation below hip with stump not exceeding ² [12.70 Cms.] in length measured from tip of greats trenchanter	05
¹ 38.	Amputation below hip with stump exceeding ² [12.70 Cms.] in	02

	length measured from tip of great trenchanter but not beyond middle thigh	
	<i>B—Toes of right or left foot Great toe</i>	
¹ 39.	Amputation below middle thigh to ³ [8.89 Cms.] below knee	14
¹ 40.	Amputation below knee with stump exceeding 3[8.89 Cms.] but not exceeding ² [12.70 Cms.]	03
	<i>Any other toe</i>	
¹ 41.	Amputation below knee with stump exceeding ² [12.70 Cms]	03
¹ 42.	Amputation of one foot resulting in end bearing	01
	<i>Two toes of one foot, excluding great toe</i>	
¹ 43.	Amputation through on foot proximal to the metatarsophalangeal joint	05
¹ 44.	Loss of all toes of one foot through the metatarso-phalangeal joint	02
	<i>Three toes of one foot, excluding great toe</i>	
¹ 45.	Loss of one eye, without complications, the other being normal	06
¹ 46.	Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal	03
	<i>Four toes of one foot, excluding great toe</i>	
¹ 47.	Loss of partial vision of one eye	09
² 48.	Whole	03

²[Note.—Complete and permanent loss of the use of any limb or member referred to in the Schedule shall be deemed to be the equivalent of the loss of that limb or member.]

1. Entries 7 to 54 re-numbered as 1 to 48 by Act 64 of 1962, sec. 9 (w.e.f. 1-2-1963).

2. Added by Act 58 of 1960, sec. 3 and Sch. II (w.e.f. 26-12-1960).

SCHEDULE II—

SCHEDULE II

[See section 2(1) (n)]

LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF SECTION 2 (1) (n), ARE INCLUDED IN THE DEFINITION OF WORKMEN

The following persons are workmen within the meaning of section 2 (1) (n) and subject to the provisions of that section, that is to say, any person who is—

¹²[(i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation ³[, repair] 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; or

(ii) employed, otherwise than in a clerical capacity, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948 (63 of 1948), is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, ⁴[whether or not employment in any such work is within such premises or precincts] and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof twenty or more persons are so employed; ⁵[***]

⁶[Explanation.—For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected, with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts; or]

State Amendment

Tamil Nadu.—In Schedule II, after clause (iii), insert the following clause, namely:—

“(iii-a) Employed for the purpose of making, altering, repairing, ornamenting, finishing, or otherwise adapting for use, transport or sale, any article or part of an article in any place where in steam, water or other mechanical power or electrical power is not used if the State Government have by notification in the Official Gazette, under section 85 of the Factories Act, 1948, declared that all or any of the provisions of that Act shall apply to such place.”

[Vide St. George Gazette, Pt. II, sec. 1, p. 4, dated 2nd January, 1963.]

(iv) employed in the manufacture or handling of explosives in connection with the employer's trade or business; or

(v) employed, in any mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952), in any mining operation or in any kind of work other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground; or

(vi) employed as the master or as a seaman of—

(a) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; or

(b) any ship not included in sub-clause (a), of twenty-five tons net tonnage or over; or

(c) any sea going ship not included in sub-clause (a) or sub-clause (b) provided with sufficient area for navigation under sails alone; or

(vii) employed for the purpose of —



(a) loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or handling or transport within the limits of any port subject to ⁷[the Ports Act, 1908 (15 of 1908), or the Major Port Trusts Act, 1963 (38 of 1963)], of goods which have been discharged from or are to be loaded into any vessel; or

(b) warping a ship through the lock; or

(c) mooring and unmooring ships at harbour wall berths or in pier; or

(d) removing or replacing dry dock caissons when vessels are entering or leaving dry docks; or

(e) the docking or undocking of any vessel during an emergency; or

(f) preparing splicing coir springs and check wires, painting depth marks on locksides, removing or replacing fenders whenever necessary, landing of gangways, maintaining lifebuoys up to standard or any other maintenance work of a like nature; or

(g) any work on jolly-boats for bringing a ships line to the wharf; or

(viii) employed in the construction, maintenance, repair or demolition of —

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof; or

(b) any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or

(c) any road, bridge, tunnel or canal; or

(d) any wharf, quay, sea wall or other marine work including any moorings of ships; or

(ix) employed in setting up, maintaining repairing or taking down any telegraph or telephone line or post or any overhead electric line or cable or standard or fittings and fixtures for the same; or]

(x) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline or sewer; or

(xi) employed in the service of any fire brigade; or

(xii) employed upon a railway as defined in ⁸[clause (31) of section 2 and sub-section (1) of section 197 of the Railways Act, 1989 (24 of 1989)], either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration; or

(xiii) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service ⁹[or as a telegraphist or as a postal or railway signaller], or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department; or]

(xiv) employed, otherwise than in a clerical capacity, in connection with operation for winning natural petroleum or natural gas; or

(xv) employed in any occupation involving blasting operations; or



(xvi) employed in the making of any excavation in which on any one day of the preceding twelve months more than ¹⁰[twenty-five] persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds ¹¹[twelve] feet; or

(xvii) employed in the operation of any ferry boat capable of carrying more than ten persons; or

(xviii) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing ¹²[cardamom], cinchona, coffee, rubber or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed; or

State Amendment

Kerala.—In Schedule II, in clause (xviii),—

(i) between the words "Coffee," and "rubber" insert the word "cardamom,".

[Vide Kerala Gazette, Pt. I, G. 874, dated 14th March, 1961.]

(ii) after the words "cardamom, cinchona, coffee, rubber or tea" insert the words "eucalyptus, orange or teak and also any plantations maintained by any Department of the State Government."

(iii) between the words "rubber" and "tea" omit the word "or".

[Vide Kerala Gazette, Pt. I, p. 490, dated 27th August, 1968.]

¹³[(xix) employed, otherwise than in a clerical capacity, in the generating, transforming transmitting or distribution of electrical energy or in generation or supply of gas; or]

(xx) employed in a lighthouse as defined in clause (d) of section 2 of the Indian Lighthouse, Act 1927 (17 of 1927); or

(xxi) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; or

(xxii) employed in the training, keeping or working of elephants or wild animals; or

¹⁴[(xxiii) employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forests fires; or]

State Amendment

Maharashtra.—In Schedule II, after item (xxiii), insert the following sub-item, namely:—

"(a) employed in the process of climbing coconut trees for plucking coconut; or".

[Vide Notification No. WCA. 1098 (410) LAB-I, dated 6th February, 2004.]

(xxiv) employed in operations for the catching or hunting of elephants or other wild animals; or

¹⁵[(xxv)] employed as a diver; ¹⁶[or]

(xxvi) employed in the handling or transport of goods in, or within the precincts of,—



(a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed or,

(b) any market in which on any one day of the preceding twelve months ¹⁷[fifty] or more person have been so employed; or

(xxvii) employed in any occupation involving the handling and manipulation of radium or X-rays apparatus, or contact with radioactive substances;] ¹⁸or]

(xxviii) employed in or in connection with the construction, erection, dismantling, operation or maintenance of an aircraft as defined in section 2 of the Indian Aircraft Act, 1934 (22 of 1934); or

(xxix) ¹⁹[employed in horticultural operations, forestry, bee-keeping or farming] by tractors or other contrivances driven by steam or other mechanical power or by electricity; or

State Amendment

Punjab.—In Schedule II, after clause (xxix), insert the following clauses, namely:—

“(xxix-a) employed in clearing of jungles or reclaiming land or ponds in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

(xxix-b) employed in the cultivation of land or rearing and maintenance of livestock or forest operation or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

(xxix-c) employed, otherwise than in clerical capacity in installation, maintenance, repair pumping equipment used for lifting of water from wells, tube-wells, ponds, lakes streams, etc., or

(xxix-d) employed, otherwise than in clerical capacity in the construction, boring or deepening of an open well or dugwell through mechanical contrivances; or

(xxix-e) employed, otherwise than in clerical capacity in the construction, working repair or maintenance of a bore well, bore-cum-dugwell, filter point; or

(xxix-f) employed in spraying and dusting of insecticides or pesticides in agricultural operations or plantations; or

(xxix-g) employed in working or repair or maintenance of bulldozers, tractors, power-tillers, etc.; or”.

[Vide Punjab Government Gazette, Pt. III (LS), p. 385, dated 3rd June, 1977.]

(xxx) employed, otherwise than in a clerical capacity, in the construction, working, repair or maintenance of a tube-well; or

(xxxi) employed in the maintenance, repair or renewal of electric fittings in a building; or

(xxxii) employed in a circus.

State Amendment

Kerala.—In Schedule II, after clause (xxxii), insert the following clauses, namely:—



(i) after item xxxii-B, insert the following entries, namely:—

"(xxxii-C) employed in water transport using valloms;"

[Vide Kerala Gazette, Pt. I, p. 298, dated 19th May, 1964.]

(ii) after item (xxxii-C), insert the following item, namely:—

"(xxxii-D) employed in cattle breeding;"

[Vide Kerala Gazette, Pt. I, p. 62, dated 2nd February, 1965.]

(iii) after item (xxxii-D), insert the following item, namely:—

"(xxxii-E) employed in handling animals in the Veterinary Institutions;"

[Vide Kerala Gazette, Pt. I, p. 561, dated 19th October, 1965.]

(iv) (xxxii-G) employed in spraying insecticides in paddy fields, plantations;"

[Vide Kerala Gazette, Pt. I, (No. 31), G. 1264, dated 31st July, 1973.]

"(xxxii-H) employed in clearing of jungles or reclaiming land or ponds;"

"(xxxii-I) employed in cultivation of land, or rearing and maintenance of livestock, or forest operations, or fishing;"

"(xxxii-J) employed, otherwise than in a clerical capacity, in installation, maintenance, repair of pumping equipment used for lifting of water from wells, tube-wells, ponds, lakes, streams;"

"(xxxii-K) employed otherwise than in clerical capacity in the construction, boring or deepening of an open well dug well through mechanical contrivances;"

"(xxxii-L) employed otherwise than in a clerical capacity, in the construction, working, repair or maintenance of bore well, bore-cum-dug-well, filter points;"

"(xxxii-M) employed in operation or repair or maintenance of bulldozers, tractors, powers tillers;"

[Vide Kerala Gazette, Pt. I, Sec. (iv), p. 1, G. 2173, dated 13th December, 1977.]

"(xxxii-N) employed in any sewage farm in planting, irrigating or harvesting of fodder grass or in diverting of sewage water or in cleaning of main channel or sub-carriers;"

[Vide Kerala Gazette, Pt. I, Sec. (iv), p. 1, G. 1457, dated 9th November, 1982.]

"(xxxii-O) employed in cleaning of sewers or septic tanks by any Local Authority;"

[Vide Kerala Gazette, Pt. I, sec. (iv) p. 1, G. 253, dated 31st May, 1988.]

"(xxxii)—employment as Farm Workers in Government Agricultural Farms;"

[Vide Kerala Gazette, Extra., p. 1, (No. 83), dated 27th January, 1990.]



(i) the existing item "(xxxii-o) employed in cleaning of sewers or septic tanks by any local authority" shall be renumbered as item (xxxii-P).

(ii) after item (xxxii-P) as so renumbered, the following item shall be added, namely:—

"(xxxii-Q) employed otherwise than in a clerical capacity in brick kiln industry"

(iii) the existing item "(xxxii-S) employed as farm workers in Government agricultural farms" shall be renumbered as item (xxxii-R).

(iv) the existing item "(xxxiii) Parathozhilalikal employed in the occupation of breaking of rock and stones in quarries" shall be renumbered as XXXII-S.

(v) after item (xxxii-S) as so renumbered, the following item shall be added , namely:—

"(xxxii-T) Employed in Kakkavaral and works connected or incidental thereto."

[Vide Kerala Gazette, Extra., p. 1 (No. 1125), dated 5th November, 1953.]

[Ed.—Items (xxxii-A), (xxxii-B) and (xxxii-F) as added are not traceable. Hence not given.]

20[(xxxiii) employed as watchman in any factory or establishment; or

(xxxiv) employed in any operation in the sea for catching fish; or

(xxxv) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous animal or insect; or

(xxxvi) employed in handling animals like horses, mules and bulls; or

(xxxvii) employed for the purpose of loading or unloading any mechanically propelled vehicle or in the handling or transport of goods which have been loaded in such vehicles; or

(xxxviii) employed in cleaning of sewer lines or septic tanks within the limits of a local authority; or

(xxxix) employed on surveys and investigation, exploration or gauge or discharge observation of rivers including drilling operations, hydrological observations and flood forecasting activities, ground water surveys and exploration; or

(xl) employed in cleaning of jungles or reclaiming land or ponds in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

(xli) employed in cultivation of land or rearing and maintenance of live-stock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

(xlii) employed in installation, maintenance or repair of pumping equipment used for lifting of water from wells, tube-wells, ponds, lakes, streams and the like; or

(xliii) employed in the construction, boring or deepening of an open well or dug well, bore well, bore-cum-dug well, filter point and the like; or



(xliv) employed in spraying and dusting or insecticides of pesticides in agricultural operations or plantations; or

(xlv) employed in mechanised harvesting and threshing operations; or

(xlvi) employed in working or repair or maintenance of bulldozers, tractors, power tillers and the like; or

(xlvii) employed as artist for drawing pictures on advertisement boards at a height of 3.66 metres or more from the ground level; or

(xlviii) employed in any newspaper establishment as defined in the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and engaged in outdoor work;]

²¹[(xlix) employed as divers for work under water.]

Explanation.—In this Schedule, “the preceding twelve months” relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.]

State Amendment

Andhra Pradesh.—In Schedule II, after clause (xxxii), insert the following clause, namely:—

“(xxxiii) employed otherwise than a clerical capacity in the conduct of survey in river valley including collection of data relating to the river;”

[Vide Andhra Pradesh Gazette, Pt. I, p. 1850, dated 10th October, 1968.]

Assam.—Same as in Andhra Pradesh.

[Vide Assam Gazette, Pt. II A, p. 999, dated 24th May, 1972.]

Bihar.—Same as in Andhra Pradesh.

[Vide Bihar Gazette, Pt. II, p. 5, dated 1st January, 1969.]

Delhi.—Same as in Andhra Pradesh.

[Vide Delhi Gazette, Pt. IV, p. 415 (No. 28), dated 8th July, 1976.]

Goa.—Same as in Andhra Pradesh.

[Vide Goa Government Gazette, Sec. I. No. 40, p. 693, dated 2nd January, 1975.]

Haryana.—Same as in Andhra Pradesh.

[Vide Haryana Gazette, Extra., Pt. III (L.S.), p. 359, dated 6th August 1968.]

Karnataka.—Same as in Andhra Pradesh.

[Vide Mysore Gazette, Pt. IV, Sec. 2C (ii), p. 2249, dated 15th May, 1969.]

Kerala.—Same as in Andhra Pradesh.



[Vide Kerala Gazette, Pt. I, p. 616, dated 30th December, 1969.]

Madhya Pradesh.—Same as in Andhra Pradesh.

[Vide Madhya Pradesh Gazette, Pt. I, p. 270, dated 20th February, 1970.]

Maharashtra.—Same as in Andhra Pradesh.

[Vide Maharashtra Gazette, Pt. I-L, p. 2908, dated 12th June 1969.]

Orissa.—Same as in Andhra Pradesh.

[Vide Orissa Gazette, Pt. III, p. 1024, dated 7th November, 1969.]

Punjab.—Same as in Andhra Pradesh.

[Vide Punjab Gazette, Pt. III (L.S.), dated 5th September, 1969.]

Rajashtan.—Same as in Andhra Pradesh.

[Vide Rajashtan Gazette, Extra., Pt. IV (Ga), p. 13, dated 27th April 1970.]

Uttar Pradesh.—Same as in Andhra Pradesh.

[Vide Uttar Pradesh Gazette, Pt. I, p. 2676, dated 20th June, 1970.]

Andhra Pradesh.—In Schedule, II, after clause (xxxix), insert the following clauses, namely:—

“(xl) employed in cook houses, messes, bakeries or catering establishments in which food for over 30 persons is prepared or more than 200 loaves of bread per day are prepared or training to at least 10 cooks caterers is imparted at any time.

(xli) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous insects or animals.

(xlii) employed in training, keeping or working with animals like horses, mules, bulls, etc.

(xliii) employed in cleaning of sewers or septic tanks within the limits of a local authority.

(xliv) employed in any operation in the sea for catching of fish.”

[Vide Andhra Pradesh Gazette, Pt. I, p. 167, dated 23rd February, 1989.]

[Vide Andhra Pradesh Gazette, Pt. I, p. 995, dated 16th November, 1995.]

Assam.—In Schedule II, following persons have been included, namely:—

“(1) Sweepers,

(2) Scavengers.”

[Vide Assam Gazette, Pt. II A, p. 1851, dated 12th May, 1970.]



The following persons are workmen within the meaning of section 2(1)(n) of the Act and subject to the provisions of that section, that is to say any person who is—

- (i) employed in clearing of jungles or reclaiming land or ponds in which on any one day of the preceding twelve months more than twenty-five persons have been employed;
- (ii) employed in cultivation of land or rearing and maintenance of livestock or forest operation or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed;
- (iii) employed, other than in clerical capacity, in installation, maintenance, repair of pumping equipment used for lifting of water from wells, tube-wells, ponds lakes, streams, etc.;
- (iv) employed, otherwise than in clerical capacity in the construction, boring or deepening of an open well/dug-well through mechanical contrivances;
- (v) employed otherwise than in clerical capacity in the construction, working, repair or maintenance of a bore well, bore-cum-dug-well, filter point, etc.;
- (vi) employed in spraying and dusting of insecticides or pesticides in agricultural operation;
- (vii) employed in working of repair or maintenance of bulldozers, tractors, power-tillers, power threshers, etc.

[Vide Assam Gazette, Pt. II A, p. 1284, dated 13th March, 1977.]

Bihar.—In Schedule II, the following classes of persons have been added:—

- (a) employed in clearing of jungles or reclaiming land or ponds in which during the preceding twelve months more than twenty-five persons have generally been employed;
- (b) employed in cultivation of land or rearing and maintenance of livestock or forest operations or fishing in which during the preceding twelve months more than twenty-five persons have generally been employed;
- (c) employed, otherwise than in clerical capacity, in installation, maintenance or repair of pumping equipments used for lifting of water from wells, tube-wells, ponds, lakes, streams, etc. in which during the preceding twelve months more than twenty-five persons have generally been employed;
- (d) employed otherwise than in clerical capacity, in the construction, boring or deepening of an open well/dug-well through mechanical contrivances in which during the preceding twelve months more than twenty-five persons have generally been employed;
- (e) employed otherwise than in clerical capacity in the construction, working, repair or maintenance of a bore-well, bore-cum-dug-well filter point, etc. in which during the preceding twelve months more than twenty-five persons have generally been employed;
- (f) employed in spraying and dusting of insecticides or pesticides in agricultural operation or plantations in which during the preceding twelve months more than twenty-five persons have generally been employed;
- (g) employed in working or repair or maintenance of bulldozers, tractors, power-tillers, etc., in which during the preceding twelve-months more than twenty-five persons have generally been employed.



[Vide Bihar Gazette, Extra., p. 2, dated 31st October, 1977.]

(xxxiii) employed in Cooking Houses, Messes, Bakeries or Catering establishments in which food for over 50 persons is prepared or more than 200 loaves of bread are prepared every day or training to at least 10 cooks/caterers is imparted at any time;

(xxxiv) employed in any employment in which workmen are exposed to low temperature conditions while working in high altitude;

(xxxv) employed in any employment which requires handling of snakes for the purpose of extraction of Venom or for the purpose of looking after snakes or handling any other poisonous insect or animal;

(xxxvi) employed in training; keeping or working with animals like horses, mules, bulls, etc.;

(xxxvii) employed in clearing of sewers or septic tanks within the limits of a local authority;

(xxxviii) employed in horticultural operation;

(xxxix) persons employed on surveys and investigation including drilling operations, Hydrological observations and flood forecasting activities, Ground matter surveys and exploration.

[Vide Bihar Gazette II, Pt. I, p. 369.]

Delhi.—In Schedule II, after clause (xxxii), insert the following clauses, namely:—

(xxxiii) employed in cook houses, messes, bakeries or catering establishments in which food for over fifty person, is prepared or more than two hundred loaves of bread per day are prepared or training to at least ten cooks or caterers is imparted at any time;

(xxxiv) employed in the training, keeping or working with animals, like horses, mules, bulls etc.;

(xxxv) employed in cleaning of sewers or septic-tanks within the limits of a local authority;

(xxxvi) employed in horticultural operations;

(xxxvii) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous insects or animals.

[Vide Delhi Gazette, Pt. IV, p. 1 (No. 34), dated 5th March, 1990.]

(xxxviii) Persons employed on surveys and investigation, including drilling operations, hydrological observation and flood forecasting activities, ground water surveys and exploration."

[Vide Delhi Gazette, Extra., p. 5 (No. 13), dated 24th January, 1991.]

Goa.—In Schedule II, after clause (xxxii), insert the following clauses, namely:—

"(xxxiii) employed in clearing of jungles or reclaiming land or ponds in which, on any one day of the preceding twelve months, more than twenty-five persons have been employed;

(xxxiv) employed in cultivation of land or rearing and maintenance of live-stock or forest operations or fishing in which, on any one day of the preceding twelve months more than twenty-five persons have been employed;



(xxxv) employed, otherwise than in clerical capacity, in the installation, maintenance, repair of pumping equipment used for lifting of water from wells, tube-wells, ponds, lakes, streams, etc.;

(xxxvi) employed, otherwise than in clerical capacity, in the construction, boring or deepening of an open well/dug well through mechanical contrivances;

(xxxvii) employed, otherwise than in clerical capacity, in the construction, working, repairs, or maintenance of a bore-well, bore-cum-dug-well, filter point, etc.;

(xxxviii) employed in spraying and dusting of insecticides or pesticides in agricultural operation/or plantation;

(xxxix) employed in working or repairs or maintenance of bulldozers, tractors power-tillers, etc.”

[Vide Gazette of Goa, Daman and Diu, Series 1 No. 46, page 387, dated 11th February, 1982.]

Himachal Pradesh.—In its application to the State of Himachal Pradesh, items (i) to (vi) are practically the same as items (xxix-a) to (xxix-f) except that there is no corresponding to item (xxixg) in Punjab. Secondly for the word “twenty-five” in items (xxix-a) and (xxix-b) in Punjab, in the words “fifteen” have been used in items (i) and (ii) in H.P. [for Punjab amendment, see under item (xxix).]

[Vide Himachal Pradesh Gazette, Extra., p. 1203, dated 16th November, 1983.]

Jammu and Kashmir.—In Schedule, II, after clause (xxxv) insert the following clause, namely:—

“(xxxvi) persons employed in surveys and investigation including drilling operations hydrological observations and flood forecasting activities and ground water surveys and exploration”

[Vide Jammu and Kashmir Gazette, Extra., Pt. IB, p. 1 (33-G), dated 18th November, 1991.]

Karnataka.—In Schedule II, after clause (xxxii) insert the following clause, namely:—

“(xxxiii) employed in any operation in the sea for catching fish;”

[Vide Karnataka Gazette, Extra., Pt. IV, Sec. 2C(ii), p. 1 (No. 874), dated 28th November, 1981.]

(ii) After clause (xxxiii), insert the following clause, namely:—

“Clauses (xxxiv) to (xxxix)”—same as clause (xxxiii) to (xxxix) in Goa.

[Vide Karnataka Gazette, Extra., Pt. IV, Sec. 2C(ii), p. 1 (No. 876), dated 3rd December, 1981.]

[Ed.—It seems that item (xxxiii) is inserted twice an having different text in Goa and Karnataka.]

“(xl) persons employed on surveys and investigation including drilling operation, hydrological observations and flood forecasting activities, ground water surveys and exploration.”

[Vide Karnataka Gazette, Extra., Pt. IV, Sec. 2C(ii), p. 2, dated 7th February, 1992.]

“(xli) persons employed to any Newspaper establishment as defined in Working Journalists (Conditions of Service and Miscellaneous Provision) Act, 1955, (Central Act 45 of 1955) and engaged in outdoor duties.”—Karnataka Gazette



26-11-92, Pt. IV, Sec. 2C (ii), p. 3607.

Madhya Pradesh.—In Schedule II, after clause (xxxiii), insert the following clauses, namely:—

“(xxxiv) persons employed on survey and investigations including drilling operations, hydrological observations and flood forecasting activities, ground water surveys and exploration.”—M.P. Gaz., 26-6-92, Pt. I, p. 1903.

(xxxv) persons employed in the outdoor duties in a Newspapers Establishments as defined in the Working Journalists, and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;”

[Vide Madhya Pradesh Gazette, Pt. I, p. 2794, dated 10th December, 1993.]

Orissa.—In Schedule II, after clause (xxxiii), insert the following clauses, namely:—

(xxxiv) employed in clearing of jungles or reclaiming lands or ponds in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

(xxxv) employed in cultivation of land or in rearing and maintenance of livestock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

(xxxvi) employed, otherwise than in clerical capacity, in installation, maintenance, repair of pumping equipment used for lifting of water from wells, tubewells, ponds, lakes, streams etc.; or

(xxxvii) employed, otherwise than in clerical capacity, in the construction, boring or deepening of an open well/dug-well through mechanical contrivances; or

(xxxviii) employed, otherwise than in clerical capacity, in the construction, working, repair or maintenance of a bore well bore-cum-dug-well, filter point, etc.; or

(xxxix) employed in spraying and dusting of insecticides or pesticides in agricultural operation/or plantation; or

(xi) employed in working or repair or maintenance of bulldozers, tractors, power-tillers, etc., or

(xli) employed in making, clearing compost; or

(xlii) employed in inter-cultural operation; or

(xlili) employed in harvesting operation; or

(xliv) employed in threshing operation.—See Orissa Gaz., 23-3-1979, Pt. III, p. 63.

(li) Employed in cook-houses, messes, bakeries of catering establishments in which food for over 50 persons is prepared or more than 200 loaves of bread per day are prepared or training to at least 10 cooks/caterers is imparted at any time.

(lii) Employed in any employment in which workmen are exposed to low temperature condition, while working in high altitude.

(liii) Employed in any employment which required handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous



insect or animal.

(liv) Employed in training, keeping or working with animals like horses, mules, bulls etc.

(Iv) Employed in clearing of sewers or septic tanks within the limits of a local authority.

(Ivi) Employed in horticultural operations.

(Ivii) Employed in sea fishing.

(Iviii) Employed in any newspaper establishment as defined in Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 and engaged in outdoor duties.

(lix) Employed in surveys and investigations, including drilling operations, hydrological observations and flood forecasting activities, ground-water surveys and exploration.—Orissa Gazette 24-4-93, Ext., p. 1 (No. 543).

Pondicherry.—In Schedule II, after clause (xxxii), insert the following clauses, namely:—

“(xxxiii) employed, otherwise than in clerical capacity in the construction, working, repair or maintenance of a bore-well, bore-cum-dug-well, filter point; or

(xxxiv) employed, in spraying and dusting of insecticides or pesticides in agricultural operation or plantation.”

[Vide Pondicherry, Gazette, p. 308, dated 15th March, 1977.]

“(xxxv) employed in fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed.”

[Vide Pondicherry, Gazette, p. 820 (No. 41), dated 13th October, 1981.]

Punjab.—In Schedule II, after clause (xxxvi), insert the following clauses, namely:—

“(xxxvii) employed on surveys and investigation, including, drilling operations, hydrological observations, flood forecasting activities, ground water surveys and exploration;”

[Vide Punjab Gazette, Pt. III (L.S.), p. 487, dated 23rd September, 1994.]

“(xxxviii) employed in any newspapers establishments as defined in the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, and engaged in out-door duties;”

[Vide Punjab Gazette, Pt. III (L.S.), p. 489, dated 23rd September, 1994.]

Tamil Nadu.—In Schedule II, after clause (xxxii) insert the following clauses, namely:—

(i) “(xxxiii) employed in any occupation involving indoor or outdoor work in the service of the Highways Research Station and its Laboratories.”—Ft. St. Geo. Gazette, 3-8-66, Pt. II, sec. 1, p. 1360;

(ii) (xxxiv) employed otherwise than in a clerical capacity in the conduct of surveys in river valleys including collection of data relating to the river.”—Ft. St. Geo. Gazette, 19-2-1969, Pt. II, sec. 1, p. 104.



(iii) (xxxv) employed as a sweeper or scavenger under a local authority.—T.N. Government Gazette, 14-11-73, Pt. II, sec. 1, p. 584.

(iv) (xxxvi) employed in any operations in the Sea for catching fish.—T.N. Government Gazette, 10-3-82, Pt. II, sec. 2, p. 156.

(v) (xxxvii) employed in clearing of jungles or reclaiming land or ponds in which in any one day of the preceding twelve months more than twenty-five persons have been employed;

(xxxviii) employed in cultivation of land or rearing and maintenance of livestock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed;

(xxxix) employed otherwise than in clerical capacity in installation, maintenance, repair of pumping equipment used for lifting of water from wells, tube-wells ponds, lakes streams etc.;

(xl) employed, otherwise than in the clerical capacity, in the construction, boring or deepening of an open well/dug well through mechanical contrivances;

(xli) employed, otherwise than in clerical capacity, in the construction, working repair or maintenance of a bore well, bore-cum-dug well, filter point etc.;

(xlii) employed in spraying and dusting of insecticides or pesticides in agricultural operation or plantations;

(xliii) employed in working or repair or maintenance of bulldozers, tractors, power-tillers, etc.;

(xliv) employed in climbing tall trees;

(xlv) employed in baling water from wells;

(xlvi) employed in crushing sugarcane;"

[Vide Tamil Nadu Government Gazette, Pt. II, Sec. 2, pp. 619, 620, dated 23rd September, 1981.]

"(xlvii) employed in cook houses, messes, bakeries or catering establishments in which food for over 50 persons is prepared or more than 200 loaves of bread per day are prepared or training to at least 10 cooks/caterers is imparted at any time;

(xlviii) employed in any employment in which workmen are exposed to low temperature condition, while working in high altitude;

(xlix) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous insect or animal;

(l) employed in training, keeping or working with animals likes horses, mules, bulls, etc.;

(li) employed in cleaning of sewers or septic tanks within the limits of a local authority;

(lii) employed in horticultural operation;"

[Vide Tamil Nadu Government Gazette, Pt. II, Sec. 2, p. 580, dated 5th August, 1987.]



“(liii) employed in any newspaper establishment as defined in the Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions Act, 1955 (Central Act 45 of 1955), and engaged in outdoor duties.”

[Vide Tamil Nadu Gazette, Pt. II, Sec. 2, p. 232, dated 9th March, 1994.]

Tripura.—Following employments are added for payments of compensation for injuries in Parts I and II:—

(i) employed in clearing of jungles or reclaiming land and pounds in which on any one day of the preceding twelve months more than twenty-five persons have been employed;

(ii) employed in cultivation of land or rearing and maintenance of livestock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed;

(iii) employed, otherwise than in clerical capacity, in installation, maintenance, repair or pumping equipment used for lifting of water from wells, tube-wells, ponds, lakes, streams etc.;

(iv) employed, otherwise than in clerical capacity in the construction, boring deepening of an open well/dug well through mechanical contrivances;

(v) employed, otherwise than in electrical capacity in the construction, working, repairing, maintenance of a borewell, bore-cum-dug-well, filter points etc.;

(vi) employed, in spraying and dusting of insecticides or pesticides in agricultural operation or plantations;

(vii) employed in working or repair or maintenance of bulldozers, tractors, power tillers etc.—
Tripura Gazette, 1-6-81, Pt. I, Ext., p. 4.

(viii) employed in any newspaper establishment as defined in working journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and engaged in outdoor duties.”

(ix) persons employed on surveys and investigation, including drilling operation, hydrological observations and flood forecasting activities, ground water surveys and exploration.

[Vide Tripura Gazette, Extra., p. 13, dated 10th May, 1994.]

1. Subs. by Act 15 of 1933, sec. 21, clauses (i) to (xiii).

2. Subs. by Act 8 of 1959, sec. 18, for clauses (i) to (ix) (w.e.f. 1-6-1959).

3. Ins. by Act 30 of 1995, sec. 15 (w.e.f. 15-9-1995).

4. Ins. by Act 64 of 1962, sec. 10 (w.e.f. 1-2-1963).

5. The word “or” omitted by Act 64 of 1962, sec. 10 (w.e.f. 1-2-1963).

6. Ins. by Act 64 of 1962, sec. 10 (w.e.f. 1-2-1963).



7. Subs. by Act 30 of 1995, sec. 15, for "The Indian Ports Act, 1908 (15 of 1908)" (w.e.f. 15-9-1995).

8. Subs. by Act 30 of 1995, sec. 15, for certain words (w.e.f. 15-9-1995).

9. Ins. by Act 8 of 1959, sec. 18 (w.e.f. 1-6-1959).

10. Subs. by Act 8 of 1959, sec. 18, for "fifty" (w.e.f. 1-6-1959).

11. Subs. by Act 8 of 1959, sec. 18, for "twenty" (w.e.f. 1-6-1959).

12. Ins. by Act 64 of 1962, sec. 10 (w.e.f. 1-2-1963).

13. Subs. by Act 30 of 1995, sec. 15, for item (xix) (w.e.f. 15-9-1995).

14. Ins. by Act 9 of 1938, sec. 11.

15. Clause (xxiii) re-numbered as clause (xxv) by Act 9 of 1938, sec. 11.

16. Ins. by Act 9 of 1938, sec. 11.

17. Subs. by Act 8 of 1959 sec. 18, for "one hundred" (w.e.f. 1-6-1959).

18. Ins. by Act 8 of 1959 sec. 18 (w.e.f. 1-6-1959).

19. Subs. by Act 30 of 1995, sec. 15, for "employed in forming" (w.e.f. 15-9-1995).

20. Ins. by Act 30 of 1995, sec. 15 (w.e.f. 15-9-1995).

21. Ins. by G.S.R. 381, dated 3rd November, 1997, published in the Gazette of India, Pt. II, Sec. 3 (i), dated 15th November, 1997.

SCHEDULE III—

¹[SCHEDULE III

(See section 3)

LIST OF OCCUPATIONAL DISEASES

PART A

Serial No.	Occupational disease	Employment
1.	Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) All work involving exposure to health or laboratory work; (b) All work involving exposure to veterinary work; (c) Work relating to handling animals, animal carcasses, part of such carcasses or merchandise which may have been contaminated by animals or animal carcasses; (d) Other work carrying a particular risk of contamination.
2.	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned.

3.	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
4.	Poisoning by nitrous fumes.	All work involving exposure to the risk concerned.
5.	Poisoning by organo phosphorus compounds.	All work involving exposure to the risk concerned.

PART B

Serial No.	Occupational disease	Employment
1.	Diseases caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.
2.	Diseases caused by mercury or its toxic compounds.	All work involving exposure to the risk concerned.
3.	Diseases caused by benzene or its toxic homologues.	All work involving exposure to the risk concerned.
4.	Diseases caused by nitro and amido toxic erivatives of benzene or its homologues.	All work involving exposure to the risk concerned.
5.	Diseases caused by chromium, or its toxic compounds.	All work involving exposure to the risk concerned.
6	Diseases caused by arsenic, or its toxic compounds.	All work involving exposure to the risk concerned.
7	Diseases caused by radioactive substances and ionising radiations.	All work involving exposure to the risk concerned.
8	Primary epitheliomatous cancer of the skin, caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risk concerned.
9	Diseases caused by the toxic halogen derivatives of hydrocarbons (of the aliphatic and aromatic series).	All work involving exposure to the risk concerned.
10	Diseases caused by carbon disulphide.	All work involving exposure to the risk concerned.
11	Occupational cataract due to infrared radiations.	All work involving exposure to the



		risk concerned.
12	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk concerned.
13	Skin diseases caused by physical, chemical or biological agents not included in other items.	All work involving exposure to the risk concerned.
14	Hearing impairment caused by noise.	All work involving exposure to the risk concerned.
15	Poisoning by dinitrophenol or a homologue or by substituted dinitrophenol or by the salts or such substances.	All work involving exposure to the risk concerned.
16	Diseases caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
17	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned.
18	Occupational asthma caused by recognised sensitizing agents inherent to the work process.	All work involving exposure to the risk concerned.
19	Diseases caused by fluorine or its toxic compounds.	All work involving exposure to the risk concerned.
20	Diseases caused by nitroglycerin, or other nitroacid esters.	All work involving exposure to the risk concerned.
21	Diseases caused by alcohols and ketones.	All work involving exposure to the risk concerned.
22	Diseases caused by asphyxiants, carbon monoxide, and its toxic derivatives, hydrogen sulphide.	All work involving exposure to the risk concerned.
23	Lung cancer and mesotheliomas caused by asbestos.	All work involving exposure to the risk concerned.
24	Primary neoplasm of the epithelial lining of the urinary bladder or the kidney or the ureter.	All work involving exposure to the risk concerned.



¹ 25	Snow blindness in snow bound areas.	All work involving exposure to the risk concerned.
26	Disease due to effect of heat in extreme hot climate..	All work involving exposure to the risk concerned.
27	Disease due to effect of cold in extreme cold climate.	All work involving exposure to the risk concerned.

1. Subs. by Act 22 of 1984, sec. 6, for Sch. III (w.e.f. 1-7-1984).

PART C

Serial No.	Occupational disease	Employment
1.	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraoo-silicosis, asbestosis) and silico tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2.	Bagassosis	All work involving exposure to the risk concerned.
3.	Bronchopulmonary diseases caused by cotton, flax hemp and sisal dust (Byssionsis).	All work involving exposure to the risk concerned.
4.	Extrinsic allergic alveelitis caused by the inhalation of organic dusts.	All work involving exposure to the risk concerned.
5.	Bronchopulmonary diseases caused by hard metals.	All work involving exposure to the risk concerned.
² 6.	Acute Pulmonary oedema of high altitude.	All work involving exposure to the risk concerned.]

1. Ins. by Act 30 of 1995, sec. 16 (w.e.f. 15-9-1995).

2. Ins. by S.O. 2615, dated 3rd October, 1987.**SCHEDULE IV—**¹[SCHEDULE IV

(See section 4)

FACTORS FOR WORKING OUT LUMP SUM EQUIVALENT OF
COMPENSATION AMOUNT IN CASE OF PERMANENT
DISABLEMENT AND DEATH

	Completed years of age on the last birthday of the workman immediately preceding the date on which the compensation fell due										Factors
	1										ds 2
Not more than	16	.	.	.	.	.	.	.	.	.	228.54
	17	.	.	.	.	.	.	.	.	.	227.49
	18	.	.	.	.	.	.	.	.	.	226.38
	19	.	.	.	.	.	.	.	.	.	225.22
	20	.	.	.	.	.	.	.	.	.	224.00
	21	.	.	.	.	.	.	.	.	.	222.71
	22	.	.	.	.	.	.	.	.	.	221.37
	23	.	.	.	.	.	.	.	.	.	219.95
	24	.	.	.	.	.	.	.	.	.	218.47
	25	.	.	.	.	.	.	.	.	.	216.91
	26	.	.	.	.	.	.	.	.	.	215.28
	27	.	.	.	.	.	.	.	.	.	213.57
	28	.	.	.	.	.	.	.	.	.	211.79
	29	.	.	.	.	.	.	.	.	.	209.92
	30	.	.	.	.	.	.	.	.	.	207.98
	31	.	.	.	.	.	.	.	.	.	205.95
	32	.	.	.	.	.	.	.	.	.	203.85
	33	.	.	.	.	.	.	.	.	.	201.66



	34	.	.	.	.	.	.	.	.	.	199.40
	35	.	.	.	.	.	.	.	.	.	197.06
	36	.	.	.	.	.	.	.	.	.	194.64
	37	.	.	.	.	.	.	.	.	.	192.14
	38	.	.	.	.	.	.	.	.	.	189.56
	39	.	.	.	.	.	.	.	.	.	186.90
	40	.	.	.	.	.	.	.	.	.	184.17
	41	.	.	.	.	.	.	.	.	.	181.37
	42	.	.	.	.	.	.	.	.	.	178.49
	43	.	.	.	.	.	.	.	.	.	175.54
	44	.	.	.	.	.	.	.	.	.	172.52
	45	.	.	.	.	.	.	.	.	.	169.44
	46	.	.	.	.	.	.	.	.	.	166.29
	47	.	.	.	.	.	.	.	.	.	163.07
	48	.	.	.	.	.	.	.	.	.	159.80
	49	.	.	.	.	.	.	.	.	.	156.47
	50	.	.	.	.	.	.	.	.	.	153.09
	51	.	.	.	.	.	.	.	.	.	149.67
	52	.	.	.	.	.	.	.	.	.	146.20
	53	.	.	.	.	.	.	.	.	.	142.68
	54	.	.	.	.	.	.	.	.	.	139.13
	55	.	.	.	.	.	.	.	.	.	135.56
	56	.	.	.	.	.	.	.	.	.	131.95
	57	.	.	.	.	.	.	.	.	.	128.33
	58	.	.	.	.	.	.	.	.	.	124.70



	59	.	.	.	.	.	.	.	.	.	121.05
	60	.	.	.	.	.	.	.	.	.	117.41
	61	.	.	.	.	.	.	.	.	.	113.77
	62	.	.	.	.	.	.	.	.	.	110.14
	63	.	.	.	.	.	.	.	.	.	106.52
	64	.	.	.	.	.	.	.	.	.	102.93
	65 or more	.	.	.	.	.	.	.	.	.	99.37

1. Subs. by Act 22 of 1984, sec. 7, for Schedule IV (w.e.f. 1-7-1984).

