Social Security: Workmen’s Compensation

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In India, in the early period the more generous employers used to pay compensation to workmen who were injured due to accidents as a charitable measure. But it was not a general practice. The complexity of industrial occupations and the increasing use of machinery for production exposing the workman to unavoidable risks and the comparative poverty of workmen made the government think of giving protection as far as possible from the hardships arising out of accidents. Therefore, in accordance with the universal principle that compensation should be given to workmen who sustained personal injuries by accidents “arising out of and in the course of employment”, the Workmen’s Compensation Act of 1923, the first statute which comes under the social security measures in India, was passed. The Act granted the right of statutory compensation to the workman, and the employer was not absolved of the statutory liability except under specific circumstances. The quantum of payment is proportionately related to the wages received, and limited to a maximum. The Workmen’s Compensation Commissioner determined the claim and adjudicated upon disputes arising out of the claims, subject to the control of the civil courts. The Act was subsequently amended to extend its scope of application to include workmen of several other employments who were not originally covered by the Act. The objective of the

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law was to grant relief to the individual or family for the deprivation suffered due to accident. Since the working of the Workmen’s Compensation Act was found to be unsatisfactory on account of the application of the doctrines of “common employment” and “assumed risk”, on the recommendations of the Royal Commission that these doctrines are inequitable, the Employer’s Liability Act 1938 was passed, which sought to eliminate the operation of these two doctrines in the determination and adjudication of compensation claims. The Employer’s Liability Act as amended in 1951, removed the defects in the application of the law, whereby the defences of common employment and assumed risk, normally taken by the employer were brought to be inapplicable in the payment of statutory compensation. It fixed a statutory liability upon the employer to pay the stipulated amount as compensation for the injured workman or his dependants.

The Employees’ State Insurance Act 1948 was passed with the objective of providing an integrated system of social security, of health and sickness insurance, invalidity relief and accident benefits. The scheme envisaged compulsory insurance, premium paid by the employers and workmen, and the administrative cost subsidised by the State, to ensure benefits for sickness, maternity and employment injury for those who are entitled under the Act. The rate of contribution of workman was on the basis of his average wages and that of the employer a percentage of the wage-bill pertaining to each employee. The benefits were cash payments for sickness and maternity subject to a maximum, and medical aid at a fixed rate for specific period. The accident benefit to the disabled workman and in case of fatal accident to the dependants is stipulated in scheduled rate. In case of death resulting from accident, pension is contemplated to the widow, minor sons and unmarried daughters, and in their absence to other dependents. Medical care is also provided to the injured workman. The entire scheme is administered by a corporation constituted under the Act, though the responsibility for providing medical care and treatment is entrusted to the State Governments. The scheme is administered territorially and those who claim under the Act are prevented from
claiming accident compensation under the Workmen’s Compensation Act. The Act thus combines several schemes of social security.

Prior to 1925, there was no legislation in India providing benefits for old age and invalidity of workers. Some private and government undertakings attempted to solve this by instituting provident funds, gratuity and pension schemes. Until 1950, excepting the employees under the governments, very few workers in India enjoyed any statutory protection as a retirement benefit. In private industries there was no scheme of provident fund instituted till the year 1929. The first enactment, the Provident Funds Act 1925 sought to amend and consolidate the law relating to government and other provident funds. Though the old age and survivor’s pension as found in the industrially advanced countries would have been ideal, on account of financial implications, an alternative was contemplated in India, namely the Employees’ Provident Fund system and the provision for payment of gratuity. Adopting the insurance method, the contributory provident fund scheme in which both the employer and employee contribute was introduced under the 1952 Act which linked the family pension scheme also as a compulsory measure in establishments scheduled in the Act. The primary objective of the Act was to institute provident fund schemes in the six major organised industries listed in the Schedule. The purpose was to stimulate the spirit of saving regularly for evil days and to encourage stabilisation of the labour force in industrial centres. The Provident Fund system was devised as a means to ameliorate the hardship faced by the worker and his family in the old age on his superannuation.

In the early decades of the twentieth century, women workers in factories and mines were not having any leave facilities or provision for the expenses on account of child birth. The different Provinces and several native-States had made provision for payment of maternity benefits, by the employers, to women workers employed in factories and mines. In order to bring uniformity in law the Mines Maternity Benefit Act, 1941 was passed. The object of the law was to prohibit employment of women
in mines for four weeks after she delivered a child, and for the payment of cash benefit as maternity allowance, and for maternity leave. As a general law, the Maternity Benefit Act was passed later in 1961. The Act was brought to apply to all establishments including mines, factories and plantations with the exception of those establishments to which Employees’ State Insurance Act applies and to those establishments in which the provisions relating to maternity benefits approximate as nearly as possible to those of the Employees’ State Insurance Act.

Gratitude is the better part of obligation. Therefore, to acknowledge and credit the work-force employed in the factories, mines, oilfields, plantations, ports, railways shops and other establishments for the service they rendered, a scheme was designed as retirement benefit for the payment of gratuity under the Payment of Gratuity Act, 1972. The Working Journalists (Conditions of Service) Miscellaneous Provisions Act, 1955, was the lone Central legislation of the kind prior to the Act of 1972. The payment of compulsory gratuity was introduced in Kerala and West Bengal, for workers employed in factories, plantations, shops and establishments under the respective State government legislation enacted in 1971. Apart from this, private gratuity schemes operated in certain flourishing industries which were validated and payment ensured under Industrial Awards. In order to bring in a uniform pattern of payment of gratuity to the employees throughout the country the Central Law was passed. The administration of the Act in respect of railways, mines, ports, oilfields, and establishments having branches in more than one State was vested in the Central Government while for other establishments it was vested in the respective State governments. The Act provided for a lumpsum payment, calculated on the basis of the length of service to employees who satisfied the eligibility conditions.

The Personal Injuries (Compensation Insurance) Act 1963 was passed to impose on employers a liability to pay compensation to workmen sustaining personal injuries, and to provide for the insurance of employees against such liability. The Act applies to employments such as factories, mines, major ports,
plantations and other employments specified by the Central Government. The provisions of this Act envisage that the employer shall pay to the workman who sustains personal injury, a compensation amount in addition to any relief provided under the Personal Injury Emergency Act, 1962.¹ For such payment of additional amount the employers are required to take out an insurance policy by paying the premium. The Central Government was to put into operation an insurance scheme which would enable the employers to get themselves insured against the liabilities incurred by them to workmen, under the Act and the Scheme. Thus, it is an indemnity insurance on workmen's compensation as reimbursement to employers who incur the liability.

A look at the Social Security Legislation in India thus makes it evident that accidental benefits in India are based on strict liability and a statutory obligation is imposed on the employer to pay except in the area where the Employees' State Insurance operates, or where the Personal Injuries (Compensation Insurance) Act 1963 applies. The ESI Act which provides maternity and accident benefits, and the Provident Fund Scheme that provides old age and retirement benefits work on the insurance method based on contribution, while the other retirement benefits such as old age and invalidity pensions or gratuity work as a public assistance system. Each one of the enactment cover segments of working class population with a limited purpose or objective. To ensure the generality of the citizens

¹ This Act envisaged that during the period of declared emergency the employers are under a liability to pay compensation in respect of personal injury (war injuries) and to insure for that amount, where the amount exceeds the amount payable as compensation under the Workmen's Compensation Act or the ESI Act. The Act sought to introduce payment of compensation on a uniform basis irrespective of the fact of coverage by the Workmen's Compensation Act and the ESI Act in employments such as in factories, mines, ports, plantations and essential services from a point of view of practicability and equity for the reason that the quantum benefits under the Workmen's Compensation Act and the ESI Act are not fixed automatically and uniformly. It was also meant for providing a scheme of insurable liability for employers based upon premium rates. This Act, though it has an element of social security, is not strictly within the compass of social security legislation.
with an assured income, is not the perspective of the social security statutes and the law. The legislative objects and reasons make it clear that only the select and organised sections or particular class of industrial employees enjoy a certain amount of social security under the statutory provisions. The major section, namely the unorganised sector, the self-employed segment and the industries not covered by the schedules in the different enactments are outside the protective umbrella of the law. It is important to take a closer view, analysing the provisions of the law and its judicial application, to get a true perspective of the law.

The Compensation System and the Workmen's Compensation Act, 1923.

The origin of compensation system is to be found in the idealist philosophy that many of the misfortunes, disabilities and accidents of individuals are ultimately social and not individual in origin. Theoretically, statutory liability to pay compensation to the injured workman is fixed on the employer for two reasons. Firstly, the workman had been contributing to the employer's occupation, business, or trade and consequently the employer should compensate for the loss suffered by the worker on account of injury caused while in the discharge of the work of the employer. Secondly, the product of workman's labour go for the consumption and comfort of the society which he serves and as such the hazards and risk he undertakes in the discharge of his duties is society's concern. The legal presumption accepts the theory that the law will permit the employer to carry on the business and trade on condition that he assumes the liability for any consequent injury to the workman, which results from occupational risks and industrial hazards for no fault on the employee's part.

In a compensation system based on the theory of fault liability, the test is the nexus of the individual's fault to an accident that resulted in injury and disablement, whereas in a compensation system based on insurance theory the test is not one of apportioning blame but of marking out boundaries. Interestingly the Workman's Compensation System in U.S.A. reflects neither the characteristics of the off-shoot of the Law of
Tort as was in England nor that of the Continental Insurance System; it is a combination of both. Under the American system, “workmen’s compensation” is a mechanism for providing cash benefits and medical care to victims of work injuries and for transferring the cost ultimately to the consumer through the medium of insurance, which in turn is passed on to the cost of product.

Judicial decisions on the application of the law of compensation in later years formulated the test thus: was the injured workman, at the time of the accident, in the employment of the employer and engaged in some work which forms part of the ordinary pursuits, trade, business or occupation of the employer? If yes, even if the work in which he is engaged in does not fall within the particularly assigned duties for which the workman is employed, or is unconnected with his main duties the employer is liable to pay compensation and the workman (or his dependents) is entitled to the compensation payment. The judicial approach and application, over the years, developed the compensation system as a measure of social security.

A typical law of workmen’s compensation system would reflect the following features:

(a) The basic operating principle is that an employee is automatically entitled to stipulated benefit whenever he suffers “personal injury arising out of and in the course of employment”.

(b) Negligence and fault is held largely immaterial so that the employee’s contributory negligence does not lessen his rights and the employer’s freedom from fault does not lessen his liability.

(c) Coverage is limited to persons having the status of workmen/employees, as distinguished from independent contractor.

(d) Benefits to the employees include cash benefit usually around 1/2 to 2/3 of his average weekly wages. Hospital and medical expenses and in cases of fatal accident, bene-
fits for dependents are provided. Arbitrary maximum and minimum limits are usually imposed by the law.

(e) The employee and his dependants, in exchange for these modest but assured benefits, give up their common law right to sue the employer for recovery of damages for any injury covered by the Act.

(f) The right to sue third persons, whose negligence caused the injury, however, remains, the proceeds being usually applied first to reimburse the employer for the compensation outlay, with the balance going to the employee.

(g) Administration is typically in the hands of administrative commissioners and as far as possible, rules of procedure, evidence and conflict with the other laws are relaxed to facilitate the achievement of the beneficient purposes of the legislation.

(h) The employer is required to secure his liability through private insurance, or "self insurance"; and hence the burden of compensation liability does not actually remain upon the employer, but passes to the consumer-product, as part of the cost of production.

The compensation system granting disablement and dependent benefits was the first step towards social security all over the world. Later came the other components of social security such as health care and maternity provision. As a result of the transformation of agricultural society into an industrial society unemployment problem was found a stark reality. Therefore, an insurance system covering unemployment risk was introduced as a measure of social security. The USA, UK, Germany and France were countries which initiated the unemployment dole programme. Thus slowly but steadily, the national governments tackled through legislative steps, several contingencies, extending the existing facilities to larger sections of the population and providing additional risk coverage to meet the requirements of a minimum standard in the social life.

In India, any person under the Workmen's Compensation Act 1923, employed in the scheduled employments
in Schedule II, and all Railway servants excluding the one who is a casual employee, is covered for purposes of entitlement of a claim for the statutory compensation. All employees drawing a stipulated monthly wage according to Schedule IV of the Act is entitled to claim the stipulated amount of compensation, in case of accidents resulting in a permanent total disablement, and the stipulated half monthly payments as compensation for a temporary disablement suffered. In case the accident results in the death of the workman, his dependants are entitled to claim the amount of compensation, as related to the wage range prescribed by the Schedule. All or any person who is in the defined category of "dependants" under the Act is covered, for purposes of compensation payment, where the accident and resultant injury proves fatal.

A series of occupational diseases resulting in the poisoning of the body on account of employment in that particular occupation, and those which result in anthrax, cancer of the skin, ulceration, and pathological manifestations due to radium and radioactive substances or X-rays are specified for the compensation payment under the Act.²

Employees who are not covered by the Act are persons whose employment is of a casual nature and who is employed not for the purposes of employer's trade or business. A person who is not borne on the muster-roll register as regular employee and at the same engaged in the employment of the employer is deemed to be a causal employee. Employees in the defence and police services of the Central and State Government are excluded from the scope of application of the Act. So, also the contractors employed for specific works in the employer's premises and those who draw wages above the stipulated limit are outside the ambit of the Act, whether they are employed in railways or other employments. In all cases a contract of

² See Workmen's Compensation Act, Schedule III, Parts A, B and C.
employment between the employer and employee, expressed or implied, is necessary for the entitlement of the claim. All governments and local government authorities are included as employers for the operation of the Act.

The Workmen's Compensation Act 1923 imposes strict liability. The employer is made statutorily obliged to pay, to the injured employee (or to the dependants in case of fatal accidents), compensation as stipulated under the law. In its nature, the employer's statutory liability vests, in the employee and dependants, a corresponding right to claim the stipulated amount of compensation, provided the same right had not been negated on account of the workman's own fault under conditions prescribed by the Act. Where the workman has contributed to the accident by being intoxicated by drinks or drugs or has violated the express rules of prohibitive acts, or deliberately omitted to observe safety requirements, the right to recover compensation is not available. Again, where the accident has not caused any disability resulting in reduction of earning capacity the right is held to be non-existent, even if there had been an accident. So also, if the accident and consequent injury has not lasted for more than three days requiring medical attention and had not resulted in disablements of defined description, the employer is not liable to pay compensation. Except under circumstances which absolve the employer of his liability to pay he is liable for the payment of statutory compensation. Employer's liability was based on the theory of fault, due to negligence which was subsequently made untenable as a plea by virtue of the Employer's Liability Act. However, despite the Employer's Liability Act, the liability of the employer remains circumscribed within the limits of the formula "personal injury caused on account of accident arising out of and in the course of employment". The phrase determines the right of the workman for compensation; depending on its application to the facts and circumstances in each particular case.

3. Id., Section 3.
In the early period of the application of the law the theory was that since accident denotes a cause-effect relationship it was not necessary to look beyond the proximate cause and that it is the immediate cause which produced the effect that is material to decide whether the injury is caused by accident or otherwise.

The employer’s liability is for personal injury caused to the workman. Personal injury could be both physical and mental and includes occupational disease. Unless the injury results in a disability of either description; temporary or permanent; total or partial, the workman would not be entitled to claim the compensation. Again if the injury suffered had disabled the workman and had resulted in the reduction of his earning capacity, the sufferer is entitled for compensation. The circumstance entitling compensation is thus a question of fact, and a justiciable issue. The Act envisages that the employer is not to be held liable, unless the injury results from the accident ‘arises out of and in the course of employment’.

If an employer contracts another to execute any of his work which forms part of his usual trade and business and during the course of the execution of his work under the contractor any workman is employed, the principal employer shall be liable to pay compensation as if the workman had been immediately employed by him, and the compensation shall be calculated on the basis of the wages received by the employee. The principal employer is entitled to be indemnified by the contractor without prejudice to his workman’s right to claim compensation from the contractor, and all questions relating to the

4. For instance, a sudden explosion which results in deafness by noise is an accident, but when the same effect is produced by nervous shock or fear it would not be an accident since the result is not directly relatable to the cause but due to cause external to the incident, such as the mental state or the temperamental nature of the sufferer. Explosion, noise and the deafness have got a direct cause and effect relationship. Similarly, an epileptic fit or some such bodily and mental condition which brought the effect while performing an act such as crossing a river, or waiting for transport or boarding a train are not considered accidental injury since they are not directly relatable to the factor.
right of indemnification and the amount of indemnity is to be settled by the Commissioner if there is no agreement between the principal employer and the contractor.\(^5\) However, where the workman has been injured under circumstances creating liability on a third party and compensation or damages are recoverable, the person who has to pay indemnity to the principal employer is entitled to be indemnified by the third party who has a legal liability to pay.\(^6\) If an employer has taken out insurance in respect of his liability to pay compensation or if the employer becomes insolvent or where it is a company, in the event of its liquidation, irrespective of other factors, the workman is entitled to claim the compensation from the insurers or liquidators. If the workman is entitled to a greater amount of compensation than the liability of the insurer, the workman can claim and recover the balance, on proving the same in the insolvency proceedings or liquidation. But the insurer or liquidator is not under any greater liability to the workman than they would have been under the employer. If the employer has taken out an insurance to cover the liability towards the workman and the contract become void or voidable on account of default on the part of the employer, it would be deemed that the contract is neither void nor voidable, and the insurer shall be liable to pay, unless the workman fails to give notice to the insurers about the accident and the resultant disablement. The insurer, however, is entitled to prove his case of default by the employer before the insolvency proceedings or liquidation for the amount paid to the workman.\(^7\) In the case of transfer of assets by any employer, the liability accrued on or before the date of transfer, in respect of compensation payable under the Act, will be a first charge on the assets so transferred.\(^8\)

The statutory liability of the employer arises where the workman is injured by accident and the same arises "out of and in the course of employment". After an initial period of

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5. Workmen's Compensation Act 1923, Section 12.
7. Id., Section 14.
8. Id., Section 14A.
narrow interpretation, the phrase “arising out of and in the course of employment” was interpreted by the judiciary to mean not merely the time-factor or the place-factor, but the facts and circumstances of each case. The approach was that unless under the statutory exception the employer is exempted, the right of the employee stands and the compensation is payable. Though the employment of the workman begins when he has reached the place of employment and does not continue after he has left the place of employment, the employer’s premises are deemed, by a course of liberal interpretations by the judiciary, to extend to areas which the workman pass and re-pass while going to the place of work and leaving for home. In other words there could be some reasonable extension of both time and place in which the workman may be regarded as in the course of his employment for entitling the workman for compensation. If the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course, the workman had exposed himself to an “added peril” by his imprudent or deliberate act. In the case of death caused by accident the burden rests upon the claimant to prove that the accident arose out of and in the course of employment. This caveat renders the liberal interpretation mostly ineffective, since it often happens that a claim does not succeed where the accident has happened just outside the premises in spite of the doctrine of “notional extension of employer’s premises”.

The compensation is not a solatium to the injured or the dependants, but something to replace the actual loss suffered. To establish the legal right to statutory compensation which the Act has granted, there must be a subsisting contract of employment, and a personal injury resulting in total or partial disablement causing loss in the earning capacity. The quantum payment depend on the nature of the injury and the consequent loss in the earning capacity. The percentage of loss in earning capacity is pre-determined in the case of disablements of defined category. Further, the injury suffered must have been by accident, by a mishap either of the machinery or circumstances, and

9. Id., Schedules I and IV, and definition in Sections 2(g) and 2(1).
without any design on the part of the worker. The accident and resultant injury must have been on account of the inherent risk involved in the nature of the employment and discharge of duty, which can be directly attributed to the employment, establishing a relationship. It must have happened during the period of employment in which the employee can be deemed to be on duty. No claim arises, when the injury does not disable the workman for period less than three days.\textsuperscript{10} Again, if the accident is the result of a specific act of omission or commission, such as intoxication by drug or drink, wilful disobedience of express prohibitory orders or wilful disregard of safety measures which are within the knowledge of the workman, the employer is not liable to pay unless the accident was a fatal one.\textsuperscript{11} Where the workman has elected to proceed against the employer by an action for damages on ground of negligence, the statutory compensation is barred.\textsuperscript{12}

Powers And Functions Of The Compensation Commissioner

The Workmen's Compensation Commissioner is the principal officer through which the Act is implemented. The Commissioner has the power for the computation of payments, determination of the amount and to accept the deposit and to dispose off the applications. He can also require the employers to submit statements of fatal accidents, and to receive the report on all fatal accidents and serious injuries from employers and employees, and to decide many other facts and issues that arise in an application. The Commissioner can order the employer to deposit further sums or to issue notice for the same, in case he is of the opinion where the injury has resulted in death that the sum already deposited is insufficient as the compensation amount. If the employer fails to satisfy the Commissioner, he can also give an award determining the total amount payable and requiring the employer to deposit the deficiency.\textsuperscript{13} The

\textsuperscript{10} Id., Section 3(1) (a).
\textsuperscript{11} Id., Section 3(1) (b).
\textsuperscript{12} Section 3 (5).
\textsuperscript{13} Id., Section 22A.
Workmen’s Compensation Commissioner is empowered to review the half-monthly payments payable by the employer, and increase or decrease or continue or end, depending upon the nature of the resultant disablement suffered by the accident. So also, the Commissioner is authorised to compute the half-monthly payments where it has continued for not less than six months and to redeem the employer by payment of lump sum either by agreement with the parties or on his own when either of the party makes an application to that effect.

No Civil Court has got jurisdiction to settle, decide or deal with any matter which is within the competence of Commissioner or to enforce any liability that arises under the Act. The Commissioner is endowed with the powers of Civil Court under the Code of Civil Procedure for purposes of compelling attendance of witnesses and production of documents for taking evidence. In recording evidence, the Commissioner shall make a brief memorandum of the substance of evidence as the examination of witnesses proceed. The Commissioner can submit any question of law to the High Court’s decision and decide the matter before him in conformity with the decision of the High Court. If the Commissioner receives information from any source that a workman has died of an accident arising out of and in the course of employment, he can suo motu demand from the employer a statement of the circumstances of such fatal accident and impose the liability of depositing the compensation amount with him by sending thirty days notice by registered post. In case the employer is liable to pay compensation he shall have to deposit the amount within thirty days and if he pleads non-liability he will have to submit the grounds on which he disclaims the liability. In the circumstances of disclaimer of liability the Commissioner has the power to permit the dependants to file a claim if he thinks so, after making necessary enquiries about the fatal accident. In the case of fatal accidents and accidents causing

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15. Id., Section 19.
16. Id., Section 23.
17. Id., Section 25.
18. Id., Section 10A.
serious bodily injuries, which occurs within the premises of the employer, he is duty bound under the law to give notice to the authorities within seven days of the death or injury; and a report of the same be sent to the Workmen's Compensation Commissioner.19 Where a workman has given notice of an accident to the employer, and if the employer offers to have him medically examined by a qualified practitioner free of charge within three days of the receipt of the notice, or, if the workman is in receipt of half-monthly payment, he shall submit himself for such medical examination and from time to time, as required under the rules. If, the workman refuses to submit himself for medical examination or obstructs the same, the Commissioner can suspend the right to compensation for such refusal and obstruction, except when the workman has sufficient cause to do so. If the workman dies without having submitted himself for medical examination whose right to compensation has been suspended, the Commissioner is empowered to direct payment of compensation to the dependants of the deceased. On the other hand, if the right of compensation is suspended before the expiry of the waiting period of three days, the waiting period shall be increased.20

From the decisions and orders of Compensation Commissioner, of allowance or disallowance of any claim, or half-monthly payments, or refusal to register a memorandum of agreement or an order awarding interest, penalty, or order providing for the distribution of compensation among dependants,

19. Id., Section 10B. But this provision does not apply to employers of factories to which the ESI Act applies.

20. Id., Section 11. In cases where the workman refuses to be attended by a qualified medical practitioner or having accepted the service of a medical practitioner has deliberately disregarded the instructions consequent to which the disablement has aggravated, the injury and the disablement shall be deemed to be of the same nature and duration as could be reasonably expected had the treatment of the medical practitioner been properly gone through, and compensation will be paid accordingly. Thus for the aggravation of the disablement due to the employee's negligence, the employer will not be liable under the law.
appeal lies to the High Court if there is a substantial question of law involved and the amount is above the prescribed limit.\textsuperscript{21} Neither the employer, nor the employee is permitted to contract out of the liabilities imposed by the statute and if there is an agreement to that effect relinquishing the right to statutory compensation it would be null and void.\textsuperscript{22}

If the workman has elected to file a claim before the Workmen's Compensation Commissioner for statutory compensation he will be disentitled to institute civil proceedings claiming damages against the employer or any other person in respect of the injury he has suffered. If in respect of the injury a suit is filed for damages in a civil court the workman would not be entitled to claim compensation under the Workmen's Compensation Act.

A resourceful employer may be able to escape from liability under the Act on account of the requirement of evidentiary proof. Once a claim disallowed or awarded, howsoever inequitable it be from the point of view of social justice, the claimant has only the alternative of the statutory appeal under Section 30 of the Act.

\textit{Computation of Compensation and the Claim Dispensation}

The prescribed authority to compel the payment and disburse the amount is the Workmen's Compensation Commissioner, appointed by the Government under the statute. A notice relating to the accident is a pre-condition for the entertainment of the claim, and it must be given as soon as practicable. The claim must be preferred within two years of the date of occurrence of the accident, whether it results in disablement or death. In the case of occupational diseases peculiar to the employment, the entitlement for the compensation claim is only when the workman has served for a continuous period of six months in the particular employment.\textsuperscript{23} The workman will be deemed to have

\textsuperscript{21} \textit{Id.}, Section 30.
\textsuperscript{22} \textit{Id.}, Section 17.
\textsuperscript{23} \textit{Id.}, Schedule 3, Parts A & B.
suffered the occupational disease on the first day on which he has gone on continuous absence on account of the disablement caused by the disease. In the case of occupational diseases which does not force the workman to be absent from work, and which cause only partial disablements, a limitation period of two years is prescribed and that will be counted from the day the workman gives notice to his employer. Where the workman ceases to be in employment, if he develops symptoms of occupational disease within two years of the cessation of his employment after having served for a continuous period of six months, the accident will be deemed to have occurred on the day the symptom was first detected and he will be entitled for compensation payment. A claim preference notice should give the name and address of the person injured, state the cause of injury and date of accident, and serve it on the employer or any person responsible to the employer for the management of his trade or business. The want of or any defect or irregularity in the notice by the employee will not be a bar to entertain the claim before the Commissioner. The Commissioner is vested with discretion to condone the delay in the service of notice of claim “on sufficient cause”, and grant of relief. He has the power to decide the claim notwithstanding defects and delay in the notice.24

The calculation of accident compensation is based on monthly wages. Monthly wage means the wages payable for a period of one month’s service, whether piece-rate or time-rate. The monthly wage is to be arrived at by averaging the total sum payable to the workman in case he has worked for a continuous period of twelve months preceding the accident. Where the method of payment and the period of service is not amenable to a calculation based on monthly wages, the average monthly wage is calculated on the rate of average wages per day for the period of continuous service immediately preceding the accident and multiplied by thirty.25 Thereafter on the basis of monthly wages

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24. *Id.*, Section 10.

25. *Id.*, Section 5.
so arrived, the compensation amount will be calculated in accordance with Schedule IV read with Schedule I.

A claim is preferable when the injury results in death, permanent total disablement, permanent partial disablement and temporary disablement. To enable the computation and determination of the amount of compensation Schedule IV of the Act provides a rateable compensation amount, related to the monthly wage-range of the injured workman. In the case of death, it is a total and fixed lumpsum payment; and in the case of permanent total disablement it is a proportionate rate of lumpsum payment related to wages. In permanent partial disablements the amount of compensation is to be calculated on the basis of the amount meant for permanent-total disablement, adjusted pro rata with the loss of earning capacity. Multiple injury can cumulatively produce a loss of 100% earning capacity which would be reckoned as permanent total disablement. Partial disablements are those which result in loss of less than 100% in earning capacity. The compensation for permanent/temporary disablement would be the amount for permanent/total disablement calculated in terms of the relative loss of earning capacity pertaining to that particular injury. Where there are more than one injury caused by the same accident the amount would be aggregated on the basis of the loss for each injury subject to the total payable for permanent/total disablement.

The workman is entitled only to half-monthly payments proportionate to the duration of the disablement in the case of temporary disablements of either description, total or partial. The half-monthly payments are related to the wage-range.

26. Id., Schedule 1. It provides a list of description of injury and the percentage of loss of earning capacity.
27. Id., Section 4, Schedule IV and Schedule I. Thus, loss of both hands or a hand and a foot would be 100% loss making it permanent/total disablement while, amputation of both feet would be permanent partial disablement being only 90% loss of earning capacity, while loss of all toes of both feet would be merely 20% loss making it a permanent partial disablement.
28. Id., Schedule IV.
Prior to the determination of the nature of the disablement if any lumpsum had been paid by the employer as compensation, the employer is entitled to deduct the amount from the half-monthly payments payable to the workman. But the amounts received by the workman from the employer for medical treatment, as payment or allowance, is not to be treated as statutory compensation payable under the Act. The half-monthly payments due for the period of disablement need not be in excess of the amount of half-monthly wages which the workman is entitled to receive after the accident. In other words, the statutory liability to pay half-monthly payment for temporary disablement is only to a maximum of half the amount of actual wages which the employer is to pay.\(^2\)

**Judicial Application Of The Act**

In the early stages, judicial interpretation of the phrases “arising out of employment” occurring in Section 3 of the Workmen’s Compensation Act was that it denotes the relationship with the nature of the contractual duties of the workman and the accident that occurred, and the nexus between the accident with the duties assigned to the employee by the employer with reference to the time and place of work. Similarly the phrase “in the course of employment” in the same Section was deemed to denote the time and place or premises in which the workman was at work. As a result, in circumstances where a nexus between the accidental injury and the assigned duties is missing or where the relativity between the accident and the time of duties or the place of duties is too remote, to that extent, the legal right of the employee to claim compensation is whittled down. Thus where an accident occurs outside the premises of the employer or at non-duty hours, or if the accident was not directly relatable to the nature of work for which the employee is detailed, the employer could successfully plead exemption from liability. The different High Courts took divergent views; at times placing a strict interpretation with a positivist approach, narrowing the right of the employee to claim; and at times placing a beneficial interpretation taking a sociological view of the facts and

\(^2\) Id., Section 4.
circumstances, in consonance with the spirit of the statute, widening the liability of the employer. The Supreme Court took the view that it is very important to enunciate the principles of law in accordance with the spirit and philosophy of the statute.

In the *Saurashtra Salt Manufacturing Company* the workmen who used to cross and re-cross in a ferry to reach the work-place were drowned on their way to the workshop. And the dependants claimed damages. Setting aside the order of the Commissioner who granted compensation, the Supreme Court held that the accident did not fall within the scope of the phrase "arising out of and in the course of employment". It ruled that the theory of notional extension of the employer’s premises cannot be extended to cover such cases where the ferrying of passengers is done by a public transport. The accident has happened to the workmen who were exposed to the same risk as was the case with all others in that public transport, more so, when there is substantial distance to be covered as a road journey by foot, between the workplace and the disembarking point of the ferry. The principle laid down in the case is this. In an accident where the workman is in a public transport, and is exposed to the same risk as all others in the transport, the risk being unconnected with the nature of employment, he is not entitled to compensation, in as much as it is too remote in time and space from employer’s sphere of liability to be covered by the doctrine of notional extension of employer’s premises.

In *B.E.S.T. Undertaking* the widow of one of the drivers claimed compensation for the fatal accident of her husband. The driver was returning home after duties, in one of the buses that constituted the fleet of the buses of the appellant on the route. Under the Standing Orders of the Undertaking employees were entitled to travel to and fro the work-place in the buses of the
appellant, free of charge. The Supreme Court, applying the doctrine of notional extension of employer's premises confirmed the holding of the High Court in granting the compensation and held that the accident was in the course of employment. The Court observed that the premises of a factory which gives ingress and egress to the workplace is a limited one, but in the case of a city transport service, the entire fleet of buses forming the service would be the premises. Therefore, if a driver uses the bus in going to and coming from the depot, any accident that happens to him is an accident in the course of his employment. The Court added, the doctrine of reasonable or notional extension of employment, developed in the context of specific workshops, factories or harbours equally applies to such a bus service. The doctrine necessarily will have to be adapted to meet the peculiar requirements, inspite of the fact that the workman concerned has discharged his duties and left the precincts of the depot, after the tool down hours. Hence where a workman met with an accident in the transport of his employer, he is entitled to compensation.

In Mackinnon Mackenzie the father of the deceased workman who worked in a ship as seaman, claimed compensation. There was nothing on evidence to show that the missing seaman was dead, and that the death was caused by accident arising out of and in the course of employment. The Commissioner of Workmen's Compensation in dismissing the application found that in the absence of conclusive proof the presumption of accidental death of missing seaman is merely speculative. The High Court opined that the missing seaman must be held to have met with an accident arising out of and in the course of employment. The Supreme Court, felt that the High Court was not justified in setting aside the finding of the Commissioner. Allowing the appeal, the Supreme Court held:

32. Id., at p. 201.
33. Id., at pp. 200, 201.
35. Id., at 1912.
evidence to warrant such a conclusion. The Court also explained that the phrase "arising out of employment" means that the injury has resulted from some risk incidental to the duty of the servant, so much so the workman would not have suffered the accident unless it was owing to the duty towards the master. The expression is not confined to the mere nature of the employment but applied to its conditions, obligations, and incidents. A claim for compensation must succeed unless the workman has exposed himself to an added peril by his own imprudent act. Thus, while narrowing the statutory liability of the employer under the phrase "arising out of and in the course of employment" confining to the facts and circumstances of the case, the Court reinforced the doctrine of added peril in compensation claims. The Court laid down the proposition that where the workman had not taken any added risk by his imprudent act, he is entitled for the compensation if the nexus between the duty of the injured workman and the accident is established.

The Supreme Court in later decisions departed from the purely positivist approach and narrow construction, which countered the spirit and philosophy of a social security measure. In *P. N. Singh Deo* the respondent carpenter fell down while he was working, and his left arm had to be amputated. On the claim petition, the Compensation Commissioner disallowing the contention that the workman was only a causal employee, and that in any case the liability for payment arose only when the order for payment was passed by the Commissioner, granted the compensation amount, with a penalty of 50% and interest at 6%. The Supreme Court on appeal sustained the decision of the Commissioner. It was held that under Section 4A(1), where the injury is such that the workman is permanently disabled to do the work he had been doing, it was the duty of

36. *Id.*, at 1908.
37. *Id.*, at p. 1909.
39. *Id.*, at 224.
the appellant to pay the compensation as soon as the injury was caused. Further, even if only one of the arms is amputated when the earning capacity of the workman has been reduced to the level of 100% for doing the job which he was till then doing, the nature of the disablement is permanent and total and not partial disablement. And if the employer has committed a default in discharging the obligation of payment, the Commissioner will be justified in imposing a 50% fine on the statutory amount of compensation.

Courts have, thus in recent years began to take a liberal view in applying the provisions of the Act to meet the requirements of social justice, both in relation to imposition of liability on the employer, and in widening the scope of the rights of the workman. The compensation amount payable is neither assignable, nor can there be any charge on it. The statute sought to caution the employers, that the liability is on them to pay, if accidental injury occurs. The four fold objectives of the Workmen's Compensation Act are the following: 40

(1) To protect the workers against the hardships arising out of industrial accidents.
(2) To mitigate the effect of accidents by a provision for suitable medical treatment.
(3) To fix the liability for accidents upon the employer.
(4) To provide a suitable administrative machinery to afford quick and cheap remedy to compensation claims.

The principal objective of the law is only to fix the liability upon the employer for payment of statutory compensation to his own workers who suffered disablement out of industrial accident. On account of its limited objective the compensation

40. See the statement of Objects and Reasons to the Act in Gazette of India 1922. Part V.
law suffers from the lacunae, both in its nature and in its operational efficacy, to be an effective social security system.

The pre-determined percentage of loss of earning capacity, relating it to the nature of injury and the classification of disablement in terms of permanent and temporary, do not leave much scope to administer social justice and enough recompense for the loss actually suffered either by the individual worker or his family. The nexus fixed between earning capacity and current wages, do not take into account, the disparity between money wages and real wages. The omission of a realistic assessment of the workman’s future earning capacities by the job prospects and the relative life span he can serve renders the concept of earning capacity notional and the compensation illusory. The fixation of the quantum measure, without taking into account the requirement of dependant liability of the workman concerned is both arbitrary in practice and works injustice to the worker and his family. In the application and administration of law, there is still room for the intrusion of the doctrine of “added peril” to counter-act the benefit conferred to the workman and permit the employer to escape from the liability to pay.

An anomalous situation results: the compensation payable is neither real nor illusory; neither substantial nor niggardly. It is not even enough recompense for the disablement suffered. It neither makes good the loss suffered nor provides a level of subsistence. The payment of subsidy to the disabled or lumpsum amount to the dependants as recompense, never commensurate with loss suffered, but only proportionate to the current wages earned, can in no way be considered as adequate compensation or sufficient income security, since it is neither related to the cost of living index nor rated with the individual’s earning capacity or “real income”. Thus the Workmen’s Compensation Act, and the compensation system, is no doubt, a means of social justice but not a measure of social security. Further, in its functional efficacy, the law of workmen’s compensation operates as an independant branch, distinctly separate and un-integrated with social security measures. In this processual aspect the twin doctrines of “added peril” and “assumed
risk”, still plays somewhat decisive role to add to the inefficacy of the law in action. A claim petition gets entangled in judicial procedure once the Commissioner’s award comes under challenge, and it suffers from both litigality and delay. In recent times, as judicial approach becomes more sociological, a welcome change is visible. But that can no way be a consolation for a statutory change for integrated social security.