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Employees Compensation Laws – Changing Scenario

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Compensation laws are designed to make provision for the payment of compensation by certain class of employees for injury by accident. The reasons being the growing complexity of industry with the increasing use of machinery and consequent danger to employees along with the comparative poverty of workmen. It was felt necessary that they should be protected as far as possible from hardship due to injury from accidents.

It was as early as 1884, the Factory and Mining Inspectors drew the attention of the Government to this human problem which warranted immediate protection of employees.

Employees were liable to pay compensation to injured employees for negligence on their part. Even if the negligence could be proved, the employer could avoid his liability by putting forward any of the following defenses:

1) The doctrine of assumed risk:

This doctrine originates from the maxmim "Volenti non fit injuria" which means where there is consent there is no injury. When a person has voluntarily agreed or consented to take the risk of injury, he has no remedy in law. Consent to suffer may be expressed or implied. It was assumed that the employees knew the known risks of employment and this idea enabled the employers to avoid any possible liability towards his employees for employment injury. If the worker knew the type of risks which he was running while working in a manufacturing unit, the employer was not liable to pay compensation for injuries. There is also an implied condition that the employers have an obligation to use reasonable care to protect employees who are not in a position to protect themselves.

There are some dangers which the employees may not discover. With the acceptance of widespread adoption of comparative negligence doctrine, implied assumptions of risks are treated as forms of contributory negligence that may diminish the liability of the employers but not bar in tort recoveries.

2) The doctrine of contributory negligence:

According to the common law rule of contributory negligence, an employee is not entitled to compensation for injury which has been caused to him by his own negligence. The common law defense was that an injured party who was contributory negligent cannot recover from a negligent defendant is subject to the exceptions that a negligent employee may recover if the employer had the last clear chance, or was guilty of gross, willful or wanton negligence since industrial employees are regularly exposed to risks of injury through momentary forgetfulness or lack of caution, the defense often imposes a genuine obstacle to recovery. Forgetfullness of a specific danger is not necessarily contributory negligence, particularly where the scene of the employees operations is shifting constantly or duties demand undivided attention.

3) The doctrine of common employment or the follow servant defense:

In the pre-industrial era the factory bosses used to work side by side with the general employees. The coming of the industrial revolution brought a profound change in the relationship of employers with employees. Enterprises came to the conducted through the agency of corporations which were incapable of any personal fault which could act only through agents or employees.

The doctrine provides than an employer is not liable for the payment of compensation to an employee for injury provided i) he is working with several persons for a common purpose, and ii) he is injured by some act or omission of some of his co-

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employees. Employers used to take advantage of this doctrine on the ground that such negligence could not be attributed to them.

4) End of personal action with death:

The common law maxim is action personalies moritur cum persona (a personal right of action dies with the person). At common low, if an injury was done either to the person or property of another for which damages only could be recovered in satisfaction, the action died with the person to whom, or by whom wrong was done. Hence the dependants of the deceased employee were not entitled to claim any compensation.

All the above defenses by the employer proved to be very harsh for employees and it was almost impossible for an employee to obtain relief in case of an accident. Fatal Accidents Act, 1985 was passed to overcome the first and last objections Employees liability Act, 1938 was passed to overcome third objection. The Employees compensation Act, 1923 was enacted to meet to other objections of the employees.

Fatal Accidents Act, 1855:

The Act was passed to avoid the rule that "a person's" claim to suit comes to an end with the death of the person". The rule is based on the maxim 'action personalis moniter cum persona' which means a personal action dies with the death of the person. The second object of the Act was to negate the defense of the employer to pay compensation for injury on the doctrine of assumed risks. The defense that personal action dies with the death of the employee resulted in a great hardship to the families of the poor employees who died from injuries due to accidents. The legal representatives of the deceased employees were not entitled to make a claim for compensation.

Main provisions of the Act:

1) Section I.A of the Act provides that when a worker dies by his wrongful act, neglect or default, his executors, administrators or legal representatives can bring a suit for damages for the benefit of the wife, husband, parents and children, if any, of such deceased worker. In every such action the court may give such damages as it may think proportional to the loss resulting from such death to the parties entitled to damages.

2) Under Sec. 4 of Act, the term "Person" includes bodies politic and corporate, "Parents" include father and mother, "Child" includes son, daughter, grand – son, grand- daughter, step- son and step – daughter.

3) According to Sec. 2 of the Act, only one suit can be brought for, and in respect of, the same subject – matter of complaint.

4) According to Sec. 3 of the Act, the plaintiff must give full particulars of the person of persons for whom or on whose behalf the action or suit is being brought and the nature of the claim in respect of which damages are rought to be recovered.

5) The measure of damages in case of death is the actual pecuniary loss suffered, taking into account reasonable expectation of a pecuniary benefit which includes the chances of any improved conditions and the standard of living of the defendant family. But no compensation can be allowed for mental sufferings or for ceremonial or funeral purpose. (Naarayan Jetha V. Commr & Corp. of Bombay 16 Bom 245).

The Employees "Liability Act, 1938":

The Act declares that certain defenses cannot be raised by employees in suits for damages in respect of injuries sustained by and employee while working for the employer.

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The following are the important provides of the Act:

Defense of common employment cannot be maised. Sec. 3 of the Act provides that an employer cannot plead the defense of the common employment where personal injury in caused to an employee due to –

1) The omission of the employer or any person in the service of the employer to maintain in good and service condition any way, works, machinery or plant connected with or used in his trade or business or
2) The negligence of any person in the service of the employees who is in charge of any superintendence, whilst in the exercise of such superintendence : or
3) The negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform at the time of injury ; or
4) Any act or omission of any person in the person in the service of the employer, done or made (a) in the normal performance of duties of that person, or (b) obedience to any rule or by-law of the employer or (c) in obedience to particular instructions given by any other person authorized by employer to do so.

Agreement excluding or limiting liability void:

Sec. 3-A provides that any agreement excluding or limiting any liability of the employer in respect of personal injuries caused to an employee as per Sec. 3 of the Act in void.

No voluntary undertaking of risk:

Sec. 4 of the Act provides that in any suit for damages, an employee shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk was fully explained to and understand by the workman and that the workman voluntarily undertook the same.

The Employees Compensation Act, 1923:

Although the question of payment of compensation to employees involved in services or fatal accidents was raised much earlier by Factory and Mining Inspectors, by the end of 1920 the Government constituted a committee consisting of members of the Legislative Assembly, Employers, Writers or representatives of workers, medical and insurance experts. It was on the basis of the recommendations of the committee that employees compensation Act, 1923 was enacted.

The Act considers compensation payable by an employer to his employees in case of an accident as a measure of relief and social security. It enables an employee to get compensation irrespective of his negligence. The general scheme of the Act is that compensation should ordinarily be given to employees who sustain personal injuries by accidents arising out of and in the course of employment. Dependants of the deceased employees who sustained injury are also entitled to compensation. Compensation will also be given in certain limited circumstances for disease. The actual rates of compensation payable are fixed and in every case subject to a minimum. The object of conferring rights upon employees to recover compensation in simply to provide for social security and social justice and in no way to punish the employer.

Main Features of the Act:

1) Like all pre- independence enactments, the Employees, Compensation Act, 1923 in modeled on British Pattern under the Act payment of compensation has been made obligatory on all employers where employees are entitled to claim benefit under the Act.

2) The employee or his dependants can claim compensation if the injury has been caused by accident arising out of and in the course of employment and in case of injury not resulting in death if such accident cannot be directly attributable to the employee having been at the time thereof under the influence of drink or drugs or if it is not caused due to willful disobedience of rule or orders or disregard of safety devices.
3) The various closes of employees have been specified in the definition of employees in Sec 2 (1) (n) and in Schedule II.
4) The Scheme of compensation for occupational diseases is sketched in provisions of sub-clauses 2, 2A, 3 and 4 of Sec. 3 read with schedule III appended to the Act. The plan envisages three categories of employment with corresponding diseases peculiar to such specified employments. The schedule is divided into three parts distinctly indicated as A.B & C. Diseases mentioned in Part A,B & C of Schedule III are the occupational diseases and the employee is not required to establish the same. Beyond this, the deeming status does not operate and the application is made subject to proof.
5) The amount of compensation payable depends in case of death on the average monthly wages of the deceased employee and in the case of an injured employee both on the average monthly wages and the nature of disablement.
6) The term "Wages" for the purpose of this Act includes over time pay and the value of any concessions or benefit in the form of food, clothing, free quarters, etc. Wherever the compensation payable to any employee has to be worked out, first of all his monthly wages are determined and then the amount of compensation is decided by reference to sec 4 and schedule IV, where in the method of determining the amount of compensation for death and permanent disablement is given.
7) In order to protect the interest of dependants in case of total accident the following provisions are made –
    i) All cases of total accident are to be brought to the notice of the commissioner for employees compensation.
    ii) If the employer admits his liability the amount of compensation payable is to be deposited with the Commissioner.
8) A sub-contractor may indemnify his contractor if he has had to pay compensation either to a principal or to on employee.
9) The Act is administered by the Commissioner for Employees Compensation appointed by the State Government.

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