CHAPTER - XI

LAW RELATING TO INDUSTRIAL INJURIES
11.1. Introduction:

Workmen’s Compensation Act, 1923 is the earliest social security legislation placed on the Indian Statute book during the pre-independence era, to provide for compensation to certain classes of workmen by their employers for injuries suffered by them as a result of accident arising out of and in the course of employment. The ameliorative and beneficial legislation for the protection of the rights of workmen was enacted at a time when there was not so much of glamour for giving a square deal to the “weaker sections” or the under privileged. With the advent of National independence and the awakening of social consciousness, the Workmen’s Compensation Act has gone through several amendatory processes.¹

Article 38, 39 (e), 41 and 42 of the Constitution lay emphasis on the need to protect the health and strength of the workers, to make effective provision for sickness and disablement of the workers and an endeavour to secure to all workers decent conditions of work. It is not often realized that the provision for compensation to dependants is specially intended, to

avoid want and penury and is a direct recognition to the Directive Principles mentioned above.

The theme of the Workmen's Compensation Act is to provide security to the workman against the risks in the employment. The protection so afforded to the workmen is independent of the acts of grace or mercy the employer may show to him. In a welfare State the protection afforded to a disabled workman cannot be allowed to rest on the mercy or grace of the employer by way of continuing the workman in service though such an act on the part of the employer is commendable. This object has to be kept in view in calculating the compensation where there is permanent partial disability to a workman as a result of the accident.²

Under the Workmen's Compensation Act the compensation becomes payable not because of a tort, or wrong-doing by the employer. The liability under the Act has no connection with any wrong-doing on the part of the employer. It does not result from any neglect or any default on his part. Indeed in case of death or serious and permanent disablement, the event may be the consequence of serious or willful misconduct on the part of the workman while the employer is wholly free from blame and yet compensation may be recoverable all the same.³ In view of this approach it has been held that the liability is created immediately on the accident

occurring to the workman suffering the injury and amounts to a debt payable to the workman.\(^4\) Compensation provided by the Act is in nature of insurance and not a remedy for negligence.\(^5\) What is provided against is the loss of earning capacity.\(^6\)

The Workmen's Compensation Act is a piece of social security legislation. It has now been generally accepted that various provisions of the Act ought to receive liberal interpretation. The Act is a welfare legislation. Therefore, if any particular provision of the Act is capable of two interpretations, the one that is more favourable to the persons for whose benefit the legislation has been made should be adopted. Interpretation of labour legislation, which is likely to prejudice the rights and welfare of labour, should be avoided. A Statute whose dominant purpose is to protect the workmen should not be interpreted by introducing words by implication, the effect of which will be to reduce the protection conferred on workmen.

The Act creates a special type of liability in the employer to pay compensation at a fixed rate to his employee who is rendered incapable to work by an accident arising out of and in the course of employment. The Act does not purport to give solatium to the relative of the deceased employee but something to replace the actual loss the relative has

\(^5\) AIR 1939 Rang 369.
\(^6\) Supra Note. 4.
The provisions of the Workmen's Compensation Act are not intended to award damages for negligence on the part of the employer.

The law provides compensation for five types of injuries that are sustained by the workmen out of and in the course of employment. They are namely, (i) where death results from the injury, (ii) where permanent total disablement results from the injury, (iii) where permanent partial disablement results from the injury (iv) where temporary disablement, whether total or partial, results from the injury and (v) for contacting occupational diseases peculiar to the employment.

With the progress of time and change in the standards of living in the society the Act has on many occasions been modified so as to benefit greater number of workmen and to provide for payment of greater amount of compensation to them. The Royal Commission on labour paid a tribute to the smooth working of the Act and recommended the extension of the benefits under the Act to a larger class of employees. But Prof. B.P. Adarkar in his report on Health Insurance for Industrial Workers was of the opinion that the Workmen's Compensation Act has become out of date in its scope and operation and that the administration and operation of the Act have been a comparative failure. Prof. Adarkar advocated for compulsory insurance of all workmen. The result was that the Employees' State Insurance Act, 1948, was passed. This Act was a substantial
improvement over the Workmen's Compensation Act. Any person who is covered by the 'Employees State Insurance Act', 1948 and who is entitled to receive disablement or dependant's benefit under this Act is not entitled to compensation from the employer under the Workmen's Compensation Act, 1923. The scope of the Employees' State Insurance Act is limited but it is hoped that in times to come it will cover the entire field of compensation by replacing the Workmen's Compensation Act. What is actually intended to be insured by such Acts is the rehabilitation of the workman himself or of his dependants. For the progress of democratic socialism and its needed impact on the society the socialization of the needs and miseries of man is as important as the socialization of the basis of production and wealth.7

The compensatory benefit under the Employees State Insurance Act is based on contributory system both by the employee as well as employer in contrast to the Workmen's Compensation Act, 1923. Hence, the Employees State Insurance Act is addressed as a reformatory to the Workmen's Compensation Act, in the sense the law provides five types of compensatory benefits to the workmen when he is for any reason remains unemployed during the tenure of his employment. In principle this law is not based on the common law principles of employer's liability to pay

compensation to his workmen for the injuries sustained by them out of and in the course of their employment.

11.2. The Basis for Liability under the Workmen's Compensation Act, 1923:

The principal charging section under the Act is, section 3 of the Act, which provides for employer’s liability to pay the compensation.8

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8 Section 3 of the Workmen’s Compensation Act, provides that — (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable:

(a) in respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding [three] days;

(b) in respect of any injury, not resulting in death, [or, permanent total disablement] caused by an accident which is directly attributable to:

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

[(2) If a workman employed in any employment specified in part A of Scheduled contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section, and unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved—

(a) that a workmen whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

(b) that the disease has arisen out of and in the course of the employment; the contracting of such disease shall be deemed to be an injury by accident within the meaning of the section:

Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous
11.3. The Scope of the Liability:

Section 3 is the most important provision in the whole scheme providing for payment of compensation by an employer under the Workmen's Compensation Act. Compensation is payable only when personal injury is caused to a workman as defined in S. 2 (1) (n) read with period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2-A) If a workman employed in any employment specified in Part C of Scheduled III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government after giving, by notification in the Official Gazette, not less than three months notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively and thereupon the provisions of sub-section (2) shall apply in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to cover any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this act.

Section 2(n) of the Workmen's Compensation Act provides that a "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

(i) a railway servant as defined in Clause (34) of the Railway's Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as it specified in Schedule II, or

[(ia) (a) a master seaman or other member of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,
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Schedule II. The occupational diseases contracted during employment are also liable to be compensated by the employer. The amount of compensation varies accordingly as the injury results in temporary disablement, which may be total or partial, or a permanent disablement, which may be total or partial. In the case of fatal injury the dependants are entitled to claim compensation. The injury must be suffered by the workman in the course of employment, which has reference to time, place and circumstances of the employment, and there must be a causal connection established between the injury and the employment and the work. The important phrase "arising out of and in the course of employment" is understood to mean that the injury has resulted during the course of employment from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, company, as the case may be, is registered in India, or ;]

(ii) employed* * *? in any such capacity as is specified in Schedule II whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing ; but does not include any person working in the capacity of a member of the Armed Forces of the Union ; and any reference to a workman who has been injured shall, where the workman is dead, includes a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

("(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons : Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.")
reasonable to believe the workman would not otherwise have suffered. There must be a causal relationship between the accident and the employment i.e. if the accident had occurred on account of a risk, which is an incident of the employment, the claim for compensation must succeed, unless the workman has exposed himself to an added peril by his own imprudent act.  

The injury for which the statute gives compensation is not mutilation or disfigurement or loss of physical power, but loss of diminution of capacity to earn wages in the employment in which the injured workman was engaged at the time of the accident.  

11.4. The Scope of the 'Term Employment':

The concept of "employment" in section 3 is not confined only to the actual working whether in a pit or at any other trade in which the workman may be engaged. He is employed not only to work in the pit but also to do other things that he is entitled to do by virtue of his contract of employment. For example, he is entitled to and therefore employed to do such acts as coming and going on employer's premises, passing and re-passing for all legitimate purposes connected with his work on the premises such as getting to the pit's mouth, going to get his wages, going

to make proper enquiries from the proper officer, for taking a train which he is entitled to use by virtue of his contract of service he must make reasonable use of the facilities the right to which is given to him. In testing whether workman is injured in the course of his employment the word ‘employment’ is not to be defined in a narrow manner by reference only to the duties of the workman but the character, conditions, incidents and special risk involved would have to be taken into consideration. The word ‘employment’ covers and includes things belonging to and rising out of it.

11.5. The Phrase ‘Arising out of and in the Course of Employment’:

The use of this phrase as a condition to be satisfied to enable a claim for compensation to be recognized has given rise to a plethora of decisions, which pin-point various facets, which arise for consideration before the Commissioner adjudicating a claim for compensation. It is now well settled that the expression "arising out of employment" means that during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered. The words "in the course of employment" mean in the course of the work which the workman is employed to do and

which is incidental to it. There must be a causal relationship between the accident and the employment.  

11.6. The Doctrine of ‘Notional Extension’ of Time and Place:

The Doctrine of ‘Notional Extension of time and place’ is a complete contribution of the judiciary, in extending the liability of the employer to pay the compensation for the injured workmen. This principle was developed by the judiciary entirely keeping in view the concept of social security as propounded by the International Labour Organization.

The general rule that the man’s employment does not begin until he has reached the place where he is to work and it does not continue after he has left it, is subject to various exceptions under the principle of notional extension of time and place of employment, which is recognized by judicial pronouncements. Where there is no ‘place of duty’ one has to read this rule in relation to the ambit, scope or scene of duty.

An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he uses the means of access and egress to and from the place of employment. Thus, where the workman after the close of the working hours, was on his way to home and was picking up his ‘dabosa” which he had kept under the shed within

14. Supra Note. 1. at 53-54.
the precincts of the factory, it could not be said that accidental injury caused to him, was not arising out of and in the course of his employment.\textsuperscript{15}

There must be causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. The cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. The fact that the employee shares that peril with other members of the public is an irrelevant consideration. The peril, which he faces, must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril, which he faces, has nothing to do with his own action or his own conduct, . . . then if the accident arises out of such peril, a causal connection is established between the employment and accident.\textsuperscript{16}

\textsuperscript{15} Chunnilal v/s. B.D. Agarwal. 1977 Serv L.W. 219.
The deceased, a railway employee, lived in the railway quarters adjoining the railway station. The only access from the quarters to the railway station was through the compound of the railway quarters. Once when he left his quarters a few minutes before midnight in order to join duty he was stabbed by some unknown person. There was no evidence that someone was interested in murdering him. In such circumstances, it was held that the accident arose out of the employment.\textsuperscript{17}

11.7. Extension of the Doctrine:

As a rule, the employment of workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area, which the workman passes and repasses in going to and in leaving the actual place of work. There may be reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.

\textsuperscript{17}. Re Bhaubai v/s. General Manager, Central Railway V. T. Bombay, AIR 1955 Bombay 105.
It is well settled that when a workman is on a public road or public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reached the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him."

A workman was not in the course of his employment from the moment he left his home and was on his way to his work. He certainly was in the course of the employment if he reached the place of work or a point or an area, which came within the theory of notional extension, outside of which the employer was not liable to pay compensation for any accident happening to him. In *B.E.S.T. Undertaking v. Mrs. Agnes*, after following this decision and after considering a host of English authorities, their Lordships in terms pointed out that under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of employment and in the course of employment. The question when does an employment begin and when does it cease depends upon the facts of each case. The Courts, however, had agreed that the employment does not necessarily end when the down tool signal is given or when the

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18. AIR 1964 SC 193.
workman leaves the actual workshop where he is working. There was a notional extension at both the entry and the exit by the time and space. The scope of such extension must necessarily depend on the circumstances of a given case.

11.8. Death- Brain Haemorrhage While on Duty:

The Supreme Court in Mackinnon Mackenzie v. Ibrahim Mohammad Issak has explained the meaning of the term, "in the course of the employment" and has laid down that this expression means, "in the course of the work which the workman is employed to do and which is incidental to it". The expression "arising out of employment" has also been explained by the learned Judges to mean that during the course of the employment, injury resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered.

11.9. Heart Cases:

Heart cases, that is where the workman died as a result of heart attack owing to strain of work in which he was employed present various aspects and the Commissioner has to make detailed enquiry before coming to the conclusion that the strain of work such as loading led to the

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19. Supra Note. 16.
Where a workman already suffering from heart disease dies in mill premises after working for eight hours on a hot day it was held that the proper inference to draw would be that he died of injury by accident arising out of and in course of his employment. In such cases it is the duty of Court to see if there is paucity of other evidence to draw the proper inference of heart disease; if the workman was suffering from heart trouble it could be held that the most natural inference to draw when a man suddenly collapses and dies very soon after and the doctor is not in a position to suggest any reason for the sudden collapse would be that he was suffering from heart trouble which could not be discovered by mere clinical examination. Where an employee, a traffic inspector in State Road Transport Corporation, got a heart attack for the first time while performing his duty of checking the tickets from the passengers, and died after 11 days, and there was no medical evidence to show causal connection between the heart attack and the duties he was performing or that his duties involved overstrain, tension and anxiety which might cause an attack, the heart attack could not be said to have been, caused out of his employment.

There may be cases where on the facts found the things speak for themselves (res ipsa locquitur). But where there is no absolute certainty

whether the deceased had a fall and consequently had a heart attack or the heart attack preceded the fall it could not be said to have been proved that the accident arose out of employment of the workman. If the heart attack of the deceased could not be associated in any way with the employment and the deceased was not exposed to the risk of the heart attack by nature of the work then the claim would not be sustainable.\textsuperscript{24} If a person is employed in a job of loading and unloading which accelerates or aggravates the workman's heart condition causing death or disability it may be held to be a compensable injury. Sudden manifestation of heart condition from the effect of strain or overexertion of work constitutes an accidental injury within the Act.\textsuperscript{25} But it is necessary in all such cases to prove the causal connection. Where a chief cook on active duty till the day previous to his death due to heart failure on ship at 5-30 a.m. while preparing for attending to his duties commencing at 7 a.m. the accident is held to arise out of employment.\textsuperscript{26} Where a workman going to work at 3.30 p.m. was found dead on the floor at 5.30 p.m. by coronary insufficiency it is permissible to infer that the death was due to strain out of work and fatigue in doing the work and that the strain led to the coronary condition.\textsuperscript{27} A fireman in a Railway engine fell down from the tank in the engine (where he was filling water), 10 feet below on the ground, complained of pain in the chest, vomited and collapsed and the post

\textsuperscript{24} Assam Railways and Trading Co. v/s. Saraswati Devi. AIR 1963 Assm 127.
\textsuperscript{26} M/s. Jayanti Shipping Co., Ltd., v/s. Bernadita Pereira, 1976 Lab I.C. 977.
\textsuperscript{27} Smut. Amubibi v/s. Angry Mills & Ltd., (1977) II LLJ. 510 (Guj).
mortem report stated that the death was due to heart failure on account of
the shock. The claim of the dependants is tenable as causal connection is
established.  

In Marian Bee v. Town and Country Development Authority, the
facts of the case were that the workman while moving from one place of
work to another under directions from the employer complained of pain in
his chest and ultimately died. The medical opinion was that he had died of
heart attack, which could have been caused, inter alia, due to tension. In
another case, there was evidence to show that though his wife had
already been admitted in the hospital, the workman was denied leave and
that he had been warned that, if he wanted leave, his services would be
terminated. Under these circumstances the workman had gone to work
where he had to move between the two places of work. In view of the said
evidence, it was held that the death was as a result of his employment.

11.10. Shift in Judicial Policy:

From the discussion of series of case law, it is very clear that the
law relating to compensation for injuries is a welfare legislation aimed to
further the Directive Principles of State Policy as contained in Part IV of
the Constitution. The basic philosophy behind this legislative policy is that

in the event of any injury to the workmen, the workmen or his dependent family members must not be in misery. Of late there a slight deviation from this policy by the apex Court wherein, the Court demonstrated an attitude of rigidity not only in respect of cases that fall under the Workmen's Compensation Act, 1923 but, also under the provisions of Employees State Insurance Act, 1948.

The Employees State Insurance Act, 1948 is a reformatory to the Workmen's Compensation Act, 1923 in view of the fact that it provides a social security mechanism basing on contributory system. No doubt the individual and tiny employers at times faced the hardship of shelling out a huge amount by way of compensation under the Workmen's Compensation Act. In this context the State of Karnataka stands first in the country as per the information furnished by Labour Department of Government of India in paying compensation under the Workmen's Compensation Act. According to reports the employers paid 41 crores by way of compensation in Karnataka State under the Workmen's Compensation Act during the period 2003-2004. There must be a compulsory legislative reform in reducing the hardship to the individual employers in contrast to an optional provision.30

30 The Workmen's Compensation Act, 1927 under Section 12(2) provides that, where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the workman could have recovered compensation, and all
In Regional Director, E.S.I. Corporation v. Francis DeCosta, the respondent employee while going to his place of employment (a factory), met with an accident at a place which was about only one kilo-meter away from the factory. The accident occurred at 4.15 p.m. while his duty-shift was to commence at 4.30 p.m. As a result of the accident, the respondent's collar-bone was fractured. The question before the Supreme Court was whether the said injury amounted to "employment injury" within the meaning of Section 2(8) of the Employees' State Insurance Act, 1948 entitling the respondent to claim disablement benefit. Answering in the negative, the Supreme Court held that in view of the definition of "employment injury" in Section 2(8), in order to succeed in his claim to disablement benefit, the employee must prove that the injury he had suffered arose out of and was in the course of his employment. Both the conditions would have to be fulfilled before he could claim any benefit under the Act. The injury suffered by the respondent did not arise in any way out of his employment. The other words of limitation in Section 2(8) are "in the course of his employment". The dictionary meaning of the said words indicates that the accident must take place within or during the period of employment. If the employee's work-shift begins at 4.30 p.m., any accident before that time will not be "in the course of his employment". The journey to the factory might have been undertaken for working at the factory at 4.30 p.m. But that journey was certainly not in the course of

questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

employment. If the employee met with an accident while riding his own bicycle on the way to his place of work, it could not be said that the accident was reasonably incidental to the employment and was in the course of his employment. If an 'employment' begins from a moment the employee sets out from his house to the factory, then even if the employee stumbles and falls down at the doorstep of his house, the accident will have to be treated as to have taken place in the course of his employment. The interpretation leads to absurdity and has to be avoided.

The mere facts that the accident took place only fifteen minutes before the employee was to report for duty and only one kilo-meter away from the factory could not be made a ground for departing from the principle that the employment of the workman does not commence until he has reached the place of employment. What happens before that is not in the course of employment. Therefore, the injury suffered in the instant case could not be said to have been caused by an accident arising out of and in the course of his employment.

It may be recalled here that even a claim for compensation by the dependent wife of the deceased workman under Workmen's Compensation Act was upheld by the Division Bench of the Gujarat High Court in 1977. 32 In this case the deceased workman was standing just 15 minutes before shift timing in front of main entrance of factory and was knocked down by a lorry. The Court drew the principles of notional

extension to the facts of the case and upheld the compensation of the dependent wife.

In contrast in Regional Director, E.S.I. Corporation v. Francis Costa and Another, was a case for compensation for disability under the provisions of the Employees State Insurance Act. Interestingly the apex Court solely interpreting the definition of employment injury as defined in section 2(viii) of the Act read with section 51-A of the Act, decided the case accordingly.

It is respectfully submitted that the political intention of the legislature when this law was enacted in 1948 was straight cut in ensuring the monitory benefit for disabled workers for the injuries they sustain during their tenure if there is an approximate connection between the accident and the employment. The political philosophy of the State considerably changed in later 1960s’ wherein one can find the insertion of the definition of employment injury under section 2(viii) and section 51-A, defining presumption as to accident rising in the course of employment.

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34. Section 2(viii) of the ESI Act deals with definition of ‘employment injury’ means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India; [subs. by Act 44 of 1966, Section 2 for original clause (w.e.f. 28-1-1968)]
35. Section 51-A of the ESI Act deals with ‘Presumption as to accident arising in course of employment’. For the purpose of this Act, 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. (Added by Act 1944 of 1966, S. 23 (w.e.f. 28-1-1968).)
Unfortunately for the poor working class community these amendments stood in the way for claiming the compensation under the Employees State Insurance Act, which was projected as the law not based on common law principles of employer's liability. Probably the political economy of the State is the background for any judgment of the higher judiciary, as it had happened in England in 18th and 19th century.