



RAMA UNIVERSITY

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FACULTY OF COMMERCE & MANAGEMENT

COURSE: MBA 3rd SEMESTER

SUBJECT: LABOUR LEGISLATIONS

SUBJECT CODE: MBAHR01

LECTURE: 24

NAME OF FACULTY: DR. H. L. BHASKAR

Lecture-24



Social Security Legislations: Payment of Wages Act, 1936; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; The Workmen's Compensation Act, 1923; The Employee State Insurance Act, 1948; Employees' Provident Fund and Miscellaneous Provisions Act, 1952; Maternity Benefit Act, 1961

The Workmen's Compensation Act, 1923 or Employee's Compensation Act, 1923 - (Amendment) Act, 2017 (Continue.....)

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.7470 OF 2009**

North East Karnataka Road Transport CorporationAppellant(s)
VERSUS
Smt. Sujatha ...Respondent(s)

The employer had challenged the compensation awarded to the wife of a workman who had died in the course of employment.

In this case, the Commissioner for employee's Compensation had awarded the interest at the rate of 12% per annum on the awarded sum but it was awarded from the expiry of 45 days from the date of order and that too, if the employer failed to deposit the awarded sum within 45 days.

The bench comprising Justice Abhay Manohar Sapre and Justice Indu Malhotra noticed that in *Pratap Narain Singh Deo vs. Srinivas Sabata*, a four-judge bench of the apex court had held that an employer becomes liable to pay compensation as soon as as the personal injury is caused to the workman in the accident which arose out of and in the course of employment and that it is the date of the accident and not the date of adjudication of the claim, which is material.

It also observed that the division bench of Supreme Court in *National Insurance Company Ltd vs. Mubasir Ahmed and Oriental Insurance Company Ltd. vs. Mohmad Nasir & Anr.*, without noticing the above judgment, had held that payment of compensation fall due only after the commissioner's order or with reference to the date on which the claim application is made.

REVIEW [Sec 6]

- In the case of temporary disablement of the workman, employer should pay the amount as compensation for every two weeks.
- If workman condition is improving, employer can make an application to the commissioner for reduction of compensation amount payable
- If the workman condition is becoming worse, with the help of the qualified medical practitioner can make an application to commissioner for increase in compensation amount payable for every two weeks.
- 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.

COMMUTATION OF HALF-MONTHLY PAYMENTS [Sec 7]

In the case of temporary disablement of the workman, his compensation amount can settlement by way of lump sum amount or can make an application to commissioner for settlement of lump sum amount after a period of at least 6 months.

DISTRIBUTION OF COMPENSATION. [Sec 8]

- Compensation must be paid to the dependents only. No other persons except dependents having are right to claim compensation.
- Compensation should not be paid directly to the workman by his employer in case of injury or death etc.
- Employer should deposit the workman compensation with the commissioner.
- The deposited compensation to workman shall be paid through the commissioner to the workman.
- If no dependent is there for deceased (dead) workman, there is no necessity to pay compensation by the employer. [Sec 8 (4)].
- If two or more dependents exist for a deceased workman, the compensation amount shall be distributed by the commissioner according to his wish. [Sec 8 (5)].
- If the workman dependent is of legal disability ((a minor), or mental capacity) or neglect of children, the compensation amount shall be invested for their according to the directions of the commissioner.

Compensation not to be assigned, attached or charged [Sec 9]

Except to the workman, compensation should not be passed or attached to other person. Only in case of death of the employee, such compensation should be given to his/her dependents.

NOTICE AND CLAIM. [Sec 10]

After the occurrence of the accident to the workman, giving notice to the employer is must.

After the occurrence of the accident to workman or the death of the workman, with in 2years notice should be given to the employer.

Without giving notice of accident or death of the workman, claim of compensation is not considered by the commissioner.

Every notice given to employer about the accident of the workman should contain the following details.

- a) Name of the injured workman.
- b) Address of the injured workman.
- c) Date on which the accident happened.

Notice should be registered post addressed.

POWER TO REQUIRE FROM EMPLOYERS STATEMENTS REGARDING FATAL ACCIDENTS.[Sec 10A]

Commissioner receives information from any source about the death of the workman or the occurrence of the accident to the workman under employment, he is having power to send notice to employer through registered post demanding the employer fro explanation about the cause and reasons for the accident or the death of the workman.

Within 30 days from the receipt of the notice from commissioner by the employer has to submit all the details of the accident or the death of the workman. Employer should mention whether he is liable to pay the compensation or not liable to pay the compensation to the workman.

- If employer accepts the liability to pay the compensation to the workman, employer should deposit the compensation with the commissioner with in 3oday from the receipt of the notice.
- If employer rejects the liability to the compensation to the workman, employer should mention all details why he is not so liable.

REPORTS OF FATAL ACCIDENTS AND SERIOUS BODILY INJURIES. [Sec 10B]

After the occurrence of the accident results in death of the workman, or serious bodily injury of the workman, employer should give notice to the authority appointed by the state government within 7 days.

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.

CONTRACTING. [Sec 12]

In case of contracting, the principal (person who employed the workman fro contract) or

contractor (principal for the purposes of his trade or business contracts with any other person) is liable to pay the compensation to the employed workman who is injured.

INSOLVENCY OF EMPLOYER [Sec 14]

In the case where the employer of the worker has entered into an agreement with insurers (insurance company), to pay compensation and subsequently the employer (may be company) becomes insolvent or closing down of company, then in the event of any accident happening, the employer's liabilities will be transferred to the insurers, and they would be treated as the employers of the aggrieved worker for the purpose of paying compensation.

Compensation cannot be claimed from the insurer 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.

If the liability of the insurers is to be less than that of the original employers, then the worker can claim the balance amount from the insolvency proceedings. [Sec 4(2)]

If employer has taken insurance to cover claims arising out of workers' accidents, the insurance company will be responsible to pay compensation. It is interesting that in such cases were an employer has taken insurance and the employer will back the worker's claim against the insurance company! Naturally, as insurance company is not responsible to pay the worker compensation. The practice of taking insurance is common only amongst the bigger contractors/companies.

In the case of the compensation being half monthly payments (every two weeks), the insurers may convert that to an appropriate lump sum and pay that compensation to the worker. [Sec14 (5)]

SPECIAL PROVISIONS RELATING TO MASTERS AND SEAMEN. [Sec 15]

- Master of the ship is treated as the employer and seamen are treated as the workman employed under him.
- Notice of the accident and disablement to the seaman is not necessary, if it has happened on board of the ship.
- 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. [Sec 15(2)]
- In case ship has lost the claim for compensation by claimant shall be made within 18 months from the date ship is lost.

SPECIAL PROVISIONS RELATING TO CAPTAINS AND OTHER MEMBERS OF CREW OF AIRCRAFT'S. [Sec 15A]

- Captain of the aircraft is treated as the employer and crew are treated as the workman employed under him.
- Notice of the accident and disablement to the crew is not necessary, if it has happened on board of the aircraft.
- In the case of the death of a Captain of the aircraft or crew, the claim for compensation shall be made within one year after the news of the death has been received by the claimant. [Sec 15A(2)]
- In case aircraft has lost, the claim for compensation by claimant shall be made within 18 months from the date ship is lost..

SPECIAL PROVISIONS RELATING TO EMPLOYEES ABROAD OF COMPANIES AND MOTOR VEHICLES. [Sec 15B]

(i) in the case of employees who are persons recruited by companies registered in India and working as such abroad, 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 employees, subject to the following modifications, namely :- (1) 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,

(2) 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:

CONTRACTING OUT [Sec 17]

Any contractor agreement made for give-up of compensation from the employer in case of the accident or the death of the workman is void and not valid.

THE EMPLOYEE'S COMPENSATION (AMENDMENT) ACT, 2017

17A. 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.

PENALTIES. [Sec 18A.]

(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 10-A, or

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

(d) fails to make a return which he is required to make under [section 16, or] shall be punishable with fine] [which shall not be less than fifty thousand rupees but which may extend to one lakh rupees.]

(e) fails to inform the employee of his rights to compensation as required under section 17A

(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].,

APPOINTMENT OF COMMISSIONER. [Sec 20]

(1) The State Government may, by notification in the Official Gazette, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted officer for not less than five years having educational qualifications and experience in personnel management, human resource development and industrial relations

(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).

FORM OF APPLICATION [Sec 22]

- Application should be made before the commissioner by the dependents of the workman for claiming the compensation
- Fee is necessary for Application to commissioner. [sec 22(2)]
- Application form should consist the following details
 - a) Reason for application for compensation
 - b) Relief they need.
 - c) Claims
- Date of the notice given to the employer about the accident of the employer

- If application is illiterate, he or she can take help of other person in preparing the application form.

Section 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 taken down as nearly as may be word for word.

25 A. The Commissioner shall dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.

REGISTRATION OF AGREEMENTS.[Sec 28]

When there is agreement (memorandum) of compensation in between workman and employer for lump sum amount settlement against the half monthly payments (every two weeks payments) to the women or a person under a legal disability, employer should send the memorandum to the commissioner.

Memorandum should not be obtained by fraud, undue influence or other improper means. If the commissioner satisfies with memorandum, it shall be registered.

[Sec 29]

If memorandum of agreement is not send to commissioner by the employer shall be liable to pay the full amount of compensation which he is liable to pay.

Section 30. Appeals. - (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:-

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

[(aa) an order awarding interest or penalty under section 4-A;]

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

(c) 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;

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

(e) 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 [ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify]:

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.] (2) The period of limitation for an appeal under this section shall be sixty days. (3) The provisions of section 5 of [the Limitation Act, 1963 (36 of 1963)], shall be applicable to appeals under this section.