CHAPTER V
COMPENSATION SYSTEM FOR OCCUPATIONAL INJURIES AND DISEASES

The Compensation System for Occupational diseases and injuries is the most vital component of any Social Security Scheme for the working class. This chapter concentrates on the procedure and adequacy of compensation awarded to the labouring population in Faridabad.

THE ESIS COMPENSATION SYSTEM: AN OVERVIEW

The Workmen’s Compensation Act (WCA) provided for a one time lumpsum compensation to be given by the principal employer to the employee in case of disability or death due to an injury or disease sustained at the workplace. This was replaced by the ESI Act 1948, in areas and industrial units notified by the State Governments. The ESI Act provides for compensation in the form of periodic payments in case of Employment Injury or death due to an occupational accident.

The disablement benefit is of two types viz Temporary and Permanent. Temporary disablement is defined as a condition resulting from an employment injury which renders an employee temporarily incapable of doing work. The compensation awarded during this period is technically termed Temporary Disablement Benefit (TDB). Permanent disablement is of two types viz partial or total. Permanent partial disablement is defined as such disablement of a permanent nature that reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement. Permanent total disablement is defined as disablement of a permanent nature that incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement. The compensation awarded for such injuries is technically termed Permanent Disablement Benefit (PDB).

The present rates of TDB are given in Appx 2. The PDB rate is decided after the medical board, constituted by the ESIS, fixes a percentage of “loss of earning capacity” after examining the worker and perusing his medical record. Thus, if the medical board records the loss of earning capacity as 50%, the worker will get 50% of the TDB rate.
Both the TDB and the PDB are given in the form of periodic monthly payments. In 1989, a provision has been inserted in the Act for providing lumpsum PDB payment to workers, subject to the fact that the lumpsum PDB does not exceed Rs 10,000 at the time of commencement of final award of his permanent disability.

The ESI Act also provides for compensation to dependents of an insured person who dies as a result of an employment injury. The benefit paid in this case is equivalent to the TDB rate (Appx 2).

To provide the above benefits, the ESI Act and Rules framed therein provide for creating a suitable infrastructure and lay down the procedure for the same. The ESI Local Office Manual describes the guidelines to be followed for making such payments. Accordingly, the ESIS has Regional Offices (functioning directly under the National office located in New Delhi) in all States, headed by an officer of the rank of Regional Director. These Regional offices are responsible for organising disbursement of all cash benefits in the State. They have Local Offices at various industrial areas to assist them in the discharge of their functions. Local Offices are headed by officers of the rank of Manager.

Whenever, a worker sustains an Employment Injury, the employer is bound by law to inform the dependent Local Office and ESI dispensary. The LO Manager carries out Investigation and confirms that the worker has sustained an Employment Injury. The worker is then given TDB based on certification by the dispensary doctor. This payment continues till the injury stabilises. After stabilisation, the worker is examined by an ESI Medical Board, which decides his "loss of earning capacity". He accordingly gets PDB. In the event of death due to Employment injury, the dependents are advised to apply for Dependent Benefit, which is sanctioned by the RO.

In case a worker or dependent is aggrieved by any of the above decisions, he can appeal before a Medical Tribunal/ Employees Insurance (EI) Court. This procedure is discussed in detail in Chapter VI.

DEFINITION OF EMPLOYMENT INJURY

The original definition of Employment Injury as per the ESI Act is:
"Employment Injury means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment in factory or establishment to which this Act applies, which injury or occupational disease would entitle such employee to compensation under WCA, if he were a workman within the meaning of the said Act."

In 1966, a new definition was added to replace the above which reads:

Employment injury means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India’

It is clear from the above, that previously the insured persons were kept at par with the workmen within the meaning of WCA, and the circumstances in which the insured person could claim benefit under the ESI Act, were similar to the circumstances in which a workman under the WCA could claim compensation for Employment Injury under Section 3 of the WCA. By inserting this new clause, the Legislature intended that the ESI Act would lay down provision of its own so that the spirit of social insurance would be inculcated in the Act for industrial workers in this country as has been done in England by the National Insurance (Industrial Injuries) Act 1946 (Mallick, 1995). However, in practice it is observed that apart from a cosmetic change in definition, there is absolutely no extra benefit accrued to the worker as a result of this legislative amendment.

When we examine the Second Schedule which lays down guidelines on which the Medical Board is expected to award compensation for certain Occupational Injuries under the ESI (Appx 1) we find that it is a verbatim copy of Schedule I of the WCA (Akalank Publications, 1997). This in effect means that the quantum of compensation given under the two Acts remains the same. While fixing similar levels of compensation, the ESI scheme has ignored the following pertinent points:

1) Under the WCA, a large one time lump sum payment was given for a permanent disablement, whereas under the ESI a small fixed monthly pension is given for the same. This in effect means that the ESI gives the worker much less than even the
interest (he would have earned on the lumpsum given under WCA), while retaining the capital permanently.

2) Under the WCA, the liability to pay compensation was totally that of the employer, unlike the ESIS, where the worker is also a financial contributor.

3) In the ESIS, the monthly disability pension is only admissible till the death of the worker and after his death (if the death is not due to Employment Injury), his family has to fend for itself. In other words, premature death due to non occupational reasons, after an Employment Injury results in financial savings to the Corporation. Under the WCA, since a lumpsum was awarded to the worker at the time of accident itself, his family can continue to enjoy the benefits of interest accrued on the lumpsum even after his death.

To illustrate the inadequacy of the present ESI compensation procedure, we present the Case Report of a 100% disabled young worker of Faridabad. Kamal Bharadwaj, son of Chandra Mohan, aged 22 years migrated from Lansdowne (Uttar Pradesh) and started working in Raj Enterprises 16/5 Old Faridabad in 1995. His factory is registered under the Factories Act and covered by the ESIS. It is an SSI Unit employing only 12 workers. He was assigned to perform job work as an unskilled worker on the boring machine. He was paid only Rs 1100 per month, though he was made to sign on forms which showed that the employer was paying him minimum wages fixed by the Haryana Government. On 20/10/97, he sustained a serious injury in a major accident when his shirt got stuck in the machine and he got dragged on to it. Timely intervention by his colleagues saved his life but the accident rendered him a cripple. He was rushed to ESI NH 3 Hospital. His father told us that the doctors in the hospital kept on telling him that his son is a road traffic accident case and not an employment injury. The matter was sorted out by the intervention of the employer who testified it to be an occupational accident.

Nonetheless, ESI doctors informed them that he is too serious to be handled by the ESI Hospital and the Casualty Medical Officer referred him to Safdurjung Hospital New Delhi. At Safdurjung, an Magnetic Radio Imaging (MRI) was done costing Rs 5000 (paid by individual’s father). He was diagnosed as Traumatic Fracture with Posterior subluxation at Cervical 7 vertebra (C7) with mild extradural compression with cord contusion with Paraplegia on 21/10/97. He remained admitted in the Delhi hospital for a fortnight and was
then discharged for further care at home. His father brought him to his residence which is located in a closed down factory. The father is employed as a chowkidar in this factory for Rs 1400 per month, but officially his wages are being shown as Rs 2000. The ESI Hospital now states that they cannot do anything more for him. His father has bought a mattress for Rs 1300 and the employer has ‘donated’ a wheel chair for the boy. The boy is bedridden, has bedsores and urinary and stool incontinence. He cannot sit on the wheel chair due to his bedsores. All expenditure for treatment is borne by his father and he has not got a penny as reimbursement despite applying for the same. The father says that the ESIS keeps on making him run in circles from the LO to the RO to the ESI Hospital to Safdurjung for documentation. He has finally given up any hope of getting any medical reimbursement. The boy urgently needs a cervical collar as advised by the referral hospital but ESIS refuses to take any action on the matter. No ESIS official has ever visited the boy in his home, though there is provision for domicilliary visits under this Scheme. It is pertinent to point out that under Section 103 B of the ESI Act this boy is entitled to medical benefit from the ESIS till life, even if he leaves insurable employment. But the attitude of the ESI doctors has rendered this clause non operational in his case. It is a paradoxical situation where on one hand, the ESIS has extended its medical benefit scheme to even retired employees and on the other hand it is unable to provide adequate care to even serving workers. Moreover, nobody has spared a thought for the Rehabilitation of the boy though Rehabilitation Benefit is one of the benefits under the ESI Scheme.

As long as his injury was not stabilised he got TDB @ Rs 39.24 per day (21/10/97 to 21/9/98) from the ESIS. This stopped the moment the dispensary doctor certified his injury as ‘stable’. He then applied for medical board. Meanwhile, he also requested the LO Manager for some interim advance payment till finalisation of the Board but the LO Manager told him there is no such procedure. As per official records he was sent a letter at his residence asking him to appear before the medical board but the same was not received by the worker. His father then approached the RO and after repeated visits was informed that his son should be brought for the medical board on 8/1/99. The father requested that in view of the medical condition of his son, the medical board should examine him at his house itself, but he was shooed away on the ground that there is no such system in vogue.
The medical board at Faridabad held on 8/1/99 was attended by us. The boy was brought to the RO in an autorickshaw by his father at 0900 hrs. However, it was difficult to carry him to the first floor (venue of the medical board) and so he lay on a stretcher on the ground itself. The father of the boy made repeated requests through the clerical staff of the RO that the boy may be examined first in view of his condition. But the Board decided to see him only after examining all other patients. Finally at around 1130 the boy was seen by the Surgeon and the Orthopaedic Surgeon. They awarded him a disability of 100%. However, it took another 9 weeks for the accounts branch to finalise his compensation (PDB) at Rs 39.24 per day for life. This was despite repeated visits by the father of the disabled boy, to the RO, requesting them to have mercy on his son.

This young lad has not received any salary from his employer after the accident. He is not in a position to perform his original or for that matter any other work for the rest of his life. The employer has dismissed him from service. He needs a permanent assistant to look after him for the rest of his life. He also has to incur expenditure for his future treatment. As a result of his disability he will never get married. Thus, a compensation of Rs 39.24 per day (Rs 1177 per month) is grossly inadequate for this boy. It is pertinent to point out that as per WCA this boy is entitled to a one time lumpsum compensation of Rs 2,15,000. The interest earned on investing this sum @ 12% interest works out to Rs 2150 per month. So in effect the ESI is paying him only about 50% of what he would have got under WCA, while permanently retaining the principal.

All the executives of the ESIC whom we met during our Study, tried to justify periodic payments under ESI as against lumpsum payments under WCA on the grounds that the former also provided Medicare services, while the latter did not do so. The Case Report of Kamal Bharadwaj illustrates that the quality of medical care provided by the ESIS, at the cost of holding on to his entitled capital under WCA, is nothing short of exploitation of the working class. When we explained the economics of the WCA and the ESIS in their specific case to the Bharadwaj family, the entire family was of the unanimous opinion that given a choice they would jettison the medical care services of the ESIS in favour of a composite lumpsum payment under the WCA. Therefore, to do justice to the working class, the ESI scheme should logically give higher percentages of compensation than that given under WCA, or allow all workers the option of taking a lumpsum payment.
It was also expected that the Corporation would frame a separate schedule to guide the Medical Board for assessment of non schedule injuries. These are injuries which are not included in the Second Schedule (Appx 1) such as shortening of limb due to fracture, non union of fracture, partial auditory deafness, etc. However, despite the scheme having been in existence for over 40 years, the Corporation has not come out with any guidelines on compensation for non schedule injuries. This has been left to the discretion of the members of the medical board and hence can be highly subjective.

**OCCUPATIONAL INJURIES**

Technically, the term 'Employment Injury' includes both Occupational Diseases and Injuries caused by industrial accidents. While the latter is mostly apparent, Occupational diseases due to their insidious nature require dedicated medical expertise for proper diagnosis and compensation. The ESIS offers both types of benefits viz Disability Benefit for the injured worker and Dependent Benefit for the family of a deceased worker, in case they satisfy the following conditions (DGESIC, 1988):

1) It must be a personal injury to an employee,
2) It must be caused by an accident or by an occupational disease,
3) It must have arisen out of employment of the employee in a covered factory or establishment, and
4) It must arise in the course of his employment in a covered factory or establishment.

There is no minimum period of employment for claiming either disability or dependent benefit, for example, if a worker sustains employment injury even within minutes of taking up a new job, he would be entitled to one of these benefits. Further, Disability Benefit is of two types; Temporary Disablement Benefit and Permanent Disablement Benefit.

**Temporary Disability Benefit**

This consists of periodical payments during the period when the injury is not stabilized, and it amounts to approximately 70% of the normal wages of the worker. The current rates are given in Appx 2. As soon as a worker sustains an injury due to his employment, his employer is to fill an accident report form (Form 16) and send the same to
the ESI Local office and dispensary. On receipt of the Form the local Office Manager (ESI) will confirm the existence of the Employment Injury by visiting the factory and perusing the medical certificate given by the dispensary doctor. He will then make payment of Temporary Disablement Benefit (TDB). It is important to note that TDB is given only for the period that the employee does not attend to his work. The worker does not get any wages during this period, a fact that denies all logic of permanent employment. By giving only 70% of his normal wage as TDB, the ESIS does not even give the injured worker full compensation for loss of wages, while completely absolving the employer from all his liabilities. Contrast this with the Maternity Benefit. When a woman worker is pregnant, she is given full wages for the prescribed period of confinement (Appx 2). Similarly, a person on Enhanced sickness benefit due to a Family Planning operation is given full wages for absence from work in the ESIS (ESIC, 1997a). This shows that the Family Welfare Programme with its stress on 'Safe Motherhood' has had a profound influence even on this Occupational Health Scheme.

One is not for a moment suggesting that the Maternity Benefit rate be lowered. But it is not illogical to expect that in an occupational social security legislation, the rate for compensation for an employment injury should be at least equal, if not more than the compensation given for an essentially physiological condition like pregnancy. The idea of giving the above illustration is to highlight the priorities of the ESIS.

On an average, 5139 and 2014 workers have received TDB in Haryana and Faridabad respectively in the last 5 years (Table 5.1). Thus, Faridabad accounts for 39% of all cases given TDB in Haryana.

**TABLE 5.1: NUMBER OF NEW CASES OF TEMPORARY DISABLEMENT BENEFIT ADMITTED IN HARYANA AND FARIDABAD**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>HARYANA*</th>
<th>FARIDABAD#</th>
<th>Percentage(Faridabad of Haryana)</th>
</tr>
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<tbody>
<tr>
<td>1993-94</td>
<td>4903</td>
<td>1196</td>
<td>24.39</td>
</tr>
<tr>
<td>1994-95</td>
<td>5880</td>
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</tr>
<tr>
<td>1995-96</td>
<td>5642</td>
<td>2442</td>
<td>43.28</td>
</tr>
<tr>
<td>1996-97</td>
<td>5248</td>
<td>2281</td>
<td>43.46</td>
</tr>
<tr>
<td>1997-98</td>
<td>4022</td>
<td>1490</td>
<td>37.05</td>
</tr>
<tr>
<td>AVERAGE</td>
<td>5139</td>
<td>2014</td>
<td>39.19</td>
</tr>
</tbody>
</table>

Source: *Annual Statistical Abstracts (ESI Corporation)
# Compiled from Master Ledger of Monthly Statistics (RO ESI Faridabad)
The significant drop in number of accidents compensated in 1997-98 does not mean that industrial accidents have decreased. ESI officials pointed out that this has come about due to a landmark decision of the Supreme Court in Oct 96 which has redefined the concept of admissibility of commuting accidents (from home to workplace and back) as Occupational Accidents. Since Faridabad is an Industrial Township located on both sides of the National Highway (Mathura Road), it is an area where Road Traffic Accidents are common. Due to the Supreme Court judgement, these Road Traffic Accidents are not admitted as Employment Injury since 1997-98.

According to the policy of the ESI Corporation, commuting accidents were treated as Employment Injury in the State of Haryana and the workers given compensation for such accidents till 1996 (DGESIC, 1988). Senior executives of the Corporation pointed out that there was however, considerable debate among the ESI Staff and the labour ministry regarding admissibility of such accidents as occupational or otherwise. In Kerala one IP, Francis D’ Costa who got injured in a Road Traffic Accident in 1971 while commuting to his factory was denied compensation by the Local Office on the grounds that the same was not an Employment Injury. The individual appealed to the local EI Court who set aside the order of the Local Office and directed the ESI to pay him compensation. The ESI Corporation filed an appeal in the Kerala High Court who rejected the same on 25 Nov 77. However, the Corporation filed a Special Leave petition before the Supreme Court. This was heard by a two judge bench who rendered conflicting decisions on the matter and therefore the issue was referred to a larger three judge bench of the Supreme Court (1993 Supp (4) SCC 100). The 3 Judge Bench in its decision dated 11 Sep 96 held that a personal injury sustained by an employee in a commuting accident is neither out of nor in the course of Employment (1996 (74) FLR 2326 (SC)). The plea put forward by the Counsel for the worker was that since the worker was commuting to his place of employment when the accident occurred; hence as per the theory of notional extension, the accident occurred out of and in the course of employment. The Court while rejecting this plea gave the following interpretation of the concept of notional extension:

1) Road accident is not ‘incidental to’ or ‘arising out of employment’: The injury must be caused by an accident which had its origin in the employment. A road accident, while an employee is merely on his way to his place of employment cannot be said to have origin in his employment in the factory. A road accident may happen anywhere and at
any time. But such accidents cannot be said to have arisen out of employment unless it can be established that the employee was doing something incidental to his employment. In view of this, such commuting accidents are not incidental to his employment.

2) Road accident does not occur ‘in the course of employment’: An employee is not ‘in the course of his employment’ from the moment he leaves his home and is on his way to work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension of employer’s premises.

Acting quickly, the ESI Corporation promptly issued a circular on 31 Oct 96 to all its Regional Offices not to give compensation in the case of such commuting accidents (ESIC, 1996a). Therefore, all such accidents are now denied Disability/ Dependent Benefits not only in Faridabad but in the entire country. As a consequence, the low paid labourers had to bear the costs for accidents that occurred while commuting to and fro work. This did restrict the spirit of ‘Social Security’. Workers leave the safety of their village and hearth to earn a living in the Industrial Townships, thus getting exposed to Road Traffic Accidents. There is no obligation on the part of the employer to provide housing facilities to him. This forces them to stay in dingy, unhygienic and unauthorised colonies (Jhuggis), where the basic necessities of life are a luxury. It is only his employment which forces him to stay there, so that he can be near his place of employment. His exposure to road traffic hazards while going to or returning from work has therefore necessarily arisen ‘out of’ and ‘in the course’ of employment. It would perhaps be a more liberal interpretation of the law to not deny him compensation by a pure technical interpretation of the theory of notional extension. Social Justice demands that due consideration be given to the inherent pressures to which the working class is exposed to, while such landmark decisions in the realm of ‘Social Security’ are being made. Subsection 51 C of the ESI Act states that ‘accidents while travelling in employers transport shall be presumed to have arisen out of and in the course of employment’. Only senior officials of the company have the privilege of travelling in company transport from their home to factory and back. It is ironic that due to this subsection, these officials will continue to get compensation for commuting accidents whereas, the ordinary worker who cycles down to work or takes a bus due to his meagre earnings, is denied compensation.
In Faridabad district, it was observed that the least paid, unskilled, casual and contract labourers were most affected by this decision while the foreman/clerical and skilled workers remained untouched. Once a commuting accident takes place, the workers are at the mercy of the management. It is up to them to show the accident as commuting or otherwise. The higher paid skilled workers and clerical staff are close to the management. ESI staff pointed out that whenever any such worker is injured in a commuting accident, the management shows them as being on duty. They are shown by the management as being directed to bring an item for the factory from a shop enroute or delivering a message to any industrial unit while returning home. The accident thus becomes an occupational accident and the worker gets his compensation. Thus, Ram Kumar, a clerk in M/s Polar Auto and Engineering (Pvt) Ltd, 132 DLF Industrial Area got his Road Traffic Injury (sustained on 8/2/99 while driving his own motorcycle) admitted as a case of Employment Injury. But when a low paid casual worker meets the same fate, the management denies even the knowledge of any accident, let alone attempt to cover up the worker. The case of a deceased contract labourer of Faridabad will illustrate this point.

Late Ram Rattan son of Hari Dutt was employed with M/s Fixo Pan Machine (Pvt) Ltd, Plot No. 102, Sector 25, Ballabgarh, Faridabad. He had been working in this factory for the last one year. His factory was covered by the ESIS. After completing his work on 16/4/97, he left the factory premises for his home on his cycle at around 8 pm, when he was run over by a vehicle and died on the spot. A (First Information Report) FIR was registered with the local police station by a colleague immediately. The errant vehicle could not however be traced. The management did not report the accident to the LO ESI even after the individual’s wife informed them of the same. They did not extend any help to the bereaved family on the pretext that the individual was a contract labourer and as his contractor is his principal employer, the latter is only required to complete all formalities. Nobody guided the aggrieved illiterate widow on the future course of action even on humanitarian grounds. Based on wrong legal advice she engaged a Counsel, who filed a suit under WCA in the Office of the Labour Officer. Summons were issued to the management by the Labour Officer. The management in its reply denied total knowledge of any accident and also stated that WCA was not attracted in this case as they were covered by the ESI Act. The case was dismissed after 18 months.
Thereafter, she made a desperate appeal to the RO Faridabad for compensation on 21/1/98. She received a prompt reply that in view of the Supreme Court judgement in ESI (RD) vs Francis D Costa, her husband did not sustain Employment Injury, and hence she was not entitled to any Dependent Benefit. Disillusioned, she left for her native place to fend for herself and her 4 minor children. This Case Report highlights the implications of the Supreme Court interpretation of Employment Injury in the instant case, to the labouring class. It is also interesting to note that though the Supreme Court rejected the plea of Francis De Costa (the worker injured in the road accident while commuting to work), but obviously moved by his plight, they allowed him to retain his full compensation received from the ESI Corporation. They also awarded him the costs of the litigation even though he had lost the case. This shows that the Supreme Court showed 'human sensitivity' in the case of Francis De Costa as the individual was 'seen' by them. Sadly, however, their judgement conferred a statutory right on the ESI Corporation to be insensitive to the misery of subsequent Francis De Costa's or widows of Ram Rattan's.

The Supreme Court's decision has tremendously emboldened the Regional Office (RO) Faridabad to treat even non-commuting road traffic accidents as commuting accidents. The theory of notional extension is invariably held against the poor worker to deny him his legitimate dues. Karan Singh, a fitter in M/s KG Khosla Company (Pvt) Ltd Faridabad, sustained multiple injuries on his face along with fracture of the right hand, while travelling in a bus from Faridabad to Delhi to deposit his Provident Form with the office of the Provident Commissioner. He was however denied compensation by RO ESI Faridabad on the grounds that “Deposit of PF Form is work of a personal nature and hence cannot be construed as Employment Injury”. The RO Faridabad thought it convenient to ignore the fact that the contribution to PF Scheme ‘arose out of’ and ‘only’ in the course of Employment, as an unemployed worker would never go to the office of the Provident Commissioner to submit a Form. Exasperated, by this ridiculous interpretation of Employment Injury, the poor worker filed an appeal in the EI Court on 11/3/95. The case is still pending.
Permanent Disablement Benefit

This benefit is given as per Section 51 of the ESI Act which states that a person who sustains permanent disablement whether total or partial shall be entitled to periodical payments by way of compensation (DGESIC, 1988). The amount is given as a percentage of the TDB rate (Appx 2). For example if a persons disability is assessed at 20% by the medical board, then the individual will be paid 20% of the TDB rate on a monthly basis till his death. This in effect means that this individual will be paid 14% of his wages as compensation.

As soon as an individual's injury gets stabilized (as certified by the treating ESI doctor) he is required to make an application to the Local Office (LO) for convening a Medical Board. The LO processes the documents and then informs the worker about the venue and date of the Medical Board. The Medical Board examines the worker and communicates its decision to the individual after final processing of the papers by the accounts branch at the Regional Office (RO). In case either party feels aggrieved by the decision of the Medical Board they can appeal before a Medical Appellate Tribunal (MAT) or before an EI Court. The decision of the latter is final and a further appeal to the High Court can only be made on points of Law and not on facts.

The Medical Board for Faridabad comprises ESI doctors from Delhi. They include the Medical Supdt (Chairman), Orthopaedic Surgeon, General Surgeon and the Eye Specialist of ESI Hospital Jhilmil, Delhi. These doctors are from the Centralized cadre of the ESI as the ESI Medicare Scheme is run directly by the Corporation in Delhi and NOIDA. The Medical Board examines the cases in the conference hall of the RO Faridabad. The Deputy Director (Benefits) and the Regional Director Faridabad pointed out that local ESI doctors are not chosen for the Medical board (despite ESI having 2 hospitals and 17 dispensaries in Faridabad), as they are under the control of the State Government and not directly under the ESI Corporation. Choosing doctors from Delhi, according to these ESI executives, ensured an "objective and corruption free" assessment of disabilities.
An average of 373.4 workers were granted compensation annually for permanent disabilities by this Medical Board in the last five years (Table 5.2). If we had the yearly accident incidence figures of Faridabad from the Factory Inspectorate, then it would have been easy to work out the percentage of cases granted PDB. However, we have already seen in the last Chapter that there is gross underreporting of industrial accidents to the Factory Inspectorate in Faridabad. This anomaly becomes even more apparent when we compare Table 5.2 (that gives the number of workers granted PDB in Faridabad) with Table 4.10 (that gives the number of occupational accidents reported to the Factory Inspectorate in Faridabad). While a total of only 945 industrial accidents (Table 4.10) were reported in Faridabad in the last 5 years, the number of workers granted permanent disability during the same period is 1867 (Table 5.2). This clearly indicates that managements in Faridabad get away lightly despite not reporting industrial accidents to the Factory Inspectorate. Therefore, for the purpose of calculations we are forced to rely on the incidence of TDB cases in Faridabad during the same period as given in Table 5.1. We can safely assume that these figures are a fair reflection of the number of industrial accidents (among ESI covered workers) in Faridabad in the last 5 years, as all workers who suffer an accident report to their local dispensary and it is the dispensary doctor who initiates the process for claiming TDB. By this assumption, we find that on an average 19% of injured workers in the last 5 years have been granted PDB in Faridabad (Table 5.2).
The Medical Boards are held regularly in Faridabad (Table 5.3). This is a significant achievement as the ESI Scheme has often faced a lot of flak for not holding Medical Boards in time (PRIA, 1996, page 70; 1992.).

**TABLE 5.4: INDICATORS OF SPEED (AVERAGES OF LAST FIVE YEARS) OF COMPENSATION IN FARIDABAD**

<table>
<thead>
<tr>
<th>Time taken between stabilization of injury and holding of Medical Board</th>
<th>Time taken between holding of Medical Board and finalisation of payment</th>
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<tbody>
<tr>
<td>No. of Days</td>
<td>No. of cases</td>
</tr>
<tr>
<td>----------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>30-40</td>
<td>56</td>
</tr>
<tr>
<td>41-50</td>
<td>100</td>
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<td>51-60</td>
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<td>61-70</td>
<td>514</td>
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<tr>
<td>121-130</td>
<td>93</td>
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<tr>
<td>&gt;131</td>
<td>33</td>
</tr>
<tr>
<td>AVERAGE</td>
<td>77.6</td>
</tr>
</tbody>
</table>

Source: Compiled from Permanent Disability Register (RO ESI Faridabad)

We calculated the indicators of speed of compensation in Faridabad based on the data available in the PDB register of RO Faridabad (Table 5.4). The average time taken between stabilization of injury and holding of medical board is 77.6 days. Thus, on an average it takes 4 months for a worker to get his compensation amount, from the time his injury has stabilised. This is a crucial period that causes misery to the cash starved worker and his family for the following reasons:

1) The moment his Injury is certified as stabilised, the TDB payment stops. Further payment will only be given once the accounts branch clears his payment after holding of the Medical Board.

2) We have already discussed in Chapter III that ESI hospitals and dispensaries are short of drugs and that the quality of medical care is not satisfactory. The procedure for obtaining medical reimbursement for expenses is also cumbersome. The case of Kamal Bharadwaj (the 100% disabled worker who's Case Report has been presented earlier) is a case in point. Our User Survey also brought out that workers have to continue to spend money on treatment due to inherent problems in the functioning of the ESI Health Service System.

3) In the case of serious injuries, stabilisation takes more than 6 months. As the worker has been getting TDB for more than six months, he no longer gets protection from
dismissal from service by the employer. Employers take recourse to ESI General Regulations 98 that empower them to dismiss an employee who has taken TDB for more than six months. Though this regulation is contradictory to Section 19 of the ESI Act (which stipulates that the Corporation has powers to introduce schemes for rehabilitation and redeployment of the disabled worker), but the Supreme Court has upheld the right of an employee to dismiss a worker after termination of TDB (AIR 1964 (SC) 1272). Most employers have taken advantage of this judicial interpretation and are not willing to keep a disabled person even if he is partially disabled or to even give him a light job as recommended by a doctor (Mallick, 1995). The Senior Factory Inspector, Regional Director ESI Faridabad and workers were unanimous in their opinion that the managements treat the worker as a commodity which is to be disposed off as scrap when uneconomical to them. While the skilled workers may be retained despite their disability as managements find it difficult to get a replacement, the unskilled and the casual/contract labourer is invariably shown the door after six months of TDB/ stabilisation of his injury. Ram Kewal, Kamal Bharadwaj, Rajdev Yadav, Mahabir Prasad, Tasduk and Ram Snehi Pande are some unskilled seriously disabled workers in Faridabad. They have all been dismissed by the employers taking advantage of ESI General Regulation 98, six months after they sustained the Occupational Injury. Ironically, except for Kamal Bharadwaj, the rest have been granted negligible “loss of earning capacity” by the medical board. A Case Report of one such worker is presented to illustrate this point.

Heera Lal was working as a manual labourer in M/s Perfect Pack Ltd, Plot No. 134, Sector 24, Faridabad when he sustained right hand crush injury while removing corrugated sheets from punching machine as it got in between plates and casting die. The accident took place on 10/5/97. As his factory was covered by the ESIS, he got treated at ESI Hospital sector 8 for 75 days. On his Form B.1.1.(a), the treating doctor wrote on 14/8/97, “Crush injury right hand and palm with fracture base of 2\textsuperscript{nd} metacarpal; restriction of movement marked along with pain and numbness”. But the medical board held on 28/10/97 awarded him “Nil” disability. The employer dismissed him from his job on the date he stopped getting TDB viz 8/8/97, on the plea that the left hand is non functional and deformed, and since both hands are required to do the job of lifting weights, the worker can no longer perform the duties of a manual labourer. Under these circumstances, the worker
has no option but to approach the EI Court and he has accordingly filed a suit. The same is pending.

It is a sad commentary on the Indian legislative and judicial system that a plethora of legislation have failed to address this crucial issue. Permitting dismissal of a worker who sustains an Employment Injury is not only morally incorrect but also against the spirit of Social Security. It in effect permits managements to take advantage of their own wrong (violation of safety and health regulations resulting in injury to the worker).

From the time of stabilisation of injury to the time of final payment all workers live in a state of 'penury' and 'want'. The ESI Corporation does have regulations to tide over this crisis, albeit temporarily, in respect of seriously injured workers. The First ESI Review Committee recommended that in cases where the estimated permanent disablement was expected to be more than 25%, advance payment of PDB could be made and the same could be adjusted later upon finalisation of compensation by the accounts department of the RO (ESI, 1966, page 9). This suggestion was accepted by the ESIS and this led to relaxation of Regulation 76 of the ESI, making provision to pay advance payment in the case of 'Scheduled Injuries'. The Medical Referee, who is a Corporation employee located at every RO, was empowered to certify such payments (DGESIC, 1988). In Faridabad however, we observed that this was not being implemented. None of the PDB cases have ever been given any advance payment and the Medical Referee confirmed that no such case has ever been referred to him for certification. The LO Managers and clerical staff interviewed were not even aware of any such procedure in the ESI Regulations. The Executive Officers had correct knowledge of the Regulations but stated that they preferred not to implement this clause. One official remarked, "Even if there is provision in the rules for advance payment, how will we recover the advance in case the medical board certifies a lesser disability than the certificate given by the Medical Referee? We do not want to attract audit objections on this score." This bureaucratic approach and red tapism contributes to the Financial Health of the Corporation by way of interest on 'delayed payments', while it pushes the severely disabled worker and his family on to the precipice of starvation.
Admittedly, the period between stabilisation of injury and holding of Medical Board in Faridabad may be difficult to reduce further. However, the average period of 49.2 days from holding of medical board to finalisation of payment appears excessive (Table 5.4). No efforts have been made to reduce it. The complete documents regarding entitlement, TDB rate, medical certificates, etc are thoroughly processed prior to holding of Medical Board. The opinion of the Medical Board on ‘Loss of earning capacity’ is indicated as a mathematical percentage of the TDB rate. The Law stipulates that the same cannot be altered even by the DGESI or the Labour Minister or for that matter by the President of India (Mallick, 1995). So, there appears to be no reason why the disabled worker cannot be given his PDB certificate within minutes of the Medical Board recording its opinion. The Corporation however, does not encourage this single window clearance system which will remarkably speed up the compensation process. The delay places the worker at the mercy of the dealing ‘babus’ in the RO/LO. Letters sent by the Corporation often do not reach the workers due to their ‘unauthorised’ residences and employers rarely bother to deliver letters of contract/casual labourers to the addresses. A worker in urgent need of money has to make repeated visits during working hours to his LO/RO only to be told that “the file is under process and you will be informed as soon as a decision is finalised”. The Employer promptly deducts the wages of the disabled worker for this absence from work. The case of Kamal Bharadwaj (the 100% disabled worker whose Case Report has already been presented before) illustrates this point. His father had to make repeated visits to the RO Faridabad and doggedly request the clerical staff to have mercy on his son. Only then could he succeed in getting compensation. In this particular case it took 9 weeks after holding of the medical board for the accounts office to finalise his case. The employer did not pay any wages at all to the worker during this period.

REASONS FOR LOW PERCENTAGE OF DISABILITY GRANTS

On analysis of 500 individual medical board files, we found that 84% of the workers had injuries pertaining to the upper extremity and 5% had eye injuries. 68% of the workers who had injuries to the upper limb had amputation of a part of one or more fingers, whereas 30% comprised those workers who had sustained dislocations or fractures. However, only in 10% of the cases studied by us we found that the disability assessment by the medical board was satisfactory. In 90% cases we observed that the board had recommended a lower disability than the entitlement of the worker.
| PERCENTAGE OF DISABILITY AWARDED | NIL | 1-2 | 3-7 | 8-12 | 13-17 | 18-22 | 23-27 | 28-42 | 43-57 | 60 | 70 | 80 | 90 | 100 | TOTAL |
|--------------------------------|-----|-----|-----|------|-------|-------|-------|-------|-------|-----|----|----|----|----|-----|-------|
| NUMBER OF WORKERS              | 769 | 382 | 520 | 294  | 162   | 138   | 48    | 218   | 30    | 6   | 67 | 1  | 0  | 1   | 2636  |
| PERCENTAGE TO TOTAL            | 29.17 | 14.49 | 19.7 | 11.15 | 6.15  | 5.24  | 1.83  | 8.28  | 1.14  | 0.23 | 2.54 | 0.04 | 0   | 0.04 |       |

Source: PDB Register & Nil Register (RO Faridabad)
In addition, the PDB and the Nil Registers present at the RO Faridabad were statistically analysed to find out the percentage of disability awarded by the medical boards to workers sustaining occupational injuries in Faridabad in the last 5 years (Table 5.5). 30% of the 2636 workers who appeared before the medical boards in the last 5 years have not been awarded any compensation. In fact 86% of the injured workers have been awarded less than 22% disability while only 3% workers have been given more than 60% “loss of earning capacity” by the medical board.

Based on our study of 500 files of medical board cases, observing the conduct of the medical board and interaction with medical board members, ESI executives and disabled workers, the reasons for this significant observation are discussed below.

**Attitude of ESI Corporation Staff towards disabled workers**

Medical Boards in Faridabad are conducted with utter disregard to common courtesies and this shows the insensitivity of the ESI System towards the disabled workers. On the day of the Medical Board all the workers are lined up and herded like cattle an hour prior to the arrival of the Medical Board members from Delhi. During this time documentation is finalised by the ESI clerks. There is no place for sitting down and those who cannot stand due to pain from their disability are forced to squat on the ground. The room for holding the board is located on the first floor thus, making disabled workers bear the agony of climbing staircases. Severely disabled workers however keep on lying down on the ground floor itself but are examined at the end by the Medical Board.

The Medical Board generally arrives at 1030 hours and starts examining the workers from 1100 hours. It finishes its work by 1200 hours. Only the concerned specialist examines the worker. The other doctors remain mute spectators and simply sign on the Board papers. The orthopaedic surgeon always remains the busiest as almost 90% cases pertain to his speciality (amputees and fractures). Even in our 500 cases studied, we found that 89% of the workers were orthopaedic cases. The contribution of the Chairman is negligible as she is not a specialist. The medical board members are of the unanimous opinion that most workers will try to malinger (by feigning pain and stiffness) to extract the maximum disability from the Board. They feel that it is their duty to view all IP’s with suspicion so that the Corporation (who is their employer) does not suffer excess financial
The doctors therefore examine the workers ruthlessly with disregard to medical ethics. This was apparent from the heart rending shrieks emanating from the workers examined in front of us (during the medical boards observed by us) whenever their disabled limbs are twisted by the examining doctor. A classical example witnessed by us illustrates this point.

One worker appeared before the medical board in Jan 99, with an injury to the ankle sustained in an accident at the Factory. The ankle was covered by a Crepe Bandage on the advise of the treating ESI doctor. The impatient medical board member remarked to the patient in anger, “Why have you not removed this crepe bandage before entering this room? Stupid fellow! You are only wasting my time”. Another member remarked jokingly, “He is probably feeling very cold”. The entire room reverberates with the laughter of the medical board members while the hapless and crestfallen worker hurriedly removes his bandage and in the process falls down on the ground. The doctor then proceeds to twist his ankle though the worker appears to be in obvious pain due to his injury. There was swelling and tenderness along with restriction of movement at the ankle joint. The worker was asked to leave the room. To our utter surprise the examining doctor recorded the following finding on the medical board papers, “Right Ankle - Recovered Completely. Disability - Nil”.

Quality of Opinion given by Medical Board Members

The treating ESI Dispensary doctor issues a report “For information of the Medical Board”, after stabilisation of the worker's injury. This report is filled up on a statutorily prescribed proforma called ‘Form B.1.1.(a) (Appx 3)’. On this report the treating ESI doctor records vital information which includes the treatment history and present clinical condition of the patient. The ESI Corporation Local Office Manual lays down that all documents pertaining to the worker including this report and medical investigation records are to be sent to the Chairman of the Medical Board so as to reach him/her at least 3 days prior to the meeting of the medical board (DGESIC, 1988). This is to enable the medical board members to peruse the papers in advance so that they are in a good position to express their opinion after examining the worker on the appointed day. In Faridabad, we observed that these papers are never sent in advance. The files containing these papers are put up to them only when they start examining the patient. As a result the board does not even make a passing glance at this most vital document viz the treating doctors report made
specifically for the information of the medical board (Appx 3). It spends less than a minute to examine the worker and then records the diagnosis and percentage of disability on the file.

The board is expected to follow the Second Schedule while recording its disability in respect of injuries which are mentioned in the Schedule (Appx 1). While giving the mathematical percentages fixed in the schedule mechanically, we observed that the board ignored the important note given below the Second Schedule which reads:

"Complete and permanent loss of the use of any limb or member (part of the limb) referred to in this Schedule shall be deemed to be equivalent to the loss of that limb or member."

This means that if an IP has a contracture of the thumb of the left hand due to loss of the terminal phalanx the disability should be assessed at 30% (Item No 11 of the Schedule) as the individual has lost complete and permanent use of the Thumb. However the Medical Board will give its assessment only as 20% (Item No 16 A of the Schedule) if it ignores the note below the second schedule. In such a case the board has failed to consider that consequent to the stiffness as a result of the contracture of the hand, the IP has lost the functioning of the entire thumb. While examining the selected 500 individual PDB case files in Faridabad, we came across 389 cases in which the workers had a severe disability (resulting in permanent loss of use) of a part of a limb without actual loss or amputation of that limb. In 376 of such cases we observed that the medical board had not applied the note below the Second Schedule while assessing the disability. As a result, 97% of such cases were awarded disability lower than their legal entitlement. In addition in 84% cases we found that, the medical board had not taken into account the opinion expressed by the treating ESI doctor on the statutory form B.1.1. (a) (Appx 3). In other words, the medical board viewed 84% of the workers as malingerers since it gave no Weightage to symptoms like pain, stiffness, partial loss of mobility, etc as recorded by the treating physician. A few cases observed while examining the selected 500 individual PDB case files are reproduced below to illustrate this point.

• Narain Bahadur, sustained accidental injury in M/s Krishna Industries on 30/8/98. On his Form B.1.1.(a) the treating ESI Insurance Medical Officer (IMO) recorded (on 29/9/98): "Nail of right thumb cracked in the middle, restriction and pain on movement at interphalangeal joint, movement of right thumb restricted especially at
metacarpophalangeal joint. The medical board on 20/11/98 however recorded “Right Thumb recovered completely- Disability Nil”. The nature of injuries described by the IMO indicates that the individual has totally lost the function of the right thumb. Hence as per Entry No 30, of the Second Schedule he is entitled to 30% disability.

Rajbir Singh, sustained accidental injury on 4/4/98. On his Form B.1.1.(a) (Appx 3) the treating ESI doctor (IMO) recorded (on 9/9/98): “Amputated right middle finger above proximal interphalangeal joint, fixed and tender right index finger”. The medical board on 16/10/98 however recorded “Right ring finger recovered completely, right middle finger- loss of distal 2 phalanges, Disability 9%”. The nature of injuries described by the IMO indicates that the individual has totally lost the function of the right ring finger, besides loss of two phalanges of the middle finger. Hence as per Entry No. 38 and 41, of the Second Schedule he is entitled to 16% disability.

In the case of Surendra Kumar, the IMO recorded on his Form B.1.1.(a): “Permanent disability of left hand leading to marked restriction of movement of entire hand”. The medical board however recorded, “Left index finger and middle finger- complete loss, left ring finger- loss of distal part of distal phalanx with stiff deformed proximal interphalangeal and distal interphalangeal joint, Disability 26%”. In this case the worker has lost complete use of his entire right hand. Hence as per Entry No. 10 of the Second Schedule he is entitled to 60% disability.

In the case of Dhani Ram, the IMO recorded on his Form B.1.1.(a): “Contracture and part amputation of terminal phalanx of right index finger”. The medical board however recorded, “Right index finger - guillotine amputation of tip- Disability 5%”. In this case the worker has lost complete use of his right index finger due to the contracture. Hence as per Entry No 33 of the Second Schedule he is entitled to 14% disability.

In the case of Veer Singh, the IMO recorded on his Form B.1.1.(a) (on 28/8/98): “Pain and swelling of right index finger, unable to press a switch”. The medical board however recorded (on 16/10/98), “Right index finger – partial loss of pulp- Disability 2%”. In this case the worker has lost complete use of his right index finger since he cannot even perform the function of pressing a switch. Hence as per Entry No. 33 of the Second Schedule he is entitled to 14% disability.

- In the case of Bhagat Ram, the IMO recorded on his Form B.1.1.(a): “Marked stiffness in left hand due to loss of phalanges of left index finger and left middle finger and injury to left ring finger”. The medical board however recorded (on 11/9/98), “Left
index finger- loss of distal 2 phalanges, left middle finger- complete loss, left ring finger- Stiff proximal interphalangeal joint, Disability 24%”. In this case the worker has lost complete use of his entire right hand due to the severe nature of his multiple injuries. Hence as per Entry No. 10 of the Second Schedule he is entitled to 60% disability.

In the case of Sukhi Ram, the IMO recorded on his Form B.1.1.(a) : “Terminal phalanx of the right index finger is amputated due to which he will find it difficult to work later”. The medical board however recorded, “Right index finger – loss of distal phalanx- Disability 9%”. In this case the worker has lost complete use of his right index finger and the IMO has specifically recorded that the damage is so severe that he will be unable to perform any job in future. Hence as per Entry No. 33 of the Second Schedule he is entitled to 14% disability.

In the case of Haveli Ram the medical board recorded, “Left wrist – functional loss of thumb and index finger due to tendon and nerve injury, Disability-25%”. Since the individual has lost the complete use of the thumb and the index finger, as per Entry 11 and 33 of the Second Schedule he is entitled to 44% disability.

Gobind Singh, Son of Jagat Singh aged 50 years has been working as a nibbling and rebound operator since 1/8/62 in Autopin (India) Ltd, Faridabad. He resides at I-H/46, NIT Faridabad. The worker is deaf and dumb. On 3/2 92, his right index and middle fingers got injured by the moving fan blade in the factory. He was treated at ESI Dispensary No 1 and ESI NH3 Hospital for several months. During this period he also got sickness benefit for his period of absence from duty due to the injury. Nobody (the management, the dispensary doctor, the ESI Hospital nor the LO) advised him that he is entitled to compensation for his disability. In case of any occupational accident it is the duty of the management to inform the local office and the Factory Inspectorate. Though the management insisted that it had done so but records of the LO and the Factory Inspectorate show that this was not done. Similarly, the treating dispensary doctor is to render a medical certificate in such cases to enable the worker to claim Temporary Disablement Benefit. The dispensary doctor did render a certificate but the same showed the injury to be non occupational and hence the LO gave the worker only sickness benefit and not Temporary Disablement benefit. The worker only came to know of his entitlement in Feb 95, during casual interaction with his colleagues. He immediately approached the LO for his claim of Permanent Disablement Benefit. The
LO refused to entertain his request on the grounds that his claim is time barred and that no 'Occupational Accident Report' had been received by them at the time of the accident. Distraught, he complained to the RO. The RO got a Form 16 initiated from the factory and then directed the LO to ensure presence of the worker before the medical board. The medical board examined him in Apr 95 and wrote, "Right index finger- recovered completely, right middle finger- loss through middle phalanx, Disability- 8%". The worker has severe stiffness of the middle finger and cannot use it at all. Therefore, as per the Second Schedule he is entitled to 12% loss of earning capacity and not 8%.” The worker is however not approaching the EI Court, as he realises that even if he gets justice after 4-5 years, he would have spent more on litigation, than the enhanced benefit admissible to him as a result of a favourable judgement.

The above misapplication as already pointed out, stems from the 'internalised' wrong belief by the members of the medical board that workers feign stiffness, pain, contractures, loss of movement, etc to mislead the board with a view to derive maximum benefit. A worker has to actually lose a limb or a member of the body completely to get his correct entitlement. Alternatively, if he has the resources he will have to approach the EI Court, where he may get justice after an agonisingly long waiting period as in the case of Ram Bachan. The medical board had assessed his disability at 1%. He got justice after 3 years when the EI Court Faridabad in a speaking judgement upgraded his assessment to 44%.

The Medical Board at Faridabad is unaware of the fact that the MP High Court has held that in view of the Note below the Second Schedule of the ESI Act, a worker need not actually lose a limb to get the benefit of the dysfunctional limb (Appx 1). This interpretation came up when an IP sustained an Employment Injury which rendered his right hand useless. However there was no amputation of the right hand. The Medical Board was referred the matter. The Board, even while accepting that there was appreciable disablement of the right hand, had assessed the loss of earning capacity to 10%. The employee challenged the said report before the Employee’s Insurance Court. The Court examined the question on the basis of the evidence produced. Medical evidence was laid. One such doctor before the court opined very clearly that the right hand of the employee
had become useless and it was as bad as amputated. But the EI Court on the basis of the recommendation of the Medical Board held that the loss of earning capacity was 10% as recommended by the Medical Board.

The employee appealed to the High Court. The judge held that evidence has clearly established that there was total loss of function of the right hand and it was as good as amputation and the employee was entitled to 60% loss of earning capacity. The judge interpreted the definition of Section 2 (15A) of the ESI Act of the “permanent partial disablement” read with item 10 of the Second Schedule with the “Note” appended to that Schedule. The High Court has held that the question to be decided is to what extent the earning capacity of the employee had been reduced as a result of the injury. For this one has to consider whether or not he can take future employment which he could have taken in any place had he not suffered the injury resulting in his disablement. In the instant case the High Court held that though there was no loss of hand or amputation, the hand had yet become useless for all practical purposes as the employee’s earning capacity and general capabilities in terms of Section 2 (15A) of the Act are concerned. The mere fact that there was some movement of the fingers or that he is working in the same post in which he was working prior to the Employment Injury or, that actual loss of earning did not take place cannot take the case out of Item 10 of the Second Schedule. This is because, not the fingers but the hand as a particular limb as a whole has become useless for all practical purposes affecting his capabilities resulting in the potential loss of earning capacity. The learned Judge therefore set aside the order of the EI Court rendered on the basis of the recommendation of the medical board and has held that the employee is entitled to compensation at the rate of 60% of the loss of earning capacity (1988 ACJ 932 MP).

It is a sad reflection on the level of sensitivity and knowledge of the medical board members of Faridabad that despite this judgement delivered 10 years ago, they continue to apply the Second Schedule in a pure mechanical, mathematical and inhuman manner.

In the case of non Schedule injuries the situation is no better. Non Schedule injuries are those injuries which do not find mention in the Second Schedule. These include cases of shortening of limbs, non united fractures, partial loss of hearing, injuries to internal organs, etc. So obsessed is the Medical Board with the term ‘Malingering’ that so called
subjective symptoms like pain, tenderness, stiffness, partial hearing loss, dyspnoea, dyspepsia, etc which should be the guiding factors for deciding such cases, are given no Weightage. A few illustrative cases that came to light while examining the selected 500 individual PDB case files in Faridabad and the case of Ram Khilawan who was examined by the medical board in our presence are reproduced below to corroborate this point.

- Dharambir Sharma sustained injury on 13/1/98 on his left wrist and left hip while working in High Polymer Laboratories, Faridabad. He was under treatment at ESI Hospital NH3 from 13/1/98 to 4/7/98. The treating ESI doctor recorded on his Form B.1.1.(a) (on 8/7/98), “Intertrochanteric fracture left hip with Colle’s fracture of left hand, condylar block plate applied and Open Reduction and Internal Fixation done, IP walks with stick only, has pain in left hip and left wrist”. His medical board was held on 16/10/98 where the board recorded, “Left hip- 30% loss of dorsiflexion and flexion- Disability- 18%.” With the kind of injuries sustained by the individual, he has lost his job. The medical board appears to have been very unfair to him as he has practically lost the use of one leg. Even in the Second Schedule ESI, functional loss of one leg entitles him to a disability of 90%.

- In the case of Madan Lal, the IMO recorded on his Form B.1.1.(a) : “Restricted movements and reduced weight bearing capacity of left hand due to fracture of left ulna”. The medical board however recorded, “20% loss of flexion at the left elbow and left forearm, Disability-6%”. One can observe that a worker who has lost considerable function of his left upper limb has been given only 6% disability.

- Vijay Kumar was injured while working in M/s Vishal Machine (Pvt) Ltd, Faridabad on 26/5/98. He sustained injuries on the ring, middle and index fingers of his left hand and was under treatment for the same from 26/5/98 to 31/7/98. The treating ESI doctor recorded on his Form B.1.1.(a) , “Scar tender on ring finger left middle fingers of left hand, poor sensation at the extremities of these fingers, restricted movements of these fingers”. The medical board however recorded, “Left hand (including fingers) - recovered completely, Disability-Nil”. The medical board totally disregarded the statutory opinion of the IMO and also failed to appreciate symptoms of pain, paraesthesia, stiffness and loss of movement. The worker thus got no compensation.

- Ram Khilawan was examined in front of us by the medical board on 8/1/99. This worker had sustained penetrating injury of one lung while performing his duty. The metal piece was surgically extracted. The IP was grossly anaemic, complained of
breathlessness, severe cough off and on and continuous chest pain. He stated that this
prevented him from doing his normal work. The medical board does not carry a
stethoscope and no medical specialist is associated with the board. Hence no
auscultation could be done. The board did not even think it fit to record his respiratory
rate. A cursory glance was given by the Surgical Specialist to his X ray. The surgeon
commented that as the metal has been removed there is no disability. The total clinical
examination lasted for less than 30 seconds. The individual was accordingly denied any
compensation. The symptoms of this patient pertained to the speciality of medicine.
There are provisions in the ESI Regulations for the board to co-opt a medical specialist
in such cases. But the medical board did not think it fit in this case to recommend such
an action, as it appeared in a tearing hurry to dispose off the case. It also did not think it
fit to give the benefit of doubt to a worker, who was symptomatic and had lost his job,
after sustaining serious employment injury.

As a result of the above approach by the medical board, 90% of the cases awarded
"Nil" disability in Faridabad pertain to non Schedule injuries. Two Case Reports pertaining
to Faridabad, where though the medical board recorded total hearing loss in one ear, but
gave ‘Nil’ disability on the grounds that the individual can hear normally from the other ear
will amplify this point.

Rajdev Yadav Son of Chander Yadav, aged 46 years has been working with Jhalani
Tools (Pvt ) Ltd since 1951 and resides at T No 477, House No. 222, Jawahar Colony II,
NIT, Faridabad. His Factory is covered by ESIS. On 24/12/94 at 3.30 PM he sustained
Blunt Injury Ear (left) while tightening the bolt on the milling machine. As per his Form
16, the bolt bromen and the spanner hit on his sideface near the left ear leading to this
injury. He was initially under treatment of ESI NH3 Hospital and later referred to Rohtak
Medical College Hospital. The Rohtak Medical College Hospital issued him a medical
certificate which read, "Left ear- complete hearing loss, Right ear normal, Disability –
50%". On completion of his treatment, he applied for medical board. Two notices were
sent by the Corporation to him which, he did not receive. Finally, he got his medical board
arranged after visits to the RO. The medical board initially sent him for opinion of the ENT
Specialist at ESI Hospital, Jhilmil, Delhi. The ENT Specialist certified total hearing loss of
left ear on 14/7/95. The medical board then examined the worker on 13/10/95. The worker
thereafter did not receive any communication from the ESI Corporation. Fed up with the attitude of the Corporation, he engaged a lawyer who served a legal notice on the RO on 17/11/97. He received a prompt reply stating that the medical board had given the following remarks after examining him, “Left ear complete hearing loss, right ear normal, Disability- Nil”. Accordingly, he was not entitled to any compensation. Distraught and crestfallen, he approached a lawyer who gave him wrong legal advice. He accordingly filed a case under WCA in the office of the Labour Officer. Notice was issued by the Labour Officer to the RO. The RO challenged its maintainability as the factory was covered by ESIS. The worker then withdrew his petition on 30/6/98. He filed a fresh case in the EI Court on 12/7/98, alleging injustice at the hands of the Corporation interalia on the following grounds:

- “After his formal examination, the medical board stated that there is no disability, while in the same intimation, they accepted that the workman suffers from complete hearing loss in the left ear”.
- The certificate from medical college Rohtak indicates a disability of 50%.
- He is totally unfit to carry out his normal day to day activities as his left ear is useless.
- He has lost his present job and is not going to get any other employment.

Notice was thereafter served on the RO. The ESI filed its reply, stating that the case be dismissed as it is not bound by the medical certificate of Rohtak Medical College. Moreover, the reply brought out that the certificate indicated disability percentage only and not loss of earning capacity. These two things are different and the ESI Corporation takes a decision on the “loss of earning capacity” and not on the “disability”. It also stated that the fact that the worker lost his job due to the injury is not relevant while deciding “loss of earning capacity”. This case was going on during our field work. The ESI Counsel, Shri Ahuja and the Legal Inspector were of the opinion that the worker was justified in pursuing this matter, and the medical board had not properly exercised its mind while deciding the case. Accordingly, the ESI Counsel advised the Regional Director (RD) of RO Faridabad to have the worker re-examined so that further infructuous litigation is avoided. The medical board was requested to re-examine the case on 8/1/99 by the RD. The medical board members discussed this case in our presence on this date. They were unanimous in their opinion that they are correct and the case does not require re-examination by them. The logic advanced by them for giving "Nil" disability in this case was, “Entry 6 of Second
Schedule (Appx 1), gives 100% disability for absolute deafness only, and there is no mention of one sided deafness in the Second Schedule. Since the individual can hear from one ear, he is not absolutely deaf. Hence he is not entitled to any compensation." They refused to examine the patient once again. The executives of the RO then took a typical bureaucratic approach and closed the case with the remarks that "As the matter is subjudice, it would be in order to wait for the Court directions before getting the worker reexamined". We then spoke to Shri Ahuja. He said that he has no option but to defend the case in the EI court now as he is paid by the Corporation. Though the worker has a fool proof case, but he has to be prepared for protracted litigation for another 3-4 years before he can expect a positive outcome. For this, he may have to incur debts to not only feed his family but also to pay his advocate.

The view taken by the medical board in this case is legally, ethically and morally incorrect. It is admitted that total hearing loss in one ear due to injury is not listed in the Second Schedule. But there is no bar on the Corporation on giving loss of earning capacity to injuries not appearing in the Second Schedule. This injury therefore becomes a non scheduled injury and as per the medical college Rohtak deserves atleast 50% disability. The listing of total deafness in the Second Schedule does not prevent the medical board from treating partial or one sided hearing loss as a non scheduled injury. It is also pertinent to point out that partial hearing loss due to noise is an occupational disease as per the Third Schedule. When a worker who becomes hard of hearing due to excess noise at workplace gets entitled to compensation, obviously the one who becomes totally deaf in one ear due to injury can get compensation under the ESI Act (Appx 4).

There is another similar case that has been denied his legitimate dues by the medical board. Baljeet Singh slipped on 13/11/95 while working in Amteep Machine Tools (Pvt) Ltd, 14/7 Mathura Road Faridabad and his right ear got injured. He was treated at ESI NH3 Hospital and AIIMS New Delhi. His medical certificates reveal the following:

- Issued by ESI NH3 Hospital: Induced hearing loss right ear, Myringoplasty done, 30-40 db conductive hearing loss right ear, 30 db sensorineural hearing loss left ear, Diagnosis: Central perforation of posterior part of tympanic membrane.
- Issued by AIIMS New Delhi: Audiogram reveals, permanent disablement due to right ear mixed hearing loss and left ear semiloss of hearing.

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The medical board however on 19/4/96 gave him "Nil" loss of earning capacity. He has filed an appeal in the EI Court on 20/6/96, which is pending.

Weightage given to opinion of treating doctors

We have already pointed out that the medical board does not even see the statutory report prepared by the treating ESI doctor. This is not the only medical opinion which is disregarded. The ESIS has provisions to refer patients to non-ESI hospitals for treatment. Accordingly, serious cases of Occupational Injuries are often referred by the ESI hospitals in Faridabad to referral hospitals designated by the Dy Dir Medical ESI (Haryana). These include reputed Government hospitals like Safdurjung hospital, AIIMS and Medical College Rohtak. Many times these referral hospitals issue disability certificates to the injured worker. But even these certificates of designated ESI referral hospitals are not given any weightage by the medical board. In our analysis of 500 medical board cases, we found that in 36 cases the workers had produced certificates of assessment of disability from referral hospitals. In all these 36 cases the ESI medical board had reduced the percentage of disability (from that given by the referral hospital) while giving its final assessment. The cases of Rajdev Yadav and Baljeet Singh presented above are illustrative of this. Another poor carpenter suffered the same fate as the medical board refused to take note of the disability certificate issued by the Civil Surgeon Faridabad (who incidentally is the Head of all Medical and Health services in the district and writes the confidential reports of the Medical Superintendents of both the ESI Hospitals located in Faridabad).

Madho Lal has been working as a carpenter in M/s Frick India Ltd, 13/3, Milestone, Mathura Road, Faridabad since 18/8/72. He had an occupational accident on 31/1/78. He was treated at ESI Hospital NH3 with marginal relief. The pain in his right leg however did not subside despite repeated visits to the hospital. He was finally referred to Safdurjung Hospital on 9/11/90. He underwent surgery at this referral hospital. His discharge slip showed, "4’ apparent shortening of right leg and 20% flexion deformity of right hip even after surgery". The Civil Surgeon Faridabad gave him a disability certificate that indicated 35% disability. He then asked for a medical board which was refused by the ESI. He sent a legal notice on 18/12/91. The RO replied on 17/1/92 stating, "It is not clear why he remained silent for 13 years. We have no details of further aggravation". He then filed a case in the EI Court on 24/2/92. The Corporation strongly contested the case on the grounds of it being time barred. It filed a reply which specifically stated, "The earlier injury..."
was minor and had no loss of earning capacity as he got employment with the Company thereafter. His present surgery is also not connected with his old injury”. The Court however passed a speaking order directing the RO to hold a medical board. Its order was also an indictment of the Corporation’s attitude towards a disabled worker (Appx 7).

The worker’s agony did not end here. The Corporation apparently sent notices to the worker at his factory address but the worker did not receive them. As a result his case was closed. The worker then filed a contempt petition in the same EI Court on 12/10/94. After proceedings that lasted more than a year, the Court directed the RO to hold a medical board within 3 months. The medical board held on 12/1/96 recorded, “Non union right neck of femur with 20% loss of flexion at hip and 2” shortening of limb; Disability – 18%”.

The medical board has given disability much less than that awarded by the Civil Surgeon Faridabad, and so the worker has a strong case in case he appeals before the EI Court. But then he is so fed up with the litigations he has undergone to even get this 18%, that he has been forced to accept injustice.

Kundan Lal, also had similar problems. He is working in Deepak Pneumatics as a Turner. He sustained multiple injuries of the right hand, right leg and back with stiffness of back on 24/6/93, when his cycle hit the gate of the factory while he was coming to duty. He was treated at ESI Hospital NH 3 Faridabad. As his injury had taken place prior to the decision of the Supreme Court in ESI (RD) vs Francis D Costa (1996 (74) FLR 2326 (SC)), it was admitted as an Employment Injury by the ESIS. On his Form B.1.1.(a) the treating ESI doctor gave the remarks (16/9/94), “Multiple injury back, right leg, right hand and right arm; X Ray shows fracture lateral malleolus right ankle; patient has pain in all injuries”. He also approached Deputy Commissioner Faridabad who directed the Civil Surgeon to examine him. The Civil Surgeon examined him and gave him a certificate quantifying his disability as 30%. The medical board ESI however, gave him “Nil” disability on 21/10/94.

He has filed an appeal in the EI Court on 6/2/95, which is currently pending. The ESI contested the case as being time bar, but the EI Court has condoned the delay in filing the appeal.
The Medical Board members gave us interesting reasons for ignoring these certificates. Firstly, they pointed out that such certificates can easily be bought for money. Secondly, they stated that these certificates indicated 'Disability percentage' and not 'Loss of earning capacity' and the medical board is supposed to judge the latter and not the former. Certificates of these referral hospitals however, are accepted as valid proof for availing 'sick leave' and 'medical reimbursement' in respect of not only Government employees but also employees of the ESI Corporation itself. It appears then that the worker is denied his legitimate dues on hypothetical assumptions by the medical board members.

PREMATURE CLOSURE OF PERMANENT DISABILITY BENEFIT CASES

On studying the "Closed PDB Cases register" maintained at the Regional Office, we found that in Faridabad 81 permanent disability benefit cases have been closed in the last five years as the disabled workers did not turn up for the Medical Board. This constitutes 3% of the total PDB cases handled by the Regional Office (Table 5.5). 95% of these pertained to temporary unskilled workers or contract labourers.

Once a worker applies for the Medical Board it appears strange that he will not turn up for the same, if proper intimation reaches him. Just like Kamal Bharadwaj and Rajdev Yadav (presented above) most of the above workers did not get intimation regarding the holding of the Medical Board. The reasons for this are:

1) The ESI Local Office Manual lays down that notices of the date of medical board are to be sent simultaneously by the RO to three addresses viz workers' home address, his factory address and to his dependent ESI Dispensary (DGESIC, 1988). The idea is to track down the worker so that he gets his legitimate dues. However the RO Faridabad sends the notices to either the factory or the residential address and never to both. The doctor at the ESI dispensary is also never given any intimation regarding the date of the medical board.

2) Factory managements do not bother to inform the casual/contract workers even if the notices reach them.

3) The casual/contract labourers reside in 'unauthorised' colonies where their Jhuggis are not given any number. Most of them are not visited by any postman. Even in those
localities where a postman does go, the letters are dumped in one central location and are liable to be lost.

The clerical staff said that most of the notices come back undelivered with remarks like, "addressee not available" or "address is incomplete". Most workers come to know the date of the medical board after repeated personal visits to the RO. In the case of those who do not do so, their cases are closed after they do not turn up for the Medical Board. The ESI Corporation has not made any attempt to analyse the reasons for such closures, so that corrective measures could be instituted, nor does it follow the guidelines of its Local Office Manual to send notices simultaneously to the Residence, factory and dispensary of the worker. Letters to all factories/establishments and Trade Unions asking them to display the next date of Medical Board on their notice boards were also not issued, nor displays at prominent places in the city frequented by workers, were made. At the moment infact, these notices are not even displayed on the notice boards of the ESI Regional Office/Local Offices/Dispensaries or Hospitals. The fact that the ESI Corporation is not serious in the matter can be gauged from the response given by a Senior ESI executive in Faridabad. He said, "Most of these workers may be lying drunk in some gutter on the day of the Medical Board. How can we possibly trace them? If he is not interested in getting his compensation, what can we do? You can take a horse to the water but, you can’t make him drink it." The persons responsible for the running of the ESI Scheme were largely oblivious of the ground realities under which the Indian working class lives and dies.

DENIAL OF DISABILITY BENEFIT

We also observed that some workers in Faridabad do not reach the Medical Board due to reluctance on the part of the managements to initiate Accident Injury Report (Form 16). This problem is compounded by the ignorance of the workers regarding their legitimate compensation rights. As per law the management is to send an accident report to both the ESI and the Factory Inspectorate. The ESI staff informed us that this reluctance on the part of the management stems from fear of being prosecuted by the Factory Inspectorate in case any safety violation is detected. There have been a number of complaints to the Regional Director by workers regarding non reporting of their Occupational injury to the ESI. Whenever such complaints are received by the Corporation it does put pressure on the managements concerned to initiate Form 16. However, it neither
crosschecks with the managements nor with the Factory Inspectorate as to whether a similar report has been received by the latter. In such cases while the worker will get his compensation, the multiplicity of authorities allows the management to escape its criminal liability under the Factories Act. The Case Report of PreAsh Industries (Pvt) Ltd presented earlier illustrates this fact. Though this is the real life ground situation, but ironically the official policy of the Corporation calls upon its managers to initiate procedures to curb 'fake reporting' of Occupational Injuries (DGESIC, 1988). It is pertinent to point out that the Corporation is only concerned with curtailing 'fake reporting' and not necessarily encouraging 'correct reporting'.

COMMUTATION OF DISABILITY BENEFIT

Section 62 of the ESI Act states, “An insured person whose permanent disablement has been assessed as final and who has been awarded permanent disablement benefit at a rate not exceeding Rs 1.50 per day may apply for commutation of permanent disablement benefit into a lumpsum, subject to the conditions that the total commuted value of the lump sum permanent disablement benefit does not exceed Rs 10,000 at the time of commencement of final award of his permanent disability.” (Akalank Publications, 1998).

The ESIS thus allows only workers who have very low levels of disability to get their benefit commuted. All Local Office Managers in Faridabad confirmed that every worker who is entitled to get his benefit commuted has exercised this option in the last five years. During our User Survey 100% of the workers covered by the ESIS, informed us that given the option they would go for a lumpsum benefit rather than the present periodic payment system. This is conclusive evidence that, all workers desire lump sum payment as was admissible under the WCA. However, workers preferences have not been considered in the framing of the ESIS, on the grounds that workers will fritter away lumpsum benefits on alcohol, etc (ILO, 1958, page 3). A Social Scientist and the present Chairman of The Special Task Force set up by the Labour Ministry to suggest modalities for integration of various social security schemes in the country, was also in agreement with this view and wanted that the present system of periodical compensation (as followed in the ESIS) should be continued. There is however no scientific study to confirm the fact that workers fritter away lumpsum benefits on non essential needs. This shows that in our society the decision regarding well being of the lower classes is taken by the upper class based on the latter’s
own perceptions with utter disregard of the desires and socio-economic realities of the former.

Dependent Benefit

Dependent Benefit consists of periodical payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee under the ESI Act. As in the case of Disability Benefit, there are no contributory conditions for qualifying for this benefit (Mallick, 1995). The moment a fatal accident occurs due to an Employment Injury, the management is to inform the LO, who after detailed investigation will send the case to the RO for admitting the same as an Employment Injury. On analysing the Dependent Benefit statistics in Faridabad for the last 5 years we found that it takes on an average 4 months for the RO to give its decision after the occurrence of the fatality. This period can easily be reduced if the RO tightens up its administrative machinery. After this decision, the LO informs the Dependents of the deceased worker to fill up the claim form.

The full rate of dependent benefit is the same as the full rate of disablement benefit viz the daily rate of TDB (Appx 2). In case the deceased is unmarried then his dependant parents/ brothers/ sisters are entitled to this benefit. The First Schedule of the Act determines the share of the widow and the children of the deceased IP viz

- Widow- 3/5 of the full rate till her remarriage
- Each son/ daughter- 2/5 of the full rate till they attain majority

However, this is subject to the rider that the total amount of Dependant Benefit given in each individual case will not exceed the full rate of benefit. It is pertinent to note that the above pattern of distribution helps the Corporation to retain with itself a share of the benefits of the deceased. While in the case of a worker who is survived by a large family, the rider restricts the payment to only the full benefit rate, but in case a deceased is survived by only his wife, then his wife gets only 3/5 of the full benefit rate. We see here that in the former case the Corporation does not pay anything extra, though in the latter case it retains with itself 40% of the benefit of the deceased. Moreover, just as in the case of TDB/PDB the periodic payments work out to be less than even the interest that the dependants would have earned had they been given their dues in a lumpsum (as was admissible under WCA). This is discussed in detail in a separate Section below.
DEPENDENT BENEFIT CASES IN FARIDABAD

### Table 5.6: Number of Dependent Benefit Cases Admitted in Haryana and Faridabad

<table>
<thead>
<tr>
<th>YEAR</th>
<th>HARYANA</th>
<th>FARIDABAD</th>
</tr>
</thead>
<tbody>
<tr>
<td>93-94</td>
<td>45</td>
<td>12</td>
</tr>
<tr>
<td>94-95</td>
<td>64</td>
<td>29</td>
</tr>
<tr>
<td>95-96</td>
<td>92</td>
<td>31</td>
</tr>
<tr>
<td>96-97</td>
<td>93</td>
<td>15</td>
</tr>
<tr>
<td>97-98</td>
<td>71</td>
<td>28</td>
</tr>
<tr>
<td>AVERAGE</td>
<td>73</td>
<td>23</td>
</tr>
</tbody>
</table>

Source: DB Cases Register (RO Faridabad)

An average of 23 DB cases have been admitted annually in Faridabad in the last 5 years (Table 5.6). 40 DB cases have been closed in the last 5 years as Dependents do not claim this benefit (Table 5.7). This statistics is alarming as it indicates that as many as 26% of deceased dependants do not get their entitled dues.

### Table 5.7: Number of Dependent Benefit Cases Closed in Faridabad

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL No. OF DB CASES</th>
<th>NUMBER OF DB CASES CLOSED</th>
<th>PERCENTAGE OF DB CASES CLOSED AS OF TOTAL DB CASES</th>
</tr>
</thead>
<tbody>
<tr>
<td>93-94</td>
<td>18</td>
<td>6</td>
<td>33</td>
</tr>
<tr>
<td>94-95</td>
<td>37</td>
<td>8</td>
<td>22</td>
</tr>
<tr>
<td>95-96</td>
<td>41</td>
<td>10</td>
<td>24</td>
</tr>
<tr>
<td>96-97</td>
<td>22</td>
<td>7</td>
<td>32</td>
</tr>
<tr>
<td>97-98</td>
<td>37</td>
<td>9</td>
<td>24</td>
</tr>
<tr>
<td>AVERAGE</td>
<td>31</td>
<td>8</td>
<td>26</td>
</tr>
</tbody>
</table>

Source: DB Cases Register (RO Faridabad)

Some ESI staff indicated that these are probably deceased workers who did not have any surviving dependant. This is not correct. During analysis we found that all these cases pertained to workers who are casual migrant labour. Migrant labour comes to industrial townships to earn a living for their families. They are usually young and the only bread winners having atleast one dependant back home. This was confirmed by examining the ESI Declaration forms (filled and forwarded by employees to ESI Office immediately on joining insured employment) of all deceased employees whose cases have been closed by the RO. All of them had the name of atleast one dependant recorded on them. As per the Local Office Manual, the Corporation is expected to make all efforts to trace out these dependants viz pasting notices at last known address/ factory where the deceased was working, advertising in the local newspapers where the dependants are expected to live, etc (DGESIC, 1988). In Faridabad this was not being done. Only a simple letter is written to
the dependant’s and in case no reply was received, it is assumed that there are no claimants and the case is closed. The illiterate widow of a migrant labourer staying in a remote village in Bihar, more often than not will not receive any such letter. Even if she does, she may either not understand what to do or find the system too complicated, and with lack of guidance would be unable to get the dues of her deceased husband.

The case of a young boy will illustrate this point. Feroze Ansari, a 4 year old boy living in Uttar Pradesh was orphaned when his father died in an Occupational accident while working as an unskilled worker in Souvenir Ceramics, Faridabad on 10/9/90. The ESI Corporation closed the Dependant Benefit Case File after 30 days of receiving no reply to their letter addressed to the boy. The boy had come for his father’s funeral with a relative to Faridabad but nobody informed them of his entitlement to Dependent Benefit. He received his legitimate dues only in 1998, after another relative who happened to be a lawyer threatened to sue the Corporation in the EI Court. Many orphans and widows are not so lucky to have such helpful and educated relatives who can put pressure on the Corporation to give them their legitimate dues.

The ESI Corporation has a network of Local Offices all over the country with Managers and Inspectors. Instead of trusting the Inspectors with only revenue collection duties, this staff can be augmented and given additional job of tracing out the dependants and guiding them in filling the forms and claiming their dues. There has however been no attempt to do so as the Corporation has not even conducted an analysis on the reasons for such an alarming number of closed DB cases in Faridabad. The reason is not hard to guess. Closed DB cases means revenue savings to the Corporation and collection of revenue is the priority of the Corporation.

ABUSE OF PROVISIONS OF DEPENDENT BENEFIT

The ESI Regulations lay down that there is no minimum contributory period for claiming Disability and Dependants Benefit. This provision was inserted with a view to help the working class. This clause has however, been misused by certain clever entrepreneurs in Faridabad to escape their liability under WCA. The modus operandi is simple. Whenever a new contract/casual labourer joins such an establishment (covered by ESI), his ESI Declaration form is filled up partially but not forwarded to the LO. By doing
so, the employer retains not only his own but also the employee’s ESI contribution with himself. In case a fatal accident takes place, the employer promptly shows the deceased worker as having joined his establishment only a few days ago, completes the relevant columns in the declaration form and forwards it to the LO. There is no way the LO can reject this Form as General Regulations 14 of the ESI states, “an employer can send the declaration form of a new employee to the LO within 10 days of the workman entering his employment (Mallick, 1995).” The unscrupulous employer has had the best of both worlds. If there is no accident, he does not pay any insurance premium, but if one does take place, his employee gets the benefit of compensation from the ESI and he escapes his liability under WCA. The Case Report of the largest industrial accident in Faridabad will clearly illustrate this point.

In the case of the accident in PreAsh Industries (Pvt) Ltd (Case Report presented in the previous Chapter) all the injured workers were contract labourers hailing from Bihar and UP. As per ESI (General) Regulations 14, an employer can send the declaration form of a new employee to the LO within 10 days of the workman entering his employment. The PDB/ Dependent Benefit can be given to the worker without any minimum contribution period viz if an employee in a factory covered by the ESIS sustains injury on the first day of employment, the ESIS will give him both these benefits provided his declaration form reaches the LO within 10 days of his joining employment. In this particular case the employers appear to have taken full advantage of this rule, so that they wash their hands off the compensation under WCA. These workers have been shown as employed from 7/4/97 viz 7 days prior to the accident. Their declaration forms have been handed over on 14/4/97 and ESI contribution of Rs 269 deposited on the same day, after the accident. The ESIS was thus bound to pay the workers compensation. 4 of the deceased workers got their Dependent Benefit from ESIS. Two cases viz Ramdhari and Balram have been closed as no dependent turned up to claim compensation as per ESI records. This appears strange as their declaration forms show that they have dependents residing in Bihar. It is possible that the intimation sent by ESIS has not been received by them. As regards the injured workers, they were treated at the management’s cost at Safdurjung Hospital, New Delhi. Thereafter, they were despatched by the management to their native places. No compensation claim in respect of them has been received by the LO. It was learnt from the LO Manager and the workers of the factory that this unit like a lot of other units in Faridabad has a large number
of contract and casual labourers. Such workers are not taken on regular strength so that the management does not have to pay them minimum wages under the Minimum Wages Act. As a corollary, the managements save on their PF and ESI dues also. However, the ESI declaration forms of these workers are filled up in advance without writing any date on them. Should an accident take place the managements promptly show them as employed a couple of days ago only and then deposit the ESI contribution (which works out to be a pittance). These forms are then sent to the LO. The ESI has no option but to register these workers and then give them PDB/ Dependent Benefit. The Employer is absolved of his liability under WCA as a result of this.

In the case of this accident, the compensation under WCA, would have worked out to a minimum of Rs 2 lacs per head for the fatalities alone (Total Rs 12 lacs). This entire cost would have to be paid by the management. But by taking advantage of the loopholes in the ESI Regulations, the employer has washed his hands off the entire compensation proceedings by depositing merely Rs 269 in the ESI account after the accident took place.

We also heard the proprietor of Sewa International, a large export house having number of factories in Faridabad and Delhi bragging as to how he has been able to fool the system by taking advantage of these regulations. The ESI executives while admitting that such practices do take place, expressed helplessness at curbing them in view of the liberal ESIS regulations. No wonder some NGO’s have rechristened the ESI as an Employers’ State Insurance Scheme (PRIA, 1992).

**OCCUPATIONAL DISEASES**

**Law pertaining to Compensation for Occupational Diseases**

The Third Schedule of the ESI Act lists the Occupational diseases which can be given disability/ dependent benefit under the ESIS (Appx 4). Section 52A of the ESI Act reads:

"If an employee employed in any employment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified
therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an ‘employment Injury’ arising out of and in the course of employment.”

Though the ESIS is hailed as an improvement to the WCA but, just as in the case of Occupational Injuries, here also the Third Schedule of the ESIS is a verbatim copy of the Third Schedule of the WCA (Akalank Publications, 1997). On the contrary, the ESIS has excluded from its list certain diseases which were considered ‘Occupational’ under WCA. These include:

- Snow Blindness in snow bound areas
- Diseases due the effect of heat in extreme hot climate
- Disease due to effect of cold in extreme cold climate

The data obtained during our User Survey in Faridabad discussed in Chapter VII, shows that workers in furnaces, heat treatment plants and foundries often suffered from heat exhaustion due the extremely hot temperatures on the Factory floor. Similarly, porters of organised tour agencies accompanying mountaineering expeditions or workers employed in cold storage industry can easily suffer from ‘effects of cold’. While these workers can claim compensation under WCA, they are denied the same if their factory/establishment is covered by ESIS, since the ESIS refuses to even recognise the fact that these diseases can originate in the workplace.

**TABLE 5.8: PERIOD OF MINIMUM CONTINUOUS EMPLOYMENT FIXED BY ESIS FOR DISEASES UNDER PART C OF THIRD SCHEDULE**

<table>
<thead>
<tr>
<th>SNO</th>
<th>OCCUPATIONAL DISEASES</th>
<th>PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Silicosis</td>
<td>6 months</td>
</tr>
<tr>
<td>2</td>
<td>Coal miner’s Pneumoconiosis</td>
<td>7 years</td>
</tr>
<tr>
<td>3</td>
<td>Asbestosis</td>
<td>3 years</td>
</tr>
<tr>
<td>4</td>
<td>Bagassosis</td>
<td>7 years</td>
</tr>
<tr>
<td>5</td>
<td>Bysinosis</td>
<td>3 years</td>
</tr>
<tr>
<td>6</td>
<td>Farmers’ Lung</td>
<td>7 years</td>
</tr>
<tr>
<td>7</td>
<td>Pneumoconiosis</td>
<td>7 years</td>
</tr>
<tr>
<td>8</td>
<td>Extrinsic allergic alveolitis caused by inhalation of organic dusts</td>
<td>Not yet Fixed</td>
</tr>
<tr>
<td>9</td>
<td>Bronchopulmonary diseases caused by hard metals</td>
<td>Not yet Fixed</td>
</tr>
</tbody>
</table>

Let us now consider the diseases listed in Part C of the Third Schedule of the ESIS (Appx 4). The ESI Corporation has fixed **minimum continuous employment** for these diseases to be considered for compensation as an Occupational Disease (Table 5.8). Like most other aspects of Employment Injury, these periods too have been copied from the WCA. Most doctors of the ESIS (including the Medical Commissioner, her deputies and the Senior Consultant Medicine ESI and member of the Special Medical Board for Occupational Diseases since the last 16 years) agreed that the Occupational Diseases listed in Table 5.8 could occur even in shorter periods of time. They further opined that current knowledge about Occupational Diseases has rendered the statutory fixing of minimum periods for contracting Occupational Diseases obsolete and the same should be done away with.

There is also a fundamental difference regarding the rigidity of application of the periods mentioned in Table 5.8 between the WCA and the ESI. In 1962, an amendment was introduced in the WCA inserting Subsection 2A in Section 3 of the Act. According to this a worker can get compensation for an Occupational Disease listed in Part C of the Third Schedule even if he has worked for less than the periods specified in Table 5.8 or worked under more than one employee for these periods or even after cessation of Employment. The ESIS however has introduced no such express provision in the Act, thus forcing its Special Medical Boards to be ruthless in denying compensation. We shall discuss more of this later. A large number of toxic substances encountered by workers in factories, like Asbestos listed in the Third Schedule can cause Cancer. Occupational Cancer has a long incubation period and it can manifest even after the worker ceases gainful employment. While the WCA has made specific provisions for compensation of such diseases even after retirement, the ESI which has been hailed as a significant improvement over the former, has failed to address this important issue. As a result, no claim for Disability Compensation for Occupational Diseases (if at all diagnosed) after cessation of service, is entertained by the ESI Corporation.

Mallick states that the list of Occupational Diseases in the Third Schedule is meagre (Mallick, 1995). Let us consider the case of Tuberculosis which happens to be one of the commonly prevalent diseases among the Indian working class. The ESIS does not recognise it as an Occupational Disease. It is however, common scientific knowledge that
lowered lung resistance due to continuous inhalation of dust at the work place (Cotton dust, coal dust, silica dust, asbestos fibres, carbon, etc) can predispose the worker to Tuberculosis (Park, 1995, page 457). However, most workers are denied compensation for Pneumoconiosis because:

1) Silicosis, Asbestosis and Bysinosis are wrongly diagnosed as Tuberculosis by the treating doctor.

2) Silico tuberculosis is listed as Occupational diseases in the Third Schedule. But there is a rider to the effect that despite diagnosis of these conditions the Medical Board has to be satisfied that silicosis is an essential factor in causing disability or death. It is next to impossible to confirm whether it is the Tubercle bacilli or the silica dust which caused the radiological changes in the lungs, in a case of Silico tuberculosis. There is thus the possibility of the worker being denied compensation.

There is therefore a strong case to include Tuberculosis as an Occupational disease in the Third Schedule of the ESI as has been done in the National Insurance (Industrial Injuries) Act of England and in the Indian Armed Forces (Mallick, 1995; DGAFMS, 1980). This will ensure that the Medical Boards give the Benefit of doubt to the worker. Similarly, non infective dermatitis, inflammation of the upper respiratory passages or mouth, papilloma of the bladder which are recognised diseases in Great Britain find no mention in the Third Schedule (Mallick, 1995). It is pertinent to note that though the ESI Corporation itself has come to the conclusion that ‘Bronchiolitis’ is a common occupational disease prevalent in Indian industries, but its non inclusion in the Third Schedule denies workers’ their entitled compensation (ESI Corporation, 1997b). The Medical Commissioner ESI while admitting that the Third Schedule needs exhaustive revision, however regretted that no such exercise appears likely in the near future as her department is too occupied in provisioning and monitoring medical care services, which she labelled as the ‘backbone of the ESIS’.

Occupational Diseases actually Compensated in the ESIS

The ESI Corporation does not compile statistics on the number of workers who had applied for compensation for Occupational Diseases in the country. It however publishes the figures of those who were finally awarded compensation by the Special Medical Boards. The number of workers compensated for Occupational Diseases by the ESIS in the
entire country appears to be negligible (Table 5.9). The ESI Corporation also does not publish any data on the diagnosis of these compensated occupational diseases. Infact, neither administrative medical officers nor the executives working at the Headquarters have any idea of the same as the Headquarters has fixed a reporting procedure which does not call upon the ROs to report periodically even the diagnosis of such cases. The question of carrying out an annual epidemiological analysis does not therefore arise.

**TABLE 5.9: NUMBER OF WORKERS COMPENSATED FOR OCCUPATIONAL DISEASES UNDER ESI IN INDIA**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NUMBER COMPENSATED</th>
</tr>
</thead>
<tbody>
<tr>
<td>93-94</td>
<td>9</td>
</tr>
<tr>
<td>94-95</td>
<td>23</td>
</tr>
<tr>
<td>95-96</td>
<td>17</td>
</tr>
<tr>
<td>96-97</td>
<td>10</td>
</tr>
<tr>
<td>97-98</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: ESI Corporation: Annual Statistical Abstracts

The situation in Faridabad is equally grim and dismal. Only 2 cases were referred for compensation for Occupational diseases to the Special Medical Board in Faridabad (for that matter the entire Haryana) in the last five years. While the first, Harpal Singh, a worker in an Aluminium Cable unit got his compensation by sheer perseverance and courage, as he refused to give up even after the initial rejection of his claim by the Special Medical Board; the other, Late Pati Ram, a cotton mill worker was not so fortunate and he expired immediately after the Special Medical Board, most inhumanely rejected his claim. The Case Reports of these two workers are being presented below to enable one to understand the complexities of the compensation procedure of the ESIS. These also give us an insight into the working of the ESIS Health Service System and its linkages with the compensation system.

**Case Report-I**

Harpal Singh, Son of Yad Ram is a 51 year old resident of House No 1767, Dayanand Nagar, Faridabad. He has been working as a helper in Indian Aluminium Cables Ltd (now renamed, Hindustan Vidyut Products Ltd), 12/1, Mathura Road, Faridabad, since 4/1/77. This is a Cable manufacturing unit, covered by ESIS, and presently having 537 employees.

In 1994, Harpal Singh, went to ESI Hospital NH 3 with complaints of severe breathlessness and cough. Sputum examination revealed that he was AFB negative. He was however diagnosed as a case of Pulmonary Tuberculosis based on his X Rays and the
clinical findings of the Chest and TB Specialist. He received anti tubercular treatment for 18 months, without relief. He then requested for a referral to Safdurjung Hospital. The ESI doctors obliged. After a Pulmonary Function test at the referral hospital, he was diagnosed as “Pneumoconiosis leading to Interstitial Lung Disease” vide their certificate dated 24/7/96. The complete cost of treatment at Safdurjung was borne by the worker himself and the same has not been reimbursed to him by the ESIS. He showed this certificate to his dependent ESI LO Manager Sector 31. He was told, that he will continue to get sickness benefit till the maximum period admissible under the rules and nothing after that. Nobody at the LO bothered to check that the worker’s medical certificate indicated an occupational disease and so he is entitled to PDB and not merely sickness benefit. The Form 16 A which is required to be filled up by the management for a worker to claim PDB in case of an Occupational Disease was also not available with the LO. Infact, this Form is not available even today in any of the LOs or even the RO at Faridabad.

Aggrieved, the worker complained to the RO, who referred him to the Medical Referee. The medical referee perused his documents and told the worker that he will attempt to get him compensation for his occupational disease. On 1/10/96, the Medical Referee spoke to the Chairman of the Special Medical Board (SMB) for Occupational Diseases. The latter became the MS of the ESI Hospital cum ODC, New Delhi, later and is presently the Medical Commissioner of the ESIS. He also sent all the medical documents with a request for confirmation of the diagnosis at ODC, New Delhi (if necessary). The Chairman replied, “Complete formalities like X Ray Chest, Pulmonary function Tests and Sputum for Acid Fast Bacilli (AFB) and then the board will be held at RO Faridabad on 3/1/97”.

The medical board examined the worker on 3/1/97. Its findings were, “Working in Cable manufacturing industry for last 20 years, treated for Koch’s for 11/2 years in 1994, C/o of breathlessness and cough for last 2 years, on leave since 19/6/96, Weight- 55 Kgs, Height- 172.5 cms, Respiratory system- Crepitations at bases, X Ray chest- Fibrotic lesion both upper and middle zone, Averagely built, moderately nourished, Chest expansion- 5 cms, Bronchial Biopsy- Alveolar tissue shows interstitial fibrosis and focal lymphocytic infiltration, Vital Capacity- 2.18 litres in Dec 96”. Its decision was, “Diagnosis- Old healed Koch’s with Interstitial Fibrosis; No evidence of Occupational Disease (Bysinosis) - To be
reviewed after 6 months”. It is important to note that this highly qualified and singular Special Medical Board for Occupational Diseases was looking for Bysinossis in an Aluminium Cable factory worker, when the latter can only occur in a worker exposed to cotton dust.

The worker was informed about the rejection of his claim for compensation on 28/2/97, but the copy of the decision was not given to him. He could finally get a copy after repeated visits to the RO only on 25/4/97. He agitated before the RD of the RO as his condition continued to deteriorate. A fresh medical board was ordered on 25/6/97 which was later postponed to 22/8/97. On both these dates Harpal turned up at the RO for his medical board but the SMB did not come. The worker again complained to the RO and the medical board was finally held on 30/9/97.

The same medical board examined the worker again on 30/9/97 and wrote, “Working in Cable manufacturing industry for last 20 years, treated for Koch’s for 11/2 years in 1994, Complains of breathlessness and cough for last 2 years, on leave since 19/6/96, Weight- 55 Kgs, Height- 172.5 cms, Respiratory system- Crepitations at bases, X Ray chest- Fibrotic lesion both upper and middle zone, Averagely built, moderately nourished, Chest expansion- 5 cms, Bronchial Biopsy- Alveolar tissue shows interstitial fibrosis and focal lymphocytic infiltration, Vital Capacity- 2.18 litres in Dec 96 (40% of normal), Investigated at Safdurjung Hospital and diagnosed as a case of Interstitial Lung Disease”. Its decision was, “Diagnosis- Bilateral Interstitial Fibrosis: Aluminium Induced; 35% Disability, final.

This was not the end of his misery. The audit authorities raised umpteen clarifications from the LO. Finally, after a large number of appeals to the RO, the individual got a letter dated 23/3/98 fixing his compensation (PDB) at 35% (Rs 21.56 per day) with effect from 20/9/97 (date of ending 2nd spell of sickness benefit). Apparently, even these belated decisions of the ESIS are flawed due to the following reasons:

- The Special Medical Board while recording that his Vital Capacity is 40% of normal gave him only 35% disability. Even mathematically, he should have been given at least 60% disability because that was his deviation from normal. Moreover, how can the medical board make the assessment as “Final”? There is no permanent cure for
Pulmonary Interstitial Fibrosis as the pathological process is irreversible. It can even deteriorate despite treatment. Moreover, the worker will go back to work in the same environment. So his disability can be aggravated. The board should have at best done a provisional 2 year assessment which can be reviewed regularly.

The worker has been suffering from 1994, but has been given PDB only from 20/9/97. Agreed, he got sickness benefit prior to this, but that was only for a limited period and the rate of sickness benefit is only 50% of wages, whereas the TDB/full PDB rate is 70% of wages. The worker should have been given TDB from 1994 till date of starting PDB.

Harpal also informed us that there are more workers suffering from the same symptoms as he is, in his factory, but they have been diagnosed as Tuberculosis by the ESI Hospitals. His own condition has worsened since the medical board and he is sure that he will die due to this Occupational Disease only. He however cannot quit his present job as nobody will give him another job in view of his disability.

Though under the Factories Act, the ESIS and the management is bound to inform the Factory Inspectorate Faridabad that Harpal Singh has been detected to have an Occupational Disease, but the same has not been done.

**Case Report- II**

Late Pati Ram, Son of Jyoti Prasad, resided at House No 63A (Kapda Colony), Air Force Road, NIT, Faridabad. He had worked in East India Cotton Mills, Faridabad for 36 years and was aged 57 years at the time of his death. This factory is covered under ESIS. It is presently under lockout with effect from Sep 96.

In the year 1969, he was diagnosed as a case of Tuberculosis by the ESI medical institutions and advised Anti Tubercular Treatment (ATT) and rest at TB Hospital Kasauli. He stayed at that hospital for 18 months. In 1990, he complained of severe cough with breathlessness and fever off and on. He was referred to ESI NH 3 Hospital, Faridabad, where the Chest and TB Physician diagnosed him as Pulmonary TB and put him on ATT once again. His sputum for AFB was negative. He showed no improvement whatsoever. Infact his condition deteriorated to the extent that he had to undergo repeated hospitalisation. Hospital discharge slips (ESI NH3) show his diagnosis as, "Chronic fever
with COPD on ATT”, “COPD”, “Old case of Pulmonary TB with COPD”, etc. In desperation, he wrote to the RO on 6/9/96,

“Since last 5 years I am under treatment of Dr Bhuyana (Chest and TB specialist ESI NH3 Hospital), I have been admitted to the TB ward of the hospital every 6-7 months for 20-25 days. But I have not been cured. On the contrary my problem has aggravated. Nobody tells me clearly what I have been suffering from. When I go to the LO Sector 31 for money, they tell me to get it written from the treating doctor my exact diagnosis. When I go to the doctor he says that I don’t have TB. But I get breathless on the slightest movement and bring out blood on coughing. I feel I will collapse anytime. I cannot even walk properly or do my duty. I cannot attend my work for even 15-20 days. I am sure all my problems are due to my work. Please get me checked up properly so that I am treated correctly”.

This letter was treated by the RO as a complaint against the treating physician and sent to the MS ESI Hospital NH3 for “necessary action”. It was merely filed in the office of the MS.

Pati Ram, thereafter went to the LO to find out the procedure for claiming compensation for an occupational disease. He was advised to get Form 16 A filled up from his employer. But the same was not available anywhere in Faridabad. He therefore made a plain application to the RO which read,

“I am being treated by Dr AN Bhuyana, Chest Physician in ESI Hospital for last 5 years without relief. The reason is very clear. I work in the weaver department of East India Cotton Mills, where a lot of cotton dust is present. This dust has ruined my life. I am suffering from an occupational disease. Please hold a medical board to give me compensation, so that I can carry on further, because at the moment I am unable to carry even the weight of my own body. Please take mercy on the balance of my life and give me compensation”.

Meanwhile, he became critically ill and was admitted in the last week of Dec 1996 in the ESI Hospital. A senior specialist of the same hospital, relatives of the worker and Shri Ram Sagar (a co worker), pleaded with the treating chest physician to give a certificate to the effect that the worker is suffering from “Byssinosis”. The Chest Physician informed them that though he is convinced that the worker is suffering from “Byssinosis” and not

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“TB”, but he cannot put the same in writing as he does not want to become a “marked and controversial man in the Hospital”. Colleagues of Pati Ram remember clearly the doctor telling them, “I cannot write it. I will lose my job”. He told them that during their induction training, they were told at the RO Faridabad that it is not their job to diagnose an Employment Injury. This is the job of the executive authorities and not the medical doctors”. The diagnosis put down by him now read, “COPD” only.

On 3/1/97, Pati Ram was produced before the Special Medical Board for Occupational Diseases at the RO Faridabad. His relatives were informed that the decision of the medical board will be communicated to them shortly. They also cautioned the relatives that Pati Ram is terminally ill and in all probability will die in 2 months. On 11/1/97, Pati Ram was however discharged from ESI NH 3 Hospital with the remarks, “A case of COPD fit to join duty”.

On 8/2/97, he became extremely serious and was rushed to the ESI Hospital. The Casualty Medical Officer panicked on seeing his serious condition and after writing a diagnosis of “Corpulmonale with TB with COPD with Acute Embolism? Relapse”, advised transfer to RBTB Hospital, New Delhi. However, before the ambulance which was to take him to the referral hospital could arrive, Pati Ram breathed his last.

On 28/2/97, his widow received the decision of the Special Medical Board which read, “Bilateral Pulmonary TB, not a case of occupational disease, hence no disability due to Occupational Disease”. Ram Sagar and a Union Leader of East India Cotton Mills pointed out that a large number of workers in their mill have been diagnosed as TB by ESI Hospital. Just like Pati Ram, they also show no improvement due to treatment. Workers are convinced that this is due to a disease contracted at the work place, but nobody listens to them.

East India Cotton Mills has been under lockout since Sep 1996. As a result workers are now not entitled ESI benefits even. Though, Union Leaders allege that Courts of Law have specifically directed the management to lift the lockout, yet the same is not being done. The workers are on the verge of starvation as new jobs are hard to come by. Under these circumstances, the Union is busy full time in trying to get the mill reopened so that
the workers and families can keep their body and soul together. Therefore, they are forced to keep the issue of compensation for Occupational Diseases under wraps.

**REASONS FOR LOW RATE OF COMPENSATION OF OCCUPATIONAL DISEASES**

When we inquired from the administrative medical officers and executives the reasons for such a negligible low rate of compensation of occupational diseases in Faridabad, the following reasons were advanced:

1) Faridabad does not have any hazardous industry where Occupational Diseases can occur.
2) Workers being illiterate are not aware of the symptoms of Occupational Diseases and so do not inform the doctor of the same.
3) ESI doctors lack professional expertise in diagnosing Occupational Diseases.

Data held by the Factory Inspectorate in Faridabad (presented in Chapter IV) shows that there are a large number of Hazardous Units in Faridabad where Occupational Diseases can occur. Moreover, certain Occupational Diseases like Bysinossis, allergic contact dermatitis, extrinsic allergic alveolitis, occupational cataract, auditory deafness, etc need not be confined to the four walls of so called ‘hazardous units’ alone. There is an abundance of chemical, cotton, heavy engineering units, stone crushers and brick kilns (to name only a few) in Faridabad where such diseases do occur. Our User survey (discussed in detail in Chapter VII) and the Case Reports of Harpal Singh and Pati Ram bring out that workers are fully aware that the symptoms they suffer from are related to their occupation. It would be naïve to expect a worker to rattle out names of Occupational diseases listed in the Third Schedule of the ESI. Once he tells the ESI doctor that he has symptoms related to his occupation, it is the system which is expected to take the matter to its logical conclusion. This is unfortunately not being done. Details of the same have already been discussed in Chapter III.

The ESI Corporation has consciously placed hurdles in compensation for Occupational Diseases. While in the case of Occupational Injuries it has decentralised local Medical Boards, but to award compensation for Occupational Diseases it has only one centralised Medical Board christened ‘Special Medical Board’ for the entire country (Mallick, 1995; ESIC, 1996b, page 12). This comprises a Chairman (Dy Medical
Commissioner ESI Headquarters), a physician (Dr KA Ramachandran, Consultant Medicine and incharge Occupational Diseases Centre, ESI Hospital cum Occupational Diseases Centre, Basaidarapur, New Delhi) and two Chest physicians. Whenever a case of Occupational Disease is reported by a RO to the Headquarters, this Special Medical Board is detailed to examine the worker. Being a centralised board its members are naturally unaware of the specific local industrial hazards to which the diseased worker has been exposed. Moreover, they never even visit the factory where the worker has allegedly contracted the Occupational disease.

Our interviews and discussions with the Special Medical Board Members gave an interesting overview of their approach to this vital issue. We were informed as to how the Board approached the compensation claims in a large group of elderly workers in an industrial unit using Mercury in the production process. These workers had complained of headaches, insomnia, and Psychiatric symptoms due to mercury poisoning and were correctly diagnosed as "mad hatter syndrome" by the treating ESI doctors. Their claims were however rejected on the ground that the mercury levels in the atmosphere of the workplace was less than the permissible limit under the Factories Act, as recorded by the local Industrial Hygiene Laboratory. The SMB ignored two significant considerations while deciding this case. Firstly, such a large number of workers suffering at one point from similar symptoms itself suggest that this is not a normal occurrence but is related to their occupation only. Secondly, a finding of permissible levels in the work environment does not necessarily mean that a worker cannot suffer from the effects of toxicity. This is because for a short period (when not being measured) the levels can suddenly shoot up leading to toxicity among workers. Moreover, the atmospheric levels vary from one department to another, whereas samples are usually collected from one place only. In the instant case, there is no doubt that the workers were exposed to mercury. Therefore, correlation with their clinical symptoms (confirmed by a vigilant local ESI doctor as 'mad hatter syndrome') is epidemiological proof that the workers are suffering from "Diseases caused by mercury or its toxic compounds" which is listed at serial 2 of Part B of the Third Schedule of the ESI as an Occupational Disease (Appx 4). As they had all also completed the minimum statutory period of 6 months of continuous employment fixed under the ESI Act for claiming compensation in respect of this disease, rejection of their claims was unjust and unscientific.
As already stated statistics on the total number of cases appearing for occupational diseases before the medical boards are not compiled or published by the ESI Corporation. In the absence of this, we have had to dig out available data from some publications of the ESIS which is not necessarily comprehensive. These have been in the form of research papers published by some individuals or one time statistics presented by some ESI Hospitals.

Two ESI doctors Chander and Khokhar in their research paper entitled “Occupational Health in Cities” have revealed that 161 cases of occupational diseases were referred to the ESI Special Medical Board for compensation in 1992. They had been diagnosed as Silicosis, Asbestosis, Bysinosis, Occupational Asthma and Chrome Induced Disability by the treating ESI doctors (Chander, 1996, page 43-56). The ESI Statistical Abstract (an annual official document published by the ESI Corporation) shows that only 9 cases got compensation for occupational diseases in the entire country in 1992-93 (ESIC, 1992-93). This shows that only 6% of cases which appeared before the medical board for occupational diseases were fortunate enough to get compensation. The balance 94% were apparently rejected and denied compensation, despite being diagnosed as occupational diseases by the treating ESI doctors.

Similarly, ESI Occupational Diseases Centre, Chennai in one of its publications confirms having diagnosed 321 cases of Occupational Diseases in the year 1997-98 in its referral area alone. It also gives the breakdown of the diagnosis (Table 5.10). However, the total number of such diseases compensated by the ESI in the entire country during the same period was a measly 6 (Table 5.9). Armed with these statistics, we interacted with the ESI functionaries as to why such a low percentage of cases (of which appear for compensation before them) actually get compensated for occupational diseases. The reason put forth by the SMB members and the executives of the ESI Corporation for such low incidence of compensation vis-à-vis diagnosis of Occupational diseases was that mere diagnosis does not guarantee compensation. Firstly, the disease concerned has to figure in the Third Schedule of the ESI Act. Disease like Bronchitis, Pneumonitis, Bronchiectasis, Allergic Rhinitis and Eczema though diagnosed as Occupational Diseases by the ESI ODC Chennai (Table 5.10) do not figure in the Third Schedule. Secondly, in the case of those diseases
which do find mention in the said Schedule, the worker has to fulfill the minimum period for continuous employment fixed statutorily by the Corporation. We have already discussed the first reason before.

**TABLE 5.10: NUMBER OF CASES OF OCCUPATIONAL DISEASES DIAGNOSED BY ESI OCCUPATIONAL DISEASES CENTRE, CHENNAI IN 1997-98**

<table>
<thead>
<tr>
<th>DIAGNOSIS</th>
<th>NUMBER OF CASES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asthma</td>
<td>83</td>
</tr>
<tr>
<td>Bronchitis</td>
<td>82</td>
</tr>
<tr>
<td>Pneumonitis</td>
<td>19</td>
</tr>
<tr>
<td>Bronchiectasis</td>
<td>12</td>
</tr>
<tr>
<td>Byssinosis</td>
<td>5</td>
</tr>
<tr>
<td>Allergic Rhinitis</td>
<td>11</td>
</tr>
<tr>
<td>Noise Induced deafness</td>
<td>2</td>
</tr>
<tr>
<td>Eczema</td>
<td>11</td>
</tr>
<tr>
<td>Others</td>
<td>96</td>
</tr>
</tbody>
</table>


As regards the second reason, it must be noted that India has a vast majority of migrant and casual labour whose terms of employment are as per the desires of the employer. They are thus forced to migrate from one employer to another or to be laid off in the lean season or given a day’s break periodically on the muster roll so that the employer can escape application of various Labour Laws to his Industrial Unit. In case the SMB applies the ‘minimum periods of continuous employment’ clause so rigidly, then these hapless workers are bound to get no tangible benefit in case of contracting an Occupational Disease. Fortunately, the Law courts have not taken kindly to this approach by the Corporation. A landmark judgement has been delivered by the MP High Court in the case of ESI Corporation vs Smt Siyara on 10 Aug 98 which interprets Section 52A of the ESI Act (dealing with Occupational Diseases) (JG Chitre, MP (HC), Indian Factories Journal and Factories Journal Reports, Vol 94, PT 8, 19/2/99, page 122). Siyara, a labourer who had been working in a Slate Pencil Factory in Mandsaur for 12 years was diagnosed as a case of ‘Silicosis’ by the doctors of the local ESI dispensary/hospital. Silicosis is rampant among the workers employed in these Slate Pencil Factories (Rashtriya Sahara, New Delhi, 23/2/94; Navbharat, New Delhi, 11/3/94). However her case for compensation was rejected by the SMB on the grounds that since she had had a 7 day break in employment in the last 6 months prior to her contracting Silicosis, she did not meet the criteria of minimum 6 months continuous employment fixed by the ESIS for entitlement to compensation of

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Silicosis. She went in appeal to the local EI Court against this decision which allowed the same. The RO ESI (MP) bent on harassing the ailing impoverished slate pencil worker went in appeal to the MP High Court. The ESIS Counsel reiterated the plea that Siyara should have been in work continuously for six months for all the days before the date she noticed that she had contracted Silicosis. The Court while rejecting the plea of the Corporation came down heavily on the latter for attempting to defeat the spirit of this Social Security legislation. It reminded the Corporation that it had been created for the purpose of giving benefit to such hapless employees and should therefore not come up with such technical objections. The Court added, “It is pertinent to note at this juncture that a sentence has been used in Section 52A (of the ESI Act) which needs to be specially marked viz unless the contrary is proved, be deemed to be an employment injury arising out of and in the course of employment. What was the need of using this sentence in Section 52A if the intention was otherwise than which has been indicated in this judgement? In this era of benevolent enactments, and thinking of welfare state and an assurance of fundamental rights to citizens, all benevolent enactments have to be interpreted with a broader outlook. If anything is to be interpreted, if anything needs to be interpreted from the codified section, the interpretation should be always in favour of beneficiaries for whom the enactments have been indicated. The indicator of the interpretation should be always pointing towards the hapless, weaker sections of the society who are thrown in hazardous occupation.” It is pertinent to point out that Siyara would have been saved the agony of this litigation and a lot of other workers covered by ESI would have got their legitimate compensation if Subsection 2A of Section 3 of the WCA (discussed earlier) had been incorporated in Section 52A of the ESI Act.

None of the SMB members interviewed were aware of this judgement and nor has the ESI Corporation thought it fit to give directions to its officials to implement the judgement in letter and spirit while deciding future compensation cases. There is also no proposal pending with the Corporation to initiate the necessary amendments in the Act in line with Subsection 2A of Section 3 of the WCA. As a result, the benefit of Siyara’s protracted fight for justice is not going to accrue to other workers covered by ESIS. The SMB will continue to deny compensation on mere technicalities, allowing the Corporation to amass wealth at the cost of the workers health.
Dependent Benefit

The ESI Corporation does not publish figures of number of workers granted Dependent Benefit for Occupational diseases, but officials admit that the number is negligible. In Faridabad (and Haryana) no worker has been granted this benefit in the last five years. We have already seen that the Corporation grudgingly gives disability benefit for Occupational diseases during the lifetime of the individual. So one can imagine how difficult it is for a widow to convince the Corporation that her deceased husband died due to an Occupational disease. The Case Report of Late Uma Shanker will illustrate this point.

Late Uma Shanker was aged 38 years at the time of his death. He was employed at M/s Sandhu Auto (Pvt) Ltd Plot No 228, Sector 24, Faridabad, a factory covered by the ESIS. As per records he has been on their roll with effect from 1/5/93, though the widow insists that he has been working since 1991, but was regularised only after 2 years. The widow resides with her two minor children at Village Sihi, Sector 8, Faridabad.

Uma Shanker had been working on the wire tanning machine, where chemically treated rubber/plastic was drawn on the cable wire and so he inhaled many chemicals while working. In 1995, he complained of breathlessness and was referred to ESI Hospital sector 8, Faridabad, He was diagnosed as “Pleural effusion” according to his MRE maintained at ESI Dispensary Sector 7. He was put on antibiotics and given 3 spells of sickness benefit viz for 2 weeks from 24/4/95, for 3 weeks from 19/5/95 and for 2 weeks again from 12/6/95. Since he showed no improvement he went on his own accord to AIIMS, New Delhi where he was diagnosed as a case of Carcinoma Liver. Doctors at AIIMS did not hold out much hope of his survival and so he went to a private Hospital viz Dharamshila Cancer Hospital, New Delhi, for palliative terminal care. He died here as a case of Carcinoma Liver with respiratory failure with renal failure on 3/7/95. His widow was denied medical reimbursement by the ESIS on the grounds that her husband was not referred by the ESIS to AIIMS/ Dharamshila Cancer Hospital.

His widow filed a claim for Dependent Benefit on the grounds that as Uma Shanker was constantly exposed to rubber fumes at his workplace, and rubber is a known carcinogen, her husband had died of an occupational disease. She received no reply from
the ESIS. Therefore, an appeal was filed in the local EI Court on her behalf on 23/12/95. The ESIS replied in the court on 29/3/96 that she can only get funeral benefit as her husband did not sustain Employment Injury. They stated that as per their records Uma Shanker had died due to ‘Pleural effusion’ and the same is not listed as an occupational disease in the Third Schedule ESI (Appx 4). The case is pending till date.

It is important to highlight that ‘Pleural effusion’ is merely a pathological diagnosis and does not indicate aetiology. Even the ESI Corporation’s own booklet on Occupational Diseases circulated to all MO’s records that Pleural effusion could be an outcome of an occupational disease (ESI Corporation, 1990). So the ESI Corporation is wrong in insisting that Pleural effusion is not an occupational disease, merely because it is not listed in their Third Schedule. The Pleural effusion in this case was due to the secondaries in the lungs as a result of malignancy of the liver. Rubber is a known carcinogen and has been implicated as a causative agent in occupational cancer (Park, 1995). The possibility of rubber exposure at workplace leading to Carcinoma Liver cannot be ruled out in this case. Admitted, that it cannot be confirmed that the malignancy to Uma Shanker was caused by an occupational carcinogen alone. But as the involvement of the same cannot be ruled out in this case, the benefit of doubt should go the deceased, especially as the ESIS is a Social Security Scheme, supposedly wedded to workers welfare. Even the WHO admits that there is no internationally accepted definition for the term, “Occupational Disease”. It simply means a disease arising out of or in the course of employment. Any grouping of Employment Injuries is therefore done only for the sake of convenience (Park, 1995). The Third Schedule ESI is no exception.

Harpal Singh (the only worker to be compensated for an occupational disease) is extremely apprehensive as to whether his wife will get Dependent Benefit after his death. His fears are not unfounded. Since he continues to work in the same environment where he contracted the disease and as there is no definitive cure for his ailment he could die due to complications of ‘Aluminium Induced Pulmonary Interstitial Fibrosis’, either during his service or even after retirement. Under these circumstances his dependents will have to run from pillar to post to get Dependent Benefit. The Local Office Manual states, “The chances of the IP dying on account of the Occupational Disease cannot however be ruled out, even though such chances may be remote in most of the cases unless other complications set in”.

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The letters marked in italics indicate the intention of the Corporation to make things difficult for such cases.

The Corporation impresses upon its lower offices that the death certificates and the post-mortem reports should unequivocally indicate that the cause of death was an Occupational Disease, before forwarding such cases for approval to the DGESI (who alone is empowered to sanction Dependent Benefit for Occupational Diseases). In Chapter III we bring out that ESI doctors do not even record correct diagnosis of routine patients. Pati Ram though suffering from Byssinosis was repeatedly diagnosed as Tuberculosis. It is also common knowledge that doctors in India often issue death certificates indicating cause of death as, 'Cardio pulmonary arrest' which is a diagnosis that means nothing. Under these circumstances only a very 'lucky' deceased person will get a diagnosis of Occupational Disease recorded both on his death certificate and post mortem report. ESI Corporation officials admitted that due to want of complete documents or discrepancy in diagnosis between treatment papers, post mortem report and death certificate, rejection of dependent Benefit claims by the DGESI is the rule. A few officials expressed anguish over this but expressed helplessness in the matter due to procedures framed by the Corporation with utter disregard to the actual method in which medical documentation is done in the country and the socio-economic circumstances of an Indian widow.

FINANCIAL ASPECTS OF DISABILITY COMPENSATION

During our discussions and interviews we found that a few ESI executives expressed the fear that increasing rates of disability compensation or giving lumpsum payment (as in WCA) or even liberalising procedures for payment of Disability/Dependent Benefit will render the Scheme financially nonviable. We therefore discuss the impact of the current disability compensation procedure on the financial Health of the ESI Corporation.

The Permanent Disability Benefit and Dependent Benefit payments made by the Corporation are given in Tables 5.11 and 5.12. Let us consider the case of 97-98 as an example. In this year the Corporation made provisions for new payments of Rs 1,485,043,000 and Rs 686,983,000 for PDB and DB claims respectively. This figure is based on the assumption that the Corporation was to make lumpsum payments, (as in
### TABLE 5.11: PERMANENT DISABILITY BENEFIT RESERVE FUND (IN Rs) OF ESI CORPORATION

<table>
<thead>
<tr>
<th>YEAR</th>
<th>BALANCE (AS ON BEGINNING OF YEAR)</th>
<th>PROVISIONS/CREDITS DURING THE YEAR</th>
<th>INTEREST ON INVESTMENT</th>
<th>PAYMENT/ADJUSTMENTS MADE DURING THE YEAR</th>
<th>BALANCE AS ON YEAR END</th>
</tr>
</thead>
<tbody>
<tr>
<td>94-95</td>
<td>3285782865</td>
<td>364387000</td>
<td>392761147</td>
<td>241357176</td>
<td>3801573836</td>
</tr>
<tr>
<td>95-96</td>
<td>3801573836</td>
<td>417147000</td>
<td>452411764</td>
<td>258092543</td>
<td>4413040057</td>
</tr>
<tr>
<td>96-97</td>
<td>4413040057</td>
<td>417777000</td>
<td>532679803</td>
<td>295269013</td>
<td>5068227847</td>
</tr>
<tr>
<td>97-98</td>
<td>5068227847</td>
<td>1485043000</td>
<td>647963446</td>
<td>303478599</td>
<td>6897755694</td>
</tr>
</tbody>
</table>

Source: ESI Corporation: Annual Reports

### TABLE 5.12: DEPENDENT BENEFIT RESERVE FUND (IN Rs) OF ESI CORPORATION

<table>
<thead>
<tr>
<th>YEAR</th>
<th>BALANCE (AS ON BEGINNING OF YEAR)</th>
<th>PROVISIONS/CREDITS DURING THE YEAR</th>
<th>INTEREST ON INVESTMENT</th>
<th>PAYMENT/ADJUSTMENTS MADE DURING THE YEAR</th>
<th>BALANCE AS ON YEAR END</th>
</tr>
</thead>
<tbody>
<tr>
<td>94-95</td>
<td>1794664290</td>
<td>187674000</td>
<td>214521995</td>
<td>143969538</td>
<td>2052890747</td>
</tr>
<tr>
<td>95-96</td>
<td>2052890747</td>
<td>236961000</td>
<td>244306382</td>
<td>137504880</td>
<td>2376653249</td>
</tr>
<tr>
<td>96-97</td>
<td>2376653249</td>
<td>183491000</td>
<td>286874911</td>
<td>183188404</td>
<td>2663830756</td>
</tr>
<tr>
<td>97-98</td>
<td>2663830756</td>
<td>686983000</td>
<td>340564552</td>
<td>187647996</td>
<td>3503730312</td>
</tr>
</tbody>
</table>

Source: ESI Corporation: Annual Reports
WCA- called ‘Capitalised value’ in ESI vocabulary)), then this is the amount it would have paid to the beneficiaries during this current year. However, as the Corporation actually pays only in small monthly instalments, the amounts given to all individuals (old and new) during the current year are Rs 303,478,599 and 187,647,996 respectively. It is apparent that these amounts are less than even the interest that the Corporation earns on the capitalised (one time payment) value. In other words under the ESIS, the Corporation not only permanently holds on to the principal but even does not give the full interest to the worker as a result of investing his principal. In contrast to this the Permanent Disability Reserve Fund and the Dependent Benefit Reserve Fund has been showing a steady increase over the last 4 years (Tables 5.11 and 5.12).

The Corporation can thus easily afford to liberalise the compensation procedures so that all workers get their entitled dues. On the contrary, we observe that the Corporation has been filling its coffers and has therefore become a source of money for the Union Ministry of Labour (Table 5.13).

<table>
<thead>
<tr>
<th>DATE</th>
<th>FUNDS WITH THE ESIS (Rs LACS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.3.95</td>
<td>238452.59</td>
</tr>
<tr>
<td>31.3.96</td>
<td>268250.19</td>
</tr>
<tr>
<td>31.3.97</td>
<td>304262.69</td>
</tr>
<tr>
<td>31.3.98</td>
<td>399867.25</td>
</tr>
</tbody>
</table>

Source: ESI Corporation: Annual Reports

When the latest Task Force to Study modalities for Integration of various Social Security Schemes was set up, the ESIS was directed to bear all the expenditure for the functioning of the Task Force. In 1998, Mr Dias (a Union Leader and member of the Standing Committee ESIS) strongly objected to this unilateral financial burden on the Corporation. He also pointed out that the Task Force had no Labour representative (ESIC, 1998). His objection was overruled by the majority comprising representatives of the Corporation, The Government and the Employees on the ground that since the DGESI is a member of the Task Force, the workers interests are protected. This is strange logic where a Career Bureaucrat on deputation to the ESIC and aspiring to move out on promotion to the rank of Secretary (IAS), is nominated as a representative of the workers! Further, the ESIS, whose primary objective is to provide benefits in cash and kind to workers, becomes the only one to finance such ‘Task Forces’! The Union Ministry of Labour who does not
contribute a penny towards the running of the Scheme, barely funds the umpteen numbers of Committees it sets up. The problem does not stop here. Senior executives of the Corporation pointed out that most of the Conferences on Labour and Social Security hosted by India have also to be funded by the ESIS, in view of its solid financial reserves. We thus see that though the ESIS has no shortage of funds, its priorities appear to be misplaced.
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