

# WORKMENS' COMPENSATION ACT, 1923

## I. PRELIMINARY

### 1. Short title extend and commencement

- (1) This Act may be called the Workmen's Compensation Act 1923.
- (2) It extends to the whole of India.
- (3) It shall come into force on the first day of July 1924.

### 2. Definitions

In this Act unless there is anything repugnant in the subject or context -

[Clause (a) omitted w.e.f. 1-6-1959.]

- (b) "Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20;
- (c) "compensation" means compensation as provided for by this Act;
- (d) "dependent" means any of the following relatives of a deceased workman namely :-
  - (i) a widow a minor legitimate or adopted son an unmarried legitimate or adopted daughter or a widowed mother; and
  - (ii) if wholly dependant on the earnings of the workman at the time of his death a son or a daughter who has attained the age of 18 years and who is infirm;
  - (iii) if wholly or in part dependant on the earnings of the workman at the time of his death-
    - (a) a widower
    - (b) a parent other than a widowed mother
    - (c) 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 minor
    - (d) a minor brother or an unmarried sister or a widowed sister if a minor
    - (e) a widowed daughter-in-law
    - (f) a minor child of a pre-deceased son
    - (g) a minor child of a pre-deceased daughter where no parent of the child is alive or
    - (h) a paternal grandparent if no parent of the workman is alive;

**Explanation** : For the purpose of sub-clause (ii) and items (f) and (g) of sub-clause (iii) references to a son daughter or child include an adopted son daughter or child respectively.

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer and when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship means such other person while the workman is working for him;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business but does not include an individual manager subordinate to an employer;

(ff) "minor" means a person who has not attained the age of 18 years;

(g) "partial disablement" means where the disablement is of a temporary nature such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement is of a permanent nature such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time :

Provided that every injury specified in Part II of Schedule shall be deemed to result in permanent partial disablement;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "qualified medical practitioner" means any person registered under any Central Act or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners or in any area where no such last-mentioned Act is in force any person declared by the State Government by notification in the Official Gazette to be a qualified medical practitioner for the purpose of this Act;

[Clause (j) omitted by Act 15 of 1933]

(k) "seaman" means any person forming part of the crew of any ship but does not include the master of the ship;

(l) "total disablement" means such disablement whether of a temporary or permanent nature as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement :

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity as specified in the said Part II against those injuries amount to one hundred per cent or more;

(m) "wages" includes any privilege or benefit which is capable of being estimated in money other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is -

(i) a railway servant as defined in Section 3 of the Indian Railways Act 1890 (9 of 1890) not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II or

(ia)(a) a master seaman or other member of the crew of a ship.

(b) a captain or other member of the crew of an aircraft

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

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

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

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

(3) The Central Government or the State Government 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 to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation and the provisions of this Act shall thereupon apply in case of notification by the Central Government within the territories to which the Act extends or in the case of a notification by a State Government within the State to such classes of persons :

Provided that in making addition the Central Government or the State Government as the case may be may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

## **II. Workmen's Compensation**

### **3. 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 he knew to have been provided for the purpose of securing the safety of workman.

(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 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 an 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.

(2A) 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 and notification by the State Government within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

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

(5)Nothing herein contained shall be deemed to 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 fifty 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 sixty thousand rupees whichever is more.

**Explanation I** : For the purpose 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 birthday immediately preceding the date on which the compensation fell due;

**Explanation II** : Where the monthly wages of a workman exceed two thousand rupees his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only;

(c) where permanent partial disablement results from the injury

(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

(ii) in the case of an injury 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 purpose 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 twentyfive per cent of monthly wages of the workman to be paid in accordance with the provisions of sub-section (2).

(1A) 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 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 monthly 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 one thousand rupees for payment of the same of 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.

(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 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 jurisdiction 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)

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

#### **5. Method of calculating wages**

In this Act and for the purpose 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 directly by an employer shall be deemed to be a payment of compensation :

Provided that in the case of a deceased workman an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such workman and so much of such amount as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.



(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman the Commissioner shall if he thinks necessary cause notice to be published or to be served on each dependant in such manner as he thinks fit calling upon the dependants to appear before him on such dates as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary that no dependant exists he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall on application by the employer furnish a statement showing in detail all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall subject to any deduction made under sub-section (4) be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit or may in the discretion of the Commissioner be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person the Commissioner shall if the person to whom the compensation is payable is not a woman or a person under a legal disability and may in other cases pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability such sum may be invested applied or otherwise dealt with for the benefit of the woman or of such person during his disability in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability the Commissioner may of his own motion or on an application made to him in this behalf order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

(8) Where on application made to him in this behalf or otherwise the Commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested applied or otherwise dealt with ought to be varied the Commissioner may make such order for the variation of the former order as he thinks just in the circumstances of the case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made or shall be made in and case in which it would involve the repayment by a dependant of any sum already paid to him.

(9) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud impersonation or other improper means any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

## **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 these premises at which workmen are employed a notice book in the prescribed form which shall be readily accessible at all reasonable times to any injuries 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 accident**

(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 person 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 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 vicinuity 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.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner then if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been excepted to be if the workman had been regularly attended by a qualified medical practitioner whose instructions he had followed and compensation if any shall be payable accordingly.

### **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 contract 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.

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

(2) 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 of aforesaid

### **14. Insolvency of employer**

(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman then in the event of the employer becoming insolvent or making a compensation or scheme of arrangement with his creditors or if the employer is a company in the event of the company having commenced to be wound up the rights of the employer against the insurers as respects that liability shall notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies be transferred to and vest in the workman and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer so however that the insurers shall not be under any greater liability to the workman than they would have been under the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers to void or voidable by reason of non-compliance on the part of the employer with any

terms or conditions of the contract (other than a stipulation for the payment of premia) the provisions of that sub-section shall apply as if the contract were not void or voidable and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act 1909 (3 of 1909) or under section 61 of the Provincial Insolvency Act 1920 (5 of 1920) or under Section 530 of the Companies Act 1956 (1 of 1956) are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts the amount due in respect of any compensation the liability where for accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up as the case may be and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment the amount due in respect thereof shall for the purpose of this section be taken to be the amount of the lump sum for which the half-monthly payment could if redeemable be redeemed if application were made for that purpose under section 7 and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3) but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

#### **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 wherefor 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.

#### **15. Special provisions relating to master 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 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 dependant or the person accused had an opportunity or 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.

(4) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is under any law in force for the time being relating to merchant shipping liable to defray the expenses of maintenance of the injured master or seaman.

(5) No compensation shall be payable under this Act in respect of any injury in respect of which provision is made for payment of gratuity allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine etc.) Scheme 1939 or the War Pensions and Detention Allowances (Indian Seamen etc.) Scheme 1941 made under the Pensions (Navy Army Air Force and Mercantile Marine) Act 1939 (2 & 3 Geo. 6 c 83) or under the War Pensions and Detention Allowances (Indian Seamen) Scheme 1942 made by the Central Government.

(6) Failure to give a notice or make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceedings under this Act in respect of any personal injury if -

(a) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause and

(b) the State Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made makes provision for payments and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury and

(c) the proceedings under this Act are commenced within one month from the date on which the said certificate of the State Government was furnished to person commencing the proceedings.

### **15A. Special provisions relating to captains and other members of crew of aircraft**

This Act shall apply in the case of workmen who are captains or other members of the crew of aircraft 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 caption 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 :

Provided that the Commissioner may entertain any claim for 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 captain of 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.

### **15B. Special provisions relating to workmen aboard of companies and motor vehicles**

This Act shall apply -

(i) in the case of workmen who are persons recruited by companies registered in India and working as such aboard and



(ii) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act 1988 (59 of 1988) as drivers helpers mechanics cleaners or other workmen subject to the following modifications namely :-

(iii) The notice of the accident and the claim for compensation may be served on the local agent of the company or the local agent of the owner of the motor vehicle in the country of accident as the case may be.

(iv) In the case of death of the workman in respect of whom the provisions of this section shall apply the claim for compensation shall be made within one year after the news of the death has been received by the claimant :

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

Where an injured workman 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 on 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.

## **17. 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 in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

## **18. Proof of age**

[Repealed by the Workmen's Compensation (Amendment) Act 1959, (8 of 1959)]

## **18A. Penalties**

(1) Whoever -

(a) fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10 or

(b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10A or

(c) fails to send a report which he is required to send under section 10B or

(d) fails to make a return which he is required to make under section 16 shall be punishable with fine which may extend to five thousand rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner and no Court shall take cognizance of any offence under this section unless complaint thereof is made within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner.

## **III COMMISSIONERS**

### **19. Reference of Commissioners**

(1) 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.

(2) No Civil Court shall have jurisdiction to settle or deal with any question which is by or under this Act required to be settled or dealt with by a Commissioner or to enforce any liability incurred under this Act.

### **20. Appointment of Commissioners**

(1) 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.

(2) Where more than one Commissioner has been appointed for any area the State Government may by general or special order regulate the distribution of business between them.

(3) 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.

(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

## **21. Venue of proceedings and transfer**

(1) Where any matter under this Act is to be done by or before a Commissioner the same shall subject to the provisions of this Act and to any rules made hereunder be done by or before the Commissioner for the area in which -

(a) the accident took place which resulted in the injury; or

(b) the workman or in case of his death the dependant claiming the compensation ordinarily resides; or

(c) the employer has his registered office :

Provided that no matter shall be processed before or by a Commissioner other than the Commissioner having jurisdiction over the area in which the accident took place without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned :

Provided further that where the workman being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a workman in a motor vehicle or a company meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship aircraft or motor vehicle resides or carries on business or the registered office of the company is situate as the case may be.

(1A) If a Commissioner other than the Commissioner with whom any money has been deposited under section 8 proceeds with a matters under this Act the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request he shall comply with the same.

(2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner whether in the same State or not he may subject to rules made under this Act order such matter to be transferred to such other Commissioner either for report or for disposal and if he does so shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and where the matter is transferred for disposal shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings :

Provided that the Commissioner shall not where any party to the proceedings has appeared before him made any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard :

(3) The Commissioner to whom any matter is so transferred shall subject to rules made under this Act inquire there into and if the matter was transferred for disposal continue the proceedings as if they had originally commenced before him.

(4) On receipt of report from a Commissioner to whom any matter has been transferred for report under sub-section (2) the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5)The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

## **22. Form of application**

(1)Where an accident occurs in respect of which liability to pay compensation under this Act arises a claim for such compensation may subject to the provisions of this Act be made before the Commissioner,

(1A)Subject to the provisions of sub-section (1) no application for the settlement of any matter of Commissioner other than an application by a dependant or dependants for compensation shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) an application to a Commissioner may be made in such form and shall be accompanied by such fee if any as may be prescribed and shall contain in addition to any particulars which may be prescribed the following particulars namely :-

(a) A concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;

(b) in the case of a claim for compensation against an employer the date of service of notice of the accident on the employer and if such notice has not been served or has not been served in due time the reason for such omission;

(c) the names and addresses of the parties; and

(d) except in the case of an application by dependants for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3)If the applicant is illiterate or for any other reason is unable to furnish the required information in writing the application shall if the applicant so desires be prepared under the direction of the Commissioner.

## **22A. Power of Commissioner to require further deposit in cases of fatal accident**

(1)Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death and in the opinion of the Commissioner such sum is insufficient the Commissioner may by notice in writing stating his reasons call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2)If the employer fails to show cause to the satisfaction of the Commissioner the Commissioner may make an award determining the total amount payable and requiring the employer to deposit the deficiency

## **23. Powers and procedure of Commissioners.**

The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure 1908 (5 of 1908) for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the Commissioner shall be deemed to be a

Civil Court for all the purposes of section 195 and of Chapter XXVI of the Code of Criminal Procedure 1973 (2 of 1974).

#### **24. Appearance of parties**

Any appearance application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance company or a registered Trade Union or by an Inspector appointed under sub-section (1) of section 8 of the Factories Act 1948 (63 of 1948) or under sub-section (1) of section 5 of the Mines Act 1952 (35 of 1952) or by any other officer specified by the State Government in this behalf authorised in writing by such person or with the permission of the Commissioner by any other person so authorised.

#### **25. Method of recording evidence**

The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record :

Provided that if the Commissioner is prevented from making such memorandum he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same and such memorandum shall form part of the record :

Provided further that the evidence of any medical witness shall be take down as nearly as may be word for word.

#### **26. Costs**

All costs incidental to any proceedings before a Commissioner shall subject to rules made under this Act be in the discretion of the Commissioner.

#### **27. Power of submit cases**

A Commissioner may if he thinks fit submit any question of law for the decision of the High Court and if he does so shall decide the question in conformity with such decision.

#### **28. Registration of agreements**

(1)Where the amount of any lump sum payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise or where any compensation has been so settled as being payable to a woman or a person under a legal disability a memorandum thereof shall be sent by the employer to the Commissioner who shall on being satisfied as to its genuineness record the memorandum in a register in the prescribed manner :

Provided that -

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

[Clause (b) omitted by Act 5 of 1929.]

(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise or an agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act 1872 (9 of 1872) or in any other law for the time being in force.

### **29. Effect of failure to register agreement**

Where a memorandum of any agreement the registration of which is required by section 28 is not sent to the Commissioner as required by that section the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act and notwithstanding anything contained in the proviso to sub-section (1) of section 4 shall not unless the Commissioner otherwise directs be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

### **30. Appeals**

(1) An appeal shall lie to the High Court from the following orders of a Commissioner namely :-

(a) an order as 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;

(b) an order awarding interest or penalty under section 4A;

(c) an order refusing to allow redemption of a half-monthly payment;

(d) an order providing for the distribution of compensation among the dependants of a deceased workman or disallowing any claim of a person alleging himself to be such dependant;

(e) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(f) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and in the case of an order other than an order such as is referred to in clause (b) unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner or in which the order of the Commissioner gives effect to an agreement come to by the parties :

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(1)The period of limitation for an appeal under this section shall be sixty days.

(2)The provisions of section 5 of the Limitation Act 1963 (36 of 1963) shall be applicable to appeals under this section.

### **30A. Withholding of certain payments pending decision of appeal**

Where an employer makes an appeal under clause (a) of sub-section (1) of section 30 the Commissioner may and if so directed by the High Court shall pending the decision of the appeal withhold payment of any sum in deposit with him.

### **31. Recovery**

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act whether under an agreement for the payment of compensation or otherwise and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act 1890 (1 of 1890).

## **IV. RULES**

### **32. Power of the State Government to make rules**

(1) The State Government may make rules to carry out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters namely :-

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;

(b) for prescribing the intervals at which and the conditions subjects to which a workman may be required to submit himself for medical examination under sub-section (1) of section 11;

(c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases;

(d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;

(e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another;

- (f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;
- (g) for prescribing the form and manner in which memorandum of agreements shall be presented and registered;
- (h) for the withholding by Commissioners whether in whole or in part of half-monthly payments pending decision on application for review of the same;
- (i) for regulating the scales of costs which may be allowed in proceedings under this Act;
- (j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act;
- (k) for the maintenance by Commissioners of registers and records of proceedings before them;
- (l) for prescribing the classes of employers who shall maintain notice-books under sub-section (3) of section 10 and the form of such notice-books;
- (m) for prescribing the form of statement to be submitted by employers under section 10A;
- (n) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner;
- (o) for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts;
- (p) for prescribing the manner in which diseases specified as occupation diseases may be diagnosed;
- (q) for prescribing the manner in which diseases may be certified for any of the purposes of this Act;
- (r) for prescribing the manner in which and the standards by which incapacity may be assessed.

(3) Every rule made under this section shall be laid as soon as may be after it is made before the State Legislature.

### **33. Power of Local Government to make rules**

[Repealed by the A.O. 1937]

### **34. Publication of rules**

(1) The power to make rules conferred by section 32 shall be subject to the condition of the rules being made after previous publication.



(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act 1897 (10 of 1897) as that after which a draft of rules proposed to be made under section 32 will be taken into consideration shall not be less than three months from the date on which the draft of proposed rules was published for general information.

(3) Rules so made shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act.

**35. Rules to give effect to arrangements with other countries for the transfer of money paid as compensation**

(1) The Central Government may by notification in the Official Gazette make rules for the transfer to any foreign country of money deposited with a Commissioner under this Act which has been awarded to or may be due to any person residing or about to reside in such foreign country and for the receipt distribution and administration in any State of any money deposited under the law relating to workmen's compensation in any foreign country which has been awarded to or may be due to any person residing or about to reside in any State :

Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed orders determining its distribution and apportionment under the provisions of sub-sections (4) and (5) of section 8.

(2) Where money deposited with a Commissioner has been so transferred in accordance with the rules made under this section the provisions elsewhere contained in this Act regarding distribution by the Commissioner of compensation deposited with him shall cease to apply in respect of any such money.

**36. Rules made by Central Government to be laid before Parliament**

Every rule made under this Act by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session of the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**SCHEDULE I**

[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 a 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 eye-sight 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

#### Amputation cases-upper limbs (either arm)

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 a 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

#### Amputation cases-lower limbs

11	Amputation of both feet resulting in end bearing stumps	90
12	Amputation through both feet proximal to the metatarsophalangeal joint	80
13	Loss of all toes of both feet through the metatarso-phalngeal joint	40
14	Loss of all toes of both feet 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
17	Amputation below hip with stump not exceeding 12.70 cms in length measured from tip of great trochanter	80
18	Amputation below hip with stump exceeding 12.70 cms in length measured from tip of great trochanter 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 12.70 cms	50
21	Amputation below knee with stump exceeding 12.70 cms	50
22	Amputation of one foot resulting in end bearing stump	50
23	Amputation through one foot proximal to the metatarso-phalangeal joint	50
24	Loss of all toes one foot through the metatarso-phalangeal joint	20

## OTHER INJURIES

25	Loss of one eye, without complication, the other being normal	40
26	Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal	30
26A	Loss of partial vision of one eye	10

Loss of

### A. Fingers of right or left hand

#### INDEX FINGER

27	Whole	14
28	Two phalanges	11
29	One phalanx	9
30	Guillotine amputation of tip without loss of bone	5

#### MIDDLE FINGER

31	Whole	12
32	Two phalanges	9
33	One phalanx	7
34	Guillotine amputation of tip without loss of bone	4

#### RING OR LITTLE FINGER

35	Whole	7
36	Two phalanges	6
37	One phalanx	5
38	Gulliotine amputation of tip without loss of bone	2

### B. Toes of right or left foot

#### GREAT TOE

39	Through metatarso-phalanges joint	14
40	Part ,with some loss of bone	3

#### ANY OTHER TOE

41 Through metatarso-phalangeal joint	3
42 Part ,with some loss of bone	1

#### TWO TOES OF ONE FOOT, EXCLUDING GREAT TOE

43 Through metatarso-phalangeal joint	5
44 Part ,with some loss of bone	1

#### THREE TOES OF ONE FOOT, EXCLUDING GREAT TOE

45 Through metatarso-phalangeal joint	6
46 Part, with some loss of bone	3

#### FOUR TOES OF ONE FOOT, EXCLUDING GREAT TOE

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 the Schedule shall be deemed to be the equivalent of the loss of that limb or member.

#### **SCHEDULE II**

[Section 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 than in 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

incident 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 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 of 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 mine as defined in clause (j) of section 2 of the Mines Act 1952 (35 of 1952) in any mining operation or in any kind of work other than clerical work incidental to or connected with any mining operation or with the 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 tonnes 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 Indian Ports Act 1908 (15 of 1908) or the Major Port Trusts Act 1963 (18 of 1963) of goods which have been discharged from or are to be loaded into any vessel; or

(a) warping a ship through the lock; or

(b) mooring and unmooring ships at harbour wall berths or in pier; or

- (c) removing or replacing dry dock caissons when vessels are entering or leaving dry docks; or
- (d) the docking or undocking of any vessel during an emergency; or
- (e) preparing splicing chis springs and check wires painting depth marks on locksidess removing or replacing fenders whenever necessary landing of gangways maintaining lifebuoys up to standard or any other maintenance work of a like nature; or
- (f) any work on jolly boats for bringing 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 any road bridge tunnel or canal; or
  - (c) 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 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 pipeline 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 Indian Railway Act 1989 (24 of 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 operations 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 person; 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

(xvi) 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

(xvii) employed in a lighthouse as defined in clause (d) of section 2 of the Indian Lighthouse Act 1927 (17 of 1927); or

(xviii) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; or

(xix) employed in the training keeping or working of elephants or wild animals; or

(xx) 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 forests fires; or

(xxi) employed in operations for the catching or hunting of elephants or other wild animals; or

(xxii) employed as a diver; or

(xxiii) 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 on any one day of the preceding twelve months ten or more persons have been so employed or

(a) any market in which on any one day of the preceding twelve months fifty or more persons have been so employed;  
or

(xxiv) employed in any occupation involving the handling and manipulation of radium or X-ray apparatus or contract with radioactive substances; or

(xxv) 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

(xxvi) employed in horticultural operations forestry bee keeping or framing by tractors or other contrivances driven by steam or other mechanical power or by electricity; or

(xxvii) employed otherwise than in a clerical capacity in the construction working repair or maintenance of a tube-well; or

(xxviii) employed in the maintenance repair or renewal of electric fittings in any building; or

(xxix) employed in a circus.

(xxx) employed as watchman in any factory or establishment; or

(xxxi) employed in any operation in the sea for catching fish;

(xxxii) 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 insects; or

(xxxiii) employed in handling animals like horses mules and bulls;

(xxxiv) employed for the purpose of loading or unloading any mechanically propelled vehicle or in the handling or transport of goods which have been loaded in such vehicles;

(xxxv) employed in cleaning of sewer lines or septic tanks within the limits of a local authority;

(xxxvi) employed on surveys and investigation exploration or garage or discharge observation of rivers including drilling operations hydrological observations and flood forecasting activities groundwater surveys and exploration;

(xxxvii) 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;

(xxxviii) employed in 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;

(xxxix) employed in installation maintenance or repair of pumping equipment used for lifting of water from wells tube wells ponds lakes streams and the like;

(xl) employed in the construction boring or deepening of an open well bore well bore-cum-dug well filter point and the like;



- (xli) employed in spraying and dusting of insecticides or pesticides in agricultural operations or plantations; or
- (xlii) employed in mechanised harvesting and threshing operations;
- (xliii) employed in working or repair or maintenance of bulldozers tractors power tillers and the like;
- (xliv) employed as artists for drawing pictures on advertisement boards at a height of 3.66 metres or more from the ground level;
- (xlv) employed in any newspaper establishment as defined in the Working Journalists and Other Newspaper Employees (Conditions of Services) and Miscellaneous Provisions Act 1955 (45 of 1955) and engaged in outdoor work.

**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.

### **SCHEDULE III**

#### **[Section 3]**

#### **LIST OF OCCUPATIONAL DISEASE**

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 or merchandise which may have been contaminated by animals or animal carcasses;
  - (d) Other work carrying a particular risk of contamination
2. Disease 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 amino toxic derivatives of benzene or its homologous All work involving exposure to the risk concerned