

ABSTRACT OF THE EMPLOYEE'S COMPENSATION ACT. 1923

1. WORKMAN V COVERD :

The Act applies to all persons (other than those whose employment is of a casual nature and who are employed otherwise than for the purpose of the employer's business). Who are railway servants (other than those permanently employed in any administrative, district or sub-divisional office of a railway) and who are employed in industries specified in scheduled -II.

II. EMPLOYER'S LIABILITY FOR COMPENSATION :

If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation is payable in respect of any injury which does not result in total or partial disablement for a period exceeding 3 days,(2) no compensation is payable for the first three days of temporary disablement even when that period is exceeded, and (3) no compensation is payable in respect of any injury, not resulting in death caused by an accident directly attributable to :-

- i) The workman having been at the time of the accident under the influence of drink or drugs ;or
- ii) Willful disobedience of the workman to an order expressly given or to a route expressly framed, for the purpose of securing the safety of the workmen ; or
- iii) Willful removal or disregard by the workman of any safety guards or other device which he know to have been provided for the purpose of securing the safety of workmen.

III. COMPENSATION FOR DISEASES :

- (a) If a workman employed in any employment specified in Part-A of the schedule III contracts any diseases specified therein as an occupational disease peculiar to the employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment)_ in any employment specified in Part-B of the schedule -II , contract any disease specified therein as an occupational disease peculiar to that employment, or If a workman which in the service of one or more employers in any employment specified in Part-C of the scheduled-III for such continuous period as the Central Government may specify in respect of each such employment contracts any disease specified there in as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this action and.

Unless the contrary is proved the accident shall be deemed to have arisen out of and in the course of the employment.

- (b) If any disease specified in Part-C of Schedule-III as an occupational disease peculiar to that employment has been contracted by any workman during the continues period specified under sub-section(2) in respect of that employment and the workman has during such period been employed in such employment under more than one employer, all such employers shall be liable for the payment of compensation under this Act in such proportion as the Commissioner may, in the circumstances, deem, just.

IV. DEFINITIONS :

- (a) **DEPENDENT** – Dependent means (i) Widow, minor legitimate son, unmarried legitimate daughter and the widowed mother of the deceased workman; (ii) a son or a daughter who has attained that age of 18 years and who is infirm in case he was wholly dependent on the earnings of the workman at time of his death; and widower, parents other than widowed mother, illegitimate son, unmarried, illegitimate daughter or a daughter legitimate or illegitimate if married and minor or if widowed sister, widowed daughter in law, minor child or a pre-deceased son minor child of a pre-deceased daughter where no parents of the child is alive, or a paternal grand parent of no parent of the workman is alive.
- (b) **PARTIAL DISABLEMENT.**
- i) **TEMPORARY** – Temporary partial disablement means such disablements as reduces the earning capacity of the of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement.
- ii) **PERMANENT** – Permanent partial disablement means (i) every injury specified in the Schedule-I to the Act. And (ii) such disablement as reduces the earning capacity of a workman in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.
- iii) **TOTAL DISABLEMENTN** – Total disablement means such disablement which incapacitates a workman for all work which he was capable of performing at the time of the accident and includes ipso facto permanent total loss of sight and any combination

V. AMOUNT OF COMPENSATINA PAYABLE :

Amount of Compensation- (i) Subject to the provision of the Act the amount of Compensation shall be as follows, namely :-

- (a) Where death result from the injury – an amount equate to forty percent of the monthly wages of the deceased workman multiplied by the relevant factor, or an amount of twenty thousand rupees whichever is more;
- (b) Where permanent total disablement result from injury – an amount equal to fifty percent of the monthly wages of the injured workman multiplied by the relevant factor on an amount to twenty four thousand rupees whichever is more.

Explanation I- For the purpose of clause (a) and clause (b), relevant factor , in relating to a workman means the factor specified in the second column of the Schedule-IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

Explanation – II- Where the monthly wages of a workman exceed one thousand rupees , his monthly wages for the purpose of the clause (a) and clause (b) shall be deemed to be one thousand rupees only.

- (c) Where permanent partial disablement results from injury –(i) in the case of an injury specified in Part-II of Schedule-I such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified there in as being the percentage of the loss of earning capacity caused by that injury , and .
(ii) in the case of an injury not specified in Schedule-I, Such percentage of the compensation payable in the case of the permanent of the total disablement as is proportion able to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury .

Explanation-1 Where more injuries than one are caused by the same accident the amount of compensation payable under this head shall be aggregated but not so in any case as so exceed the amount which would have been payable, if permanent total disablement had resulted from the injuries :

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

- (d) Where temporary disablement whether total or partial results from the injury a half monthly payment of the sum equivalent to twenty five percent of monthly wages of the workman , to be paid in accordance with the provisions of sub section (2)

(2) The half monthly payment referred to in clause (d) of the sub-section.

(1) shall be payable on the sixteenth day-

- (i) from the date of disablement where such disablement lasts for a period of twenty eight days or more ; or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement last for a period of less than twenty eight days ; and thereafter half-monthly during the disablement or during a period of five years. Whichever period is shorter :

Provide that-

- (a) There shall be deducted from any lump sum monthly payment to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payments , as the case may be ; and
- (b) No half-monthly payment shall in any case exceed the amount if any by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he was earning after the accident.

Explanation – Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation with the meaning of clause (a) of the provision.

(3) On the ceasing of the disablement before the date on which any half monthly payment falls due there shall be payable in respect of that half monthly a sum proportionate to the duration of disablement in that half month.

VI COMPENSATION NOT TO BE ASSIGNED, ATTACHED OR CHARGED

No lump sum or half monthly payment payable under this Act. Shall in any way be capable of being assigned or charged or liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

VII NOTICE AND CLAIM

No claim for compensation shall be entertained by the Commissioner unless the notice of the accident has been given in the prescribed manner 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 of the occurrence of the accident or, in case of death, within two years from the date of death. The Commissioner may entertain and decide any claim to compensation, notwithstanding that the notice as prescribed has not been given or the claim has not been preferred in due time, if he is satisfied that failure to give the notice or prefer the claim was due to sufficient cause.'

VIII LIABILITY FOR CONTRACTOR'S WORKMAN

If the employer or principal engages a Contractor for the execution of the whole or any part of any work which is ordinary part of the trade or business of the principal, the principal shall be

liable to pay to Contractor's workmen the compensation which he would have been liable to pay if the workman had been employed directly by him. The principal shall however, be entitled to be indemnified by the contractor and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

IX CONTRACTING OUT

Any contract or agreement, whereby a workman either relinquishes or reduces his right of compensation, 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.

X. APPEARANCE OF PARTIES

Any appearance, application or act required to be made or done by any person before or to a Commissioner may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company or a registered Trade Union or by an Inspector of Factories or Inspector of Mines or by any other officer specified by the Government in this behalf authorized in writing by such person or, with the permission of the Commissioner, by any other person so authorized.