

Business Manager

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Making HR People Complete

Know all about **Employee's Compensation Law**

A tribute by T.V. Rao

PVR Murthy : Silent Institution Builder



**PVR Murthy :
Silent Institution Builder**

A tribute by Dr. T.V. Rao

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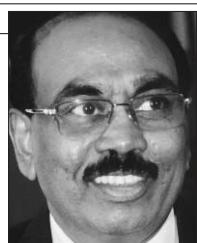
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Response

Readers are invited to comment on articles published in BM through email at : bm.alwar@gmail.com



Classic work

The article of Pradip Khandwala on "Creative HRM" is a classic work. While going through the article packed with interesting examples took me to a feel as if I was reading something in HBR. The quality of the article matches with his name. Simply superb.

-Madhusudan

Robust

The quality contents of the cover story on "Creative HRM" is robust. Panelists of the roundtable have presented their views in simple words with a depth. The roundtable moderated by Dr. Rajeshwari is superior. I enjoyed reading whole issue.

-Swapnil

Very apt

The leadership lessons from Dr. Kalam put by Prasanth will be remembered for long. Really very apt inclusion in this issue and Prasanth did full justification.

-Mohit

Interesting

The article of Aparna Sharma on "Organisation and Leadership" tells of certain basic qualities of organisation that has to develop to deliver value to all stack holders. Rightly said that organisations have to be better organised with flexibility and high on networking. Interesting read.

-Sulekha

Delivering value

Mr. H.L. Kumar in his article has raised very relevant issues about the utility of employers organisations and their nexus with the Government. The various boards constituted by the Government generally represented by trade union leaders organisations and employers organisations in a ritual. Such high level meetings and conferences are hardly participated by employers and experts of national fame. It is rightly pointed that Government should look beyond these formal bodies to nominate experts from related fields so that real contribution in terms of rich legal and academic inputs is received.

-L.K. Singh

Relevant

Article of P.C. Chaturvedi on domestic enquiry is very informative and outlines the importance of documents and witnesses. He has rightly analysed the impact of recent judgments of Supreme Court on this issue. In enquiry it is must that list of witnesses and documents copies should be supplied to the delinquent workman.

-B.K. Girwar

Good cause

Many thanks. It has come out well. Kudos to you and your team for bringing the best of HR fraternity and sharing it with larger group for a good cause.

-Praveen Purohit

Well done

Greeting! The entire issue has come up very well. Well done!

Cheers!

-Puneet

Good photo

Thanks for the nice selection of the article photograph & also for the right packaging overall. Enjoyed reading the magazine. Thanks a ton, Sir.

-Amit Mongia

Chief Editor

ANIL KAUSHIK

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Inclusive of human touch

One of the earliest piece of social welfare legislations in the country- the Employee's Compensation Act, 1923, earlier known as Workmen Compensation Act is on the statute book for the last more than eighty years that supports employee and its dependents in case of mis-happening with employee during course of employment where employer is liable to compensate in case of death or major/ minor injuries to an employee and his dependents. Besides, the Act has a provision of paying compensation to the workmen for some occupational diseases contracted by them during the course of their employment.



The basic purpose of latest amendments which came into force from 2009 is to insert the term "employee" of rather very wide connotation. It is thus applicable to all classes of employees and to make the expression gender-neutral and applies to workers employed in any capacity specified in Schedule II of the Act which includes Factories, Mines, Plantations, Mechanically Propelled Vehicles, Construction Work and certain other hazardous occupations and specified categories of Railway Servants. There is no wage limit for coverage of workers under the Act. It does not, however, apply to persons serving in Armed Forces and workers covered by the Employees' State Insurance Act, 1948. The Act do not distinguish between types of employees- contractual, permanent, casual, daily wages and even employee working abroad- all types of employees comes under purview of this Act. In case of contractual employee both contractor and principal employer are liable to pay compensation to employee in case of mishap defined in the Act.

Probably, this is the only social welfare legislation which provides relief to lakhs of workers engaged in organized and unorganised sector irrespective of their salary, designation and status. The purpose gets defeated when mechanism/ system provided for giving relief to dependents gets stuck/ delayed in legal technicalities and dependent too leave this material world in hope to get the financial support. Such delay in claims of this nature should not happen. Authorities should develop a mechanism where such cases are put on fast track and poor people get relief at the earliest. No big loss can ever happen to family than when their bread earner dies and leave them torn off socially, emotionally and financially. It should be a matter to feel by inner conscience and not by stony heartless legal arguments to avoid and defeat the claim.

On our readers consistent demand, this issue cover story is on this law which is an attempt to unfold the legalities, technicalities and present the important aspects in a comprehensive manner and easy to understand style by experts and research team of BM. After going through the pages, I am confident, you will certainly feel that you know all about employee's compensation law of the country.

If you like it let us know. If not, well, let us know that too.

Happy Reading!

Anil Kaushik

Employee's Compensation Act - An overview

Archana Balasubramanian

Agma Law Associates, Mumbai



The Workmen's Compensation Act, 1923, was enacted as a social security measure to provide relief to employees for injury caused by industrial accidents. In 2009, the Workmen's Compensation Act was amended to "Employees' Compensation Act." The substitution of the term 'workman' with 'employee' was made in order to make the law gender neutral. Under this Act, an employer is liable to compensate, in the manner provided in the Act, an employee for the following subject to the conditions specified therein:

- a) any accident arising out of or in the course of employment causing personal injury;
- b) employee being afflicted by any occupational disease peculiar to an industry contained in Schedule III of the Act being industries having an environment with high risk of contamination.

Injury

The cornerstones for determining employer liability under the Act are:

- (a) death or injury must be caused to a workman; and
- (b) the said injury must have been caused by accident; and
- (c) the accident must arise out of and in the course of employment.

The table below provides the nature of injuries suffered by an employee that entitle the aggrieved employee to compensation for that suffered by such employee during the course of or arising out of his / her employment:

<p><u>Personal injury caused by accident</u></p> <ul style="list-style-type: none">- arising out of and- in the course of employment. <p>"Accident" means a mishap or an untoward event, which is not expected or designed, and without any sole contribution on the part of the workman for the cause of the death/ accident.¹ A series of tiny accidents, each cumulatively producing final injury also together constitute an accident.²</p> <p>The injury need not be caused by a mechanical process and could cover something as simple as insect bites.</p>	<p><u>Conditions for awarding compensation:</u></p> <ul style="list-style-type: none">- total or partial disablement of employee should be a period exceeding 3 (three) days;- the employee should not be under the influence of drugs;- there should be no wilful disobedience of a safety rule;- employee should not have removed a safety guard known to be for his protection. <p>Except the condition first appearing, the other conditions provide a defence to the employer where there has not been a death or permanent total disability.</p>
<p><u>Occupational Hazard</u></p> <ul style="list-style-type: none">- Where the employee contracts a disease that is peculiar to that industry as contained in Schedule III in Part A, Part B and Part C thereof.	<p><u>Conditions for awarding compensation:</u></p> <ul style="list-style-type: none">- the employee should have been in continuous employment for 6 months for occupation diseases outlined in Part B of Schedule III.- In respect of Part C (Schedule III) industries if it can be shown that despite the period being less than the continuous period mentioned therein, the employee contracted any of those occupational diseases arising out of or in the course of employment.

Course of Employment

The entire discussion in respect of whether or not compensation is payable in case of any injury i.e. accident and/or occupational disease is incumbent upon such injury have been suffered as a consequence of and in the course of employment. It should be noted here that the onus to prove that the accident took place during employment is on the employee.

In the first glance both the phrases 'arising out of' and 'in the course of' appear similar. But it should be understood here that while 'in the course of employment' refers to the time and place of the work, the phrase 'arising out of employment' specifically refers to the nature of the work being done. To illustrate, if an employee was performing a personal chore at his workplace when the accident happened, such an accident would not attract compensation under the Act. The reason being that such accident did not arise out of employment.

On the other hand, there isn't dearth of debates as to what activities constitute 'course of employment.' The stand taken by courts on this point is that the doctrine of 'notional extension' would apply while determining the liability of the employer.

The Supreme Court has aptly explained this doctrine in relation to the Employees' Compensation Act:

"As a rule, the employment of a 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 some 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."³

The doctrine of notional extension being a fiction of law cannot be rigidly construed. Its applicability is based on reason and logic. While it is important to establish a connection between the accident and occupation / employment of the employee, the courts have been happy to extend the applicability of the general circumstances that evidence the connection with the work place.

Regard has to be had to the facts and circumstances surrounding each case to determine the extent of application of the doctrine of notional extension. The courts have



applied this doctrine in the following cases where the accident occurred outside of the premises of the employer:

- i. B.E.S.T. bus driver when taking the bus to his workplace from home was injured on the way. The B.E.S.T. undertaking was held liable to compensate the driver.⁴
- ii. Injury suffered by Special Protection Group (SPG) personnel on a journey from the staff quarters to the workplace in the SPG vehicle was considered in the course of employment and compensation was awarded to the injured.⁵

Beneficiaries

The beneficiaries of the Act are a certain class of employees as defined specifically under the Act. These include, (a) railway servants who are not specifically into administrative work, (b) crew members of a ship or crew of an aircraft, (c) persons employed as drivers, mechanics, cleaners, etc. in relation to motor vehicles come under the purview of the Act.

The Act likewise extends its protection to those employees who are recruited for work abroad by a company. Other than these classes of employees, State Governments are empowered to, vide notifications, include such other classes of workmen / employees to be protected under this Act. The entire list of beneficiaries for all States can be found under State amendments to Schedule II of the Employees' Compensation Act.

Compensation

The liability of the employer under the Act is determined and calculated as per the formula provided in Section 4 of the Act. The rules that need to be followed while calculating the amount of compensation are set out in the Act. The Act has laid down the minimum compensation to be awarded in case of death of the employee or any injury resulting in permanent total disablement.

The table below provides the compensation prescribed under the law for injuries in various categories:

Death resulting from injury	50% of the monthly wages of the deceased multiplied by the relevant factor ⁶ or INR 1,20,000 whichever is more;
Permanent Total Disablement ⁷	60% of the monthly wages of the injured employee multiplied by the relevant factor or INR 1,40,000 whichever is more
Partial Disablement ⁸ for injury specified in Part II of Schedule I	Such percentage of the compensation as payable in case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury
Partial Disablement for injury not specified in Schedule I	Such percentage of the compensation as payable in case of permanent total disablement as is proportionate to the loss of earning capacity as assessed by a qualified medical practitioner permanently caused by the injury.
Other compensation	In addition to the compensation amount, the employers are also liable to reimburse the employees for any actual medical expenditure incurred by him for the treatment of injuries caused during the course of employment. Also in the event of death of an employee, the employer is liable to pay to the eldest member of the deceased employee funeral expenses not less than INR 5000.

Until the year 2009, the liability of the employer was capped at wage limit of INR 4000 for the purpose of calculating the liability. This cap was done away with in 2009 with effect from January 2010, making the liability of the employer open-ended.

In determining the amount of compensation, the Supreme Court has held that the compensation should be awarded with view to the loss of earning capacity of the employee and not his physical capacity. Such loss should be examined with reference to the nature of the job the workman was doing at the time of the accident.⁹

Manner of paying compensation

The administrative authority for the regulation of this law is the Commissioner appointed under this Act. Any compensation given to the employee, the notice thereof is mandatorily required to be given to the Commissioner. Any compensation given to the employee or its dependants of which the Commissioner has no notice will deemed to be not given.

All compensation paid under this Act may be deposited with the Commissioner. Once the deposit is made to the Commissioner, the employer parts away with his liability and the commissioner becomes responsible to distribute the proceeds of compensation among the dependants.

Any claim for compensation (where in lump sum or periodic payments) is required to be filed with the Commissioner appointed under the Act within two years from the date of the accident or within two years from the death of the employee, as the case maybe. The employer may only compensate for death or make lump sum compensation to women or persons with legal disability to the Commissioner. Payment made directly will not be considered compensation under the Act.

It is interesting to note here that courts have taken the view that the Act is a benevolent legislation to give benefit to the workman and therefore the same must be construed in favour of the intended beneficiary and no person including the commissioner should have the authority to

construe it to the detriment of the injured employee and/or his dependants.¹⁰

Any disputes regarding the payment of compensation will be heard by the Commissioner. The Commissioner is required to dispose such cases within three months from the date when the case was referred to him. Any appeal relating to the order passed by the Commissioner shall lie to the High Court.

The employer is required *inter alia* to comply with the following requirements under the Act:

- i. Maintain a notice-book
- ii. Notify the Commissioner in case of any fatal accidents
- iii. File a return specifying the injuries in respect of which the compensation has been made with other details of the compensation paid.

Mitigation of Losses

It is pertinent to note that any agreement or contract, which aims at reducing the liability to pay compensation under this Act or relinquishes such right to receive compensation, would be treated as void and will not be enforceable. The Act also expressly prohibits any kind of assignment or passing on of charge or liability to any person other than liable by law.

The principle of acquiescence or waiver has no application in such cases.

It is a common misunderstood notion that, the liability or risk to employers is mitigated in the event that the employer / employees are registered and covered under the Employee State Insurance Corporation (ESIC). However practically, ESIC affiliated hospitals may not be present in many industrial areas. A list of such exempted areas is available on the website of ESIC¹¹. In such non-implemented or exempted areas, the recourse of the employee is to seek compensation under the Act. In such events corporates in non-implemented areas under ESIC should obtain adequate insurance to cover liabilities arising from injury to employees.

Non-compliance

Any delay in the payment of the compensation under this Act or violation of any



other provisions of the Act will attract interest and further penalty liabilities. It is interesting to note here that the Act does not provide for any punishment resulting to imprisonment. Also prosecution under this Act can be instituted only by a previous sanction of the Commissioner.

Widened scope of Accidents

Courts have time and again held that the provisions of this Act - being benevolent in nature and the objective being to redress an enormous vacuum for the underprivileged - shall be strictly construed. Courts have held that the general approach of the authorities under the Act should be to ordinarily award compensation and not to adopt a technical approach inconsistent with the provision of law with the object of denying compensation. As can be seen from above, with the progress of time the conception of the circumstances under which compensation may be awarded to the workman has widened and become more and more liberal.

In sum

While the objectives are laudable the will to implement is not commensurate with the same.

There are several weaknesses in the legislation such as the following:

- The onus being on the workmen to discharge proof as to accident having been cause in the course of employment;
- The subjective calculation of compensation as well as the vague and unclear language as to what constitutes an accident under the Act, which give, rise to a number of disputes.
- No rigorous penalties or prosecution for non-compliance.

In the circumstances, it is questionable as to be whether the employers are deterred from deviating from safety and security provisions, which was the original intention of the Act. Also, while the Act has been attempted to be made 'gender neutral', the Act does not offer specific protections to women employees arising out of rape, sexual assault, loss of foetus or deformity in foetus etc. that may be injuries that arise out of and in the course of employment. The law on employee compensation leaves a lot to be desired despite the lifting of the cap on employer liability in 2009. **BM**

1. *Union of India v. S. Mariyamma and others* : 2004 SCC AP 420
2. *Chillu Kahar v. Burn & Co. Ltd.* : AIR 1953 Cal 516
3. *General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes* : AIR 1964 SC 193
4. *General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes* : AIR 1964 SC 193
5. *Rajanna v. Union of India* : (1995) 2 SCC 601
6. The 'relevant factor' is specified in Schedule IV refers to the factor applied basis the age of the employee at the time of his death.
7. Total disablement refers to a situation where the injury incapacitates one from all the work that he was capable of doing at the time of the accident, it is said to result in total disablement.
8. Partial disablement on the other hand is said to of temporary nature when such injury reduces the earning capacity of the employee in the employment in which he was engaged at the time of the injury. Such an injury would be of permanent nature when the earning capacity of the employee is reduced in every employment, which the employee was capable of undertaking at the time of injury.
9. *In Pratap Narain Singh Deo v. Srinivas Sabata* : (1976) 1 SCC 289
10. *Balavadra Patra v. Chief Engineer* : 1987 Lab IC 347 (Ori)
11. <http://www.esic.nic.in/index.php>