Under the Employees' State Insurance Act, 1948, compensation for industrial injuries is given in the form of benefits. These benefits are disablement benefit, dependant's benefit, funeral expenses and medical benefit. Of these benefits, the first three are benefits in the form of money and the last one in the form of medical services.

Disablement benefits are of three types, viz. (a) temporary disablement benefit (b) permanent partial disablement benefit and (c) permanent total disablement benefit.

---

1. Employees' State Insurance Act, 1948, Section 2 (21). According to this section, "temporary disablement" means a condition, resulting from an employment injury, which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work, which he was doing, prior to or at the time of injury. Unlike under the Workmen's Compensation Act, 1923, no distinction is made between temporary total disablement and temporary partial disablement. See supra, Chapter 5.

2. Id., Section 2(15-A). The definition of permanent partial disablement is the same as under the Workmen's Compensation Act, 1923. See supra, Chapter 5.

3. Id., Section 2(15-B.). The definition of permanent total disablement is the same as under the Workmen's Compensation Act, 1923. See supra, Chapter 5.
benefit. Temporary disablement benefit is payable, only if the disablement lasts for not less than three days, excluding the day of the accident. If the period of disability exceeds three days, the benefit can be claimed from the first day of the disablement for the whole period of such disablement.\textsuperscript{4} There is, thus, no statutory limit, as in the case of the Workmen's Compensation Act, 1923\textsuperscript{5} with regard to the period during which an employee can receive compensation for temporary disablement. Permanent disablement benefit, whether total or partial,\textsuperscript{6} is to be

\textsuperscript{4} Employees' State Insurance (Central) Rules, 1950, Rule 57 (1).

\textsuperscript{5} Workmen's Compensation Act, 1923, Section 4(2) (ii). See also supra, Chapter 5

\textsuperscript{6} In Employees' State Insurance Corporation v. Gopi, (1995) 1 L.L.N. 642 (Ker.) (D.B.), a workman was engaged in weaving work in a coir factory, run by a co-operative society. He fell in the course of his work and sustained injury to his back-bone. After treatment, when he returned for work, he was found not fit to do the same work. The Medical Board assessed his loss of earning capacity as 20 percent. On appeal to the Insurance Court, it enhanced the percentage of loss of earning capacity to cent percent. On appeal by the ESI Corporation against the order of the Insurance Court, it was held by the Kerala High Court that if the injured workman can do the work, he was performing just before the accident in a reduced form, the result is one of permanent partial disablement. If he cannot do that work at all, then the result is permanent total disablement. It is not necessary that the employment injury should render the employee totally unfit to do any work, whatsoever, for holding that he is suffering permanent total disablement. See also E.S.I.Corp. v. Raju, (1995) 1 L.L.N. 597 (Ker.) (D.B.); Chhotelal v. R.D., E.S.I.C., 1989 (58) F.L.R. 158 (M.P.); E.S.I.C. v. B.V.Balanarasaraju 1985 Lab.I.C. 216 (A.P.) (D.B.); For contrary view, see Mushigiri v. E.S.I.C., 1988 Lab.I.C. 320 (M.P.).
paid, when assessed provisionally, for that period, and when
assessed finally, for life.\textsuperscript{7}

The daily rate of disablement benefit is forty percent
more\textsuperscript{8} than the standard benefit rate,\textsuperscript{9} applicable to the
average daily wages in the contribution period,\textsuperscript{10} correspont-
ding to the benefit period,\textsuperscript{11} in which the employment injury
is sustained. Where an employment injury is sustained before
the commencement of the first benefit period in respect of a
person, the daily rate of disablement benefit depends on
whether the injury is sustained after or before the expiry
of the first wage period\textsuperscript{12} in the contribution period, in
which the injury is sustained. If the injury is sustained
after the expiry of the first wage period, the daily rate is
forty percent more than the standard benefit rate, applicable
to the wage group, in which his average daily wages during

\begin{itemize}
\item \textsuperscript{7} Employees' State Insurance (Central) Rules, 1950, Rule 57 (2).
\item \textsuperscript{8} Employees' State Insurance Act, 1948, Section 51, as
amended by Act 29 of 1989. See also Employees' State
Insurance (Central) Rules, 1950, Rule 57(3)(a). Before
the 1989 Amendment, the rate of permanent and temporary
disablement benefit was as specified in para 6 of the
First Schedule, according to which the daily rate of this
benefit was twenty five percent more than the standard
benefit rate.
\item \textsuperscript{9} Id., Rule 54.
\item \textsuperscript{10} Id., Rules 2 (1-A) and (2-A), inserted by the Employees'
State Insurance (Central) Amendment Rules, 1991 (w.e.f.
\item \textsuperscript{11} Id., Rule 2(1-C).
\item \textsuperscript{12} Employees' State Insurance Act, 1948, Section 2(23).
\end{itemize}
that wage period\textsuperscript{13} fall. If the injury is sustained before the expiry of the first wage period, the daily rate is forty percent more than the standard benefit rate, applicable to the group, in which wages, which are actually earned or would have been earned, had he worked for a full day on the date of accident, fall.\textsuperscript{14} The disablement benefit, calculated in the above manner, is called the "full rate", which comes approximately to 70% of the wages. Both the temporary disablement benefit and permanent total disablement benefit are payable at the full rate.\textsuperscript{16}

Permanent partial disablement may be caused by scheduled\textsuperscript{17} as well as non-scheduled injuries. For permanent partial disablement, resulting from an injury, specified in Part II of the Second Schedule, the disablement benefit is payable at such percentage of the full rate, payable in the case of permanent total disablement, as specified in the Schedule as being the percentage of the loss of earning capacity, caused by the injury.\textsuperscript{18} But the question, whether

\textsuperscript{13}See Employees' State Insurance (Central) Rules, 1950, Rule 2 (1-B).
\textsuperscript{14}Id., Rule 57 (3) (b).
\textsuperscript{15}Id., Rule 57 (3), Explanation.
\textsuperscript{16}Id., Rule 57 (4).
\textsuperscript{17}Employees' State Insurance Act, 1948, Schedule II, Part II.
\textsuperscript{18}Employees' State Insurance (Central) Rules, 1950, Rule 57 (4) (c).
the payment of disablement benefit for scheduled injuries in
conformity with the Second Schedule is justifiable, is
subject to conflicting judicial interpretations. According
to one view, the payment of disablement benefit, in accord­
ance with the percentage of loss of earning capacity, speci­
fied in the Schedule is justifiable and, hence, the Medical
Board or the appellate authority\(^19\) is precluded from assess­
ing the percentage of loss of earning capacity, independent
of the percentage, specified in the Schedule.\(^20\) According
to the opposite view, the Medical Board or the appellate
authority is not debarred from estimating the actual loss
of earning capacity, as the loss of earning capacity, men­
tioned in the Second Schedule, is only the minimum.\(^21\) The
latter view is more reasonable than the former one, because
the payment of disablement benefit, in accordance with the
loss of earning capacity, specified in the Schedule, in
spite of adequate evidence to prove that the actual percen­
tage of loss of earning capacity is higher than the one in
the Schedule, is quite unjustifiable.

For permanent partial disablement, resulting from an
injury, not specified in Part II of the Second Schedule, the

\(^{19}\) Employees' State Insurance Act, 1948, Section 54-A.
\(^{20}\) See E.S.I.C. v. Ameer Hasan, 1980 (41) F.L.R.224 (All.)
\(^{21}\) D.B.).
\(^{21}\) See E.S.I.C. v. B.V.Balanarasaramaju, 1985 Lab.I.C.216
\(^{21}\) (A.P.) (D.B.).
benefit shall be payable at such percentage of the full rate, payable in the case of permanent total disablement, as is proportionate to the loss of earning capacity, permanently caused by the injury. Where more injuries than one are caused by the same accident, the rate of permanent partial disablement benefit shall be aggregated but not so in any case as to exceed the full rate.

22. Employees' State Insurance (Central) Rules, 1950, Rule 57(4)(d). The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a Medical Board for assessing the extent of loss of earning capacity. If the insured person or the Corporation is not satisfied with the decision of the Medical Board, the insured person or the Corporation may appeal to the Medical Appeal Tribunal and from there, to the Employees' Insurance Court. Unlike under the Workmen's Compensation Act, 1923, where the loss of earning capacity is assessed by the qualified medical practitioner (supra, Chapter 5), under the Employees' State Insurance Act, 1948, it is done by specially constituted Medical Boards/Tribunals. Employees' State Insurance Act, 1948, Section 54-A; Employees' State Insurance (General) Regulations, 1950, Regulations 72, 73; Employees' State Insurance (Central) Rules, 1950, Rules 20-A, 20-B.

In Reg. Dir., E.S.I.C. v. S.Saravanan, (1991) 2 L.L.J. 494 (Kant.) (D.B.). It was held that the Medical Board, Medical Appeal Tribunal and the Employees' Insurance Court are not barred from estimating and fixing the percentage of loss of earning capacity of an insured person for determining the extent of disablement benefit, to which such person becomes entitled under the Act for an injury, not specified in the Second Schedule to the Act.

23. In Munshigiri v. E.S.I.C., 1988 Lab.I.C.320 (M.P.), a workman became incapable of even taking food and dressing, owing to employment injury to his right hand. He was held entitled to get compensation for 60% loss of earning capacity, as he was having potential loss of earning capacity, though there was no loss of hand or amputation thereof.

Certain conditions are to be fulfilled for getting disablement benefit. The injured employee should give notice of the accident, causing the injury. The notice should contain the appropriate particulars. It can be given either orally or in writing to the employer or to a foreman or to the supervising official of the insured person. The notice should be given as soon as practicable after the happening of the accident. On receipt of notice, the employer has to send a report of the accident to the nearest Local Office and the nearest Insurance Medical Officer, in the prescribed form, as soon as practicable and required.

25. No such notice need be given, if the employment injury is caused by an occupational disease, specified in Schedule III to the Workmen’s Compensation Act, 1923. Employees’ State Insurance (General) Regulations, 1950, Regulation 65 (i), Explanation.

26. Id., Regulation 65 (i). Any such notice, required to be given by the insured person, may be given by some other person, acting on his behalf. Id., Regulation 65 (i), Proviso. An entry of the appropriate particulars of the accident in the Accident Book, made by the insured person or some other person, acting on his behalf, shall be sufficient notice of the accident. Id., Regulation 65 (iii). In the case of notice, otherwise than by an entry in the Accident Book, it is the duty of the employer or any other person, receiving such notice, to make an appropriate entry, regarding the accident in the Accident Book and in the case of oral notice, read out to the person, giving the notice, the particulars of the notice and obtain his signature or thumb impression on the Accident Book. Id., Regulation 67.
under the circumstances. He has also to furnish further particulars of the accident, as may be required by the appropriate office. The injured employee must comply with the directions from the appropriate Regional Office, requiring him to submit himself to a medical examination or to attend any vocational training or industrial rehabilitation courses.

If the employee intends to claim disablement benefit for temporary disablement, he may submit a claim for the benefit, in the prescribed form, together with the appropriate medical certificate, to the appropriate Local Office. The first payment, in respect of temporary disablement benefit, has to be paid not later than one month, after the

27. Id., Regulation 68. It is not necessary for the employer to report, if the employment injury is caused by an occupational disease, specified in Schedule III to the Workmen's Compensation Act, 1923 but the employer has to furnish necessary information to the appropriate Local Office, on demand. Id., Regulation 68, Proviso III.

28. Id., Regulation 70.

29. c.f. Workmen's Compensation Act, 1923, Section 11. See also supra, Chapter 5.


31. See Id., Regulations 48, 53, 54, 55, 56, 57, 59, 61 and 63. The authority to certify the eligibility of claimants shall be the appropriate Local Office, in respect of temporary disablement benefit and funeral expenses and the appropriate Regional Office, in respect of permanent disablement and dependant's benefits. Id., Regulation 51.
claim, complete in all respects, is made to the office.  

An injured employee is not entitled to temporary disablement benefit for the period of strike, except in certain circumstances, nor for the period, for which he gets wages. Temporary disablement benefit may be suspended, if the recipient fails to comply with certain conditions. Temporary disablement benefit cannot be combined with either sickness benefit or maternity benefit. When a person becomes entitled to get more than one of these benefits

32. Id., Regulation 52 (1) (d). The second and subsequent payments of not only temporary disablement benefit, but also permanent disablement benefit and dependant's benefit are paid either along with the first payment or within the calendar month, following the month, to the while or part of which they relate, whichever is later. Id., Regulation 52 (2).

33. Id., Regulation 99-A. An injured employee is entitled to temporary disablement benefit for the period of strike in the following circumstances:

(i) if a person is receiving medical treatment and attendance as an indoor patient in any Employees' State Insurance Hospital or a hospital, recognised by the Employees' State Insurance Corporation for such treatment; or

(ii) if a person is in receipt of temporary disablement benefit, immediately preceding the date of commencement of the strike, given by the employees' union to the management of the factory/establishment.

34. Employees' State Insurance Act, 1948, Section 63, as amended by Act 29 of 1989, Section 25. The reason is obvious. The condition, precedent for obtaining the temporary disablement benefit, is the incapability of the claimant to do work and receive wages. So the claimant cannot be given the benefit, when the claimant works and receives wages.

35. Employees' State Insurance (General) Regulations, 1950, Regulation 99. See also Employees' State Insurance Act 1948, Section 64.
for the same period, he is entitled to choose one of these benefits. 36

An employee, declared to be permanently disabled by a Medical Board or by a Medical Appeal Tribunal or an Employees' Insurance Court, 37 has to submit to the appropriate Local Office a claim for permanent disablement benefit. The first instalment of benefit becomes payable not later than one month from the submission of the claim. 39 Though benefits, under the Employees' State Insurance Act, except the medical benefit and funeral expenses, are paid as periodical payments, an insured person, whose permanent disablement benefit has been finally assessed and who has been finally awarded permanent disablement benefit at a rate not exceeding Rs.1.50 per day, may apply for commutation of the periodical payments into a lumpsum 40 within 6 months of the "date

36. Id., Section 65.
37. Supra, n.22.
38. Employees' State Insurance (General) Regulations, 1950, Regulation 76-A.
39. Id., Regulation 52 (1)(e). Every person, receiving permanent disablement benefit, shall submit at six monthly intervals, with the claim for December and June every year a life certificate. Id., Regulation 107. The appropriate Local Office Manager may require the personal attendance and due identification of the recipient of permanent disablement benefit, once in every six months. Id., Regulation 107-B. But a person, incapacitated by bodily illness or infirmity or a purdanashin lady, is exempted from this requirement. Ibid.
40. Id., Regulation 76-B (1). See also Employees' State Insurance Act, 1948, Section 62, prohibiting commutation, except as provided in the Regulations.
of possible option\(^{41}\) and get the benefit, commuted into a lumpsum.\(^{42}\)

In the event of the death of an injured employee, his dependants are entitled to dependant's benefit.\(^{43}\) This is irrespective of whether the deceased was in receipt of any periodical payments of temporary disablement benefit for the injury or not.\(^{44}\) A person, claiming dependant's benefit, has to prove that the death of the deceased employee was the result of the employment injury. The benefit is payable in cash month by month to the specified dependants\(^{45}\) of the deceased employee as a pension. In case the injured employee dies without leaving behind the specified dependants,\(^{46}\) the benefit shall be paid to the other dependants of the deceased.\(^{47}\) The benefit is payable at

41. Id., Regulation 76-B (2) and (4).

42. The amount of the lumpsum, admissible, is calculated as per Cl. (5) of Regulation 76-B of the Employees' State Insurance (General) Regulations, 1950.

43. Employees' State Insurance Act, 1948, Section 52. If a person dies during any period, for which he is entitled to a cash benefit under this Act, the amount of such benefit upto and including the day of his death shall be paid to any person, nominated by the deceased person in writing in such form as may be specified in the regulations or if there is no such nomination, to the heir or legal representative of the deceased person. See Id., Section 71.

44. Id., Section 52.

45. Id., Section 2 (6-A)(i), (i-a) and (ii), read with Section 52(1).

46. Ibid.

47. Id., Section 52 (2).
such rates and for such periods and subject to such conditions, as prescribed by the Central Government.\textsuperscript{48} Prior to the 1989 Amendment of the Employees' State Insurance Act, dependant's benefit was payable, in accordance with the provisions of the First Schedule to the Act, which has been omitted by the Amendment.\textsuperscript{49} The only change, brought about by the Central Government after the 1989 Amendment, is that it has increased the daily rate of dependant's benefit and thereby, the full rate. The daily rate of dependant's benefit is now forty percent more than the standard benefit rate,\textsuperscript{50} whereas it was only twenty five percent more than the standard benefit rate, according to the First Schedule.

As in the case of disablement benefit, certain formalities are to be complied with for obtaining dependant's benefit also. The death of the deceased employee has to

\textsuperscript{48} Id., Section 52, as amended by Act 29 of 1989, Section 27. Employees' State Insurance (Central) Rules, 1950, Rule 58.

\textsuperscript{49} See Employees' State Insurance Act, 1948, Schedule I, paras 6, 8 and 9, omitted by Amendment Act 29 of 1989.

\textsuperscript{50} See Employees' State Insurance (Central) Rules, 1950, Rule 58(2). The total amount of dependant's benefit, computed in this manner, amounts approximately to 70\% of the wages, like disablement benefit, whereas under the Workmen's Compensation Act, 1923, compensation for death is only 40\% of the wages (See \textit{supra}, Chapter 5).

\textsuperscript{51} Employees' State Insurance Act, 1948, Schedule I, para 6 before the 1989 Amendment.
be reported to the nearest Local Office and to the nearest dispensary, hospital or other institution, where medical benefit under the Employees' State Insurance Act is available. Reporting is to be done by the employer, if death occurs at the place of employment. It has to be done by a dependant, intending to claim dependant's benefit or any other person, present at the time of death, if death occurs at any other place. Unlike under the Workmen's Compensation Act, 1923, the dead body is not to be disposed of, until it has been examined by an Insurance Medical Officer. This Officer has to issue, free of charge, a death certificate in the prescribed form to the dependants of the deceased and send a report to the appropriate Regional Office. A claim for dependant's benefit has to be submitted to the appropriate Local Office, in the prescribed form. It has

52. Employees' State Insurance (General) Regulations, 1950, Regulation 77.

53. Ibid.

54. Id., Regulation 78. If an Insurance Medical Officer is unable to arrive for the examination within 12 hours of such death, the body may be disposed of, after obtaining a certificate from any available medical officer. See Id., Regulation 78, Proviso I.

55. Employees' State Insurance Act, 1948, Form 17.

56. Employees' State Insurance (General) Regulations, 1950, Regulation 79.

57. Employees' State Insurance Act, 1948, Form 18.
to be done by the dependant or dependants concerned or by their legal representative or, in case of a minor, by his guardian, supported by proper documents. 58 On receipt of the claim for dependant's benefit, the appropriate Regional Office will ascertain, after proper enquiry, whether there are other persons, entitled to the benefit. 59 If it is found that there are other dependants, the Office should issue them a notice for submission of claims within a period of thirty days from the date of such notice. 60 As soon as after the expiry of the period for submission of claims, 61 the appropriate Regional Office has to intimate the decision of the Corporation, regarding dependant's benefit to each of the dependants or his legal representatives or in the case of a minor, to his guardian. 62 Each dependant, whose claim for dependant's benefit was admitted by the Corporation, has to submit to the appropriate Local

58. Employees' State Insurance (General) Regulations, 1950, Regulation 80.

59. Id., Regulation 81.

60. Ibid. c.f. Workmen's Compensation Act, 1923, Section 8(4), where the Commissioner sends notice to each of the dependants to appear before him for distribution of compensation, on deposit of compensation in respect of a deceased workman with him, as per Section 8(1).

61. Employees' State Insurance (General) Regulations, 1950, Regulation 81.

62. Id., Regulation 82.
Office a claim for periodical payments of dependant's benefit, in the prescribed form. Such claim may be made by the legal representative of a beneficiary or in the case of a minor, by his guardian.

Dependant's benefit accrues from the date of death. But, if disablement benefit was payable for that date, it accrues from the date, following the date of death. The first instalment of dependant's benefit is payable, not later than 3 months after the submission of the claim in the proper manner.

The Employees' State Insurance Act, 1948, like the Workmen's Compensation Act, 1923, provides for the payment of funeral expenses to the eldest surviving member of the family of the deceased employee to meet the funeral expenses of the deceased. However, where the deceased person did

63. Id., Regulation 83-A; Employees' State Insurance Act, 1948, Form 18-A. As in the case of disablement benefit, any person, whose claim for dependant's benefit has been admitted, shall submit at six monthly intervals with the claim for December and June every year a life certificate. Id., Regulation 107-A.

64. Id., Regulation 83-A. If the appropriate Regional Office thinks that a child, who is in receipt of dependant's benefit, is being neglected by his guardian, it may appoint another guardian. See Id., Regulation 86.

65. Id., Regulation 83.

66. Ibid.

67. Id., Regulation 52 (1) (f).

68. Workmen's Compensation Act, 1923, Section 8(4).

69. The expression "funeral benefit" in Section 46(f) was substituted by "funeral expenses" by the Amendment Act 29 of 1989, Section 17.

70. Employees' State Insurance Act, 1948, Section 46 (f).
not leave any members of his family at the time of his death, the amount is paid to the person, who actually incurred the funeral expenses.\textsuperscript{71} The amount of such payment is one thousand rupees,\textsuperscript{72} whereas under the Workmen's Compensation Act, it is only fifty rupees.\textsuperscript{73}

Certain formalities have to be observed for claiming funeral expenses also, as in the case of other benefits. The death of the employee has to be reported to his Local Office at the earliest. If death occurs at the place of employment, it is the duty of the employer to report the matter to the Local Office. If it occurs at any other place, the person, entitled to and intending to claim funeral expenses, has to report the death to the Local Office immediately. The said report of death may also be made to the Local Office by any other person, present at the time of death of the injured person.\textsuperscript{74} The person, intending to claim funeral expenses, should obtain a death certificate from the

\textsuperscript{71} Ibid.

\textsuperscript{72} Employees' State Insurance (Central) Rules, 1950, Rule 59. The amount of funeral expenses was not to exceed Rs.100/- prior to the 1989 Amendment of the Act (Act 29 of 1989, Section 17(ii)), according to which the amount of such payment shall not exceed such amount as may be prescribed by the Central Government.

\textsuperscript{73} Supra, n.68.

\textsuperscript{74} Employees' State Insurance (General) Regulations, 1950, Regulation 95-B.
Insurance Medical Officer, who attended the deceased employee at the time of his death or the Insurance Medical Officer, who examined the dead body of the deceased. He should submit a claim for funeral expenses to the appropriate Local Office, supported by proper documents, within three months of the death of the deceased employee. The funeral expenses, claimed in the above manner, has to be paid not later than 15 days from the date of submission of the claim.

As under the Workmen's Compensation Act, 1923, provision is made for speedy payment of the above mentioned benefits in the form of money. Accordingly, if any of these benefits is not paid by the Local Office within the prescribed time limits, the delay in payment has to be reported.

---

75. Id., Regulation 95-C. In special circumstances, the Corporation may also accept any other evidence of death, in lieu of death certificate by the Insurance Medical Officer. Id., Regulation 95-D.

76. Id., Regulation 95-E.

77. Employees' State Insurance Act, 1948, Section 46(1)(f), Proviso. The Corporation or any officer or other authorised authority may extend the period of three months in suitable cases. Ibid.

78. Employees' State Insurance (General) Regulations, 1950, Regulation 52 (1) (b).

79. Workmen's Compensation Act, 1923, Section 4-A. See also supra, Chapter 5.

80. Employees' State Insurance (General) Regulations, 1950, Regulation 52 (1) and (2).
to the appropriate Regional Office. Then, it is paid as soon as possible by the Local Office, as per the directions from the Regional Office. Disablement benefit, dependant's benefit and funeral expenses are, generally, paid in cash by the Local Office, on the production of Identity Card by the claimant. Still, they may be paid by other appropriate means like postal money order.

Provision is made for review of dependant's benefit and permanent disablement question. Any decision, awarding dependant's benefit, may be reviewed by the Corporation, if it is satisfied by fresh evidence that the decisions was given in consequence of non-disclosure of material fact or misrepresentation or that the decision is no longer in accordance with the Employees' State Insurance Act, because of changed circumstances. It is obligatory on the part of the appropriate Regional Office to review the payment of

81. Id., Regulation 52 (3). See Bhagwanti v. E.S.I.C., 1989 Lab.I.C.NOC 2 (P. & H.). The Employees' State Insurance Corporation was directed to pay interest on the dues, outstanding against it.

82. Id., Regulation 2 (k).

83. Id., Regulation 52 (4).

84. Employees' State Insurance Act, 1948, Section 55-A(1). Employees' State Insurance (General) Regulations, 1950, Regulation 84 (1).

85. Employees' State Insurance Act, 1948, Section 55.

86. Id., Section 55-A.
benefit, if an application is made to that effect. Such review can, however, be conducted, only after giving due notice to each of the dependants and giving them an opportunity of being heard. Dependant's benefit may be commenced, continued, increased, reduced or discontinued after the above-mentioned kinds of review. Any permanent disablement question, decided by a Medical Board or Medical Appeal Tribunal, may be reviewed by it, if it is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or a misrepresentation by the employee or any other person of a material fact. Any assessment of the extent of disablement may also be reviewed by a Medical Board, if it is satisfied that since the making of the assessment, there has been a substantial and unforeseen aggravation of the result of the relevant injury and substantial injustice will be done, if the injury is not reviewed.

In addition to these benefits in the form of money, unlike the Workmen's Compensation Act, 1923, the Employees' State Insurance Act, 1948 provides for other benefits in the

87. Employees' State Insurance (General) Regulations, 1950, Regulation 84(1)(a), (b) and (c).
88. Id., Regulation 84 (2).
89. Id., Regulation 84(3). Employees' State Insurance Act, 1948, Section 55-A(2). See also supra, nn.86, 87.
90. Employees' State Insurance Act, 1948, Section 55(1).
91. Id., Section 55(2).
form of services. An injured employee, whose condition requires medical treatment and attendance, is entitled to receive medical benefit upon production of his identity card. He is also entitled to medical benefit during any period, in which he is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations. An employee, who ceases to be in insurable employment on account of permanent disablement, continues to receive medical benefit till the date, on which he would have vacated the employment, on attaining the age of superannuation, had he not sustained such permanent disablement.

In addition to an injured employee, members of his family

92. Id., Section 56 (1).
93. Employees' State Insurance (General) Regulations 1950, Regulation 104.
94. Employees' State Insurance Act, 1948, Section 56 (3); Employees' State Insurance (General) Regulations, 1950, Regulation 103. But after the disablement has been declared as a permanent disablement, the person shall not be entitled to medical benefit, if he is not otherwise entitled to such benefit, except in respect of any medical treatment, which may be rendered necessary on account of the employment injury, from which the disablement resulted. Employees' State Insurance (General) Regulations, 1950, Regulation 103, Proviso.
95. Employees' State Insurance Act, 1948, Section 2 (13-A).
96. Id., Section 56 (3), Proviso II; Employees' State Insurance (Central) Rules, 1950, Rule 60.
are also entitled to medical benefit. Medical benefit is given either in the form of outpatient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the employee or as in-patient treatment.

Reimbursement of expenses, incurred for medical treatment of injured employees and their family outside Employees' State Insurance hospitals or dispensaries, is permitted under specified conditions. In certain States like Bombay, if an insured person while on duty in any area, in which the Employees' State Insurance Act is not in force, sustains an employment injury, the cost of his medical treatment can be reimbursed, subject to certain conditions.

Under the Employees' State Insurance Act, 1948, unlike under the Workmen's Compensation Act, 1923, provisions are made for restoring the loss of earning capacity of an

97. Employees' State Insurance Act, 1948, Section 99; Employees' State Insurance (General) Regulations, 1950, Regulation 95-A.

98. Employees' State Insurance Act, 1948, Section 56 (2)

99. Id., Section 57(2); Employees' State Insurance (General) Regulations, 1950, Regulation 96-A.

100. Employees' State Insurance Act, 1948, Section 2(14).

101. Bombay Employees' State Insurance (Medical Benefit) Rules, 1954, Rule 3-B.
injured employee not only by the medical and rehabilitative treatment, but also by providing for vocational training/industrial rehabilitation courses and re-employment. 102

When a person is entitled to any of the benefits, provided by the Employees' State Insurance Act, 1948, he is not entitled to receive any similar benefit, admissible under the provisions of any other enactment. 103 He is also debarred from claiming compensation under the Workmen's Compensation Act, 1923 or damages under any other law. 104 The


103. Employees' State Insurance Act, 1948, Section 61. It does not, however, bar a suit for damages for injuries, due to the negligence of the employer. (P. Asokan v. Western India Plywoods Ltd., 1987 Lab. I.C. 310 (Ker.) (F.B.)) or third party (Reg. Director, E.S.I.C., v. D.M. Breweries Ltd., A.I.R. 1958 Punj. 136). Section 61 does not debar a person, entitled to any benefits, provided by the Act from claiming similar benefits, if any, available under service conditions or by way of customary concession. See Workmen of Rohtas Industries Ltd. v. H.K. Choudhuri, A.I.R. 1965 Pat. 127 (D.B.). In Hindustan Aeronautics Ltd. v. P.V. Perumal, A.I.R. 1972 Mys. 255 (D.B.), it was held that Section 61 would not bar a petition, filed under Section 110-A of the Motor Vehicles Act, as the compensation awarded therein is under the Law of Torts and not under an enactment.

104. Id., Section 53. In Associated Electrical Agencies v. Commissioner for Workmen's Compensation & Anr., (1995) 1 L.L.J. 368 (Bom.) (D.B.), it was observed that Parliament enacted the Employees' State Insurance Act for conferring more benefits than under the Workmen's Compensation Act viz. sickness benefit, maternity benefit contd...
The object behind such a bar is to save the employer from facing more than one claim, in relation to the same accident.

Employers are prohibited from using the benefits payable under the Employees' State Insurance Act as an excuse or justification for reducing or discontinuing the wages and benefits, available to the workman, under their conditions of service on the ground of similarity between

(f.n.104 contd.)

and medical benefit. So it provided that employees, entitled to the benefits under the Employees' State Insurance Act, should not secure double benefit by reference to the Workmen's Compensation Act. Hence, the provisions of the Workmen's Compensation Act stand repealed qua the employers and the employees of the establishment, governed by the Employees' State Insurance Act. In P.Asokan v. Western India Plywoods Ltd., supra, n.103, it was held that Section 53 does not bar a suit for damages for injuries, sustained due to the negligence of the employer. In Annapurna v. G.M., K.S.R.T.C., 1984 Lab.I.C.1355 (Kant.)(D.B.), it was held that the dependants of an insured person, dying of an employment injury, are entitled to benefits under Section 52. Hence, any claim of theirs for damages under the Motor Vehicles Act, in respect of the said injury, is barred by Section 53.

105. The expression "benefits payable" in Section 72 of the Employees' State Insurance Act must be construed to include not only those benefits, payable in terms of money but also medical benefit. Per Unwalla, J. in Workmen of Rohtas Industries Ltd., v. H.K.Choudhury, A.I.R.1965 Pat.127 at 130 (D.B.).
the two types of benefits. The mere fact, that the employer is liable to make a contribution under the Employees' State Insurance Act, will not help him escape from this prohibition.

Under the Employees' State Insurance Act, 1948, the employer is prohibited to take punitive actions against an employee, who is in receipt of temporary disablement benefit. But, if the conditions of service of any employee so allow, the employer may discharge or reduce, on due notice, an employee, who has been in receipt of temporary disablement benefit.

106. Employees' State Insurance Act, 1948, Section 72. In Workmen of Rohtas Industries Ltd. v. H.K. Choudhuri, A.I.R. 1965 Pat. 127 (D.B.), it was held that the fact that an insured person is entitled to medical benefit, provided under the Act, does not bar such benefit as he gets from the management as a condition of his service.


108. Id., Section 73(1). In M. Ramakrishna v. Bharat Electronics Ltd. and others, [1999] 87 P.J.R. I (Kant.), it was held that, what is prohibited by Section 73(1) is the taking of any penal action against an employee during the period, referred to in the section. The submission of resignation by an employee is a voluntary act, the acceptance of which by the management cannot be deemed to be a penalty or other disciplinary action, prohibited by Section 73. In Municipal Corpn. v. B.E.S.T. Workers' Union, (1973) 3 S.C.C. 546, it was held that Section 73 places an embargo upon the powers of an employer to dismiss, discharge or otherwise punish an employee in the circumstances, mentioned therein. It was held in Mysore Steel Works v. Jitendra Chandra Kar, (1971) 1 L.L.J. 543 (S.C.) that the burden is on the workman to claim protection under Section 73. In Buckingham and Carnatic Co. Ltd. v. Venkatiah, 1963 (7) F.L.R. 343 (S.C.), it was held that termination of service, following automatically either from a contract or a standing order by virtue of unauthorised absence for the specified period, does not attract Section 73(1).
benefit for a continuous period of six months or more.\textsuperscript{109} So long as this provision exists, an employee cannot claim temporary disablement benefit beyond a period of six months, even if his physical condition requires continued enjoyment of the benefit. The object of the Act to provide for benefits to employees in case of employment injury cannot be fully achieved, if a person, disabled by employment injury, is permitted by the regulations to be so discharged from service.

As under the Workmen's Compensation Act, 1923,\textsuperscript{110} the right to receive any benefit under the Employees' State Insurance Act, 1948 is neither transferable nor assignable by the recipient. No cash benefit, payable under the Act, is liable to attachment or sale, in execution of any decree or order of a court.\textsuperscript{111} The claimants alone are entitled to receive the benefits, because the right to receive the benefits is a personal right. The prohibition against assignment or attachment of benefits prevents all illegal and unfair means to frustrate the object of the Act. It

\textsuperscript{109} Employees' State Insurance (General) Regulations, 1950 Regulation 98.

\textsuperscript{110} Workmen's Compensation Act, 1923, Section 9.

\textsuperscript{111} Employees' State Insurance Act, 1948, Section 60.
helps to protect effectively the insured against employment injuries. 112

Prior to the 1989 Amendment of the Employees' State Insurance Act, the rates of disablement benefit and dependant's benefit were as specified in the First Schedule to the Act and funeral benefit was not to exceed a sum of Rs.100.

But after the 1989 Amendment, the First Schedule was omitted and the powers to determine the rates of contributions and benefits were conferred upon the Central Government; 114 thus multiplying the powers of the Central Government. Exercising these powers, the Central Government has decreased the rates of contributions by employers and employees 115. But on the other hand, it has increased the rates of benefits reasonably.

112. However, on the death of the insured person, his nominee/heir/legal representative shall get the cash benefit. See Id., Section 71.

113. See infra, n.116.

114. Employees' State Insurance Act, 1948, Section 39 (2), 46 (1)(f), 51 and 52.

115. The employer's contribution has been reduced from "five per cent" to "four percent" of the wages, payable to an employee; and employee's contribution from "two and one-fourth percent" to "one and one-half percent" of the wages, payable to an employee. See Employees' State Insurance Act, 1948, Schedule I, Clause 1, omitted by Act No.29 of 1989; Employees' State Insurance (Central) Rules, 1950, Rule 51.

116. Whereas formerly the daily rate of disablement and dependant's benefits was twenty five percent more than the standard benefit rate, it is now forty percent more than the standard benefit rate. The amount of funeral expenses has been increased from an amount of one hundred to one thousand rupees. See Employees' State Insurance Act, 1948, Schedule I, Clause 6(a), Section 46(1)(f), contd...
Unlike the Workmen's Compensation Act, 1923, cash benefits under the Employees' State Insurance Act, 1948 are payable in the form of periodical payments. Commutation of these periodical payments was prohibited, prior to the 1989 Amendment of the Act. But the 1989 Amendment has confined the prohibition to disablement benefit only. So the Act does not prevent now a widow, receiving dependant's benefit, from commuting the periodical payments, getting married thereafter, and thus wriggling out of the clutches of law, which denies her dependants' benefit, on remarriage.

Analysis of the provisions, relating to provision of compensatory benefits under the Employees' State Insurance Act, 1948, reveals that the Act contains certain commendable provisions, unlike the Workmen's Compensation Act, 1923.

(f.n.116 contd.) prior to the amendment of the Act, by Act No.29 of 1989; Employees' State Insurance (Central) Rules, 1950, Rules 57(3), 58(2) and 59. See also supra, n.8.

117. See Employees' State Insurance Act, 1948, Section 46(1). But "funeral expenses", which is not to exceed one thousand rupees, is paid in lumpsum.

118. Id., Section 62, prior to the 1989 Amendment.

119. Id., Section 62, as amended by Act 29 of 1989, Section 24 (w.e.f. 20-10-1989). See also Employees' State Insurance (General) Regulations, 1950, Regulation 76-B, which provides for commutation of small periodical payments of permanent disablement benefit.

120. Employees' State Insurance (Central) Rules, 1950, Rule 58(1) A(a).

121. See supra, Chapter 5.
For instance, the loss of earning capacity of an injured employee is assessed by a specially constituted Medical Board/Medical Appeal Tribunal/Employees' Insurance Court under the Employees' State Insurance Act, 1948, whereas it is done by a single medical practitioner under the Workmen's Compensation Act, 1923. Another commendable provision is that, unlike the Workmen's Compensation Act, 1923, which does not contain any provision for review of compensation for permanent disablement, the Employees' State Insurance Act, 1948 contains provision for reviewing any assessment of the extent of permanent disablement, made by a Medical Board, if it is satisfied that since the making of the assessment, there has been a substantial and unforeseen aggravation of the results of the relevant injury.

Thirdly, the quantum of compensation in cash under the Employees' State Insurance Act, 1948 is substantially higher than the one under the Workmen's Compensation Act, 1923. This is because the quantum of disablement benefit and dependant's benefit comes to 70% approximately of the wages of the injured employee and the quantum of funeral expenses is one thousand rupees under the Employees' State Insurance Act, 1948.

122. Supra, n.22.
123. Workmen's Compensation Act, 1923, Section 4(1)(c)(ii). See also supra, Chapter 5.
124. Employees' State Insurance Act, 1948, Section 55(2); See also supra, n.91.
Act, 1948, whereas under the Workmen's Compensation Act, 1923, compensation for death is only 40% of the monthly wages of the deceased workman and for disablement, both permanent and temporary, only 50% of the monthly wages of the workman and the amount of funeral expenses, permissible, is only an amount of fifty rupees. Fourthly, unlike the Workmen's Compensation Act, 1923, the Employees' State Insurance Act, 1948 provides for benefits in the form of services also viz. medical benefit and rehabilitation.

Despite the above-mentioned commendable provisions, there are certain defects in the provisions, relating to provision of compensatory benefits under the Employees' State Insurance Act, 1948. The first of such defects is that under the Employees' State Insurance Act, 1948, the disablement benefit, payable for permanent partial disablement, resulting from a scheduled injury, is proportionate to the percentage of loss of earning capacity, mentioned in Schedule II, Part II, as under the Workmen's Compensation Act, 1923.

125. Employees' State Insurance (Central) Rules, 1950, Rules 57(3), 58(2), 59. See also supra, n.116.
126. Workmen's Compensation Act, 1923, Section 4(1). See supra, Chapter 5 for the 1995 Amendment, which is not brought into force.
127. Id., Section 8(4). See supra Chapter 5 for the 1995 Amendment, which is not brought into force.
128. Employees' State Insurance Act, 1948, Sections 19, 56; Employees' State Insurance (Central) Rules, 1950, Rules 23-A, 60; Employees' State Insurance (General) Regulations 1950, Regulations 95-A, 103, 103-B.
129. Employees' State Insurance (Central) Rules, 1950, Rule 57(4)(c); Workmen's Compensation Act, 1923, Section 4 (1) (c)(i).
But, the determination of the quantum of disablement benefit, based upon the pre-determined loss of earning capacity in Schedule II, Part II, for permanent partial disablement, may not be fair in all cases. Sometimes, the percentage of the actual loss of earning capacity, sustained by an employee, may be higher than the one, mentioned in Schedule II, Part II. Hence, it is suggested that Rule 57(4)(c) of the Employees' State Insurance (Central) Rules, 1950 should be amended by adding an explanation to the effect that the loss of earning capacity, mentioned in Schedule II, Part II, is the minimum and can be held to be higher on the basis of evidence, led before the tribunal under Section 54-A of the Employees' State Insurance Act, 1948.

The expression "any other law" in Section 53 of the Employees' State Insurance Act, 1948 implies that it includes common law also. This section should be amended by inserting an explanation that the expression "any other law" does not include common law. Otherwise, the said expression is likely to stand in the way of an employee's seeking the alternative remedy, available under common law. It is also suggested that the right to sue for damages under common law should be made an additional remedy under the Employees' State Insurance Act, 1948, as suggested in respect of the Workmen's Compensation Act, 1923.  

---

130. See supra, n.21.
131. See supra, Chapter 5
Regulation 98 of the Employees' State Insurance (General) Regulations enables an employer to discharge an employee, who has been in receipt of temporary disablement benefit for a continuous period of six months or more, if permitted by the conditions of service of the employee. This provision, which stands in the way of an employee's receiving temporary disablement benefit beyond a period of six months, should be deleted.