



Social Security Under Employee's Compensation Act 1923: Judicial Perspective**

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Abstract

Human Civilization is in a constant pursuit of social order, which has been greatly disturbed of social order, which has been greatly disturbed during all phases of its history. The notion of social security has been in existence since the time of immemorial and traces its evolution right from the existence of the society. It is true that the human history is full of struggle for survival and has faced the unpredictability brought on by unemployment, ill health, impairment, demise and elderliness. Social security is a double-edged system designed to combat against destitution, vagrancy & deprivation, it assures the basic minimum benefits to an individual for himself & his dependents. Today it plays a vital role in the advancement process and generates a more positive approach to the challenges of globalization.

Key Words- Social Security, Compensation, Employee, Disability, Employer, Notional Extention

1 Introduction

In the early phase of the industrial revolution, the profit motive of the employer, investors and shareholders was dominant & as such, the worker developed as a commodity to be hired and fired in the interest of more and more of profits. The dominant profit motive and the non-involvement of the State lead to the theory of an exploitation of man by man is the bitter fruit of profit motive which was prevalent in those days. Under laissez faire economy, the workers suffered owing to the long hours of work, having to work in most unhealthy surroundings, exposure to accidents and low wages which did not provide even bare subsistence. Such arrangement was found grossly inadequate and against the human rights & it was felt that the State has to play a significant part in achieving the desired assistance to workers under such circumstances. This led to the evolution of the concept of social security.¹

2 The Employee's Compensation Act, 1923

In order to achieve 'gender neutrality' i.e. a sense of equality the name of the Workmen's Compensation Act 1923 was changed in 2009. The beginning of initiatives regarding social security in India was greatly affected and took pace with the passing of the Employees' Compensation Act, 1923. The primary objective of the Act

¹ Meenakshi Gupta, "Labour Welfare & Social Security in Unorganized Sector", 2007, P. 78

is to make the employers responsible for his liability to pay compensation to workers for accidents arising out of and in the course of employment. It aims not to compensate the employee in alternate of wages but to pay compensation for the loss suffered.²

2.1 Applicability of the Act, 1923

Prior to the passing of this Act, the workers were truly speaking at the mercy of the employers; there were very few chances when the employers were held responsible for paying compensation to the victim. Before the passing of the Act, 1923 the compensation by an employee could be claimed only for those accidents which was occurred due to the wrongful act or negligence of the employer & worker was at no fault.³ In order to secure and safeguard the workers against the employment related injuries during or in the course of employment, the Government made proposals to enact an Act to grant compensation & the same was circulated for opinion of the people, the proposals received a huge support & as a result, the Act of 1923 was passed.⁴ Since the passing of this Act, it has been amended number of times, subsequently in 1987, 2000, and 2008 and recently in 2017.

The Act extends to the entire of India; it becomes applicable to the organized as well as unorganized sectors that are out of the preview of E.S.I scheme. The Act applies to many diverse industries including mines, factories, transport, plantation, mechanically propelled vehicle, construction work & certain other hazardous occupations etc.⁵

2.1.1 Objective of the Act, 1923

The primary aim of the Employees Compensation Act, 1923 is-

- a- To secure a financial support as a compensation to the employees or his dependents in a situation of employment related injuries resulting in death or disability (partial or permanent) including certain occupational disease that occurred out of & in the course of employment.⁶
- b- To makes the employer accountable or responsible towards the safety of the workers employed by him.
- c- Lessen the burden of expenses at the time of unpredictable hardship such as arises out occurrence of accident at working place.

In **Branch Manager, New India Assurance Co. Ltd V. Siddappa, Major**,⁷ the court held that the Employees' Compensation Act, 1923 undoubtedly is welfare piece of enactment focused to settle the suffering of employee or his dependents who become incapacitated or lost the life on account of the injuries suffered by them during the course of the employment.

2.1.2 Employers Liability to Pay Compensation and Risk Covered

Risks covered under this Act includes all the injuries occurs out of and during the course of employment, it covers the economic loss suffered by the employee and the medical expenses incurred on various injuries or

² Dr. Jeet Singh Maan, "Comprehensive Social Security Scheme for Workers", Deep & Deep Publication, New Delhi 2015, P. 121

³ The Indian Fatal Accident Act, 1885

⁴ A.M. Sharma, Gazette of India, 1922, Part v, P. 313

⁵ Section 2(n) The Employee's Compensation Act, 1923

⁶ Employee's Compensation Act, 1923, Sec. 3

⁷ 2004 Lab IC 1574 (Kant.)

diseases as specified in the Schedule III. As per the Act the employer shall stand liable to pay the prescribed amount of compensation to the employee (in case of demise of an employee the compensation is given to the dependents of the deceased) who suffers an employment related injury arising out of and in the course of his employment.

The employer can claim exemption to pay compensation in the following cases where -

- a- effect of injury caused does not remained for a period, exceeding three days;
- b- injury does not result into death or permanent total disablement, which is the result of worker's default like,
 - i- at the occurrence of accident the employee is under a state of drink or drugs, or
 - ii- the accident occurs due to deliberate disobedience of or breach of the direction expressly given or of rules expressly framed for the safety purpose, or
 - iii- the deliberate removal or disregard by the employees of any safety guard or other device which is essential for the safety of the worker.

The employer shall stand liable to pay compensation in a case where the employee suffers from any disease expressly mentioned as an occupational disease related to that employment as specified in the schedule of the Act.⁸

2.1.3 Amount of Compensation Paid to Employees

As per the Act, for determining the amount of compensation to be paid in respect of injuries suffered, the injuries have been categories as i.e. death, permanent total disablement, permanent partial disablement and total or partially temporary disablement. In case where death is the result of injury on amount equal to fifty percent of the monthly wages of the deceased employee multiplied by the relevant factor; or an amount of [one lakh & twenty thousand]⁹ rupees whichever is more. The maximum amount of compensation for death raised up-to Rs. 4.50 lakh. The Amendment Act 46 of 2000 has raised the existing wage ceiling for computation of maximum amount of compensation from Rs 2,000 to Rs. 4,000. In case of permanent total disablement occurs the beneficiary is eligible to get an amount equal to 60 percent of the monthly wages multiplied by the relevant factor, or an amount of [one lakh and forty thousand rupees].¹⁰ Maximum amount provided in death and permanent total disablement is Rupees 4.56 lakh and Rupees 5.48 lakh respectively that is awarded according to the age and wage of affected employee.¹¹ In case of permanent partial disablement the amount of compensation payable is depend upon the degree of the loss of earning capacity of the affected employee. In case of temporary disablement (total/partial), the sufferer is entitled to a half monthly payment i.e. sum equivalent to 25 percent of monthly wages. The Central Government may have the authority to increase the amount of compensation as mentioned above from time to time.¹² Any amount that has been given to the employees from the employer as assistance towards his medical treatment is to not be treated as given

⁸ Section 3 of the Employees Compensation Act, 1923

⁹ Substituted by The Employees Compensation (Amendment) Act 2009

¹⁰ Substituted by The Employees Compensation (Amendment) Act, 2009

¹¹ Ministry of Broadcasting, 2009 Govt. of India, P.623

¹² Section 4 of the Employee's Compensation Act, 1923

by way of compensation. In case of demise of the employee as result of the injury caused due to an accident, the employer is under a liability to pay funeral expenses in addition to the amount of compensation.¹³ Any unreasonable delay in paying the required amount of compensation attracts penalty.¹⁴ The employer is directed to deposit the amount of compensation with the commissioner and not permitted to not make any direct payment of compensation. However, the employer is free to give any advance to the dependents of the deceased employee to meet out the exigency and the same is adjusted in total amount of compensation deposited with the concerned authority.¹⁵

2.1.4 Administration of the Act

State government is authorized to administer the Act, through Employee's Compensation Commissioner who settles all claims for compensation or examine other issues like liability of an employer to pay compensation, enquires from employer regarding fatal accident & revision of periodical payments. In order to initiate the procedure for claim relating to compensation a notice of accident must be served to the commissioner in the manner prescribed as soon as practicable after the incident 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. However, the commissioner may allow the claim of compensation even after the expiry of the time specified, if he satisfied that failure to give notice or to make a claim as the case may be was due to sufficient reason.¹⁶

2.1.5 Defects of the Employees Compensation Act 1923

It is well settled that Act is an important piece of social security & welfare legislation; it is beneficial and provides timely assistance and protection to the employees, despite this it suffers from defects such as

- a- Limited application of the Act; the Act is interpreted too narrowly and it covers only the scheduled industries which employ only a fraction of the total labour force.
- b- Only permanent worker under these scheduled industries are covered, a large section of employees is left uncovered and exposed to risks.
- c- An important shortcoming in the provisions of the Act is that it makes absolutely no provisions for medical help which is most needed when he/she is involved in some accident or contracts an industrial disease.¹⁷
- d- The amount of compensation awarded for partial/total disability is not sufficient or more enough to live an independent life.
- e- The procedure of claiming the benefits is very much complicated.
- f- Not covered any benefit for the accident or mishap to an employee as occurred outside the course of employment.
- g- Limited applicability to the unorganized sector of work.

¹³ Ibid

¹⁴ Section 4 A of the Employees Compensation Act, 1923

¹⁵ Section 8 of the Employee Compensation Act, 1923

¹⁶ Section 10 of the Employees Compensation Act, 1923

¹⁷ Dr. T.N. Bhagoliwal, "Economics of Labour & Industrial Relations", ed. 1989, Sahitya Bhawani Publication, P. 513

3 Judicial Response

Interpretation of the term Dependent and Their Entitlement to Compensation

In Ramji V. Lalit Kumar Bardya,¹⁸ a driver of a tractor met with an accident in the course of and out of employment as result of which he was crushed under the tractor and died. The parents of the deceased employee claimed compensation. The Commissioner rejected the claim on the ground that they are not dependents within the meaning of the Act. The court observed that the parents who did not get any advantage from the earning of the deceased but were entitled to receive the same in normal circumstances, are included in the relevant definition of the term dependent. Non-payment of wages due to the deceased dispossesses the parents of the benefits of the earnings of the deceased who was living jointly with them during his life time. His death deprived them of his monetary support for all times in future. Such parents should be held intended to be included in the definition of dependent and entitled to compensation.

In Bai Mani Widow of Jakhlabhai Hurjibhai and others V. Executive Engineer Irrigation, Project Division, Baroda,¹⁹ a daily wage worker died while he was working. Appellants, the dependents his widowed mother, two minor sons & a minor daughter claimed a sum of rupees 18000 as compensation and rupees 9000 as penalty. The High Court after considering the facts in question held that the concerned authorities jointly & severally liable to pay compensation to the dependents of the deceased employee.

Interpretation of Term Arising Out of and in the Course of Employment and Entitlement of Compensation; Doctrine of Notional Extension.

In Saurashtra Salt Manufacturing Co.V. Bai Valu Raja, the workman employed in Saurashtra Salt Company while returning to his home after finishing the work met with an accident in a ferry boat and died due to drowning. After considering the facts and circumstances of the case the apex court held that the employment of a workman considers not start until he has reached the premises of the employment. The period taken by the workman in coming to and going from the place of work is excluded from the course of employment. However, this exclusion is subject to “the theory of notional extension of the premises of the employer so as to include an area, which the workman uses in going and in leaving to the actual place of work. There may be reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises”.²⁰

In J.F. Pareira. V. Eastern Watch Co. Ltd.,²¹ a sales man working in the company on the ground floor sought a few minutes permission to go out. Subsequently, he was found unconscious in the third floor of the building as he suffered an attack and he die in hospital. The court held that the fatal injury sustained by the workman had been sustained in the course of employment. The court further stated that while on duty a workman can be out for smoke or to visit conveniences or to enjoy a cup of tea. Unless he does not go out to his personal or on a frolic of his own, he would be deemed to be in the premises of the employer by the notional extension and any miss-happening to him is deemed to have arisen in the course of employment.

¹⁸ (1995) I LLJ 910 MP

¹⁹ (1986) II L.L.J.426 (Guj.)

²⁰ AIR 1958 SC 881

²¹ (1985) I LLJ 472 (Bom).

In Branch Manager, New India Assurance Co. Ltd. V. Siddappa, Major,²² The deceased worker went out to answer the call of nature while on duty, he slipped and fell down into the well and was drowned while taking water from the well. The court after applying the doctrine of notional extension and looking at the casual relation between the employment and cause of death held that the accident happened in the course of the employment and compensation was granted.

In **The New India Assurance Co. V. Smt. Padmavati,**²³ the deceased was employed as cleaner of vehicle, an accident occurred when he was bringing tiffin on the instructions of driver from a vehicle which was parked after reaching destination. It was held that it was held that the work done by the victim was accessorial and related to his job and the same was happened out of in connection with the employment. The dependents of the deceased were entitled to compensation.

In Oriental Insurance Co. Bangalore V. Vasantha Pitambar,²⁴ the workman was a driver of a lorry. When he had taken the lorry to the garage for greasing and application of oil, the tyre of lorry was busted. In the absence of cleaner, the driver attempted to remove the tyre. The driver put the lorry on to jack to change the tyre, the jack slipped and the lorry fell on him. The court held that the replacement of tyre by the driver is an incidental to his main duty of driving. As the accident was attributed indirectly to the employment, therefore the accident was held to have happen out of an in the course of employment & the employer was held liable to pay compensation.

In Traffic Manager, New Mangalor Port Trust V.B. Radhay, the deceased workman was employed by port trust for unloading from and loading on the ship, he was died by drowning in sea while he was unloading logs from ship. The Court held that his death was caused out of and in the course of employment, the dependent of the deceased were entitled to compensation for the death of the workman.²⁵

In P.P.L Factory V. Mangilal, the defendant workmen became blind by his left eye due to the leakage of Ammonia Gas in the premises of his employer where he is working. The Court held that the blindness of the workers is an injury caused due to an accident arising out of & in the course of employment; the employer was directed to pay compensation.²⁶

In **Vardarajulu V. Masaya Boyan,**²⁷ the employer was a contractor for the formation of a road and the deceased was a coolie mistery under him. The employee suffered injury by colliding of the lorry belonging to the contractor & it was conveying the employee to the work spot when accident happened. The Madras High Court held that in such situation where the transport facility was provided by the employer & was the only means available to employee, the accident occurred during such transportation was held to be in the course of employment and entitled to compensation.

²² 2004 Lab.I.C 1574

²³ 2005 Lab. I.C 3190 A.P.

²⁴ AIR 1997 Lab IC 2565 (Kant.)

²⁵ 1998 Lab. I.C. 2516 (Kant.)

²⁶ 1999 Lab.I.C. 3466 (M.P.)

²⁷ AIR 1954 Mad. 113

In **Mackinnon Mackenzie and company private Limited V. Ibrahim Mohammad Issak**,²⁸ the Supreme Court broadly interpreted the concept of the accident arising out of and in relation of employment. The court clearly held that the injury sustained by the workman must be the result of an accident which must have occurred while the workman is working under the employer and must have been supposed to perform his work-related duties.

In **Work Manager, Carriage and Wagon Shop East Indian Railways V. Mahavir**,²⁹ a workman who lived in a village near to a Malhar Railway Station, he along with other employees used to come free of charge to Lucknow junction every morning in workmen's special train as provided by the railway to reach the Alam Bagh workshop. This was the shorter route as compared to other routes available to reach the workshop. This route was used as a matter of route so for going to the workshop and coming from the place of work. One day, Mahavir met with an accident when he was coming back after finishing his work at 5:30 am, he was run over by a shunting engine while crossing the line. As a result of the accident his legs were crushed and they had to be amputated later on. It was held that the accident arose out of and in the course of employment and the workman entitled to compensation.

In **TNCS Corpn. V. S. Poomalai**,³⁰ an employee was murdered in communal riot while he was coming to the rice mill for attending the work, it was held that the deceased employee was attacked during the course of his employment; therefore, the dependent is entitled to compensation.

Principles laid down to Determine Eligibility for Compensation

In **Bai Shakri V. New Manekchowk Mills Co. Ltd.**³¹, the Gujarat High Court laid down certain principles on determine the eligibility to workman compensation as arising out and in the course of employment- "Casual connection between the injury & the accident must be established; the burden of proof is upon the applicant to show that the injury caused by an accident was the result of work and the strain of work; it is not necessary that the employee must be actually working at the time accident which causes his demise or that death must occur while he is working or had just ceased to work; if the evidence is of such a nature that shows a greater probability, which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed".

Interpretation of Disability Caused and Realization of Amount of Compensation

In **Lipton (India) Ltd. V. Gokul Chandra Mondal**,³² the employee suffered an injury in the left eye by the fall of iron particles which causes loss of vision. The Commissioner after considering evidence adduced by both the parties including medical evidence stated that the workman had sustained permanent partial disability in the left eye and was entitled to compensation at the rate of 30 percent loss of his earning capacity. In appeal the High Court of Calcutta confirmed the view taken up by the Commissioner. The court further observed that

²⁸ AIR 1970 SC 1906

²⁹ AIR 1954 All. 132

³⁰ (1995) 1 LLJ 378

³¹ (1961) 1 LLJ 585 Guj.

³² (1982) 1 LLJ 255

the personal injury is as an injury which affects the working capability of a labour or adversely affect his earning and it also cover mental and psychological trait.

In **Puran Dutt V. H.R.T.C.**,³³ the claimant was a driver, while he was driving an accident happened and his right leg was crushed. In medical report it was stated that he was suffered with 30 percent physical disability. But the court found that though there was 30 percent of physical disability yet the injury suffered by the employee totally incapacitated him to do the work of driving. Thus, the nature of disablement suffered by the driver was in the course of employment & amounted to total disablement. The High court further held that in such a case the assessment of compensation shall be awarded by keeping in mind the nature and effect of injury suffered.

In **K. Janardhan V. United India Insurance Co. Ltd.**,³⁴ the appellatant claimant was a tanker driver, he suffered serious injuries and also amputation of the right leg up to the knee-joint when met with an accident with a tractor coming from the opposite direction. He moved an application before the Commissioner, the Commissioner after determining all relevant facts stated that the claimant had suffered an amputation of his right leg up to the knee & that amounts to a loss of 100 percent earning capacity as a driver and determined the compensation payable to him at rupees 2, 49,576 & interest at the rate of 12 percent per annum thereon from the date of accident. An appeal was filed to the High court by Insurance Company. The High Court after relying on nature of injury & on doctor report had reduced the compensation. The claimant came to the apex court. The apex court held that the appellatant had suffered 100 percent disability and unable to work as a tanker driver. The order of the Commissioner was restored.

Compensation for Occupational Disease

In **Indian News Chronicle Limited V. Luis Lazarus**,³⁵ the employee was an electrician, as a part of his duty he had to go frequently from heating room to the cooling room where the temperature was considerably low, due to this he fell ill and as a result of that died of pneumonia. The court held that the worker suffered from pneumonia has a direct relation to the nature of his employment. The term personal injury includes “all physical injuries, mental strains or mental tension or mental illness or psychological diseases provide such mental conditions have arisen in the course of employment”.

Interpretation on Casual Connection between the Injury Suffered and the Employment and Entitlement to Compensation

In **Suprintending Engineer, Parambikulam Aliar Project, Pollachi V. Andummal**,³⁶ Where the worker was employed as a Luskar to regulate the flow of water in the branch canal operating upon the sluices and shutters under the directions of the juniors engineer in-charge of the canal. One day when he was on duty some people assaulted him and he consequently died. The Commissioner awarded a sum of rupees 18,000 to the wife of the deceased on an application for compensation. The employer contended that death has not arisen out of employment. It was held by High Court of Madras that the deceased was beaten up at the time when he

³³ 2006 Lab I.C. 1715 H.P.

³⁴ (2008) 2 SCC (L&S) 733

³⁵ AIR 1951 Punj. 102

³⁶ (1983) 2LLJ 326 (Mad.)

is performing his duty by some people and the assault was the reason to his demise. It is natural that he often had faced the agriculturists who had illegally diverted the course of water from canal & he usually had to come across the threat and mishappening that amount to his death was the result of such threat. The court further stated that in such a situation there was a causal connection between the accident & the employment, it is clear that injury, suffered by the deceased was connected with work.

In **Vai Diva Kaluji V. Silver Cotton Mills Ltd.**,³⁷ Where a worker had worked for 8 hours on a hot day and died due to heart failure within 6 hours after he collapse, the Bombay High court held that the death must have been accelerated by the strain of the work and came to the conclusion that the death is caused in course of his employment and the dependent is entitled to compensation.

Degree of Injury Caused, Calculation of Amount of Compensation and Entitlement of Compensation to Casual Worker

In **Madan Mohan Verma V. Mohan Lal**,³⁸ Mr. Mohan Lal was employed by Mr. M.M. Verma as mechanic for installing cotton ginning machine and chaff cutting machine on daily wages. When he was taking the trial of the chaff-cutting machine his right hand got struck into the gear roller of the machine & all fingers and thumb of his right hand were cut-off resulting in total disability of permanent nature affecting his future earning capacity as well. He was engaged for 3 days and accident took place on third day. He claimed compensation but the employer declined to give any compensation & contended that Mohan Lal was not a workman because he suffered the injuries while he was cutting his own fodder and employment was of casual nature. The Commissioner rejected the contention of the employer. In appeal the High Court held that fixation of machine or taking of trial was all part of the business of the employer. The mere ground that he had been employed merely to install the machine could not take him out of purview of the workman. The mere fact that the workman suffered injuries only within three days after his employment would not be relevant for holding his employment of casual nature.

In **Kochu Velu V. Joseph**,³⁹ Kochu Velu was engaged by the owner of a coconut farm to pluck the coconut from tree regularly once in a period of 50 days or so. Once day while plucking the coconut he fell down from the tree and became permanently invalid. He claimed compensation for employment injury. The employer objected his claim by contending that he was not a workman due to the casual nature of his employment. Kerala High Court rejected the objection of the employer. It was held that though Kochu Velu used to be employed for plucking coconut for 6 or 7 hours once in about 50 days yet his employment is not casual in its nature, his employment is not an employment by chance or accident & hence entitled to compensation.

On whom the Liability to Pay Compensation lies in case Employability is not clear

In **Zila Sahkari Kendra Bank V. Shajadi Begum and Ors.**,⁴⁰ the deceased was a driver and when the accident happened, he was driving the jeep on election duty and the jeep was requisitioned under the authority of District Election officer. The question is issue was whether the owner of the jeep the cooperative bank or the requisitioning authority & who was liable for compensation. The respondent claimed compensation against

³⁷ (1956) 1 LLJ 740 (Bom)

³⁸ (1983) 2 LLJ 332 All.

³⁹ (1980) 2 LLJ 220 Kerala

⁴⁰ (2007) 1 SCC (L&S) 525

the bank & after considering all relevant facts the Commissioner awarded compensation. The Bank filed an appeal to High Court against such award. The High court had also upheld the order of the Commissioner. Matter came before the Supreme Court which observed that the jeep was requisitioned and that bank had no option but to put the same under the services of State Government and the State Government became employer of the deceased. The court observed that interest of justice would be sub served if the appellant is directed to be reimbursed in respect of the amount which has already been deposited by him in accordance with the order of the commissioner.

In **Administrator of the City Indore Nagar Palika Nigam, Indore V. Ram Singh**,⁴¹ a badminton hall was constructed by Municipal Corporation, Indore, the work of construction was given to a contractor, while doing the construction work, a workman employed by the contractor fell down from the scaffolding and died. As the workman died out of and in the course of employment, the dependent of the deceased workman filed an application for compensation. It was filed against the corporation as well as against the contractor. The High Court held that the Municipal Corporation is liable to pay compensation to the employee jointly & severally with the contractor. The Municipal Corporation is liable to pay compensation as principal employer.

Doctrine of Contributory Negligence and Entitlement of Compensation

In **Sundaresa Mudalier V. Muthammal**,⁴² the Madras High Court held that the doctrine of contributory negligence has no place under the Act “all mere negligence or carelessness would not be regarded as a willful disobedience & the doctrine of contributory negligence as a good defense in common law has been abrogated in so far as the Act is concerned. The compensation is awarded to the workmen against certain risks of accident and if the doctrine of contributory negligence was permitted than it ruined the whole object of the Act and used as an excuse for avoiding all liability, the workers who are employed to work in factories are human beings and not a machinery, they are subject to human imperfections”.

In **Padama Devi V. Raghunath Roy**,⁴³ the Orissa High Court held that contributory negligence being done from the side of worker does not absolve the employer from his duty to grant compensation. In this case where accident is caused to a motor bus, which dashed against a tree as a result of its being driven by the driver rashly and negligently resulting in injuries to the driver leading to his death, the court held that his death is caused by an accident and the employer is liable to pay compensation. The fact that the driver was negligent or that he committed a breach of the provisions of the Motor vehicles Act while driving the bus are not factors which would affect the rights to claim compensation.

Breach of Specific Instruction by Employee and Entitlement to Compensation

In **Ranarao Zingargi Shande V. Indian Yarn Manufacturing Company**,⁴⁴ the workman was working in the responded company. Specific instructions were given to the appellant with respect to operating the machine from the northern side, despite of such instruction he tried to operate the machine from southern side where gear exists and was injured. As per the contention of appellant the worker has made disobedience of instructions given to him. The appellant further contended that clear instruction was written and affixed on

⁴¹ 1991 Lab IC 2200 M.P.

⁴² (1956)2LLJ 52

⁴³ AIR 1960 Orissa 207

⁴⁴ 1992 LLR 934

the notice board about the use of machinery and it's the responsibility of worker to follow safety rules. The court held that the mere carelessness on the part of a workman to whom express guidelines is made does not amount will-full disobedience. "To decide whether an occurrence is an accident, it must be determined from the point of view of the employee who suffers from it and if it is unexpected and without design on his part." The workman is entitled to the compensation.

Liability when Compensation has Quantified with Penalty and Interest Payable

In **L.R. Ferror Alloys LTd. V. Mahavir Mahto**,⁴⁵ the Supreme Court explained the extent of the liability of the insurance company. In this case an accident took place in the factory of the appellant while Mahavir Mahto was pouring water for cooling a hot slab when the slab burst causing burn injuries on his face resulting in loss of sight in both eyes. The worker made an application for compensation, the commissioner fixed the amount payable as compensation, in-addition to compensation he also quantified the penalty and interest payable as compensation. In this case the quantum of compensation was not disputed but the question for decision was whether the appellant was liable to pay the penalty & interest. The Supreme Court held that "payment of interest and penalty are two distinct liabilities. Liability to pay interest is part and parcel of legal liability to pay compensation. Therefore, claim for compensation along with interest will have to be made good jointly by the insurance company with the insured employer, but penalty imposed on the insured employer is on account of his personal fault." Insurance company is not accountable to compensate for the penalty imposed on the employer.

Penalty to the Employer where he Fails to Pay the Compensation in Stipulated Period

In **Traffic Manager, New Mangalore Port Trust V. Mrs. B. Radha**,⁴⁶ the Commissioner awarded a sum of rupees 78,824 as compensation to the widow and minor children of the workman who had died in relation to work related injury. The appellant who is the employer unjustifiably obtained interim stay on order of compensation passed by the Commissioner. The Karnataka High court dismissed the appeal filed by the employer and awarded interest at 12 percent on the compensation fixed and awarded by the Commissioner after the expiry of one month from the date of the order passed by the Commissioner till the date of the compensation was actually paid by the employer. The Karnataka High court further observed that under the Act, employer is bound to give the compensation to the victim and to the dependents as soon as possible and if it is not given in due time then additional amount will be paid as a penalty by the concerned authority.

In **Dilip Kumar Saha V. Smt. Ratna Das**,⁴⁷ the husband of the claimant died in an accident in the course of employment but the claimant respondent did not issue notice for claiming the compensation. However, the Commissioner entertained the claim even without issuing a notice in this behalf by the claimant respondent. The act of the commissioner was in issue. The high court in this case held that it is the legal position that the claim becomes due on the date of the accident, no where it has been provided that if a notice is not given according to section 10 (1) of the Employee's Compensation Act 1923 the employer stand absolved from the statutory liability to pay at least the provisional amount of compensation. The High court did not find any legal infirmity in the order of the commissioner.

⁴⁵ 2002 SCC (L&S) 1117

⁴⁶ 1998 Lab IC 2316 (Kant.) at page 2320

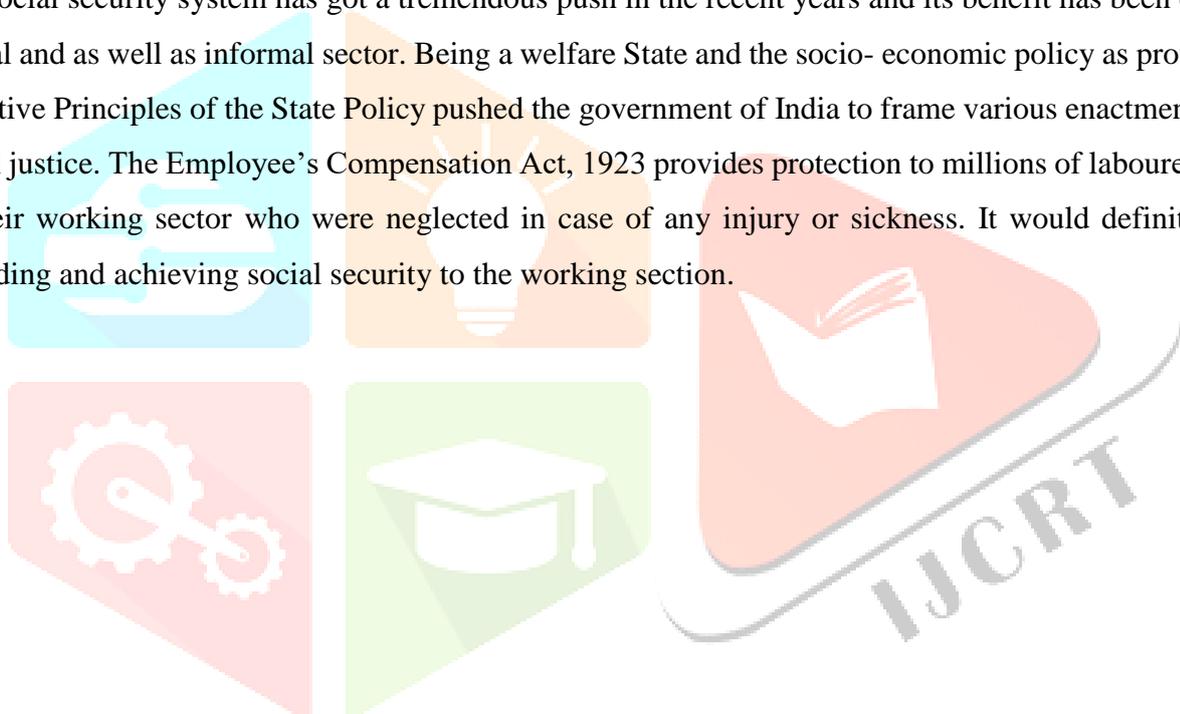
⁴⁷ 2006 Lab IC 1816 Guj.

Entitlement of Compensation to an Employee Working Beyond the Duty Hours on the Direction of Superior

In **Raj Dulari V. Superintendent Engineer, Punjab State Electricity Board**,⁴⁸ the deceased was an employee under the Punjab State Electricity Board. While he was met with an accident, he was engaged in fixing electric wire, on the side of the road. The claim of compensation by the dependent was dismissed by the Commissioner on the ground that the deceased employee worked beyond the duty hours at his own risk and hence the death was not in course of employment. An appeal was filed in the High Court against the order of the Commissioner. The High Court held that if the work had been left at the spot, then it may cause more damages on road. The assistant line man acted with responsibility and asked the employee to continue the work of repair even beyond the duty hours, thus he acted under the direction of his superior & he was on duty when the accident had occurred and his widow is entitled to compensation.

4. Conclusion

The social security system has got a tremendous push in the recent years and its benefit has been extended to formal and as well as informal sector. Being a welfare State and the socio- economic policy as provided in the Directive Principles of the State Policy pushed the government of India to frame various enactments to insure social justice. The Employee's Compensation Act, 1923 provides protection to millions of labourer's despites of their working sector who were neglected in case of any injury or sickness. It would definitely help in providing and achieving social security to the working section.



⁴⁸ (1989) 2 LLJ 132 (P&H)