

Employees compensation act, 1923

A blurred background image showing a person in a white lab coat, possibly a doctor or nurse, interacting with a patient. The image is out of focus, emphasizing the text overlay.

**Workers'
Compensation**



OBJECT AND SCOPE

❖ Amendment

1) Title:-

Before - Workmen's Compensation Act 1923

After - Title of the Act amended to "Employees Compensation Act 1923".

2) Words and expressions:-

Before - Refer to the words 'workman' or 'workmen' in the Act

After - They are substituted by the words 'employee' or 'employees' wherever they occur.

- The Employees Compensation Act, 1923 extends to the **whole of India**.
- It came into force on the first day of July, 1924. It is social security legislation.
- The Employees Compensation Act, 1923 imposes statutory liability upon an employer to discharge his moral obligation towards employees when they suffer from any physical disabilities or diseases, during the course of employment in hazardous working conditions.
- The aim of the Act is to provide quick and cheaper disposal of disputes relating to the compensation which is not possible in comparison in case of proceedings of civil law. The Act also helps the dependants to get relieved from the hardship, rising from accident.

Coverage of the act



- **Applicable to:**

- Mines
- Factories
- Plantations
- Transport Establishments
- Construction Works
- Railways
- Ships
- Circuses

- **Not applicable to:**

- Members of armed forces of union
- Employees covered by ESI Act, 1948. (Dependent's benefits available)
- Casual Workers & workers employed otherwise than for employer's trade or business



Definition

DEFINITION



- **Section 2 (1) (b)** of the Act define, “**Commissioner**” as a Commissioner for Workmen's Compensation appointed under section 20;
- **Compensation [section 2 (1) (c)]** means compensation as provided for by this Act;
- **Employer [section 2 (1) (e)]** includes:
 - i) any body of persons whether incorporated or not ,
 - ii) any managing agent of an employer ,
 - iii) legal representative of a deceased employer,
 - iv) any workman whose services 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.A contractor falls within the above definition of the employer.



□ Amendment

Schedule II:-

Before - Clerks were not covered for compensation under the Act.

After - Clerks are now covered for compensation. Please refer to schedule-II for specified employments.

- Employee, **section 2 (1) (n)** as follows:

Employee Means any person who is –

- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 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
 - (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 in any such capacity as is specified in Schedule II



Definition

DEPENDANT Sec. 2(1)(d)

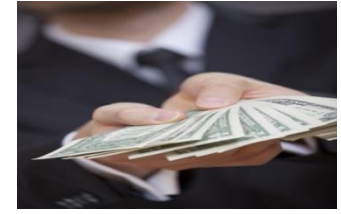
Dependants -whether actually so or not	Wholly dependant on the earnings of the employees at the time of death	Dependant- wholly or in part dependant on the earnings of the employee at the time of death
(a) a widow, (b) a minor legitimate or adopted son, (c) unmarried legitimate or adopted daughter, or (d) a widowed mother	a son or a daughter who has attained the age of 18 years and who is infirm	(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 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.

DISABLEMENT



- The Act does not define the word disablement. But it defines the partial and total disablement.
 - (i) **“Partial disablement”** means,
 - a.) where the disablement is of a **temporary in 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
 - b.) 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 in Part II of Schedule I shall be deemed to result in permanent partial disablement.
 - In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the workman’s earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity is not only the employment in which he was engaged at the time of accident but in all other employment.
 - (ii) **“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.
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.

EMPLOYER'S LIABILITY FOR COMPENSATION



- Under the **Section 3** of the Act provides the liability of the employer, in case of occupational diseases or personal injuries or the prescribed manner in which compensation has pay to the workmen.
- **OCCUPATIONAL DISEASES:-**
 - 1) Part A of schedule III
 - 2) Part B of schedule III
 - 3) Part C of schedule III
- **PERSONAL INJURY:-**
 - 1) Personal injury
 - 2) Accident
 - 3) Arising out of employment & in course of employment
- **EMPLOYER IS NOT LIABLE WHEN:-**
 - 1) Disablement not exceeding 3 days
 - 2) Accident due to influence of drink, drugs or disobeyed orders, disregards of safe guards

Occupational Diseases

Occupational Diseases

- Workers employed in certain occupations are exposed to certain diseases which are inherent [its character] in those occupations.
 - Infections due to contamination.
 - Infra-red radiations.
 - Skin diseases [Chemical, Leather Processing Units].
 - Hearing impairment caused by noise.
 - Lung Cancer caused by asbestos dust.
 - Diseases due to effect of heat/cold in extreme hot/cold climate, etc.

What are the condition for receiving compensation for Personal Injury caused by the accident ?



The three tests for determining whether an accident arose out of employment are :

- 1) 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;
- 2) That accident occurred at the place where he was performing his duties; and
- 3) Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature or condition of employment.

Fatal Accidents

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Sec-10-A [Power to require from employers statements regarding Fatal Accidents]

Sec-10-B [Report of Fatal Accidents & Serious Bodily Injuries]

Commissioner receives from any source regarding fatal accident of an employee, send notice to employer

Employer required to give notice about accident in his premises resulting in death/serious bodily injury send report

By	Regd. Post			To	Commissioner
Require employer	To Submit statement stating circumstance leading to death of employee			Time Limit	7 days of accident
Format	Prescribed Form			This section – not apply to factories to which ESI Act, 1948 applies.	
Time Limit	Within 30 days of service of notice				
Further indication to be made by employer in Statement whether in his opinion, he is	liable	or	Not liable		
	To deposit compensation on account of death				
	Deposit within 30 days of notice	Indicate the ground for disclaimer			

EMPLOYER'S LIABILITY WHEN CONTRACTOR IS ENGAGED



- **Section 12** of the act covers the employer's liability when contractor is engaged for the purpose of doing any work in respect of employer's trade or business. Such contractor has to execute the work with the help of workman engaged by him. But the employers will liable for the payment of compensation only in the following circumstances:
 - a.) The contractor is engaged to do a work which is part of the trade or business of the employer.
 - b.) The workmen were engaged in the course of or for the purpose of his trade or business.
 - c.) The accident occurred in or about the premises on which the employer has under taken or undertakes to execute the work.

This provision, however does not prevent a workman from recovering compensation from the contractor instead of the employer. Here, the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

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 was merely a matter of sound common sense as to when and where and to what extent this doctrine could be applied.

Compensation for What?

❖ Amendments

Sec.4 (a):- The minimum ceiling limit of compensation for death was Rs.80000/-Now it has been revised to Rs1,20,000/-

Sec.4(b):- The minimum ceiling limit of compensation for permanent total disablement was Rs.90000/-Now it has been revised to Rs1,40,000/-

sec.4(2):- This sub-section was added after sub-section(2).This entitles an employee to reimbursement of actual medical expenditure incurred by him for injuries caused during the course of employment.

Explanation II to clauses(a)&(b) of Sec.4 of Sec.4:- Explanation –II prescribes the maximum wage limit at Rs.4000/- p.m. for the purpose of computing compensation for death and permanent disablementThe Explanation was omitted and a new sub-section (IB) has been added after Sub-section IA of sec.4 whereby the maximum wage limit has been revised to Rs.8000/-p.m.

- **Sec-4** Provides for Compensation for:-
 - Death,
 - Permanent Total,
 - Permanent Partial ,
 - Temporary Partial,
 - Temporary Total

Compensation to be paid



- **When due?**
 - as soon as it falls due i.e. liability for payment of compensation is fixed on employer
- **If employer do not accept the compensation to the extent claimed:-**
 - should make provisional payment to the extent he accepts
 - payment should be deposited with commissioner for employee's compensation
 - Employee having right to make any further claim.
- **Time limit for payment:-**
 - within 1 month from due date
 - if not, commissioner direct the employer to pay the arrears with simple interest rate 12% or as prevailing in the bank.
 - further delay:- 50% of amount due will be recovered as penalty.

Amount of compensation



- **Section 4:-**

- Where death of a workman results from the injury:-
 - An amount equal to 50% of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of, Rs. 1,20,000 whichever is more.
- Where permanent total disablement results from the injury:-
 - An amount equal to 60% of the monthly wages of the injured workman multiplied by the relevant factor or an amount of Rs. 1,40,000, whichever is more.

Amount of compensation

- Where permanent partial disablement results from the injury (injury listed in part II of schedule I):-
 - % of loss of earning capacity that such % of compensation payable
- Where temporary total/ partial disablement of a workman results from the injury:-
 - An amount equal to 25% of the monthly wages payable every half-month

Procedure for calculation



- **Higher the age – Lower the compensation**
 - Relevant factor specified in second column of Schedule IV giving slabs depending upon the age of the concerned workman.
- **Example** : In case of death:
 - Wages Rs.3000 PM
 - Age 23 years
 - Factor as schedule IV : $219.95 * 1,500$
 - Amount of compensation Rs.3,29,935.00
 - In case of total disablement: Rs.3,95,910.00
- Schedule II: List of persons engaged in different employment.
- Schedule III: List of occupational diseases.
- Schedule IV: Relevant factor.

Review of Half- Monthly payment



- Half-Monthly payment may be reviewed by **Commissioner** on the application by Employer or employee.
- Application must be accompanied by certificate of qualified medical practitioner that there has been changed in the condition of employee.
- On review, Half-Monthly payment may be continued, increased, decreased, ended or converted into lump-sum.

Defence available to employers before E.C. Act, 1923



Doctrine of assumed risk	'volenti non fit injuria' - where there is consent there is not injury.	
Doctrine of common employment	Employer not liable to pay compensation to employee for injury	
	Worker working with several persons for common purpose.	Worker injured by some act or commission of some of the persons of his group.
Doctrine of contributory negligence	Employees not entitled to compensation for injury caused by his own negligence. (employer not responsible for negligence on the part of employees.)	
End of personal action with death	Personal action (of employee) came to an end due to death of employee.	

Penalty



- **Section 4A:-**

- Where an 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 in addition to the amount of arrears, pay simple interest there on at the rate of 12% per annum or on such higher rates.
 - b) Commissioner has the power under the Act to impose penalty and the interest on the cleared amount as per the provision of the act.

Distribution of compensation



- **Section 8:-**
- The compensation payable for death and
- The compensation payable to a woman or person of legal disability shall be through the commissioner only.
- Employer can make advance payment directly to dependents in case of death equivalent to three months salary of the deceased person.
- 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.

Contracting Out of the compensation



- **Section 17**
- Any contract or agreement 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.



Ways open to employees for claiming compensation:-

- Injured employee may:-
 - file a civil suit; or
 - claim compensation under E.C. Act, 1923
- Employee can not file a suit for damages in any court of law if he filed claim under E.C. Act'1923.
- **Comparison**

Civil Suit	E.C.Act, 1923
• Risky & Costly • Employer can put forward all defenses available to him under laws of torts.	• Safe & less Costly

NOTICE AND CLAIM



- **Section 10**
- To claim the compensation:-
 - ✓ The claimant shall give notice of accident to the employer or by entering in the notice book within the reasonable period.
 - ✓ Every such notice shall give the name and address of the person injured, the cause of the injury and the date on which the accident happened and
 - ✓ Submit the claim application to the commissioner within two years from the date of accident.
 - ✓ In case of occupational disease the accident is deemed to have occurred on the first day of disease.
 - ✓ Defect if any in the notice or not giving notice or delayed application will not bar the claim for compensation.

Procedure in the proceedings before the commissioner



- Section 19 - Reference to commissioners.
- Section 20 - Appointment of commissioner. Section 20
- Section 21 - Venue of proceedings and transfer.
- Section 22 - Form of application.
- Section 22A – Power of the Commissioner to require further deposit in case of fatal accident.
- Section 23 – Powers and procedure of Commissioners.
- Section 24 – Appearance of Parties.
- Section 25 - Methods of recording evidence.
- Section 26 – Costs.
- Section 27 – Power to submit cases.
- Section 28 – Registration of Agreements.
- Section 29 – Effect of failure to register agreement.

Appointment of commissioner



- Section 20
- The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification.
- 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.

Reference to commissioners



- **Section 19**
- 19(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 a Commissioner.
- 19(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.

Case laws



- **State of Kerala v. khadeeja beevi, 1988**
 - A govt. servant who is employed as “Mahout” in the forest deptt. is also treated as employee under this act even if he is covered by family pension, GPF, & family benefits scheme under the govt.
- **N.A.CHAUHAN v. N.K. SHAH, 1991**
 - Expression “arising out and in course of employment”. The words suggest that there should be casual relationship between the employer and accident.
- **New India assurance co. ltd. v. Mohan Kumar sahu, 2004**
 - Person engaged for one day to drive vehicle of the owner is also the employee in this act. The Owner have definite control over the person. The person was driving the vehicle on the direction of the owner of the vehicle. His engagement for one day only will not throw him out of the definition of Employees u/s 2(n) of the act.

Case laws



- **G.S.R.T.C. v/s Ashok Kumar keshavlal Parekh, 1999**
Sec. 16 of Apprentices Act, 1961 entitles a apprentice to claim compensation under this act if Personal Injury caused to him by accident arising out of or in course of his training as an apprentice.
- **Radhamony v/s Secretary, Department Of Home Affairs, 1995**
A Person employed as driver comes under the category of employees irrespective of the position whether he is a non-govt. employee or govt. employee.
- **Devidayal Ralyaram v/s Secretary of state of AIR, 1937**
According to **Doctrine Of Added Peril** if a workman while performing his duty does something which is not required to do and which involves extra danger, the employer would not be liable to pay compensation if any injury caused to him.

Cases of Accidents Arising Out of & In the Course of Employment



- Railway employee was ordered to travel to a certain station to repair a water main. When he had finished the work & was crossing the platform to catch the train, he slipped & died as a result.
- A watchman in the course of his duty lifted G.I. Pipe in order to keep it in a safe place. While doing so, he received injury.
- An employee suffered from heart disease & died on account of strain of work by keeping continuously standing or walking.
- An employee suffering from heart disease after having worked for 8 hours on a hot day in a mill collapsed. There was evidence to the effect that collapse was likely to have been caused by strain of work on a diseased heart.