ENFORCEMENT MACHINERY FOR PROVISION OF COMPENSATION FOR INDUSTRIAL INJURIES

However wonderful legal provisions for the payment of compensation to workmen for industrial injuries may be, they are of little use to an injured workman, in the absence of a proper machinery for their enforcement. So, a study on compensation to workmen for industrial injuries will not be complete without analysing the effectiveness of the enforcement machinery for ensuring the provision of compensation.

Under the Workmen's Compensation Act, 1923, there is no inspectorate to enforce the provisions for providing compensation. In case of fatal accidents, the Commissioner may require from employers statements regarding them.\(^1\) Again, he may recover as an arrear of land revenue any amount of compensation, payable by any person under the Act.\(^2\)

1. Workmen's Compensation Act, 1923, Section 10-A.
But the force of enforcement of these provisions depends on the discretion of the Commissioner.

To enforce the provisions of the Workmen's Compensation Act, 1923 and thus ensure the payment of compensation, penalties are prescribed for the employer for

a) failure to maintain a notice-book;

b) failure to send to the Commissioner statements regarding fatal accidents;

c) failure to send reports of fatal accidents and serious bodily injuries; and

d) failure to submit annual returns as to compensation.

The penalties, prescribed, however, amount to Rs.500/- only. Any employer can pay such penalties and escape the obligations, imposed on him by the Act easily. Therefore, such penalties do not have any deterrent effect. It is no use

3. Id., Section 18-A. Before a person can be prosecuted and sentenced under Section 18-A of the Workmen's Compensation Act, it must be proved beyond doubt that he is a person, required to submit the return under Section 16, because the liability to submit a return under Section 16 is limited to a person, employing workmen or any specified class of such persons as directed by the State Government by notification in the Official Gazette. See Sheo Shankar Kanodia v. State of Bihar, 1978 Lab.I.C.1479(Pat.)

4. Id., Section 10(3).

5. Id., Section 10-A (1).

6. Id., Section 10-B.

7. Id., Section 16.

8. Id., Section 18-A (1). The Law Commission of India has recommended that the maximum amount of fine should be increased from five hundred rupees to one thousand rupees, contd...
imposing such penalties, if the failures, for which the penalties are imposed, will not, in whole or in part, be prevented thereby.9 Further, neither a workman nor a trade union has any right to initiate, of one's own accord, prosecution proceedings. Prosecution can be instituted only by or with the previous sanction of the Commissioner for Workmen's Compensation.10

The employer is expected to pay the amount of compensation, as soon as it falls due.11 If there is a delay of more than a month in paying compensation, the employer has to show sufficient cause for delay, to the satisfaction of the Commissioner. Unless reasons for delay are explained and established, the employer has to pay simple interest at the rate of six percent per annum on the amount and a

(f.n.8 contd.) having regard to the fall in the value of the rupee, and imprisonment up to six months be added. Further, a new clause (e) should be added, imposing punishment for failure to display extracts of the provisions of the Act, as required by Section 17-A, which is proposed by the Commission. See Law Commission of India, Sixty-second Report on the Workmen's Compensation Act, 1923 (1974), pp.98-99.

Section 18-A of the Workmen's Compensation Act, 1923 is amended by the Workmen's Compensation (Amendment) Act, 1995, substituting for the words "five hundred", the words "five thousand". The amendment will come into force only on such date as the Central Government may specify by notification. See Workmen's Compensation (Amendment) Act, 1995, Sections 1(2) and 9.


10. Workmen's Compensation Act, 1923, Section 18-A (2).

11. Id., Section 4-A (1).
further sum not exceeding fifty percent of such amount by way of penalty. Although the penalty, prescribed in this case, may appear to be stringent, the imposition of penalty is left to the discretion of the Commissioner.

Thus, the enforcement machinery under the Workmen's Compensation Act, 1923 is very feeble. This helps the employer evade his liability for compensation.


The Law Commission of India has recommended that it would be desirable to provide for notice to the employer before an order, imposing penalty, is passed. Further, the rate of interest should be raised from 6 percent to 9 percent and the Commissioner should be bound to award interest at that rate in every case, where the employer is in default. See Law Commission of India, supra, n.8, p.67. See also supra, Chapter 5.

13. Madan Mohan Varma v. Mohan Lal, 1982 Lab.I.C.1729 (All.) (D.B.). The discretion to levy a penalty must be exercised judiciously and after due consideration of the relevant circumstances. This also pre-supposes giving of an opportunity to explain the reasons for delay in making payment. See Oriental Insurance Co. Ltd., v. Jeyaramma, 1989 Lab.I.C.294 (Kant.) (D.B.). In Kehar Singh v. State of Himachal Pradesh, 1989 Lab.I.C. NOC 30 (H.P.), it was held that the Commissioner had failed to exercise his jurisdiction to award interest and penalty for the delay on the part of the respondent, in payment of compensation to the appellant for a personal injury, caused by an industrial injury.
Unlike under the Workmen's Compensation Act, 1923, the employer cannot evade his liability for the provision of compensatory benefits by failure to pay the required contribution under the Employees' State Insurance Act, 1948. Where there is neglect on the part of the principal employer to pay the contribution and the Corporation is satisfied that the principal employer should have paid the contribution, the Corporation has the power to recover either

(i) twice the amount of contribution, which the principal employer failed to pay, or

(ii) the difference between the amount of benefit, paid by the Corporation and the amount, which he would have received on the basis of contribution, paid by the employer, whichever is greater. 14

Thus, the principal employer is penalised and he is liable to pay more than he would have paid in the ordinary course. The amount due from the principal employer, may be recovered as arrears of land revenue, 15 as under the Workmen's

14. Employees' State Insurance Act, 1948, Section 68 (1).

15. Id., Section 45-B, ins. by Act No. 44 of 1966. Where an amount is determined under Section 45-A of the Employees' State Insurance Act, the said amount can be recovered under Section 45-B of the Act, even before the dispute, with respect to the same, is decided by the Insurance Court in proceedings under Section 75 of the Act. But in cases, other than the cases under Section 45-A of the Act, the amount cannot be so recovered, till the dispute is decided by the Insurance Court. See M/s. Modi Steels v. E.S.I.C., Kanpur, 1988 Lab.I.C. 1518 (All.) (D.B.).
Compensation Act, 1923.\textsuperscript{16} It may also be recovered by other modes of recovery like issuing certificate of the due amount to the Recovery Officer\textsuperscript{17} or notice to post office/bank/insurance companies, where the principal employer may have invested money.\textsuperscript{18}

Prior to the 1966 Amendment of the Act,\textsuperscript{19} the Employees' State Insurance Corporation could not recover the ordinary contribution\textsuperscript{20} as an arrear of land revenue,\textsuperscript{21} though the employer's special contribution\textsuperscript{22} could have been so recovered. If the employer withheld registers, books of account or other document or failed to submit returns\textsuperscript{24} or failed to furnish the particulars, called for by the Corporation,\textsuperscript{25}

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\textsuperscript{16} Workmen's Compensation Act, 1923, Section 31. See supra, n.2.
\textsuperscript{17} Employees' State Insurance Act, 1948, Sections 45-C to 45-F.
\textsuperscript{18} Id., Section 45-G.
\textsuperscript{19} Act No.44 of 1966.
\textsuperscript{20} See Employees' State Insurance Act, 1948, Section 40.
\textsuperscript{21} Id., Section 45-B, supra, n.15.
\textsuperscript{22} Id., Section 73-A under Chapter V-A, which consisted of transitory provisions and ceased to be effective from 1st July, 1973, Vide Notification No.S.O.173(E) dated 26-3-1973.
\textsuperscript{23} Id., Section 73-D of Chapter V-A
\textsuperscript{24} Id., Section 44.
\textsuperscript{25} Id., Section 44(2).
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the latter was at a loss to ascertain the contributions payable by an employer. This difficulty was obviated by the 1966 Amendment of the Act. Now, if the employer fails to maintain, submit or furnish on demand returns, registers or records, the Corporation is empowered to determine the amount of contribution payable by the principal employer on the basis of the information, available to it.\(^{26}\)

Unlike under the Workmen's Compensation Act, 1923, inspectors are appointed under the Employees' State Insurance Act, 1948 for enforcing the legal provisions for providing benefits.\(^{27}\) The inspector may examine the employer or any other person in charge of the factory/establishment or any person found in the factory/establishment. He may call for documents or registers.\(^{28}\) He may even take copies of any

\(^{26}\) Id., Section 45-A, ins. by Act No. 44 of 1966, Section 17 w.e.f. 17-6-1967. It is the Regional Director alone, who is empowered to determine the amount under S. 45-A. See Asian Paints (India) Ltd. v. E.S.I.C. 1981 Lab.I.C. 514 (Bom.). The Corporation is obliged to pass a speaking order, indicating as to how it has determined the amount of contribution and what was the information, available to it, for determining such amount. This section does not confer any unguided or unbridled power on the Corporation. See A.P. Handloom Weavers Co-operative Society v. E.S.I.C. (1958) 2 L.L.J. 515 (A.P.); Hindustan Times Ltd. v. E.S.I.C. 1988 (57) F.L.R. 599 (Del.); B.M.K. Industries Ltd. v. E.S.I.C. 1979 (39) F.L.R. 258 (Bom.) (D.B.).

\(^{27}\) Id., Section 45(1); Employees' State Insurance (General) Regulations, 1950, Regulation 102.

\(^{28}\) Power to call for production of the registers means that the production is to be made on the factory premises. The inspector has no power to call for their production at his office. See State of Saurashtra v. Pitambar Savjibhai (1954) 1 L.L.J. 138 (Sau.) (D.B.). Failure to produce a register by the employer, on demand, is punishable. See Alibhai v. Emperor, A.I.R. 1943 Nag. 79.
document or register. Every principal employer has to maintain a bound inspection book and be responsible for its production, on demand by an inspector. A note of all irregularities and illegalities, discovered at the time of inspection, indicating therein the action, proposed to be taken against the principal employer together with the orders for their remedy, passed by the inspector, is sent to the principal employer. The latter has to enter the note and orders in the inspection book.

The penalties, for violation of the provisions for ensuring the provision of compensatory benefits for industrial injuries, are more stringent under the Employees' State Insurance Act than under the Workmen's Compensation Act. Thus, a person is punishable with imprisonment for a term, which may extend up to six months or with fine not exceeding two thousand rupees or with both for giving false statement for avoiding any payments. A person, who is guilty of

30. Employees' State Insurance (General) Regulations, 1950, Regulation 102-A (i) and (ii). Every principal employer shall preserve the inspection book, after it is filled for a period of 5 years from the date of the last entry therein. Id., Regulation 102-A (iii).
31. The penalties have been made stringent by Act No.29 of 1989.
32. Supra, n.8.
33. Employees' State Insurance Act, 1948, Section 94. The words 'six months' have been substituted for 'three months' and 'two thousand' for 'five hundred' by Act No.29 of 1989, Section 32 (i) and (ii) w.e.f. 20.10.1989.
offences like failure to submit any return, obstructing an inspector in the discharge of his duties, and any contravention of the Act or the rules or the regulations, for which no special penalty is provided, is punishable with imprisonment for a term, which may extend to one year or with fine, which may extend to four thousand rupees, or with both. The punishment for failure to pay contributions is the most stringent. A person, guilty of failure to pay the employee's contribution, is punishable with imprisonment, ranging from one to three years and a fine of ten thousand rupees. In any other case of failure to pay contribution, the guilty person is punishable with imprisonment, ranging from six months to three years and a fine of five thousand rupees. A person, who is guilty of repetition of an offence after conviction, is punished with imprisonment for a term, which may extend to two years and a fine of five thousand rupees for every subsequent offence.

34. Id., Section 44.
35. Id., Section 45; Employees' State Insurance (General) Regulations, 1950, Regulations 102, 102-A.
36. Id., Section 85.
37. Ibid. In Nellimerla Jute Mills Co. Ltd., v. E.S.I.C., A.T.R.1961 A.P.338 (D.B.), it was held that there was nothing in the Act to prevent a Criminal Court from entertaining a prosecution under the Act without adjudication of that matter by the Employees' Insurance Court.
38. Id., Section 85-A. The words "two years and with fine of five thousand rupees" have been substituted for "one year, or with fine which may extend to two thousand rupees, or with both" by Act No.29 of 1989. 
subsequent offence is failure by the employer to pay any contribution, the employer is punishable with imprisonment for a term, ranging from two to five years and a fine of twenty five thousand rupees. 39 Where an employer is convicted of an offence for failure to pay any contribution, the court 40 may require him to pay the amount of contribution, in addition to awarding any punishment. 41

If the person, committing an offence, violating the provisions for ensuring provision of compensatory benefits, is a company, every person, who, at the time of the commission of the offence, was in charge of the company as well as the company will be punished for the offence. 42 Further, if the offence, committed, is attributable to any neglect on the part of any director or manager, secretary or other

39. Id., Section 85-A, Proviso. In the Proviso, the words "five years but which shall not be less than two years and shall also be liable to fine of twenty five thousand rupees" have been substituted for "one year but which shall not be less than three months and shall also be liable to fine which may extend to four thousand rupees" by Act No.29 of 1989 w.e.f.20.10.1989.

40. No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under the Employees' State Insurance Act, 1948. Id., Section 86(2).

41. Id., Section 85-C.

42. Id., Section 86-A (1). But a person shall not be punished. If he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. Id., Section 86-A (1), Proviso.
officer of the company, such director, manager, secretary or other officer is liable for punishment. 43

As under the Workmen's Compensation Act, 1923, 44 neither a workman nor a trade union has any right to institute, of one's own accord, proceedings for prosecution for commission of offences under the Employees' State Insurance Act, 1948. Such proceeding can be instituted only by or with the previous sanction of the Insurance Commissioner or other authorised officer of the Corporation. 45

In addition to prosecution for offences through criminal court, the Corporation may recover damages from the employer by way of penalty for failure to pay contributions or other amounts. 46 The amount of damages, that the Corporation can recover from the employer, is not to exceed the amount of arrears as may be specified in the regulations. 47

43. Id., Section 86-A (2).
44. See supra, n.10.
45. Employees' State Insurance Act, 1948, Section 86 (1).
46. Id., Section 85-B(1). See E.S.I.Corporation v. Perfect Potteries Co., [1995] 87 F.J.R.374 (M.P.) (D.B.). In Rameshwar Jute Mills Ltd. v. Union of India, 1986 Lab. I.C.1225 (Pat.) (F.B.), it was held that the Corporation's power under Section 85-B can be delegated to subordinate officers or authorities by virtue of Section 94-A. In E.S.I.C. v. Dhanda Engineers (P) Ltd., 1981 Lab.I.C.658 (P. & H.) (D.B.), it was held that the liability for punishment under Section 85 survives, despite imposition of damages under Section 85-B and payment of interest under Regulation 31-A.
47. Ibid. See also Employees' State Insurance (General) Regulations, 1950, Regulation 31-C. The words "from the employer by way of penalty such damages not exceeding contd...
Before recovering damages from the employer, the Corporation should give the employer a reasonable opportunity of being heard. 48 His explanation must be duly considered 49 and a speaking order for recovery of damages should be passed, after taking into account all the facts and circumstances. 50 The damages may be recovered from the employer as an arrear of land revenue or other modes of recovery. 51 The provision, (f.n.47 contd.) the amount of arrears as may be specified in the regulations" in Section 85-B(1) have been substituted for the words "from the employer such damages not exceeding the amount of arrears as it may think fit to impose" by Act No.29 of 1989.


49. E.S.I.C. v. Perfect Potteries Co., supra, n.48. In E.S.I.C. v. Indoflex (P.) Ltd., 1988 (56) F.L.R.109(Raj.), it was held that payment of interest by the employer under Regulation 31-A is no bar to imposition of damages under Section 85-B. In E.S.I.C. v. Meecos Ltd., 1980 K.L.T.179 (D.B.), it was held that the damages, contemplated in Section 85-B, is not compensation for loss on account of the default of a party but in the nature of a penalty, that could be imposed for non-compliance with the statute, and hence, mere absence of proof of loss was no bar to imposing damages under Section 85-B.


51. Employees' State Insurance Act, 1948, Section 85-B(2). In this sub-section, the words "or under Section 45-C to Section 45-I" were added at the end by Act No.29 of 1989, Section 35.
requiring the Corporation to afford opportunity for hearing to the employer and recover only such damages as specified in the regulations\textsuperscript{52} prevents the Corporation from resorting to arbitrary exercise of power.\textsuperscript{53}

Though the inspector under the Employees' State Insurance Act, 1948 has wide powers of inspection, the question of exercise of such powers is left to the discretion of the inspector.\textsuperscript{54} Again, it is true that the penalties for the violation of the provisions for ensuring provision of compensatory benefits have been made stringent by Act No.29 of 1989. But the question, whether the violator should be proceeded against, depends upon the Insurance Commissioner or other authorised officer of the Corporation. As under the Workmen's Compensation Act, 1923,\textsuperscript{56} in the Employees' State Insurance Act also, there is nothing that

\textsuperscript{52} Supra, nn.47, 48, 49 and 50.

\textsuperscript{53} For arbitrary exercise of power by the Corporation, see M/s. Hind Arts Press v. E.S.I.C., 1990 Lab.I.C.744 (Kant.) (D.B.), where the Corporation proceeded to levy damages to the extent of 50% and 60% respectively on the employer for delayed payment of contribution for two periods and for further delay, damages to the extent of 100%. It was held that, though the levy of damages for earlier two periods was not arbitrary, the levy of damages to the extent of 100% was and, therefore, ordered the same to be reduced to 60%.

\textsuperscript{54} Employees' State Insurance Act, 1948, Section 45(2).

\textsuperscript{55} Id., Section 86 (1).

\textsuperscript{56} Supra, nn.1, 2 and 13.
compels the Inspector/Insurance Commissioner/authorised officer of the Corporation to switch on the enforcement machinery. It is suggested that Section 45 of the Employees' State Insurance Act, 1948 may be amended empowering the Employees' State Insurance Corporation to constitute in each local office an Inspectorate, consisting of one Inspector, appointed by the Corporation and one employees' representative, selected by the Corporation, in consultation with employees' union, having the largest membership, instead of the existing provision for appointing inspectors. For initiating prosecution for offences, provision may be introduced in the Employees' State Insurance Act, empowering the Corporation to constitute in each local office a Prosecuting Agency, consisting of one authorised official of the Corporation and one employees' representative, selected by the Corporation, in consultation with employees' union, having the largest membership. Conducting inspections regularly and initiating prosecution promptly should be made the mandatory duty of the Inspectorate and Prosecuting Agency respectively.

Provision may be incorporated in the Workmen's Compensation Act, 1923, empowering the State Government to constitute in each district an Inspectorate, consisting of one

57. See Employees' State Insurance Act, 1948, Section 45.
Inspector, appointed by the State Government and one workers' representative, selected by the State Government, in consultation with workers' organisation, having the largest membership, of employments, covered by the Act and in the absence of any workers' organisation in the employments, covered by the Act, one workers' representative, selected by the State Government and entrust it with the mandatory duty of conducting inspections and enforcing the provisions of the Act. Provision may also be incorporated in the Workmen's Compensation Act, 1923, empowering the State Government to constitute in each district a Prosecuting Agency, consisting of an official, appointed by the State Government and the workers' representative, in the Inspectorate, proposed under the Act. It should be made the mandatory duty of the Prosecuting Agency to initiate prosecutions for offences under this Act.