Chapter 4

COMPENSABLE INDUSTRIAL INJURIES

An industrial workman may sustain injury in respect of his person or property in the course of his employment. The injury may be caused by industrial or non-industrial accidents, occupational or non-occupational diseases, his own fault or natural calamities. All such injuries are not compensable injuries under the Workmen's Compensation Act, 1923 or under the Employees' State Insurance Act, 1948. An injury, sustained by an industrial workman, becomes compensable under these Acts, only if it is a personal injury, caused by an accident or an occupational disease, arising out of and in the course of employment.¹

The conditions, to be satisfied for making an injury compensable under the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948, are the following:-

1. Workmen's Compensation Act, 1923, Section 3(1) and (2); Employees' State Insurance Act, 1948, Section 2(8).
Whereas Section 2(8) of the Employees' State Insurance Act has defined 'employment injury', the Workmen's Compensation Act does not contain any such definition. Under the Employees' State Insurance Act, an injury, sustained by an industrial workman, becomes compensable, only if he is employed in "insurable employment". Under the Employees' State Insurance Act, unlike under the Workmen's Compensation Act, it does not matter, whether the accident or occupational disease, causing the injury, occurred or was contracted within or outside the territorial limits of India.
(1) The injury must be a personal one.
(2) It must have been caused by an accident or occupational disease.
(3) The accident or disease must have arisen out of and in the course of employment.  

In the absence of statutory definition of terms like 'personal injury', 'accident', 'occupational disease', 'arising in the course of employment' and 'arising out of employment', their scope has to be understood in the light of judicial decisions. These terms have been imported from the British Workmen's Compensation Acts. Hence, judicial decisions, interpreting these terms, are based on the English decisions. So, the scope of these terms has to be examined in the light of Indian and English decisions.

**Personal Injury**

"Personal injury", for the purposes of the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948, means physiological injury. It is not confined to a

---

2. Under the Employees' State Insurance Act, 1948, an accident, arising in the course of an insured person's employment, shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment. See Employees' State Insurance Act, 1948, Section 51-A. See also E.S.I.C. v. Lakshmi, 1979 Lab. I.C.167 (Ker.) (D.B.).

3. See supra, Chapter 2

visible injury in the shape of some wound. It includes internal injuries and a strain, which causes a chill. It covers diseases also. The aggravation or acceleration of an existing disease by an accident is also covered by the expression 'personal injury'.

All personal injuries, caused by accident, arising out of and in the course of employment, however, are not compensable injuries. Under the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948, an injury, which does not result in the total or partial disablement of the workman for a period exceeding three days, is not compensable. Further, under the Workmen's Compensation Act, 1923, an injury, not resulting in death, caused by an accident, was held to have resulted in permanent partial disablement of the right eye of the workman, which was already diseased before the accident.


9. Jagadish Prasad v. Modi Lantern Works, A.I.R. 1964 All. 323. The injury, caused by the accident in this case, was held to have resulted in permanent partial disablement of the right eye of the workman, which was already diseased before the accident.

10. Workmen's Compensation Act, 1923, Section 3(1), Proviso (a); Employees' State Insurance (Central) Rules, 1950, Rule 57 (1).
directly attributable to the workman having been under the influence of drink or drugs or to the wilful disobedience of the workman to safety rules or to the wilful disregard by the workman of any safety guard or device, is not compensable personal injury. 11

11. Workmen's Compensation Act, 1923, Section 3(1). Proviso (b). In Padam Debi v. Raghunath, A.I.R. 1950 Ori. 207 (D.B.), the husband of the appellant, employed as a motor driver by the respondent, dashed the bus against a tree, while driving at a high speed. The driver and some other passengers sustained fatal injuries. The accident was caused by the rash and negligent driving of the driver. It was held that it could not be said that the accident was brought about by any previous design or wilful act on the part of the driver. The applicability of clause (b) of the proviso to Section 3(1) is limited to those cases, where injury has not resulted in death. Where, however, the injury has resulted in death, the question about disobedience of any rule or order is not material. So long as it can be reasonably held that the accident arose out of and in the course of employment.

It has to be noted that clause (b) of the proviso to Section 3(1) of the Workmen's Compensation Act, 1923 is amended by the Workmen's Compensation (Amendment) Act, 1995 by inserting the words "or permanent disablement" after the word "death". But the amendment will come into force only on such date as may be specified by the Central Government by notification in the Official Gazette. See Workmen's Compensation (Amendment) Act, 1995, Sections 1 (2) and 3 (a). Under the Employees' State Insurance Act, 1948, an injury, caused by an accident, happening, while acting in breach of regulations or orders or without instructions from his employer, is compensable personal injury under specified conditions. See Employees' State Insurance Act, 1948, Section 51-B.
Accident

'Accident', for the purposes of the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948, is an unexpected event, happening without design on the part of the injured workman.  

The test for deciding whether an occurrence is an accident, is whether it is unexpected by the injured person and not whether it would be expected by persons other than the injured person. If a particular occurrence is unexpected by the injured person, it does not cease to be an accident, although it is intentionally caused by the author of it or by some act, committed wilfully by him.

Self-inflicted injuries cannot be said to have been

---


caused by accident, as 'accident' has to be looked at from the point of view of the person, who suffers from it. The more usual case of an accident is an event, happening externally to a man like an explosion in a mine, a collision, tripping over floor obstacles, fall of a roof, a man falling down from a ladder, an assault, a lightning stroke, bite of an animal or intrusion of foreign body into the eye. The less obvious cases of accident are strain, causing rupture; bursting of an aneurism; failure of the muscular action of the heart; exposure to a draught, causing chill; exertion in a stokehold, causing apoplexy, an invasion of bacilli, causing a disease, or a shock, causing neurasthenia. These are called 'internal accidents'. The common factor, in

(f.n.15 contd.) 200. The term 'accident' is a relative one. An intentional assault, committed by A on B may not be an accident from A's point of view. But it would not be odd to call the resultant injuries accidental injuries from B's point of view. P.S. Atiyah, op.cit., p.3.

16. In Combat Vehicles and Research Establishment v. D.C. of Labour, 1995 (71) F.L.R.147 (Mad.), a workman jumped from a running train, on his way to the place of work and died. It was held that the sustaining of injuries by the deceased workman in this manner could not be said to be an unexpected event, therefore, not an accident, which had arisen in the course of and out of employment. But suicide resulting from insanity or mental derangement, consequent on personal injury by accident, has been held to be death, resulting from injury. The claimant must prove that insanity, leading to death, is the direct result of accident. See Mackinnon Mackenzie & Co.Ltd. v. Miss Velma Williams, A.I.R.1964 Cal.94.


19. Fife Coal Co.Ltd., v. Young, supra, n.17. The rupture, contd...
all cases of accidents, whether external or internal, is some concrete happening at a definite point of time and an incapacity, resulting from the happening. Though an accident must be a particular occurrence, which happens at a particular time, it is not necessary that the workman

(f.n.19 contd.) which is accident, is at the same time injury, leading to death or incapacity. Thus, in cases of 'internal accidents', 'accident' and 'injury' coincide. It is hardly possible to distinguish in time between accident and injury. Sundarbai v. G.M., Ordnance Factory, 1976 Lab.I.C.1163 (M.P.) (D.B.).

20. It is not enough that the injury shall make its appearance suddenly at a particular time and upon a particular occasion. A workman, who had worked for some time, exposed to lead infection, became suddenly poisoned. This was not held to be an injury by accident in Steel v. Cammel, Laird & Co., [1905] 2 K.B.232. The injury must result from some particular incident in the business. This may be some act, done by him or by some other person or condition encountered, which has, in the course of the sufferer's employment, caused the particular harm. This incident must be shown to have occurred at some reasonably definite time. G.S.Talcher Thermal Station v. Bijuli Naik, 1994 Lab.I.C.1379 (Ori.); Trim v. Kelley, [1914] A.C.667. See also Francis H. Bohlen, "A Problem In The Drafting Of Workmen's Compensation Acts", 25 Harvard Law Review, p.328 at 342-343 (1911-12).

should be able to locate it to succeed in his claim. There would be cases, where a series of tiny accidents, each producing some unidentifiable result and operating cumulatively to produce the final condition of injury, would constitute together an accident. 22

**Occupational disease**

The Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948 provide for compensation for personal injury, caused not only by industrial accidents but also by occupational diseases. 23 The term 'occupational disease' is not defined under these Acts. 24 The third schedule to the

22. In Deviben Dudabhai v. Mgr., Liberty Talkies, Porbandar, 1994 Lab.I.C.2570 (Guj.), the deceased workman was a doorkeeper in a theatre. He worked for 15 hours a day except for a lunch-break of an hour for a long spell of 15 years. It was proved that he used to do the work of two persons. He was suffering from tuberculosis, which was accelerated and aggravated by the strain of his work, leading to his death by heart-failure. It was held that the death of the workman had arisen out of and in the course of employment. It is not necessary that the death should be the result of one accident to make it compensable. The workman may be suffering gradually, due to his work and if the cumulative effect of slight injuries, suffered during a long span of time, is death, such death is compensable injury. See also Bai Shakri v. New Manekchowk Mills Co., A.I.R.1961 Guj.34; Chilli Kanar v. Burn & Co.Ltd., A.I.R. 1953 Cal. 516; Fitzsimons v. Ford Motor Co.Ltd., [1946] 1 All E.R.429 (C.A.).

23. Workmen's Compensation Act, 1923, Section 3(2), (2-A), (3) and (4). See also Employees' State Insurance Act, 1948, Section 52-A.

24. Whereas an industrial accident results from a concrete happening at a definite point of time, an occupational disease is caused by a process of exposure of the worker to unhealthy working conditions for a certain time, contd...
Acts\textsuperscript{25} gives a list of occupational diseases along with the employments, likely to cause those diseases. If an employee, while working in any of these employments, contracts any such occupational disease, peculiar to that employment under specified conditions, he shall be deemed to have sustained an injury by accident.\textsuperscript{26} In fact, the contracting of a scheduled occupational disease in itself is not an injury by an accident. It is elevated to the position of an injury by an accident only by fiction of law.\textsuperscript{27}

\begin{flushright}
\end{flushright}

\textsuperscript{25} The third Schedule to both the Acts is identical, except for the fact that a sixth item has been added in Part C of Schedule III of the Workmen's Compensation Act, 1923 by Notification No.S.O.2615 dated 15-9-1987.

\textsuperscript{26} Workmen's Compensation Act, 1923, Section 3(2); Employees' State Insurance Act, 1948, Section 52-A (1). In G.M., \textit{Orissa State Road Transport Corporation and another v. Sathyabhama Seth}, 1994 Lab.I.C.NOC 204 (Ori.), a workman died on account of Broncho pulmonary disease. This disease, if caused by cotton, flax hemp and sisal dust, is covered by Part C (3) of the third Schedule. But in this case, the disease was not found to be caused by cotton, flax hemp or sisal dust. So it was held that the third Schedule was not applicable to this case and the claimant was not entitled for compensation.

scheduled occupational diseases, the Acts of 1923 and 1948 provide for compensation for other diseases, if they are directly attributable to specific injury by accident, arising out of and in the course of his employment.

Employment

The term "employment" refers to a condition, in which a man is kept occupied in executing any work. It means not only an appointment to any office for the first time but also the continuity of that appointment. "Employment", as used in the phrase "arising out of and in the course of employment", has to be understood in the context of the language, employed therein. It covers not only the nature of the employment but also its character, conditions, obligations, incidents and special risks. Generally, the employment of a workman does not commence, until he has

28. See Workmen's Compensation Act, 1923, Section 3 (4); Employees' State Insurance Act, 1948, Section 52-A (3).
29. Ibid.
31. Workmen's Compensation Act, 1923, Section 3; Employees' State Insurance Act, 1948, Section 2 (8).
reached the place of his employment and does not continue, when he has left it. In other words, the employment of a workman commences at the end of his journey from home and stops at the commencement of his journey back home.33

The workman, on his way to his work and before he enters the employer's premises, is a man and not a "workman" and travels at his own risk.34 When he is on a public road or a public place or a public transport, he is there as any other member of the public and not in the course of his employment, unless the very nature of his employment makes it necessary for him to be there.35

But problems arise, when a workman receives injuries just before his entry to or just after his exit from the place of work or just near the place of his work, but not exactly at the place of his work. The natural question in such cases would be: "Was he, at the time of the accident


35. Saurashtra Salt Mfg. Co. v. Bai Valu Raja, (1958) 2 L.L.J. 249 (S.C.). But if his employment were of a kind, which is pursued on the high way, he might be in the course of his employment while there. See John Stewart and Sons v. Longhurst, [1917] A.C.249 (H.L.). See also E.S.I.C. v. A.Parameswaran, 1977 Lab.I.C.194 (Ker.) (D.B.), When the employee was deputed to play a match in this case, his death in car accident, occurring, while proceeding to the playground was held to be the result of an employment injury.
doing his duty during his normal working hours at his normal working place?" Strictly speaking, the answer would be 'no' and the workman would be without any relief. But to include some of these genuine cases in the course of employment of a workman and give him a relief, the theory of notional extension has been evolved by courts. According to this theory, a workman may be regarded as in the course of his employment, even though he has not reached or left the premises of his employer.

There can be notional extension in place and time for the entry to and exit from the work-place. There can


39. In G.S.Talcher Thermal Station v. Bijuli Naik, 1994 Lab. I.C.1379 (Ori.), the workman died at the factory gate, while coming to join his duty, a couple of minutes before the starting of shift. It was held that the employer was liable to pay compensation, one of the reasons being that the theory of notional extension was applicable to this case. Saurashtra Salt Mgf.Co. v. Bai Valu Raja, (1958) 2 L.L.J.249 (S.C.).
be notional extension to cover interruptions, that occur during the course of employment and journeys in discharge of duty. This is because the word 'employment' has a wider meaning than 'work'. A workman can be regarded as in the course of employment not only when he is engaged in his actual work at the employer's premises but also when he is doing something, incidental to it, like proceeding towards his work from one portion of his employer's premises to another or taking rest. 41

By the application of the theory of notional extension of place to the entry and exit point of the place of employment, the sphere of employment is extended from the employer's premises to the route/vehicle for coming to and leaving the place of employment. 42 This extension is justified by establishing a nexus by logical reasoning between the employment and the accident, happening in the route.

---


The fact that at the time, the workman met with the accident, he was on the way to the factory from his home and in the normal course, he would be reporting for duty within a few minutes, is one such reasoning.\(^43\) Another reasoning is that at the time of the accident, the workman was coming to or going from the factory along the recognised/practical route, commonly used by all the workers of the factory.\(^44\) Nexus between employment and accident is established also by the fact that the workman was directly on the way between his place of work and home, at the time of the accident.\(^45\)


\(^45\) In Steel Authority of India Ltd. Rourkela v. Kanchanbala Mohanty, 1994 Lab.I.C.1528 (Ori.), the workman met with an accident and died, while returning from the place of work. A clause in a settlement between the employer and the workmen of the industrial establishment provides for compensation for accidental injuries, sustained by a workman, while returning from the place of work to his residence by normal route. But in the instant case, the deceased workman was found to have met with his accident at a place, in a direction opposite from the residence of the workman. Hence, the deceased could not be said to be returning from the place of work to his residence by normal route. Therefore, it was held that the claimant was not entitled to compensation on the basis of the theory of notional extension of employer's premises. See also Sathy bhama v. E.S.I.C., 1991 (1) K.L.T.784 (D.B.).
If the workman was coming to or going from his employer's premises by the transport, provided or arranged by the employer and was under an express or implied contractual obligation or practical compulsion to travel by it, the sphere of employment is notionally extended so as to cover the accident, occurring in the route of the vehicle. The sphere of employment can be notionally extended to the place of accident, occurring in the course of journey to and from the place of employment, even though the workman was not using employer's transport but was enjoying only a travel

46. In M.N.Khan v. Bombay Municipal Corpn., 1982 Lab.I.C.780 (Bom.) (D.B.), the petitioner, a clerk of Bombay Electricity Supply and Transport Committee, run by the Bombay Municipal Corporation, was leaving his place of work for home, after finishing work. While crossing the road, he was knocked down by a taxi and was injured. It was held that the doctrine of notional extension does not automatically apply in a case, where an accident takes place, while the workman is going to or coming from his place of work. The doctrine can apply, only when there is a duty or obligation on the part of the workman to avail himself of the means of transit, offered by the employer, though the said duty may be express or implied in the contract of service. See also Patel Engg. Co. v. Commr. for W.C., 1978 Lab.I.C.1279 (A.P.) (D.B.); B.E.S.T. Undertaking v. Mrs. Agnes, A.I.R.1964 S.C.193; Varadarajulu Naidu v. Masuya Boyan, A.I.R.1954 Mad.1113 (D.B.); Weaver v. Tredegar Iron and Coal Co.Ltd., [1940] 3 All. E.R.157 (H.L.); St.Helen's Colliery Co.Ltd., v. Hewitson, [1924] A.C.59 (H.L.); Richards v. Morris, [1915] 1 K.B.221 (C.A.); Cremins v. Guest, Keen and Nettlefolds Ltd., [1908] 1 K.B 469 (C.A.).

Under the Employees' State Insurance Act, 1948, as amended by Act No.44 of 1966, an accident, sustained by a workman, while travelling with the express or implied permission of the employer in a vehicle, provided or arranged by the employer, shall be deemed to be an employment injury, whether he was required to travel by it or not. See Employees' State Insurance Act, 1948, Section 51-C.
It can also be extended to an accident, occurring, while travelling by a vehicle, which, though he was not obliged to use, was a vehicle which, in the contemplation of the parties, was a normal mode of transport to and from the place of employment. But notional extension of the sphere of employment to journey to and from the place of employment has got its own limits. It can be permitted only upto the point, where the general risks, which the workman shares with the public at large, cease and the particular risks, which are incidental to his employment, commence. But the dividing line is not always easy to discover and it depends upon the facts of each case.

47. Indian Rare Earths Ltd. v. A. Subaida Beevi, 1981 Lab. I.C. 1359 (Ker.) (D.B.); E.S.I.C. v. Suhara Beevi, (1975) 2 L.L.J. 255 (Ker.).

48. See E.S.I.C. v. Francis De Costa, 1978 Lab. I.C. 925 (Ker.) (D.B.). While the employee was coming by bicycle to the factory, he was hit by the lorry, belonging to the factory and sustained injury. The accident took place at a distance of 1 km. away from the factory. It was held that the employee met with the accident in the course of his employment, as at the time of the accident, he was on his way to the factory, through the route, through which normally he had to reach the factory from his home, using the conveyance, which, though he was not legally obliged to use, was a vehicle, which, in the contemplation of the parties, was a normal mode of transport from the employee's residence to the factory.


There can be notional extension of the time of employment before and after the period of work. A workman's employment is not like an electric machine, which may commence functioning immediately by putting on a switch and cease functioning immediately by putting off the switch. It involves a human relationship. A workman, who reaches the place of his work before time, is in the course of his employment, if the period by which he reaches earlier than the actual time of commencement of his work is not unreasonable.

(f.n.50 contd.) reached his destination after completing his work. It was held that the benefit of notional extension of time and place could not be granted to him, as he could not be treated as on duty, when he was injured. But in Sheela v. E.S.I.C.,(1991) 1 L.L.J.247 (P. &. H.), the deceased employee met with accident, while he was waiting for local bus to go to his place of work. Here the notional extension of employer's premises was permitted by the court. See also Rajappa v. E.S.I.C.,(1992)2 L.L.J. 714 (Kant.) (D.B.). Maherunisha A. Pathan v. E.S.I.C., (1995)1 L.L.N.394 (Guj.).

51. Kanita Prasad Pandey, supra, n.36.

52. See Sharp v. Johnson & Co. Ltd., [1905] 2 K.B.139 (C.A.). In this case, a number of workmen, employed on certain building work at Catford, had to come down from London each day by a train, which brought them to the place of employment about twenty minutes before the time, fixed for commencing work in the morning. One of these workmen, who had come from London one morning, while proceeding to deposit his ticket at the ticket office sustained injuries through accidentally falling into an excavation near the ticket office. It was held that the accident arose out of and in the course of employment, as the workman was permitted to be upon the premises for depositing his ticket about twenty minutes before the time, fixed for commencing work. See also Dudhiben Dharamshi and others v. New Jehangir Vakil Mills Co. Ltd., (1977) 2 L.L.J.194 (Guj.) (D.B.).
As the employment begins a reasonable time before the actual commencement of the work, it continues for a reasonable time even after the actual 'tools down'. This is because it is practically impossible for a workman to leave the employer's premises simultaneously with the cessation of the work.

53. In Tiruchy v. Kanagambal, 1995 Lab.I.C. NOC 48 (Mad.), the husband of the applicant was employed as a pointsman in the Railways. He was assaulted during early hours after night duty by some unknown persons. He died subsequently as a result of the injuries, sustained by him. It was held that his death was caused by an accident, which had arisen out of and in the course of employment.

54. In John Stewart and Sons v. Longhurst, [1917] A.C.249 (H.L.), a carpenter was employed by John Stewart and Sons Ltd. to repair a barge, lying in a dock, controlled by the Port of London Authority. One night, the carpenter, while returning from the barge after the day's work, fell off the quay in the darkness of the night and was drowned. It was held that the employment of a workman might be regarded as existing before the actual operations of the workman began and might continue, even after the actual work had ceased. The accident was held to have arisen out of and in the course of employment, as it occurred, on his leaving the barge and while he was lawfully on the dock premises on his way out. See also Raj Dulari v. Superintending Engr., P.3.E.B. and another, (1989) 2 L.L.J.132 (P. &. H.). A workman of the Punjab State Electricity Board was engaged in fixing electric wire on the poles on either side of the road, beyond duty hours, as directed by his superiors. A bus, belonging to the Punjab Road Transport Corporation, came at a high speed and dragged the electric wires, hanging on the road. As a result, the pole, on which the workman was working, was broken from the middle and he fell down and died instantaneously. It was held that the deceased was on duty in the course of his employment, when the accident took place, as he was working beyond duty hours, as per the directions of his superiors.
There can be notional extension of the sphere of employment in place and time not only before and after work but also to cover the interruptions, that occur during the course of employment. The course of employment may be temporarily interrupted by tea/meal breaks or periods of leisure. Such interruptions in fact can be softened in such a way that they may not appear to be interruptions in law by the application of the theory of notional extension. For the efficient discharge of his duties, a workman should take refreshments and meals, as and when required. So a workman is in the course of his employment not only while doing his work but also while taking refreshments and meals. But if an employee, with fixed time and place of work, takes his meals or refreshments at a prohibited place or time, he is outside the course of employment. Thus, a workman was

55. In Reg.Dir., E.S.I.C. v. Mary Cutinho and others, 1994 Lab.I.C.2420 (Bom.), a workman went home nearby during lunch-break to take lunch. While returning to factory, he was knocked down by a vehicle and he died. It was held that the deceased workman had suffered injury, as a result of an accident, arising out of and in the course of employment and his dependants were entitled to compensation. See also J.F.Pareira v. Eastern Watch Co., Ltd., (1985) 1 L.L.J.472 (Bom.).


held to be not in the course of his employment, as he was injured, while taking his lunch at a prohibited place and during a period, when he was prohibited to remain on the employer's premises. In addition to refreshments and meals, relaxation may improve the output of the worker by relieving him of the tedium of the work. So the sphere of employment of a workman is notionally extended to periods of relaxation also.

Sometimes, a workman may have to do jobs, not assigned to him under his contract of employment. If it has become customary for a workman to do such a particular job by the order of his employer, an accident, sustained, while doing it, can be considered as in the course of employment, by the application of notional extension of the sphere of employment to the period of performance of such job. The extension of the sphere of employment by notional extension in this case is justified, because he is doing the work, as directed by his employer. Further, a workman can be regarded

59. See E.S.I.C. v. Gulab baksh Mulla, 1987 Lab.I.C.141(Bom.)
60. Kamala v. Madras Port Trust, (1966) 1 L.L.J.690 (Mad.). A lascar in the Port Trust was ordered by his dredge-master to fetch his master's dinner from his house. He was knocked down by a lorry on the highway and died on the spot, while returning from his master's house. He was held to be in the course of his employment, as he was acting, as per the orders of his master.
as in the course of his employment, by the theory of notional extension when he is, in an emergency, doing acts, which are entirely different from the work, assigned to him, and which involve new and greater danger and are expressly forbidden to be done under normal conditions. He may be doing such acts, as they are necessary to preserve the employer's property from destruction or to rescue a fellow workman, if such workman is imperilled under circumstances, which will make the employer liable to compensate him. It is enough that the workman honestly believes that an emergency exists, in which his employer's interest requires him to go outside his normal sphere of employment. Even though such emergency did not actually exist and the employer's person or property or interest was not in actual peril, the workman, who sustained injury, while acting with the honest belief that there was such emergency, will be entitled to compensation.


63. Ibid.
pivotal question is whether the workman acts in the interest of his employer in such emergency. If the answer is in the affirmative, he is acting in the course of his employment. 64

Generally, an injury, sustained by a workman, while he is outside the premises of the employer, cannot be said to be compensable industrial injury, its occurrence being outside the sphere of employment. But it is compensable, if he was so sent outside the premises, on his employer's business, because the theory of notional extension applies and the sphere of employment is extended to the place of performance of such duty. 65 During duty hours, a gangman was asked to shift to another place for work along with other workmen. While going to the other place, he was knocked

64. J.D. & Co. Oil Mills v. E.S.I.C., A.I.R.1963 A.P.210; Ravuri Kotaya v. Dasari Nagavardhanamma, A.I.R.1962 A.P.42. Under the Employees' State Insurance Act, 1948 an accident, sustained by a workman, while acting in the interest of the employer during emergency, shall be deemed to have arisen out of and in the course of his employment. The workman will be benefitted by the above provision, even if the emergency was supposed and the action was taken outside the actual premises of his employer. See Employees' State Insurance Act, 1948, Section 51-D, added by Act 44 of 1966.

65. See Nagar Palika, Mandsaur v. Bhagwantibai, 1994 Lab.I.C. NOC 171 (M.P.). A temporary worker, while he was going in the jeep of his employer to a place outside the employer's premises, fell down from the jeep and died. It was held that the employer was liable to pay compensation, as his death arose out of and in the course of employment. See also F.P.Walton, supra, n.34 at p.46.
down by a lorry on the public street, and died, as a result of the accident. The accident was held to have occurred in the course of his employment, the accident having taken place, when the deceased was proceeding to discharge his duty at the behest of the employer at the second site.  

Sometimes, the nature of the employment is such that the journey becomes part of the sphere of employment. A boy, employed to take tea from a teashop, outside the factory gate to employees of the factory, was returning to the teashop after serving tea. He was caught in the midst of an unruly mob of workmen and was struck by a bullet, fired by the police to disperse the mob. The boy was severely wounded and he died. The accident was held to have arisen out of and in the course of employment, as the employment specially exposed the boy to a general risk.

The concept of the sphere of employment both under the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948 has been considerably widened by the

---

68. Under common law, the sphere of employment is notionally extended to the entry/exit point of the place of employment. It does not go beyond the employer's premises generally. See John Munkman, Employer's Liability at contd...
application of the theory of notional extension to a wide
variety of situations, as mentioned above. It covers the
entry and exit points of the place of employment, the route
or the vehicle for the journey to and from the place of
employment, breaks for meals or refreshments, performance of
unassigned work for the purpose of employer's welfare,
performance of emergency duty beyond working hours, and
journeys in discharge of duty beyond employer's premises.
Such extension is justified by the fact that it was the
employment, that brought the workman at the particular place
of accident. He was not there, like other members of the
public, for his own personal purposes. He was there for
the purposes of his employment and matters, incidental
thereto. In fact, the theory of notional extension has
cleared much deal wood, thereby widening the scope of com-
pensable industrial injuries, in accordance with the reco-
mendation of the I.L.O.\(^\text{70}\)

(f.n.68 contd.) Common Law (1985), p.99. But notional exten-
sion is permitted outside employer's premises, where
workmen are sent out on duty outside. See General Clean-
ing Contractors Ltd. v. Christmas, [1952] 2 All E.R.1110
(H.L.).

69. He would have fallen outside the sphere of notional
extension, if had been there for his personal purposes. See
G.M., Northern Rly. v. R.R.Nerma, 1979 Lab.I.C.1099
(All.); Saurashtra Salt Mfg. CO. v. Bai Valu Raja, (1958)
2 L.L.J.249 (S.C.); Alderman v. Great Western Rly. Co.
[1937] A.C.454 (H.L.); Burma Oil CO.Ltd. v. Ma Hmwe Yin,

70. The Employment Injury Benefits Recommendation No.121 of
1964 of the International Labour Organisation requires
each Member to treat the following as industrial accidents:

contd...
Accident arising out of employment

The expression "arising out of employment" emphasizes the existence of a relationship in the shape of cause and effect between employment and accident. 71 The former viz.

(f.n.70 contd.)

(a) accidents, regardless of their cause, sustained during working hours at or near the place of work or at any place where the worker would not have been except for his employment;
(b) accidents sustained within reasonable periods before and after working hours in connection with transporting, cleaning, preparing, securing, conserving, storing and packing work tools or clothes; and
(c) accidents sustained while on the direct way between the place of work and—
   (i) the employee's principal or secondary residence; or
   (ii) the place where the employee usually takes his meals; or
   (iii) the place where he usually receives his remuneration.


employment, is the cause and the latter viz., accident, is
the effect. A causal connection between employment and
accident can be held to exist, if the immediate act, which
led to the accident, is not so remote from the sphere of
the workman's duties or the performance thereof as to be
regarded as something foreign to them. 72

It is not necessary that there must always be a direct
and physical causal connection. 73 Sometimes, depending

---

A.P. 42; See also Devshi Bhanji Khona v. Mary Burno &
Another, 1985 Lab.T.C.1589 (Ker.) (D.B.). The workman
was working as a head-load worker under the appellant.
Owing to over-exertion, there was a sudden deterioration
of his health, which proved fatal. It was held that the
death of this workman was caused by an accident, arising
out of and in the course of his employment, as his death
would not have occurred but for the over-exertion.

Haldane, observed "Now the expression "arising out of"
no doubt imports some kind of causal relation with the
employment; but it does not logically necessitate direct
or physical causation: . . . . The right given is no
remedy for negligence on the part of the employer, but
is rather in the nature of an insurance of the workman
against certain sorts of accident".

(f.n.71 contd.)
A.I.R.1962 Ori. 7; Ravuri Kotayya v. Dasari Nagavardhan-
amma, A.I.R.1962 A.P. 42; Parwati Bai v. Rajkumar Mills,
A.I.R.1959 M.P. 281; Mrs. Santan Fernandez v. B.P. (India)
Ltd., A.I.R.1957. Bom. 52 (O.B.); Bai Diva Kaluji v. Silver
Cotton Mills, A.I.R.1956 Bom. 424 (D.B.); Imperial Tobacco
Co. v. Salona Bibi, A.I.R.1956 Cal. 458 (D.B.); Indian
News Chronicle Ltd. v. Mrs. Lazarus, A.I.R.1951 Punj. 102;
All E.R. 1221 (C.A.); Charles R. Davidson & Co. v.
M'Robb L.R., [1918] A.C. 304 (H.L.); Riley William Holland
& Sons, Ltd., [1911] 1 K.B. 1029 (C.A.); Clover, Clayton
& Co. Ltd., v. Hughes, [1910] A.C. 242 (H.L.); Fitzgerald
v. Clark & Son, [1908] 2 K.B. 796 (C.A.); Fenton v.
upon other circumstances, even indirect and abstract causal connection may be treated as sufficient.\textsuperscript{74}

There are numerous causes of an accident, out of which some are proximate and others remote. Of these, the cause, contemplated for establishing the causal relationship, is the proximate cause and not the remote one.\textsuperscript{75}

A woman, employed by a fish-curer, while working in a shed, belonging to her employer, was injured by the falling of the roof of the shed, under which she was working. The roof fell, because of the falling of another wall, being constructed on the adjoining land, by its proprietor.

\textsuperscript{74} See United India Insurance Co. Ltd., v. C.S. Gopalakrishnan, 1989 Lab.I.C. 1906 (Ker.) (D.B.). The workman, a bus conductor, died, while sleeping in bus during halting hours. There was no clear evidence as to the fact whether the death occurred directly due to the strain and stress of the work, the deceased was doing on the day, previous to the fatal incident. But it could not be denied that the workman was put to great strain and stress in discharging his duties, as the workman was asked to do work for more hours than what he was statutorily bound to do. So the workman was held to have died, as a result of an accident, which arisen in the course of employment. See also Lawrence v. George Mathews Ltd., [1929] 1 K.B. 1 (C.A.); Thorn or Simpson v. Sinclair, [1917] A.C. 127 (H.L.).

\textsuperscript{75} In New India Assurance Co. Ltd., v. G. Krishna Rao and others, 1995 (71) F.L.R. 1 (Ori.), the deceased workman, who was engaged in the construction of railway line, was residing in a hut, provided at the work-site by the employer. While the deceased was sleeping in the hut, fire engulfed the hut and she was burnt alive. It was held that though the provision made by the employer for residence of the concerned workman may be an incident of service and the deceased might have slept in the house, made available to her by the employer, such accommodation by itself cannot form the basis to claim compensation on the ground that death by accident was caused out of and in the course of employment. See also Bhagubai v. G.M., Central Rly. (1954) 2 L.L.J. 403 (Bom.) (D.B.).
accident was held to have arisen out of her employment on consideration of the proximate cause viz. she happened to be working in the shed at the time of the accident. 76

Accidents "arising out of employment" envisage such accidents as are either inherent 77 in the employment or incidental to it. In other words, they mean such accidents as are either part of employment or flow from it. 79


77. An accident cannot be said to arise out of employment, unless the risk of such an accident has been even before the accident inherent in the employment to a greater or lesser extent. See Munshi & Co. v. Yeshwant Tukaram, A.I.R.1948 Bom.44 at 45; Vishram Yesu Haldankar v. Dadbabhoy Hormasji & Co. A.I.R.1942 Bom.29; Brooker v. Thomas Borthwick & Sons (P) Ltd., [1933] A.C.669 (P.C.).


79. Smt.Leela Devi and another v. Sh. Ram Lal Rahu and another, (1990) 1 L.L.J.364 (H.P.). The deceased was employed as watchman in the Cement Factory of the second respondent as per a contract with the first respondent. He was assigned night duty during winter season. No woollen clothing was provided to the deceased nor any heating arrangement was made at the place of his duty despite

contd...
an accident is caused directly by the work, a man is employed to do or by the condition of the machinery, plant or premises, such an accident can be said to be inherent in or incidental to employment and, therefore, to have arisen out of employment. For instance, an injury, caused by the aggravation of a pre-existing condition by the strain of work, is incidental to employment and, therefore, can be said to be arising out of it. A night watchman of the Bombay Port Trust complained of chest pain, while on duty and expired within his period of duty. Medical evidence showed that he was suffering from heart disease and the death was caused by the strain of his being on his legs for a long time daily. The death of the workman, caused by the aggravation of his pre-existing disease by the strain of his work, was held to be incidental to employment. But, where an employee of a factory died of heart

(f.n.79 contd.) request. As a result of the bitter cold, the deceased started having pain in the stomach and died. It was held that the death occurred as a consequence of and in the course of employment. See also Divl.Rly.Mgr., Kota v. Shamsadi, 1988 Lab.I.C.605 (Raj.). The deceased workman was bitten by scorpion in the course of duty. After an operation, he was found to be suffering from tetanus. His death was held to be caused by an accident in the course of and out of employment on the ground that the tetanus was incidental and consequential to scorpion bite in the course of duty.

failure suddenly in the premises of the factory before starting his work, his death was held to be not incidental to employment, as the heart-failure was not the consequence of any stress or strain during actual working. The principle is nicely elucidated by Justice Ramaswami in the following words:

"If the workman dies as a natural result of the disease from which he was suffering . . . no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death or if the death was due not only to the disease but the disease coupled with the employment, then it could be said that the death arose out of the employment and the employer would be liable".

While a workman is acting in the course of his employment, he may meet with accident, caused by a stranger's misconduct, skylarking or negligence or a bite by a cat or dog or some natural cause such as sun-stroke, frost-bite or lightning. Accidents of this kind, which arise in the course of employment, do not necessarily arise out of it.

83. In The Special Officer v. Smt. Ayyammal, 1994 Lab.I.C. NOC 386 (Mad.) (D.B.); a worker was stabbed to death by her husband during the course of employment. Evidence contd...
The test, applied to decide whether such accidents arise out of employment, is to examine whether the employment is the effective cause of the accident by involving special exposure to such risks. If the employment involves special exposure to such risks, the accident, caused by such special exposure, is considered as arising out of it. 84

Can an accident, faced by a workman, while attempting a prohibited act, be held to be incidental to employment?

Under common law, if the workman is doing the work with which he is entrusted by his employer, he does not cease to be acting in the course of his employment, even though he is doing something prohibited. 85 Under the Employees’ State Insurance Act, if an accident happens to an injured person, while acting in contravention of any of the provisions of a

(f.n. 83 contd.)

on record showed that the deceased worker initially beat her husband and, thereby, provoked him to stab her. It was held that the worker’s death was not caused by an accident arising out of employment. But see Tiruchy v. Kanagambal, supra, n.53.


statute\textsuperscript{86} or of any orders, given by or on behalf of the employer or while acting without instructions from his employer, the accident shall be deemed to arise out of and in the course of insured person's employment, if two conditions are fulfilled. Firstly, the accident should be such as would have been deemed to arise out of and in the course of employment, had the act not been done in contravention of the statute, or orders or without the instructions of his employer. Secondly, the act is done for the purposes of and in connection with the employer's trade or business.\textsuperscript{87}

Under the Workmen's Compensation Act, such presumption is not applicable, where the injury resulting from an accident, happening, while acting in violation of rules or regulations of the employer, does not result in his death. Where it results in death, the question of disobedience of any rule or order does not stand in the way of holding the injury incidental to employment.\textsuperscript{88}

\textsuperscript{86} For instance, see Factories Act, 1948, Section 111, dealing with obligation of workers to comply with provisions for ensuring health and safety.

\textsuperscript{87} Employees' State Insurance Act, 1948, Section 51-B.

\textsuperscript{88} Workmen's Compensation Act, 1923, Section 3(1), Proviso (b). Lingam Seetharamiah v. Bijjam Braramamba, 1969 Lab.I.C,118 (A.P.); Janaki Ammal v. Divi. Engr., Highways, (1956) 2 L.L.J. 233 (Mad.); Padam Deb v. Raghunath Ray, A.I.R.1950 Ori.207 (D.B.). See also supra, n.11. 'Disobedience', contemplated by Section 3(1), Proviso (b) involves conduct of a quasi-criminal nature, the intention of doing something either with the knowledge that it is likely to result in serious injury or with a wanton and reckless disregard of the probable consequences. So contd...
When the expression "arising out of" is analysed from the angle of "injuries inherent in or incidental to employment", what is brought to light is nothing but the causal relationship between employment and accident.

It cannot be stated as a correct proposition of the law that all accidents, occurring at the time, and place of employment, arise out of employment. Nor can it be said that accidents, not occurring at the time and place of employment of a workman, can never be accidents, arising out of his employment. If a workman is obliged by the conditions of his employment to be at a particular place at a

(f.n.88 contd.)

mere disobedience is not sufficient for exempting the employer from liability, because it may be the result of forgetfulness or the result of the impulse of the moment. The concept, embodied in these words, is the antithesis of the idea imported by the word "accident". See Arya Muni v. Union of India, (1965) 1 L.L.J. 24 (All.); Janaki Ammal v. D.I.V. Engr., Highways, (1956) 2 L.L.J. 233 (Mad.); Bhurangya Coal Co. v. Sahebjan, A.I.R. 1956 Pat. 299 (D.B.); Lee Shi v. Consolidated Tin Mines, A.I.R. 1939 Rang. 428 (D.B.); Allah Rakhsh v. Mian Mohammad Allah Baksh, A.I.R. 1935 Lahore 670.


particular time and exposed to an accident, then, such accident arises out of employment. Though such accident may not have any causal relation to the work of the workman, it is incidental to the particular place, where, by the conditions of his employment, he is obliged to work. The analysis of concept of "arising out of employment" from the angle of "relevancy of time and place" lays bare again the underlying concept of causal connection between employment and accident.

Workers, while performing their duties, sometimes adopt means to accomplish their ends in a way, which are either unwarranted or the adoption of which are liable to increase the risk, involved in the execution of the work. If there is only one mode of doing a particular work and the worker suffers an injury, while performing the work by adopting that mode, the injury will be said to arise both in the course of as well as out of the employment. But if there are various alternative ways of doing the work, the worker is expected to adopt the least risky method.

91. Ibid.
92. In Stephen v. Cooper, [1929] A.C.570 (H.L.), a farm servant was engaged in driving a reaping machine, drawn by two horses. While driving the machine, a chain, hooked to the backband of one of the horses, became unhooked and had to be re-hooked. The servant, without putting the cutting blade out of gear, attempted by walking along the pole between the horses to refix the chain. The horses suddenly started forward and the servant, losing balance, fell on the blade and was permanently injured. The proper method of refixing the chain was not followed by him. Instead, this dangerous contd...
The worker should not choose a more risky method and thus add peril to the job. If he acts otherwise, the injury, caused, is on account of added peril and, therefore, does not arise out of employment.

Accidents, falling under the category of "added peril", comprise the following acts of a workman, namely:

(1) acts outside the sphere of his employment;

(2) acts for his own purpose; and

(3) acts done carelessly or negligently.

Accidents, resulting on account of acts, done for one's own purpose as well as those, falling outside the sphere of one's employment, have been held to be not arising out of employment.

(f.n.92 contd.) course was taken. It was held that the injury was sustained by an accident, caused by an added peril, to which the workman exposed himself by his own conduct and not due to an accident, arising out of his employment. See also Lancashire and Yorkshire Rly. Co. v. Highley, [1917] A.C. 352 (H.L.).

93. "Added peril" means a peril, voluntarily superinduced on what arose out of the employment, to which the workman was neither required nor had authority to expose himself. See Lancashire and Yorkshire Rly. v. Highley, [1917] A.C. 352 at 361 per Viscount Haldane.

94. In Devidayal Ralyaram v. Secretary of State, A.I.R. 1937 Sind. 288 (D.B.), a fitter, who wanted some scrap to make nuts and studs, went under the machine to take it from the scrap heap under the machine, which, when set in motion, caused a permanent injury to his right hand. It was held that the injury arose out of an added peril, to which the fitter had voluntarily and unnecessarily exposed himself and not out of and in the course of employment. See also Gouri Kinkar Bhakat v. Radha Kissen Cotton Mills, A.I.R. 1933 Cal. 220 (D.B.).

But accidents, resulting from the carelessness or negligence of the workman, may be treated as arising out of his employment, if he has been acting within the sphere of his employment. Workmen are human beings and not machines and, therefore, are subject to human imperfections. No man can be expected to work without ever making a mistake or slip. Imperfections of a workman form the ordinary hazards of employment. Therefore, accidents, arising from them, are treated as arising out of employment.

96. In R.B. Moondra & Co. v. Mst. Bhanwari, 1970 Lab.I.C. 695 (Raj.), the deceased was employed as a driver on a truck, used for the purpose of carrying petrol in a tank. As the tank was reported to be leaking, he was asked by the employer to enter the tank and see from where it leaked. The deceased entered the tank, which had no petrol in it but was partly filled with water. For detecting the place of leaking, he lighted a match stick. As a result, the tank caught fire and the deceased received burns and died subsequently. It was held that though the deceased acted negligently or rashly, it could not be said that the act done was outside the sphere of his employment. See also G.M., South Eastern Railway v. Radhey Shyam, 1984 (48) F.L.R. 493 (M.P.); Challapareddy Ranganayakamma v. K. Venkateswara Rao, 1975 Lab.I.C. 1373 (A.P.); Bhurangya Coal Co. Ltd. v. Sahebjan, A.I.R. 1956 Pat. 299 (D.B.); Harris v. Associated Portland Cement Mfrs. Ltd. [1938] 4 All E.R. 831 (H.L.).

97. In Challapareddy Ranganayakamma v. K. Venkateshawara Rao, 1975 Lab.I.C. 1373 (A.P.), a lorry driver died in an accident, while driving the lorry. It was held that the mere fact, that he had permitted six passengers to travel in the lorry, which was already carrying a load of 10,150 kgs., did not amount to adding peril to his employment by his own conduct. See also R.B. Moondra & Co. v. Mst. Bhanwari, 1970 Lab.I.C. 695 (Raj.).
"Once you have found the work which he is seeking to do to be within his employment, the question of negligence, great or small, is irrelevant and no amount of negligence in doing an employment job can change the workman's action into a non-employment job. If a workman is doing an act which is within the scope of his employment in a way which is negligent in any degree and is injured by a risk incurred only by that way of doing it, he is entitled to compensation."

The doctrine of notional extension extends the sphere of a man's employment. The doctrine of added peril, on the other hand, purports to limit this sphere. For an act to fall within the sphere of one's employment, it must be ancillary to the employment or a necessary incident of it.


100. In Superintending Engr., Parambikulam Aliyar Project, Pollachi v. Andammal, (1983) 2 L.L.J. 326 (Mad.), the deceased had to face the agriculturists, who had unauthorisedly diverted the water from the canal to their field, in the course of his employment. He made a complaint to the Junior Engineer about these agriculturists. He had to face the indignant agriculturists again in the course of his employment, when he was killed by them. It was held that the accident, resulting in the death of the deceased, was caused by a peril, which was very closely and intimately linked up with the performance of his duty and not by added peril.
If a workman is doing an act, ancillary to his employment, he must not unnecessarily increase the risk of injury to himself and so the risk of liability to his employer, beyond what is contemplated in his contract of employment. He must not choose an unnecessarily dangerous place for doing his work nor must he do it in an unnecessarily dangerous way. If acts otherwise, he will go outside the sphere of employment and the resulting injury cannot be considered to be arising out of employment but of added peril. 101

An accident can, therefore, be said to arise out of the employment of a person, when it is causally connected with something, that is reasonably incidental to the employment or with the nature or the terms or the conditions of the employment. It is not necessary to establish that the workman was engaged in the performance of his duty, at the time of the accident and that the accident was related to such performance. The presence of the workman on the spot of the accident, if such presence itself was attributable to the discharge of his duty, is enough to show that the accident arose out of his employment. 102

101. See supra, nn. 92, 93 & 94.

Accident arising in the course of employment

If the requirement, that the accident must arise out of the employment, is primarily a matter of causation, the requirement, that the accident must arise in the course of employment, is a matter of the factual scope of the employment in question.\(^\text{103}\) An accident can be said to have arisen in the "course of employment," if it took place within the period of employment, while the workman was performing his duties or engaged in doing something, incidental thereto at the place, where he, ordinarily, is required to work. Thus the phrase covers duty, time and place of employment.

There are two trends of judicial decisions, regarding the element of duty. According to the first\(^\text{105}\), to find out whether an accident has arisen in the course of employment or not, it is necessary to find out, whether the workman was doing his duty, at the time of the accident. If he was not doing any such duty, the accident has not arisen in the course of employment. According to the second,\(^\text{106}\) "duty" is not relevant. An accident may arise in the course of employment.

---

103. K.M. Joseph, "Compensable injury under the workmen's Compensation Act," 1987 Lab.I.C. 57; See also F.P. Walton supra, n.63 at 45.


106. See infra, n.112.
employment, though the workman might not have been doing his
duty at the time of the accident. 107

There is a catena of cases, 108 holding that workmen
were acting in the course of their employment on the ground
that at the time of the accident, they were doing their
duties, for which they were employed. Similarly, there is
no paucity of cases, 109 in which workmen have been held not

108. Union of India v. Mrs.Noorjahan, 1979 Lab.I.C.652 (All.)
Varkeychan v. Thomman, (1979) 1 L.L.J.373 (Ker.) (D.B.);
2 L.L.J.95 (Guj.) (D.B.); Satiya v. S.D.O., P.W.D., 1974
Lab.I.C.1516 (M.P.) (D.B.); Assam Rly. and Trading Co.
v. Saraswathi Devi, A.I.R.1963 ASS.127 (P.B.); Janaki
Ammal v. Divl. Engineer, (1956) 2 L.L.J.233 (Mad.);
141 (D.B.); Dunn v. A.S.Lockwood & Co. [1947] 1 All E.R.
(H.L.); Weaver v. Tredegar Iron Co., [1940] 3 All E.R.
157 (H.L.); London and North Eastern Rly. Co. v. Bren-
tnall, [1933] A.C.489 (H.L.); Armstrong, Whitworth &
Co. v. Redford, [1920] A.C.757 (H.L.); John Stewart &
Son Ltd. v. Longhurst, [1917] A.C.249 (H.L.); Webber v.

1415 (A.P.); Tobacco Mfrs. Ltd. v. Marian Stewart,
A.I.R.1950 Cal.164 (D.B.); Alderman v. Great Western
Secretary of State, A.I.R.1937 Sind.288 (D.B.); Gouri
220 (D.B.); St.Helen's Colliery Co. v. Hewitson, [1924]
A.C.59 (H.L.); Charles R. Davidson & Co. v. M'Robb,
[1918] A.C.304 (H.L.); Plumb v. Cobden Flour Mills,
to be acting in the course of employment on the ground that at the time of the accident, they were not doing their duties. So to make his injury compensable, the workman must show that he was, at the time of the accident, causing the injury, engaged in the employer's business or in furthering that business and was not doing something for his own benefit, or that he was doing something in discharge of his duty to his employer, directly or indirectly imposed upon him by his contract of service.

According to the second view, performance of duty is not the pivotal question. A workman, employed by the Public Works Department to work on the Gwalior-Jhansi Road, left the work-site for collecting the salary of the labourers from the office. While he was taking his meals on the way, he was murdered by unknown persons. Though the workman was not doing any duty but taking his meals at the time of the accident, causing his death, he was held to be in the course of his employment at that time, as he would not have been murdered but for his proceeding to the office.

112. See P.W.D., Bhopal v. Smt.Kausa, A.I.R.1966 M.P.297. For other cases, where the workman was held to be in the course of employment, though he was not performing any duty at the time of the accident, see Tiruchy v. Kanagambal, 1995 Lab.I.C.NOC 48 (Mad.); Reg. Dir., E.S.I.C. v. Mary Cutinho and others, 1994 Lab.I.C.2420 contd...
It appears at the first sight that the two views, noted above, are contradictory. But if they are looked in a wider perspective, they mean, substantially the same thing. The first view gives a wider and liberal meaning to the word 'duty' and includes within the scope of 'duty' even those cases, which, according to the second view, are included as falling in the course of employment. Lord Atkinson, while emphasizing the element of 'duty' as a determinative factor in the determination of the course of employment, took 'duty' in a wider sense. The second view discarded


113. Kamta Prasad Pandey, supra, n.36, at 443

114. The test, which must be satisfied to bring an 'accident' in the course of a workman's employment, should be based upon, according to Lord Atkinson, "a duty to the employer arising out of the contract of employment but it is to be borne in mind that the word "employment" as here used covers and includes things belonging to or arising out of it". See St.Helen's Colliery Co. Ltd., v. Hewitson, [1924] A.C.59 at p.71 (H.L.).

115. Lord Atkinson observed: "For instance, hay makers in a meadow on a very hot day are, I think, doing a thing in the course of their employment, if they go for a short time to get some cool water to drink to enable them to continue the work they are bound to do and without which they could not do that work, and workmen are doing something in the course of their employment when they cease working for the moment and sit down on their employer's premises to eat food to enable them to continue their labours". See St.Helen's Colliery Co. Ltd., v. Hewitson, supra, n.114. See also the observation of Lord Dunedin in Charles R. Davidson v. M'Robb, [1918] A.C.304 at 321.
the test of 'duty' to include in the course of employment, accidents like those occurring, while taking meal in a canteen during the lunch-break or staying on the employer's premises during the midday dinner hour and eating his dinner. These circumstances do not amount to discharge of duty, in the strict sense, by the workman, though they can be included in the wider concept of 'duty'.

The scope of 'duty' can be determined properly only by keeping in mind the implication of 'employment'. The concept of 'employment', as noted earlier, is of wider import than that of 'work' or 'duty' in the strict sense. The concept of 'duty', implied in the expression 'in the course of employment' therefore, covers not only the actual work, the workman is employed to do but also matters, incidental to it. A workman may be engaged in doing something

119. Supra, n.32.
outside the scope of his normal duties, for his own purposes, such as having a break, taking refreshments, going to lavatory, taking meals at the canteen or talking with fellow workers. But so long as what he is doing is something, which he is not contractually debarred from doing, it may reasonably be said to be incidental to his actual employment. 121

The elements of time and place alone, therefore, do not play a decisive role in the determination of the question, whether a particular accident has arisen in the course of employment. The deciding factor is, of course, the element of duty. But the element of duty cannot be stretched to the extent of holding that a lad, employed as a finisher of boots, taking home work, in disobedience of orders, for developing his own skill and sustaining injury by accident, while doing the work at home, has sustained the injury in the course of employment. 122 The application of the elements of 'time' and 'place' to the element of 'duty' in such cases, clarifies the boundaries of the concept of 'in the course of employment'.

The question, whether a personal injury, sustained by a workman, is a compensable industrial injury under the workmen's Compensation Act, 1923 and the Employees' State Insurance


Act, 1948, thus depends upon the interpretation of terms like 'personal injury', 'accident' 'employment' 'accident arising out of employment' and 'accident arising in the course of employment' by the adjudicatory authority. In order that the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948 may really help an injured workman in obtaining compensation, it is suggested that the scope of these terms may be defined in these statutes. The term 'personal injury' may be defined in the statutes to include not only external injuries including disfigurement of the body but also internal ones such as injury to the mind, injuries like rupture of a vein, failure of heart and the like. 'Personal injury' may also include diseases, caused by accident and the aggravation of an existing disease by an accident or by the stress and strain of employment.

123. For instance in Smt.Abida Khatun v. G.M., Diesel Locomotive, Varanasi, (1973) 1 L.L.J. 387 (All.) (O.R.), a workman was murdered by some unknown person, while going to join his duty. It was held that the employer was not liable to pay compensation, as no nexus between accident and employment was established. But see Eshagubai v. Central Railway, Bombay, (1954) 2 L.L.J. 403 (Bom.) (O.B.), where, a workman, who was stabbed by some unknown person on his way to work was held to have suffered an accident, arising out of and in the course of employment.


125. Supra, n. 8.

126. Supra, n. 9.

127. Supra, n. 80.
two statutes as an unexpected event, happening without design on the part of the injured workman.\textsuperscript{128} This unexpected event may be explained as including both external and internal accidents\textsuperscript{129} as well as the cumulative effect of a series of tiny accidents.\textsuperscript{130} The third Schedule to the Acts covers only certain specified occupational diseases.\textsuperscript{131} So it may be deleted and 'occupational disease' may be defined as including all diseases, known to arise out of the exposure to substances or dangerous conditions in processes, trades or occupations.\textsuperscript{132} Appropriate changes may also be made in Section 3(2) of the Workmen's Compensation Act, 1923 and Section 52-A of the Employees' State Insurance Act, 1948.\textsuperscript{133} The word 'employment' may be defined in the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948 as covering not only the nature of the employment but also its character, conditions, obligations, incidents and special risks.\textsuperscript{134} Despite the considerable extension of the sphere of employment by the theory of notional extension,\textsuperscript{135} courts have taken different approaches with regard to the extension

\textsuperscript{128} Supra, n.12.
\textsuperscript{129} Supra, nn.17, 18 and 19.
\textsuperscript{130} Supra, n.22.
\textsuperscript{131} Supra, n.25.
\textsuperscript{133} Supra, n.26.
\textsuperscript{134} Supra, n.32.
\textsuperscript{135} Supra, n.37.
of the sphere of employment to the journeys to and from the place of work and treating accidents, occurring during such journeys, as accidents arising in the course of employment.  

So, it is suggested that 'accident arising in the course of employment' may be defined under the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948 as including accidents, occurring not only during the period, when a workman/employee is doing the work, actually allotted to him, but also during the time, when he is at a place, where he would not be but for his employment. An explanation clause may be added to this definition so that the following kinds of accidents, namely, (a) accidents, sustained during working hours at or near the place of work or at any place, where the worker would not have been but for his employment; (b) accidents, sustained within reasonable periods before and after working hours, in connection with transporting, cleaning, preparing, securing, conserving, storing and packing work-tools or clothes; and (c) accidents, sustained, while on the direct way between the place of work and a workman's/employee's residence or the place, where the workman/employee usually takes his meals or the place, where he usually receives remuneration shall be regarded as accidents, arising in the course of employment, provided that the workman has not invited such accident.  

136. Supra, n.123.  

injuries, sustained, while travelling in employer's transport, the theory of notional extension of the sphere of employment applies under the Workmen's Compensation Act, 1923, only if the workman was under an obligation or practical compulsion to use the transport as per judicial decisions. The employees, covered by the Employees' State Insurance Act, 1948, do not have this problem, as the Act has taken away the requirement of obligation to use the transport. The condition of workmen, covered by the Workmen's Compensation Act, 1923, may be ameliorated by incorporating a similar provision in that Act. 'Accident arising out of employment' may be defined under the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948 as an accident, in which there is a causal connection between the accident and employment. 'Causal connection' may be deemed to exist, if the immediate act, which led to the accident, is not so remote from the sphere of the workman's duties or the performance thereof as to be regarded as something foreign to them.

A workman or his dependant, claiming compensation under the Workmen's Compensation Act, 1923, has to prove two

138. See supra, n.46.
139. Supra, n.46. See also E.S.I.C. v. Lakshmi, 1979 Lab. I.C.167 (Ker.) (D.B.).
140. Supra, n.71.
141. Supra, n.72.
thins for establishing that his injury is compensable, viz.,
that (1) the accident, causing the injury, occurred in the
course of employment and (2) it arose out of employment. 142
But an employee or his dependant, claiming compensatory
benefits under the Employees' State Insurance Act, 1948 need
prove only that the accident, causing the injury, has arisen
in the course of employment for establishing that, his injury
is compensable. 143 This is because, on establishing that
the accident arose in the course of employment, a rebuttable
presumption arises that the accident arose out of employment
also. 144 In order to relieve the workmen, covered by the
Workmen's Compensation Act, 1923, of the additional burden
of establishing that the accident, causing the injury, arose
out of employment, it is suggested that a provision, similar
to Section 51-A of the Employees' State Insurance Act, 1948,
may be incorporated in the Workmen's Compensation Act, 1923.

Under the Workmen's Compensation Act, 1923, an injury,
not resulting in death, caused by an accident, directly
attributable to the workman, having been under the influence
of drink or drugs or to the wilful disobedience of the work-
man to safety rules or to the wilful disregard by the workman
of any safety guard or device is not compensable personal

Central Glass Industries Ltd. v. Abdul Hossain, A.I.R.
1948 Cal.12 (D.B.).

143. Supra, n.2.

144. Ibid.
injury. But under the Employees' State Insurance Act, 1948, accidents, happening, while acting in breach of regulations or orders or without employer's instructions, shall be deemed to arise out of and in the course of employment, if the accident would have been deemed so to have arisen, had the act been done properly and the act is done for the purpose of and in connection with the employer's trade or business. It is suggested that a similar provision may be inserted in the Workmen's Compensation Act, 1923 also. Under the Workmen's Compensation Act, 1923, unlike under the Employees' State Insurance Act, 1948, there is no specific provision for treating accidents sustained by a workman, while taking emergency action in the interest of the employer, as accidents arising out of and in the course of employment, though they are treated so by judicial decisions. In order to avoid unnecessary litigation, it is suggested that a provision, similar to Section 51-D of the Employees' State Insurance Act, 1948 may be inserted in the Workmen's Compensation Act, 1923.

The Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948 do not contain any specific provision for treating injuries, resulting from accidents, caused by a stranger's misconduct, or negligence or by natural cause.

145. Supra, n.11.
146. Ibid.
147. Supra, nn.61, 62, 63 and 64.
such as sun-stroke, frost-bite or lightning, as compensable industrial injuries. As per judicial decisions, such injuries are compensable, if the employment involves special exposure to such risks.\textsuperscript{148} It is suggested that provision may be inserted in both the Acts for treating such injuries as compensable, provided the workman or the employee would not have met with such accidents but for his employment.

Further, under the Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948, an injury, which does not result in the total or partial disablement of the workman for a period exceeding three days, is not compensable.\textsuperscript{149} An injury, sustained by a workman or employee on account of his employment, should be compensated, irrespective of the question whether the disablement, caused by the injury, exceeds three days or not. Hence it is suggested that Section 3(1), Proviso (a) of the Workmen's Compensation Act, 1923 and Rule 57 (1) of the Employees' State Insurance (Central) Rules, 1950 may be amended to achieve that purpose.

\textsuperscript{148} Supra, n.84.

\textsuperscript{149} Supra, n.10.