Employees’ Compensation Act, 1923

Objective and Scope of this Act

The Employees’ Compensation Act is social security legislation.

It imposes statutory liability upon an employer to discharge his moral obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions.

To help the dependents of the employee rendered destitute by the ‘accidents’ and from the hardship arising out from such accidents.

The Act provides for cheaper and quicker mode of disposal of disputes relating to compensation through special proceedings than possible under the civil law.

The Act extends to the whole of India.

Definitions

Dependant 2(1)(d)

Means any of the following relatives of a deceased employee:

- a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, or a widowed mother, and

- if wholly dependent on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; and

- if wholly or in part dependent on the earnings of the employee at the time of his death:
  - a widower,
  - a parent other than a widowed mother,
  - 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,
  - a minor brother or an unmarried sister, or a widowed sister if a minor,
a widowed daughter-in-law,

- a minor child of a pre-deceased son/adopted son
- a minor child of a pre-deceased daughter/adopted daughter where no parent of the child is alive or
- a paternal grandparent, if no parent of the employee is alive.

**Employee Section 2(dd)**

Means a person, who is –

- 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 Employees’ Compensation Act, 1923
- a master, seaman or other members of the crew of a ship,
- a captain or other member of the crew of an aircraft,
- a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.
- 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
- employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been” injured shall, where the employee is dead, include a reference to his dependants or any of them;

**Employer [Section 2(1)(e)]**

- anybody of persons incorporated or not;
- any managing agent of the employer;
legal representative of a deceased employer. Thus, one who inherits the estate of the deceased is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him;

any person to whom the services of a employee are temporarily lent or let on hire by a person with whom the employee has entered into a contract of service or apprenticeship.

**Case:- Baijnath Singh v. O.T. Railway**

A contractor falls within the above definition of the employer. Similarly, a General Manager of a Railway is an employer.

**Seaman [Section 2(1)(k)]**

Means
Any person forming part of the crew of any ship but does not include the master of the ship.

**Wages {Section 2(1)(m)}**

Include 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 to an employee towards any pension or provident fund or
- a sum paid to employee to cover any special expenses entailed on him by the nature of his employment.

**Case:-  Godawari Sugar Mills Ltd. v. Shakuntala;**
**Case:-  Chitru Tanti v. TISCO; and**
**Case:- Badri Prasad v. Trijugi Sitaram**
Wages include dearness allowance, free accommodation, overtime pay, etc.
Case: - KSRTC Bangalore v. Smt. Sundari
The driver of a bus died in an accident. On a claim for compensation made by widow it was held that line allowance and night out allowance came under the privilege or benefit which is capable of being estimated in money and can be taken into consideration in computing compensation as part of wages.
The claim of bonus being a right of the workman is a benefit forming part of wages and the same can be included in wages.

Disablement
- The Act does not define the word Disablement.
- It only defines the partial and total disablement.
- After reading the partial or total disablement as defined under the Act one may presume that disablement is loss of earning capacity by an injury which depending upon the nature of injury and percentage of loss of earning capacity will be partial or total.
- The Act has classified disablement into two categories-
  - Partial disablement, and
  - Total disablement.

Partial disablement [Section 2(1)(g)]
Partial disablement can be classified as temporary partial disablement and permanent partial disablement.

- Where the disablement is of a temporary nature: Such disablement as reduces the earning capacity of an employee in the 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 for all time his earning capacity in every employment which he was capable of undertaking at the time. But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

Schedule I contains list of injuries deemed to result in Permanent Total/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 employee’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 in not only the employment in which he was engaged at the time of accident but in all other employments.

Whether the disablement is temporary or permanent and whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in Part II of Schedule I.

Case: Sukhai v. Hukam Chand Jute Mills Ltd.,
It was observed that if a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsalable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it would otherwise fetch.

The capacity of a workman may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost if such a result ensure by the reason of the results of an accident, although the accident has not really reduced the capacity of the workman to work.

He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but had been turned away on account of the results of the accident visible on his person.

Case: General Manager, G.I.P. Rly. v. Shankar
If after the accident a worker has become disabled, and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement.
Deemed to be permanent partial disablement:
Part II of Schedule I contain the list of injuries which shall be deemed to result in permanent partial disablement.
Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

Case: - Lipton (India) Ltd. v. Gokul Chandran Mandal
On the question whether eye is a member or limb as used in the note to Schedule I it was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary, it could be said that the words limb or member include any organ of a person and in any case it includes the eye.

Total disablement [Section 2(1)(l)]
Total disablement can also be classified as temporary total disablement and permanent total disablement.
Total disablement means, such disablement whether of a temporary or permanent nature, which incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement.
Permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or similarly total disablement shall result from any combination of injuries specified in Part II of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said Part II against these injuries amount to one hundred per cent or more.

Case: - Ball v. William Hunt & Sons Ltd
The expression incapacitates a workman for all work does not mean capacity to work or physical incapacity. If due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn he is entitled to compensation for total disablement.
It is immaterial that the workman is physically fit to perform some work. Thus, where a workman, though physically capable of doing the work cannot get employment in spite of his best efforts, he becomes incapacitated for all work and hence entitled to compensation for total disablement.

**Case:- Mangru Palji v. Robinsons,**
Loss of physical capacity is co-extensive with loss of earning capacity but loss of earning is not so co-extensive with loss of physical capacity as he may be getting the same wages even though there may be loss of physical capacity. In a case permanent partial disability caused to a workman in accident while working on ship, e.g. getting pain in his left hand and experiencing difficulty in lifting weights, it was held that workman can be said to have lost his earning capacity even though getting same amount of wages as before. Where it is not a scheduled injury the loss of earning capacity must be proved by evidence.

**Case:- Katras Jherriah Coal Co. Ltd. v. Kamakhya Paul**
Where the worker lost his vision of one eye permanently in an accident in course of his employment in colliery, the compensation should be assessed in accordance with item 26 Part II in Schedule I.

**Case:- Pratap Narain Singh Deo v. Srinivas Sabata**
In an injury the workman, had amputated his left arm from elbow, who was a carpenter. It was held by the Supreme Court that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

**Case: - Divisional Manager KSRTC v. Bhmaiah**
Where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st Schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be
determined not on the basis of the work he was doing at the time of accident.

**Employer’s liability for compensation (Section 3)**

**(a) In cases of occupational disease**

- Where an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein, as an occupational disease, peculiar to that employment, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment.

- Where the employee employed in any employment specified in Part B of Schedule III, for a continuous period of not less than six months under the same employer, and whilst in the service contracts any disease specified in the Part B of Schedule III, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment. The employer shall be liable even when the disease was contracted after the employee ceased to be in the service of the employer, if such disease arose out of the employment.

- If an employee whilst in service of one or more employers (not necessarily the same employer) in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify, contracts any disease, even after he ceased to be in the service of any employer and disease arose out of such employment, specified in the Schedule, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment.

- [Section 3(2A)] - However, where the 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 circumstances deem just.

- If it is proved that the employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and
If it is proved 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.

The Central Government or the State Government after giving, by notification in the Official Gazette, not less than three months notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall 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 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 as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

Except as mentioned above no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(b) In case of personal injury
The employer becomes liable if the injury is caused to an employee by accident arising out of and in the course of his employment.

(i) There must be personal injury caused to an employee.
Normally, Injury implies physical or bodily injury caused by an accident. However, such personal injury will also include nervous shock or break-down or mental strain.

Case:- Indian News Chronicle v. Mrs. Lazarus
An electrician who had to go frequently to a heating room from a cooling plant, contracted pneumonia which resulted in his death. It was held that the injury caused by an accident is not confined to physical injury and the injury in the instant case was due to his working and going from a heating room to a cooling plant as it was his indispensable duty.
(ii) The personal injury must be caused by an “accident”.

The term “accident” has not been defined in the Act but its meaning has been sufficiently explained in number of decided cases. The expression accident must be construed to its popular sense. It has been defined as a mishap or an untoward event which is not expected or designed. What the Act intends to cover is what might be expressed as an accidental injury.

Case: - Smt. Sunderbai v. The General Manager, Ordinance Factory Khamaria, Jabalpur

The Madhya Pradesh High Court has clarified the difference between accident and injury. Accident means an untoward mishap which is not expected or designed by workman, ‘Injury’ means physiological injury. Accident and injury are distinct in cases where accident is an event happening externally to a man, e.g., where a workman falls from the ladder and suffers injuries. But accident may be an event happening internally to a man and in such cases accident and injury coincide. Such cases are illustrated by failure of heart and the like, while the workman is doing his normal work. Physiological injury suffered by a workman mainly due to the progress of disease unconnected with employment may amount to an injury arising out of and in the course of employment if the work, that the workman was doing at the time of the occurrence of the injury contributed to its occurrence. The connection between employments must be furnished by ordinary strain of ordinary work if the strain did in fact contribute to accelerate or hasten the injury. The burden of proof is on applicant to prove the connection of employment and injury.

(iii) Arising out of employment and in the course of employment

To make the employer liable, it is necessary that the injury is caused by an accident which must be raised out of and in the course of employment.
Arising out of employment
The expression “arising out of employment” suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause.

Case:- Laxmibai Atma Ram v. Bombay Port Trust
Where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment.
Generally if an employee is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, employer is not liable. But if the employment is contributory cause or has accelerated the death that the death was due to disease coupled with the employment, then the employer would be liable as arising out of the employment.

Case: - Mackenzie v. I.M. Issak
- It was observed that the words arising out of employment means that injury has resulted from risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered.
- There must be a casual relationship between the accident and the employment.
- If the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed unless of course the workman has exposed himself to do an added peril by his own imprudence.

Case:- Mackinnon Mackenzie and Co. (P.) Ltd. v. Ibrahim Mohammed Issak
Case:- Lancashire and Yorkshire Railway Co. v. Highley
The Supreme Court observed that the test is:
was it part of the injured persons employment to hazard, to suffer or to do that which caused his injury?
If yes, the accident arose out of his employment,
If not it did not.

**Arising in the course of employment**

- Suggests the period of employment and the place of work.
- In other words, the workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.
- The expression “employment” is wider than the actual work or duty which the employee has to do.
- It is enough if at the time of the accident the employee was in actual employment although he may not be actually turning out the work.
- Even when the employee is resting, or having food, or taking his tea or coffee, proceeding from the place of employment to his residence, and accident occurs, the accident is regarded as arising out of and in the course of employment.

**Case: - Union of India v. Mrs. Noorjahan**

A man may be in course of his employment not only when he is actually engaged in doing something in the discharge of his duty but also when he is engaged in acts belonging to and arising out of it.

**For the expression “accident arising out of and in the course of employment”**

- the basic and indispensable ingredient is unexpectedness.
- The second ingredient is that the injury must be traceable within reasonable limits, to a definite time, place or occasion or cause.

**(iv) Theory of notional extension of employment**

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment.

It means that the accident must take place at a time and place when he
was doing his master’s job.

Case: - Weaver v. Tradegar Iron and Coal Co. Ltd.
It is well settled that the concept of “duty” is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment.
It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

Case: - Naima Bibi v. Lodhne Colliery
A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment and his wife is entitled for compensation.

Case: - TNCS Corporation v. Poonamalai
If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment.

(v) When employer is not liable
In the following cases, the employer shall not be liable:
- When the injury does not result in disablement for a period exceeding 3 days.
- When the injury not resulting in death or permanent total disability is due to any of the following reasons:
the employee was at the time of accident, under the influence of drink or drugs, or
the employee wilfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing safety of workers, or
the employee, wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of the employee.

Case:- R.B. Moondra & Co. v. Mst. Bhanwari
In this case it was held that where a employee dies due to an accident arising out of and in the course of employment, it cannot be pleaded that death was due to any of the reasons stated above.

Suit for damages in a Court barred {Section 3(5)}
An employee is not entitled to any compensation under the Workmen’s Compensation Act, 1923, if he has instituted, in a Civil Court, a suit for damages against the employer or any other person.
Similarly, an employee is prohibited from instituting a suit for damages in any court of law,
if he has instituted a claim to compensation in respect of the injury before a Commissioner; or
if the employee and the employer have entered into an agreement for the payment of compensation in accordance with the provisions of this Act.

Employer’s liability when contractor is engaged {Section 12}
Sometimes, employer may engage a contractor instead of employing his own employee for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of the employee engaged by him. If any injury is caused by an accident to any of these employees, the employer cannot be held liable because they are not employed by him and hence are not his employees. But now Section 12(1) makes the employer liable for compensation to such employees hired by
the contractor under following circumstances:

- The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).
- The employee were engaged in the course of or for the purpose of his trade or business.
- The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.
- The amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

**Section 12(2)** - Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered compensation and all questions as the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

**Section 12(3)** - The above provision, however, does not prevent an employee from recovering compensation from the contractor instead of the employer, i.e., the Principal.

**Section 12(4)** - This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be to execute the work or which are otherwise under his control or management.

**Illustrations on Section 12:-**

- A Municipal Board entrusted the electrification work of the town to State employees. An employee received injuries while performing his work. Held, it is the State and not the Board, liable to pay compensation because execution of electrical project is not the ordinary business of the Municipal Board.
A contractor was entrusted with the repairs of a defective chimney. A employee engaged by him was injured while carrying out repairs. Held, mill was not liable for compensation as the repairing of chimney is not the part of companys trade or business, whether ordinarily or extraordinarily.

A cartman was engaged by a Rice Mill to carry rice bags from mill to railway station. The cartman met with an accident on a public road while returning back from railway station and this resulted in his death.

There was no evidence to show that employee was engaged through a contractor. In a suit for compensation against the mill owner, it was observed that Section 12 is not applicable where the accident arises out of and in the course of employment. Even assuming that the deceased was in the employment of contractor engaged by the employer, the liability of the owner was clear from Section 12(1) and it had not been excluded by reason of Section 12(4).

Compensation

Meaning of compensation [Section 2(1)(c)]

Amount of compensation [Section 4]

Amount of compensation is payable in the event of an employee meeting with an accident resulting into temporary or permanent disability or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with Schedule IV.

Schedule II contains a list of persons engaged in different employments/ operations specified therein who are covered by the definition of employee and entitled to compensation e.g. a person employed for loading/unloading of materials in a factory or ship, persons employed in work incidental or connected with manufacturing process.

Schedule III contains a list of occupational diseases which if contracted while in employment entitles an employee to compensation such as disease caused by lead, mercury, etc.

Schedule IV lays down the relevant factor (a certain figure) related to the age of the employee at the time of death, injury or
accident by which wages are multiplied to arrive at compensation.

Compensation to be paid when due and penalty for default

Time of payment of compensation: Section 4A

Case:- Smt. Jayamma v. Executive Engineer, P.W.D. Madhugiri Division

Compensation under Section 4 shall be paid as soon as it falls due. Compensation becomes due on the date of death of employee and not when Commissioner decides it.

The employer is required to deposit or to make provisional payment based on the extent of liability which he accepts with the Commissioner or hand over to the employee as the case may be even if the employer does not admit the liability for compensation to the extent claimed.

Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to the employee or his dependent as the case may be.

Method of calculating wages (Section 5)

Monthly wages mean the amount of wages deemed to be payable for a month’s service and calculated as follows:

(a) Where the employee has, during a continuous period of not less than 12 months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be 1/12th of the total wages which have fallen due for payment to him by the employer in the last 12 months of that period.

(b) Where the whole of the continuous period of service was less than one month, the monthly wages of the employee shall be the average monthly amount which during the 12 months immediately preceding the accident was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed
on similar work in the same locality.

(c) In other cases, including cases in which it is not possible to calculate the monthly wages under clause (b) the monthly wages shall be 30 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.

A period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days.

Review of half-monthly payment [Section 6]

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

Any half monthly payment, may on review, under the above provisions be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the employee is entitled less any amount which he has already received by way of half-monthly payments.

Commutation of half monthly payments [Section 7]

Any right to receive half-monthly payments may, by agreement between the parties or if the parties cannot agree and the payments have been continued for not less than 6 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.

Distribution of compensation (Section 8)

No compensation has to be paid in respect of an employee whose
injury has resulted in death and no payment of lump sum compensation to a woman or a person under a legal disability except by deposit with the Commissioner.

- The employer cannot make payment of compensation directly to the deceased legal heirs. It is the Commissioner who decides on the distribution of compensation to the legal heirs of the deceased employee.

- Right to claim compensation passes to heirs of dependant as there is no provision under the Act to this effect.

- Payment of ex-gratia or employment on compassionate grounds will not be employers’ liability.

**Compensation not to be assigned (Section 9)**

Save as provided by this Act, no lump sum or half-monthly payment payable under this Act can be assigned, or charged or attached or passed to any person other than the employee by operation of law nor can any claim be set-off against the same.

**Compensation to be first charge (Section 14A)**

- The compensation money shall bear the first charge on the assets transferred by the employer.

- It says that where an employer transfers his assets before any amount due in respect of any compensation, the liability whereof accrued before the date of transfer has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.

**Insolvency of employer and the compensation (Section 14)**

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

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

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 employee.

But the employee is required to give notice of accident and resulting disablement there from to the insurers as soon as possible after he becomes aware of the insolvency or liquidation proceedings otherwise the above provisions shall not be applied.

There shall be deemed to be included among the debts which under Section 49 of the Presidency Towns Insolvency Act, 1909, or under Section 61 of the Provincial Insolvency Act, 1920 or under Section 530 of the Companies Act, 1956, are in the distribution of 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 where for 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.

Where the compensation is 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 application...
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.

The provisions of sub-section (iv) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (iii) 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 if referred to in sub-section (i).

This Section shall not apply where a company is wound up voluntarily merely for purpose of reconstruction or of amalgamation with another company.

Contracting out of compensation {Section 17}
Any contract or agreement whereby an employee 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.

Obligations and responsibility of an employer
(i) Power of Commissioner to require from employers statements regarding fatal accidents (Section 10A)

Where a Commissioner receives information from any source that an employee has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the employee’s employer requiring him to submit, within 30 days of the service of the notice, a statement, in the prescribed form giving the circumstances attending the death of the employee, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within 30 days of the service of the notice.

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.

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

(ii) To submit reports of fatal accidents and serious bodily injuries

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 in his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury in the prescribed form (Form EE of the Workmen’s Compensation Rules: Rule 17).

“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. [Expl. to Section 10B(1)]

The State Government may, by notification in the Official Gazette, extend the provisions of sub-section (i) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

Section 10B - Nothing in this section shall apply to the factories to which the Employees’ State Insurance Act, 1948, applies.

Notice and claim

(a) No claim for compensation shall be entertained by a Commissioner unless the 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 two years of the occurrence of the accident or, in case of death, within two years from the
Provided that:

- where the accident is the contracting of a disease the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease;

- in case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer;

- if an employee who, having been employed in an employment for a continuous period specified under sub-section 3(2) 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.

The want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim:

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

- if the employer or any one of several employers or any persons responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred.

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

(b) 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 any one of several employers, or upon any person
responsible to the employer for the management of any branch of the
trade or business in which the injured employee was employed.

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

(d) 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.

The Commissioner can initiate suo motu proceedings and can waive the
period of limitation under this Section.

Medical Examination [Section 11]

(i) Where an employee has given notice of an accident, he shall, if the
employer, before the expiry of 3 days from the time at which service of
the notice has been effected, offers to have him examined free of charge
by a qualified medical practitioner, submit himself for such examination,
and any employee who is in receipt of half monthly payment under this
Act shall, if so required, submit himself for such examination from time
to time as per the rules under the Act.

(ii) If an employee 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.

(iii) If an employee, 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 officers himself for such examination.

(iv) Where an employee, whose right to compensation has been suspended under sub-section (ii) or subsection (iii), dies without having submitted himself for medical examination as required by either of those subsections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased employee.

(v) Where under sub-section (ii) or sub-section (iii) 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 (i) of Section 4, the waiting period shall be increased by the period during which the suspension continues.

(vi) Where an injured employee has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the employee has not thereafter been regularly attended by a qualified medical practitioner or having been so attended had deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the employee had been regularly attended by a qualified medical practitioner, whose instructions he had followed, and compensation, if any, shall be payable accordingly.

Case:- Burhwal Sugar Mills Ltd. v. Ramjan

The Allahabad High Court observed that Section 11 confers a right and not an obligation on employer to have workmen medically examined. If he does not do so it will not debar employer from challenging medical certificate produced by employee. The court held that where the award of compensation was passed on basis of medical certificate without examination of doctor on oath, the award was liable to be quashed since there was no evidence on oath on which compensation could be awarded.
Procedure in the proceedings before the commissioner

(i) Appointment of Commissioners [Section 20]

State Government may, by notification in the Official Gazette, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personal management, human resource development and industrial relations to be a Commissioner for Employee’s Compensation for such an area as may be specified in the notification.

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

Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Section 20(3) empowers the Commissioner to appoint or choose any person, possessing special knowledge of any matter relevant to the matter under inquiry, to assist him in holding the inquiry.

(ii) Reference to Commissioner and his jurisdiction {Section 19(1)}

Jurisdiction of a Commissioner to entertain a claim in respect of payment of compensation to an employee. The Commissioner is empowered in default of an agreement to settle any question which may arise in any proceeding under this Act as to the liability of any person to pay compensation, and in particular, the Commissioner has jurisdiction over following matters:

- Liability of any person to pay compensation.
- Whether a person injured is or is not an employee?
- The nature and extent of disablement.
- The amount or duration of compensation.

Case: - United India Fire & General Insurance Co. Ltd. v. Kamalalshi

If an application is made under the Employee’s Compensation Act to the Commissioner, he has, by virtue of Section 19(1) of the Act,
jurisdiction to decide any question as to the liability of any person including an insurer to pay compensation. Section 19(2) further provides that the enforcement of that liability can only be made by him. The Commissioner’s jurisdiction is wide enough to decide the tenability of the objections; the consequential direction of the Commissioner to the insurer to pay is also covered under Section 19(1). In any event in execution of the order against the insured, namely, the employer, the Commissioner can enforce his liability against the insurer under Section 31. In the light of Section 19 read along with Section 31, the order of the Commissioner can never be challenged as being without jurisdiction.

(iii) Jurisdiction of Civil Court barred

Case:- Madina Saheb v. Province of Madras

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. However, where the Commissioner has no jurisdiction to decide any matter and even fails to decide when raised, thereby leaving a party without any defense the Civil Court will have jurisdiction to entertain such suits.

(iv) Venue of proceedings and transfer { Section 21}

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:

- the accident took place which resulted in the injury; or
- the employee or in case of his death, the dependent claiming the compensation ordinarily resides; or
- the employer has his registered office:

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:

Where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner of 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.

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

If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

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.

The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereto 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.

On receipt of a report from a Commissioner to whom any matter has been transferred for report under Subsection (2), the Commissioner by whom it was referred shall decide the matter
referred in conformity with such report.

The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

**(v) Form of application (Section 22)**

All claims for compensation subject to the provision of the Act shall be made to the Commissioner. But such applications other than the applications made by dependant or dependants can only be submitted when the parties have failed to settle the matter by agreement.

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 concise statement of the circumstances in which the application is made and the relief of order which the applicant claims;
- in the case of a claim for compensation against an employer, 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;
- the names and addresses of the parties; and
- except in the case of an application by dependents for compensation, a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

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.

**Case: - M.B. & G. Engineering Factory v. Bahadur Singh**

However, any defect in the application, e.g., when it is not in the prescribed form cannot be fatal to the claim. Any such irregularity can be rectified with the permission of the Commissioner at any stage.
(vi) Power of the Commissioner to require further deposit in case of fatal accident (Section 22A)

Where the Commissioner is of the opinion that any sum deposited by the employer as compensation payable on the death of an employee, is insufficient, he is empowered to call upon, by a notice in writing stating his reasons, the employer to show cause why he should not make a further deposit within a stipulated period. 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 him to deposit the deficiency.

(vii) Powers and procedure of Commissioners (Section 23)

The Commissioner shall have for the following purposes, all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of:

- taking evidence on oath;
- enforcing the attendance of witnesses; and
- compelling the production of documents and material objects.

(viii) 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 registered Trade Union or by an Inspector appointed under Section 8(1) of the Factories Act, 1948, or under Section 5(1) of the Mines Act, 1952 or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the Commissioner by any other person so authorised.

(ix) Method of recording evidence (Section 25)

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 a part of the record.

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

The evidence of any medical witness shall be taken down as nearby as may be word for word.

Case:- M.S.N. Co. Ltd. v. Mohd. Kunju

It was held that the Commissioner should not make a medical certificate the basis of his award unless he has examined the concerned medical officer.

(x) Time Limit for disposal of cases relating to compensation {Section 25A}

The Commissioner shall dispose of the matter relating to compensation within a period of 3 months from the date of reference and intimate the decision in respect thereof within the said period to the employee.

(xi) Costs (Section 26)

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

However, the Commissioner must use his discretion judiciously.

(xii) Power to submit cases (Section 27)

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.

(xiii) Registration of agreements { Section 28}

It is obligatory for the employer to send a memorandum to the
Commissioner where 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 an compensation has been settled as being payable to a woman or a person under a legal disability.

The Commissioner shall record the memorandum in a register in the prescribed manner, after he has satisfied himself as to its genuineness provided that the Commissioner has given at least 7 days notice to the parties concerned before recording such memorandum. The Commissioner may at any time rectify the register.

The Commissioner may refuse to register the memorandum on the following grounds:

- Inadequacy of the sum or amount settled; or
- Agreement obtained by fraud or undue influence or other improper means.

The Commissioner may in such a situation make such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

An agreement which has been registered as aforesaid shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.

(xiii) (Section 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 employees by way of compensation whether under the agreement or otherwise.
Appeals (Section 30)

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

- an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- an order awarding interest or penalty under Section 4A;
- an order refusing to allow redemption of a half-monthly payment;
- an order providing for the distribution of compensation among the dependants of a deceased employee or disallowing any claim of a person alleging himself to be such dependant;
- an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Subsection (2) of Section 12; or
- an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions.

Such appeal should be filed within 60 days of order. The section empowers appellate Court to infer with findings recorded by commissioner only in case of substantial error of law. The provisions of Section 5 of Limitation Act, 1963 shall be applicable to appeals under the Section.

No appeal shall lie unless the following requirements are fulfilled:

- A substantial question of law is involved in the appeal.
- In case of order, other than order refusing to allow redemption of a half-monthly payment, unless the amount in dispute in the appeal is not less than three hundred rupees;
- The memorandum of appeal should be accompanied by a certificate by the Commissioner to the effect that the applicant has deposited with him the amount payable under the order appealed against. Deposit of compensation amount is alone contemplated: deposit of penalty or interest is not condition precedent for filing appeal.
- The appeal does not relate to 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.

Jurisdiction conferred on High Court being special any further appeal against the judgement is barred. No, leave petition was therefore held maintainable. Finding whether the claimant was an employee arrived by commissioner on material on record is a fact hence no further appeal is allowed.

**Withholding of certain payments pending decision of appeal (Section 30A)**

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.

**Recovery (Section 31)**

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.

**Penalties [Section 18A]**

The Act prescribes penalties for the contravention of the provisions of the Act which include fine up to Rs. 5,000.

The following omissions attract this punishment under the Act:

- Whosoever fails to maintain a notice book which he is required to maintain under Section 10(3); or
- Whosoever fails to send to the Commissioner a statement of fatal accidents which he is required to send under Section 10A(1); or
- Whosoever fails to send a report of fatal accidents and serious bodily injuries which he is required to send under Section 10B; or
- Whosoever fails to make a return of injuries and compensation which he is required to make under Section 16.

No prosecution under Section 18A shall be instituted except by or with
the previous sanction of the Commissioner and no court shall take
cognizance of any offence under this section unless complaint is made
within 6 months of the date on which the alleged commission of offence
comes to the knowledge of the Commissioner.

Special provisions relating to masters and seamen [Section 15]
- 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.
- In the case of the death of a master or seaman, the claim for
  compensation shall be made within one year after the news of the
  death has been received by the claimant or, where the ship has
  been or is deemed to have been lost with all hands, within
  eighteen months of the date on which the ship was, or is deemed
to have been, so lost:
- 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.
- Where an injured seaman or master is discharged or left behind in
  any part of India or in any other 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:
  - if the deposition is authenticated by the signature of the
    Judge, Magistrate or Consular Officer before whom it is
    made;
  - 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
  - if the deposition was made in the course of a criminal
proceedings, 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 proceedings 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.

No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping liable to defray the expenses of maintenance of the injured master or seaman.

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

Failure to give a notice to 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:

- an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and
- the State Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made makes provisions for payments, and that 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
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.

**Special provisions relating to captains and other members of crew of aircrafts [Section 15A]**

- The notice of the accident and the claim for compensation may, except where the person injured is the captain of the aircraft, be served on the captain of the aircraft as if he were the employer, but where the accident happened and the disablement commenced on board the aircraft it shall not be necessary for any member of the crew to give notice of the accident.

- 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.

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

- Where an injured captain or other member of the crew of the aircraft is discharged or left behind in any part of India or in any other country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence:
  - if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
  - 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;
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.

Special provisions relating to employees aboard of companies and motor vehicles {Section 15B}

This Act shall apply:
- in the case of employee who are persons recruited by companies registered in India and working as such abroad, and
- persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 as drivers, helpers, mechanics, cleaners or other employees:
  - 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.
  - In the case of death of the employee in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant:
  - The Commissioner may entertain any claim for compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.
  - Where an injured employee is discharged or left behind in any part of India or in any other country any depositions
taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence:

- if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
- 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;
- if the deposition was made in the course of a criminal proceeding, or 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.
Important Cases

Case:- Baijnath Singh v. O.T. Railway
A contractor falls within the above definition of the employer. Similarly, a General Manager of a Railway is an employer.

Case:- Godawari Sugar Mills Ltd. v. Shakuntala;
Case:- Chitru Tanti v. TISCO; and
Case:- Badri Prasad v. Trijugi Sitaram
Wages include dearness allowance, free accommodation, overtime pay, etc.

Case: - KSRTC Bangalore v. Smt. Sundari
The driver of a bus died in an accident. On a claim for compensation made by widow it was held that line allowance and night out allowance came under the privilege or benefit which is capable of being estimated in money and can be taken into consideration in computing compensation as part of wages.

Case:- Sukhai v. Hukam Chand Jute Mills Ltd.,
It was observed that if a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsalable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it would otherwise fetch.

The capacity of a workman may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost if such a result ensure by the reason of the results of an accident, although the accident has not really reduced the capacity of the workman to work.

He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but
had been turned away on account of the results of the accident visible on his person.

**Case: - General Manager, G.I.P. Rly. v. Shankar**

If after the accident a worker has become disabled, and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement.

**Case: - Lipton (India) Ltd. v. Gokul Chandran Mandal**

On the question whether eye is a member or limb as used in the note to Schedule I it was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary, it could be said that the words limb or member include *any organ of a person* and in any case it includes the eye.

**Case: - Ball v. William Hunt & Sons Ltd**

The expression incapacitates a workman for all work does not mean capacity to work or physical incapacity. If due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn he is entitled to compensation for total disablement.

It is immaterial that the workman is physically fit to perform some work. Thus, where a workman, though physically capable of doing the work cannot get employment in spite of his best efforts, he becomes incapacitated for all work and hence entitled to compensation for total disablement.

**Case:- Mangru Palji v. Robinsons,**

Loss of physical capacity is co-extensive with loss of earning capacity but loss of earning is not so co-extensive with loss of physical capacity as he may be getting the same wages even though there may be loss of physical capacity. In a case permanent partial disability caused to a workman in accident while working on ship, e.g. getting pain in his left hand and experiencing difficulty in lifting weights, it was held that
A workman can be said to have lost his earning capacity even though getting same amount of wages as before. Where it is not a scheduled injury the loss of earning capacity must be proved by evidence.

**Case:- Katras Jherriah Coal Co. Ltd. v. Kamakhya Paul**

Where the worker lost his vision of one eye permanently in an accident in course of his employment in colliery, the compensation should be assessed in accordance with item 26 Part II in Schedule I.

**Case:- Pratap Narain Singh Deo v. Sriniwas Sabata**

In an injury the workman, had amputated his left arm from elbow, who was a carpenter. It was held by the Supreme Court that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

**Case:- Divisional Manager KSRTC v. Bhimaiah**

Where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st Schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be determined not on the basis of the work he was doing at the time of accident.

**Case:- Indian News Chronicle v. Mrs. Lazarus**

An electrician who had to go frequently to a heating room from a cooling plant, contracted pneumonia which resulted in his death. It was held that the injury caused by an accident is not confined to physical injury and the injury in the instant case was due to his working and going from a heating room to a cooling plant as it was his indispensable duty.
Case: - Smt. Sunderbai v. The General Manager, Ordinance Factory Khamaria, Jabalpur

The Madhya Pradesh High Court has clarified the difference between accident and injury. Accident means an untoward mishap which is not expected or designed by workman, ‘Injury’ means physiological injury.

Accident and injury are distinct in cases where accident is an event happening externally to a man, e.g., where a workman falls from the ladder and suffers injuries.

But accident may be an event happening internally to a man and in such cases accident and injury coincide. Such cases are illustrated by failure of heart and the like, while the workman is doing his normal work.

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

The connection between employments must be furnished by ordinary strain of ordinary work if the strain did in fact contribute to accelerate or hasten the injury. The burden of proof is on applicant to prove the connection of employment and injury.

Case:- Laxmibai Atma Ram v. Bombay Port Trust

Where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment.

Generally if an employee is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, employer is not liable. But if the employment is contributory cause or has accelerated the death that the death was due to disease coupled with the employment, then the employer would be liable as arising out of the employment.
Case: - Mackenzie v. I.M. Issak

It was observed that the words arising out of employment mean that injury has resulted from risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered.

There must be a casual relationship between the accident and the employment.

If the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed unless of course the workman has exposed himself to do an added peril by his own imprudence.

Case:- Mackinnon Mackenzie and Co. (P.) Ltd. v. Ibrahim Mohammed Issak

Case:- Lancashire and Yorkshire Railway Co. v. Highley

The Supreme Court observed that the test is:

was it part of the injured persons employment to hazard, to suffer or to do that which caused his injury?

If yes, the accident arose out of his employment,

If not it did not.

Case: - Union of India v. Mrs. Noorjahan

A man may be in course of his employment not only when he is actually engaged in doing something in the discharge of his duty but also when he is engaged in acts belonging to and arising out of it.

Case: - Weaver v. Tradegar Iron and Coal Co. Ltd.

It is well settled that the concept of “duty” is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that
he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment. It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

Case: - Naima Bibi v. Lodhne Colliery
A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment and his wife is entitled for compensation.

Case: - TNCS Corporation v. Poonamalai
If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment.

Case:- R.B. Moondra & Co. v. Mst. Bhanwari
In this case it was held that where a employee dies due to an accident arising out of and in the course of employment, it cannot be pleaded that death was due to any of the reasons stated above.

Case:- Smt. Jayamma v. Executive Engineer, P.W.D. Madhugiri Division
- Compensation under Section 4 shall be paid as soon as it falls due. Compensation becomes due on the date of death of employee and not when Commissioner decides it.
- The employer is required to deposit or to make provisional payment based on the extent of liability which he accepts with the Commissioner or hand over to the employee as the case may be even if the employer does not admit the liability for compensation to the extent claimed.
- Where an employer is in default in paying compensation, he
would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to the employee or his dependent as the case may be.

**Case:- Burhwal Sugar Mills Ltd. v. Ramjan**

The Allahabad High Court observed that Section 11 confers a right and not an obligation on employer to have workmen medically examined. If he does not do so it will not debar employer from challenging medical certificate produced by employee. The court held that where the award of compensation was passed on basis of medical certificate without examination of doctor on oath, the award was liable to be quashed since there was no evidence on oath on which compensation could be awarded.

**Case: - United India Fire & General Insurance Co. Ltd. v. Kamalalshi**

If an application is made under the Employee’s Compensation Act to the Commissioner, he has, by virtue of Section 19(1) of the Act, jurisdiction to decide any question as to the liability of any person including an insurer to pay compensation. Section 19(2) further provides that the enforcement of that liability can only be made by him. The Commissioner’s jurisdiction is wide enough to decide the tenability of the objections; the consequential direction of the Commissioner to the insurer to pay is also covered under Section 19(1). In any event in execution of the order against the insured, namely, the employer, the Commissioner can enforce his liability against the insurer under Section 31. In the light of Section 19 read along with Section 31, the order of the Commissioner can never be challenged as being without jurisdiction.

**Case:- Madina Saheb v. Province of Madras**

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. However, where the Commissioner has no jurisdiction to
decide any matter and even fails to decide when raised, thereby leaving a party without any defence the Civil Court will have jurisdiction to entertain such suits.

However, any defect in the application, e.g., when it is not in the prescribed form cannot be fatal to the claim. Any such irregularity can be rectified with the permission of the Commissioner at any stage.

Case: - M.S.N. Co Ltd. v. Mohd. Kunju
It was held that the Commissioner should not make a medical certificate the basis of his award unless he has examined the concerned medical officer.
1. Under Workmen’s Compensation Act, 1923
   (A) Individual manager subordinate to an employer cannot act as managing agent.
   (B) Managing agent includes an individual manager subordinate to an employer.
   (C) Only employer can act as managing agent.
   (D) The appropriate government shall appoint managing agent.

2. The Workmen’s Compensation Act, 1923, the Maternity Benefit Act, 1965 and the Employees State Insurance Act, 1948
   (A) Together can be applicable.
   (B) The Maternity Benefit Act and the Employees State Insurance Act can be applicable at a time.
   (C) The Workmen’s Compensation Act and the Employees State Insurance Act can be applicable at a time.
   (D) If the Workmen’s Compensation Act and the Maternity Benefit Act are applicable, the Employees State Insurance Act is not applicable.

   Reason (R): Employees’ Compensation Act is a comprehensive social security legislation.
   (A) (A) is wrong, but (R) is right.
   (B) (A) is right, but (R) does not related to the (A).
   (C) (A) and (R) are right, and (R) validates the (A).
   (D) (A) and (R) are wrong.

4. While working at the construction of a multi-storeyed building of a company, a worker employed by a ‘contractor’, supplied by Suraj, faced an accident and became temporarily disabled. For paying compensation to the worker, who shall be held responsible as per law?
   (A) The contractor who employed the worker
   (B) The Suraj who supplied the worker
   (C) Both (A) and (B)
   (D) None of the above
5. No contribution is required for getting benefit under which of the following legislations?
(A) Maternity Benefit Act
(B) Employees’ Compensation Act
(C) Both under (A) & (B)
(D) None of the above

6. If the money is due from the employer under the settlement or award, the workman or his assignee can make an application to the appropriate government for the recovery within the period given below.
(A) One year.
(B) One year and also after the said period of the appropriate government is satisfied that the applicant has sufficient cause for not making the application within one year.
(C) Two years.
(D) Three years.

7. The name of which of the following legislations has been recently changed?
(A) Workmens’ Compensation Act
(B) Employees’ State Insurance Act
(C) Maternity Benefit Act
(D) Payment of Gratuity Act

8. Which of the following statements relating to the Employees’ Compensation Act is not correct?
(A) This Act has a link with the Workmen’s Compensation Act
(B) This act is the outcome of the amendment that was made to the Workmen’s Compensation Act
(C) This act does not have any provision relating to temporary disablement of workmen
(D) This act has a provision relating to permanent partial disablement

Reason (R): Fatigue is the result of personal health condition of the worker as well as by overwork, monotony and boredom as part of work experience.
Codes:
(A) (A) is right but (R) is wrong.
(B) (A) is right and the (R) rightly explains the (A).
(C) Both (A) and (R) are wrong.
(D) (A) is wrong but (R) is right.

10. If there is willful 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 safety of workman,

(A) Employer is liable to pay compensation
(B) Employer is not liable to pay compensation
(C) Appropriate government is liable to pay compensation
(D) The Trade Union is liable to pay compensation

11. In case of fatal accident if the commissioner serves notice to the employer based on his source

(a) The employer can neglect the notice.
(b) If the employer thinks liable, he shall make the deposit within sixty days of the service of notice.
(c) If the employer thinks liable, he shall make the deposit within thirty days of the service of notice.
(d) If the employer is not liable, he shall in his statement indicate the grounds on which he disclaims liability.

(A) All statements are correct.
(B) All statements are incorrect.
(C) Only (a) and (d) are correct.
(D) Only (c) and (d) are correct.

12. Under Workmen’s Compensation Act, 1923, which of the following are considered as dependent of deceased workman for the purpose of paying compensation?

(i) a minor brother or an unmarried sister or a widowed sister
(ii) a widowed daughter-in-law
(iii) a minor child of a pre-deceased son
(iv) a minor child of a pre-deceased daughter where no parent of the child is alive
(v) a paternal grandparent if no parent of the workman is alive;
13. Under this Act, employer shall not be liable to pay compensation in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding _______ days;
(A) 7
(B) 3
(C) 5
(D) 2

14. Under this Act, employer shall not be liable to pay compensation in respect of any injury not resulting in death or permanent total disablement caused by an accident
(A) Under the influence of drink or drugs
(B) Due to 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
(C) Due to the wilful removal or disregard by the workman of any safety guard or other device he knew to have been provided for the purpose of securing the safety of workman
(D) All the above