

# THE WORKMEN'S COMPENSATION ACT 1923

# OBJECTIVES

- ▶ **The Workmen's Compensation Act, 1923 is one of the important social security legislations. It aims at providing financial protection to workmen and their dependants in case of accidental injury by means of payment of compensation by the employers.**

# DEFINITIONS{section 2}

- ▶ **COMMISSIONER**
- ▶ **DEPENDANT**
- ▶ **EMPLOYER**
- ▶ **DISABLEMENT**
- ▶ **WAGES**
- ▶ **WORKMAN**

# COMMISSIONER

- ▶ **Sec.2(1)(b)**
- ▶ **A Commissioner means a Commissioner for Workmen's Compensation appointed under section 20**

# DEPENDENT

- ▶ Means any of the following relatives of a deceased workman, namely
- ▶ (i) a widow, a minor legitimate or adopted son, and unmarried legitimate or adopted daughter, or a widowed mother; and
- ▶ (ii) if wholly dependent 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 dependent 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 legitimate or illegitimate or adopted if married and a minor or if widowed & 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, (h) a paternal grandparent if no parent of the workman is alive.

# **EMPLOYER(sec 2(1)!e)**

- ▶ **Any body of persons whether incorporated or not**
- ▶ **Any managing agent of an employer; and**
- ▶ **The legal representative of a deceased employer**

# DISABLEMENT

- ▶ **Disablement means any loss of capacity to work or move**
- ▶ **May result in loss or reduction of his earning capacity**
- ▶ **Disablement may be**
  - **Total {sec.2.1(g)}**
  - **Partial {sec 2.1(l)}**
  - **Temporary**
  - **permanent**

# Cont..

- ▶ Disablement, is said to be total when if Incapacitates a worker for all work he was capable of doing at the time of the accident resulting in such disablement.
- ▶ "Total disablement" is considered to be permanent if a workman, as a result of an accident, suffers from the injury specified in Part I of Schedule I or suffers from such combination of injuries specified in Part I of Schedule I as would be the loss of earning capacity when totaled to one hundred per cent .
- ▶ Disablement is said to be permanent partial when it reduces for all times, the earning capacity of a workman in every employment which he was capable of undertaking at the time of the accident. Every injury specified in Part II of Schedule I is deemed to result in permanent partial disablement.
- ▶ Where the disablement is of a temporary nature and reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident it is "temporary partial disablement."



# WAGES{ sec.2.1(m)}

- ▶ “wages” includes any **privilege or benefit which is capable of being estimated in money**, other than travelling concession or a contribution paid by the employer to the workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed to him by the nature of his employment

# WORKMAN{sec.2.1

- ▶ Any person who is:
- ▶ (a) a railway servant as defined in clause (34) of section 2 of The Railways Act 1989 not permanently employed in administrative, district or sub-divisional office of a railway and employed in any such capacity as is specified in schedule II or,
- ▶ (b) a master, seaman, or other member of the ship or crew
- ▶ It does not include a person whose employment is of a casual nature

# ENTITLEMENT

- ▶ Every employee (including those employed through a contractor but **excluding casual employees**), who **is engaged for the purposes of employers business** and who suffers an injury in any **accident arising out of and in the course of his employment**, shall be entitled for compensation under the Act.
- ▶ Workers employed in any capacity specified in Schedule II of the Act which includes Factories, Mines, Plantations, Mechanically Propelled Vehicles, Construction Work and certain other Hazardous Occupations and specified categories of Railway Servants.
- ▶ The Act extends to the whole of India except the States/Union Territories of Arunachal Pradesh, Mizoram, Nagaland, Sikkim and Daman & Diu and Lakshadweep.
- ▶ The coverage of this Act is also to cooks employed in hotels and restaurants
- ▶ The Act does not apply to members of the Armed Forces of the Union & workmen who are covered by the ESI Act

# EMPLOYER'S LIABILITY


- ▶ to **compensate any employee:**
- ▶ Who has suffered an accident arising out of and in the course of his employment, **resulting into:**
  - (i) **death,**
  - (ii) **permanent total disablement,**
  - (iii) **permanent partial disablement,**
  - (iv) **temporary disablement whether total or partial, or**
- ▶ **who has contracted an occupational disease.**

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## **HOWEVER THE EMPLOYER SHALL NOT BE LIABLE**

- ▶ –In respect of any injury **which does not result in the total or partial disablement** of the workmen **for a period exceeding three days;**
- ▶ In respect of any injury not resulting in death, caused by an accident which is directly attributable to–
- ▶ the workmen having been at the time thereof **under the influence of drugs,** or
- ▶ the **willful 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
- ▶ **the willful removal or disregard by the workmen of any safeguard** or other device which he knew to have been provided for the purpose of securing the safety of workmen.
- ▶ The burden of proving intentional disobedience on the part of the employee shall lie upon the employer.
- ▶ when the employee has contracted **a disease which is not directly attributable to a specific injury caused by the accident or to the occupation;** or
- ▶ **When the employee has filed a suit for damages against the employer or any other person, in a Civil Court.**

# Condition for receiving compensation for Personal Injury

- ▶ The **three tests** for determining whether an **accident arose out** of employment are :
  - ▶ At the time of injury **workman must have been engaged in the business of the employer** and must not be doing something for his personal benefit;
  - ▶ That **accident occurred at the place where he was performing his duties**; and
  - ▶ Injury must have resulted from **some risk incidental to the duties of the service, or inherent in the nature or condition** of employment.
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# THE GENERAL PRINCIPLES

- ▶ There must be a causal connection between the injury and the accident and the work done in the course of employment;
- ▶ The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury;
- ▶ It is not necessary that the workman must be actually working at the time of his death or that death must occur while he was working or had just ceased to work; and
- ▶ Where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury it would be enough for the workman to be entitled. But where the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of the employment or where the accident was the result of an added peril to which the workman by his own conduct exposed himself, which peril was not involved in the normal performance of the duties of his employment, then the employer will not be liable.

# ***Doctrine of Notional Extension:***

- ▶ The expression in the course of his employment', connotes not only actual work but also any other engagement natural and necessary thereto, reasonably extended both as regards work-hours and work-place. It refers to the time during which the employment continues. . However, this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and re-passes in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. This is also called as the Doctrine of Notional Extension. The doctrine of notional extension could not be placed in a strait jacket; it is merely a matter of sound common sense as to when and where and to what extent this doctrine could be applied.



# Payment of Compensation to Contract Labour

- ▶ The principal employer is liable to pay compensation to contract labour **in the same manner as his departmental labour.** He is entitled to be indemnified by the contractor. The principal employer shall not however be liable to pay any interest and penalty leviable under the Act

# Occupational Diseases

- ▶ Workers employed in certain types of occupations are exposed to the risk of contracting certain **diseases which are peculiar and inherent to those occupations**. A worker contracting an occupational disease is **deemed to have suffered an accident out of and in the course of employment** and the employer is liable to pay compensation for the same.

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- ▶ Occupational diseases have **been categorized in Parts A, B and C of Schedule III**. The employer is liable to pay compensation:
- ▶ When a workman contracts any disease specified in Part B, while in service for a continuous period of 6 months under one employer. (Period of service under any other employer in the same kind of employment shall not be included),
- ▶ When a workman contracts any disease specified **in Part C**, while he has been in continuous service for a specified period, **whether under one or more employers**. (Proportionate compensation is payable by all the employers, if the workman had been in service under more than one employer).
- ▶ If an employee **has after the cessation of that service contracted any disease** specified in Part B or Part C, 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 the Act.

# *Accident Report*

- ▶ Where the accident results in death or serious bodily injury, the employer should send a report to the Commissioner, within 7 days of the accident, in the prescribed form giving the circumstances attending the death or serious bodily injury

# Notice of Accident

- ▶ A 'notice of accident' should be sent to the Commissioner, by the concerned employee as soon as practicable after the happening thereof. The notice should contain such particulars as the name and address of the person injured, the date and cause of accident, etc. A Copy of the notice should also be sent to the establishment wherein he was employed. The notice of accident may be served either personally or by registered post or by means of an entry in the notice-book maintained by the employer.

# *Medical Examination*

- ▶ The employer may get the concerned workman examined by a qualified medical practitioner, **within 3 days** from receiving the notice of accident. The **employee must present himself for such examination** otherwise he shall lose his right to the compensation.
- ▶ Failure of employer to have the workman medically examined does not debar him from **challenging the medical certificate produced by the workman.**

# *Statement of Fatal Accidents*

- ▶ 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 require the employer, by serving upon him a registered notice, to submit **within 30 days of its service, a statement in the prescribed form ;**
- ▶ (a) Giving **the circumstances attending the death of the workman, and**
- ▶ (b) Indicating **whether he is or, is not, liable to pay accident compensation.**
- ▶ If the employer feels that he is liable to pay compensation, he shall make the deposit within 30 days of the service of the notice. If **the employer disclaims his liability, he should indicate the grounds for such disclaimer.**

# AMOUNT OF COMPENSATION{sec.4}

- ▶ **The amount of compensation payable to a workman depends on**
- ▶ **-the nature of injury** caused by accident
- ▶ **-the monthly wages** of the workman concerned and the relevant factor
- ▶ **-the Relevant Factor** is specified in schedule IV for working out the lump sum amount of compensation
- ▶ **THERE IS NO DISTINCTION BETWEEN AN ADULT AND A MINOR WORKER WITH RESPECT TO THE AMOUNT OF COMPENSATION**



# COMPENSATION FOR DEATH

- ▶ In case of death resulting from injury, the amount of compensation shall be equal **50% of the monthly wages of the deceased workman multiplied by the relevant factor.**
- ▶ Or an amount of Rs 80,000/- whichever is more.

# Example:

- ▶ A workman is employed in a factory on a monthly wage of Rs 3000. While working he met with an accident and dies on oct 2000. His date of birth is july 18 , 1970. The amount of compensation payable to his dependent would be

$$\frac{50 * \text{monthly wages} * \text{Relevant factor of age}}{100}$$

Or 80,000 whichever is higher

$$\frac{50 * 3000 * 207.98}{100} = 3,11,970$$

Since Rs 311970 is more than 80000 the compensation payable to him shall be Rs 311,970


# COMPENSATION FOR PERMANENT TOTAL DISABLEMENT

- ▶ In case of permanent total disablement resulting from the injury, the amount of compensation shall be **60% of the monthly wages** of the injured workman multiplied by the relevant factor or Rs 90,000/- thousand whichever is more.

# COMPENSATION FOR PERMANENT PARTIAL DISABLEMENT

- ▶ Where permanent partial disablement occurs, the amount of compensation payable shall be as follows:
- ▶ in case of an injury specified in part II of the schedule I, the amount of compensation shall be such percentage of the compensation which would have been payable for the percentage of loss of earning capacity caused by that injury.
- ▶ in case of an injury not specified in schedule I, such percentage of the compensation is payable which is proportionate to the loss of earning capacity (as assessed by a qualified medical practitioner) permanently caused by the injury.

# COMPENSATION FOR TEMPORARY DISABLEMENT (TOTAL OR PARTIAL)

- ▶ If the temporary disablement, whether total or partial results from the injury, the amount of compensation shall be **a half monthly payment of the sum equivalent to 25% of the monthly wages of the workman** to be paid in accordance with the provisions.
  - ▶ The half monthly payment shall be **payable on the sixteenth day from the date of disablement**
  - ▶ In cases **where such disablement lasts for a period of 28 days or more compensation is payable from the date of disablement**
  - ▶ **In other cases After the expiry of a waiting period of three days from the date of disablement.**
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# COMPENSATION TO BE PAID WHEN DUE AND PENALTY FOR DEFAULT (section 4A)

- ▶ As per this section, compensation has to be paid as soon as it is due
- ▶ In case the employer does not accept the liability of paying the compensation, **he is bound to make provisional payment to the extent of the liability he accepts.** Such amount has to be deposited with the commissioner or paid to the workman. If he defaults, the commissioner may order:
  - ▶ **the payment of the amount with interest at 12 % per year**
  - ❖ **if the default to be unjustifiable then the commissioner may order payment of a further sum ~~penalty~~ exceeding 50% of the amount due, by way of**

# *Mode of Payment*


- ▶ The employer becomes **liable to pay the compensation as soon as the personal injury was caused** to the workman by the accident which arose out of and in the course of the employment.
- ▶ The amount of compensation **should be paid as soon as it falls due**. It will be computed on the date of accident. If the amount is not paid within one month from the date it fell due, the Commissioner may after giving reasonable opportunity of being heard, direct the employer to pay simple interest @ 12% p.a. or at such higher rate as may be specified not exceeding the. Maximum lending rate of any scheduled bank. Besides, if there is no justification for the delay, the Commissioner may after giving reasonable opportunity of being heard, direct the employer to pay a further sum not exceeding 50% of the compensation, by way of penalty. **The amount of penalty and also interest shall be paid to the workman or his dependent as the case may be**
- ▶ **The half-monthly installments of compensation (payable in case of temporary disablement) should be paid within the time specified. The half-monthly installments can be converted into a lump sum payment, by an agreement between the employer and the employee or by applying to the Commissioner.**

## *Compensation to be deposited with Commissioner*


- ▶ The amount of compensation is not payable to the workman directly. It is generally deposited along with the prescribed statement, with the Commissioner who will then pay it to the workman. Any payment made to the workman or his dependents, directly, in **the following cases** will not be deemed to be a payment of compensation :
  - (i) in case of death of the employee;
  - (ii) in case of lump sum compensation payable to a woman or a minor or a person of unsound mind or whose entitlement to the compensation is in dispute or a person under a legal disability.
- ▶ Besides, compensation of Rs. 10 or more may be deposited with the Commissioner on behalf of the person entitled thereto.
- ▶ The receipt of deposit with the Commissioner shall be a sufficient proof of discharge of the employer's liability.



# AMOUNT PERMISSIBLE TO BE PAID DIRECTLY TO THE WORKMAN/DEPENDANT

- ▶ Following amounts may be paid directly to the workman or his dependents:
  - ▶ In case of death of the workman, any advance on account of compensation upto an amount equal to three months wages of such workman] may be paid to any dependent.
  - ▶ In case of lump sum compensation payable to an adult male worker not suffering from any legal disability.
  - ▶ In case of half-monthly payments payable to any workman
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# Contd....

- ▶ Employer is exonerated from his liability if he deposits the compensation amount with the commissioner within the stipulated time.
  - ▶ The commissioner shall call all dependents of the deceased and determine the method for distribution of compensation among them.
  - ▶ If no dependents are found then amount shall be refunded to the employer.
  - ▶ On request by the employer the commissioner shall furnish the details of disbursement.
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# FUNERAL EXPENSES

- ▶ In case of death of a workman funeral expenses amount of 2500/- shall be payable to the dependent of the deceased workman or to anyone who incurs the expenses of the funeral


# *Administrative Authority*

- ▶ ***Jurisdiction of Commissioner*** - Any matter under this Act, to be done by or before a Commissioner, shall be done by or before the Commissioner for the area in which
  - ▶ (a) the accident resulting in the injury, took place or
  - ▶ (b) the workman, or his dependent, claiming the compensation ordinarily resides, *or*
  - ▶ (c) the employer has his registered office.
- ▶ Where a Commissioner is satisfied that any proceedings can be more conveniently disposed of by any other Commissioner, he may transfer the matter to such other Commissioner.

# MONTHLY WAGES {SEC.4(A)}

- ▶ One-twelfth of the total wages fallen due for payment by the employer during the last twelve months of that period
- ▶ Where the whole of **the continuous period immediately preceding the accident was less than one month** the average monthly amount earned by a workman employed in the same work by the same employer or if no such workman is employed, by a workman employed in a similar work in the same locality
- ▶ In any other case, thirty times the total wages earned in the last continuous period of service divided by the no. of days comprising such period
- ▶ Where the monthly wages of a workman exceeds 4000/-, his monthly wages will be deemed to be 4000/- only


# CONTRACTING OUT

- ▶ Any contract or agreement which makes the workman give up or reduce his right to compensation from the employer is null and void insofar as it aims at reducing or removing the liability of the employer to pay compensation under the Act.
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# REGISTRATION OF AGREEMENTS

- ▶ Where the amount payable as compensation has been **settled by agreement** a **memorandum** thereof shall be sent by the employer to **the Commissioner**, who shall, on being satisfied about its genuineness, **record the memorandum** in a registered manner.
- ▶ **However where it appears** to the Commissioner that the agreement ought not to be registered by reason of the **inadequacy of the sum or amount**,, or by reason that the agreement has **been obtained by fraud or undue influence** or **other improper means** he may refuse to record the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.
- ▶ **An agreement for payment of compensation which has been registered shall be enforceable** under this act notwithstanding anything contained in the Indian Contract Act, or any other law for the time being in force.

# FAILURE TO REGISTER AGREEMENT

- ▶ When a memorandum of any agreement is not sent to the Commissioner for registration, the employer shall be liable to pay the full amount of compensation, which he is liable to pay under the provisions of this Act.
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# FILING OF CLAIMS

- ▶ No claim for compensation shall be entertained by the Commissioner unless the notice of accident has been given by the workman in the prescribed manner, except in the following circumstances:
- ▶ in case of death of 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 died on such premises or such place or in the vicinity of such premises or place;
- ▶ in case the employer has knowledge of the accident from any other source, at or about the time of its occurrence;
- ▶ in case the failure to give notice or prefer the claim, was due to sufficient cause.

# LIMITATION

- ▶ Workman, to the Commissioner, may file the claim for accident compensation in the prescribed form, within 2 years from the occurrence of the accident or from the date of death. The claim must be preceded by
- ▶ (i) a notice of accident, and  
(ii) the claimant-employee must present himself for medical examination if so required by the employer.

# DUTIES OF EMPLOYERS

- ▶ **pay compensation** for an accident suffered by an employee, in accordance with the Act.
- ▶ **To submit a statement to the Commissioner (within 30 days of receiving the notice)** in the prescribed form, giving the circumstances attending the death of a workman as result of an accident and indicating whether he is liable to deposit any compensation for the same.
- ▶ **To submit accident report** to the Commissioner in the prescribed form within 7 days of the accident, which results in death of a workman or a serious bodily injury to a workman?
- ▶ **To maintain a notice book in the prescribed form at a place** where it is readily accessible to the workman.
- ▶ **To submit an annual return** of accidents specifying the number of injuries for which compensation has been paid during the year, the amount of such compensation and other prescribed particulars.

# DUTIES OF EMPLOYEES

- ▶ To **send a notice** of the accident in the prescribed form, to the Commissioner and the employer, within such time as soon as it is practicable for him. The **notice is precondition for the admission of the claim for compensation.**
- ▶ To **present himself for medical examination**, if required by the employer

# AMENDMENTS AND CHANGES

- ▶ The Act is now known as „Employee“s Compensation Act
- ▶ Throughout the Act where „workman“ or „workmen“ occur, the words “employee” and „employees“ shall be substituted
- ▶ Clerical employees are included in the definition of „employee“
- ▶ Compensation for death raised from 80,000 to 120000
- ▶ Compensation for permanent total disablement raised from 90,000 to 140000

# CONTD.....

- ▶ New subsection is added for **medical reimbursement**
- ▶ *The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment”*
- ▶ **Funeral expenses** amount is increased from **Rs.2500** to **“not less than Rs.5000”**
- ▶ No changes in definition of “wages
- ▶ It reserves the right for Central Government to enhance the amount of compensation
- ▶ **Explanation II:**
- ▶ Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only:”
- ▶ **Now the above explanation has been revised as:**
- ▶ **Where the monthly wages of a workman exceed Eight thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be Eight thousand rupees only;”**

# LIMITATION ON MAXIMUM COMPENSATION

- ▶ The maximum compensation payable is upon the following scale (as per W.C. Amendment Act 2000)  
Fatal Injury - Rs.4,57,080
- ▶ Permanent Total Disablement - Rs.5,48,496
- ▶ Permanent Partial Disablement - According to incapacity caused
- ▶ Temporary Disablement - Rs. 2000 per month upto a period of 5 years

**THANK YOU**

