

**THE WORKMEN'S COMPENSATION ACT.**

**[INDIA ACT VIII, 1923.]**

**(1st July, 1924.)**

**[ Amendment : 24.03.1955, 02.04.1957, 11.05.2005 ]**

**CHAPTER I.**

**PRELIMINARY.**

1. \* \* \* \*

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,-

- (a) **“adult” and “minor”** mean respectively a person who is not and a person who is under the age of fifteen years;
- (b) **“Commissioner”** means a Commissioner for Workmen's Compensation appointed under section 20;
- (c) **“compensation”** means compensation as provided for by this Act;
- (d) **“dependant”** means any of the following relatives of a deceased workman, namely:-
  - (i) a [widow], a minor legitimate son and unmarried legitimate daughter, or a widowed mother; and
  - (ii) if wholly or in part dependent on the earnings of a workman at the time of his death, a [widower], a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, [a minor child of a deceased daughter where no parent of child is alive,] or, where no parent of the workman is alive, a paternal grandparent;
- (e) **“employer”** includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him [and also includes the owner of any vehicle or vessel the use of which is obtained from the owner thereof for the purpose of plying for hire with the said vehicle or

vessel under any contract other than a hire purchase agreement in consideration of the payment of a fixed sum or a share in the earnings or otherwise];

- (f) **“managing agent”** means any person appointed or acting as the representative of another person for the purpose of carrying on such other person’s trade or business, but does not include an individual manager subordinate to an employer;
- (i) any person employed otherwise than by way of manual labour whose monthly wages exceed the amount prescribed by notification made by the Ministry of Labour with the approval of the Government: or
- (ff) **“outworker”** means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;
- (g) **“partial disablement”** means, where the disablement is of a 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 Schedule I shall be deemed to result in permanent partial disablement;
- (h) **“prescribed”** means prescribed by rules made under this Act;
- (i) **“qualified medical practitioner”** means any person registered under the Medical Act, 1858, or any Act amending the same, or under the Burma Medical Act or any Act of any Legislature in India or Pakistan providing for the maintenance of a register of medical practitioners;
- (j) \* \* \* \*
- (k) **“seaman”** means any person forming part of the crew of any ship, but does not include the master of the ship;
- (l) **“total disablement”** means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: 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 that Schedule against those injuries, amounts to one hundred per cent;

(m) **“wages”** includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(n) **“workman”** means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing; and also includes a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise, but does not include-

(i) any person employed otherwise than by way of manual labour whose wages exceeds four hundred rupees per month; or

(ii) a person employed in agriculture, that is to say, the cultivation of crops other than those grown on any estate which is maintained for the purpose of growing cinchona, rubber coffee or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed; or

(iii) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or

(iv) any person working in the capacity of a member of the naval , military or air forces of the Union of Burma; or

(v) a member of a police force; or

(vi) an outworker; or

(vii) a member of the employer's family dwelling in his house.

**Explanation.**- For the purposes of this sub-section “member of a family” means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister.

- (2) Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.
- (3) The exercise and performance of the powers and duties of a local authority or of any department of the Government shall, for the purpose of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

<Amendment 11.05.2005>

## CHAPTER II.

### WORKMEN'S COMPENSATION.

Employer's liability for compensation.

3. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable in respect of any injury, not resulting in death, caused by an accident which is directly attributable to-

- (i) the workman having been at the time thereof under the influence of drink or drugs, or
  - (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
  - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.
- (2) \* \* \* \* If a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in [List A of] Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

**Explanation.**-For the purposes of this sub-section a period of service shall be deemed to be continuous which has not included a period of service under any other employer.

- (3) If a workman contracts any disease specified in List B of Schedule III, and it is certified by a qualified medical practitioner that the disease is directly due to the nature of any employment in which the

workman was employed at any time within the twelve months previous to the date of disablement, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section, and unless the employer proves the contrary the accident shall be deemed to have arisen out of and in the course of the employment aforesaid:

Provided that the compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due.

(4) The President of the Union, after giving, by notification in the Gazette, not less than three months' notice of his intention so to do, may, by a like notification, add any description of employment to the employments specified in [List A of] Schedule III, and shall specify in the case of the employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(5) The President of the Union, after giving, by notification, not less than three months' notice of his intention to do so, may, by a like notification add any diseases to the occupational diseases specified in List B of Schedule III, and the provisions of sub-section (3) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases.

(6) Save as provided by sub-sections (2) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(7) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury-

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

Amount of compensation.

4. (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

A. Where death results from the injury-

(i) in the case of an adult, a sum equal to 36 times the workman's monthly wages calculated in accordance with this Act:

Provided that the minimum and the maximum payment in such a case shall be the amount of compensation prescribed by notification made by the Ministry of Labour with the approval of the Government respectively, and

(ii) in the case of a minor- the amount of compensation prescribed by notification made by the Ministry of Labour with the approval of the Government;

B. Where permanent total disablement results from the injury-

(i) in the case of an adult, a sum equal to 36 times 140 per cent of the workman's monthly wages calculated in accordance with this Act:

Provided that the minimum and the maximum payment in such a case shall be the amount of compensation prescribed by notification made by the Ministry of Labour with the approval of the Government respectively, and

(ii) in the case of a minor- the amount of compensation prescribed by notification made by the Ministry of Labour with the approval of the Government;

C. Where permanent partial disablement results from the injury-

(i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified 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 permanently caused by the injury;

**Explanation.** - Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day \* \* \* \* from the date of the disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter,-

(i) in the case of an adult-of a sum equivalent to one-third of the workman's monthly wages calculated in accordance with this Act, and

(ii) in the case of a minor-of one-half of his monthly wages :

Provided that-

- (a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and
- (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident; and
- (c) no compensation shall be payable in respect of the first four days of the disablement if the period of the workman's disablement is ten days or less.

E. In cases where the injury results in incapacity of such a nature that the injured workman must have the constant help of another person, additional compensation equivalent to twenty-five percent of the compensation payable in respect of the injury shall be paid to the injured workman.

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(3) Where the injury sustained is of such a nature as would entitle the injured workman to the supply and renewal by the employer of such artificial limbs and surgical appliances as are recognised to be necessary, the injured workman shall be paid a lump sum compensation representing the probable cost of the supply and renewal of such appliances. This sum, which shall not exceed ten percent of the compensation payable in respect of the injury, shall be decided at the time when the amount of compensation payable in respect of the injury is settled or revised.

[<Amendment 24.03.1955, 11.05.2005>](#)

Method of calculating wages.

5. (1) [In this Act and for the purposes thereof, the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and] calculated as follows, namely:-

- (a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
- (b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed by a workman employed on similar work in the same locality;
- (c) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

**Explanation.**-A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

(2) \* \* \* \*

Review.

- 6. (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.
- (2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

Commutation of half-monthly payments.

- 7. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either



party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

Distribution of compensation.

8. (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of the amount of compensation prescribed by notification made by the Ministry of Labour with the approval of the Government, and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

- (2) Any other sum amounting to not less than the amount of money prescribed by notification made by the Ministry of Labour with the approval of the Government which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.
- (3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.
- (4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman the Commissioner shall deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding the amount of money prescribed by notification made by the Ministry of Labour with the approval of the Government, and pay the same to person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.
- (5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in

such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

- (6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom compensation is payable is not a woman or a person under a legal disability, and may in other cases, pay the money to the person entitled thereto.
- (7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.
- (8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

- (9) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

[<Amendment 11.05.2005>](#)

Compensation not to be assigned, attached or charged.

9. Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Notice and claim.

10. (1) No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been instituted within twelve months of the occurrence of the accident or, in case of death, within twelve months from the date of death: Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the maintenance of proceedings-

- (a) if the claim is made in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or
- (b) if the employer had knowledge of the accident from any other source at or about the time when it occurred:

Provided further that Commissioner may admit and decide any claim to compensation in any case, notwithstanding that the notice has not been given, or the claim has not been instituted, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or institute the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person directly responsible to the

employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The President of the Union may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

Power to require from employers statements regarding fatal accidents.

10A. (1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or he is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

Reports of fatal accidents.

10B. (1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death, the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the death:

Provided that, where the President of the Union has so prescribed, the person required to give the notice may, instead of sending such report to the Commissioner, send it to the authority to whom he is required to give the notice.

(2) The President of the Union may, by notification in the Gazette, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

Medical examination.

11. (1) (a) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination; and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time.

(b) If the Commissioner considers it necessary for the settlement of any question arising in any proceedings under this Act, he may require a workman who has given notice of an accident to submit himself for examination by a medical practitioner, and the cost of such medical examination, if any, shall be payable by the employer:

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of

those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension. \* \* \* \*

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge, or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal, failure or disregard was unreasonable in the circumstances of the case, and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner, and compensation, if any, shall be payable accordingly.

#### Contracting.

12. (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and, where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation, and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman would have recovered compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

Remedies of employer against stranger.

13. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Insolvency of employer.

14. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman:

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the Rangoon Insolvency Act, or under section 61 of the Burma Insolvency Act, or under section 230 of the Burma Companies Act, are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Special provisions relating to masters and seamen.

15. This Act shall apply in the case of workmen who are masters of ships or seamen subject to the following modifications, namely:-

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant on where the ship has been or is



deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost.

- (3) Where an injured master or seaman is discharged or left behind in any part of His Britannic Majesty's dominions or in a foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the President of the Union shall, in any proceedings for enforcing the claim, be admissible in evidence-
- (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
  - (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and
  - (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition, and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition, if made in a criminal proceeding, was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

- (4) In the case of the death of a master or seaman leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being in the Union of Burma relating to merchant shipping liable to pay the expenses of burial of the master or seaman, return to the employer the full amount of the compensation deposited under sub-section (1) of section 8 without making the deduction referred to in sub-section (4) of that section.
- (5) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in the Union of Burma relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

Returns as to compensation.

16. The President of the Union may, by notification in the Gazette, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of

such compensation, together with such other particulars as to the compensation as the President of the Union may direct.

Contracting out.

17. Any contract or agreement, whether made before or after the 1st July, 1924, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Proof of age.

18. Where any question arises to the age of a person injured by accident arising out of and in the course of his employment in a factory, a certificate granted in respect of such person under section 12 or section 52 of the Factories Act before the occurrence of the injury shall be conclusive proof of the age of such person.

Penalties.

18A. (1) Whoever-

(a) fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10, or

(b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10A, or

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

(d) fails to make a return which he is required to make under section 16,

shall be punishable with fine which may extend to kyats 10,000.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

<Amendment 11.05.2005>

### **CHAPTER III.**

### **COMMISSIONERS.**

Reference to Commissioner.

19. (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the

amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

(2) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

Appointment of Commissioners.

20. (1) The President of the Union may, by notification in the Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such local area as may be specified in the notification.

(2) Where more than one Commissioner has been appointed for any local area, the President of the Union may, by general or special order, regulate the distribution of business between them.

(3) Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Penal Code.

Venue of proceedings and transfer.

21. (1) Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before a Commissioner for the local area in which the accident took place which resulted in the injury:

Provided that, where the workman is the master of a ship or a seaman, any such matter may be done by or before a Commissioner for the local area in which the owner or agent of the ship resides or carries on business.

(2) If a Commissioner is satisfied by any party to any proceedings under this Act pending before him that such matter can be more conveniently dealt with by any other Commissioner, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lump sum shall be transferred for disposal under this sub-section

to a Commissioner save with the previous sanction of the President of the Union unless all the parties to the proceedings agree to the transfer.

- (3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.
- (4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.
- (5) The President of the Union may transfer any matter from any Commissioner to any other Commissioner.

Form of application.

22. (1) No application for the settlement of any matter by a Commissioner, other than an application by a dependant or dependants for compensation, shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.
- (2) An application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely:-
- (a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;
  - (b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;
  - (c) the names and addresses of the parties; and
  - (d) except in the case of an application by dependants for compensation, a concise statement of the matters on which agreement has and of those on which agreement has not been come to.
- (3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

Power of Commissioner to require further deposit in case of fatal accident.

- 22A. (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.
- (2) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

Powers and procedure of Commissioners.

23. A Commissioner shall have all the powers of a civil Court under the Code of Civil Procedure for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and a Commissioner shall be deemed to be a civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure.

Appearance of parties.

24. Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or other person authorized in writing by such person.

Method of recording evidence.

25. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record:
- Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:
- Provided, further, that the evidence of any medical witness shall be taken down as nearly as may be word for word.

Costs.

26. All costs incidental to any proceedings before a Commissioner shall, subject to rules made under this Act, be in the discretion of the Commissioner.

Power to submit cases.

27. A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

Registration of agreements.

28. (1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been settled as being payable to a woman or a person under a legal disability, a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that-

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(b) \* \* \* \*

(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum, whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable to a woman or a person under a legal disability, ought not to be registered by reason of the inadequacy of the sum or amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Contract Act or in any other law for the time being in force.

Effect of failure to register agreement.

29. Where a memorandum of any agreement, the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and, notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise

directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation, whether under the agreement or otherwise.

Appeals.

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

- (a) an order awarding as compensation a lump sum, whether by way of redemption of a half-monthly payment or otherwise, or disallowing a claim in full or in part for a lump sum;
- (b) an order refusing to allow redemption of a half-monthly payment;
- (c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than the amount of money prescribed by notification made by the Ministry of Labour with the approval of the Government:

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided, further, that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of the Limitation Act shall be applicable to appeals under this section.

<Amendment 11.05.2005>

Withholding of certain payments pending decision of appeal.

30A. Where an employer makes an appeal under clause (a) of sub-section (1) of section 30, the Commissioner may, and if so directed by the High Court shall, pending the decision of the appeal, withhold payment of any sum in deposit with him.

Recovery.

31. The Commissioner may recover as an arrear of land-revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act.

#### **CHAPTER IV.**

#### **RULES.**

Power of the President to make rules.

32. (1) The President of the Union may make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;
- (b) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (1) of section 11;
- (c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases;
- (d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;
- (e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another;
- (f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;
- (g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered; and
- (h) for the withholding by Commissioners, whether in whole or in part, of half-monthly payments pending decision on applications for review of the same.

Power of President to make rules regulating scales of costs, etc.



33. The President of the Union may make rules to provide for all or any of the following matters, namely:-
- (a) for regulating the scales of costs which may be allowed in proceedings under this Act;
  - (b) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act;
  - (c) for the maintenance by Commissioners of registers and records of proceedings before them;
  - (d) for prescribing the classes of employers who shall maintain notice-books under sub-section (3) of section 10, and the form of such notice-books;
  - (e) for prescribing the form of statement to be submitted by employers under section 10A;
  - (f) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner; and
  - (g) generally for carrying out the provisions of this Act.

Publication of rules.

34. (1) The power to make rules conferred by sections 32 and 33 shall be subject to the condition of the rules being made after previous publication.
- (2) The date to be specified in accordance with the Burma General Clauses Act, as that after which a draft of rules proposed to be made under section 32 or section 33 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.
- (3) Rules so made shall be published in the Gazette and, on such publication, shall have effect as if enacted in this Act.

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.

35. (1) The President of the Union may, by notification in the Gazette, make rules for the transfer to any other country of money deposited with a Commissioner under this Act which has been awarded to or may be due to any person residing or about to reside in such part or country, and for the receipt, distribution and administration in the Union of Burma of any money deposited under the law relating to workmen's compensation in any other country, which has been awarded to or may be due to any person residing or about to reside in the Union of Burma:

Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed orders

determining its distribution and apportionment under the provisions of sub-sections (4) and (5) of section 8.

(2) Where money deposited with a Commissioner has been so transferred in accordance with the rules made under this section, the provisions elsewhere contained in this Act regarding distribution by the Commissioner of compensation deposited with him shall cease to apply in respect of any such money.

**----- Footnote -----**

မူရင်းဥပဒေမှာ အင်္ဂလိပ်ဘာသာဖြင့် ၁၉၂၃ ခုနှစ်တွင် ပြဋ္ဌာန်းပြီး ၁၉၅၄ ခုနှစ်တွင် ဥပဒေများကို စုစည်းပြင်ဆင်၍ Burma Code အဖြစ် အတည်ပြုထုတ်ပြန်ခဲ့ရာ Burma Code ပါ ဥပဒေကို မူရင်းဥပဒေအဖြစ်ယူ၍ ပြင်ဆင်ချက်များပြုလုပ်သည်။ ပြင်ဆင်ချက်ဥပဒေ (၄/၂၀၀၅) ၏ ပုဒ်မ ၂ ပါ အစားထိုးထည့်သွင်းခြင်းကို မူရင်းဥပဒေ ပုဒ်မ ၂ (စ) အောက်၌ ထည့်သွင်းသည်။

- (1) Sec 2. (1) (d) (i) [widow], (ii) [widower] = Substituted by Act LII, 1951, which came into force on 1st January 1952.
- (2) Sec 2. (1) (ii) [ a minor child ..... alive.], (e) [and also ..... otherwise] , (ff), = Inserted by Act LII, 1951.
- (3) Sec 2. (n) = substituted by Act LII, 1951.
- (4) Sec 2. (2) , Sec 3. (2) [List A of],Sec 3. (3) = Inserted by Act LII, 1951.
- (5) Sec 2 (3) \*\*\* , 3. (2) \* \* \* \* = Deleted ibid.
- (6) Sec 3. (1) Provided that the employer = Amended ibid.
- (7) Sec 3. (4) , (6), (7) = Sub-sections (3), (4) and (5) were re-numbered as sub-sections (4), (6) and (7) by Act LII, 1951.
- (8) Sec 3.(4) [List A of]= Inserted ibid.
- (9) Sec 4. (1) A.(i) = Substituted ibid.
- (10) Sec 4. (1) B. (i) , D.(i) = Substituted by Act LII, 1951.
- (11) Sec 4. D. day \* \* \* = Deleted ibid.
- (12) Sec 4. D. (c) = Inserted by Act LII, 1951.
- (13) Sec 5. (1) [In this Act ..., and] = Substituted ibid.
- (14) Sec 10 (1) within twelve months = Substituted by Act LII, 1951.
- (15) Sec 11 (1) (a) (b) = Original sub-section (1) was renumbered as sub-section (1) (a) and clause (b) was inserted by Act LII, 1951.
- (16) Sec 11 (5) \* \* \* \* = Deleted by Act LII, 1951.
- (17) Sec 17. the 1st July, 1924. = Date of commencement of this Act.
- (18) Sec 32. (1) may make rules = For the Workmen's Compensation Rules, see Notification No. L-1182, Gazette of India. Part I, dated 20th June, 1924.

[ပင်ရင်း- The Burma Code Volume (V) မှ ကူးယူတင်ပြသည်။]

**----- Attachment -----**

[ ATTACH LIST 1 ] 01 SCHEDULE I. [See sections 2 (1) and 4.] List of injuries deemed to result in permanent partial disablement.

[ ATTACH LIST 2 ] 02 SCHEDULE III. (See section 3.) LIST OF OCCUPATIONAL DISEASES. List A.