

A Critical Study Of Protection Of The Rights Of The Disabled Under Labor Laws

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Abstract

The labor laws are made to create a harmonious relationship between employees and employers. The law applies uniformly to the disabled and non-disabled. A worker or employer who meet with some accident during the course of his employment can ask for such compensation provided in Workmen Compensation Act and are entitled for treatment under the Employees Insurance Act. The service rule of the government provides that employees who become disabled should be adjusted in post where his disability will not prevent him from rendering work. Therefore, it can be said that the Workman's Compensation Act, 1923 offers Compensation to workers who have encountered disability due to an accident during their course of employment. On the other hand, the Employees State Insurance Act, 1948 has been enacted with the objective of securing financial relief in cases of Disablement and for providing medical benefits to employees of factories and establishments, and their Dependents

PROVISION RELATING TO PERSONS WITH DISABILITIES IN LABOUR LAW

The disabled person has been a matter of concern for society. With the passage of time, these people have attained a prestigious place in society. Numerous attempts have been made to improve their plight. These endeavors can be notice in various programs and schemes which are being run all around. The condition of disabled persons has improved through various enactments and law, Apart from constitutional provisions, other legal measures which are oriented towards these persons, some of the important provisions have been laid down in Workmen's Compensation Act, 1923 and the Employees State Insurance Act, 1948

These Acts incorporate numerous provisions which is directed toward taking care of disabled person and providing them the opportunity to overcome those problems arising due to this sorry state of their affairs. Various provisions contained in this act for the benefit of disabled are given below in brief.

Significant Provision relating to "Disability" in the Workmen's Compensation Act, 1923¹

The main object of the Workmen's Compensation Act, 1923, is to protect and promote rights and interest of disabled persons during the course of employment. The Workmen's Compensation Act, 1923 is a classic example of Compensatory Jurisprudence, because it imposes an obligation upon employers to pay compensation to workers for accident resulting into death or disablement in the course of employment. In this Act, there is a

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¹The Act was passed in 1923 to redress the problem of labour. The Act makes the employer liable to pay Compensation for injury sustained by the Workmen due to accident arising out of and in the course of his employment.

provision in the case of temporary as well as permanent disablement and also for partial or total disablement.

The Workmen's compensation Act 1923 does not define the word "disablement". It defines "partial disablement" and "total disablement".

Partial disablement

The Act, defines partial disablement as "where the disablement is of 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 I shall be deemed to result in permanent partial disablement".² Partial disablement further divided in two categories. (i) Permanent partial disablement, and (ii) Temporary partial disablement.³ This distinction has been made in clause (ii) of section 4(1) (c).⁴ In the case of disablement of a temporary nature, the loss of earning capacity, which is spoken of, is in any employment in which the workman has engaged at the time of the accident resulting in the disablement. In case of disablement of permanent nature the reduction of earning capacity is considered with regard to every employment in which the workman was capable of undertaking at the time of the accident. Loss of earning capacity has to be determined by taking into account the diminution or destruction of physical capacity as disclosed by medical evidence.⁵

Total Disablement

Section (2)(i) defines "total disablement" as Such disablement, whether of a temporary nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.⁶

Provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100 percent. If a carpenter's left hand above elbow is amputated as a result of personal injury suffered in the course of employment. It is total disablement because a carpenter cannot work with one hand.⁷

The aforesaid definition speaks of "incapacity for all work" and not "incapacity to work". The use of the proposition "for" instead of the word "of" makes it amply clear that it is incapacity to get employment which is relevant and not the physical incapacity to undertake any work. It is because of his apparent physical defects caused by an injury, no one will employ a workman, however, efficient he may be. In fact, he has lost the power to earn wages as if he was paralysed in every limb.⁸

² Section 2 (i) g of the Workmen's Compensation Act, 1923.

³ Bengal Chamber of Commerce vs Md Hussain, 1969 Lab IC 971 at 972.

⁴ Clause (ii) of section 4 (1) (c) of the Workmen's Compensation Act, 1923.

⁵ This has been held by the Bombay High Court in Sadashiv Krishna VS M/S Time trader-1992 ILLJ 877, (Bom). Also see Raghuraj Singh VS Eastern Railway (1967) Allahabad, LLJ 62, Lipton (India) Ltd VS Gokul Chandra Mondal (1982) LLJ 255.

⁶ Section 2 (L) (i) of the Workmen's compensation Act, 1923 as amended by Act, 64 of 1962.

⁷ PratapNarain Singh Deo VS Shrinivas AIR 1976 SC 232.

⁸ S.C.Srivastava, "Rights of Persons Disabled during Employment in Indian Industries", PP .51-67 in S.K. Verma & S.C. Srivastava (ed.), Rights of Persons with Disabilities, Indian Law Institute, New Delhi, pp.53,(2002)

Employer Liability For Compensation to Persons Disabled during Employment under The Workmen's Compensation Act, 1923

Section 3 of the Workmen's Compensation Act, 1923, inter alia, provides for employer's liability for compensation in case of personal injuries. The injury 'total' or 'partial' disablement must exceed three days.⁹ Notice of the accident must have given to the employer after the occurrence of the accident.¹⁰ If the notice is not given, no claim for compensation is entertained in the Act, Claim for compensation can be preferred before the commissioner within two years of the occurrence of the accident. However, the delay can be condoned if there is sufficient cause.¹¹ The employer shall not be liable:

- i. When the injury does not result in disablement for period exceeding 3 days.
- ii. When the injury no resulting in death, is due to any of the following reason.
 - a) The Workman was at the time of accident, under the influence of drink or drugs, or
 - b) The Workmen Willfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing safety of workers, or
 - c) The workmen, willfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workmen.¹²

The Workmen's Compensation Act. Applies to all persons who are employed otherwise than for the purpose of the employer, trade or business who is-

- i. A railway servant as defined in [clause (34) of section 2 of the Railway Act, 1989(24 of 1989)] not permanently in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or¹³
 - (a) a master, seaman or other member of the crew of a ship,
 - (b) a caption of other member of the crew of an aircraft,a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle, 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, or motor vehicle or company, as the case may be, is registered in India; or Employed in any such capacity as is specified in Schedule II

The Central Government or State Government may add to Schedule II any class of persons employed in any occupation, which it is satisfied, is a hazardous occupation, and the provision of this Act shall there upon apply by the Central Government.

Compensation in case of permanent total disablement-

⁹ Section 3(1) a of the Workmen's Compensation Act, 1923.

¹⁰ Section 10 of the Workmen's Compensation Act, 1923.

¹¹ Section 10: Limitation Act, in such cases cannot be taken into a rigid rule.

¹² S.C Srivastava, "Rights of Persons Disabled During Employment In Indian Industries", pp.51-67 in S.K.V ERMA AND S.C.Srivastava(ed), "Rights of Persons with Disabilities", pp.55, (2002).

¹³ Substituted by Act, 30 of 1995, Section 2 (1) n.

Where permanent total disablement results from the injury, the injury workmen shall be entitled to an amount equal to sixty percent of the monthly wages of the injured workmen multiplied by the relevant factor or an amount of ninety thousand rupees whichever is more. Under Explanation II where the monthly wages of a workmen exceeds four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only.¹⁴

Compensation in case of permanent partial disablement

Permanent partial disablement may be caused either by injury specifically mentioned in Part II of Schedule I or injury not mentioned their in. Section 4 (1) (cc) Provides that¹⁵

- i. In the case of an injury not 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 there in as being the percentage of the loss of earning capacity by that injury, and
- ii. In the case of an injury not mentioned 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)¹⁶ permanently caused by the injury. Where more injuries than one are caused by the same accident, the amount of compensation payable shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement has resulted from the injuries there to.

The percentage of the loss of earning capacity stated against the injuries in part II of schedule I is the minimum to be presumed and the applicant is entitled to prove that the loss of earning capacity was more than the minimum so prescribed¹⁷. In case of injuries not mentioned in part II of schedule I and of the occupational diseases listed in schedule III, The commissioner has to decide the percentage of loss of the earning capacity and not about his physical capacity.¹⁸

Compensation in Temporary Disablement

Under Section 4(1) (d)¹⁹, in the case of temporary disablement, whether total or partial, results from the injury an injured workman is entitled to a half monthly payment of the sum equivalent to twenty five percent of monthly wages of the workman, to be paid in accordance with the provision of subsection (2). The payment becomes due on the sixteenth day:

- i. From the date of the 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 the disablement where such disablement lasts for a period of less than twenty-eight days; and there after half-monthly during the disablement or during a period of five years, which ever period is shorter.

¹⁴Explanation 1 to section 4(1)c, Workmen's Compensation Act, 1923.

¹⁵ Section 4(1)(cc) of the Workmen's Compensation Act, 1923

¹⁶ Explanation II to section 4(1)c, Workmen's Compensation Act, 1923.

¹⁷Samir U Parikh VS Sikander Zahiruddin, (1984) 2 LLJ 90 AT (Bom)

¹⁸ Agent East India Railway VS Maurice Celcial Ryan AIR 1937 Cal 526', Sarat Chatterjee and Co. VS Md Khalid, 1979 Lab IC, 4019 (Cal)

¹⁹ Section 4 (1)(d) of the Workmen's Compensation Act, 1923

The above mentioned provisions are subject to fulfill two conditions: (I) all advance payment or allowance by way of compensation made by the employer to the workman are to be deducted from any lump sum or half-monthly payments²⁰ (II) the half-monthly payments shall not exceed half the amount of such wages which the payment or allowance which the workman is earning after the accident²¹..However 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 proviso²².

Section 4 (3)²³ provides that on the ceasing of disablement before the date on which any half month a sum proportionate to the duration of the disablement in that half month.

Relevant Provisions about disabled contained in the Employees State Insurance Act, 1948²⁴

The Employees State Insurance Act, 1948 like the Workmen's Compensation Act makes three classifications, namely;

- a) Permanent Partial disablement,
- b) Permanent total disablement and
- c) Temporary disablement

Permanent Partial Disablement

Section 2 (15 A)²⁵ of the Act defines permanent partial disablement to mean:

Such disablement of a permanent nature as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the accident resulting in the disablement:

Provided that every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement:²⁶

Permanent Total Disablement

Section 2 (15B)²⁷ of the Act defines permanent total disablement to mean:

Such disability of a permanent nature as incapacitates an employee for all work, which he was capable of performing at the time of the accident resulting in such disablement.²⁸

²⁰Provisio (a) to section 4 (2) of the Workmen's Compensation Act,1923

²¹Provisio (b) to section 4 (2) of Workmen's Compensation Act,1923

²² Explanation to section 4 (2)

²³Section 4 (3) of workmen's Compensation Act,1923

²⁴The Employees State Insurance Act, 1948 aims at bringing about social and economic justice to the weaker class including disabled.

²⁵ Section 2 (15 A) of the Employees State Insurance Act

²⁶ The "permanent partial disability" has further been defined to include incapacitating the performance of a persons work altogether in the case of Ramkrishna VS Employee's State Insurance Corporation(2001 A.c.j,51 Kerala 119)

²⁷ Section 2 (15 B) of the Employees State Insurance Act

²⁸ In a landmark case named Kali Das VS S.K.Mondal,the Calcutta High Court decided that loss of earning capacity is to be determined by taking into account the extent of physical capacity,AIR 1957 Cal 660

Provided that the permanent total disablement shall be deemed to result from every injury specified in the Part I of the second Schedule or from any combination of injury specified in Part II there of where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred percent or more,”

Temporary Disablement

Section 2 (21)²⁹ of the Act defines temporary disablement to mean:

A condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury.

Disablement Benefit under The Employees State Insurance Act, 1948

An insured person is entitled to disablement benefit if he:

- a) Suffers employment injury and
- b) Such employment injury causes
 - i. Temporary disablement not less than three days (excluding the day of accident) or
 - ii. Permanent disablement whether total or partial; and
 - iii. Fulfills the other eligibility conditions specified in the Regulation of Employees State Insurance Act are
 - iv. The expression “employment injury” is defined in the Act as a “personal injury” caused to an employee, (i) by accident arising out of and in the course of employment, (ii) by occupational disease existing act of and in the course of employment, being (iii) such employment is an insurable employment, (iv) it is immaterial whether the accident arising out of and in the course of employment occurs within or outside the territorial limit of India”.³⁰ Its meaning has been settled by a number of judgements on the issue.³¹

Presumption as to accident arising in the course of Employment

The Phrase “arising out of and in the course of employment” has been given an extended meaning on the basis of certain presumptions provided in the Act. For the purpose of this an accident arising in the course of an insured person’s employment shall be presumed in the absence of evidence to the contrary, also to have arisen out of that employment.³²

Accident happening while acting Breach of Regulation.

An accident shall be deemed to arise out of and in the course of an insured person’s employment notwithstanding that he is at the time of the accident was acting in contravention of the provisions of any law applicable to him or any orders given by or behalf of his employer or that he is acting without instruction from his employer, if –

²⁹ Section 2 (21) of the Employees State Insurance Act, 1948

³⁰Section 51-A of the Employees State Insurance Act,1948. Also see Smt. RunukabaiGedam VS Manager, Nagpur Times,1984 Lab LC,943.

³¹ Trustees port of Bombay VS Yamuna Bai AIR 1952 Bom, Also see Jayaram Motor Service VS Pitchammal AIR 1982 L.L.J326 (Mad)

³²Section 51-B of the Employees State Insurance Act,1948

- (a) The accident would have been deemed to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be, and
- (b) The act is done for the purpose of and in connection with the employer's trade or business.

Accident happening while travelling in Employer's Transport

An accident, happening while an insured person is, with the express or implied permission of his employer, traveling as a passenger by any vehicle to or from his place of work, shall notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if-

- a) The accident would have been deemed so to have arisen had he been under such obligation; and
- b) At the time of accident, the vehicle.
 - i. Is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and
 - ii. Is being operated in the ordinary course of public transport service.

In this Section "vehicle includes a vessel and an aircraft"³³. The aforesaid presumptions are of great benefit to the insured persons and will save them from the rigorous burden of prove on the accident as an employment injury. The person challenging have to rebut these presumptions. These presumptions are not available under Workmen's Compensation Act. 1923. ILO recommendations in 1964 suggests that 51-C should be adopted with modification that it is not necessary that the transport is provided by employer³⁴.

This Section, therefore, obviates the need for an examination of the question whether it is the duty of the employee to go to his workplace and return from there by any particular means of transport if the two conditions mentioned in clause (b) there of are satisfied. This provision in the employees State Insurance Act is a beneficial one and obviously serve social justice

Accident happening while meeting emergency

An accident happening to an insured person in or about any premises at which he is for the time being employed for the purpose of his employer trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succor or protect persons who are , thought to be possibly injured or imperiled, or to avert or minimize serious damage to property.³⁵

Rate of Disablement Benefit.

Unlike Workmen's State Insurance Act, 1923 the disablement benefits under the Employees State Insurance Act, 1948 are made by way of periodical payments at such rates and for such period and subject to such conditions may be prescribed by the central

³³Section 51-C of the Employees State Insurance Act, 1948

³⁴Government of India, 62nd Report of the Law Commission of India, 1974, p. 56

³⁵Section 51-D of the Employees State Insurance Act, 1948.

government. Further, a person who sustains temporary disablement for not less than three days (excluding the day of accident) is also entitled to periodical payment at prescribed rates and conditions. Moreover, the person who sustains permanent disablement whether total or partial shall be entitled to periodical payment subject to conditions prescribed by the Central Government.

Determination of question of Disablement

Section 54³⁶ lays down that the disablement question shall be determined by the Medical Board. The following are the disablement questions:

- a) Whether the relevant accident has resulted in permanent disablement; or
- b) Whether the extent of loss of earning capacity can be assessed provisionally or finally;
- c) Whether the assessment of the proportion of the loss of earning capacity is provisional or final; or
- d) In case of provisional assessment as to the period for which such assessment shall hold good.

Section 54-A³⁷ provides that when a Medical Board makes a provisional assessment in respect of any disablement question it shall again be referred to the Medical Board not later than the end of the period for which the provisional assessment has been made. If the insured person or the corporation is dissatisfied with the decision of the Medical Board, the injured person or the Corporation may prefer an appeal to the Medical Appeal Tribunal with further rights of appeal to the Employee State Insurance Court. The aggrieved party may also directly appeal to the Employees State Insurance Court.

Concluding Observation: Critical Analysis of Workman Compensation Act, 1923 and Employees State Insurance Act, 1948 Reveals that emphasis has been given to protect the Rights of the Disabled during the course of employment but have failed to produce a significant impact

³⁶Section 54 of the Employees State Insurance Act, 1948.

³⁷ Section 54-A of the Employees State Insurance Act, 1948.