PAYMENT OF COMPENSATION FOR INDUSTRIAL INJURIES

UNDER THE WORKMEN'S COMPENSATION ACT, 1923

Compensation, payable under the Workmen's Compensation Act, 1923, depends on the extent of injury, resulting from accident. Injury may result in death, permanent total disablement, permanent partial disablement, temporary total disablement and temporary partial disablement.

Permanent total disablement means such disablement as permanently incapacitates a workman for all work he was capable of performing at the time of the accident, causing such disablement. The question, how the disablement of a workman has to be assessed for deciding, whether his disablement is a permanent total one or not, has been subject to different judicial interpretations, in spite of the above statutory definition. According to one interpretation, if the workman is incapacitated for the work, he was capable

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1. Workmen's Compensation Act, 1923, Section 2(1) (1). Permanent total disablement shall be deemed to result from every injury, specified in Part I of Schedule I or from any combination of injuries, specified in Part II thereof, where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred percent or more. Ibid. See also Janatha Modern Rice Mills v. G. Satyanarayana, 1995 Lab.I.C. 677 (A.P.).
of performing at the time of the accident, he sustains permanent total disablement, though he may be capable enough to obtain some other sort of work.\(^2\) As per another interpretation, a workman can be said to have suffered permanent total disablement, only if the workman is incapacitated for all work and not merely the work, he was performing at the time of the accident.\(^3\) This is because the expression

2. In National Insurance Co. Ltd. v. Mohd. Saleem Khan and another, (1992) 2 L.L.J. 377 (A.P.), a truck collided with a lorry and the driver sustained multiple injuries on both feet and collar bone. The doctor, who treated him, certified that he was not fit to drive any heavy vehicle and assessed his disability as 50%. It was held that the work which the workman was capable of performing at the time of accident, is material to consider whether it is a case of total disablement or not. So if the driver is incapacitated for the work of a driver, he has suffered total disablement, though he can obtain some other work and the disability was assessed as 50% by the doctor. See also New India Assurance Co. Ltd. v. Kotam Appa Rao, 1995 Lab. I.C. 1087 (A.P.); Oriental Insurance Co. Ltd. v. Guru Charan Saren, A.I.R. 1991 Ori. 294; Sidappa v. G.M., K.S.R.T.C., 1988 (57) F.L.R. 500 (Kant.) (D.B.); P.K.Parmar v. G.Kenal Construction & ANR, (1985) 1 L.L.J. 98 (Guj.) (D.B.); and Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 L.L.J 235 (S.C.).

3. In Shankarlal v. G.M., Central Railway, 1990 A.C.J. 1028 (M.P.), a Shunting Master met with an accident, fracturing the bones of his leg, which was ultimately shortened by four inches. This defect rendered him unfit for his original job as well as the alternative job of Power Recorder, which was assigned to him subsequently. In such circumstances, it was held that the workman had suffered permanent total disablement. See also Moti Lal v. Thakur Das, (1985) 2 L.L.N. 951; 1985 A.C.J. 634 (All.); All India Construction Co. Ltd. v. Munshi Ram, A.I.R. 1931 Lah. 319.
"for all work"⁴ cannot be read as "for the work he was performing at the time of the accident".⁵ The first judicial interpretation enables an injured workman to get compensation for permanent total disablement, if he is incapacitated for the particular work, he was engaged in at the time of the accident. His capability to obtain some other work does not affect his title to compensation for permanent total disablement.

On the other hand, according to the second interpretation, unless an injured workman is incapacitated for all work, he was capable of performing at the time of the accident, in addition to the particular work, he was engaged in at the time of the accident, he will not be treated as having suffered permanent total disablement. The second interpretation, hence, throws open before the workman the chances for alternative employment, in addition to compensation for permanent partial disablement.⁶

The incapacity, that is contemplated for deciding whether there is permanent total disablement, is not mere physical incapacity⁷ but incapacity to secure employment.

4. Supra, n.1.
6. Infra, n.11.
Earning of wages depends as much on the demand for the workman's labour as it does upon his physical ability to work. If, because of his apparent physical defects, no one will employ him, however efficient he may be, in fact, he has lost the capacity to earn wages, as if he were paralysed in every limb. For example, a man is incapacitated for work, when he has a physical defect, which makes his labour un-saleable in any market, reasonably accessible to him. If, as a result of an accident, an already useless or dead organ like an already blind eye-bawl has to be removed, the injury may not, in fact, reduce his capacity to work. But at the same time, he gets stamped with a visible mark of physical deficiency or deformity, which dissuades employers from employing him. Thus, though the capacity of a workman for work may remain quite unimpaired, his eligibility as an employee may be completely lost and his earning capacity destroyed.

Permanent partial disablement is such disablement as reduces a workman's earning capacity in every employment, he was capable of undertaking at the time of the accident,


causing the disablement. While permanent total disablement affects his very capability to get work, permanent partial disablement affects only the wages for the work done. In other words, while the former makes a workman's labour unsaleable in labour market, the latter makes his labour saleable for less than it would otherwise fetch.

Temporary disablement can also be either total or partial under the Workmen's Compensation Act, 1923. Temporary total disablement is that, which incapacitates a workman temporarily for all work, he was capable of performing at the time of the accident, resulting in such disablement. Temporary partial disablement is such temporary disablement as reduces the earning capacity of a workman in any employment, in which he was engaged at the time of the accident, resulting in the disablement.

11. Workmen's Compensation Act, 1923, Section 2 (1) (g). Injuries, which shall be deemed to result in permanent partial disablement, are listed in Schedule I, Part II. See also Hutti Gold Mines Co. v. Ratnam, (1965) 2 L.L.J. 20 (Mys.).
14. But under the Employees' State Insurance Act, 1948, in the case of temporary disablement, no distinction is made between total and partial. In that Act, 'temporary disablement' means a condition, resulting from an employment injury, which requires medical treatment and renders an employee, temporarily incapable of doing the work, he was doing prior to or at the time of injury. See Employees' State Insurance Act, 1948, Section 2 (21).
15. Workmen's Compensation Act, 1923, Section 2 (1) (g).
16. Id., Section 2 (1) (g).
The amount of compensation, in case of death under the Workmen's Compensation Act, 1923, is an amount, equal to forty percent of the monthly wages of the deceased workman, multiplied by the relevant factor or an amount of twenty thousand rupees, whichever is more. From this

17. Id., Section 4(1)(a), read with Explanation 11. There are three methods of calculating 'wages'. If the workman has been in the service of the employer during a continuous period of not less than twelve months, immediately preceding the accident, the monthly wages of the workman shall be one-twelth of the total wages in the last twelve months of that period. If the whole of the continuous period of service, immediately preceding the accident, is less than one month, the monthly wages of the workman shall be the average monthly amount, which was being earned by a workman, employed on the same work by the same employer during the twelve months, immediately preceding the accident or if there was no such workman employed by him, the average monthly amount being earned by a workman, employed on similar work in the locality. In other cases, the monthly wages shall be thirty times the total wages, earned for the last continuous period of service, immediately preceding the accident, divided by the number of days comprising such period. See Id., Section 5. The formula for calculating 'wages' under the Workmen's Compensation Act, 1923 enables even a temporary worker or one who has been employed only for a few days, the right to claim compensation in the event of an injury. See Sunil Rai Choudhuri, Social Security in India and Britain (1962), p.58.

18. Workmen's Compensation Act, 1923, Section 4(1)(a), read with Explanation I and Schedule IV. The 'relevant factor', in relation to a workman, means the factor, specified in the second column of Schedule IV against the entry in the first column of that Schedule, specifying the number of completed years of the age of the workman on his last birthday, immediately preceding the date, on which the compensation fell due. With increase in the age, the relevant factor goes on decreasing.

19. Ibid. If a workman meets with an accident and dies at the age of 35 and at that time he draws monthly wages of Rs.900/-, the relevant factor, applicable to his case, is Rs.197/06 and the compensation, payable, is an amount, equal to forty percent of the monthly wages of the
amount of compensation, payable to the dependants, an amount, not exceeding fifty rupees, is paid by the Commissioner towards funeral expenses to the person, who incurred such expenses. 20

(f.n.19 contd.) deceased, multiplied by Rs.197/06, the relevant factor.

As per Explanation II to Section 4(1) of the Workmen's Compensation Act, 1923, where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the calculation of compensation shall be deemed to Rs.1000/- only. The Law Commission of India has emphasized the need to remove the injustice, resulting from treating unequals as equals by deleting Explanation II to Section 4. Further, according to the Commission, having regard to the rise in the cost of living and the resultant fall in the value of money and in view of the upward revision of the minimum wages by 150%, the minimum compensation, in case of death, has to be revised upwards by substituting the figure Rs.50,000/- for Rs.20,000/-. See the Law Commission of India, One Hundred and Thirty Fourth Law Commission Report on Removing Deficiencies in Certain Provisions of the Workmen's Compensation Act, 1923 (1989), pp.33, 35. It has to be noted that the quantum of compensation, payable in case of death, is revised by substituting for the words "forty percent" and "twenty thousand rupees" in Section 4 (1)(a) of the Workmen's Compensation Act, 1923, the words "fifty percent" and "fifty thousand rupees" respectively. But this amendment will come into force only on such date as the Central Government may, by notification in the Official Gazette, specify. See Workmen's Compensation (Amendment) Act, 1995, Sections 1 (2) and 4.

20. Workmen's Compensation Act, 1923, Section 8(4). According to the Law Commission of India, it is not too much to expect the employer to pay for the last rites of a workman, who has lost his life in his employment, to a reasonable extent. So it has recommended that the employer may meet the actual funeral expenses of the deceased workman, subject to an upper limit of a sum, equivalent to two months' wages, in addition to paying compensation as per the Act. See the Law Commission of India, supra, n.19, pp.39,40. It has to be noted that after omitting the words "shall deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding fifty rupees and pay the same to
In case of the permanent total disablement, the injured workman shall be entitled, under the Workmen's Compensation Act, 1923, to an amount, equal to fifty percent of the monthly wages, multiplied by the relevant (f.n. 20 contd.) the person by whom such expenses were incurred and in Section 8(4), a new sub-section (4) is inserted after sub-section (3) of Section 4 of the Workmen's Compensation Act, 1923, requiring the employer, in the event of death of an injured workman, to deposit with the Commissioner a sum of one thousand rupees towards the funeral expenses of the workman, in addition to the compensation under sub-section (1). But this amendment will come into force only on such date as the Central Government may, by notification in the Official Gazette, specify. See Workmen's Compensation (Amendment) Act, 1995, Sections 1 (2), 4 and 6.

21. Workmen's Compensation Act, 1923, Section 4 (1) (b), read with Explanation II. Where the monthly wages of a workman exceed one thousand rupees for calculation of compensation, his monthly wages shall be deemed to be one thousand rupees only. In Bharat Gold Mines Ltd., v. Hanuman and others, (1993) 2 L.L.J. 313 (Kant.) (D.B.), a workman, who contracted silicosis, was terminated from service. His employer refused to pay compensation to the workman with reference to the wages on the date of termination of service. It was held that compensation has to be made on the basis of wages, drawn on the date of actual termination of services of workman and not on the date of contracting occupational disease. In B.M. & G. Engineering Factory v. Bahadur Singh, A.I.R. 1955 All. 182 (D.B.), it was held that the term 'wages' has to be interpreted in the light of the definition given in the Workmen's Compensation Act, 1923 and not the one, given in the Payment of Wages Act. The word 'privilege' or 'benefit' in the definition in the Workmen's Compensation Act includes the benefit of 'free accommodation'. In Hindustan Aeronautics Ltd., v. Bone Jan, 1971 (22) F.L.R. 308 (Mys.) (D.B.), it was held that the word 'privilege' or 'benefit' covers overtime allowance and outstation allowance and in Luizina Cyril Vaz v. M/s. Caltex (India) Ltd., 1973 (27) F.L.R. 320 (Bom.), it was held that the term 'wages' covers food allowance, overseas allowance, devaluation supplement and overtime wages, paid to a seaman. In Chopra Printing Press v. Des Raj, (1964) 1 L.L.J. 658 (Punj.), it was held that contd...
factor\textsuperscript{22} or an amount of twenty four thousand rupees, whichever is more\textsuperscript{23}. The compensation, payable in the case of permanent total disablement, is, therefore, more than that admissible to dependants in the event of the death of the

\text{(f.n.21 contd.)}

where a workman actually receives wages less than the one prescribed under the Minimum Wages Act, 1948, he would be deemed to be drawing the monthly wages as prescribed by the said Act.

22. Workmen's Compensation Act, 1923, Section 4, Explanation I and Schedule IV. The relevant factor is the same as in the case of death.

23. \textit{Id.}, Section 4 (1) (b). Thus the compensation, payable for permanent total disablement to a workman, aged 35 and drawing a monthly wages of Rs.900/-, would be Rs.88,677/-, being 50 per cent of Rs.900/-, multiplied by Rs.197/06, the relevant factor. Having regard to the rise in the cost of living and the resultant fall in the value of money and in view of the upward revision of the minimum wages by 150\%, the Law Commission of India has recommended that the minimum compensation, in case of permanent total disablement, has to be revised by substituting the figure Rs.60,000/- for Rs.24,000/-. See the Law Commission of India, \textit{supra}, n.19 at p.35.

The quantum of compensation, payable for permanent total disablement, is revised by substituting for the words "fifty percent" and "twenty four thousand rupees" in Section 4(1)(b) of the Workmen's Compensation Act, 1923, the words "sixty percent" and "sixty thousand rupees" respectively. Explanation II to Section 4(1) of the Act of 1923 is also amended by substituting for the words "one thousand rupees", the words "two thousand rupees". But these amendments will come into force only on such date as the Central Government may, by notification in the Official Gazette, specify. See Workmen's Compensation (Amendment) Act, 1995, Sections 1 (2) and 4.
workman.24

For permanent partial disablement, in the case of a scheduled injury,25 such percentage of the compensation, which would have been payable in the case of permanent total disablement, as is proportionate to the percentage of the loss of earning capacity,26 specified therein, is payable.27

In the case of injuries, not specified in Schedule I, such percentage of the compensation, payable in the case of permanent total disablement, as is proportionate to the loss

25. See Workmen's Compensation Act, 1923, Schedule I, Part II
26. The percentage of the loss of earning capacity, stated against the injuries in Part II of Schedule I, is only the minimum to be presumed in each case and the applicant is entitled to prove that the loss of earning capacity was more than the minimum, so prescribed. The Commissioner may come to his own conclusion with regard to the loss of earning capacity in each case on the basis of the evidence, led before him. See Samir U. Parikh v. Sikandar Zahiruddin, 1984 Lab.I.C. 521 (Bom.).
27. Thus, if a workman, drawing monthly wages of Rs.900/-, gets Rs.88,677/- as compensation in case of permanent total disablement, the compensation, he is to receive for permanent partial disablement, for example, loss of thumb of one hand, will be 30% of Rs.88,677/- i.e., Rs.26,603/10. See Workmen's Compensation Act, 1923, Schedule I, Part II, Serial No.5; M.L. Kumar, Employer's Liability on Accidents (1992), p. 51.
of earning capacity,\textsuperscript{28} is payable. Where more injuries than one are caused by the same accident, the amount of compensation, payable for them, shall be aggregated. But the aggregated amount shall not, in any case, exceed the amount,\textsuperscript{29} which would have been payable for permanent total disablement.

To claim compensation for scheduled injuries under the Workmen's Compensation Act, 1923, the workman is required only to show that he has suffered injury during the course of employment and that the particular injury falls within the Schedule. But in the case of non-scheduled injuries, the workman must show by leading evidence that he has suffered loss of earning capacity to a particular extent and he would be entitled to compensation, commensurate with the loss of earning capacity, suffered by him.\textsuperscript{30}

In the case of scheduled injuries, the extent of loss of earning capacity is determined by the statute itself.\textsuperscript{31}

\begin{itemize}
\item \textsuperscript{28} The power to assess the loss of earning capacity, in case of non-scheduled injuries, was conferred upon the medical practitioner by the 1984 amendment of the Workmen's Compensation Act, 1923 (Act No.22 of 1984, Section 3 w.e.f. 1-7-1984.) Prior to the 1984 amendment, the provision, relating to non-scheduled injuries, ran as follows:- "(ii) in the case of an injury not specified in Schedule I such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury" See also infra, nn.40, 41, 42, 43.
\item \textsuperscript{29} Workmen's Compensation Act, 1923, Section 4(1) (c), Explanation I.
\item \textsuperscript{31} For example, in case of total loss of vision of a workman, contd...
So primafacie, no further investigation is needed to find out the extent of loss of earning capacity. But in the case of non-scheduled injuries, the loss of earning capacity is to be assessed by a medical practitioner after the 1984 amendment of the Workmen's Compensation Act, 1923. A medical practitioner may be competent to assess the loss of physical capacity. But the problem is that, though the loss of physical capacity may be relevant in assessing the extent of loss of earning capacity, the former loss is not co-extensive with the latter loss and the former cannot prove the

(f.n.31 contd.) his compensation has to be assessed in accordance with Item 26 of Part II of Schedule I i.e. at 30% loss of earning capacity. See Katras Jherriah Coal Co. v. Kamakhaya Paul, 1976 Lab.I.C.751 (Cal.) (D.B.). See supra, nn.25, 26 & 27.

32. P.E.Davis & Co. v. Kesto Routh, A.I.R.1968 Cal.129 (D.B.). But In Sidappa v. G.M., K.S.R.T.C., 1988 (57) F.L.R.500 (Kant.) (D.B.), it was held by the Karnataka High Court that though the injury, suffered by a workman, falls under one of the items, specified in Part II of Schedule I, listing injuries, deemed to result in permanent partial disablement, if it is found that there has been permanent total disablement, having regard to the nature of employment, in which the workman concerned was employed, he would be entitled to the compensation in accordance with the IV Schedule. See also Samir U. Parikh v. Sikandar Zahiruddin, supra, n.26.

33. Supra, n.28; infra nn.40, 41.

34. In Janatha Modern Rice Mills v. G.Satyamarayana, 1995 Lab.I.C.677 (A.P.), a helper in a rice mill met with an accident in the course of his work. As a result, his left hand had to be amputated up to below elbow. His loss of earning capacity was assessed by the doctor as 60%. It was held that his loss of earning capacity had to be taken as 100%, instead of 60%, as certified by the doctor, as the workman was not able to work with the contd...
latter.35 Earning capacity is the capacity to earn money.

Physical incapacity may or may not affect the earning capacity. For example, the weakening or loss of a limb may make it impossible for the affected workman to do his former job, with his former efficiency. So, although he may obtain employment, he is not offered remuneration at the old rate. Here physical incapacity leads to reduction, though not total loss of the earning capacity. On the other hand, the weakening or even loss of a limb may not stand in the way of a workman's obtaining his former employment and his doing it with former efficiency. So there is no loss of earning capacity, despite physical incapacity.36 Further, loss of earning capacity has inexorable nexus with the type of profession of the workman. For instance, loss of finger of a painter could result in total loss of his earning capacity. But loss of a finger


of a head-load worker need not have that effect. Moreover, earning capacity is different from actual earning. For example, the employer may offer alternative job to the injured workman out of mercy. So the workman may not suffer any loss or reduction in earnings. But this stability in earnings does not imply that there is no loss of earning capacity. This is because he is offered job by the employer out of mercy and not because of the capacity of the workman to do it. The medical practitioner may find it difficult to

37. United India Insurance Co.Ltd., v. Sethu Madhavan, 1992 (2) K.L.T.702 (D.B.). See also Sarjerao Unkar Jadhav v. Gurindar Singh, (1992) 1 L.L.J.155 (Bom.). A contractor was engaged by the Electricity Board for doing painting work. A workman, employed by the contractor, sustained injuries in the course of his work. His loss of earning capacity was assessed as 20% by the Commissioner. On appeal, the Bombay High Court held that the percentage of loss of earning capacity, as assessed by the Commissioner, was very low, considering the nature of his job. The percentage of loss of earning capacity should not have been assessed with reference to physical incapacity but with reference to the loss in earning capacity in the context of the nature of the job, that he was engaged in, as laid down by the Supreme Court in Pratap Narain Singh Deo v. Shrinivas Sabata, (1976) 1 L.L.J.235. Siddappa v. G.M., K.S.R.T.C., 1988 (57) F.L.R.500 (Kant.) (D.B.) and P.K.Parmar v. G.Kenai Construction & ANR, (1985) 1 L.L.J.98 (Guj.) (D.B.) are other cases, establishing the nexus between loss of earning capacity and the nature of employment of the injured workman.

38. V.Jayaraj, v. Thanthai Periyar Transport Corpn. Ltd., (1989) 2 L.L.J.38 (Mad.). A conductor, working in State-owned Transport Corporation, lost his hearing capacity due to shock, received by him in an accident in the bus, in which he was working. The Commissioner for Workmen's Compensation fixed the loss of earning capacity at 20%, even though the medical certificate showed that there is 100% sensorineural hearing loss on right ear and 73.5% hearing loss on the left ear. On appeal to the High Court contd...
assess these complex factors, relating to loss of earning capacity. This has led to divergence of opinion as to who should assess the loss of earning capacity. According to one view, the legislative wisdom, empowering the medical practitioner to assess the loss of earning capacity, should be respected. This is because the statute specifically postulates that the compensation, to be awarded for non-scheduled injury, should be proportionate to the loss of earning capacity, as assessed by the qualified medical practitioner. The expression "as assessed by the qualified medical practitioner" is not ambiguous. So the legislature's intention in accepting and recognizing the expert opinion of the medical practitioner cannot be overlooked. But, according to the opposite view, the Commissioner for Workmen's Compensation is the competent authority to assess the loss of earning capacity, as the loss of earning capacity cannot be

(f.n.38 contd.) of Madras, it was held that the loss of earning capacity has to be calculated in terms of permanent partial disability, which the workman has been subjected to. The fact, that the workman is continued in the employment and gets old wages, will not absolve the employer from paying the compensation. The employer may continue him in the old post and give him old wages by way of grace. But that would not entitle the workman to claim compensation. See also Exec.Engr., P.W.D. v. Narain Lal, 1977 Lab.I.C.1827 (Raj.); Saraswathi Press v. Nand Ram, 1971 Lab.I.C.1341 (All.).


40. Supra, n.33.

co-extensive with the physical incapacity but depends upon several other factors, in addition to the physical incapacity. But there is still another view, which reconciles the above mentioned conflicting views. According to this view, normally, the loss of earning capacity, assessed by the qualified medical practitioner, is to be accepted by the Commissioner, after examination of the medical practitioner. However, the Commissioner can disagree with the assessment of loss of earning capacity, made by the qualified medical practitioner and consider other evidence, in special circumstances. Of these three views, the last one is to be preferred.

For temporary disablement, whether total or partial, an injured workman is entitled to half-monthly payment of the sum, equivalent to twenty five percent of the monthly wages of the workman. This means a workman would receive 50% of


44. Workmen's Compensation Act, 1923, Section 4 (1) (d). No half-monthly payment shall in any case exceed the amount by which the amount of the monthly wages of the workman before the accident exceeds half the amount of wages, he is earning after the accident. Id., Section 4 (2), Proviso (b).
his monthly wages in a month towards temporary disablement, whatever may be his monthly wages. 45

Any half-monthly payment may be reviewed by the Commissioner, on the application either of the employer or of the workman. 46 After review, the half-monthly payment may be continued, increased, decreased or ended. 47 If the accident is found to have resulted in permanent disablement, the half-monthly payment will be converted into a lumpsum less the amount, already received by way of half-monthly payment. 48

Any right to receive half-monthly payment may be commuted

45. This change, brought about by the 1984 Amendment of the Workmen's Compensation Act, 1923 is advantageous to persons drawing higher wages. Previously, persons drawing more than Rs.900/- but not more than Rs.1000/- were eligible for compensation for temporary disablement at the rate of only Rs.175/- per half month i.e. Rs.350/- p.m. But persons drawing Rs.60/- p.m. were eligible to receive Rs.36/-, which was more than half of their monthly wages every fortnight i.e. more than full wages for a month. But after the 1984 Amendment, they are entitled to only half of their wages in a month. The 1984 Amendment has taken away the discrimination between persons drawing lesser wages and those drawing higher wages.


46. The application should be accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman. See Workmen's Compensation Act, 1923, Section 6(1). An application for review may be made without medical certificate in certain cases. Workmen's Compensation Rules, 1924, Rule 3.

47. Workmen's Compensation Act, 1923, Section 6(2).

48. Ibid.
into a lumpsum by the Commissioner.⁴⁹

Thus, under the Workmen's Compensation Act, 1923, in cases of death and permanent disablement, lumpsum payments are granted, depending on the monthly wages and age of the deceased/injured workman. In case of permanent partial disablement, lumpsum payment is made, depending on the monthly wages, age and the percentage of loss of earning capacity. For temporary disablement, whether total or partial, half-monthly payments are made. But the quantum of compensation, payable except for temporary disablement, stands restricted by the provision, limiting the monthly wages for calculation of compensation to Rs.1,000/-. Today, workers in private or government industries generally get more than Rs.1,000/- p.m. as salary. Hence, the quantum of compensation for death and permanent disablement is hardly geared to the actual salary of the workers.⁵¹

Certain conditions are essential for the payment of compensation under the Workmen's Compensation Act, 1923. The first condition is that the incapacity must be for a period longer than the waiting period of 3 days. Secondly,

⁴⁹. Id., Section 7; Workmen's Compensation Rules, 1924, Rule 5
⁵⁰. Supra, nn.19 and 21.
⁵¹. V.Jaya Surya Rayalu, supra, n.45 at 13.
⁵². Workmen's Compensation Act, 1923, Section 3(1), Proviso (a). Though the idea of a waiting period seems to be in contradiction with the principle of occupational risk,
the injury, unless it is fatal, must not be due to the influence of drink or drugs or the wilful disobedience by the workman of an order or a safety rule or the wilful removal or disregard of a safety device. Thirdly, notice of the accident has to be given to the employer as soon as

(f.n.52 contd.) which requires that compensation should begin from the moment, the loss occurs, a waiting period was considered desirable to discourage malingering and reduce the burden, caused by the payment of compensation for minor accidents. The original Workmen's Compensation Act of 1923 prescribed a waiting period of 10 days. As per the recommendation of the Royal Commission, the waiting period was reduced from 10 to 7 days by the Amending Act of 1933. The Amending Act of 1959 has not only allowed dating back for incapacity, lasting for 28 days or more but has also reduced the period from 7 to 3 days in all cases. See Sunil Rai Choudhuri, Social Security in India and Britain (1962), p.42.

53. Workmen's Compensation Act, 1923, Section 3(1), Proviso (b). See M/s.Deep Metal Industries, Chakan v. B.D.Gaikwad, 1995 Lab.I.C.1002 (Bom.). An unskilled workman offered a machine without closing it, he being not aware of any rules or instructions in this regard. It was held that the workman could not be considered to be wilfully disobedient, as wilful disobedience means something more than a mere violation of a rule.

54. 'Notice of accident' in Section 10(1) would mean the notice of the details of the accident and it may not be necessary to set out the details of any ascertained amount of claim. See Chhatiya Devi Gowalin v. Rup Lal Sao, 1978 Lab.I.C. 1368 (Pat.). The words 'notice of accident' do not mean notice of the details of accident. See Ali mohamed v. Shankar, A.I.R.1946 Bom. 169 (D.B.). It is not necessary that there should be notice of every trivial accident. If an accident, too trivial, in the first instance, to require notice, subsequently, develops serious consequences, the obligation to give notice as soon as practicable would be met by giving notice, when the consequences ensue. Until then, there has not really been an accident. Ahmedabad Victoria Iron Works Ltd., v. Maganlal, A.I.R. 1941 Bom.296 (D.B.).

It is possible that the employer may deny receipt of contd...
practicable after the happening of the accident, in the prescribed manner. But want of or any defect or any irregularity in a notice is not a bar to the entertainment of a claim, if the failure to do so was due to sufficient

(f.n.54 contd.) notice or may not maintain the required notice - book under sub-section (3), and nice questions of fact, requiring evidence, may then arise. So the giving of notice should be a facility, allowed to the workman and not an obligation, imposed on him. He can avail himself of the facility in order to preserve evidence of his bona fides. But failure to do so should not entail a bar to the claim being entertained. See Law Commission of India, Sixty-second Report on the Workmen's Compensation Act, 1923 (1974), p.84.

55. According to the original Act, a notice had to be given to the employer as soon as practicable after the happening of the accident and before the workman voluntarily left the employment, in which he was injured. The Act of 1938, however, deleted the latter requirement. Now notice has only to be given as soon as practicable. See Sunil Rai Choudhuri, Social Security in India and Britain (1962) p.48. No cast-iron rule can be laid down, in regard to what is meant by 'as soon as practicable'. It depends on the circumstances of each case. A notice, given two months after the accident, may, if the victim of the accident is continuously in the hospital, be held to be one, given 'as soon as practicable'. Bansidhar v. Ramachandra, A.I.R.1960 M.P.313.

56. Workmen's Compensation Act, 1923, Section 10. The Act prescribes no particular form, in which the notice should be made. However, the obligation to serve the notice suggests that it must be a written notice. See Ahmedabad Victoria Iron Works Ltd. v. Maganlal, A.I.R.1941 Bom.298 (D.B.).

cause or if the employer had knowledge of the accident from any other source at or about the time, when it occurred or if the claim is in respect of the death of a workman, which occurred on the employer's premises. The notice may be served on the employer by delivering it at the

58. Workmen's Compensation Act, 1923, Section 10(1), Proviso 5. 'What is 'sufficient cause' within the meaning of S.10 can only be decided in each particular case with reference to the facts and circumstances of that case. See Salamat v. Agent, E.I.R., A.I.R.1938 Cal.348 (D.B.). The fact that the applicant is suffering from typhoid (Brahma Metal and General Engg. Factory v. Bahadur Singh, A.I.R.1955 All. 182 (D.B.)) or illness, resulting in his being a complete wreck after his discharge from the hospital (Pollachi Transport Ltd. v. Arumuga Kounder, A.I.R.1938 Mad.485 (D.B.)) constitutes 'sufficient cause'.


60. Workmen's Compensation Act, 1923, Section 10(1), Proviso 4. In M/s.Deep Metal Industries, Chakan v. B.D.Gaikwad, 1995 Lab.I.C.1002 (Bom.), entertaining claim for compensation, in the absence of formal notice, was held not legally defective, as accident had taken place inside the factory and to the knowledge of working partner and management had paid medical bills also. See also Makhan Lal Marwari v. Audh Behari, A.I.R.1959 All.586. Originally, notice had to be given in every case of accident. The exceptions were laid down by Section 7(a) of the Amending Act of 1933.

61. It may also be served upon any one of several employers or upon any person, responsible to the employer for the management of any branch of the trade or business, in which the injured workman was employed. Id., Section 10 (2).
residence or any office or place of business of the person concerned or by registered post, addressed to the persons concerned or by entry in the notice-book. Fourthly, claim for compensation must be preferred before the Commissioner for Workmen's Compensation within the prescribed time. Fifthly, the workman must not have instituted a

62. See Id., Section 10(4). The State Government is empowered to require any specified class of employers to maintain at their premises, at which workmen are employed, a notice-book, in the prescribed form. The notice-book should be readily accessible, at all reasonable times, to an injured workman, employed on the premises and to any person, acting bonafide on his behalf. Id., Section 10(3).

The Law Commission is of the view that the maintenance of notice-book should be obligatory for all employers. If the workman chooses to give an intimation, he should have available a bound book, in which the intimation will be entered. See Law Commission of India, supra, n.54, p.85.

63. Workmen's Compensation Act, 1923, Section 10(1). Generally, no claim for compensation will be entertained by the Commissioner, on expiry of the prescribed period of limitation. But the Commissioner may entertain and decide any claim to compensation in any case notwithstanding the claim has not been preferred in due time, if he is satisfied that the failure to prefer the claim was due to sufficient cause. See Workmen's Compensation Act, 1923, Section 10(1), Proviso (5). Workmen's implicit belief that his employer will settle his claim (M/s.N.Pochiah & Co. v. Mulle Nagabhushanam, A.I.R.1966 A.P.99) was held to be sufficient cause and delay condoned. See also Shahabad Farmers Co-operative Marketing cum-Processing Society Ltd. v. Chajju Ram, 1989 A.C.J. 641 (P. & H.); Sarup Singh v. Mukund Lal, A.I.R. 1960 Punj.119; Brahma Metal and Gen, Engg. Factory v. Bahadur Singh, A.I.R.1955 All. 182 (D.B.). In Mangal Chand v. Forest Dept., Kinnaur, (1985) 1 L.L.J.369 (H.P.), there was one year delay in filing the claim for compensation. The Commissioner refused to condone delay, because no "sufficient cause" was shown. It was held by the Himachal Pradesh High Court that pedantic and unpragmatic

contd...
suit in a civil court for damages in respect of his injury. Lastly, if the employer offers to have the workman examined, free of charge, by a qualified medical practitioner, the latter must submit himself for such examination.

Compensation, payable to a workman, whose injury has resulted in his death, or to a woman or a person under a legal disability, is not to be paid otherwise than by deposit

(f.n.63 contd.)

approach should not be adopted to the matter and the court need not be overstrict in expecting proof of the "sufficient cause", because refusal to condone delay might result in injustice by a meritorious case being thrown out without trial.

64. Id., Section 3(5). A workman can elect to avail himself of any other remedy other than provided by the Act. But he cannot have double payments and the employer is protected from double proceedings. The word "instituted" means "setting on foot an enquiry" and is more than mere filing of claim. Hence, if nothing more than mere filing of claim has been done and it is withdrawn before commencement of proceedings, the workman's dependants are not debarred from instituting suit in Civil Court. See Suppiah Chettiar v. Chinnathurai, A.I.R.1957 Mad. 216. The adoption of this exclusive remedy principle seems to have placed the Indian workman under some disadvantage, compared with his brethren in England. The latter had till 1948 an alternative remedy under common law and the Employers' Liability Act and now have an additional remedy under the former. See Sunil Rai Choudhuri, op.cit., pp.49-50. See also Law Reform (Personal Injuries) Act, 1948, Section 2.

65. Id., Section 11. The Indian workmen's compensation system puts very great emphasis on the medical examination of workmen by doctors, employed or paid by the employer. The original payment and continuance of compensation depend upon the report of this doctor, unless the workman is able to arrange for his medical examination by a doctor of his own choice. See Sunil Rai Choudhuri, op.cit., pp.50-51.
with the Commissioner for Workmen’s Compensation. If any such payment is made directly by an employer to a claimant, that payment is not regarded as a payment of compensation at all. Even equity will not come to rescue an employer to deduct the amount, which he has already paid to the dependants of a deceased workman, from the actual compensation payable by him.

66. Workmen’s Compensation Act, 1923, Section 8(1). Any sum, other than the one mentioned in Section 8(1), amounting to not less than ten rupees, which is payable as compensation, may be deposited with the Commissioner on behalf of the person, entitled thereto. Id., Section 8(2).

67. Id., Section 8(1).

68. However, in the case of a deceased workman, an employer, may make to any dependant advances on account of compensation, not exceeding an aggregate of one hundred rupees. This sum is deducted by the Commissioner from the total compensation and is repaid to the employer. See Id., Section 8(1), Proviso.

The Law Commission of India has pointed out that it is of little use to make an advance of a petty sum of one hundred rupees in the context of the steep fall in the value of the rupee, on account of inflation in the course of the last six decades. So it has recommended that an amount upto three months’ wages should be permitted to be advanced to the dependants, thereby eliminating the need for the upward revision of the existing upper limit of advance from time to time. Law Commission of India, One Hundred and Thirty Fourth Law Commission Report on Removing Deficiencies in Certain Provisions of the Workmen’s Compensation Act, 1923 (1989), pp.37, 38.

The Proviso to Section 8(1) of the Workmen’s Compensation Act, 1923 is amended by substituting for the words "not exceeding an aggregate of one hundred rupees, and so much of such aggregate", the words "of an amount equal to three months' wages of such workman and so much of such amount". This amendment, however, will come into force only on such date as the Central Government may specify by notification in the Official Gazette. See Workmen’s Compensation (Amendment) Act, 1995, Sections 1 (2) and 6.
The Workmen's Compensation Act, 1923 contains certain provisions to ensure payment of compensation to workmen. One of such provisions is that compensation shall be paid to workmen as soon as it falls due. This is because the right of the injured workman or his heirs to receive compensation gets crystallised, the moment, an accident takes place, causing personal injury. The corresponding liability of the employer to make good this liability also springs forth simultaneously. It is not dependent on the

69. See Workmen's Compensation Act, 1923, Section 4-A(1).

70. Id., Sections 3(1), 4(1) and 4-A(1). See State of Punjab v. Vidya Devi, 1990 Lab.I.C.742 (P. & H.); P.Venkata

    narasayyamma v. S.Subba Laxmi, 1986 Lab.I.C.1389 (A.P.);


    (Guj.).


The above view of the Allahabad High Court was shared by the High Courts of Bombay (Margarida Gomes v.

    Mackinnon Mackenzie & Co. (P) Ltd., 1968 Lab.I.C.1197

    (Bom.)); Rajasthan (Ramlal v. Regional Manager, F.C.I.,

    1981 Lab.I.C.1281 (Raj.)); Jammu and Kashmir (Vijay Ram

    v. Janak Raj, 1981 Lab.I.C.143); Karnataka (D.B.)

    (Supdg. Engineer, K.E.B, Hubli v. Kadappa Malappa

    Shairannavar, 1983 Lab.I.C.1712) and Gujarat (G.M.,

    Western Rly. v. Lala Nanda, supra, n.70). However, the

    High Court of Orissa took the view that compensation

    falls due only after a notice under S.10-A(i) has been

    served upon the employer. See Khillo Chandramma v.

    Hindustan Construction Co.Ltd., 1971 Lab.I.C.135 (Ori.,

    D.B.). The law was finally settled in Pratap Narain

    Singh Deo v. Srinivas Sabata, 1976 Lab.I.C.222, where

    the Supreme Court held that the employer is liable to

    pay compensation, as soon as personal injury is caused

    to the workman by accident, arising out of and in the

    course of employment. See also P.Venkatanarasayyamma

    v. S.Subba Laxmi, supra, n.70.
determination of disputes, relating to liability, by the Commissioner. 72

Even if the employer disputes his liability to pay compensation to the extent, claimed by the workman, he is required to make provisional payment of compensation. 73 He is required to deposit with the Commissioner an amount, based on the extent of liability, he accepts. 74 If the employer is in default in paying the amount within one month from the date it falls due, the Commissioner may direct simple interest at the rate of six percent per annum


73. Workmen's Compensation Act, 1923, Section 4-A(2).

74. Ibid., See also Madan Mohan Varma v. Mohan Lal, 1982 Lab. I.C. 1729 (All.).

75. Janatha Modern Rice Mills v. G. Satyanarayana, 1995 Lab. I.C. 677 (A.P.). The Commissioner has no discretion as regards the rate of interest. It can only be simple interest at the rate of 6% per annum.

According to the Law Commission of India, the 6% rate of interest has now become outdated with the passage of years, since the provision was introduced. Hence, the Commission has recommended that Section 4-A(3) should be modified by substituting the words "simple interest at the rate of fifteen percent" in place of the words "simple interest at the rate of six percent". See Law Commission of India, One Hundred and Thirty Fourth Law Commission Report on Removing Deficiencies in Certain Provisions of the Workmen's Compensation Act, 1923 (1989), pp. 36, 37.

Section 4-A(3) of the Workmen's Compensation Act, contd...
from the date of accident. If there is no justification for the delay, a further sum not exceeding fifty percent of such sum may be recovered from the employer by way of penalty by the Commissioner. This stringent provision (f.n.75 contd.) 1923 is amended, making it obligatory on the part of the Commissioner to recover from the employer simple interest at the rate of twelve percent per annum or at such higher rate, not exceeding the maximum of the lending rates of any scheduled bank, as may be specified by the Central Government, by notification in the Official Gazette, on the amount due from the employer. The interest, recovered, shall be paid to the workman or his dependant. This amendment, however, will come into force only on such date as the Central Government may specify, by notification in the Official Gazette. See Workmen's Compensation (Amendment) Act, 1995, Sections 1(2) and 5.


77. Imposition of maximum penalty by the Commissioner should be supported by strong reasons. See M/s.Tata Refractories Ltd. v. Srikant Nath, 1994 Lab.I.C.NOC 355 (Ori.).

78. See Workmen's Compensation Act, 1923, Section 4-A(3). In Asst.Engr. (D and M.) R.S.E.B. v. Indira Devi and another, 1995 Lab.I.C.644 (Raj.), it was held that if the Commissioner is satisfied that there is deliberate delay on the part of the employer, then the Commissioner must impose the penalty. See also Divl. Forest Officer, Gwalior v. Bajnatibai, 1994 Lab.I.C.2551 (M.P.) (D.B.); Deviben Dudhbai v. Mgr., Liberty Talkies, Porbandar, 1994 Lab.I.C.2570 (Guj.); Nagar Palika, Mandsoor v. Bhagwantibai, 1994 Lab.I.C.NOC 171 (M.P.); Kehar Singh v. State of H.P., 1989 Lab.I.C.NOC 30 (H.P.); Pratap Narain Singh Deo v. Shrinivas Sabata, 1976 Lab.I.C.222 (S.C.); Santoline Fernandes v. Mackinnon Mackenzie & Co. contd...
prevents an employer from sleeping on his legal duty and thus ensures the immediate payment of compensation. Penalty and interest should not be ordered by the Commissioner in anticipation that the amount of compensation would not be deposited by the employer in time. The discretion to levy a penalty must be exercised by the Commissioner judiciously. The Commissioner cannot refuse to impose penalty merely on the ground that the amount of compensation, though with delay, has been deposited or it has not been claimed by the claimants or the claim has been admitted by the employer, though

(f.n.78 contd.) [1968] 34 F.J.R.124 (Bom.).

A proviso is added to Section 4-A(3) of the Workmen's Compensation Act, 1923, requiring that an order for the payment of penalty shall not be passed without giving a reasonable opportunity to the employer to show cause, why it should not be passed. A new sub-section (3-A) is added to Section 4-A, requiring the penalty recovered, to be credited to the State Government. This amendment, however, will come into force only on such date as the Central Government may specify, by notification in the Official Gazette. See Workmen's Compensation (Amendment) Act, 1995, Sections 1(2) and 5.


80. New India Assurance Co.Ltd. v. Sailendra Kumar Nayak and others, 1995 (70) F.L.R.204 (Ori.). This was an appeal against an order of the Commissioner for payment of penalty and interest, in case the amount of compensation is not paid or deposited within one month.


83. In Dalip Kaur v. G.M., Northern Rly., (1992) 1 L.L.J.762 contd...
the compensation was not paid\textsuperscript{64} or the employer has made some \textit{ex gratia} payment to the dependants,\textsuperscript{65} because the provision, requiring the immediate payment of compensation, is a mandatory one.\textsuperscript{66} Interest and penalty, if not imposed by the Commissioner, can be imposed at the appellate stage by the High Court.\textsuperscript{67}

No lumpsum or half-monthly payment, payable under the Workmen's Compensation Act, 1923, can be alienated or subjected to attachment nor can it pass to any person other than the workman.\textsuperscript{68} This provision protects the workman from money lenders and court attachments.\textsuperscript{69}

\footnotesize{(f.n.83 contd.) (P. \\ H.), a workman died on March 17, 1986, while discharging his duties in the Loco DG shed at Bhatinda. Despite service of notice by the applicants on the employers, the latter did not deposit any compensation, whatsoever. The Commissioner held that the widow and daughter of the deceased were entitled to a compensation of Rs.58,480/- with interest at 6% p.a. from the date, they became entitled to this amount, till the date of realisation. But he did not impose penalty on the ground that it was not claimed by the claimants. On appeal the Punjab and Haryana High Court held that a court of law is not to rely upon the relief clause in the petition, while granting appropriate relief and imposed penalty of 35%.

\textsuperscript{84} Ram Dulari Kalia v. H.P.S.E. Board, 1987 Lab.I.C.748(H.P.).
\textsuperscript{85} Ibid.
\textsuperscript{86} Supra, nn.69, 70, 71 and 72.
\textsuperscript{88} Workmen's Compensation Act, 1923, Section 9.
The employer is liable to pay compensation to a workman, only if there exists an employer-and-employee relationship between the workman and his employer. So, in many cases, persons, who want to get work done, try to avoid the liability for compensation by contracting with someone else to provide labour or to execute the work and then contend that there being no employer-and-employee relationship between the workman, who suffered the injury, and themselves, they are not liable to pay any compensation. The liability of the principal employer for even the contractor's workman prevents such escape from liability. Even though the liability for compensation is ultimately that of the contractor or the intermediary, the injured workman is entitled to recover compensation from the principal.

90. See supra, Chapter 3
92. Workmen's Compensation Act, 1923, Section 12.
93. In K. Koodalingam v. Supdt. Engr. & Orgs., (1995) 1 L.L.J. 334 (Ker.) (D.B.); Public Works Department of the Government of Kerala engaged a contractor for construction of a canal. Two workmen, employed by the contractor to do the work, died in landslide, while at work. It was held that PWD, the principal employer, was liable to pay compensation and also entitled to be indemnified by the contractor. Contract between the principal and the contractor cannot affect the right of the workman or their dependants to claim compensation from either of them at their option. For other cases on the liability of the principal to compensate contractor's workmen, see contd...
For fixing liability on the principal employer for compensation, it has to be proved that the execution of the work, in the course of which the workman is injured, should be an ordinary part of that person's trade or business.


94. The principal employer is liable for compensation only but not for interest or penalty as per Section 4-A(3). See Sarjerao Unkar Jadhav v. Gurindar Singh, (1992) 1 L.L.J. 156 (Bom.).

95. In The Commr., Tirumangalam Municipality v. Nokkammal and others, 1995 Lab.I.C.NOC 78 (Mad.), the municipality entered into a contract with a contractor for construction of latrines. A workman of the contractor died in the course of employment. The municipality was held liable to pay compensation to the dependents of the deceased workman, construction of latrines being part of business of the municipality. The painting of electric poles was held to be not only for the purpose of the electricity supplier's trade or business, but ordinarily a part of his trade or business. See Sarjerao Unkar Jadhav v. Gurindar Singh, 1991 Lab.I.C. 689 (Bom.). To constitute 'business', it must be an occupation, profession or calling or a commercial activity. The Travancore Devaswom Board is not doing any business and, hence, does not attract S.12. Travancore Devaswom Board v. Purushothaman, (1989) 2 L.L.J. 114 (Ker.) (D.B.). See also H.L.Kumar, Employer's Liability on Accidents (1992), p.76. Construction of roads, being one of the principal concerns of the PWD of the Government, inviting its serious attention, is "business" within the meaning of S.12. Hence that Department is the principal employer of the labourers, working under a contractor, employed by it. PWD v. Commr., Workmen's Compensation, 1981 Lab.I.C. 493 (J. & K.) (D.B.). If a contractor is engaged by the Defence Department for demolition of certain barracks, a worker, engaged by the contractor, cannot hold the said Dept. to be responsible under Section 12(1) of the Act, the main business of the Defence Dept. being to defend the country. Garrison Engineer v. Guttamma, 1978 Lab.I.C. 878 (Bom.). The work of loading and unloading of food grains, undertaken by

contd...
If the work, done by the workman, is ordinarily part of the business of a person to execute certain work, then, ordinarily, he will do that work by his own workmen. He is not to escape liability for any accident, that takes place, merely by interposing a contractor. The liability of the principal employer is attracted even in a case, where the contractor is engaged not in the course of but for the purpose of the principal employer's trade or business.

Further, before the principal can be made liable, it must be shown that the contractor was entitled to expect such workman to do his work at his orders and he was entitled to dismiss such workman. It must, in short, be proved that there was a contract of service between the workman and the contractor.

It has also to be proved that the accident, which gives rise to the liability for compensation, occurred

(f.n.95 contd.) the FCI, was held to be a part of the trade or business of Corpn., which covers the purchase, storage, movement, transport, distribution and sale of food grains and other food stuffs. Food Corpn. of India v. Rahat Khan, (1973) 2 L.L.J. 70 (Del.). The original construction of canals cannot be treated to be outside the ordinary course of business or trade of the Irrigation Department. Sardara Singh v. Sub-Divl. Officer, A.I.R.1963 Punj. 217. But where a company carries on the business of manufacturing goods and requires a factory for performing the manufacturing process and the factory requires a chimney, the construction of chimney is no part of the ordinary trade or business of the company. New India Tannis Ltd. v. Aurora Singh, A.I.R.1957 Cal. 613 (D.B.).

97. See Workmen's Compensation Act, 1923, Section 12 (1).
98. In Lee Shi v. Consolidated Tin Mines, A.I.R.1939 Rang. 428 (D.B.), it was held that where there is only an
on, in or about the premises, on which the principal has undertaken or usually undertakes to execute the work or which are otherwise under his control or management. It is also required that the accident must have occurred, while the workman was executing the work in the course of his employment.

(f.n.98 contd.)

agreement, by which certain selected persons could come, when they chose, and do work on their own account, which would get for them remuneration from the contractor, the principal is not liable to compensate such workman.

99. The expression 'on, in or about' means either on the land or premises of the employer or the land or premises, where he was engaged with his workman in doing the work or in close proximity to such places. A workman, while returning from the railway station, after unloading rice bags there, was dashed by a lorry and died. It was held that the workman was working on, in or about the premises, which, here, covered not only the premises of the railway station but also the places, covered by the route of the lorry. See Bhuvaneswari Rice Mill v. Mannaya Pullayya, A.I.R.1964 A.P.392 (D.B.). In Powell v. Brown, [1899] 1 Q.B.157 (C.A.), the expression 'on, in or about' was construed as being a geographical expression, involving the idea of certain physical continuity to the premises or works in question.


The principal, who has paid the compensation, is entitled to be indemnified by the contractor or any other person, from whom the workman could have recovered.

102. The amount of compensation, payable by the principal, has to be calculated with reference to the wages of the workman under the employer, by whom he is immediately employed. See Workmen's Compensation Act, 1923, Section 12(1).


104. In Binny Ltd. v. Regl. Poultry Officer, 1995 (70) F.L.R. 736 (Ker.), one R. Sobhana filed an application before the Commissioner for Workmen's Compensation, Quilon, alleging that her husband met with an accident while employed by the petitioner in the work of loading and unloading of "CARE feed" at the Regl. Poultry Farm on Dec. 2, 1983. Although notice was served on the respondents, it was not contested. Finally, the Commissioner for Workmen's Compensation, the second respondent, passed an award for realising an amount of Rs.23,100/- with interest thereon and directed the first respondent, the Regional Poultry Officer, to pay the amount to the claimant and further directed the petitioner to indemnify the Regional Poultry Officer under Section 12(2). In pursuance of this order, notice was issued under the Revenue Recovery Act for recovering from the petitioner the amount, paid by the first respondent to the claimant. In an appeal against this, it was held that issuance of notice under the Revenue Recovery Act was justified.

Indemnity will extend only as far as legal liability extends and no further. Where the employer is not liable to pay compensation but still pays out of pity, special grace, magnanimity or liberality, he has no right to recover it from the contractor. There is no legal right to indemnity, if there is no legal liability to give compensation. See State of Madras v. Sankiah Thevar, (1959) 1 L.L.J.390 (Mad.). Further, where the principal has himself been responsible for the situation, leading to the accident, the indemnity may not operate. Regional Manager, F.C.I. v. U. Sabiya Beeves, 1980 Lab.I.C.320 (Ker.) (D.B.).
compensation.  

The principle, underlying the liability of the principal employer, is to secure sure and speedy payment of compensation to workmen. A person, who employs others to advance his own business and interest, would be a more promising and certain source of recompense to the injured workman than the contractor, who may be a man of straw and whose straitened circumstances might jeopardise the chances of recovery of such compensation. The workman is, thus, saved from the risks of dealing with the contractors and sub-contractors, who might, at times, be not as reliable as the principal employer, because of their financial instability.

105. The earlier view was that the contractor, referred to in S.12(2), was the contractor, who contracted directly, with the principal, as defined in S.12(1) and if there was any further subletting of the contract, an indemnity could not be obtained under the Act and must be sought by recourse to the civil court. See Mt.Machuni Bibi v. Jardine Menzies & Co., A.I.R.1928 Cal.399 (D.B.). However, the amendment, made by S.9 of Act XV of 1933, removed this defect and the language of the amended section now leaves no doubt that the indemnity is available against the contractor as well as against any other person, from whom the workman could have recovered compensation. See K.D.Srivastava, Workmen's Compensation Act, 1923 (1992), p.286. But an order, holding the principal liable to pay compensation, does not give the principal an absolute right to claim indemnity from the contractor. Where the contractor is not a party to the order, he is not bound by it and therefore, it could not make him liable to indemnify the principal. See Patel Engineering Co. v. Chanda Bewa, 1973 Lab.I.C.619 (Ort.).


If the employer becomes insolvent or the employer, being a company, has commenced to be wound up, the insurer of the employer would be liable for the payment of compensation, provided he has entered into a contract with an insurer, in respect of any liability under the Workmen's Compensation Act, 1923. The insurer, in such circumstances, stands in the shoes of the employer, having the same rights and liabilities of the latter. However, the insurer's liability


109. Except in the case of the insolvency of the employer or the winding up of the company, the injured workman or his dependants cannot proceed directly against the insurers for the recovery of compensation. National Insurance Co. Ltd. v. Jabunbi & Others, (1985) 1 L.L.J. 102 (M.P.); G. Sreedharan v. Hindustan Ideal Insurance Corporation, 1976 Lab.I.C.732 (A.P.) (D.B.). S.14 does not enable the insurance company to avoid its liability on the ground that the insured employer has not become insolvent or has made a composition or a scheme of arrangement with his creditors or being a company, the winding up proceeding has not commenced. See United India Fire & General Insurance Co. v. M/s. Machinery Manufacturers Corpn. Ltd. (1986) 2 Kar. L.J.67 (Kant.) (D.B.). The purport of S.14 is only that, in the circumstances mentioned therein, the right of the workman shall not be defeated and the insurer can then substituted in the place of the insolvent employer. It does not operate as a prohibition against any proceedings before the Commissioner, involving the insurer, who is liable under a contract of insurance to discharge the liability of the employer for compensation. See United India Insurance Co. v. Gangadharan Nair, (1987) 1 L.L.J.448 (Ker.) (D.B.).

110. Workmen's Compensation Act, Section 14(1). This provision is not applicable to a company, which is wound up voluntarily merely for purposes of reconstruction or of amalgamation with another company. Workmen's Compensation Act, 1923, Section 14(7).

111. Id., Section 14(1). In New India Assurance Co.Ltd., v. Kotam Appa Rao & another, 1995 Lab.I.C.1087 (A.P.), the contd...
is restricted to his liability to the employer, as per the terms of the policy. If the liability of the insurer to the employer is less than the liability of the employer to the workman, the workman may move for the balance in the insolvency or liquidation proceedings. Where the insurance company defaults in payment of compensation in time, the question, whether the insurer is liable to pay interest and penalty, is subject to conflicting judicial decisions. According to one view, the insurance company is liable only for the payment of compensation and not interest and penalty.

(first respondent met with an accident, while driving an oil tanker of the second respondent. As a result of the injuries, caused by the accident, he suffered permanent total disablement, as he cannot drive any vehicle any more. It was held that the injured workman could recover compensation directly from the insurer. See also The Oriental Insurance Co. Ltd. v. Gyasuddin and others, 1995 Lab.I.C. NOC 199 (Raj.). In Oriental Insurance Co. Ltd. v. Guru Charan Saren, A.I.R.1991 Ori.294, it was held that the liability of insurer is restricted to the sum, payable under the Workmen's Compensation Act, 1923.


113. Workmen's Compensation Act, 1923, Section 14(2).

As per the other view, the insurer is liable to pay interest and penalty also. The latter view lays down a sound principle of law, as the insurer stands in the shoes of the employer, having the same rights and liabilities as those of the latter.

Though the Workmen's Compensation Act, 1923 imposes upon the employers the liability for payment of compensation, it gives them full freedom to decide, how they shall meet the same. There is no provision for compulsory insurance of liability of the employers to ensure payment of compensation. So it cannot be said that the Workmen's Compensation Act provides sufficient protection to the workman, in case of insolvency of an employer or winding up of a company.

An employer may try to avoid the payment of any compensation under the Workmen's Compensation Act, 1923, by transferring his assets. But in the event of such transfer, the amount of compensation, the employer is liable to pay, becomes


117. Sunil Rai Choudhuri, op. cit., p.58.

118. In such cases, the workman is protected, only if the employer has insured his liability. See Workmen's Compensation Act, 1923, Section 14. See also Baksi and Mitra, supra, n.89, p.58.
the first charge on his immovable assets. The injured workman is, thus, protected against the tendency of the employer to evade his liability for compensation by transfer of his assets.

Some employers may attempt to avoid their liability for compensation under the Workmen's Compensation Act, 1923 by incorporating a term to that effect in the contract of employment. But such terms in the contract of employment are null and void, in so far as they purport to remove or reduce the employer's liability for compensation. Thus the Act protects the ignorant workman, who may be induced by his employer to enter into contract or agreement, relinquishing or reducing his right to compensation under the Act.

Certain employers may accept their liability for compensation, but settle the amount of compensation by agreements with the injured workman. To protect the interest of the workmen in such cases, the Act requires agreements for the payment of a lumpsum as well as compensation, payable to a woman or a person under a legal disability, to be registered

119. Workmen's Compensation Act, 1923, Section 14-A.

with the Commissioner for Workmen’s Compensation. Before registering such agreements, the Commissioner is expected to enquire into the genuineness of the agreements and satisfy himself that the agreements were not effected by fraud or undue influence or other improper means. This provision protects a gullible workman or woman and persons under legal disability from being exploited by their employers by tempting them to accept a lesser sum than what is legally due. If the employer does not register the agreements, noted above, the employer is liable to pay the full amount of compensation. Unless the Commissioner otherwise directs, the employer is not entitled to deduct more than half of the amount, so paid, from the full amount of compensation, payable. An employer, who fails to register the specified agreements, thus, incurs a heavy loss.

121. Workmen's Compensation Act, 1923, Section 28; Workmen’s Compensation Rules, 1924, Rule 48. In Chhipa v. Bai Sona A.I.R.1929 Bom. 68 (D.B.), it was held that Section 28 refers primarily to cases, where the parties have arrived at an agreement, prior to any hearing before the court. It does not refer to a case of agreement, reached between the parties in a contested proceeding before the Commissioner.

122. Workmen's Compensation Act, 1923, Section 28, Proviso(d).

123. See H.L.Kumar, supra, n.95, p.99.

124. Workmen’s Compensation Act, 1923, Section 29. See also Bai Chanchalben v. Burjorji Dinshawji Sethna, (1969) 2 L.L.J.357 (Guj.).

125. Supra, n.121.
In the case of fatal accident and serious bodily injury to a workman, the employer has to send a report to the Commissioner within seven days of the occurrence of death or serious bodily injury. This provision aims at prevention of evasion of the liability to pay compensation by the employer in such cases.

In case of claims for compensation, made before the Commissioner for Workmen's Compensation, the Act requires

126. Workmen's Compensation Act, 1923, Section 10-B (1), Explanation defines 'serious bodily injury' as an injury, which involves or in all probability, will involve the permanent loss of the use of, or permanent injury to any limb or permanent loss of or injury to the sight or hearing or the fracture of any limb or the enforced absence of the injured person from work for a period, exceeding twenty days.

127. Workmen's Compensation Act, 1923, Section 10-B (1), This requirement to submit reports of fatal accidents and serious bodily injuries applies only where, by any law for the time being in force, notice of accidents, resulting in death or serious bodily injuries, is to be given by the employer to any authority. According to the Law Commission of India, Section 10-B, which is a useful provision, should apply in every case and not merely where some other law provides for notice of a fatal accident. Section 10-B should be suitably amended for the purpose. See Law Commission of India, supra, n.54, p.86.

128. Where the State Government has so prescribed, the person, required to give the notice, may, instead of sending such report to the Commissioner, send it to the authority, to whom he is required to give the notice. See Workmen's Compensation Act, 1923, Section 10-B (1), Proviso.

129. Workmen's Compensation Act, 1923, Section 10-B (1); Workmen's Compensation Rules, 1924, Rule 11.
the Commissioner to grant compensation at the rate, permissible under the Act, in spite of a lesser claim by the workman. The Commissioner has a duty to see that the injured workman gets fair play. He is not to be fettered in any way by the fact that an ignorant injured workman might have claimed a lesser sum in his application.

An analysis of the system for payment of compensation under the Workmen's Compensation Act, 1923, reveals certain defects in the system. The definition of 'permanent total disablement' in the Act is ambiguous. It has invited conflicting judicial interpretations. It is suggested that Section 2(1) (1) of the Workmen's Compensation Act, 1923 may be amended by defining 'permanent total disablement' as a disablement, which makes an injured workman unfit not only for the particular work, he was engaged in but also for all other kinds of work, he was capable of performing at the time of the accident, causing the disablement.


132. Supra, nn.1, 2 and 3.
The amounts of compensation, payable under the Workmen's Compensation Act, 1923 in respect of death and permanent disablement are respectively forty\textsuperscript{133} and fifty\textsuperscript{134} percent of the monthly wages of the injured workman, multiplied by the relevant factor, corresponding to the age of the injured workman. The amount of compensation, payable for temporary disablement, is fifty percent of the monthly wages of the injured workman, irrespective of his age.\textsuperscript{135} But the position under the Employees' State Insurance Act, 1948 is different. Under this Act, the disablement benefit and the dependant's benefit come approximately to seventy percent of the wages of the workman.\textsuperscript{136} It is suggested that the rate of compensation under the Workmen's Compensation Act, 1923 for all cases of disablement and death should be raised to at least seventy percent of the monthly wages of the injured workman, as in the case of the Employees' State Insurance Act, 1948, in view of the rising cost of living.\textsuperscript{137}

At present, under the Workmen's Compensation Act, 1923, the monthly wages of the injured workman beyond Rs.1000

\textsuperscript{133} \textit{Supra,} n.17.
\textsuperscript{134} \textit{Supra,} n.21.
\textsuperscript{135} \textit{Supra,} nn.44 and 45.
\textsuperscript{136} See \textit{infra}, Chapter 6
is not considered for calculation of compensation. This
causes injustice to workmen, drawing higher salary.138 So
Explanation II to Section 4 of the Workmen's Compensation
Act, 1923, limiting the monthly wages to Rs.1000/- for the
purpose of calculation of compensation should be deleted.

Under the Workmen's Compensation Act, 1923, the
amount, payable towards funeral expenses, is only an amount
not exceeding fifty rupees. Even this petty amount is
deducted from the amount of compensation, payable to the
dependants.140 It is suggested that the employer may meet
the actual funeral expenses of the deceased workman, subject
to an upper limit of a sum, equivalent to two months' wages,
in addition to paying compensation as per the Act.

In England, the two basic benefits, namely, disable-
ment benefit and dependant's benefit141 for industrial in-
juries, are augmented by supplementary benefits.142 The

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138. Supra, n.19.
139. See supra, n.23 for the change, effected by the Work-
140. Supra, n.20. For the change, effected by the Workmen's
Compensation (Amendment) Act, 1995, see Ibid.
141. Formerly, there were three basic benefits viz. injury
benefit for short-term disability, disablement benefit
for permanent or long-term disability and death benefit
in fatal injury cases. But injury benefit is abolished
w.e.f. 6th April 1983 by the Social Security and Housing
Benefits Act, 1982, Section 39(1). See Halsbury's Laws
142. These are (1) dependant's allowances (2) special hard-
ship allowance (3) constant attendance allowance (4)
hospital treatment allowance and (5) unemployability
Vol.33, p.361.
Workmen's Compensation Act, 1923 does not contain any provision for supplementary benefits as in England. Compensation, in money, cannot replace a part of the body, that has been lost by industrial injuries. Nor can it restore the life of a dead workman. So provision should be made for making good at least the financial loss, suffered by the injured workman and his dependants, as far as possible. Hence, in addition to the provision of compensation at seventy percent of the monthly wages of the injured workman, steps should be taken to introduce supplementary benefits at the rate of not more than ten percent of the wages also in the Workmen's Compensation Act, 1923.\(^{143}\)

Payment of compensation, based upon the pre-determined percentage of loss of earning capacity in the Schedule, in the case of scheduled injuries, under the Workmen's Compensation Act, 1923,\(^ {144}\) may not always help provide adequate recompense for the loss, actually suffered by the worker. So specific provision, empowering the Commissioner for Workmen's Compensation to vary the percentages of loss of earning capacity in suitable cases, should be introduced.\(^ {145}\)

\(^{143}\) The International Labour Organisation has recommended that for death or permanent incapacity, at least two-thirds of the workman's annual earnings and for temporary disablement at least two-thirds of basic earnings are required to be paid to an injured workman. See International Labour Organisation, Conventions and Recommendations, (1966), pp.84, 85.

\(^{144}\) Workmen's Compensation Act, 1923, Section 4 (1) (c), Schedule I.

\(^{145}\) Even though in Samir U. Parikh v. Sikandar Zahiruddin, supra, n.26, it was held that the loss of earning
The question, who should assess the loss of earning capacity, in case of non-scheduled injuries, causing permanent partial disablement, under the Workmen's Compensation Act, 1923, has become vexed one after the 1984 amendment of the Act, conferring the power of assessment upon the qualified medical practitioner. 146 It is suggested that the Commissioner for Workmen's Compensation should be statutorily empowered to vary the percentage of loss of earning capacity, as assessed by a medical practitioner, in deserving cases, as the latter may be incompetent to assess the loss of earning capacity, which involves several factors, in addition to loss of physical capacity. The Commissioner may not find it difficult to assess the loss of earning capacity properly, as he is empowered to seek the assistance of one or more persons, having special knowledge of the matter. 147

Percentage of the loss of earning capacity for the loss of thumb and its metacarpal bone is forty percent under the Workmen's Compensation Act, 1923. 148 But the one for

(f.n.145 contd.) capacity, mentioned in Schedule I, is the minimum and can be held to be higher on the basis of evidence, it would be better to incorporate such a provision in the statute so that the adverse impact of any contrary judicial decision can be avoided.

146. See supra, nn.40, 41, 42 and 43.
147. Workmen's Compensation Act, 1923, Section 20 (3).
the loss from amputation of one foot, resulting in endbearing, is only thirty percent, under the Workmen’s Compensation Act, 1923.\textsuperscript{149} The loss of a foot, whether more than five inches below the knee or even at the ankle, is certainly more serious than the loss of a thumb and its metacarpal bone. So the percentage of the loss of earning capacity, resulting from amputation of one foot, resulting in end-bearing, should be raised from thirty to fifty percent, under the Workmen’s Compensation Act, 1923, as was done under the Employees’ State Insurance Act, 1948.\textsuperscript{150}

Under the Workmen’s Compensation Act, 1923, half-monthly payment for temporary disablement is given now only for five years.\textsuperscript{151} Provision may be made in the Act for continuing the half-monthly payment during the entire period of incapacity, as under the Employees’ State Insurance Act, 1948.\textsuperscript{152}

If the employer does not pay the amount of compensation in time, the simple interest, that he may have to pay, is only 6% per annum. This rate of interest is outdated today.

\textsuperscript{149} Workmen’s Compensation Act, 1923, Schedule I, Part II, Item No.22.

\textsuperscript{150} Employees’ State Insurance Act, 1948, Schedule II, Part II, Item No.28, subs. by Act 29 of 1989, Section 47 (w.e.f. 20.10.1989).

\textsuperscript{151} Workmen’s Compensation Act, 1923, Section 4(2) (ii).

\textsuperscript{152} See Employees’ State Insurance (Central) Rules, 1950, Rule 57 (1); \textit{infra}, Chapter 6.

\textsuperscript{153} See supra, n.75.
Hence, it is suggested that Section 4-A (3) of the Workmen's Compensation Act, 1923 may be amended by substituting the words "simple interest at the rate of fifteen percent" in place of the words "simple interest at the rate of six percent".  

It is not clear from the Workmen's Compensation Act, 1923, whether the insurance company is liable to pay interest and penalty, if it fails to pay compensation in time. This has led to conflicting judicial interpretations. Section 4-A (3) of the Workmen's Compensation Act, 1923 may be amended in such a way that the insurer, who steps into the shoes of the employer, is also made liable for payment of interest and penalty.

All employers, covered by the Workmen's Compensation Act, 1923, are not required to maintain notice-book. This creates problems to an injured workman, who gives notice of accident by delivering it at the residence or office of the employer, because the latter may deny receipt of notice. So it is suggested that the giving of notice should not be made obligatory on the injured workman.

156. *Supra*, n.62.
158. *Supra*, n.54.
At present, under the Workmen's Compensation Act, 1923, the liability of the employer to report fatal accidents and serious bodily injuries to the Commissioner for Workmen's Compensation depends upon the existence of some other law, providing for notice of a fatal accident. It is suggested that Section 10-B of the Workmen's Compensation Act, 1923 may be amended in such a way that the liability of the employer to report fatal accidents and serious bodily injuries does not depend upon the existence of some other law.

Unlike the Employees' State Insurance Act, 1948, the Workmen's Compensation Act, 1923 does not contain any provision for medical benefit or rehabilitation of disabled workmen. The International Labour Organisation has recommended the introduction of provisions for vocational re-education of injured workmen in national laws or regulations and requires its members to provide rehabilitation services to disabled workmen. The State of Victoria in Australia

159. See for example, Section 88(1) of the Factories Act, 1948, requiring the manager of a factory to give notice of certain accidents to the prescribed authority.

160. Supra, n.127.

161. Employees' State Insurance Act, 1948, Sections 19, 56; Employees' State Insurance (General) Regulations, 1950, Regulations 103, 103-B; Employees' State Insurance (Central) Rules, 1950, Rule 23-A. See also infra, Chapter 6.

has created an Accident Rehabilitation Council to develop policies and standards for rehabilitating injured workers. It not only promotes research into occupational and social rehabilitation but also disseminates information and creates public awareness of such matters. Bonus is paid to employers, who provide continued employment or re-employment to injured workers. Conversely, employers, refusing to re-engage injured workers, are punished. A comprehensive scheme for rehabilitation of injured workers on the above pattern and medical aid should be incorporated in the Workmen's Compensation Act, 1923.

Compensation under the Workmen's Compensation Act, 1923 is now usually paid in cash at the employer's or Commissioner's office. This is inconvenient for the injured workman and his dependants, who may be residing far away from these offices. So provision should be made for the distribution of compensation through local bank or post office without any additional expenditure to the workman and the dependants. The expenses for this purpose should be borne by the employer.

Lumpsum payment of compensation, followed under the Workmen's Compensation Act, 1923, is not advisable, as it


164. Workmen's Compensation Act, 1923, Section 8.

165. Compensation is paid in lumpsum except in the case of temporary disablement under the Workmen's Compensation Act, 1923. Workmen's Compensation Act, 1923, Section 4.
is likely to be squandered away. Further, in the case of injuries, likely to lead to complications in future, the workman, who has received the lumpsum, will be in trouble, the lumpsum being fixed once for all. So, the lumpsum payment of compensation should be replaced by periodical payments, as under the Employees' State Insurance Act, 1948. Rate of periodical payments should be revised every decade, in accordance with the changes in the cost of living index. Commutation of periodical payments should be permitted only after adequate financial counselling.

In England, before 1948, the injured workman and his survivors had to elect between compensation and damages under common law. But with the passage of the Law Reform (Personal Injuries) Act of 1948, the right to claim damages has become an additional, rather than an alternative remedy. It is now possible for the injured worker in England to claim compensation under statutory law and also to pursue simultaneously a remedy for damages under common law against his employer. He obtains his statutory compensation, irrespective

166. Employees' State Insurance Act, 1948, Section 46(c) and (d). See also infra, Chapter 6.

167. The issue of the right to damages, being an alternative remedy, was examined by the Departmental Committee on Alternative Remedies (Ronckton Committee), set up in 1944. It suggested that the right to damages should not be affected by the introduction of statutory benefit. Accordingly, the Law Reform (Personal Injuries) Act, 1948 made the right to damages an additional remedy. See Sunil Rai Choudhuri, op.cit., pp.182-183.
of what happens to his suit for damages. If he wins the suit, a deduction, roughly equivalent to half the value of the benefits, received under the statutory law, is made from the total damages, assessed by the court.\textsuperscript{168} As two doctrines, which made recovery of damages under common law very difficult for the workers in the past, viz. those of common employment\textsuperscript{169} and of contributory negligence,\textsuperscript{170} have been abolished, it is possible now for the worker or his representative to realise fairly big damages from employers, if either negligence or breach of statutory duty, on their part, can be established. This right of additional remedy makes the position of the injured worker in England an enviable one.\textsuperscript{171} In India, the right to claim damages is barred, if the workman opts for compensation under the statute.\textsuperscript{172} Similarly, the right to compensation under the Workmen's Compensation Act, 1923 is barred, if he has filed a suit for damages.\textsuperscript{173} This defect in the law should be remedied by making the right to claim damages an additional remedy, as in England. Section 3(5) of the Workmen's Compensation Act, 1923 should be amended to achieve this purpose.

\textsuperscript{168. Law Reform (Personal Injuries) Act, 1948, Section 2.}
\textsuperscript{169. \textit{Id.}, Section 1.}
\textsuperscript{170. See Law Reform (Contributory Negligence) Act, 1945; \textit{supra}, Chapter 2.}
\textsuperscript{171. Sunil Rai Choudhuri, \textit{op.cit.}, p.183.}
\textsuperscript{172. Workmen's Compensation Act, 1923, Section 3(5). See \textit{supra}, n.71.}
\textsuperscript{173. \textit{Ibid.}}