

Employee Compensation Act 1923

15th November 2020

By INDIAFREENOTES

The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen and their dependents in case of injury and accident (including certain occupational disease) arising out of and in the course of employment and resulting in disablement or death. The Act applies to railway servants and persons employed in any such capacity as is specified in Schedule II of the Act. The schedule II includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations.

The amount of compensation to be paid depends on the nature of the injury and the average monthly wages and age of workmen. The minimum and maximum rates of compensation payable for death (in such cases it is paid to the dependents of workmen) and for disability have been fixed and is subject to revision from time to time.

A Social Security Division has been set up under the Ministry of Labour and Employment, which deals with framing of social security policy for the workers and implementation of the various social security schemes. It is also responsible for enforcing this Act. The Act is administered by the State Governments through Commissioners for Workmen's Compensation.

The main provisions of the Act are

- An employer is liable to pay compensation:- (i) if personal injury is caused to a workman by accident arising out of and in the course of his employment; (ii) if a workman employed in any employment contracts any disease, specified in the Act as an occupational disease peculiar to that employment.
- However, the employer is not liable to pay compensation in the following cases:-
- If the injury does not result in the total or partial disablement of the workman for a period exceeding three days.
- If the injury, not resulting in death or permanent total disablement, is caused by an accident which is directly attributable to:- (i) the workman having been at the time of the accident under the influence of drink or drugs; or (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen; or (iii) the willful removal or disregard by the workman of any safety guard or other device which has been provided for the purpose of securing safety of workmen.
- The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification. Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.
- Compensation shall be paid as soon as it falls due. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be.
- If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner. No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.
- The State Government may, by notification in the Official Gazette, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the State Government may direct.
- Whoever, fails to maintain a notice-book which he is required to maintain; or fails to send to the Commissioner a statement which he is required to send; or fails to send a report which he is required to send; or fails to make a return which he is required to make, shall be punishable with fine.

Main features of the Act

The "Employees Compensation Act, 1923" is an Act to provide payment in the form of compensation by the employers to the employees for any injuries they have suffered during an accident. Earlier this Act was known as the Workmen Compensation Act, 1923. When the employer is not liable to pay compensation:

If the injury does not end in the entire or partial disablement of the employee for a period exceeding three days.

If the injury, not leading in death or permanent total disablement, is caused by an accident which is directly attributable to:

The employee having at the time of the accident is under the influence of drink or drugs;

The willful disobedience of the employee to an order if the rule is expressly given or expressly framed, for the purpose of securing the safety of employees; or

The willful removal or disregard by the employee of any safety guard or other device which has been provided for the purpose of securing the safety of employees.

Principles Governing Compensation

Who will be receiving the compensation on behalf of the deceased?

A widow or a minor who is a legitimate son or unmarried daughter or a widowed mother is entitled to compensation;

If the family of the deceased is wholly dependent on the earnings of the employee at the time of his death or a son or daughter who has attained the age of eighteen years;

- A widower;
- A parent other than a widowed mother;
- A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor;
- A minor brother or an unmarried sister or a widowed sister if a minor;
- A widowed daughter-in-law;
- A minor child of a predeceased son;
- A minor child of a predeceased daughter where no parent of the child is alive, or;
- A paternal grandparent if no parent of the employee is alive.

Nature of Liability

Imagine what will happen if an employee who is working putting in great benefits gets to know that he/she will not be getting any benefits. After all, people tend to do something to get something in return. When the principle of vicarious liability is applied, the employer is liable to pay compensation irrespective of his/her negligence. Employer anticipates it as damages payable to the employees but it is actually a relief for them. An Employer becomes liable when employees have sustained injuries by any accident or unavoidable situations during the course of employment.

Doctrine of added peril

When an employee performs something which is not required in his duty, and which involves extra danger, the employer cannot be held liable to pay compensation for the injuries caused. In the case of *Devidayal Ralyaram v/s Secretary of State*. It was ruled that the doctrine of added peril was used as defense and the employer was not liable for the compensation.

Adjudication of Compensation

The adjudication is done by the commissioner in calculation of the amount of compensation. The quantum of compensation is calculated from the date of the accident.

Self-inflicted Injury

If a worker inflicts an injury to himself or herself it is a self-inflicted injury. The injury may be intentional or accidental but the employer is not liable for such injuries. There are some types of jobs that have a high risk for self-inflicted injuries which include:

- Law enforcement
- Medical employees
- Farmers
- Teachers
- Salespeople

Contributory negligence

Employees owe a duty to their employers to carry out their work with reasonable care so as to avoid accidents and injury. Employers are vicariously liable for the negligence of their employees but are entitled to claim a contribution or indemnity from their negligent employee in appropriate circumstances. So if there is negligence on the part of both employee and the employer then the employer will be liable to pay compensation to the extent of his own negligence, not of the employee. Hence, the compensation amount may reduce as the employer will not be liable for the negligence of the employee.

Employees' Compensation

Section 3: Employer's liability for Compensation

Employer's liability in case of occupational diseases

There are certain occupations which expose employees to particular diseases that are inherent-

- Infra-red radiations;
- Skin diseases due to chemical or leather processing units;
- Hearing impairment caused by noise;
- Lung cancer caused by asbestos dust and Diseases due to effect of extreme climatic conditions.

The Doctrine of Assumed Risk

1st January 2021



By INDIAFREENOTES

The Doctrine of Assumed Risks: If the employee knew the nature of the risks he was undertaking when working in a factory, the employer had no liability for injuries. The court assumed in such case that the workman had voluntarily accepted the risks incidental to his work. The doctrine followed from the rule *Volenti Non-Fit Injuria*, which means that one, who has volunteered to take a risk of injury, is not entitled to damages if injury actually occurs.

The Doctrine of Common Employment: Under this rule, if a number of persons work together for a common purpose and one of them is injured by some act or omission of another, the employer is not liable to pay compensation for the injury.

The Doctrine of Contributory Negligence: Under this rule, a person is not entitled to damages for injury if he was himself guilty of negligence and such negligence resulted to the injury.

The three aforesaid defences and the rule of no negligence no liability made it almost impossible for an employee to obtain relief in cases of accident. The Workmen's Compensation Act of 1923 completely changed the law. According to the Workmen Compensation Act, 1923 the employer is liable to pay compensation irrespective of negligence. The Act considers compensation as relief to the workman and not as damages payable by the employer for a wrongful act or tort. Hence contributory negligence by the employee does not debar him from relief. For the same reason, it is not possible for the employer to plead to the defence of common employment or assumed risks for avoiding liability. Thus, the Act makes it possible for the workman to get compensation for injuries, unhindered by the legal obstacles set up by the law of Torts.

Employers liability for Compensation (Sec 3 to 13)

1st January 2021



By INDIAFREENOTES

Employer's liability for compensation. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable:

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

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

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

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

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

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

[Provided that if it is proved,

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

(b) that the disease has arisen out of and in the course of the employment;

the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:]

Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

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

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

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

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

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

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

4. Amount of compensation. (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:

(a)	Where death results from the injury	An amount equal to] [fifty per cent.] [of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of] [eighty thousand rupees][, whichever is more;
(b)	Where permanent total disablement results from the injury	An amount equal to] [sixty per cent.] [of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of] [ninety thousand rupees] [whichever is more.

Explanation I. For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II. Where the monthly wages of a workman exceed] [four thousand rupees][, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be] [four thousand rupees] [only;

	(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and
(c) Where permanent partial disablement results from the injury	(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

Explanation I. Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II. In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) Where temporary disablement, whether total or partial, results from the injury	a half-monthly payment of the sum equivalent to twenty-five per cent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).
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[(1-A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.]

[(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day:

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that:

(a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation. Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.]

[(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of]two thousand and five hundred rupees][for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.]

4A. Compensation to be paid when due and penalty for default. (1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.]

[(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:]

[Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation. For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).]

[(3-A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be.]

5. Method of calculating wages. [In this Act and for the purposes thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates) and calculated] as follows, namely:

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

[(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be]the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality;]

[(c)]in other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

Explanation. A period of service shall, for the purposes of [this][section], be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

6. Review. (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

7. Commutation of half-monthly payments. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

8. Distribution of compensation. [(1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:]

9. **Compensation not to be assigned, attached or charged.** Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.
10. **Notice and claim.** (1) [No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within] [two years][of the occurrence of the accident or, in case of death, within] [two years][from the date of death:]

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

[Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:]

[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the] [entertainment of a claim]:

[(a) if the claim is] [preferred][in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer] [or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed] [had knowledge of the accident from any other source at or about the time when it occurred:]

Provided further that the Commissioner may [entertain] and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been [preferred], in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or [prefer] the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon [any one of] several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

[(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting *bona fide* on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice book is maintained, by entry in the notice book.]

[10A. Power to require from employers statements regarding fatal accidents. (1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

10B. Reports of fatal accidents and serious bodily injuries. (1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death][or serious bodily injury][, the person required to give the notice shall, within seven days of the death][or serious bodily injury][, send a report to the Commissioner giving the circumstances attending the death][or serious bodily injury][:

Provided that where the State Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.]

[*Explanation.* "Serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.]

[(2) The State Government may, by notification in the Official Gazette, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.]

[(3) Nothing in this section shall apply to factories to which the Employees' State Insurance Act, 1948 (34 of 1948), applies.]

11. Medical examination. (1) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time:

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (d) of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

12. Contracting. (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, [or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation,] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

13. Remedies of employer against stranger. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Rules as to Compensation (Sec 4 to 9) (Sec 14A & 17)

1st January 2021

By INDIAFREE NOTES

14A. Compensation to be first charge on assets transferred by employer: Where an employer transfers his assets before any amount due in respect of any compensation, the liability where for accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.

Special provisions relating to masters and seamen. This Act shall apply in the case of workmen who are masters of ships or seamen subject to the following modifications, namely:

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within [one year] after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost:

Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured master or seaman is discharged or left behind in any part of [India or] [in any foreign country], any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence:

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused, and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

15A. Special provisions relating to captains and other members of crew of aircrafts. This Act shall apply in the case of:

Workmen who are captains or other members of the crew of aircrafts subject to the following modifications, namely:

(1) The notice of the accident and the claim for compensation may, except where the person injured is the captain of the aircraft, be served on the captain of the aircraft as if he were the employer, but where the accident happened and the disablement commenced on board the aircraft, it shall not be necessary for any member of the crew to give notice of the accident.

(2) In the case of the death of the captain or other member of the crew, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the aircraft has been or is deemed to have been lost with all hands, within eighteen months of the date on which the aircraft was, or is deemed to have been, so lost:

(3) Where an injured captain or other member of the crew of the aircraft is discharged or left behind in any part of India or in any other country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence:

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused, and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

16. Returns as to compensation: The [State Government] may, by notification in the Official Gazette, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the [State Government] may direct.

Contracting out: Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void insofar as it purports to remove or reduce the liability of any person to pay compensation under this Act.

17A. Duty of employer to inform employee of his rights: Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.