



The Workmen's Compensation Act

A Guide for Activists

Alternative Law Forum

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Preface

There are large groups of unorganized workers in small industry, agriculture, construction, domestic service, garment industry, many forms of self-employment, etc. Their condition resembles that of workers in large industry in the early years of union formation. Few laws apply to them; even the ones that are passed are not implemented. Many of these workers have no education, few skills and little ability to organise themselves.

The manual originated from a feeling shared by many, that a labour rights education manual is the need of the hour. It is meant for activists working with unorganised labour. An awareness of rights does not mean that they will be implemented easily, but it is certainly important for further action and future strategies - legal or otherwise to gain those entitlements.

The manual attempts to untangle the law from the web of legalese, and present workers rights under this enactment in a simple manner along with Bangalore specific procedures for enforcement, information about ground realities and issues.

The idea for this booklet on workmen's compensation was suggested by C. Balakrishna, Hon. President of the Guttige Powrakarmikara Sangha who pointed out that this enactment was one of the important laws for unorganized sector labour. Many people have been part of the process. Valuable guidance was received from Muralidhara, State Secretary, AITUC and labour lawyer, as well as inputs from labour officer, N.B. Ramachandra, currently a claims authority for workmen's compensation at Karmikara Bhavan. The booklet owes its vitality, if any, to ALF's experience in litigating a workmen's compensation case for a child labourer. In this connection, Miriam Chinnappa, Chitra Balakrishnan and Arvind Narrain from ALF provided useful suggestions on the practical aspects to be kept in mind in any adjudication under this law. These find a place in the manual as well as other useful suggestions on form and content from Clifton D' Rozario and Aarti Mundkur, ALF. Initial work on this booklet was done by Ganesh Rao, a student of NALSAR

The deeper one digs the more one realises how little one knows. This manual will always be a work in progress. All suggestions for improvement are welcome, and may be sent via email to: **anuja@altlawforum.org**.

Anuja Mirchandaney
Alternative Law Forum



*Sections meant for intended for
Workers and Activists*



*Intended for Activists. And possibly for
Workers. Up to the trainer's discretion.*



Refers specifically to context in Karnataka



Frequently asked questions

Additionally, all references to:

- Section or s.* means sections under the Workmen's Compensation Act, 1948
- Rules* means the Karnataka Workmen's Compensation Rules, 1966
- Act* means the Workmen's Compensation Act, 1948

CHAPTER 1.

The Workmen's Compensation Act, 1923

Introduction and Historical context of the Act

The Workmen's Compensation Act is the first piece of legislation towards social security. It deals with compensation for workers who are injured in the course of duty. The scheme of the Workmen's Compensation Act is not to compensate the worker in lieu of wages. The general principle is that a worker who suffers an injury in the course of his employment, which results in a disablement, should be entitled to compensation and in the case of a fatal injury his dependants should be compensated. Under the Workmen's Compensation Act it is the employer who is responsible to pay compensation (as opposed to the employees State insurance. Establishments to which the Employees' State Insurance Act applies to the liability to pay compensation is on the ESI corporation).

The meaning of **compensation** in this Act is limited to compensation granted under the Act for employment injuries sustained during the course of work. It is also limited to specifically monetary compensation *other* than a salary, travel allowance, and any other form of remuneration that could be paid under normal circumstances of employment.

To get an overall understanding of the Act it is useful to look at the "Statement of Objects and Reasons" published with the Act when it was first passed in 1923. To quote:

" ...the growing complexity of industry in this country with the increasing use of the machinery and consequent danger to workmen, along with the comparative poverty to workmen themselves renders it advisable that they should be protected, as far as possible from hardship arising out of accidents.

An additional advantage of a legislation of this type is that by increasing the importance for employers of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects of such accidents as does occur. The benefits so conferred added to the increased sense of security, which he will enjoy, should render

industrial life more attractive and thus increase the available supply of labour. At the same time a corresponding increase in the efficiency of the average workmen may be expected.”

While these were the official objects and reason, Indian reality today, is that the protection offered by the Act does not act as an incentive for workers, most of whom are unaware of it and who simply join work to earn a livelihood.

At the time the framing of the bill two criteria were followed in determining whom the Act would apply to:

1. those industries which were more or less organized
2. Workmen whose occupations were hazardous.

Nowadays the government (State of Central) may extend the application of this Act to other establishments of an industry that may not be organised.



To which establishments does the Act apply?

All establishments hiring 20 workers and above must compulsorily register themselves under the Employees' State Insurance Act (ESI Act). It is only those establishments, which employ a lesser number of workers, and therefore do not come within the purview of the ESI Act that the Workmen's Compensation Act applies to. Also if employers fail to register themselves under the ESI Act, then they will be responsible to pay compensation under the Workmen's Compensation Act.

However, the Workmen's compensation Act will only apply to those persons considered "workers" and those Employers considered 'Employers', as defined under the Act.

Who is eligible to receive the benefits provided by this law? (s. 2 (1)(n) read with Schedule II)

The Act will apply only to persons recognized as a "workmen" under the Act. The following criteria have to be satisfied:

- With the amendment of the Workmen's Compensation Act in 2000 now it is not necessary that the worker in question is engaged in the employer's trade or business. Further with the



Babu works as a gardener at the employer's house. He is not considered a 'workman' under this law, because his job is not in the list of scheduled employments

Amendment of 2000 now even casual workers¹ are covered by this law. The only requirement is:

- The worker should be **employed in an activity, which has to be either listed in schedule II² of the Act OR any duty having connection with the specified activity mentioned in the schedule.** In addition, schedule III³ to the Act contains a list of diseases and persons in occupations where infection is possible can claim compensation under this Act. They are 'workmen' for the purposes of this Act.
- In addition to persons employed in the capacity mentioned in Schedule II, a driver, a mechanic, cleaner, or person employed in any other capacity in connection with a motor vehicle are also considered 'workers' under this Act.

Are Contract Labour eligible to receive benefits? (Section 12)

In case part of the work of an establishment is contracted out to a contractor and a worker employed by the contractor for this purpose, is injured then, the principle employer and not the contractor (who is the worker's immediate employer), is responsible to pay compensation as though the worker was directly employed by him.

However, this principal employer holds the right to be indemnified by the person who would normally pay for the compensation of an injured/deceased worker, i.e. the contractor. However, nothing shall prevent the worker from claiming his compensation from the principal employer.

Note: Piece rated workers are 'workmen' for the purposes of the Act.

The Employer: is defined in this Act, as a body of person/s, who the worker has entered into a contract of apprenticeship or service with; the term 'employer' also extends to his agent, legal representative of a dead employer, or a temporary employer on to whom the worker has been lent to hire basis.

¹ Casual employment is employment, which is not regular or continuous. It is employment for short periods or for a limited or temporary purpose. Webster's Dictionary defines it as work 'Happening to come without being foreseen; coming without regularity.

² Schedule II of the Act is attached as Annexure 4

³ Schedule III of the Act is attached as Annexure 5

CHAPTER 2. Compensation & Disablement



When is an employer liable to pay compensation?

As per Section 3 of the Act, the employer is liable to pay compensation if the worker is injured by accident that:

- arises out of (i.e. while engaged in work), and;
- in the course of his employment (i.e. during work hours),and;
- such an injury results in disablement of the worker.

If three conditions are met, the employer of an establishment covered by the Act, is bound to pay compensation. While the second condition, i.e. during work hours is easy to prove, the first condition (i.e., the accident occurred while engaged in work) has been difficult to establish in certain cases.

Example: A bus was on its last trip for the day. Some assailants entered the bus, sprayed chilli powder on the passengers and shot the conductor dead. It occurred during work hours, but could such an act be termed as an injury 'arising out of the course of work'? In this particular case, it was argued – successfully - that such an incident is a contingency that can arise during the course of duty. He was exposed to that particular risk by reason of his employment.⁴

Definition of 'Disablement'

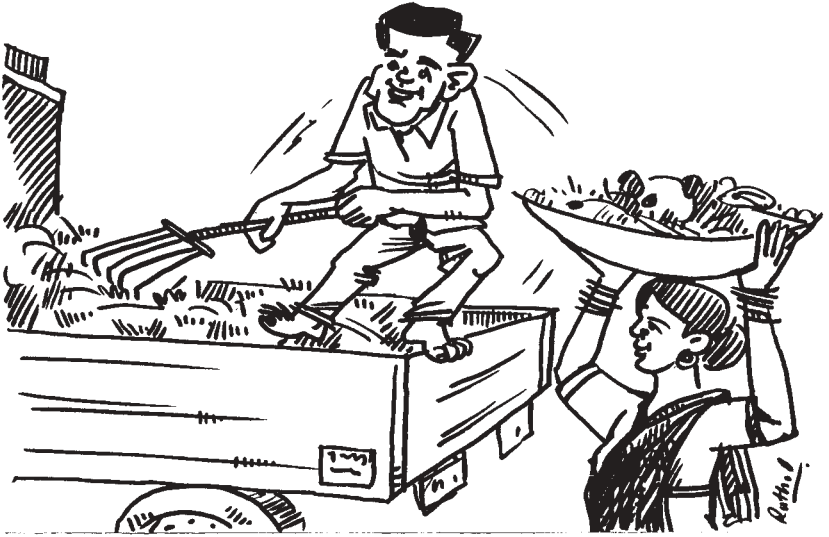
The definition of '**disablement**' is very important in this Act, as it determines the extent of compensation that can be claimed by the worker injured in the course of his employment. Under the Act, there are four types of eventualities, which can be compensated, namely:

1. **Death**
2. **Permanent Total Disablement:** disablement that incapacitates a worker from all kinds of work.
3. **Permanent partial disablement:** disablement that reduces the capacity to work in any employment similar to that the worker was performing at the time of the accident.

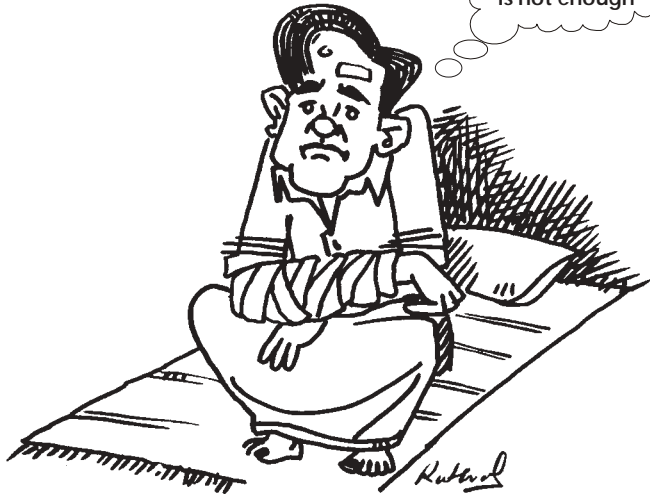
⁴ For further discussion on this see Annexure 8



Velu, who worked in a printing business, got his fingers cut off by accident. This is “Partial Disablement” as it reduces his capacity to work in any such employment of similar nature.



Better get well soon, 50% wages is not enough



Ramamurthy, a powrakarmika (Road sweeper employed on contract basis for Bangalore City Corporation) slipped and fell from a garbage truck and fractured his hand. He could not work for one month. This is temporary disablement.



As Shiraz can no longer work as a coolie or do any work of a similar nature, he can be considered 100% disabled under this law.

4. **Temporary disablement:** This may be total or partial disablement, which is of temporary nature, which reduces the earning capacity of the worker in any similar employment for the period of disablement.

Note: Total disability (i.e. 100% disability) has a different meaning under the Workmen's Compensation Act as compared to its meaning in normal language. According to the Act, disability is determined with reference to the work that the worker was doing immediately before accident took place and if the resulting injury leaves him incapable of performing any work of a similar nature then his disability is considered as 100%.

Example: An accident left a worker- a coolie with a defect in his leg and as a result unfit to perform the work of a coolie.⁵ Legally he can be considered 100% disabled. In this case the court stated that the incapacity to earn is to be determined with reference to the work, the worker was doing at the time of accident.

Q&A

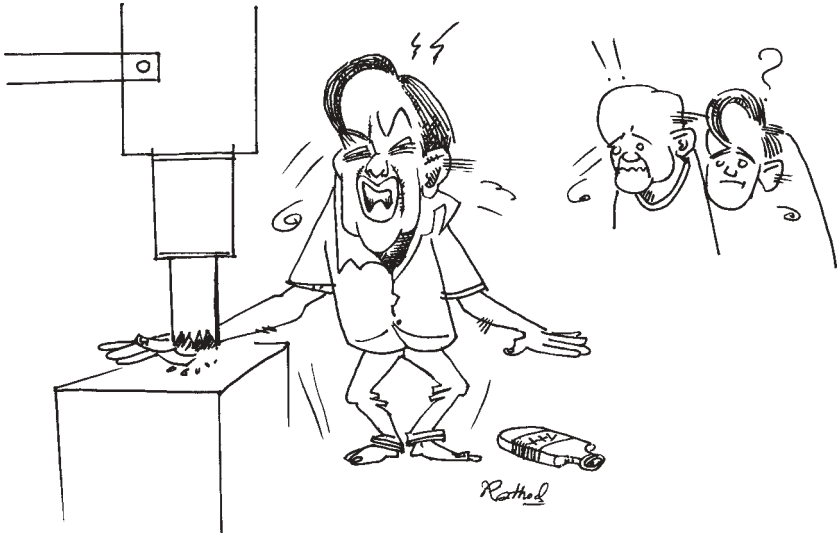
Q: If the worker was already suffering from some disease and the accident suffered by him together with the disease resulted in the injury/ death would the employer be liable to pay compensation?

A: If the injury suffered by the worker produces a disease, which aggravates a pre-existing disease thereby causing a death or disability, it is still compensable (i.e. compensation can be paid.) The employer cannot defend himself by saying that the worker already had an existing disease,

Example: A worker has a pre existing heart condition, which due to the strain or over exertion of work causes his death, the employer will is still liable to pay compensation. All that is required is that the accident suffered during the course of and arising out of the work immediately led to his death injury.

In legal terminology: the injury suffered by the workmen at work should be the 'proximate cause' of his death, or that there should be a 'close causal connection' between the accident and the injury.

⁵ This has been held by the Bombay High Court in Sadashiv Krishna Adke v. M/s Time Trader 1992 1 LLJ 877 (Bom)



Shivanna got injured at work because he was under the influence of alcohol. The employer is not responsible to pay compensation for the resulting disablement.



For accidents resulting in injury while the worker was not working, during work hours, no compensation needs to be paid.

Even if the cumulative result of a slight injury is death then such injury is compensable.⁶

Q&A

Q: If after the injury, the workman does not lose his old post and receives the same salary, does the employer still have to pay compensation?

A: Yes. This was held in a Madras High Court judgement (1989 II LLJ 38) where the employee suffered from injury on the right side of the neck, shoulder and head and there was 100% hearing loss in the right ear and partial loss of hearing in the left ear. The court held the fact that he was holding the old post and getting the old wage would not dis-entitle him from compensation under the Act. This is because, the injury suffered would affect him getting another job of a similar nature, with a different employer.

W&A

Compensation is not payable by the employer in the following circumstances:

- Where the disablement does not last for more than three days.
- Where the disablement has arisen out of the following:
 - (a) Drugs or drink;
 - (b) Disobedience;
 - (c) Disregard for the safety measures prescribed.

The grey area in this section is that there is no definition whatsoever that defines what is "drink", "drugs", "disobedience" or "disregard to safety measures".⁷ The employers may take advantage of this section and evade paying the compensation. However, the worker's being under the influence of drugs or alcohol is not a defense in the case of death or total disablement resulting from injury. Secondly, in the case of disobedience, such disobedience should be 'wilful'.

⁶ Held by the Gujarat High Court in *Devi Behn Dudhabhai v. Manager Liberty Talkies and another*, 1994-II-LLJ-1207(Guj.)

⁷ In addition to these defences, employers have often taken the recourse that the worker was negligent. This may have nothing to do with provision of safety measures; for e.g. the worker may have fallen asleep during work. In such cases no compensation may be awarded or a lesser amount of compensation may be awarded.



The back-related problems suffered by powrakarmikas due to constant bending can be considered an occupational disease

Asthma resulting from repeated exposure to congress grass can also be considered an occupational disease



Is the employer liable to pay compensation in case a worker gets inflicted by an 'Occupational Disease'? (Section 3(2))

An "occupational disease" while in service, is a disease that inflicts workers in that particular occupation in which s/he was employed in and resulting from exposure to a hazardous working atmosphere, particular to that employment. If a worker contracts such a disease then the employer is liable to pay compensation, provided that the worker was employed by him for a continuous period of six months. An occupational disease that is contracted in the course of employment will fall within the meaning of an 'accident' for the purposes of this Act. In the case of such a disease being contracted, the employer will be liable to pay compensation to the affected worker. The occupational diseases for which compensation is payable are specified in a list attached to the Act- specifically, Part A of Schedule III (see annexure 5).

Some examples of occupational Diseases:

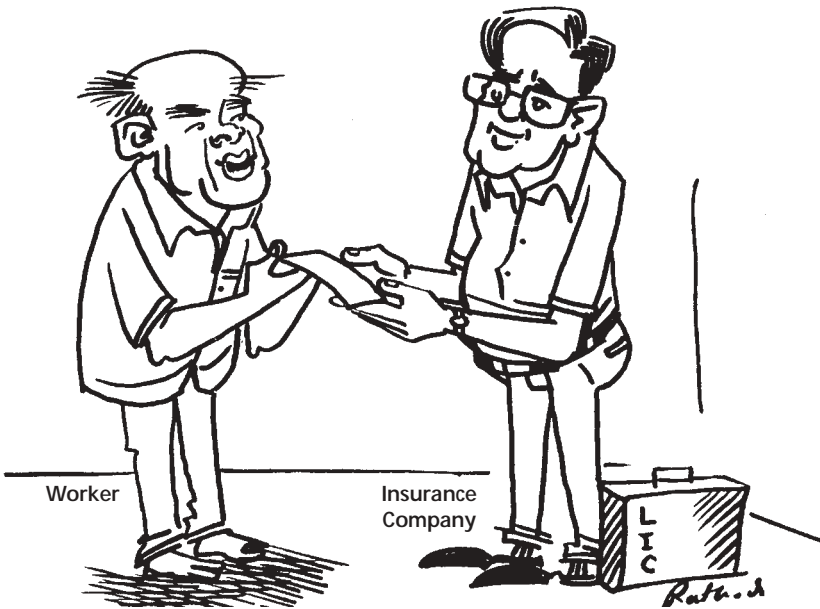
- (i) Skin diseases caused by physical, chemical or biological agents.
- (ii) Bronchopulmonary disease caused by flax, hemp and sisal dust (Byssinosis).
- (iii) Occupational asthma caused by recognized sensitizing agents inherent to the work process.

Comment: A shortcoming of this Act is that the List of occupational diseases does not include mental disorders that can arise from particular kinds of work, for e.g. from monotonous jobs. However, according to a labour officer presently functioning as a Commissioner for Workmen's compensation, if it can be proved through medical evidence that a mental disorder arose out of the work, compensation can be paid.

Point for discussion: What are the professional hazards/ occupational diseases faced by the BMP contract Powrakarmikas?

What if the Employer becomes bankrupt? - Liability In Case Of Insolvency (Section 14)

In the case where the employer of the worker has entered into an agreement with insurers, to pay compensation and subsequently the employer becomes bankrupt, then in the event of any accident happening, the employer's liabilities will be transferred to the insurers, and they would be treated as the employers of the aggrieved worker for the purpose of paying compensation. This



In cases where employers have insured their liabilities under the workmen's compensation act, the insurers have to pay compensation to workers getting injured.

happens irrespective of whether the employer is bankrupt or not. If he has taken insurance to cover claims arising out of workers' accidents, the insurance company will be responsible to pay compensation. It is interesting that in such cases were an employer has taken insurance, the employer will back the worker's claim against the insurance company! Naturally, as they are not responsible to pay the worker compensation which responsibility has shifted to the Insurance Company. The practice of taking insurance is common only amongst the bigger contractors/ companies.

However, they will be no more liable to the worker than the original employer. If the liability of the insurers is to be less than that of the original employers, then the worker can claim the balance amount from the insolvency proceedings.

In the case of the compensation being half monthly payments, the insurers may convert that to an appropriate lump sum and pay that compensation to the worker.

CHAPTER 3. Deciding Compensation

A

How is the amount of compensation decided?

The compensation to be paid by the employer for injuries caused depend on extent of the disablement suffered by the worker; more severe disablements naturally receive higher compensation.

This has been categorised as follows:

Compensation payable in case of:

- 1) Death;
- 2) Disablement
 - (a) Permanent total disablement;
 - (b) Permanent partial Disablement
 - (c) Temporary disablement-
 - (i) Temporary total disablement;
 - (ii) Temporary partial disablement.

In addition, the guiding principle is, the higher the age of the injured worker, the lower the compensation.

What is the basis of calculation of the amount of compensation?

Wages are the basis for amount of compensation paid. Two workers earning different salaries therefore will get different amounts of compensation even though the injury they suffered might be identical. Compensation under this Act is calculated on the basis of the monthly wage received by the worker. According to this Act, it is the amount of wages which would be payable for a month's service - i.e. irrespective of whether the worker is paid on a daily, weekly or piece rate basis. For method of calculating 'monthly wages' see Annexure 1.

*Note: **Wages:** is defined as the privilege or benefit which is measurable in terms of money other than any travel allowance, or provident fund or any other special benefit claimable by the worker, during the course of his employment.*

■ Compensation to be calculated on the basis of the minimum wage, if notified

Where a worker received a monthly wage less than what is prescribed under the Minimum Wages Act, 1948, s/he would be deemed to be drawing the monthly wages as prescribed by the Act for the purposes of calculating compensation. .

■ Determining wages in case of a worker inflicted with an occupational disease

According to the Karnataka High Court,⁸ compensation in the case of contracting of occupational disease is to be calculated on the basis of wages drawn at the time of termination of employment and not on the date of contracting the occupational disease.



(a) In case a worker dies who is entitled to compensation and how much compensation should be paid?

Where death results from the injury the compensation is payable to the workers dependants.

Who is a Dependant?

A 'dependant' is defined under the Act in **section 2(d)**. This definition is of vital value, as it determines who will be eligible to receive the compensation, in case the worker dies in course of his employment.

- (i) (a) A widow,
- (b) A minor⁹, legitimate/ adopted son,
- (c) An unmarried legitimate/ adopted daughter and;
- (d) A widowed mother.

All the above people come under one category as being dependants of the deceased worker.

- (ii) If wholly dependent on the earnings of the worker, then in addition: (a) a son or (b) a daughter who has reached the age of 18 but is infirm or sick.

⁸ This was held by the Karnataka High Court in the case of Bharat Gold Mines Ltd., v. Hanuman (1992) 1 LLN 1023

⁹ A minor in this Act is defined, as is normally the case, as a person who has not attained the age of 18 years.

- (iii) If wholly or partly dependant on the worker, then the following can also be termed as dependants of the deceased worker:
- (a) a widower;
 - (b) a parent other than a widowed mother;
 - (c) a minor illegitimate son;
 - (d) an unmarried or widowed, adopted, legitimate or illegitimate daughter;
 - (e) a minor brother;
 - (f) an unmarried sister;
 - (g) a widowed sister, if minor;
 - (h) a widowed daughter-in-law;
 - (i) a minor child of a deceased son;
 - (j) an orphaned grandchild;
 - (k) a paternal grandparent if the parents of the deceased worker are also dead.

Comment: The definition of the term “Dependant” shows that it is not intended to benefit all the legal heirs of a deceased worker but only those relations who to some extent depend upon the worker's earnings for their daily necessities. However, all persons mentioned in (i) above are beneficiaries who only have to prove their relationship with the deceased worker and do not have to prove that they were dependent on earnings of the worker.

How much should be paid?

The compensation due to the dependants is an amount equal to fifty percent of the monthly salary of the deceased worker multiplied by the relevant factor or an amount of eighty thousand rupees, whichever is more. *The minimum compensation in the case of death in no circumstances can be less than Rs. 80,000/-.*

The ‘relevant factor’ is mentioned in the schedule IV of the Act (see annexure for relevant factors). The factor depends on the age of the person deceased, i.e., the number of years the person could have worked for, if he did not die on the job.

Example: Muniyappa, a worker aged 35 meets with an accident and dies while at work (i.e. in the course of employment). At the time he drew a monthly wage of Rs.2,500/-. As per Schedule IV of

the Act the relevant factor applicable to his case would be Rs. 197.06. As such, the amount of compensation payable to his dependants will be arrived at in the following way:

- (i) 50% of Rs. 2,500 = 1,250
- (ii) 1,250 x relevant factor (i.e.197.06) =
Rs.2,46,325.00/- (total compensation payable)

Where the monthly wages of a worker is more than Rs. 4000/- , it is taken to be only Rs. 4000/- for calculating either compensation in case of death, or permanent disablement.



(b) in case of injury how is compensation to be calculated?

i) How much of Compensation in case of injury resulting in total permanent disablement?

Where there is total permanent disablement resulting from the injury suffered, the worker is entitled to be paid sixty percent of his monthly salary, multiplied by the relevant factor, or an amount of ninety thousand rupees, whichever is more.

*The minimum compensation in the case of total permanent disablement, in no circumstances can be less than **Rs. 90,000/-**.*

Example: Shakila Bano, a worker aged 35 meets with an accident and suffers permanent total disablement while at work (i.e. in the course of employment) At the time she drew a monthly wage of Rs.2,500/- The amount of compensation payable will be arrived at as follows:

- (i) 60% of Rs. 2,500 = 1,500
- (ii) 1,500 x relevant factor (i.e. 197.06) =
2,95,590.00/- (total compensation payable)



ii.) How much Compensation in case of injury resulting in permanent partial disablement?

In the case of partial disablement of the worker, the amount he is entitled to is the percentage of that for total permanent disablement, the percentage being given in the schedule of the Act. Schedule I¹⁰, part II, to the Act contains a list of injuries said to result in permanent partial disablement and the corresponding loss in earning capacity.

¹⁰ Schedule I of the Act is attached as Annexure 3

Examples:

<i>Description of injury:</i>	<i>% loss of earning capacity</i>
Amputation through Shoulder joint	90
Loss of all toes of one foot through a metatarso-phalangeal joint	20
Loss of one eye, without complications, the other being normal	40

The compensation is calculated on the lines given in the example above for permanent total disablement, substituting the percentage of disability suffered and the appropriate 'relevant factor' obtained from the schedule IV¹¹, as per the age of the concerned worker.

iii.) Calculation of compensation for 'non scheduled injury' resulting in permanent partial disablement.

A

The problem arises when the partial disablement resulting from the injury is not listed in the schedule. Then a reasonable percentage is to be given, as decided by the commissioner.

Example: Girija, a child labourer employed in a silk twisting and reeling unit in Magadi suffered third degree burns when a vessel of boiling water used for boiling silkworm cocoons, overturned on her during the course of work. The injury sustained is not mentioned in the schedule. How is the loss of earning capacity ascertained?

In such cases of 'non scheduled injuries' the procedure followed is to obtain a certificate from a medical practitioner who will certify the percentage of disability suffered. The certificate will form the basis for determining the loss of earning capacity, which is the labour commissioner's duty. Hence, the percentage loss of earning capacity may not be equal to the percentage of disability suffered. In some cases it could be more, which the commissioner is to decide. Useful case laws in this regard are:

1. The Karnataka High Court decision in Oriental Insurance Ltd. v. Mohammed Hanif 1995(6) Kar. L. J.696
2. Pratap Narain Singh v. Shrinivas and ors 1976 -I - LLJ- 235
3. Kashi Nath Prasad v. Tata Engg. and Locomotive Co., (1998)2TAC 452(All)

¹¹ Schedule IV of the Act is attached as Annexure 6

Therefore it is very important to make sure that the certificate issued by the doctor contains all the relevant details. These include:

- The percentage of disability suffered as a result of the injury
- Whether the disability suffered is permanent in nature

In the case of an unscheduled injury occurring, once the percentage of permanent disability is ascertained by the doctor, the amount of compensation due to the injured worker can be got using the calculation mentioned above. The 60 % disability mentioned in that example can be substituted for the percentage of disability ascertained by the doctor for the unscheduled injury, and the relevant factor obtained from the schedule IV, as per the age of the concerned worker (see annexure 6 for Schedule IV).

Example: Girija, the child labour employed in the silk reeling unit mentioned above, was certified by the doctor in the government hospital to be inflicted with 28% disability from the third degree burns she suffered from her accident. Her salary was Rs. 50/- per day. In accordance with the Act, for purposes of calculating compensation her salary will be as per the Minimum wage notified for that employment, i.e., Rs. 65/- per day, which works out to Rs. 1950/- per month. Being below the age of 16 yrs, only 60% of the wage will be applicable to her, i.e. Rs. 1170/- (as per the minimum wage notification for sericulture industry). Compensation is calculated as follow:

- (i) Percentage of disability = 28%
- (ii) Salary as per minimum wages Act = Rs. 1950
- (iii) 60% payable to child labour = Rs. 1170/-
- (iv) Relevant factor for worker of 14 years (i.e. Girija's age) = 228.54
- (v) Therefore Compensation is: $28/100 \times 1170 \times 228.54$ (relevant factor) = Rs. 74,869.70

The accident occurred in 29th September 1998, whereas compensation was awarded only in December 2003. Therefore interest @ 12% per annum which was payable from the date of the accident, was calculated as follows:

- (i) $12/100 \times 74,869.70 = \text{Rs. } 8984.36$ (interest payable for one year)

- (ii) Rs. 8984.36 x 5(years) = Rs. 44,921/-
(interest from Sept 1998 to Sept 2003)
+ Rs. 2246.09 (interest from Oct. to Dec. 2003)

Therefore total amount due (principal + interest) = Rs. 12,2036.70



iv.) How much Compensation in case of injury resulting in temporary disablement? (Section 4(2) to 4(4))

In case of temporary disablement, payments equal to 25% of the workers wages shall be made at half monthly intervals. Clause (d) of sub section 4(1) talks about compensation for temporary disablement. In case the disablement lasts for more than 28 days then the employer should make the payment on the 16th day from the day of the disablement.

If the period of disablement lasts for less than 28 days then the payment shall be made after the expiry of 3 days. This wait for 3 days is to ascertain how long the temporary disablement will last; whether it is likely to get over before 28 days or take longer.

In case the employer makes any payment to the worker before the payment of this half monthly or lump sum amount it shall be deducted from this. (section 4 (2) (a))



This provision envisages a situation where an application is made when the worker is still undergoing treatment and recovering. While this is possible, in Bangalore workers' applications for temporary disablement compensation are normally made only after they recover from the injury and find themselves out of a job. Then they make an application to recover the compensation. In such cases, the Commissioner, grants a lump sum adding up half-monthly payments for the period starting from the day of the accident up till the date shown on the last medical record (i.e. doctor's prescription, case sheet, outpatient coupon, etc) that the worker is able to produce. In addition, the Commissioner also grants 12% interest. *Therefore, in the event of suffering an injury-related disablement, workers should maintain these medical records.* Because it is on the basis of this proof, that they get compensation.

Review of payments in case of temporary disablement (section 6)

In the case of temporary disablement where half-monthly wages is to be paid, there is provision for review of such amount, by the commissioner. Either party, supported by an attested certificate of a medical examiner can apply for the review to the commissioner. The review might lead to the increase, decrease or the end of the half-monthly wages, depending on the condition of the worker. In case the temporary disablement leads to a permanent disablement, then the review has the power to call for the lump sum compensation to be paid to the worker. The lump sum the worker is entitled to is less any amount that s/he has already received in half monthly payments.

In case of temporary disablement, any worker, receiving the half monthly payment, shall be required to submit himself from time to time for a medical examination. According to Rule 17 of the Karnataka Workmen's Compensation Rules, 1966, the worker needs only to submit herself/himself for medical examination only twice in the month following the accident and only once in subsequent months, if the place is away from the worker's place of residence.

CHAPTER 4.

Procedure to be followed when an accident occurs, for receiving compensation



1. Notice of accident to the employer

In the case of an accident or an accident leading to death, a notice must be sent to the employer or any other person who is employed to supervise work in the same establishment as soon as is practicable after the occurrence of the accident.

The notice from the aggrieved party can be served to the employers either by sending the notice by registered post to the residence or the office of the employer, or by entering such notice into the notice book, maintained at the premises of the office.

The state government may require that a certain class of establishments must maintain a "notice book" which must be accessible to all the employees at all times.

The notice must contain:

- (a) The name and address of the person who died or was injured, and;
- (b) In normal language must state the cause of the injury, and;
- (c) The date on which it occurred.



Q: would establishments (not covered by the ESI Act) manufacturing garments come under this category?

A: Yes, they would.

If there is any law in force requiring the employer to give notice regarding the death or serious bodily injury of an employee, the employer shall do so, by giving the notice to the labour commissioner¹² within seven days of such event, describing the circumstances of the injury or death. This law is in force in Karnataka. All references to Commissioner in this booklet refers to the Labour Officer who handles Workmens' Compensation cases.

¹² Under this Act, the commissioner is a public servant as per the Indian Penal Code, and is appointed by the state government by notification in the official gazette. In practice, Labour officers are appointed under the Industrial Disputes



Commissioner's powers in case of accident resulting in death (S. 10-A)

Anyone can report to the Labour Commissioner in case of a worker being killed in an accident.

In case, the commissioner is aware of a fatal accident, he has the power to send a notice to the employer (i.e. without receiving any application), requiring him to submit a statement within a month's time.

Within thirty days of such notice being served, the employer should reply as to the circumstances of such death, and whether, in his opinion, he is to deposit compensation to the commissioner.

If the employer feels that he is responsible to do so, then he must deposit the compensation with the commissioner within thirty days after the notice is served. If he feels in the contrary, he must inform the commissioner of the grounds under which he claims such exemption.

On claiming such exemption, the commissioner may inform the dependants of the deceased worker, leaving it open to them, whether they would want to claim compensation or not.

2. Penalties (on Employer for not discharging duties under the Act)

If an employer fails to

- send the commissioner a statement; or report as required in case of fatal accidents fails to do so, or,
- maintain a notice book

S/he shall be liable to pay a fine, which may extend to five thousand rupees. Such a proceeding cannot be made without the previous permission of the commissioner, and the court shall not take cognizance of any offence, if such matter is not brought before the court at least within six months from the time that the commissioner becomes aware of such offence.

3. Commissioner has the power to require further deposit in cases of fatal accident (section 22-A)

- In the case of a fatal accident, where the commissioner feels that the amount deposited as compensation is not adequate, he may serve a notice to the employer stating his reasons, and asking the employer to show cause as to why the amount deposited is adequate.
- If the employer fails to show cause, the commissioner may make the award and direct the employer to pay the deficiency.
- The award in such a case is normally on the basis of the Act (i.e. 50% of wages multiplied by the relevant factor. See example in section on "How much should be paid?").



4. Medical Examination (section 11)

In cases of injury not amounting to death, on serving notice of accident to the employer, the employer may require the employee to undergo a medical examination free of charge. The injured worker should submit himself to such medical examination.

Act to do the job of conciliation and inspection. In Karnataka the State government by issuing a notification in the official gazette appoints some labour officers as 'designated commissioners for Workmen's Compensation.' And hence they perform the additional work of a claims authority to hear and decide claims under the Workmen's Compensation Act. The commissioner is appointed for the compensation of workers for a specific designated area; Bangalore North is a designated area, similarly Bangalore South etc.

- The time of the examination shall not be between 7 p.m. and 6 a.m. unless the workman specifically agrees.
- If the workmen's condition is so bad that it is either impossible or in advisable for him to leave his residence then the employer cannot force him to get examined at any other place other than his residence.
- A women worker has a right to ask for the presence of another women if a male doctor is examining her. (Rule 19)

If the worker does not agree to submit himself for a medical examination, by a qualified medical practitioner, then he shall lose his right to claim compensation from his employer, and this right shall be suspended till he refuses to appear for the examination. In case the worker does not submit himself for the examination and dies before doing so, the commissioner may make an order to pay compensation to the dependants of the worker.

Note: If the employer does not take the worker for a medical examination, or if the worker is not satisfied with the employer's doctor's medical certificate, he may approach any other registered medical practitioner for a certificate. In case of different percentages of disability being certified, it is up to the Labour Officer in the claims proceeding to decide what to rely on, when judging the loss in earning capacity of the worker.



5. Choice to enter into an agreement (SECTION 28)

The employer and employee, have the choice of entering into an agreement. The provision relating to agreements under the Workmen's Compensation Act, relate to cases where the parties have arrived at an agreement prior to any hearing before the court. It does not refer to any agreement reached by parties between whom there is an existing dispute before the court regarding the quantum of compensation. These agreements may be for:

- the settlement of any lump sum payable as compensation, (i.e., payment of a lump sum (one-time) payment to convert the employer's liability for half monthly payments, or otherwise) or;

¹³ Legal disability is a disability, which can be enforced by law. A person under a legal disability is one who is incapable of representing themselves, e.g. minor or a mentally challenged person.

- any compensation payable to a woman or a person under any legal disability.¹³

In such a case a memorandum is to be sent to the commissioner, who, after examining the genuineness of such a memorandum, must register it in the manner prescribed.

*If in the agreement the employer states that the amount is an ex gratia payment and the language of the receipt does not show that the money given was in settlement of compensation, then the employers liability to pay compensation still exists.*¹⁴

Registration of Agreements and consequences of not doing so(Section 29)

The Law requires that the employer registers such agreements with the Commissioner. Failing which, the employer will be responsible to pay the full amount and not the reduced amount if any under the settlement/ agreement. If the employer fails to register such a memorandum, the commissioner may order the employer to pay the entire amount of compensation that the provisions of the Act provide for.

In the agreement entered into the employer cannot pay less than the principle sum due as per the provisions of the Act. If s/he does the agreement will not be registered. A compromise can only be made in terms of the interest and penalty due from the employer.

In practice, in Karnataka several times the principle amount itself is not paid and as such agreements are not submitted for registration to the commissioner, they do not also come up for scrutiny. The practice is common in the construction industry. In cases where the agreement is placed before the Commissioner in Bangalore, no compromise is allowed in the principal amount of compensation payable in *fatal* cases. However in *non-fatal* cases, compromise is often permitted to the extent of Rs. 2-3,000/-. The Commissioners may themselves 'appraise' the worker of the consequences of not compromising. I.e. the ensuing litigation, and the time and money that s/he will have to incur, which often influences the worker to accept the lesser amount.

In cases of compensation payable to a woman or person under a legal disability the Act requires that the sum be deposited with the

¹⁴ Held by the Gujarat High Court in *Bai Chanchalben v. Burorji Dinshaw Sethna* (1969) 2 LLJ 357

commissioner. Any direct payment made to such persons is considered to be no payment of compensation under law.

Note: This provision for registration and depositing payment with the commissioner is to safeguard the interests of the women and dependants from fraud or force. An unscrupulous employer may pay a lesser amount to the deceased's dependents. Similarly an unscrupulous dependent may collude with the employer to deny other dependents of their share. Therefore, in the case of payments to women and dependents of deceased, an employer can enter into agreement with them, however:

- *Such agreement should be registered, and;*
- *The money should not be given directly, but deposited with the commissioner.*

However:

- No memorandum can be registered by the commissioner before the lapse of seven days from the time he had received the notice of such accident.¹⁵
- The commissioner may at any time alter the registration. And if he has reason to believe that the agreement has been reached due to fraud or undue influence, he may refuse the memorandum sent by the employer, and can pass an appropriate order, including an order to pay the compensation.



6. Distribution of compensation (including in case of worker's death, and payment of compensation to women workers / persons under legal disabilities).

Money given by employer to worker is only considered as 'compensation' under this act if it is given through the commissioner.

- Once the compensation is deposited with the Commissioner, in case of the injured party being a workman, the Commissioner can directly pay the money to him (s.8(6)).
- In case of payment made to a widow and other heirs of a worker whose injury resulted in death, any such lump sum payment already paid to the dependent of the deceased by

¹⁵ The wait for seven days is to give time for objections in case of fraud etc.

the employer cannot be deducted from actual amount of compensation payable. (Section 8).¹⁶



- Rule 11 of the Karnataka Rules provide that all workmen covered by the Act may register with their employer and the commissioner the names and addresses of their dependants.

In case of death of a worker, in an inquiry for the distribution of compensation, if no other person makes a claim the commissioner may presume the persons registered by the deceased worker are the dependants.¹⁷

- After the compensation is deposited with the commissioner, he may, if he thinks fit, call the dependants, to appear before him, to decide how much compensation each one gets.
- The receipt given to the employer by the Commissioner on payment of such compensation is proof enough of giving compensation to the worker and the burden is no longer on the employer.
- The practice in Karnataka is that 50% is given to the widow, if any, of the deceased and the rest is distributed equally among the dependants mentioned in section 2(d) of the Act (mentioned above).
- After such hearing is done, and if the commissioner finds that there is no dependant, then he must return the money to the employer. Also, if there is any balance amount, the commissioner must return the same to the employer.
- The employer may demand a detailed account of the distribution of compensation.
- Where any lump sum compensation deposited with the Commissioner is payable to a woman or person under legal disability, it may be invested or otherwise dealt with by the Commissioner for the benefit of such persons (s.8(7)). Under Rule 10 of the Karnataka Rules, the Commissioner may invest the compensation due to the deceased workmen's dependents only in (a) Government securities, or; (b) Government Savings Bank, or; (c) Post Office Savings Bank. This Rule also applies

¹⁶ *Kathelena Dias v. H.M. Coria and sons* AIR 1951 Cal 877 followed in 1989 Lab IC 1399

¹⁷ In discussion with the labour officer it appears that this provision is not in use, although as it is 'law' it may be found useful by some workers.

where compensation is payable to a woman worker/ persons under legal disabilities (i.e., workers who haven't yet attained adulthood).

Note: How much of compensation money is given in cash and how much is invested is entirely at the discretion of the Commissioner. But it fair to say that more investments are made in case of women workers than men, although the Commissioner may also invest the compensation amount in case of workmen. Also, in the case of women beneficiaries, a larger percentage of the compensation amount is invested and the remaining is given as cash, compared to men. This is decided entirely on a case-to-case basis.

Comment: These provisions for (a) paying full amount of compensation regardless of any payments already made; and (b) not giving compensation directly; are examples of the 'protectionist approach' (as opposed to the 'Rights based approach') that the legislature has in making laws covering/dealing with women workers (considered to be persons under legal disabilities). At the same time, it cannot be forgotten that women workers are often more vulnerable, and could be exploited.

Revision of compensation paid to dependants

On account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or for any other sufficient cause, the commissioner may make orders with regard to changes in the compensation payable to the dependants. This may be done on an application to the commissioner or by the Commissioner acting on his own on the basis of information received by him.



What if employer does not accept the extent of compensation?

Essentially, compensation is to be paid as soon as it falls due, i.e., when the accident occurs - at the latest within 30 days. In case the employer does not accept the extent to which compensation is being claimed, then the employer is to pay the amount of compensation to the extent of responsibility he accepts, at the earliest. He is to do so by depositing the amount at the office of the commissioner or with the worker.

By doing so, the worker, however, is not prevented from making a further claim before the Labour commissioner for the remaining amount of compensation.

Procedure in brief to be followed when an accident occurs

(see p. 30)

In the case of an accident or an accident leading to death, a notice must be sent to the employer or any other person who is employed to supervise work in the same establishment as soon as is practicable after the accident occurs. The notice can be served to the employers either by sending the notice by registered post to the residence or the office of the employer, or by entering such notice into the notice book.

The Commissioner for Workmen's Compensation has powers to act by himself, without receiving a notice, if he comes to know of any accident where a worker was injured. S/he may issue a notice to the employer asking what the cause of the injury was and whether the employer thinks s/he is liable to pay compensation.

In cases of injury not amounting to death, on serving notice of accident to the employer, the employer may require that the injured worker should submit himself to a medical examination

The commissioner's power to determine how much each dependant gets is discretionary. In Karnataka, the practice is that 50% is given to the widow if any, of the diseased workman, and the rest is equally distributed amongst the other dependants.

In cases of compensation payable to a woman (who may be a worker or dependent of a deceased workman) or person under a legal disability the Act requires that the sum be deposited with the commissioner and not paid directly to the woman/ person under a legal disability, even though an agreement can be entered into with her.

In such a case a memorandum (of the settlement) is to be sent to the commissioner, who, after examining the genuineness of such a memorandum, must register it in the manner prescribed.

The employer and employee, have the choice of entering into an agreement for: the settlement of any lump sum payable as compensation, i.e., payment to convert the employer's liability for half monthly payments, or otherwise (compensation for total/partial disability).

CHAPTER 5. Legal Remedies (adjudication)

A

In cases where the employer does not pay compensation after notice has been issued and after the lapse of 30 days from the date of the accident., or where the employee and employer fail to arrive at an agreement, an application can be made to the labour officer by the worker. The proceedings before the Labour officer are quasi-judicial in nature.

In case of workers' injuries, the government has the responsibility of disposing workers claims, in a speedy way. No technical procedure is followed in workmen compensation cases. However, as the employer has to be heard, and the matter may need to be investigated, there is some minimum procedure followed. As it will take away from the government's time, a Labour Commissioner is appointed to discharge this responsibility. To enable him/her, the rules provide that few provisions of the Civil Procedure Code may be used to empower the Commissioner to dispose of the cases¹⁸.

W&A

i. Who can make the claim? (section 10(1))

The injured employee or someone on his behalf can file a claim before the commissioner for workmen's compensation. In reality mostly a lawyer files the claim.

Note: While a matter is pending for settlement before the commissioner, the employer's liability to pay compensation is not suspended. It is the duty of the employer to pay the compensation at the rate prescribed under this Act as soon as injury is caused to the employee.

ii. Who should the claim be made to? (s. 19)

In the event that the employer does not pay compensation for accidents sustained by his workers while at work, a claim can be made to the labour commissioner, of the area where the accident took place. In case of a fatal accident the claim can be made where the claimant ordinarily resides, or where the employer has his registered office.

¹⁸ These provisions are: to take evidence on oath; enforce attendance of witnesses; and compel production of documents and other required objects may be used by the Commissioner to dispose of his/her cases.

In Karnataka, unlike Andhra Pradesh and Tamil Nadu, the claims authority is a 'labour officer' - an authority junior to the ones in the states mentioned where the Authority is an officer not junior than the level of the assistant labour commissioner.

iii. Time period within which the claim should be made (section 10)

All such claims have to be made within two years of the occurrence of the accident, or death of the worker. The commissioner can refuse to hear the matter if no notice was issued to the employer on the occurrence of the accident and no claim made to the commissioner within two years. If there is a delay in making such a claim it is possible for the delay to be excused by the commissioner, but the worker should give sufficient reason. As the Act is a 'Beneficial Act', delays and technical shortcomings are not given importance unlike criminal and civil cases.

What is 'Sufficient Reason'?

Example # 1: As a result of an accident arising out of work, a workman sustained multiple fractures on both his legs and had to be operated upon twice. He remained under treatment for three-and-a-half years. The court held that there was sufficient cause to condone the delay.

Example # 2: In a Madras High Court case¹⁹ it was held that "... the cause for the delay i.e., illiteracy, minority of children, nature of employment in its totality is sufficient reason to condone the delay..." In this case the widow of the deceased workman filed the application after a delay of 8 years.

In case the accident is the contraction of an occupational disease, the first few days of the worker being continuously absent due to the disease, shall be considered as the day of occurrence of the accident. In case, the disease does not force the worker to take leave, then the period of limitation shall be from the date that the worker gives notice to his employer of his condition.

iv. Form of application (section 22)

- The commissioner shall not be liable to entertain an application for compensation unless it is given in the prescribed format,

¹⁹ Laxmi and others vs. Deputy commissioner of Labour of Madras and Another 1998 1 LLJ158(Mad) (DB)

i.e. it must be made with the following details being furnished²⁰:

- (a) a statement in ordinary language with regards to the circumstances under which the application is being forwarded and the relief or order which the applicant claims
 - (b) in case the claim for compensation is made against the employer, the application should mention the date when the notice of such accident was made to the employer, and if there was any delay in doing so, the reason for the delay;
 - (c) The name and address of the parties.
- All applications for claims for compensation must be made to the commissioner with the appropriate accompanying fee. The fee is Rs. 2 for every Rs. 1000 of compensation claimed. If the worker is unable to pay this amount an application can be filed for exemption till the final order is passed;
 - In case of application made by/on behalf of dependants of the deceased worker, the photographs of the dependants should be fixed on the application.

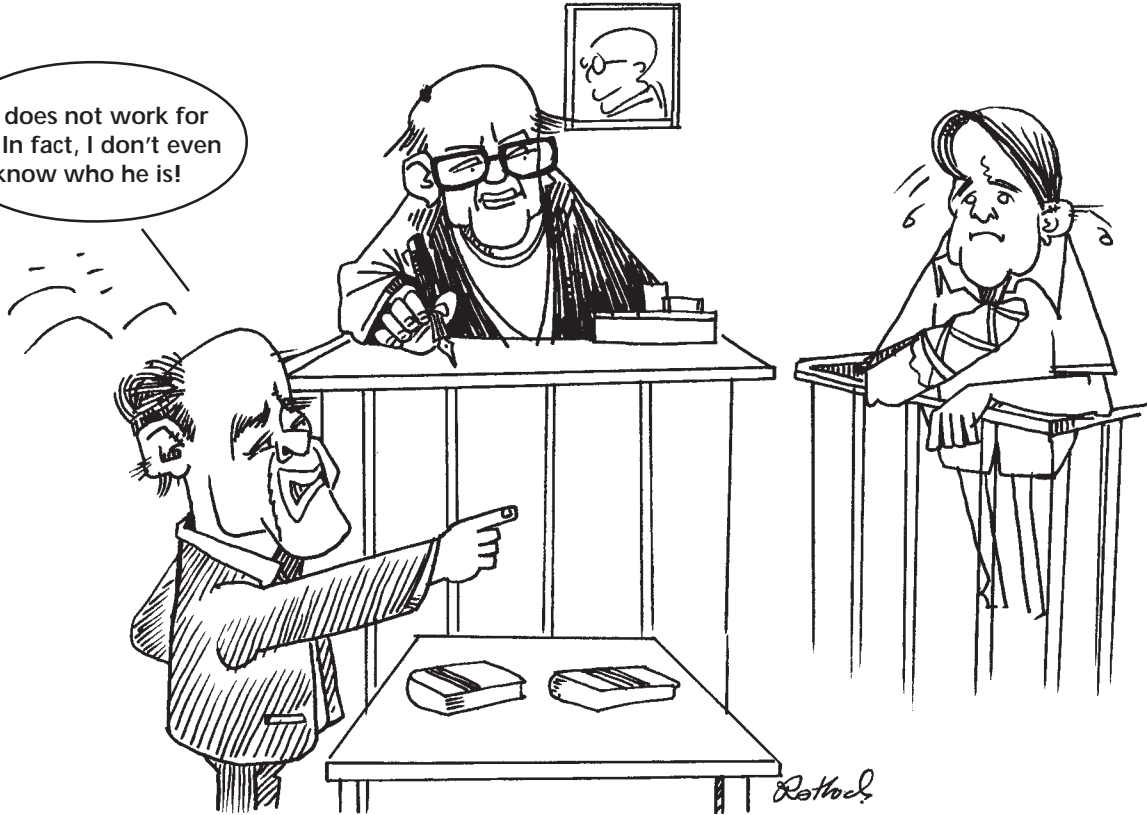


A role that can be played by Activists is to gather evidence at the time of the occurrence of the accident, or as soon as possible thereafter, as to the fact of worker's employment with that particular employer and; the fact that the injury occurred during the course of work. This is crucial if a claim is being made before the labour officer later on. Sometimes the employer denies that s/he employed the worker and secondly, that the accident occurred in the establishment premises during the course of work.

Example: Girija, the child worker employed in a silk reeling and spinning factory suffered burns when a tub of boiling water fell on her. Subsequently when a claim was made, the employer denied that the worker worked for him, and also denied that the accident occurred at his work premises. The case was complicated by the fact that there was no record of employment kept by the employer showing that he employed the worker. Further there was no person, other than the worker's relatives, who were available to testify before the labor officer about having witnessed the accident.

²⁰ Sample form of Application for Compensation by Workman see ANNEXURE 7

He does not work for me. In fact, I don't even know who he is!



The norm in most employments covered by WCA is for appointments to be made orally. In such situations, workers should try to seek documentary evidence by way of registrar of wages. If the employer is not maintaining the register, then according to the Karnataka High Court, an 'adverse inference' should be suffered by the employer. Therefore, in such cases of absence of maintenance of a wages register, the co-workers statement would be sufficient evidence.²¹

Sometimes co-workers are not willing to give evidence for fear of losing their jobs. In such cases, other documentary evidence should be looked for. This could be for e.g., the worker's bank passbook, or a letter sent to the employee at the office address (can happen in the case of migrant workers or other workers living in slums).²²

What did Girija's lawyers do? An important legal strategy for all Workmen's Compensation cases.

A strategy that could be very effective, depending on the circumstances is to check whether a criminal complaint has been registered and at what stage it is. Normally when the worker is taken to a government hospital after the accident for treatment, the hospital authorities have a legal duty to make a report to the police. For example, the employer may be criminally liable for not making adequate provisions for the safety of the workers engaged in work at his premises and thus guilty of criminal negligence.

There are two benefits of this approach; if the employer's guilt is proven in the criminal proceedings, this helps tremendously in proving his/her liability in the case before the labour officer deciding the workmen's compensation case. Secondly, it puts pressure on the employer to settle the matter.

In case the worker making the application dies before the final outcome of the case, there is nothing to prevent his legal heirs from continuing the application. There is no time fixed within which such legal heirs must come on record to continue such application originally filed by the deceased applicant.

^{21, 22} As per Muralidhara, Labour Advocate and State secretary AITUC, and S. Bajaj, V.V. Giri Institute, respectively speaking at a workshop on 'Role of Department officers and their powers and functions for disposing of cases under the Workmen's' Compensation Act. Payment of Gratuity Act and Minimum wages claims under the Minimum Wages Act' on 18 Feb 2005.



v. Appearance and Record of Evidence (sections 24 and 25)

- The parties must make their appearance before or to the commissioner. A registered legal practitioner/ trade union member/ inspector or other person appointed by the Government for this purpose can represent the worker or can represent the parties if the necessary.

Note: Sometimes the employer absconds, and successfully evades the summons to appear before the Commissioner and submit his written statement (proving that he is not liable to pay compensation). Then the practice is for the Commissioner to print the summons in the State gazette publication and paper publication (a widely circulated local newspaper), OR paste a copy of the summons on the employer's premises. Even after this, if the employer refuses to appear, the case will proceed without him and s/he will have to suffer the possible consequence of an adverse order.

- The commissioner must make a memorandum, recording the substance of the evidence given by each of the witnesses. This must be written in his own hand and must be signed by him, and this memorandum would be a part of the official record.

Note: In this connection, if neither the worker or the employer are able to produce any documents supporting their respective claims as to how much wages was paid to the worker, the practice in Bangalore is the Labour Officer will support the worker's claim.

- Arguments will be presented by both parties after which an order is issued by the commissioner
- The commissioner may, if he thinks it being fit, refer such a matter to the High Court.



vi. What happens if the employer delays in paying of compensation? (Section 4-a)

Compensation is to be paid as soon as the injury is caused to the worker. If the employer does not pay the compensation amount to the disabled worker within a month from when the compensation fell due, then the commissioner on application can give relief to the worker in the following way:

- (a) The commissioner can direct the employer to pay the compensation to the worker, plus simple interest at the rate

of 12%, or any other rate, not exceeding the rate of a scheduled bank, or as published in an official gazette; and

- (b) If the commissioner feels that there was no justification for the delay in payment to the worker, he may order the employer, in addition to the simple interest, to pay a penalty of not greater than 50% of the compensation to be paid.

Interest and penalty can be levied by the commissioner *only on application* by the worker after a claims proceedings has been completed and the workmen's compensation commissioner has passed an order awarding compensation to the worker. In consonance with principles of natural justice²³, the employer has to be given the opportunity of being heard by the commissioner before he passes such an order directing the payment of penalty.



In Karnataka, in practice penalty is not levied often, normally the labour officer only imposes interest. In rare cases where the employer wilfully doesn't deposit the money, the authorities, after observing the behaviour of the employer may impose a penalty.

Is the insurance company liable to pay interest and penalty in cases of delay in payment of compensation?

The Supreme Court has held²⁴ that if compensation is not paid within one month from when it falls due, then the payment of interest is almost automatic. It is considered part and parcel of the liability to pay compensation. Hence when the employer takes insurance coverage for any liabilities arising under the Workmen's Compensation Act, the insurance company will have to pay the compensation as well as interest on it. The Commissioner for Workmen's Compensation may calculate the interest either from the date of the accident or else from the date of passing the order for compensation. It is within his/her powers to do either.

Regarding the payment of penalty, it was held that as the delay was due to the personal fault and negligence of the insured employer, he and not the insurance company would have to pay the penalty.

²³ 'Natural Justice' refers to conventions evolved by the law courts to ensure justice and to prevent the miscarriage of justice.

²⁴ In *Ved Prakash Garg, Appellant, v. Premi devi and Ors., Respondents*, 1998 001 LLJ 363 SC

However, the Supreme Court went on to approve a decision of the Karnataka High Court ²⁵. In that particular Karnataka case, the insurance policy taken by the employer expressly excluded the payment of interest and penalty in the event of any compensation payable under the WCA, and so the High Court held that the insurance company was not liable to pay interest in addition to compensation. Therefore it depends on the terms and conditions of the insurance policy taken.

vii . Appeal (section 30)

A worker can appeal against any decision can be made in the high court, this can only be done so under certain circumstances, and only if the commissioner allows the appeal, which is determined by his certificate allowing so, attached along with the appeal. The conditions to make an appeal are mentioned in Annexure 2



Bar against double remedies (section 3 (5))

Once an injured worker, initiates action against, or reaches an agreement with, an employer the said worker cannot initiate a simultaneous proceeding in a civil court in respect of the same injury (but s/he can in a criminal court). Similarly if the worker institutes a suit for compensation, for injury sustained during the course of work, in a civil court, then s/he cannot then apply to the labour commissioner under this Act. Therefore the worker can chose the type of remedy s/he wants i.e. either under the WCA, or civil court or Motor Vehicles Act (incase of a motor accident), but s/he cannot apply for more than one remedy.



If a worker has made an application before the Motor Vehicles Accidents Claims Tribunal (MVCT), it is possible to subsequently withdraw it from that forum and make another application under the Workmen's Compensation Act. The only requirement being that s/he must prove that no compensation was taken through the MVCT.

²⁵ Oriental Insurance Company Ltd. V. Raju 1994 ACJ 191

ANNEXURE 1

Method of Calculating Monthly Wages (Section 5)

The calculation of monthly wages varies from situation to situation. They are as follows:

If the worker has been in service for over a year prior to the accident, then the monthly wages is calculated as that to be one-twelfth of the wages the worker collected in the past year (section 5 (a)).

Note: the above covers only those cases where workers have been in continuous employment under the same employer for 12 months preceding the accident. A worker might be in receipt of a retainer by a particular set of employers and have been periodically employed by them over the whole of the preceding year, yet section 5(a) will not apply here.

If the worker, prior to the accident had worked for less than one month, then the monthly wages is to be the same amount that a person of the same ability, doing the same kind of work in the same locality gets as his monthly wage (section 5 (b)).

The method of calculating the monthly wages for a **daily wage** worker is given under section 5(c). According to the section, the total wages earned by the daily wage worker in the 'last continuous period' of work is multiplied by thirty, and then divided by number of days in that period. By 'last continuous period' it is meant the last thirty days worked.

Keeping in mind that the daily wage worker does not necessarily get work on a regular basis, this period of work may not be 'continuous' in the normal sense of the word. There may be cases where the worker gets work for 5 days, then has no work for the following eight days before getting work again. As long as the period of absence from work is not more than fourteen days, the last thirty days of work can be taken into account for calculating the monthly wage.

It is also not necessary that the worker was employed by only one employer during that period. The employer who s/he was working for at the time of occurrence of the accident will be liable to pay the compensation.

The monthly wages of a **piece rated** worker can be worked out by using either of the methods given in section 5. Clause (b) or (c) of the said section can be used for a piece rated worker who has worked for less than a month. In computing monthly wage, the *payable* wages should be taken into account.

ANNEXURE 2

The conditions for appeal are:

- An order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- An order awarding interest or penalty;
- An order refusing to allow redemption of a half-monthly payment;
- An order providing for the distribution of compensation among the dependents of a deceased worker, or disallowing any claim of a person alleging himself to be such dependent;
OR
- An order refusing to register a memorandum of agreement, registering the same, or providing for the registration of the same subject to conditions:

Such an appeal should be filed within sixty days.

ANNEXURE 3

SCHEDULE I

[See Sections 2(1) and 4]

Part I

List of injuries deemed to result in permanent total disablement

S. No.	Description of Injury	Percentage of loss of earning capacity
1	Loss of both hands or amputation at higher sites	100
2	Loss of hand and a foot	100
3	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4	Loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential	100
5	Very severe facial disfigurement	100
6	Absolute deafness	100

Part II

List of injuries deemed to result in permanent partial disablement

1	Amputation through shoulder joint	90
2	Amputation below shoulder with stump less than [20.32 cms] from tip of acromion	80
3	Amputation from [20.32 cms] from tip of acromion to less than [11.43 cms] below tip of olecranon	70
4	Loss of hand or of the thumb and four fingers of one hand or amputation from [11.43 cms] below tip of olecranon	60
5	Loss of thumb	30
6	Loss of thumb and its metacarpal bone	40
7	Loss of four fingers of one hand	50
8	Loss of three fingers of one hand	30
9	Loss of two fingers of one hand	20
10	Loss of terminal phalanx of thumb	20
10 A	Guillotine amputation of tip of thumb without loss of bone	10
<i>Amputation cases—lower limbs</i>		
11	Amputation of both feet resulting in end-bearing stumps	90
12	Amputation through both feet proximal to the metatarso-phalangeal joint	80
13	Loss of all toes of both feet through metatarso-phalangeal joint	40
14	Loss of all toes of both feet proximal to the proximal inter-phalangeal joint	30
15	Loss of all toes of both feet distal to the proximal inter-phalangeal joint	20
16	Amputation at hip	90

S. No.	Description of Injury	Percentage of loss of earning capacity
17	Amputation below hip with stump not exceeding [12.70 cms] in length measured from tip of great trenchanter	80
18	Amputation below hip with stump exceeding [12.70 cms] in length measured from tip of great trenchanter but not beyond middle thigh	70
19	Amputation below middle thigh to [8.89 cms] below knee	60
20	Amputation below knee with stump exceeding [8.89 cms] but not exceeding [12.70cms]	50
21	Amputation below knee with stump exceeding [12.70cms]	50
22	Amputation of one foot resulting in end-bearing	50
23	Amputation through one foot proximal to the metatarso-phalangeal joint	50
24	Loss of all toes of one foot through the metatarso-phalangeal joint	20
	Other injuries	
25	Loss of one eye, without complications, the other being normal	40
26	Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal	30
26 A	Loss of partial vision of one eye	10
	<i>A. Fingers of right or left hand</i>	
	<i>Index finger</i>	
27	Whole	14
28	Two phalanges	11
29	One phalanx	9
30	Guillotine amputation of tip without loss of bone	5
	<i>Middle finger</i>	
31	Whole	12
32	Two phalanges	9
33	One phalanx	7
34	Guillotine amputation of tip without loss of bone	4
	<i>Ring or little finger</i>	
35	Whole	7
36	Two phalanges	6
37	One phalanx	5
38	Guillotine amputation of tip without loss of bone	2
	<i>B. Toes of right or left foot</i>	
	<i>Great toe</i>	
39	Through metatarso-phalangeal joint	14
40	Part, with some loss of bone	3
	<i>Any other toe</i>	
41	Through metatarso-phalangeal joint	3
42	Part, with some loss of bone	1

S. No.	Description of Injury	Percentage of loss of earning capacity
<i>Two toes of one foot, excluding great toe</i>		
43	Through metatarso-phalangeal joint	5
44	Part, with some loss of bone	2
<i>Three toes of one foot, excluding great toe</i>		
45	Through metatarso-phalangeal joint	6
46	Part, with some loss of bone	3
<i>Four toes of one foot, excluding great toe</i>		
47	Through metatarso-phalangeal joint	9
48	Part, with some loss of bone	3

Note — Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be equivalent to be loss of that limb or member.

ANNEXURE 4

SCHEDULE II

[See Sections 2(1) (n)]

List of persons who, subject to the provisions of Section 2(1)(n), are included in the definition of workmen

The following persons are workmen within the meaning of Section 2(1)(n) and subject to the provisions of that section, that is to say, any person who is—

- (i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation, [, repair] or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or
- (ii) employed, otherwise in a clerical capacity, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of Section 2 of the Factories Act, 1948 (63 of 1948), is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, [whether or not employment in any such work is within such premises or precincts] and steam, water or other mechanical power or electrical power is used; or
- (iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article in any premises wherein or within the precincts whereof twenty or more persons are so employed;
[Explanation. For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article shall be deemed to be employed within such premises or precincts; or]
- (iv) employed in the manufacture or handling of explosives in connection with the employer's trade or business; or
- (v) employed in any mind as defined in clause (j) of Section 2 of the Mines Act, 1953 (35 of 1952), in any mining operating or in any kind of work, other than clerical work incidental to or connected with any mining operation or with mineral obtained, or in any kind of work whatsoever below ground; or
- (vi) employed as the master or as a seaman of—
 - a. any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; or
 - b. any ship not included in sub-clause (a) of twenty-five tons net tonnage or over; or

- c. any sea-going ship not included in sub-clause (a) or sub-clause (b) provided with sufficient area for navigation under sails alone; or
- (vii) employed for the purpose of—
- a. loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or handling or transport within the limits of any port subject to [the Ports Act, 1908 (15 of 1908) or the Major Port Trusts Act, 1963 (38 of 1963)], of goods which have been discharged from or are to be loaded into any vessel; or
 - b. warping a ship through the lock; or
 - c. mooring and unmooring ships at harbour wall berths or in pier; or
 - d. removing or replacing dry dock caissons when vessels are entering or leaving dry docks; or
 - e. the docking or undocking of any vessel during an emergency; or
 - f. preparing splicing coir springs and check wires, painting depth marks on lock-sides, removing or replacing fenders whenever necessary, landing of gangways, maintaining life-buoys up to standard or any other maintenance work of a like nature; or
 - g. any work on jolly-boats for brining a ship's line to the wharf; or
- (viii) employed in the construction, maintenance, repair or demolition of—
- a. any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof; or
 - b. any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or
 - c. any road, bridge, tunnel or canal; or
 - d. any wharf, quay, sea-wall or other marine work including any moorings of ships; or
- (ix) employed in setting up, maintaining, repairing or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard or fittings and fixtures for the same; or
- (x) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal, pipe-line, or sewer; or
- (xi) employed in the service of any fire brigade; or

- (xii) employed upon a railway as defined in [clause (31) of Section 2 and sub-section (1) of Section 197 of the Railways Act, 1989 {24 or 1989}] either directly or through a sub-contractor, by a person fulfilling a contract with the Railway administration; or
- (xiii) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service, [or as a telegraphist or as a postal or railway signaller], or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department; or
- (xiv) employed, otherwise than in a clerical capacity, in connection with operation for winning natural petroleum or natural gas; or
- (xv) employed in any occupation involving blasting operations; or
- (xvi) employed in the making of any excavation in which on any one day of the preceding twelve months more than [twenty-five] persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds [twelve] feet; or
- (xvii) employed in the operation of any ferry boat capable of carrying more than ten persons; or
- (xviii) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing [cardamom,] cinchona, coffee, rubber or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed; or
- (xix) employed, otherwise than in a clerical capacity, in the generating, transforming, transmitting or distribution of electrical energy or in generation or supply of gas; or
- (xx) employed in a lighthouse as defined in clause (d) of Section 2 of the Indian Lighthouse Act, 1927 (17 of 1927); or
- (xxi) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; or
- (xxii) employed in the training, keeping or working of elephants or wild animals; or
- (xxiii) employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forest fires; or
- (xxiv) employed in operations for the catching or hunting of elephants or other wild animals; or
- (xxv) employed as a driver;
- (xxvi) employed in the handling or transport of goods in, or within the precincts of—
 - a. any warehouse or other place in which goods are stored, and in which one any one day of the preceding twelve months ten or more persons have been so employed, or

- b. any market in which on any one day of the preceding twelve months [fifty] or more persons have been so employed; or
- (xxvii) employed in any occupation involving the handling and manipulation of radium or X-rays apparatus, or contact with radioactive substances; or
- (xxviii) employed in or in connection with the construction erection, dismantling, operation or maintenance of an aircraft as defined in Section 2 of the Indian Aircraft Act, 1934 (22 of 1934); or
- (xxix) [employed in horticultural operations, forestry, bee-keeping or farming] by tractors or other contrivances driven by steam or other mechanical power or by electricity; or
- (xxx) employed, otherwise than in a clerical capacity, in the construction, working, repair or maintenance of a tube-well; or
- (xxxi) employed in the maintenance, repair or renewal of electric fittings in any building; or
- (xxxii) employed in a circus;
- (xxxiii) employed as watchman, in any factory or establishment; or
- (xxxiv) employed in any operation in the sea for catching fish; or
- (xxxv) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous animal or insect; or
- (xxxvi) employed in handling animals like horses, mules and bulls; or
- (xxxvii) employed for the purpose of loading or unloading of any mechanically propelled vehicle or in the handling or transport of goods which have been loaded in such vehicles; or
- (xxxviii) employed in cleaning of sewer lines or septic tanks within the limits of a local authority; or
- (xxxix) employed on surveys and investigation, exploration or gauge or discharge observation of rivers including drilling operations, hydrological observations and flood forecasting activities, ground water surveys and exploration ; or
- (xl) employed in cleaning of jungles or reclaiming land or ponds in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or
- (xli) employed in the cultivation of land or rearing and maintenance of live-stock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or
- (xlii) employed in installation, maintenance or repair of pumping equipment used for lifting of water from wells, tubewells, ponds, lakes, streams and the like; or

- (xliii) employed in the construction boring or deepening of an open well or dug well, bore well, bore-cum-dug well, filter-point and the like; or
- (xliv) employed in spraying and dusting of insecticides or pesticides in agricultural operations or plantations; or
- (xliv) employed in mechanised harvesting and threshing operations; or
- (xlvi) employed in working or repair or maintenance of bulldozers, tractors, power tillers and the like; or
- (xlvii) employed as artist for drawing pictures on advertisement boards at height of 3.66 metres or more from the ground level; or
- (xlviii) employed in any newspaper establishment as defined in the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and engaged in outdoor work.]
- (xlix) employed as divers for work under water.]

Explanation—In this Schedule, “the preceding twelve months” relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.

ANNEXURE 5

SCHEDULE III (See Section 3)

List of Occupational Diseases

S. No. (1)	Occupational Disease (2)	Employment (3)
PART A		
1.	Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) All work involving exposure to health or laboratory work; (b) All work involving exposure to veterinary work; (c) Work relating to handling animals, animal carcasses, part of such carcasses, or merchandise which may have been contaminated by animals or animal carcasses; (d) Other work carrying a particular risk of contamination.
2.	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned.
3.	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
4.	Poisoning by nitrous fumes.	All work involving exposure to the risk concerned.
5.	Poisoning by organo phosphorus compounds.	All work involving exposure to the risk concerned.
PART B		
1.	Diseases caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.
2.	Diseases caused by mercury or its toxic compounds.	All work involving exposure to the risk concerned.
3.	Diseases caused by benzene or its toxic homologues.	All work involving exposure to the risk concerned.
4.	Diseases caused by nitro and amido toxic derivatives of benzene or its homologues.	All work involving exposure to the risk concerned.
5.	Diseases caused by chromium or its toxic compounds	All work involving exposure to the risk concerned.

S. No. (1)	Occupational Disease (2)	Employment (3)
6.	Diseases caused by arsenic or its toxic compounds.	All work involving exposure to the risk concerned.
7.	Diseases caused by radioactive substances and ionising radiations.	All work involving exposure to the action of radioactive substances or ionising radiations.
8.	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risk concerned.
9.	Diseases caused by the toxic halogen derivatives of hydrocarbons (of the aliphatic and aromatic series).	All work involving exposure to the risk concerned.
10.	Diseases caused by carbon disulphide	All work involving exposure to the risk concerned.
11.	Occupational cataract due to infra-red radiations	All work involving exposure to the risk concerned.
12.	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk concerned.
13.	Skin diseases caused by physical chemical or biological agents not included in other items.	All work involving exposure to the risk concerned.
14.	Hearing impairment caused by noise.	All work involving exposure to the risk concerned.
15.	Poisoning by dinitrophenol or a homologue or by substituted dinitrophenol or by the salts of such substances.	All work involving exposure to the risk concerned.
16.	Disease caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
17.	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned.
18.	Occupational asthma caused by recognised sensitising agents inherent in the work process.	All work involving exposure to the risk concerned.
19.	Diseases caused by fluorine or its toxic compounds.	All work involving exposure to the risk concerned.
20.	Diseases caused by nitroglycerine or other nitroacid esters.	All work involving exposure to the risk concerned.

S. No. (1)	Occupational Disease (2)	Employment (3)
21.	Diseases caused by alcohols and ketones.	All work involving exposure to the risk concerned.
22.	Diseases caused by asphyxiants: carbon monoxide, and its toxic derivatives, hydrogen sulfide.	All work involving exposure to the risk concerned.
23.	Lung cancer and mesotheliomas caused by asbestos.	All work involving exposure to the risk concerned.
24.	Primary neoplasm of the epithelial lining of the urinary bladder or the kidney or the ureter.	All work involving exposure to the risk concerned.
25.	Snow blindness in snow bound areas	All work involving exposure to the risk concerned.
26.	Disease due to effect of heat in extreme hot climate.	All work involving exposure to the risk concerned.
27.	Disease due to effect of cold in extreme cold climate.	All work involving exposure to the risk concerned.

PART C

1.	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraosilicosis, asbestosis) and silico-tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2.	Bagassosis.	All work involving exposure to the risk concerned.
3.	Bronchopulmonary diseases caused by cotton, flax hemp and sisal dust (Byssinosis).	All work involving exposure to the risk concerned.
4.	Extrinsic allergic alveolitis caused by the inhalation of organic dusts.	All work involving exposure to the risk concerned.
5.	Bronchopulmonary diseases caused by hard metals.	All work involving exposure to the risk concerned.
6.	Acute Pulmonary Oedema of high altitude.	All work involving exposure to the risk concerned.

ANNEXURE 6

SCHEDULE IV

(See Section 4)

Factors for working out lump sum equivalent of compensation amount in case of permanent disablement and death

Completed years of age on the last birthday of the workman immediately preceding the date on which the compensation fell due	Factors	Completed years of age on the last birthday of the workman immediately preceding the date on which the compensation fell due	Factors
(1)	(2)	(1)	(2)
not more than 16	228.54	41	181.37
17	227.49	42	178.49
18	226.38	43	175.54
19	225.22	44	172.52
20	224.00	45	169.44
21	222.71	46	166.29
22	221.37	47	163.07
23	219.95	48	159.80
24	218.47	49	156.47
25	216.91	50	153.09
26	215.28	51	149.67
27	213.57	52	146.20
28	211.79	53	142.68
29	209.92	54	139.13
30	207.98	55	135.56
31	205.98	56	131.95
32	203.85	57	128.33
33	201.66	58	124.70
34	199.40	59	121.05
35	197.06	60	117.41
36	194.64	61	113.77
37	192.14	62	110.14
38	189.56	63	106.52
39	186.90	64	102.93
40	184.17	65 or more	99.37

ANNEXURE 7

FORM 8
[See Rule 21]

Format of Application for Compensation by Workman

To

The Commissioner for Workmen's Compensation.

.....
.....
.....

Residing atapplicant

Versus

.....
.....
.....

Residing at.....Opposite Party.

It is hereby submitted that—

- (1) The applicant, a workman employed by the opposite party on the day of19..... received personal injury by accident arising out of an in the course of his employment.

The cause of the injury was (here insert briefly in ordinary language the cause of the injury)

.....
.....
.....

- (2) The applicant sustained the following injuries, namely

.....
.....
.....

- (3) The monthly wages of the applicant amounted to Rs..... the applicant is over/ under the age of 15 years.....
- (4) * (a) Notice of the accident was served on the day of
- (b) Notice was served as soon as practicable.
- (c) Notice of the accident was not served (in due time by reason of
- (5) The applicant is accordingly entitled to receive–
- (a) half monthly payment of Rs..... from the..... day of 19.... to.....
- (b) a lumpsum payment of Rs.
- (6) The applicant has taken the following steps to secure a settlement by agreement, namely
- but it was proved impossible to settle the questions in dispute because.....
-

* You are therefore requested to determine the following questions in dispute namely–

- (a) Whether the applicant is a workman within the meaning of the Act.
- (b) Whether accident arose out of and in the course of the applicant's employment
- (c) Whether the amount of compensation claimed is due, or any part of that amount.
- (d) Whether the opposite party is liable to pay such compensation as is due.
- (e) etc., (as required).

Date

Applicant

ANNEXURE 8

When the Commissioner is deciding whether an injury resulted from an accident that 'arose out of and in the course of employment' for the purpose of awarding compensation, as a general rule, employment of a worker does not begin until he has reached the place of employment and does not continue when s/he has left it. But this is subject to the theory of 'notional extension' both in time and place, and a worker may be regarded as in the his/her course of employment even though s/he hasn't reached or has left the employer's premises.

In recent times, the courts have been relying on a limited idea of 'notional extension of the workplace'. Thus they have not been including accidents that occurred while the worker was on route to his/her place of work, within the ambit of accidents that have arisen "out of and in the course of work" which was the earlier jurisprudence and was necessary in order to claim compensation.

In *Commr. Kovilpatti Municipality, Kovilapati v. Tamilarasan and anr.* 1998 LLJ (002) 0683 – Mad., a worker was attacked by some miscreants on his way to work and died as a result of injuries sustained. The Madras High Court relying on the Supreme Court judgement in *Regional Director v. Francis Decosta* 1996 Lab I C 2720 (a judgement which dealt with an employee covered under the Employee's State Insurance Act) held that the deceased was on the road as a member of the public and was definitely not there in the course of his employment and hence his dependants were not awarded compensation. As per the judgement in *Francis Decosta*, the employment of the worker does not commence until he has reached his place of employment.

Subsequently some High Court decisions have expanded the expression 'arising out of and in the course of employment' in a manner which is beneficial for workers. Presented below are a few judgements in brief:

In another Madras High Court judgement of that year - *Mgmt. Of Pannimedu Estate, Tata Tea Ltd. P.O. Valparai v. Chandra* 1998 (002) LLJ 0693 Mad. the Court held that the woman worker who was assaulted and injured in that case was entitled to compensation. The court ruled that as the incident occurred while she was near

the master to get assigned to her place of work, it must be held to have occurred on account of the risk which is in the course of employment and hence is compensable(i.e. compensation can be paid).

Similarly, in *M.L. Aneja's case* 1999 (002) CLR 0062 Raj. The Rajasthan High Court held that where injury is caused to a worker by any person including a co worker within the master's premises (unless the master has no reasonable apprehension of the assailant's entry) the accident must be held to have occurred 'in the course of and arising out of employment'. Even though this was not what may traditionally be considered an hazard that implicit in and connected to the nature of the work. In this case the employee was stabbed by another employee. However, the employee did not get compensation because being a clerk he did not come within the definition of 'workman' under this Act.

In a 1999 Orisa High Court judgement - *Steel Authority of India, Rourekela, Appellant v. Sabitri Nayak* 1999 (002) CLR 0062 ORI the court held that the deceased workmen's wife, Sabitri Nayak, was entitled to compensation as a dependant of the deceased. The court held that as the death occurred due to the strain and stress undergone during employment, it is deemed to arise out of and in the course of employment. In this case the deceased worker fell from the bus while on his way to work. While such an injury normally does not result in death, the worker had heart problems due to work- related stress and the fall caused a heart attack.

Further, a person may be 'in the course of his employment' not only when he is actually discharging his duty to his employer. It also includes matters which are incidental to it. Therefore, in cases where a worker meets with an accident during periods of rest, or acts when the worker is satisfying bodily needs of food, drink and even tobacco the injury can be regarded as being in the course of employment.