

A DETAIL STUDY OF LIABILITY OF EMPLOYER AND RIGHT OF WORKMEN UNDER WORKMEN COMPENSATION ACT

¹K.PRAVITHA, ²Mrs.GIRIJA ANIL

¹Student, 4th yr ,B.A.,B.L(HON's), Saveetha School of law, Saveetha University, Saveetha Institute of Medical and Technical Sciences, Chennai-77, Tamil nadu,India.

²Assistant professor of law, Saveetha School of law, Saveetha University, Saveetha Institute of Medical and Technical Sciences, Chennai-77, Tamil nadu,India.

¹praviabi97@gmail.com , ²girijasanill@gmail.com

ABSTRACT

This paper deals about the liability of leader and right of workmen underneath workmen compensation act. black-and-blue staff and employee compensation area unit key liability problems for any business in Asian country. this can be notably the case for corporations with giant labor forces, love data technology and business method outsourcing (IT-BPO) or industrial corporations, however little business are wedged by labor laws that mandate compensation for workers black-and-blue on the duty. To avoid such burdens, employers ought to often audit human resource materials and policies to confirm that their business is compliance with relevant health and safety laws. little offices that don't maintain India-based human resource personnel, or use documents written for different international offices, ought to take into account consulting native specialists to audit their human resource materials and policies. This, combined with worker coaching, will facilitate make sure that businesses area unit ready to manage geographical point injuries effectively. This paper additionally discuss regarding the rights and responsibilities of workmen and employer. This paper can come back to a conclusion whether or not the employer is at risk of pay compensation that is discussed below.

Key words: Employer, Employee, Compensation, Injuries, Law.

Objectives:

- To identify the liability of employer under workmen compensation.
- A study on relevant provision and case laws
- Study on right and liability of workmen under workmen compensation act

Hypothesis:

Employee is liable for compensation under workmen compensation act

Research methodology:

In this paper the research has opted for doctoral research methodology and the sources act collected mainly through secondary data.

Limitation:

The research is unable to trace the primary sources needed to write about the topic as the topic demands research in the archives which is not available to the research as admission to the government archives is not allowed to undergraduate students.

Review of literature.**Books.**

Labour and Industrial Law, Pillai, 14th Edition, 2012, ALJ opublication.

This book is very useful for me to do my my research work it contain some case law in this book they explain in a detail way with explanation

Introduction:

The compensation Act, aims to produce workmen and/or their dependents some relief just in case of accidents arising out of and within the course of employment and inflicting either death or disability of workmen. AN leader, in straightforward terms, could be a person or legal entity that controls or directs a servant or employee below AN communicatory or understood contract of employment and pays him/her remuneration or wages as compensation. Employers embody everything from people hiring a keeper to Governments and business which can rent thousands of staff. In most of the western countries, Governments square measure the one largest employers, however most of the personnel is used in tiny and medium businesses within the personal sectors It provides for payment by sure categories of employers to their workmen compensation for injury out of the blue. In some circumstances, your company could also be lawfully to blame for hurt caused by its staff. below a few of legal theories, courts have control employers answerable for injuries their staff inflicted on coworkers, customers, or total strangers. Here, we tend to justify those legal theories and a number of reasonable steps you'll be able to want steer away from bother.

Minor:

in keeping with Section 2(1) (ff), minor means that someone World Health Organization has not earned the age of eighteen years

Employer:

Sec. 2(e) provides that the term leader "includes" the following: (i) anybody of persons, whether or not incorporated or not (ii) ANy managing agent of an leader (iii) the legal representatives of a deceased leader, and (iv) somebody to whom the services of a employee square measure quickly season or unfettered, whereas the employee is functioning for him. so the word employer' includes not solely natural persons, and body of persons, however artificial and legal persons. ([OECD 2017](#))

Who could be a employee

employee means that somebody (other than someone World Health Organizationse employment is of an off-the-cuff nature and World Health Organization is used otherwise than for the needs of the employer's trade or business) who is-

- a railway servant as outlined in section three of the Indian Railways Act, 1890 not for good used in any body, district or sub-divisional workplace of a railway and not used in any such capability as is laid out in Schedule II, or
- used in any such capability as is laid out in Schedule II,

Whether the contract of employment was created before or once the passing of this Act and whether or not such contract is expressed or understood, oral or in writing.

The provisions of the Act are extended to cooks used in hotels, restaurants victimization power, liquefied rock oil gas or the other machine within the method of cookery.

Employer's Liability For Compensation

An leader is susceptible to pay compensation if personal injury is caused to a employee out of the blue arising out of and within the course of his employment. An leader isn't liable in following cases: Injury that doesn't lead to total or partial disability of employee for a amount extraordinary three days. Injury caused by AN accident directly because of employee below influence of drinks or medication, willful disobedience of categorical orders for safety, willful removal of safety guard or device. [Even if such case, if the employee dies or suffers permanent total disability, the leader are going to be liable]. [\(Probst et al. 2013\)](#)¹

The leader of any institution lined below this Act, is needed to compensate AN employee:

- Who has suffered AN accident arising out of and within the course of his employment, ensuing into (i) death, (ii) permanent total disability, (iii) permanent partial disability, or (iv) temporary disability whether or not total or partial, or
- Who has shrunken AN industrial disease.

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<https://www.advocatekhaj.com/library/bareacts/workmenscompensation/3.php?Title=Workmens%20Compensation%20Act,%201923&STitle=Employer%27s%20liability%20for%20compensation>

- By reason of the omission of the leader to keep up smart and safe conditions of labor, machinery or plant connected to his trade or business, or the omission on the a part of somebody within the service of the leader with the duty if seeing that such works, plant, and machinery square measure in smart and safe condition, or
- thanks to negligence of somebody within the service of his leader World Health Organization has any oversight entrusted in him, whereas within the exercise of such superintendence; or
- thanks to the negligence of somebody within the service of his leader to whose orders or directions the employee at the time of injury was sure to adapt and did adapt, wherever the injury resulted on his having thus confirmed.

There square measure sure alternative provisions of the Act that states that any suit for damages raised by any employee World Health Organization had suffered from any personal injury thanks to non-maintenance of healthy conditions of labor, smart and sound machinery, instrumentation etc., or by reason of the negligence on the a part of the persons used by the leader, such suit shall not be unsuccessful by reason of employment of such employee with the leader²

However the leader shall not be liable

- In respect of any injury that doesn't lead to the full or partial disability of the workmen for a amount extraordinary 3 days;
- In respect of any injury not leading to death, caused by AN accident that is directly referable to-
- the workmen having been at the time thence below the influence or medication, or
- the willful disobedience of the employee to AN order expressly given, or to a rule expressly framed, for the aim of securing the security of workmen, or

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<https://www.advocatekhaj.com/library/bareacts/workmenscompensation/3.php?Title=Workmens%20Compensation%20Act,%201923&STitle=Employer%27s%20liability%20for%20compensation>

- the willful removal or disregard by the workmen of any safeguard or alternative device that he knew to possess been provided for the aim of securing the security of workmen.[\(Orth 1981\)](#)

The burden of proving intentional disobedience on the a part of the worker shall lie upon the leader.

- once the worker has contacted a sickness that isn't directly because of a particular injury caused by the accident or to the occupation; or
- once the worker has filed a suit for damages against the leader or the other person, in a very Civil Court.

Connection between accident and employment

The deceased worker whereas move by transport to his place of labor met with a fatality. Nothing has been brought on record that the worker wasn't obligated to travel in any explicit manner underneath the terms of the use nor he was move within the official transport. Held, no casual association between accident and employment may be established. Hence, the applicant isn't entitled to any compensation.³

Death throughout the course of employment

If the deceased worker met together with his death whereas he was attending to his place of labor and also the death has arisen throughout the course of employment, then the leader is chargeable for compensation. Entitlement to say compensation wherever death was accelerated on account of stress and strain of the operating condition, it's not necessary that there ought to be an instantaneous association between the reason for death and also the nature of duties. even though an off-the-cuff association between the 2 is shown then the dependants of the deceased

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<https://www.advocatehoj.com/library/bareacts/workmenscompensation/3.php?Title=Workmens%20Compensation%20Act,%201923&STitle=Employer%27s%20liability%20for%20compensation>

would be entitled to say compensation from the leader. Injury sustained by a employee should be a physical injury on account of accident.

Contracting out

Any contract or agreement that makes the employee quit or cut back his right to compensation from the leader is null and void to that degree because it aims at reducing or removing the liability of the leader to pay compensation underneath the Act. ([Orth 1981](#); [Zhang 2017](#))

What is handicap

Disablement is that the loss of the earning capability ensuing from injury caused to a employee by AN accident.

- handicap's is classified as (a) Total, and (b) Partial. It will additional be classified into (i) Permanent, and (ii) Temporary, Disablement, whether or not permanent or temporary is claimed to be total once it incapacitates a employee for all work he was capable of doing at the time of the accident leading to such handicap.
- Total handicap is taken into account to be permanent if a employee, as a results of AN accident, suffers from the injury per half I of Schedule I or suffers from such combination of injuries per half II of Schedule I as would be the loss of earning capability once destroyed to at least one hundred per cent or additional. handicap is claimed to be permanent partial once it reduces for all times, the earning capability of a employee in each employment, that he was capable of enterprise at the time of the accident. each injury per half II of Schedule I is deemed to lead to permanent partial handicap.⁴

Temporary handicap reduces the earning capability of a employee within the employment during which he was engaged at the time of the accident.

Accident Arising Out of and within the Course of Employment

⁴ <https://securenow.in/blog/how-employers-liability-decided-workmans-compensation-policy>

An accident arising out of employment implies an off-the-cuff association between the injury and also the accident and also the work tired the course of employment. Employment ought to be the distinctive and also the proximate reason for the injury. The 3 tests for crucial whether or not AN accident arose out of employment are:

- At the time of injury employee should be engaged within the business of the employer and should not be doing one thing for his personal benefit;
- That accident occurred at the place wherever he was performing his duties; and
- Injury should have resulted from some risk incidental to the duties of the service, or inherent within the nature condition of employment.

The general principles that are evolved are:

- There should be an off-the-cuff association between the injury and also the accident and also the work tired the course of employment;
- The burden is upon the employer to point out that it had been the work and also the ensuing strain that contributed to or aggravated the injury;
- it's not necessary that the employee should be truly functioning at the time of his death or that death should occur whereas he was operating or had simply ceased to work; and
- wherever the proof is balanced, if the proof shows a bigger chance that satisfies an ordinary man that the work contributed to the inflicting of the non-public injury it'd be enough for the employer to succeed. however wherever the accident concerned a risk common to any or all humanity and failed to involve any peculiar or exceptional danger ensuing from the character of the use or wherever the accident was the result of another peril to that the employee by his own conduct exposed himself, that peril wasn't concerned within the traditional performance of the duties of his employment, then the employer won't be liable.⁵

Compensation within the Case of activity Diseases

⁵ <https://securenow.in/blog/how-employers-liability-decided-workmans-compensation-policy>

Workers used in bound styles of occupations are exposed to the chance of getting bound diseases, that are peculiar and inherent to those occupations. A employee getting AN industrial disease is deemed to own suffered AN accident out of and within the course of employment and also the leader is at risk of pay compensation for constant. ([Hatch 1956](#))

activity diseases are categorized in components A, B and C of Schedule III. The leader is at risk of pay compensation:

Calculation of Compensation

The amount of compensation collectable by the leader shall be calculated as follows:

- In case of death. - five hundredth of the monthly wages X Relevant issue or Rs. 50,000, whichever is additional. And Rs. a thousand for ceremonial expenses.
- In case of total permanent disability specified below Schedule I - hr of the monthly wages X Relevant issue or Rs. 60,000, whichever is additional.
- In case of partial permanent disability specified below Schedule I - Such share of the compensation collectable just in case (2) on top of as is that the share of the loss in earning capability (specified in Schedule I)
- In case of partial permanent disability not specified below Schedule I .-Such share of the compensation collectable just in case (2) on top of, as is proportionate to the loss of earning capability (as assessed by a certified medical practitioner).
- In case of temporary disability (whether total or partial). - A half-monthly installment capable twenty fifth of the monthly wages, for the amount of disability or five years, whichever is shorter.

When Compensation is to be Deposited With Commissioner

The amount of compensation isn't collectable to the employee directly. it's typically deposited alongwith the prescribed statement, with the Commissioner United Nations agency can then pay it to the employee. Any payment created to the employee or his dependents, directly, within the following cases won't be deemed to be a payment of compensation:

- in case of death of the employee;
- just in case of payment compensation collectable to a lady or a minor or an individual of unsound mind or whose title to the compensation is in question or an individual below a legal incapacity.

Besides, compensation of Rs. ten or additional is also deposited with the Commissioner on behalf of the person entitled to it.

The receipt of deposit with the Commissioner shall be a sufficient proof of discharge of the employer's liability.⁶

Amounts permissible to be paid to the workman/dependents directly

Following amounts is also paid on to the employee or his dependents:

- just in case of death of the employee, any advance on account of compensation upto [an quantity capable 3 months' wages of such workman] is also paid to any dependent.
- just in case of payment compensation collectable to associate degree male person employee not affected by any legal incapacity.
- just in case of half-monthly payments collectable to any employee.

Registration of Agreements of Compensation

- wherever the quantity collectable as compensation has been settled by agreement a memoranda therefrom shall be sent by the leader to the Commissioner, who shall, on being glad regarding its genuineness, record the memoranda during a registered manner.
- but wherever it seems to the Commissioner that the agreement ought to not be registered by reason of the inadequacy of the total or quantity, or by reason that the agreement has been obtained by fraud or undue influence or different improper means that he might refuse to record the agreement and will create such order as well as associate degree order on any total already paid below the agreement as he thinks simply within the circumstances.[\(Hickson \)](#)
- associate degree agreement for payment of compensation that has been registered shall be enforceable below this act withal something contained within the Indian Contract Act, or the other law for the nonce good.

Duties of Employer:

- To pay compensation for associate degree accident suffered by associate degree worker, in accordance with the Act.

⁶ <https://blog.ipleaders.in/employers-liabilities-labor-laws-india/>

- To submit an announcement to the Commissioner (within thirty days of receiving the notice) within the prescribed type, giving the circumstances attending the death of an employee as results of associate degree accident and indicating whether or not he's at risk of deposit any compensation for an equivalent. To submit accident report back to the Commissioner within the prescribed type at intervals seven days of the accident, which ends in death of an employee or a heavy bodily injury to an employee.
- to take care of a notice book within the prescribed form at an area wherever it's without delay accessible to the employee.
- To submit associate degree annual come back of accidents specifying the quantity of injuries that compensation has been paid throughout the year, the quantity of such compensation and different prescribed particulars.⁷

Duties of workers

- To send a notice of the accident within the prescribed type, to the Commissioner and therefore the leader, at intervals such time as shortly because it is practicable for him. The notice is precondition for the admission of the claim for compensation.
- To gift himself for medical, if needed by the leader.

Job-Related Accidents or Misconduct

Under a legal philosophy generally mentioned as "respondeat superior" (Latin for "Let the superior answer"), associate degree leader is wrongfully accountable for the actions of its workers. However, this rule applies as long as the worker is acting at intervals the course and scope of employment. In different words, the leader can typically be liable if the worker was doing his or her job, closing company business, or otherwise functioning on the employer's behalf once the incident transpire.

The purpose of this rule is fairly simple: to carry employers accountable for the prices of doing business, as well as the prices of worker carelessness or misconduct. If the injury caused by the worker is just one amongst the risks of the business, the leader can got to bear the responsibility. [\(Bower et al. 2011\)](#)

⁷ <https://blog.ipleaders.in/employers-liabilities-labor-laws-india/>

But if the worker acted severally or strictly out of private motives, the leader may not be liable. Here square measure a couple of examples for instance the difference:

- A eating place guarantees delivery in half-hour "or your next order is free." If a delivery person hits a pedestrian whereas driving frantically to beat the point, the corporate can in all probability be de jure accountable for the pedestrian's injuries.
- A technology services company offers its staff company cars to create sales calls. when work hours, a sales person hits a pedestrian whereas exploitation the corporate automobile to try to to personal errands. presumably, the corporate won't be command accountable for the incident.
- A business firm problems cell phones to any or all of its lawyers, to permit them to decision into the workplace and sign on with purchasers once they square measure on the road. A lawyer, driving, hits a pedestrian as a result of she is totally engrossed in her conversation with a senior partner within the firm. The business firm can in all probability got to give for the pedestrian's injuries.
- A medical charge company hires a fumigator, WHO sprays the company's workplace with powerful pesticides. following day, a dozen workers fall unwell from the fumes. one in every of the affected workers is distributed home; on her approach, she suffers a dizzy spell and hits a pedestrian. the corporate is perhaps on the hook.

If you're sued underneath this legal theory of respondeat superior, your worker's victim typically will not got to show that you simply ought to have legendary your employee would possibly cause hurt, or maybe that you simply did something provably wrong. If your worker caused the injury whereas acting at intervals the scope of employment, you may got to answer to the victim.⁸

Main Responsibilities of workers

Employees have responsibilities towards their employers, even though they work half time or do not have a written contract with their employers.

⁸ <https://blog.ipleaders.in/employers-liabilities-labor-laws-india/>

These square measure the most responsibilities of employees:

- to in person do the work they were employed to try to to
- to do their work fastidiously and seriously (In some cases, they might be dismissed or disciplined if they are usually late for work, or if they are absent too usually or for no smart reason.)
- to avoid golf stroke themselves or others in peril
- to follow their employer's directions (There square measure some exceptions. for instance, if associate leader asks associate worker to try to to one thing dangerous or dirty, the worker does not got to.)
- to be loyal

When workers do not Respect Their Responsibilities**If workers do not respect their responsibilities, the leader is allowed to require bound actions:**

- discipline workers, similar to giving a written warning, or suspending them
- take different action against workers, similar to giving a letter evaluating their performance, or demoting them (that is, giving them a lower job)
- fire workers if they are doing one thing terribly serious, similar to stealing from the workplace
- take workers to court to create them pay associate quantity of cash (for example, if associate worker equal while not telling the leader earlier, or if associate worker equal before the date within the employment contract)
- take workers to court to prevent them from doing things that square measure harmful to the business

Employers' Responsibilities Towards workers

These square measure the most ones:

- Employers should offer their workers an area to figure and confirm they need access to that. they have to offer them the tools, instrumentation and different things they have to try to to their work.
- Employers should pay their workers the pay and edges they in agreement to, as well as vacation, paid holidays and different sorts of holidays. ([Hidalgo 2013](#))
- Employers should confirm their employees' operating conditions square measure safe.
- In some cases, employers should offer their workers written notice that their contracts square measure ending or that they're being set off. Note that employers will pay workers a total of cash rather than giving the notice.
- Employers should treat their workers with respect. they have to confirm their workers aren't harried or discriminated against.⁹

Conclusion

It is common that whenever there arises associate leader – worker relationship, there arises bound disputes among them additionally. In such things, the above-stated enactments give bound tips to each of them so they'll reach a conclusion additionally as during a settlement too. whereas trying into the liability of the leader for providing compensation to the worker, it'll be clear that in a method or the opposite, the worker has undergone bound injuries or damages. There square measure several firms that take care of their workers properly with adequate facilities additionally as compensations and rewards whenever necessary. however there square measure actually different square measureas whereby workers are treated during a a lot of unsatisfying approach. All such statutes indicate the nice running of a business concern additionally as for increase healthy relation among the leader and worker additionally. Hence, each of them should remember of their rights and responsibilities and to not violate the same

⁹ <https://blog.ipleaders.in/employers-liabilities-labor-laws-india/>

statutes for his or her personal gains. so leader is to blame for compensation for the injuries caused to the worker whereas within the course of employment.

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