ADJUDICATION OF DISPUTES RELATING TO COMPENSATION FOR INDUSTRIAL INJURIES

A workman, who sustains industrial injury, should be given compensation as early as possible. If there is a dispute with regard to his claim for compensation, the same should be settled speedily by an adjudicatory machinery. In India, for settling such disputes, special machineries have been created under the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948.

Under the Workmen's Compensation Act, 1923, any person can be appointed by the State Government as the Commissioner for Workmen's Compensation for a particular area.\(^1\) The Act does not prescribe any qualifications for a person to be appointed as Commissioner for Workmen's Compensation.\(^2\) The Commissioner for Workmen's Compensation can, however, choose one or more persons, possessing special knowledge of any matter, relating to an inquiry to assist him\(^3\) in holding the inquiry. Such specialist may be

\(^1\) Workmen's Compensation Act, 1923, Section 20(1).
\(^2\) Ibid.
\(^3\) Id., Section 20(3).
consulted by the Commissioner in his chamber. The parties may not, in such cases, know anything of the advice, given by such specialist. They are not given any chance to cross-examine him. 4

The jurisdiction of a Commissioner for Workmen's Compensation is confined to claims, relating to accidents, occurring within his area. 5 However, where the workman is


5. Workmen's Compensation Act, 1923, Section 21(1). Section 21 is amended by the Workmen's Compensation (Amendment) Act, 1995 by substituting for sub-section (1), the following sub-section, namely:—

"(1) where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder be done by or before the Commissioner for the area in which —

(a) the accident took place which resulted in the injury; or

(b) the workman or in case of his death, the defendant claiming the compensation ordinarily resides; or

(c) the employer has his registered office: Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned; Provided further that, where the workman being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a workman in a motor vehicle or a company, meets with the accident outside India, any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft contd...
the master of a ship or a seaman, the Commissioner for the area, in which the owner or agent of the ship resides or carries on business, has the jurisdiction to decide the case. 6

A Commissioner, within whose jurisdiction the accident took place, can transfer any matter, arising out of any proceedings before him, to another Commissioner, whether in the same State or not, either for report or for disposal. 7 For

(f.n. 5 contd.)

or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

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

But this amendment 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 10. See United Indiia Insurance Co.Ltd. v. Shaik Alimuddin, 1995 (76)F.L.R.631 (A.P.). An accident, causing injury, occurred in Bombay. But claim was made before the Workmen's Compensation Commissioner, Hyderabad. It was held that the order, passed by him, awarding compensation, interest and penalty was liable to be set aside. In National Insurance Co.Ltd. v. R.Vishnu, 1991 Lab.I.C.2172 (Kant.) (D.B.), the claim for compensation was made in a district other than the one, where the accident had taken place. The non-objection of the employer to it was held to amount to acquiescence and consequently, the employer was not allowed to raise the question of jurisdiction at the appellate stage.

6. Id., Section 21(1), Proviso.

7. Id., Section 21(2); Workmen's Compensation Rules, 1924, Rules 44, 45.
effecting this transfer, the Commissioner must be satisfied that the matter can be more conveniently dealt with by the other Commissioner. For transferring any matter, other than a matter, relating to the actual payment to a workman or distribution among dependants of a lumpsum, for disposal, the previous sanction of the State Government is required, in the absence of agreement among all the parties, regarding the transfer. For making an order of transfer, relating to distribution among dependants of a lumpsum, an opportunity for hearing has to be afforded by the Commissioner to the party to the proceedings, who has appeared before him. In addition to the Commissioner, the State Government is also empowered to transfer any matter from one Commissioner to another one. The provision for transfer helps the workman, who finds it difficult to pursue the case, at the place of accident. But if this provision is to benefit the workman, the Commissioner should be empowered to decide the question of transfer, after affording opportunity for hearing

8. Id., Section 21(2).
9. Id., Section 21(2), Proviso II. This proviso is omitted by the Workmen's Compensation (Amendment) Act, 1995. This omission will, however, come into force only on such date as may be notified by the Central Government. See Workmen's Compensation (Amendment) Act, 1995, Sections 1(2) and 10.
10. Workmen's Compensation Act, 1923, Section 21(2), Proviso I.
11. Id., Section 21(5).
to the parties concerned, instead of acting solely upon
the sanction of the State Government or on the agreement
of all the parties. Even if the State Government does
not accord sanction or the employer does not agree, the
Commissioner should have the power to transfer a case,
where the transfer of proceeding is required, to protect
the interests of the workman.

Questions like the liability of any person to pay
compensation, the nature and extent of disablement, the
amount or duration of compensation, and whether the
person injured is or is not a workman, are referred to
the Commissioner for settlement.

I.C. 698 (Ort.) (D.B.), it was held that, if any of the
parties makes a motion before the Commissioner for trans­
fer of a case from a particular division on the ground
that the concerned case has links with cases, filed in
another division, the Commissioner should consider all
relevant aspects, and pass appropriate orders.

13. In D.M., United India Insurance Co. Ltd., v. Sasikala
Sahoo, 1995 Lab.I.C. 700 (Ort.), it was held that prior
sanction of the State Government is necessary, even if
parties to proceedings agree for transfer of proceedings.

14. Workmen's Compensation Act, 1923, Section 21(2)
Proviso II.

15. Id., Section 19(1). In Bhanora Colliery v. Poda Teli,
(1974) 2 L.L.J. 520 (Cal.) (D.B.), it was held that the
Commissioner can examine the workman in a particular
case, if he feels necessary for the purpose of settling
the amount, as he is enjoined to do under section 19.

The jurisdiction of the Commissioner under 3.19(1)
of the Workmen's Compensation Act is not confined to
the liability of the employer. It extends to the lia­
ibility of an insurance company under a policy, issued
by it for payment of compensation. See Premier Insur­
(D.B.); Bibhuti Bhusan Mukherjee v. Dinamani Dei (1982)
1 L.L.J. 73 (Ort.); Motor Owners' Insurance Co. Ltd. v.
Jadavji Keshavji Modi, A.I.R. 1981 S.C. 2059; United India
2 L.L.J. 408 (Ker.) (D.B.); Sital Prasad v. Afsari Begum,
1977 Lab.I.C. 1553 (All.); Kamala Devi v. Navin Kumar,
A.I.R. 1973 Raj. 79. For contrary decisions, see Sudhir
settlement of any question can be made to the Commissioner, only if the parties have been unable to settle the same by agreement. The question, whether the parties should make an attempt to settle the matter, before making an application to the Commissioner, is subject to conflicting opinions.

16. Id., Section 22(1). Section 22 is amended by the Workmen's Compensation (Amendment) Act, 1995 by substituting for "(1) No application for the settlement" the following:-

"(1) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before the Commissioner.

(1-A) Subject to the provisions of sub-section(1), no application for the settlement"

But the 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 11.

In Fabiragram Rice Mills v. Ramu Indu, A.I.R.1950 Ass.188 (D.B.), it was held that Section 22 contemplates an application for settlement, after a claim is made under Section 10.

17. Workmen's Compensation Act, 1923, Section 22(1). But an application by a dependant or dependants for compensation is exempted from the purview of this requirement. Ibid.

18. In C.E.Corporation v. Dorai Raj, A.I.R.1960 Ori.39, it was held that Section 22(1) does not mean that, before the Commissioner can assume jurisdiction, there must be some attempt to agree, which had proved unsuccessful, but it means "if not settled by agreement". In Makhan Lal v. Audh Behari, A.I.R.1959 All.586, it was held that, what the section requires is, that a question actually arose between the parties and was not settled by private agreement. The Law Commission of India has made it clear that there is no obligation on the parties to attempt to settle, before they can proceed to make an application to the Commissioner. See Law Commission of India, supra, n.4, p.103.
The Workmen's Compensation Act, 1923 fosters the settlement of disputes, relating to compensation, by mutual agreement between the parties and discourages unnecessary resort to litigation.\textsuperscript{19} So, the parties should make an attempt to settle the question, before proceeding to make an application to the Commissioner. This will help prevent unnecessary financial loss to the workman and reduce the work-load of the Commissioner.

Application for settlement of any matter has to be made to the Commissioner,\textsuperscript{20} in the prescribed manner.\textsuperscript{21}

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\textsuperscript{20} See Smt. N.M. Salunke v. S.T. Pawar, 1995 (70) F.L.R. 360 (Bom.). The appellant's son, an employee of the respondent, died in a tractor accident in the course of employment. The question, to be decided by the High Court, was, whether the claim for compensation before the Commissioner for Workmen's Compensation was barred under Section 110-AA of the Motor Vehicles Act, 1939, in view of the appellant having already filed a claim before the Motor Accident Claims Tribunal, which was dismissed. It was held that the claim under the Workmen's Compensation Act is maintainable before the Commissioner, if the accident took place in the course of employment and the case was remanded to the Commissioner for deciding the remaining issues on merits. In Anthony Lobo v. C.M. Merchant, 1979 Lab.I.C. 61 (Bom.), the father of a person, who died in a motor accident, filed an application under Section 110-B of the Motor Vehicles Act for compensation, on behalf of himself as well as of the minor brothers of the deceased. It was held that he was barred from making a subsequent application before the Commissioner for Workmen's Compensation as guardian of the minor brothers of the deceased.

\textsuperscript{21} See Workmen's Compensation Act, 1923, Section 22(2) See also Workmen's Compensation Rules, 1924, Rule 20.
the applicant is illiterate or, for any other reason, unable to furnish the required information in writing, it has to be prepared under the direction of the Commissioner. This provision helps an illiterate or otherwise disabled applicant in getting justice. It requires the Commissioner not to allow a legitimate claim to be defeated, due to the inability of the applicant, on account of poverty, ignorance or any other disability, to engage a counsel or procure his presence.

Under such circumstances, the Commissioner has to render such assistance to the workman as he may legitimately provide, instead of sitting with folded hands or taking simply a hands-off attitude. A workman of a press sustained injury on all the fingers of his right hand, as a result of an accident in the course of his employment. His case before the Commissioner was not represented by any lawyer. The records, desired by him, namely, attendance register, minimum wages register, day book ledger and vouchers for the period from 1978 to 1979, were not produced by the employer. The Commissioner did not compel the employer to

22. Id., Section 22(3).

23. In Pushpam v. Bonamer Estate, 1988 (1) K.L.T.777 (D.B.), it was held that the statutory duty, cast on the Commissioner by Section 22(3) of the Workmen's Compensation Act, 1923 was completely forgotten by him, when he rejected the application of an illiterate lady for rectification of the date of accident in the application. For details of this case, see infra, n.67. See also Pakiragram Rice Mills v. Ramu Indu, A.I.R.1950 Ass.138 (D.B.)

produce these records. This failure on the part of the Commissioner to compel the production of records was held to be improper.\textsuperscript{25}

The Commissioner should not insist on strict compliance of the prescribed form.\textsuperscript{26} A claim for compensation, brought before the Commissioner, should not be thrown out simply on the ground that the claim was not made in the prescribed form. This is a defect of procedure, which can be permitted to be rectified by the Commissioner. Once it is rectified, the irregularity is cured.\textsuperscript{27}

If the Commissioner is satisfied that the workman is unable, by reason of poverty, to pay the prescribed fees, he may remit any or all of such fees. If the case is decided in favour of the workman, the prescribed fees may be added to the cost of the case and recovered by the Commissioner.\textsuperscript{28}

Thus, poverty does not stand in the way of a workman's filing an application before the Commissioner.

When the Commissioner exercises jurisdiction, civil courts are debarred from exercising jurisdiction in respect

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\textsuperscript{28} Workmen's Compensation Rules, 1924, Rule 34.
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of matters, falling within the jurisdiction of the Commissioner. The bar of the civil court's jurisdiction is limited to matters, which are required to be disposed of by the Commissioner. It does not affect a suit for damages.

Any appearance, application or act, required to be made or done by a workman before or to a Commissioner, may

29. See Workmen's Compensation Act, 1923, Section 19(2).

30. In respect of the Central Government employees' claims under the Workmen's Compensation Act, section 19(2) does not bar the jurisdiction of the Central Administrative Tribunal. The Tribunal has concurrent jurisdiction with the Commissioner for Workmen's Compensation in this regard. Union of India v. Sarup Chand Singla, [1989] 9 A.T.C.167 (Chand.) (F.B.). Civil courts will be competent to entertain claims, coming under Section 13 of the Workmen's Compensation Act. Even though the right of indemnity, provided under Section 13 does not exist outside the Act and is a right, specifically conferred by the Act, the fact remains that the statute, while giving a right, has not provided any particular form of remedy. The affected party can, therefore, have recourse to the ordinary civil court and have his or her rights determined. See Trustees, Port of Bombay v. Natwarlal Parekh, 1979 Lab.I.C.272 (Bom.) (D.B.). Trustees of the Port of Madras v. Bombay Co., A.I.R.1967 Mad.318.

31. See Minerals & Chemicals v. Thevan, 1991 (2) K.L.T.564, where it was held that the scope of the Workmen's Compensation Act, 1923, Section 19 is not to take away from the civil court the jurisdiction to give relief in tort but to provide for an alternative remedy for certain classes of persons, in certain circumstances.

32. But for the purposes of examination as a witness, the workman is required to appear personally. See Workmen's Compensation Act, 1923, Section 24.
be made by a legal practitioner, if he can afford to pay his fees. It can also be made by an official of an Insurance Company or a registered Trade Union or by an Inspector, or by any other officer, specified by the State Government in this behalf, authorised in writing by such person or with the permission of the Commissioner, by any other person, so authorised. This provision is a great relief to those workmen, who may be so incapacitated that they may not be in a position to appear before or apply to the Commissioner.

33. Ibid.

34. Section 24 of the Workmen's Compensation Act permits a registered Trade Union to submit an application on behalf of the injured person. Where the application was submitted by the Secretary, Majdoor Congress, Indore, it was held to be a sufficient compliance with Section 24, even though not signed by the injured workman. Registered trade union, for the aforesaid purposes, includes the office-bearers of a registered trade union. See Bhagwandas v. Pyarelal, A.I.R.1954 M.B. 59.

35. Such an Inspector may be one appointed under sub-section (1) of Section 8 of the Factories Act, 1948 or under sub-section (1) of Section 5 of the Mines Act, 1952. See Workmen's Compensation Act, 1923, Section 24.

36. The expression "any other person so authorised" indicates only formal appearance, on behalf of the persons claiming. Nanak Chand Shadiram v. Mahabir, A.I.R.1935 All.408. Thus, in the case of a joint Hindu family, a manager, without any authorisation in writing, is competent to make an application, on behalf of the members of the joint family such as widows and minors. Id., p.410. See also Workmen's Compensation Act, 1923, Section 24.

37. But this provision cannot help the workman, so long as the Commissioners go on favouring only the cases, presented by certain advocates, who happen to be their favourites. See K.L.Bhatia, "Legal Aid To Victims Of Industrial Accidents: An Empirical Study Of The Administration of Workmen's Compensation Law In The States Of Jammu And Kashmir And Punjab", 23 J.I.L.L.1,120 at 126 (1981).
On receipt of an application, the Commissioner must, first of all, either by himself or by some officer, authorised by the State Government in this behalf, examine the applicant on oath to ascertain, whether there is really a prima facie case. If, after the examination of the applicant on oath, the Commissioner is of the opinion that no case has been made out, he may dismiss the application summarily. Where the Commissioner does not dismiss the application summarily, he should proceed to take evidence.

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38. Workmen's Compensation Act, 1923, Section 22.

39. Workmen's Compensation Rules, 1924, Rule 23. In Ali Akbar v. Java Bengal Line, A.I.R.1937 Cal.697 (D.B.), the Commissioner allowed himself to be influenced into thinking that there was a prima facie case by the fact that there was a doctor's certificate, attached to the application. It was held that there was irregularity of procedure and that the doctor's certificate ought to have been disregarded and the Commissioner should have proceeded, as directed by Rule 23. In Burhwal Sugar Mills Ltd. v. Ramjan, 1982 Lab.I.C.84 (All.), it was held that the evidence, on the basis of which an order for compensation may be passed by the Commissioner, has to be on oath. Section 23 of the Workmen's Compensation Act, 1923 and Rule 23 of the Workmen's Compensation Rules, 1924 specifically refer to examination on oath. Merely placing on record the medical certificate is not enough, as a medical certificate cannot take the place of examination on oath, contemplated under Section 23 and Rule 23. In K.S.Modi v. Bichitransanda Swain, 1974 Lab.I.C.954 (Ori.), it was held that Rule 23 is mandatory and non-compliance with it would vitiate the proceeding. For contrary view, see Taxmaco v. Nandoo, A.I.R.1955 N.U.C.3693 (M.B.).

40. Id., Rule 24. See Singh v. Burma Railways, A.I.R.1939 Rang. 70 (D.B.), where it was held that Rule 21 does not give the Commissioner any power to dismiss the application summarily, unless the applicant has been examined.

41. Id., Rules 25-27. See Bhagwandas v. Pyarelal, A.I.R. 1954 M.B.59, where it was held that Rule 25 gives a

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The Commissioner is not required to record evidence in extenso. However, he cannot decide the case on no materials. He must decide the case on evidence, adduced before him, in an objective manner. So, he must make a discretion to the Commissioner to hold a preliminary inquiry. It does not make it obligatory to hold a preliminary enquiry in every case. In Singh v. Burma Railways, A.I.R.1939 Rang. 70 (D.B.), it was held that if the opposite party does not file any written statement, the Commissioner has to proceed to examine him upon the claim and reduce the result of examination to writing. Omission to do so is a substantial error in procedure. It was held in K.S. Modi v. Sichitrananda Swain, 1974 Lab.I.C.954 (Orl.) that Rule 27, relating to calling for the appearance and examination of opposite party by the Commissioner, is mandatory and non-compliance with it would vitiate the proceeding.

(f.n.41 contd.)


43. Kunchali Rudrani v. Baby, 1979 Lab.I.C.415 (Ker.) (D.B.), relying on State of Mysore v. S.S. Makapur, A.I.R.1963 S.C.375. See also Parameswaran v. M.K. Parameswaran Nair, 1989 (1) K.L.T.399 (Ker.) (D.B.). The respondent employer produced the muster roll and wages register to prove that the applicant was not employed as a regular cutter. He alleged that only on very rare occasions, the applicant was casually employed, during the absence of the regular cutter, Vasudevan. The Commissioner held that there was no proof that the applicant was employed as a regular cutter. It was held that the Commissioner was not right in holding that the applicant was not a regular workman for the only reason that his name was not mentioned in either of the two registers. He could easily have produced the staff register, relating to minimum wages or examined the regular cutter, Vasudevan or the foreman to prove his case.
brief memorandum of the substance of the evidence of every witness in the course of examination. Such memorandum is, however, required to be written and signed by the Commissioner with his own hand. But if the Commissioner is prevented from making such memorandum, he should cause such memorandum to be made in writing from his dictation and sign the same, after recording the reason for his inability. Medical certificates are the worst form of medical evidence. They, in the absence of examination of the doctors issuing them, are mere hear-say evidence and cannot be relied on to arrive at any conclusion. So, an order for payment of

44. Workmen's Compensation Act, 1923, Section 25.

45. Id., Section 25, Proviso I. It was held in Makhan Lal Marwari v. Audh Behari Lal, A.I.R. 1959 All. 586 that where the Commissioner attaches a note at the end of each deposition, stating that it has been recorded by his reader at his dictation, owing to his inability to do so, that will be sufficient compliance with Section 25 of the Workmen's Compensation Act, 1923. The Law Commission of India has noted that this restrictive provision follows the corresponding provision in the Code of Civil Procedure. It often causes inconvenience and delay. In view of this, the Commission has suggested that the dictation by the Commissioner shall be provided for, irrespective of any question whether he is able or unable to make the memorandum himself. Law Commission of India, supra, n. 4 p. 108. It is, however, the duty of the Commissioner to hear evidence himself and decide the dispute. He cannot delegate that power. G. Powell v. Panchu Mokadam, A.I.R. 1942 Pat. 453 (D.B.).

46. In Allied Cargo Motors and another v. S. Manickam, [1995] 87 F.J.R. 336 (Mad.), the Commissioner for Workmen's Compensation decided the compensation, payable to a workman for injuries, sustained by him, resulting in amputation of the fourth and fifth toes of his right leg, on the basis of medical certificate to the effect that the contd...
compensation cannot be founded on medical certificate alone without the statement on oath of the medical practitioner, who issued it. 47 Though, generally, the Commissioner is not to record evidence in extenso, he should do so in the case of the evidence of the medical witness. It has to be

(f.n.46 contd.) percentage of his loss of earning capacity was 40 percent. It was held that the doctor, who had issued the medical certificate, was not examined by the Commissioner, and, therefore, the medical certificate could be considered only as a hearsay evidence and no decision on the percentage of disability could be taken on the basis of the medical certificate. See also Bengal Coal Co. Ltd., v. Barhan Gope, 1983 Lab.I.C.685 (Cal.) (D.B.).


Medical certificate can be accepted by the Commissioner without examining the doctor, as the provisions of the Evidence Act do not apply to proceedings before quasi-judicial tribunals. See also M/s.New India Assurance Co. Ltd. v. Randi Lachaya and another, 1994 Lab.I.C. 2324 (Ori.). Certificate of medical expert as to employees' disability can be accepted by the Commissioner without formal proof of it by examination of the medical expert, on satisfaction that it is genuine, because the technicalities of the Evidence Act are not attracted in a quasi-judicial proceeding, though the general principles of the Act are to be followed. In United India Insurance Co. v. Sethu Madhavan, 1992 (2) K.L.T.702 (D.B.), it was held that certificate of medical practitioner can be admitted in evidence without examining the doctor, who issued the same. This is because administrative and quasi-judicial proceedings are not fettered by technical rules of evidence.
taken down as nearly as may be word for word. The duty of the Commissioner to hear and record the evidence himself, instead of acting on the report of subordinates, and to take special care with regard to medical evidence helps render justice to workmen.

The Commissioner, before whom any proceeding, relating to an injury by accident is pending, can collect further information, relating to the case by local inspection of the place of work or accident and examination of persons. He is also empowered to conduct summary examination of persons, likely to be able to give information, relating to a case, if it is required. The Commissioner can help an injured workman obtain compensation by the proper use of these powers.

Is the Commissioner for Workmen's Compensation a court? In Indian Iron & Steel Co.Ltd. v. Shish Ram, Salil Kumar Datta, J. of the Calcutta High Court pointed out that a tribunal or authority is a court, if certain conditions are satisfied. The conditions to be satisfied, are the following:

(1) The source of power of the tribunal or authority should be the State as the fountain of justice.

48. See Workmen's Compensation Act, 1923, Section 25, Proviso II.
50. Workmen's Compensation Rules, 1924, Rules 35 and 36.
51. Id., Rule 37.
52. (1979) 2 L.L.J.94 at 98 (Cal.).
(2) The jurisdiction to adjudicate the lis between parties must be conferred on it by law and not by any voluntary act of parties.

(3) The right to move the tribunal or authority has to be conferred on the aggrieved party by law.

(4) The proceeding on the lis commences by presentation of the case by the aggrieved party with a corresponding right on the other party to meet the case.

(5) In adjudicating the dispute, the tribunal or authority follows established procedure.

(6) If the dispute is on questions of fact, they are to be ascertained through evidence, supplemented by argument.

(7) If the dispute is on questions of law, there will be submission of arguments on such questions of law by the parties before such tribunal or authority.

(8) In arriving at its decision, the tribunal or authority acts judicially and according to law, following the principles of natural justice.

(9) The tribunal or authority pronounces judgment, finally disposing of the case.

(10) The judgment is authoritative and binding on parties, subject to appeal.

(11) The judgment is enforceable by the tribunal or authority through process of law. All these conditions being satisfied in the case of the Commissioner for Workmen's
Compensation, it was held that the Commissioner is a court.

But the Commissioner for Workmen’s Compensation is not a 'court' in the normal hierarchy of courts, as he does not deal with general disputes and deals only with particular disputes under the Workmen’s Compensation Act, 1923. He is deemed to be a civil court for certain specific matters. If the Commissioner were a civil court, there was no need for a provision, deeming him to be a civil court. Further, the institution of a suit for damages in respect of industrial injuries in a civil court excludes the jurisdiction of the Commissioner for Workmen’s Compensation and vice versa. All these factors show that the Commissioner for Workmen’s Compensation is different from a civil court. He is not a civil court, amenable to the revisional jurisdiction of the High Court. He, being not a civil court, is not bound


54. Workmen’s Compensation Act, 1923, Section 23.

55. Id., Section 3(5).


by the technicalities of the Evidence Act. He is not
governed by the provisions of the Civil Procedure Code,
1908 except in certain specified matters. He is only a
special quasi-judicial machinery, created to achieve the
object of providing compensation to workmen for injury by
accident. So he is empowered to mould or even depart
from the applicable provisions of the Code of Civil Proce­
dure, 1908 to achieve the object of the Act. He is
not fettered by the technicalities, pertaining to a civil
court. He has to ensure that justice is not sacrificed
at the altar of procedural formalities.

(f.n.57 contd.) 1979 Lab.I.C.784 (Raj.) (F.B.); Mohanlal v.
Fine Knitting Mills Co.Ltd, A.I.R.1960 Bom.387; Abdul
Rashid v. Hanuman Oil & Rice Mill, A.I.R.1951 Ass.88
(D.B.); Mt.Dirji v. Smt.Goalín, A.I.R.1942 Pat.33 (D.B.);

58. M/s.New India Assurance Co. Ltd. v. Randi Lachaya and
another, 1994 Lab.I.C.2324 (Ori.). See also New India
Assurance Co. Ltd. v. Hrusikesh Sahu and another, 1994
Lab.I.C.NOC 408 (Ori.).

59. Workmen's Compensation Act, 1923, Section 23; Workmen's
Compensation Rules, 1924, Rule 41.

60. Id., Preamble, Section 19(1). See Kunchali Rudrani v.

61. Id., Section 23; Workmen's Compensation Rules 1924,
Rule 41.

62. Id., Rule 41, Provisos (a) and (b).

63. See Parameswaran v. M.K.Parameswaran Nair, 1989 (1)
K.L.T.399 (Ker.) (D.B.); Ramanlal Madanlal v. Binapani

64. K.L.Bhatia, "Administrative Process For Compensation
Claims, An Empirical Study Of Administration Of Work­
men's Compensation Law in States of Jammu And Kashmir
Even though the Commissioner for Workmen's Compensation is not a civil court, he is empowered by certain judicial powers to achieve the object of the Workmen's Compensation Act, 1923. Such powers include the power to order addition of parties, order substituted service, allow amendment of application, permit amendment of pleadings, grant

65. Code of Civil Procedure, 1908, Order I, Rule 10. Although, specifically, the provisions of Order I, Rule 10 have not been made applicable to the proceedings under the Workmen's Compensation Act, there is no prohibition in the Act and the Rules that a person cannot be brought on record, subsequent to the filing of the application. Similarly, the principle of Section 151 of the Civil Procedure Code applies to quasi-judicial authorities also and the Commissioner can allow addition of parties. See K.V.Aboo v. Commissioner for Workmen's Compensation (1977) 2 L.L.J. 134 (Ker.).

66. In Kalyan Singh v. Dhannaram, 1977 Lab. I.C. NOC 125 (Raj.) it was held that the Commissioner can order substituted service, in accordance with Order V, Rule 20 of the Code of Civil Procedure, 1908 and for this purpose, his satisfaction, that the respondent is evading service, is enough.

67. In Pushpam v. Bonamer Estate, 1988 (1) K.L.T. 777 (D.B.), an illiterate lady gave a wrong date of the accident in her application for compensation. She filed an application to correct the date of the accident. But the Commissioner dismissed the same on the ground that he had no jurisdiction to allow such application. It was held that no provision in the Workmen's Compensation Act disabled an authority like the Commissioner from rectifying an apparent error in the application, submitted by an illiterate applicant, whose claim for compensation was denied by the employer.


adjournment, pass order by consent of parties, and correct bonafide mistakes. Though the Commissioner does not possess the inherent powers of a civil court, conferred by section 151 of the Code of Civil Procedure, the principle of the said section applies to quasi-judicial authorities like the Commissioner. Moreover, the Commissioner has to settle the dispute before him, if it could not be settled by agreement. Therefore, in furtherance of the

69. In Gian Chand v. Mani Karan, (1990) 1 L.L.J. 565 (H.P.), it was held that the power to grant adjournment has to be exercised with vigilance and circumspection. Hence, if the claim cannot be processed further, in the absence of the workman's counsel, the discretion has ordinarily to be exercised in favour of the workman by adjourning the case to enable him to secure the services of a counsel, unless the grant of adjournment is likely to result in grave miscarriage of justice or is occasioned, on account of utter lack of bona fides or diligence on the part of the workman.


71. In M/s. Intra Chemicals and Drugs Pvt. Ltd. v. Rupa Narain, 1985 Lab. I.C. 519 (P. & H.), through bona fide mistake, the claim for compensation was preferred and allowed under the old Schedule IV. It was held that the Commissioner could, on the claimant's application, modify his order and enhance the amount of compensation, in conformity with the revised Schedule.


74. Workmen's Compensation Act, 1923, Section 19 (1).
powers of settlement, the Commissioner must be presumed to have all the incidental and ancillary powers, in the absence of contrary provision in the Act. However, the Commissioner does not have any power to issue commissions for the examination of witnesses, act on report of subordinates and review his orders.

The Commissioner can submit any question of law for the decision of the High Court. By this provision, the Commissioner helps avoid an appeal and consequent expenses to the parties.

The Workmen's Compensation Act, 1923 provides for an appeal from the order of the Commissioner to the High Court.


77. Cheralodyil Usankutty v. Kunhipennu, A.I.R.1943 Mad. 608. In G.Powell & Co. v. Panchu Mokadam, A.I.R.1942 Pat.453 (D.B.), the Commissioner gave his decision on the basis of a report, submitted, after local investigation, by a person, deputed for that purpose by the Commissioner. The Patna High Court quashed the decision on the ground that the Commissioner could not delegate his powers and order a subordinate to make reports so as to make the Commissioner's work lighter and easier.


79. See Workmen's Compensation Act, 1923, Section 27.
before the expiry of sixty days from the date of the order.

An appeal lies only from certain specified orders of the Commissioner. \(^{81}\) It lies, only if there is a substantial question of law, involved in the appeal. \(^{82}\) A substantial question of law is involved, when the question of law is not well settled; there is some doubt as to the principle of law

\(^{80}\) Id., Section 30(2). In Kap Steel v. R. Sasikala, 1990 Lab.I.C.1144 (Kant.) (D.B.), it was held that the period of limitation for an appeal under Section 30 is to be computed from the date of pronouncement of the impugned order and not from the date of communication thereof. In Divn. Mgr., National Insurance Co.Ltd. v. Mani, 1992 (2) K.L.T.954 (D.B.), it was held that the time, taken to obtain certified copy of judgment, is liable to be excluded in computing the period of limitation for the appeal.

\(^{81}\) See Workmen's Compensation Act, 1923, Section 30(1)(a), (aa), (b), (c), (d), (e) and Provisos I and II.

\(^{82}\) See V. Raveendran v. B. Somavally, [1995] 87 F.J.R.369 (Ker.) (D.B.). In practice, the adjective 'substantial' remains an irrelevant ornament. 'Substantial question of law' is nothing but a question of law with the addition of a dignified epithet. See Dr. A. T. Markose, "Judicial Control Of Administrative Action Under Section 30 of the Workmen's Compensation Act, 1923" 1 L.L.J. at VII (1952). In New India Assurance Co.Ltd. v. Hrusikesh Sahu and another, 1994 Lab.I.C. NOC 408 (Ori.), it was held that issues, such as whether a workman sustained injuries in the course of and out of employment, his wages, age and percentage of disability, are findings of fact, based on materials, against which no appeal lies under Section 30. In Factory Manager, Associated Soap Stone Factory, Ratlam v. Ladkibai, 1994 Lab.I.C. NOC 17 (M.P.), it was held that an appeal by the employer against the compensation award was not maintainable, there being sufficient evidence to draw an inference that the accident arose out of and in the course
a finding of fact is not based on evidence at all; there is a dispute regarding the question whether a person is a workman or whether an accident has arisen out of and in the course of employment; the question involved is of great public importance or is so basic to the operation of the Act itself or it calls for a discussion of different views; or when the Commissioner has acted arbitrarily and

(f.n.82 contd.) of employment. In Motijhari Devi v. Bindeswari Prasad, A.I.R.1988 Pat.5 (F.B.), it was held that no appeal was maintainable against a finding of fact – the finding that the applicant for compensation failed to prove that she was the widow of the deceased worker.


86. K.Saraswathi v. S.Narayana Swami, (1984) 2 M.L.J.173; Dudhiben Dharamshi v. New Jehangir Vakil Mills Co.Ltd., (1977) 2 L.L.J.194 (Guj.) (D.B.). For contrary view, see V.Raveendran v. B.Somavally, [1995] 87 F.J.R.369 (Ker.) (D.B.), where it was held that the question, whether an accident, resulting in injury, took place during the course of employment, is a question of fact, on which no appeal lies under Section 30 of the Workmen’s Compensation Act, 1923.

unreasonably. An appeal does not lie, if the parties have agreed to abide by the decision of the Commissioner or the order of the Commissioner gives effect to an agreement of the parties. It does not lie in the case of an order, other than an order, refusing to allow redemption of a half-monthly payment, unless the amount in dispute in the appeal is not less than three hundred rupees. In the case of an order, awarding as compensation a lumpsum or disallowing a claim for a lumpsum, no appeal by an employer is permitted, unless the memorandum of appeal is accompanied by the certificate of deposit of compensation by the employer. The


89. Workmen's Compensation Act, 1923, Section 30(1), Proviso II.

90. Id., Section 30(1), Proviso I.

principle, underlying this mandatory provision, is that if the appeal be such that by it, the workman's right to the compensation, awarded to him by the Commissioner, is placed in jeopardy, the workman's interest is protected by the provision for the deposit. 93 But, if instead of the employer an insurance company files the appeal, the question, whether it should comply with the requirement of the deposit of the amount of compensation, has been subject to conflicting judicial interpretations. 94 If the provision for deposit of compensation is to protect the interests of the workmen, the insurance company should also comply with the requirement


94. In New India Assurance Co.Ltd. v. Manorama Sahu, (1993) 2 L.L.J.332 (Orl.), it was held that the insurer is not required to make the deposit of compensation, he being not an employer under Section 3 of the Workmen's Compensation Act, 1923. For contrary view, see United India Insurance Co. Ltd. v. Shaik Alimuddin, 1995 (70) F.L.R. 631 (A.P.); United India Insurance Co. Ltd. v. Ghulam Qadir Dar (1993) 2 L.L.J.9 (J. & K.); New India Assurance Co. Ltd. v. M.Jayarama Naik, 1982 Lab.I.C.1235 (Ker.) (D.B.) and Rajasi Clerk, "Policy Of Appeal Without Deposit 2" Re: §30 Of The Workmen's Compensation Act", 27 Lab.I.C.34 (1994). But in United India Insurance Co.Ltd. v. Shaik Alimuddin, 1995 (70) P.L.R.631 (A.P.), it was clarified that the insurance company is liable only to deposit the amount of compensation, not the amount of interest and penalty.
to deposit compensation.⁹⁵ Further, the provision, requiring the employer to deposit compensation for filing an appeal, becomes meaningless by the provision, empowering the Commissioner to withhold payment of the sum, deposited with him.⁹⁶ Merely because the employer has preferred an appeal, it would be unfair to deprive the injured workman or the dependants of the deceased workman of the fruits of the litigation by empowering the Commissioner to withhold payment.⁹⁷

When an appeal lies on a substantial question of law, the whole case is before the High Court and it can go into the question of law and fact independently and pass an order, which the circumstances of the case warrant. It can substitute its own decision for the decision of the Commissioner.

⁹⁵ Rajasi Clerk, supra, n.94, pp.34, 35.
⁹⁶ Workmen's Compensation Act, 1923, Section 30 (1), Proviso III.
⁹⁷ Id., Section 30-A.
⁹⁸ The Law Commission of India has noted that the existence of Section 30-A of the Workmen's Compensation Act, 1923 is liable to result in injustice, as it may be used by the Commissioner in such a manner that it causes untold hardship to the workman. The Commission has recommended the repeal of this section, as its repeal is not liable to cause any hardship to any party. The employer, filing the appeal, can obtain a stay order from the High Court, if it is required. See Law Commission of India, infra, n.180, p.45.
⁹⁹ Vijayaraghavan v. Velu, (1973) 1 L.L.J.490 (Ker.) (D.B.). See also S.Parameswaran, "Appellate Jurisdiction in Compensation cases", 13 C.U.L.R. 51 at 57 (1989). In United India Insurance Co.Ltd. v. C.S.Gopalakrishnan, 1989 Lab.I.C.1906 (Ker.) (D.B.), it was held that normally in an appeal against the decision of the Commissioner contd...
If the Commissioner's order is illegal and without jurisdiction or if there has been a flagrant abuse of power or non-exercise of jurisdiction or an error, apparent on the face of the record and if no appeal lies, the order can be challenged by filing a writ before the High Court under Article 226 of the Constitution. But, if the remedy of an appeal under the statute, which is adequate

(f.n.99 contd.) for Workmen's Compensation, the appellate Court is bound by the findings of fact and the appeal lies only on a substantial question of law. But the findings of fact of the Commissioner must be based on evidence. If the finding of fact is contrary to the evidence, then the court is not precluded from examining the correctness of the decision, holding that the court is not bound by the findings of fact of the Commissioner.

In Vijayaraghavan v. Velu, supra, it was held that in the case of an appeal against the award of the Commissioner under Section 30, there is no provision in the Act, regarding the practice and procedure, which the High Court should follow in admitting the appeal or deciding it. In the absence of any express provision, the practice and procedure of the Court, deciding the appeal, should be followed.


101. In Sona Shah v. Commr. for W.C., 1978 Lab.I.C.576 (J. & K.), it was held that direct payment of compensation, against the provisions of Section 8, cannot be deemed to be a payment of compensation. If the dependent moves an application before the Commissioner, stating non-receipt of the amount of the Commissioner's award and the Commissioner gives a finding, whether the payment has been made or not, such an order is not covered by Section 30(1) and no appeal lies against it and so a writ petition is maintainable.

102. See Dr.A.T.Markose, supra, n.82.
and efficacious, is available, by-passing it and seeking relief by filing a writ is not permissible.\textsuperscript{103}

Just like the Commissioner for Workmen's Compensation, the Employees' Insurance Court under the Employees' State Insurance Act, 1948 is constituted by the State Government for a particular area.\textsuperscript{104} It consists of such number of judges as the State Government thinks fit.\textsuperscript{105} Any person, who is or has been a judicial officer or is a legal practitioner of five years' standing, is qualified to be a judge of the Employees' Insurance Court.\textsuperscript{106} The State Government can appoint the same Court for two or more local areas or two or more Courts for the same local area.\textsuperscript{107} If more than one Court is appointed by the State Government for the same local area, the State Government, by general or special order, regulates the distribution of business between them.

\begin{itemize}
\item \textsuperscript{103} Krishna Lime Works v. Presiding Officer, (1990) 1 L.L.J. 302 (Raj.) (D.B.) See also Piara Singh v. Commissioner for Workmen's Compensation, Patiala and another, 1987 Lab.I.C. 818 (P. & H.) (D.B.) where it was held that payment of compensation, being condition precedent for entertaining appeal under Section 30 of the Act, is no ground for filing a writ petition.
\item \textsuperscript{104} Employees' State Insurance Act, 1948, Section 74 (1). In E.S.I.C. v. Tilak Dhari, 1995 (71) F.L.R. 296 (All.) it was held that the power of the State Government to constitute the Employees' Insurance Court includes the power to reconstitute it.
\item \textsuperscript{105} Id., Section 74 (2).
\item \textsuperscript{106} Id., Section 74(3). In Allahabad Canning Co. v. E.S.I.C., 1982 Lab.I.C. 545 (All.) (D.B.), it was held that an Executive Magistrate can be said to be a Judicial Officer.
\item \textsuperscript{107} Id., Section 74 (4).
\item \textsuperscript{108} Id., Section 74 (5).
\end{itemize}
Matters, to be decided by the Employees' Insurance Court, include questions or disputes\textsuperscript{109} and claims.\textsuperscript{110} Questions or disputes may relate to whether any person is an employee, the rate of wages or average daily wages of an employee, the rate of contribution, payable by a principal employer, whether a person is the principal employer in respect of an employee, the right of a person to any benefit, the amount and duration of a benefit, any direction, issued by the Corporation on a review of dependant's benefit\textsuperscript{111} and to any other matter in dispute\textsuperscript{112} between a principal employer and the Corporation or between a principal employer and an immediate employer or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues.\textsuperscript{113} Claims, to be decided

\begin{itemize}
  \item \textsuperscript{109} Id., Section 75 (1).
  \item \textsuperscript{110} Id., Section 75 (2).
  \item \textsuperscript{111} Id., Section 55-A.
  \item \textsuperscript{112} In Rohtas Industries v. E.S.I.C., 1975 Lab. I.C. 1511 (Pat.), it was held that the phrase "any other matter in dispute" includes residuary matter in dispute. It cannot, however, be enlarged and relied on as an omnibus expression to embrace in its fold the claim of the Corporation, on account of reimbursement from the employer.
  \item \textsuperscript{113} Employees' State Insurance Act, 1948, Section 75 (1) (a) to (ee) and (g). Clause (f) of Section 75 (1) was omitted by Act No. 44 of 1966. In E.S.I.Corporation v. Perfect Potteries Co. (M.P.) Ltd., 1995 87 F.J.R. 374 (M.P.) (D.B.), it was held that the Employees' Insurance Court has jurisdiction to adjudicate on the question of
\end{itemize}
by the Employees' Insurance Court, include claim for the
recovery of contribution from the principal employer, claim
by a principal employer to recover contribution from any
immediate employer, claim against a principal employer in
case of his failure or neglect to pay any contribution,\footnote{114}
claim for the recovery of any benefit illegally received by
a person\footnote{115} and claim for the recovery of any admissible
benefit.\footnote{116}

(f.n.113 contd.,) recovery of damages. In M/s.Siva Trading
Co. and others v. Secretary to Govt. of India, 1994
Lab.I.C.1593 (P. & H.) (D.B.), it was held that the
question, whether Rice shellers are 'factories' under
the Employees' State Insurance Act, 1948, is a question
of fact, which cannot be determined in writ proceed-
ings and, therefore, has to be raised before the appro-
priate forum as provided under Section 75 of the Act.
1123 (Raj.), it was held that questions, such as whether
a person is an 'employee' or a unit is a 'factory', are
questions, which can be decided by the Employees'
Insurance Court. When a special court has been esta-
blished under the provisions of the statute, it will
not be appropriate to decide the said dispute by way
of a writ petition under Article 226 of the Constitu-
I.C.1634 (Bom.), it was held that the question, whether
an establishment is a factory or not, is a matter for
the exclusive jurisdiction of the Employees' Insurance
Court. In Basant Sarkar v. Eagle Rolling Mills, 1964
(6) F.L.R.334 (S.C.), the employer withdrew the medical
benefits, given to his employees, on the provisions of
the Employees' State Insurance Act being made applicable
to them. It was held that the validity of such action
was to be challenged before the Employees' Insurance
Court.

\footnote{114}{Id., Section 68.}
\footnote{115}{Id., Section 70.}
\footnote{116}{Id., Section 75(2)(a), (b) and (d) to (f). Clause (c)
of Section 75(2) was omitted by Act No.44 of 1966
w.e.f. 28.1.1968.}
The aforesaid questions or disputes or claims are to be decided by the Employees' Insurance Court, subject to one condition. If in any proceedings before this Court, a disablement question arises and the decision of the question by a Medical Board or a Medical Appeal Tribunal is necessary for the determination of the claim or question before the Court, it should direct the Corporation to have the question decided by the concerned forum. It should then proceed with the determination of the claim or question, in accordance with the decision of such forum.\textsuperscript{117} But this condition need not be complied with by the Court, where an appeal has been filed before it from a decision of the Medical Board or Medical Appeal Tribunal.\textsuperscript{118} Further, no matter in

\textsuperscript{117} Id., Section 75 (2-A) ins. by Amendment Act No.44 of 1966. In E.S.I.C. v. Hafiz Khan, 1977 Lab.I.C.1175 (Cal.) (D.B.), it was held that the effect of Section 75 (2-A) is that, if the tribunal is not sitting in appeal over the decision of the Medical Board, on an appeal being preferred to it under Section 54-A, the decision of the Medical Board is binding between the parties and the tribunal is bound to make an award in accordance with the said decision. In E.S.I.C. v. Hari Hazra, 1989 Lab.I.C.1792 (Cal.) the Calcutta High Court did not accept the assessment of loss of earning capacity of the respondent, due to partial loss of vision of one eye at 1 percent by the Medical Board, while the loss of earning capacity for such injury is 30\% as per the Second Schedule to the Employees' State Insurance Act, 1948. It held that the harmonious construction of Section 75 (2-A) clearly suggests that it is applicable in case of unscheduled injuries only. In the case of a scheduled injury, if the assessment of the Medical Board is not in conformity with that provided in the Schedule, the latter would prevail.

\textsuperscript{118} Id., Sections 54-A(2), 75 (2-A), Employees' State Insurance (General) Regulations, 1950, Regulations 75 contd...
dispute between a principal employer and the Corporation in respect of any contribution or other dues can be entertained by the Employees Insurance Court, unless the employer has deposited with it fifty percent of the amount due from him, as claimed by the Corporation. 119

(f.n.118 contd.)
and 76; Employees' State Insurance (Central) Rules, 1950, Rules 20-A, 20-B. See also E.S.I.C. v. Hafiz Khan, 1977 Lab.I.C.1175 (Cal.) (D.B.). Before the insertion of sub-section (2-A) of Section 75 in the Act by the Amending Act No.44 of 1966, the Employees' Insurance Court did not have any power to direct the Corporation to refer any disablement question to the Medical Board. Therefore, if the Corporation did not refer the case of disablement to the Medical Board under Regulation 72 of the Employees' State Insurance (General) Regulations on the plea that the injury sustained was not an employment injury and the aggrieved person came to the Employees' Insurance Court for relief, the latter did not have power to get the said disablement question decided by the Medical Board, if it was found from evidence that the applicant suffered permanent disablement, as a result of employment injury. The Employees' Insurance Court had, however, the power to assess the loss of earning capacity on the available evidence. See M.R.Mallick, Employees' State Insurance Act (1984) pp.315-316. In Vasudevan Nair v. Reg.Dir., E.S.I.C., 1991 (2) K.L.T.284 (D.B.), it was held that where an appeal is filed from the decision of the Medical Board to the Employees' Insurance Court under Section 54-A(2) of the Act, the latter has power to decide the correctness of the determination of the disability of the Medical Board. Though the Insurance Court may not have the expertise, the statute has empowered the Insurance Court to examine the correctness of the certificate, issued by the Medical Board.

119. Id., Section 75 (2-B), ins. by Act No.29 of 1989, Section 29. The court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited. See Id., Section 75 (2-B), Proviso.
The civil court is debarred from deciding any matter to be decided by the Employees' Insurance Court, as in the case of the Commissioner for Workmen's Compensation. This is because, where the liability is created by a statute, the aggrieved party must pursue the special remedy provided by it. But, if the statutory adjudicatory authority abuses its powers or acts contrary to the provisions of the Act, it can be challenged before the civil court.

The proceedings before an Employees' Insurance Court are to be instituted in the Court, appointed for the local area, in which the insured person was working at the time, the question or dispute arose. Like the Commissioner

120. Id., Section 75(3). See Ram Parshad v. E.S.I.C., 1988 (57) F.L.R.139 (Dd.); E.S.I.C. v. M/s.R.P.Gundu, 1983 Lab.I.C.1634 (Bom.); REGL. DIRECT., E.S.I.C. v. Marikkar ENGRS Ltd., (1982) 1 L.L.J.59 (Ker.). In E.S.I.C. v. Himatram Ramdas, 1970 Lab.I.C.240 (Guj.) (D.B.), it was held that the ouster of jurisdiction cannot commence till the Employees' Insurance Court is established. In Nellimerla Jute Mills Co.Ltd. v. E.S.I.C., A.I.R. 1961 A.P.338 (D.B.), it was held that Sections 74 and 75 of the Employees' State Insurance Act, 1948 indicate that where dispute arises under the provisions of the Act, the matter must be decided by the Employees' Insurance Court and not by a Civil Court. But there is nothing in the Act that prevents a Criminal Court from entertaining a prosecution for contravention of the provisions of the Act.

121. Workmen's Compensation Act, 1923, Section 19(2).


123. Employees' State Insurance Act, 1948, Section 76(1). See Sree Karpagambal Mills Ltd. v. First Additional City Civil Court (E.S.I.C.Court) And Another, [1995] 87 F.J.R. 239 (Mad.).
for Workmen's Compensation\(^{124}\), the Employees' Insurance Court can transfer any proceeding to another Court in the same State for disposal, if it is satisfied that the matters, arising out of that proceeding, can be more conveniently dealt with by the other Court.\(^{125}\) After transferring the case to that Court for disposal, the Employees' Insurance Court should transmit the records of that case forthwith to that Court.\(^{126}\) The State Government is empowered to transfer a case, pending before an Employees' Insurance Court of that State, to any such Court of another State, with the consent of the State Government\(^{127}\) of that State. The transferee Court is to continue the proceedings, as if they have been originally instituted in it.\(^{128}\)

The proceedings before an Employees' Insurance Court are commenced by an application\(^{129}\) to it, as in the case of the proceedings before the Workmen's Compensation Commissioner. Application to the Employees' Insurance Court can be made within a period of three years from the date, on which the

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124. Workmen's Compensation Act, 1923, Section 21(2).
125. Employees' State Insurance Act, 1948, Section 76(2).
126. Ibid.
127. Id., Section 76(3).
128. Id., Section 76(4).
129. Id., Section 77(1).
130. Workmen's Compensation Act, 1923, Section 22.
cause of action arose, unlike the Workmen's Compensation Act, 1923. The cause of action, in respect of a claim for benefit, arises, only if the insured person or in the case of dependant's benefit, the dependants of the insured person claim that benefit, within a period of twelve months, after the claim became due or within such further period as permitted by the Employees' Insurance Court.

Any application, appearance or act to or before an Employees' Insurance Court may be made or done by a legal practitioner or an officer of a registered trade union, authorised in writing by such person or any other authorised agent of the party with the permission of the Court. The appearance of a person before this Court as a witness must, however, be always personal. As in the case of the Commissioner for Workmen's Compensation, the provision

131. In Sher Ali Mridha v. Torae Ali, A.I.R.1942 Cal.407, it was held that the expression "Cause of action" means all the essential facts, constituting the right and its infringement. See Employees' State Insurance Act, 1948, Section 77(1-A), ins. by Act No.44 of 1966, Section 33.

132. Workmen's Compensation Act, 1923, Section 10(1). Under this Act, the claim for compensation has to be made before the Commissioner within two years from the date of the occurrence of the accident or in case of death, within two years from the date of death.

133. Employees' State Insurance Act, 1943, Section 2(14).
134. Id., Section 77(1-A), Explanation (a).
135. Id., Section 79.
136. Ibid.
137. Workmen's Compensation Act, 1923, Section 24.
for filing application and for appearance or acting through ways, other than by the party in person or through legal practitioner distinguishes the Employees' Insurance Court from a civil court and makes it an informal statutory body.

Just like the Commissioner for Workmen's Compensation, the Employees' Insurance Court can refer any question of law for the decision of the High Court. When a reference is made by the court, it is bound to decide the question, pending before it, in accordance with the decision of the High Court.

Like the Commissioner for Workmen's Compensation, the Employees' Insurance Court is not an ordinary civil court, dealing with general disputes but is a tribunal, specially constituted for the purpose of deciding disputes.

138. Id., Section 27.
139. Employees' State Insurance Act, 1949, Section 81.
140. Ibid.
141. Workmen's Compensation Act, 1923, Section 19(1).
142. Civil Court means 'Court of Civil Judicature, maintained by the State under its constitution to exercise the judicial power of the State. When the Constitution of India speaks of 'Courts' in Articles 136, 227, 228, 233 to 237 or in the Lists, it contemplates 'Courts of Civil Judicature' and not tribunals other than such courts. This is the reason for using both the expressions in Articles 136 and 227. See Kharbanda, Commentaries on Employees' State Insurance Act, 1948 (1993), p.181.
under the Employees' State Insurance Act, 1948. 143 Though
it does not have all the powers of a civil court, it does
have some powers of a civil court for certain purposes. 144
It is not, however, empowered to decide the vires of the
Employees' State Insurance Act, 1948 or the Rules framed
thereunder. 145 But the Employees' State Insurance Act, 1948,
in conferring upon the Employees' Insurance Court the juris-
diction to adjudicate on disputes under the Act, impliedly
granted it the power of doing all such acts and employing
all such means as are essentially necessary for discharging
its obligation to adjudicate the matter before it effectively.
Though, in substance, the Employees' Insurance Court functions

143. Employees' State Insurance Act, 1948, Sections 74, 75.
413 and Reg.Dir., E.S.I.C. v. Ram Lakhan, A.I.R.1960
Punj.559.

144. Id., Section 78(1) and (4). See Reg.Dir., E.S.I.C. v.
Shashikant, 1984 Lab.I.C.527 (Bom.) (D.B.); Dhala
Tanning Co. v. E.S.I.C., 1974 Lab.I.C.401 (Mad.) and
Shalimar Rope Works v. E.S.I.C., 1971 Lab.I.C.1551
(Cal.) (D.B.).

1290 (Mys.) (D.B.).

146. The inherent powers of the Employees' Insurance Court
includes the power to allow amendment of petition
(D.B.) )and the power to issue an injunction in an
appropriate case (M/s.Modi Steels Unit-A v. E.S.I.Court
(S.O.M.) Ghaziabad, 1985 Lab.I.C.78 (All.); National
Shriram Bearings Ltd. v. E.S.I.C. 1977 Lab.I.C.1482(Pat.)
(D.B.) and Agarwal Hardware Industries v. E.S.I.C., (1977)
1 L.I.J.192 (Cal.) (D.B.). But it was held in E.S.I.C.
the Employees' Insurance Court does not have any inherent
power to order restitution under Section 144 of the Civil
Procedure Code.
as a court, it is basically only a tribunal, not bound by the provisions of the Code of Civil Procedure, 1908 and of the Evidence Act, 1872. It follows the procedure, prescribed by rules, framed by the State Government. It is not bound by the Limitation Act, 1963. It is not a civil court, subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, just like the Commissioner for Workmen's Compensation.

Appeal against an order of the Employees' Insurance Court lies to the High Court before the expiry of sixty days from the date of the order, if it involves a substantial question of law, as in the case of appeal from an order of the Commissioner for Workmen's Compensation. But this right to appeal is not as restricted as the one under the Workmen's Compensation Act, 1923. Under the Employees'

147. M/s. Modi Steels Unit-A v. E.S.I.Court (S.D.M.), Ghaziabad, 1985 Lab.I.C. 28 (All.).
148. Employees' State Insurance Act, 1948, Section 78(2)
151. Supra, n. 57.
152. Employees' State Insurance Act, 1948, Section 82(3).
154. Workmen's Compensation Act, 1923, Section 30.
State Insurance Act, 1948, appeal lies against any order of the Employees' Insurance Court, provided a substantial question of law is involved in the appeal and the appeal is filed before the expiry of sixty days from the date of the order. But, under the Workmen's Compensation Act, 1923, there are other restrictive conditions.

Whereas the Commissioner for Workmen's Compensation decides all disputes, whether medical or non-medical, relating to payment of compensation for industrial injuries under the Workmen's Compensation Act, 1923, under the Employees' State Insurance Act, 1948, for the adjudication of medical disputes, Medical Boards are constituted by the Employees' State Insurance Corporation. These Boards examine disabling questions and decide, whether an insured person is entitled to permanent disablement benefit. Appeals lie from the decision of the Medical Board to the Medical Appeal Tribunal and from there to the Employees' Insurance

155. Employees' State Insurance Act, 1948, Section 82(2), (3)
156. Supra, nn.81, 89, 90 and 92.
157. Employees' State Insurance (General) Regulations, 1950, Regulation 75.
158. Employees' State Insurance Act, 1948, Section 54.
159. Id., Section 54-A (1).
160. Id., Section 54-A (2) (1); Employees' State Insurance (Central) Rules, 1950, Rule 20-A.
Unlike under the Workmen's Compensation Act, a Special Court or the Employees' Insurance Court directly. 

161. Id., Section 54-A (2) (i). Employees' State Insurance (Central) Rules, 1950, Rule 20-B. In Ram Awadh v. E.S.I.C., (1995) 1 L.L.N.882 (All.), it was held that the Employees' Insurance Court, while exercising the appellate powers under Section 54-A (2) (i), has to attach due value to the conclusion, arrived at by the Medical Appeal Tribunal on the question of extent of disability. It should not interfere with the conclusions, arrived at by the Medical Appeal Tribunal, except where it finds that the conclusions are based on no valid material or they are perverse or otherwise vitiated by reason of any mistake of law or of fact. In Vasudevan Nair v. R.D., E.S.I.C., 1991 (2) K.L.T. 284 (D.B.), it was held that the Employees' Insurance Court is not a rubber stamp to accept what an expert says before it, because, though the Court may not have the expertise, the statute has empowered it to examine the correctness of the certificate, issued by the Medical Board. See also Chhotelal v. R.D., E.S.I.C., 1989 (58) F.L.R.158 (M.P.), where it was held that the recommendations of the Medical Board are not binding on the Employees' Insurance Court.

162. Id., Section 54-A (2) (ii); Employees' State Insurance (Central) Rules, 1950, Rule 20-B. In E.S.I.C. v. Pushkaran, 1993 (2) K.L.T. 187 (D.B.), an employee of M/S Kerala Spinners Ltd. met with an accident in the course of his employment. After discharge from the hospital, where he was diagnosed as suffering from invertebral disc prolapse, he was examined by the ESI Medical Board, Alappuy. As per its decision, he had 20% permanent disablement. This decision was challenged before the Employees' Insurance Court. In an appeal against the Employees' Insurance Court's order, it was held that the burden of establishing, that the finding of the Medical Board was not proper, is on the employee. There is very little scope for the court, which is not technically equipped to assess the quantum of disablement or to interfere with the finding of the Medical Board on grounds, not established before it.
Medical Board is constituted for deciding, whether an employment injury is caused by an occupational disease.

Tribunals are created by statutes for adjudicating disputes speedily, cheaply, efficiently and informally. Compared to ordinary law courts, they can help further the objects of the statutes, which created them. The tribunals for the adjudication of disputes, relating to compensation for industrial injuries viz. Commissioner for Workmen's Compensation and Employees' Insurance Court, are remarkable for their informal procedure. Though they are discharging the same functions as those of a court of law, they are not hindered in the discharge of their functions by the procedural formalities in the Code of Civil Procedure, 1908, and Evidence Act, 1872 like ordinary civil courts. Further, any application, appearance, or act, required to be made or done by any person before these tribunals, may be made or done by a trade union official or any other authorised person. This provides relief to an injured workman, who is not financially sound enough to engage a legal practitioner. The Commissioner for Workmen's Compensation goes to the extent

163. Employees' State Insurance (General) Regulations, 1950, Regulations 74, 75.

164. Employees' State Insurance Act, 1948, Schedule III.

165. Workmen's Compensation Act, 1923, Section 24; Employees' State Insurance Act, 1948, Section 79. See supra, nn.33, 34, 35, 36 and 135.
of helping illiterate persons or persons, unable to furnish the required information in writing and presenting the application\textsuperscript{166} for compensation. Both the tribunals may exempt poor applicants from payment of prescribed fees.\textsuperscript{167} These provisions enable the tribunals to adjudicate disputes quickly, informally and without placing much financial burden on the claimant.

Separate machineries are created by the Employees' State Insurance Act, 1948 for adjudication of non-medical and medical\textsuperscript{169} disputes, as in England.\textsuperscript{170} Further, in

\begin{itemize}
\item \textsuperscript{166} Workmen's Compensation Act, 1923, Section 22(3). See supra, n.22.
\item \textsuperscript{167} Workmen's Compensation Rules, 1924, Rule 34; Andhra Pradesh Employees' Insurance Court Rules, 1953, Rule 46; Assam Employees' Insurance Court Rules, 1959, Rule 46; Bihar Employees' Insurance Court Rules, 1952, Rule 46; Bombay Employees' Insurance Courts Rules, 1959, Rule 46; Kerala Employees' Insurance Court Rules, 1958, Rule 46; Madhya Pradesh Employees' Insurance Court Rules, 1963, Rule 44; Meghalaya Employees' State Insurance Court Rules 1980, Rule 46; Orissa Employees' Insurance Court Rules, 1951, Rule 46; Rajasthan Employees' Insurance Court Rules, 1959, Rule 46; Tamil Nadu Employees' Insurance Court Rules, 1951, Rule 46; Uttar Pradesh Employees' Insurance Court Rules, 1952, Rule 46; West Bengal Employees' Insurance Court Rules, 1955, Rule 42.
\item \textsuperscript{168} Employees' State Insurance Act, 1948, Section 74. See supra, nn.104, 109, 110, 113 and 116.
\item \textsuperscript{169} Id., Sections 54, 54-A. See supra, n.157.
\item \textsuperscript{170} In England, claims for benefits are submitted first to an insurance officer, from whose decision appeal lies to local tribunals and from there to a Social Security Commissioner. Disablement questions are referred by contd...
the case of medical disputes, a classification is made between disputes, concerning injuries, resulting from occupational accidents and those, resulting from occupational diseases. While the former class of disputes is decided by Medical Boards, the latter is done by Special Medical Boards. For the adjudication of non-medical disputes, Employees' Insurance Court, consisting of persons with prescribed qualifications, is constituted.

Under the Workmen's Compensation Act, 1923, a single machinery, Commissioner for Workmen's Compensation, is constituted to adjudicate all disputes, whether non-medical or medical. However, he is empowered to choose one or more persons, possessing special knowledge of any matter, relevant to the matter under inquiry to assist him in holding the inquiry. This helps him resolve disputes, relating to a matter, he is not conservant with. But the parties are not given any opportunity to cross-examine the expert on the

(f.n.170 contd.) an insurance officer to a medical board, from whose decision an appeal lies to a medical appeal tribunal, from whose decision appeal lies to the Social Security Commissioner on a point of law. See Halsbury's Laws of England (1982), Vol.33, pp.467-471, 483.

172. Employees' State Insurance (General) Regulations, 1950, Regulations 74, 75. See supra, n.163.
173. Employees' State Insurance Act, 1948, Section 74. See supra, n.143.
174. Workmen's Compensation Act, 1923, Section 19(1). See supra, n.60.
175. Supra, n.3.
opinion, expressed by him. This may affect detrimentally the interest of the parties, especially the injured workman. Therefore, Section 20(3) of the Workmen's Compensation Act, 1923 may be suitably amended, enabling the parties to cross-examine the expert. 176

The Workmen's Compensation Act, 1923 does not prescribe any qualifications for the post of Commissioner for Workmen's Compensation. It permits the appointment of any person in the post. 177 If any person is appointed in the post, he may not be competent to discharge the quasi-judicial duty, required by the post. So it is suggested that Section 20 (1) of the Workmen's Compensation Act, 1923 may be amended, providing for appointing only a person, who has been a judicial officer for five years or is a legal practitioner of ten years' standing as Commissioner for Workmen's Compensation.

The most important objective behind the establishment of a special tribunal is speedy justice. The Commissioner for Workmen's Compensation has to discharge administrative duties, in addition to adjudicatory ones. At present, generally, Commissioners for Workmen's Compensation and

176. Supra, n.4.
177. Supra, nn.1 and 2.
Employees' Insurance Court have to hold sittings at more than one place. These obstacles stand in the way of their rendering speedy justice to injured workman. So, it is suggested that the Commissioner for Workmen's Compensation should be relieved of his administrative duty. Moreover, there should be Commissioner for Workmen's Compensation and Employees' Insurance Court for each district. In those districts, where the incidence of industrial injuries is more, there should be at least two Commissioners for Workmen's Compensation and Employees' Insurance Courts. Provision should be incorporated in both the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948, requiring the adjudicatory authority under the Acts, both original and appellate, to dispose of a case within six months of its institution.

For rendering justice efficiently, it is suggested that the Employees' Insurance Court may consist of an equal number of employers' and employees' representatives, in addition to judges. The employers' and employees' representatives, in addition to judges.

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178. Information collected from empirical study.

179. See supra, Chapter 7 and infra, Chapter 10.


representatives may be selected by the State Government, in consultation with their respective organisations, having the largest membership. Section 74(2) of the Employees' State Insurance Act, 1948 may be suitably amended for the purpose. Section 20(3) of the Workmen's Compensation Act, 1923 may be amended suitably, requiring the Commissioner for Workmen's Compensation to hear employers' and workmen's representatives as experts in any case, where the dispute involves a question of an occupational character and, in particular, the question of the degree of incapacity for work.182

In England, appeals are permitted from the decision of the lowest tribunal to two higher tribunals.183 But in India, appeals lie from the Commissioner for Workmen's Compensation and Employees' Insurance Court not to higher tribunals, as in England but to the High Court.184 This involves delay and heavy expenses for seeking relief through appellate proceedings. It is suggested that appeals from the decisions of these tribunals may lie to higher tribunals, as in England.

Provision should be made under both the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948.

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182. See Id., p.87.
183. Supra, n.170.
184. Workmen's Compensation Act, 1923, Section 30(1); Employees' State Insurance Act, 1948, Section 82(2). Supra, nn. .80 and 153.
Act, 1948 for the appointment of an ombudsman, specialised in Social Security Law. He should have free access to official records. The procedure before this authority should be informal and inquisitorial rather than adversarial.

In western countries, legal aid is provided to injured workers. In England, legal aid and advice are provided to injured workers under the Legal Aid and Advice Act, 1949. In the Federal Republic of Germany, if the injured worker lacks the financial means to obtain legal advice, the Court may appoint a representative for him at the cost of the State. In France, legal aid is provided by the court at the cost of the insurance institution.\(^{185}\) In India also, provision should be made for providing compulsory legal aid to injured workmen under the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948. In the absence of provision for legal aid, the provisions, conferring rights, may not be of use to injured workmen in all cases. The right to legal aid should be made available to every workman, irrespective of his financial condition. Such a provision would not cast any undue burden on the State, because, in practice, those who can afford to engage private lawyer, will always do so.\(^{186}\) In each district, there should be at least

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185. Supra, n.37 at 125-127.

186. Law Commission of India, supra, n.4.
one legal practitioner, appointed by the State Government to conduct cases before Commissioner for Workmen's Compensation and Employees' Insurance Court on behalf of injured workmen or their dependants. The High Court should also have an advocate, appointed by the State Government to represent workmen or their dependants before it.\textsuperscript{187}

Under the Workmen's Compensation Act, 1923, the question, whether the parties should make an attempt at settlement, before proceeding to submit an application to the Commissioner, is subject to conflicting judicial decisions.\textsuperscript{188} If applications are made to the Commissioner without attempting to settle disputes by the parties themselves, that will increase the work-load of the Commissioner and lead to delay in the disposal of cases by him. So, Section 22(1) of the Workmen's Compensation Act, 1923 may be amended, clarifying that the parties should have made an attempt at settlement, before proceeding to submit an application to the Commissioner.

Under the Workmen's Compensation Act, 1923, the claim for compensation has to be preferred before the Commissioner within two years of the occurrence of the accident or in case of death within two years from the date of death.\textsuperscript{189}

\begin{itemize}
\item \textsuperscript{187} Id., pp.106, 107.
\item \textsuperscript{188} Workmen's Compensation Act, 1923, Section 22(1). See supra, n.18.
\item \textsuperscript{189} Id., Section 10(1). The Commissioner may entertain the claim after two years, if he is satisfied that failure to prefer the claim was due to sufficient cause. See Id., Section 10(1), Proviso V. See supra, n.132.
\end{itemize}
But, under the Employees' State Insurance Act, 1948, the period of limitation for filing an application to the Employees' Insurance Court is three years from the date of the cause of action. The cause of action, in respect of a claim for benefit, arises, when the benefit is claimed within a period of twelve months, after the claim became due or within such further period as the Employees' Insurance Court may allow on reasonable grounds. Thus, an injured employee under the Employees' State Insurance Act, 1948 gets a minimum of at least four years from the date of the accident, causing the injury, for approaching the Employees' Insurance Court. But an injured workman under the Workmen's Compensation Act, 1923 gets only two years for approaching the Commissioner. Entertainment of a claim by the Commissioner after two years, is left to the discretion of the Commissioner. Section 10(1) of the Workmen's Compensation Act, 1923 may, therefore, be amended, enabling an injured workman to prefer a claim for compensation before the Commissioner within three years from the date of the cause of action, which should be held to arise on the date, when the parties fail to reach an agreement, regarding payment of compensation.


191. Id., Section 77(1-A), Explanation (a). See supra, n.134.

192. Supra, n.189.
Under the Workmen's Compensation Act, 1923, if the Commissioner is prevented from writing the memorandum of evidence himself, he can cause such memorandum to be made in writing from his dictation and sign the same, after recording the reason for his inability to write it himself. 193 Writing of the memorandum by the Commissioner himself may cause delay, the Commissioner being busy. So section 25, Proviso I of the Workmen's Compensation Act, 1923 may be amended, enabling the Commissioner to prepare the memorandum of evidence by dictation, whether he is able or unable to make the memorandum himself. 194

Under the Employees' State Insurance Act, 1948, appeal lies to the High Court from an order of Employees' Insurance Court, if it involves a substantial question of law. 195 But under the Workmen's Compensation Act, 1923, appeal lies only from certain specified orders of a Commissioner. 196 So it is suggested that Section 30(1) of the Workmen's Compensation Act, 1923 may be amended, providing for appeal from all orders of the Commissioner, if a substantial question of law is involved in them.

193. Workmen's Compensation Act, 1923, Section 25, Proviso I; See supra, n.45.

194. Ibid.


196. Workmen's Compensation Act, 1923, Section 30(1) (a) to (e). See supra, n.81.
The question, whether the insurance company should comply with the requirement to deposit the amount of compensation payable with the Commissioner for filing an appeal under the Workmen's Compensation Act, 1923,\textsuperscript{197} is subject to conflicting judicial decisions.\textsuperscript{198} If the employer is liable to comply with the said requirement for filing an appeal, the insurance company, which steps into the shoes of the employer, should also be made liable to comply with the requirement so as to protect the interests of the injured workman. So Proviso III to Section 30(1) of the Workmen's Compensation Act, 1923 may be amended, clarifying that the insurance company also should deposit the amount of compensation, payable under the order appealed against, with the Commissioner, for filing an appeal.

In Proviso III to Section 30(1) of the Workmen's Compensation Act, 1923,\textsuperscript{199} reference is made only to an appeal under Section 30(1) (a) i.e., an order, awarding as compensation a lumpsum or disallowing a claim for a lumpsum. Formerly, no appeal was provided against an order, awarding interest or penalty under Section 4-A. Subsequently, sub-clause (aa) was added to Section 30(1), providing for an

\textsuperscript{197} Id., Section 30 (1), Proviso III.

\textsuperscript{198} Supra, n.94.

\textsuperscript{199} Supra, n.92.
appeal against an order, awarding interest or penalty under Section 4-A.\textsuperscript{200} Now the position is that, while the employer has to deposit the amount of compensation for an appeal under clause (a), he need not do so in respect of an appeal under clause (aa). It is desirable that Provisio III to Section 30 (1) be amended suitably so as to provide for deposit of the amount, payable by way of interest and penalty under Section 4-A, with the Commissioner, for filing an appeal against an order, awarding interest or penalty.\textsuperscript{201}

\textsuperscript{200} Workmen's Compensation Act, 1923, as amended by Section 15 of Act No.8 of 1959.

\textsuperscript{201} See Law Commission of India, \textit{supra}, n.180, pp.43-44