

LABOUR LAW SEMINAR (PAPER-III)

TOPIC: - CONCEPT OF DISABLEMENT

NAME:-PRAKASH MARATHE

CLASS: - SECOND YEAR LL.M

SUBJECT: - LABOUR LAW (PAPER III)

INDEX

| SR.NO. | TOPIC | PG.NO. |
|-----------|--|-----------|
| | CONCEPT OF DISABLEMENT | |
| 1. | INTRODUCTION | 3 |
| 2. | DISABLEMENT UNDER WORKMEN'S COMPENSATION ACT, 1923 | 4 |
| | A. Historical Background | 4 |
| | a. Workmen's Compensation in England | 4 |
| | b. Workmen's Compensation in US | 7 |
| | c. Workmen's Compensation in India | 8 |
| | B. Partial and Total Disablement | 9 |
| | a. Partial Disablement | 9 |
| | b. Total Disablement | 11 |
| | C. Amount of Compensation | 14 |
| | a. Compensation in case of Permanent Total Disablement | 14 |
| | b. Compensation in case of Permanent Partial Disablement | 14 |
| | c. Compensation in case of Temporary Disablement whether Total or Partial | 18 |
| | d. Compensation payable to an employee in respect of accident occurred outside India | 19 |
| 3. | DISABLEMENT UNDER ESI ACT, 1948 | 20 |
| | A. Historical Background | 20 |
| | B. Disablement under ESI Act | 20 |
| | a. Permanent Partial Disablement | 21 |
| | b. Permanent Total Disablement | 21 |
| | c. Temporary Disablement | 22 |
| | C. Disablement Benefit | 22 |
| 4. | CONCLUSION | 23 |
| | SCHEDULE I | 24 |
| | SCHEDULE IV | 28 |
| | BIBLIOGRAPHY | 30 |

CONCEPT OF DISABLEMENT

1. INTRODUCTION

It was strongly felt after World War I that universal peace based on social justice was essential. In order to achieve this, the International Labour Organization (ILO) was formed in 1919. In the first session of ILO held at Washington in 1919, India also participated as an original member.

The role of ILO since its inception has been very significant in creating international standards of social insurance and in promotion of social security. It was on the initiative and influence of the ILO that the first legislation of its kind towards social security in the country namely, Workmen's Compensation Act, 1923 was enacted. Later on the Employee's State Insurance Act, 1948 replaced the Workmen's Compensation Act in the areas where the Employee's State Insurance Act has been made applicable.¹

The concept of 'disablement' is relevant under both the Workmen's Compensation Act to claim compensation and the Employee's State Insurance Act to claim disablement benefit. But it is to be noted that the term 'disablement' has not been defined specifically under both the Acts. The Workmen's Compensation Act provides for partial and total disablement while the ESI Act provides for permanent total, permanent partial and temporary disablement.

In common parlance the term disablement can be understood as follows:

When an accident occurs and the workman sustains injury, it results into loss of capacity to work and in turn it results into loss of earning capacity of that workman. Such condition of incapacity of doing work and subsequently resulting into loss of earning capacity is called as disablement.

¹ Sharma J. P., Simplified Approach to Labour Laws, (Bharat Law House, New Delhi, 3rd Ed.2009) at 73

2. DISABLEMENT UNDER WORKMEN'S COMPENSATION ACT, 1923

A. Historical Background

The law of Workmen's Compensation was introduced firstly in Germany where it had been introduced in 1884 by the Iron Chancellor, Bismarck. He was the first among the European statesmen to understand fully the implications of the Marxist challenge and to take some steps towards forestalling the threatened revolution of workers by providing for their security in various forms. One of the benefits secured to the workers by a new law was a right to receive compensation from their employer for injuries suffered in the course of employment, irrespectively of any fault or breach of duty on the part of the employers. Later on, Austria followed Germany in 1887.²

a. Workmen's Compensation Act in England³

In England the Workmen's Compensation Act (1897) had come from Germany. Though it is believed that in Germany the law of compensation was introduced against the implications of the Marxist challenge, in England the law of compensation seems to have been caused by broad consideration of justice and humanity rather than a motive of neutralizing the revolutionary potentialities of the working class.

The British Act of 1897 fell short of the German precedent in one respect. While the German Act required employers to indemnify injured workmen, or in the case of fatal accidents, their families, and it also set up an insurance system under which the employers were obliged to insure the risk, the British Act only made indemnification at prescribed rates obligatory, but left insurance of the risk to remain optional.

It is a matter of history that from an early period up to the middle of the 18th century, the political and economic philosophy holding sway over Europe was 'mercantilism', according to which it was necessary and proper to exercise a strict control over private enterprise, whether joint or individual. Gradually, however, a reaction set in. towards the middle of the 18th century, it began to be felt that there was too much of Government which was destroying individual initiative and affecting the prosperity of the nation. The

² Goswami V.G. Dr., Labour and Industrial Laws, Vol.1 (Central Law Agency, Allahabad 9th Ed.2011) at 27

³ Id at 24

feeling led to the evolution of the doctrine of the laissez faire which means “let things alone”.

After it had been formulated the doctrine of laissez faire found a rapid and wide acceptance particularly in England and it ushered in a period during which the agencies of production operated under conditions of complete economic freedom. In the sphere of employment the doctrine translated into terms of concrete policy, meant that every individual was free to enter any occupation or service that he might choose and that wages and other conditions of service were to be determined entirely by free bargaining between the employer and the employee. The bargain, thus concluded would thereafter rule.

The experiment with a policy of complete economic freedom was carried on for a considerable period but, in the end, laissez faire in its turn, began to reveal its own defects. Taking again the sphere of employment alone, it was found that not only were the employers imposing, in the name of freedom of contract, cruelly harsh terms on the employees who had no equal bargaining power and forcing them to work for unconsciously long hours and under appalling conditions but the employees had even no adequate means of relief against the employers for injuries sustained in their service. For death or disablement by industrial injuries, the only legal remedy that a workman or his dependents would seek was damages at common law, but that law having been evolved at an earlier stage of industrial development to govern for simpler relations of master and servant afforded little real protection in the complicated circumstances of modern industry.

At common law, workmen's claim could be allowed only if he was able to establish some negligence or breach of duty on the part of the employer as the sole cause of the accident resulting in the injury. But it was not easy to prove either of those torts, first because the courts' hesitating perhaps to saddle the growing industries with too much liability to the employee, were apt to construe the duties of the employer very narrowly and secondly, because in the majority of cases, the employer had ceased to be a human individual and come to be a limited company which it was difficult to find guilty of a tort.

Apart from these hurdles in the way of proof, the workman had also to contend against the bar of contributory negligence which meant that if there was some negligence on his part which had contributed to the occurrence of the accident either wholly or to such an extent that it was not possible to determine whether his or the employer's negligence had been the decisive cause, he could not recover.

There was again, the doctrine of common employment or "the fellow servants rule", as it is called in America. It meant that there was always an implied term in a contract of service that the servant agreed to accept the risk of injury from the negligence of a fellow servant and consequently, when such negligence was the cause of the injury, he could not claim damages from the master.

The result of these limitations was that an injured workman or, in the case of fatality, his dependents could rarely recover damages at common law. In that state of conditions under which workmen were being compelled to work by their insensitive employers and the inadequacy of the relief available to them for injuries, a reaction against the doctrine of laissez faire inevitably set in and comprehensive series of labour legislation came gradually to be enacted with a view to liberating the workers from their helplessness against the power of the men who owned the factories and establishment where they worked. First came the Factories Act which were directed at improving the conditions prevailing in the factories and compelling the employers to adopt suitable safety measures for the prevention of accidents.

Next legislation was the Workmen's Compensation Act, which provided for compulsory payment by the employer, some compensation, calculated by reference to the wages, for death or disablement of a worker by accident while at his work, independently of any negligence or breach of duty on the part of the employer. When first enacted in 1897, the Act was limited to injuries caused directly by accidents and it covered only a few industries and occupations, but the list was enlarged by subsequent amendments and by a fresh Act passed in 1906, occupational diseases were added. The benefit of the Act was, however, limited to workmen drawing remuneration up-to a certain amount.

The Act of 1906 was replaced by a new Act in 1925 with no change in the provisions. The National Insurance (Industrial Injuries) Act 1946, which coming into force in 1948 introduced an insurance system under which insurance benefits were payable to victims of the industrial accidents and to sufferers from certain industrial diseases. The solatium receivable by workmen was given the name of 'benefit' in lieu of 'compensation'.

b. Workmen's Compensation Act in United States⁴

By the end of 19th century, the coincidence of increasing industrial injuries and decreasing remedies had produced in the United States a situation ripe for radical change, and when, in 1893, a full account of the German system written by John Graham Brooks was published as the fourth special Report of the Commissioner of Labour, legislators all over the country seized upon it as a clue to the direction which efforts at reform might take place. The stimulus was also provided by the enactment of the first British Compensation Act in 1897, which later became the model Act in many respects.

In 1910, New York became the first State to enact a workmen's compensation law sufficiently comprehensive to meet the problem effectively with compulsory coverage of certain hazardous employments. It was held unconstitutional in 1911 by the Courts of Appeals, on the ground that the imposition of liability without fault upon the employer was a taking of property without due process of law under the State and Federal Constitutions in *Ives v. South Buffalo Rly. Co.*

In New York the *Ives* decision was answered by the adoption in 1913 by a Constitutional Amendment permitting a compulsory law, and such law was passed in the same year. In 1917 this compulsory law was held Constitutional by the United States Supreme Court. By 1920 all States except one had adopted compensation Acts and on January 1, 1949 the last State, Mississippi, came under the system.

⁴ Id at 27

c. Workmen's Compensation Act in India⁵

The origin of labour welfare activity in India goes back to 1833 when slavery was abolished. But the earliest legislative approach could be traced back to the passing of the Apprentices Act 1850. The next Act was the Fatal Accidents Act 1855 that aimed at providing compensation to the families of workmen who lost their life as a result of "actionable wrong". The Act had the Preamble "whereas no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him".

It was way back in 1884 when the question of granting workmen's compensation for serious and fatal accidents was first raised in India in 1884 and the need for proper legislation was emphasized by factory and mining Inspectors. But it took about 40 years for Government of India to frame a full-fledged comprehensive Workmen's Compensation Act. Only towards the end of 1920-21, Government of India initiated steps for framing legislation by constituting a small committee in June 1922, comprising members of Legislative Assembly, Employer's and Worker's representatives and medical and insurance experts. The Committee's detailed recommendations for framing legislation were accepted and Workmen's Compensation Act was passed in 1923.

The Workmen's Compensation Act 1923 followed the British Act in its main principles and in some of its details, but it contained a large number of provisions designed to meet the special conditions in India. Under this enactment the responsibility for payment of compensation rested with employer, a system which led to certain hardship.

By the Amendment Act 2009, the title of the Act i.e. Workmen's Compensation Act 1923 was made as the Employees' Compensation Act 1923 and in place of the word 'workmen', the word 'employees' was substituted.

⁵ Sharma J. P., Simplified Approach to Labour Laws, (Bharat Law House, New Delhi, 3rd Ed.2009) at 715

B. Partial and Total Disablement

a. Partial Disablement

It has been defined under Section 2 (1) (g) to mean 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 his accident resulting in the disablement, and where,

the disablement is of permanent nature, such disablement as reduces the earning capacity in every employment which he was capable of undertaking at that time provided that every injury specified in Part II of Schedule I⁶ shall be deemed to result in permanent partial disablement.⁷

When an accident occurs and the workman sustains injury, it results into loss of earning capacity of that workman. Such condition of incapacity of doing work is called disablement. If the earning capacity of a workman is reduced by the disablement merely in the particular employment in which he was engaged at the time of his accident, it is known as partial disablement of temporary nature, on the other hand if the earning capacity of a workman is reduced as result of disablement in every employment which he was capable of undertaking at the time of the accident, it is known as partial disablement of permanent nature.

*Lipton (India) Ltd. v. Gokul Chandra Mondal*⁸

In this case Gokul Chandra Mondal was the workman in the wage group of Rs. 300-400 per month under Lipton (India) Ltd., sustained an injury in the left eye by the fall of iron particles with the consequent loss of vision in an accident arising out of and in the course of employment. He filed an application before the commissioner claiming a sum of Rs. 3780 as compensation at the rate of 30% loss of his earning capacity. The appellant denied permanent partial disablement because the workman remained disabled only for

⁶ Infra page 24

⁷ Goswami V.G. Dr., Labour and Industrial Laws, Vol.1 (Central Law Agency, Allahabad9th Ed.2011) at 43

⁸ Id at 44

14 days and thereafter he resumed his duties. The Commissioner after considering evidence adduced by both the parties including medical evidence came to the conclusion that the workman has sustained permanent partial disability in the left eye and so the workman was entitled to compensation at the rate of 30% loss of his earning capacity as fixed by item No. 26 of Part II of the First Schedule overruling the contention of the appellant that item 26 was not applicable and that compensation was to be determined under Section 4 (1) (c) (ii) and consequently he directed payment to him by the appellant of the sum of Rs. 3780/-.

In appeal the High Court of Calcutta confirmed the view taken by the Commissioner and observed that we are unable to accept the contention that unless there is complete loss of vision of one eye item 26 is not attracted. There is nothing in item 26 which excludes partial loss of vision. In welfare legislation if any particular provision is capable of two interpretations, the one that is more favourable to the persons for whose benefit the legislation has been made should be adopted. There can be no doubt that partial loss of vision of one eye comes within the purview of item 26.

*Calcutta Electric Supply Corp. v. HC Das*⁹

No compensation is granted for any physical disability unless there was loss of earning capacity. It is only in the case of scheduled injury that such loss is presumed. Where the injury is not scheduled injury, the loss of earning capacity must be proved.

b. Total Disablement

It has been defined under Section 2 (1) (l) to mean 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 accident resulting in such disablement and every injury specified in Part I of Schedule I or combination of injuries specified in Part II of Schedule I where aggregate percentage, as specified in Part II against those injuries amounts to 100% or more.¹⁰

⁹ (1968) 2 LLJ 169

¹⁰ Sharma J. P., Simplified Approach to Labour Laws, (Bharat Law House, New Delhi, 3rd Ed.2009) at 727

The total disablement may be of two kinds, first temporary total disablement and secondly, permanent total disablement. In temporary total disablement the earning capacity of a workman is lost for a temporary period and in permanent total disablement the earning capacity of a workman is lost forever with regard to all work which he was capable of performing at the time of the accident resulting in such disablement. It has been expressly provided that in total disablement, 100% earning capacity is lost as a result of any injury specified in Part I of Schedule I or as a result of two or more injuries specified in Part II of Schedule I.¹¹

The loss of earning capacity has to be determined by taking into account the diminution or destruction of physical capacity as disclosed by the medical evidence. Then it has to be seen to what extent such diminution or destruction should reasonably be taken to have disabled the affected employee from performing the duties which a workman of his class ordinarily performs. The medical evidence as to physical capacity is an important factor in the assessment of loss of earning capacity.¹²

The certificate of a medical expert can only say what the injury is, its effect temporary or total and to an extent the physical incapacity of the man. It is however, for the Court to find having regard to the evidence before it whether the workman has suffered partial or total disablement.¹³

*Pratap Narain Singh Deo v. Shrinivas Sobata and another*¹⁴

The Supreme Court observed that the expression total disablement has been defined in Section 2 (1) (l) of the Act. It has not been disputed that the injury was of such a nature as to cause permanent disablement to the respondent, and that the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

¹¹ Goswami V.G. Dr., Labour and Industrial Laws, Vol.1 (Central Law Agency, Allahabad 9th Ed.2011) at 45

¹² Ibid

¹³ Ibid

¹⁴ AIR 1976 SC 222

“The injured workman in this case is carpenter by profession. By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only”.

The Court held this finding as reasonable and correct.

*V. Jayraj v. T. P. Transport Corpn. Ltd.*¹⁵

A conductor working in State owned Transport Corporation lost his hearing capacity due to shock received by him in an accident in the bus in which he was working. He claimed compensation under item 6 in Part I of Schedule I of the Act. The Commissioner fixed the loss of earning capacity at 20% even though the medical certificate showed that there is 100% sensorineural hearing loss on right ear and 73.5% hearing loss on the left ear. Hence the appeal was filed under Section 30 of the Act was filed.

It was held that the loss of earning capacity has to be calculated in terms of permanent partial disability which the workman has been subjected to. The fact that the workman is continued in the employment and gets old wages will not absolve the employer from paying the compensation. The employer may continue him in the old post and give him old wages by way of grace, but that would not disentitle the employee to claim compensation. It was observed that fixing of loss of earning capacity at 20% by the commissioner cannot be upheld. Having regard to the fact that the appellant had lost the hearing in the right ear at 100% and in the left ear at 73.5%, the loss of earning capacity, could be fixed at 60%. Thus allowing the appeal the amount of compensation was enhanced by the High Court.

*Samir U. Parikh v. Sikander Zahiruddin*¹⁶

The question before the Court was whether the Commissioner has power to assess the loss of earning capacity more than what is provided in the Schedule against a particular injury. In this case the Commissioner determined the actual loss of earning capacity at 80% even though the Schedule fixed it at 40%. The Bombay High Court held that the

¹⁵ (1989) LLJ 38 (Mad)

¹⁶ (1984) II LLJ 90 (Bom)

percentage of the loss of earning capacity stated against the injuries in Part II of Schedule I of the Act is only the minimum to be presumed in each case and the applicant is entitled to prove that the loss of earning capacity was more than the minimum so prescribed. The Commissioner is therefore, empowered to come to his own conclusion with regard to the loss of earning capacity in each case on the basis of the evidence led before him.

*K. Janardhan v. United Insurance Company Ltd.*¹⁷

In this case the appellant tank driver met with an accident and was severely injured. His right leg was amputated up-to knee joint. The Commissioner held it to be 100% disability and awarded compensation. In appeal based on the opinion of the doctor, the High Court held it to be 65% disability. Relying upon the ratio laid down in the judgement of *Pratap Narain Singh Deo v. Shrinivas Sabata* and another, the Apex Court held the appellant had suffered 100% disability and he was not in a position to work as a driver.

¹⁷ 2008 LLR 785 (SC)

C. Amount of Compensation

Section 4 of the Act provides how the amount of compensation is to be computed. It contains principles on which compensation is to be determined which are as follows:

a. Compensation in case of Permanent Total Disablement

Section 4 (1) (b) provides that where permanent total disablement results from the injury the amount of compensation shall be equal to 60% of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of Rs. 1,40,000, whichever is more.

After Section (1) (b) the proviso has been inserted namely:

“Provided that the Central Government (instead of Parliament) may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in Clauses (a) and (b).

Explanation

For the purpose of section 4 (1) (a) and (b) the relevant factor in relation to a workman means the factor specified in the 2nd column of Schedule IV.¹⁸ The table given in Schedule IV shows that, relevant factor keeps on decreasing with the increase in workman's age.¹⁹

b. Compensation in case of Permanent Partial disablement

Section 4 (1) (c) of the Act under its clauses (i) and (ii) deals with the amount of compensation in cases of permanent partial disablement either caused by injuries specified in Part II of Schedule I or caused by injuries other than specified in Schedule I.

Where the permanent partial disablement results from the injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the

¹⁸ Infra page 28

¹⁹ Sharma J. P., Simplified Approach to Labour Laws, (Bharat Law House, New Delhi, 3rd Ed.2009)at 751

case of permanent total disablement as is specified there in as being the percentage of the loss of earning capacity caused by that injury.

Where the permanent partial disablement results from the injury other than specified in schedule I, such percentage of compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.²⁰

In order to find out the amount of compensation in cases of permanent partial disablement, it would be necessary to calculate the amount of compensation in case of permanent total disablement with reference to the age of the injured employee i.e. 60% of his monthly wages multiplied by relevant factor as indicated in Schedule IV and then the amount so obtained shall be determined in proportion to loss of earning capacity of the injured employee as specified in Part II of the First Schedule in respect of injury in question.²¹

In order to clarify the position in cases where the workman sustains more injuries than one from the same accident, Explanation I to Section 4 (1) (c) has been added. It provides that 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.it means that compensation in such a case shall not be more than what would have been payable in the case of permanent total disablement.²²

In the process of assessment of loss of earning capacity in cases of permanent partial disablement caused by injuries which are not specified in Schedule I, it has been clearly provided in Explanation II to Section 4 (1) (c) that in assessing the loss of earning capacity for the purpose of sub-clause (ii) the qualified medical practitioner shall have

²⁰ Goswami V.G. Dr., Labour and Industrial Laws, Vol.1 (Central Law Agency, Allahabad9th Ed.2011) at 89

²¹ Ibid

²² Ibid

due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule I.²³

*United India Insurance Co. Ltd. v. Sethu Madhavan*²⁴

The Commissioner cannot disregard the assessment made by a qualified medical practitioner. However, if he does not accept the Certificate, he can refer the Party to Medical Board for expert opinion and report or to call a second medical report.

*C. David v. G. C. Mishra*²⁵

In this case it was held that while assessing compensation, the Court has to see whether the earning capacity of the injured has been reduced in every employment and not merely in particular employment in which he was engaged at the time of accident. That is the reason why Section 4 (1) (c) (ii), Explanation II of the Act mandates that in case of non-scheduled injury the qualified medical practitioner while assessing the loss of earning capacity shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule I.

*Amar Nath Singh v. Continental Constructions Ltd*²⁶

Here the appellant lost his left eye and made claim as having lost his complete vision in that eye but medically it was assessed that loss of vision was only 80%. The Commissioner assessed the compensation payable to him as 100% under Schedule I, Part I Item 4. The High Court reduced it to 30% relying upon the provisions under Item 26 of Part II Schedule I.

It was contended before the Supreme Court that the reduction made by the High Court is improper. The appellant relied upon the decision in *Pratap Narain Singh Deo v. Srinivas Sabata*,²⁷ wherein the case of amputation of left arm from the elbow causing total disablement to perform the work of carpenter was discussed and contended in the present

²³ Id at 90

²⁴ (1993) I LLJ 142

²⁵ (1997) II LLJ 844 (Ori)

²⁶ 2002 SCC (L&S) 1040

²⁷ Supra note 12

case that there is a loss of one eye and the earning capacity of the appellant has been reduced from what he was capable of earning at the time of accident, as a result of disablement. The contention was refuted and submitted that the appellant himself has been claiming that he was fit for work and his evidence discloses the same, and in the circumstances the view taken by the Commissioner is incorrect and that of High Court is justified.

*Orissa State Electricity Board v. Kedar Charan Lenka*²⁸

The High Court of Orissa explaining and distinguishing “loss of earning” and “loss of earning capacity” observed that these two concepts have conceptual difference. In case, there is no loss of earning and there is continuance of engagement, reference to Section 4 (1) (c) (ii) of the Act is necessary to appreciate the distinction. The plea of employers was that in case of continuance of engagement and non-reduction in earning, compensation is not payable. The Court observed that this plea cannot be accepted. In considering loss of earning capacity in case of permanent/partial disablement the comparison between the wages drawn by the workmen before and after the accident from his employer at the time of accident is not a determinative factor. If that be so, the employer to tide over liability may offer a temporary employment to the claimant workman to deprive the latter of his entitlement under the Act. That would be against the legislative intent. The intent is to consider loss of earning capacity in such cases and not the loss of earning.

*The General Manager, M/s Tungabhadra Minerals Ltd. v. Sri G Ameer*²⁹

The same principle was laid down as was expressed in *OSEB v. Kedar Charan Lenka*.

²⁸ (1997) II LLJ 1058 (Ori)

²⁹ 2007 LLJ 1051 (Karnataka HC)

c. Compensation in case of Temporary Disablement whether Total or Partial³⁰

Section 4 (1) (d) deals with the amount of compensation in cases of temporary disablement whether of total or partial nature. It has been provided that where temporary disablement, whether total or partial, results from the injury the compensation shall be paid in the form of a half monthly payment of the sum equivalent to 25% of monthly wages of the employee in accordance with the provisions of sub-section (2) of Section 4.

Section 4 (2) lays down that the half monthly payment referred to in Section 4 (1) (d) shall be payable on the sixteenth day

- (i) From the date of disablement where such disablement lasts for a period of 28 days or more; or
- (ii) After the expiry of waiting period of 3 days from the date of disablement where such disablement lasts for a period of less than 28 days; and thereafter half monthly during the disablement or during a period of five years, whichever is shorter.

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.

Explanation: — Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of

³⁰ Goswami V.G. Dr., Labour and Industrial Laws, Vol.1 (Central Law Agency, Allahabad 9th Ed. 2011 at 92

the proviso, so such amount shall not be deducted from any lump sum or half monthly payments to which the employee is entitled.

Section 4 (2A) – the employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.

This sub-section does not mention any amount as such. It simply provides that actual medical expenditure incurred by the employee concerned for treatment of injuries caused during the course of employment shall be reimbursed. The actual amount may be ascertained by bills and vouchers concerned.

Section 4(3) - 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.

d. Compensation payable to an employee in respect of accident occurred outside India³¹

4(1A) provides that notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

³¹ Ins. by Act(30 of 1995, sec. 4 (w.e.f. 15-9-1995)

3. DISABLEMENT UNDER EMPLOYEE'S STATE INSURANCE ACT, 1948

A. Historical Background

The Workmen's Compensation Act though designed to protect and safeguard the interest of the labour was in the nature of social assistance and not social insurance. The Employee's State Insurance Act, 1948 was the first measure adopted in India to provide for Social insurance to the labourers.

Under the resolution of ILO of 1927 the Government of India was required to introduce a health insurance scheme for industrial workers. But due to the economic conditions of the country the scheme could not be launched immediately.

However, due to persistent efforts on the part of ILO the Government of India yielded and also appointed Prof. Adarkar as a Special Officer to report on the health insurance of the industrial workers in India. The report submitted by Prof. Adarkar contained comprehensive contributory scheme of social insurance and ultimately the Employee's State Insurance Act, 1948 came into being.

B. Disablement under ESI Act, 1948

The ESI Act provides for benefits to be paid to persons who are covered under this Act. The workers who sustain employment injury as defined under the provisions of this Act are entitled to claim various benefits out of which one is the disablement benefit.

Disablement benefit is the periodical payment to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act, certified to be eligible for such payments by an authority specified in this behalf by regulations.³² In order to get disablement benefit it becomes necessary to provide the meaning of disablement which is defined as follows:

³² Goswami V.G. Dr., Labour and Industrial Laws, Vol.1 (Central Law Agency, Allahabad 9th Ed. 2011 at 316

a. Permanent Partial Disablement

Section 2 (15-A) defines permanent partial disablement as such disablement of permanent nature, as reduces earning capacity of an employee in every employment which he was capable of undertaking at the time of accident resulting in the disablement.

It is further provided that every injury specified in part II of II Schedule shall be deemed to result in permanent partial disablement.³³

b. Permanent Total Disablement

Section 2 (15-B) defines Permanent total disablement as such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.

The essence of permanent total disablement is as follows:

- i) The employee becomes permanently incapable to perform duties
- ii) The loss of earning capacity is 100% or more
- iii) It reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of accident.
- iv) The accident by which such an injury has been sustained by an employee has arisen out of and in the course of employment.

Every injury specified in Part I of II Schedule to the Act amounts to permanent total disablement and any combination of injuries specified in Part II of II Schedule shall also amount to permanent total disablement where aggregate percentage of loss or earning capacity amounts to 100% or more.³⁴

³³ Id at 318

³⁴ Ibid

c. Temporary Disablement

Temporary disablement is a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury.³⁵

In case of temporary disablement employee becomes incapable to work or to perform his duties for a limited period which he was doing before such injury. After treatment the person becomes fit for doing his work. The ESI Act does not specify conditions of temporary disablement because the affected person due to injury becomes fit for work after proper treatment.

C. Disablement benefit

Section 51 of ESI Act provides for disablement benefit in case of temporary and permanent disablement. The disablement benefit shall be payable to an insured person. The disablement benefit is payable in two contingencies:

- i) Where a person sustains temporary disablement for not less than 3 days excluding the day of accident;
- ii) Where a person sustains permanent disablement, whether total or partial

The Central Government has been empowered to prescribe rates, periods and conditions subject to which such benefit shall be payable.³⁶

³⁵ Ibid

³⁶ Id at 317

4. CONCLUSION

It is the function of an ideal welfare State to give to every citizen the opportunity of earning his living and freedom from fear of economic ruin which can involve physical and even moral ruin.³⁷ The Constitution of India affirms this opportunity to the people, in the form of social and economic justice, which needs to be secured by peaceful, social and legislative steps.

In order to provide socio-economic justice to the working people various legislative steps have been taken in our country like other countries of the world. The enactment of Employee's Compensation Act 1923 was the first step towards social security in India which provides for compensation to the employees, followed by Employee's State Insurance Act, 1948 which provides for insurance benefit to the workers.

The concept of 'disablement' has been defined in both the Acts in order to get compensation under WC Act and to get disablement benefit under ESI Act. The meaning and content of the concept of disablement under both the Acts is one and the same. The only thing that can be noticed is that under WC Act the disablement is classified as *partial* and *total* whereas under the ESI Act the concept is classified as *permanent* and *temporary*. Another thing which needs to be mentioned is that under ESI Act the term temporary disablement is defined only with respect to partial temporary disablement whereas under WC Act both temporary partial and total disablement are defined.

In case of Workmen's Compensation Act the employee gets a lump sum amount of compensation in case of disablement whereas under the ESI Act the disablement benefit is paid to the insured employee in the form of periodical payments.

³⁷ K. D. Srivastava, Commentaries on the Workmen's Compensation Act 1923 at 2

SCHEDULE I

Part I

List of Injuries to result in permanent total disablement

| Serial No. | Description of Injury | Percentage of loss of earning capacity |
|------------|---|--|
| 1. | Loss of both hands or amputation at higher sites | 100 |
| 2. | Loss of a hand and a foot | 100 |
| 3. | Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot | 100 |
| 4. | Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential | 100 |
| 5. | Very severe facial disfigurement | 100 |
| 6. | Absolute deafness | 100 |

PART II

List of injuries deemed to result in permanent partial disablement

| Serial No. | Description of Injury | Percentage of loss of earning capacity |
|--|--|--|
| <i>Amputation cases—upper limbs (either arm)</i> | | |
| 1. | Amputation through shoulder joint | 90 |
| 2. | Amputation below shoulder with stump less than 3[20.32 Cm from tip of acromion | 80 |
| 3. | Amputation from 20.32 Cm from tip of acromion to less than 11.43 Cm below tip of olecranon | 70 |
| 4. | Loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43 cm below tip of olecranon | 60 |

| | | |
|-----|---------------------------------------|----|
| 5. | Loss of thumb | 30 |
| 6. | Loss of thumb and its metacarpal bone | 40 |
| 7. | Loss of four fingers of one hand | 50 |
| 8. | Loss of Three fingers of one hand | 30 |
| 9. | Loss of two fingers of one hand | 20 |
| 10. | Loss of terminal phalanx of thumb | 20 |

Amputation cases – lower limbs

| | | |
|------|--|----|
| 10A. | Guillotine amputation of tip of thumb without loss of bone | 10 |
| 11. | Amputation of both feet resulting in end bearing stumps | 90 |
| 12. | Amputation through both feet proximal to the metatarsophalangeal joint | 80 |
| 13. | Loss of all toes of both feet through the metatarsophalangeal joint | 40 |
| 14. | Loss of all toes of both feet proximal to the proximal interphalangeal joint | 30 |
| 15. | Loss of all toes of both feet distal to the proximal interphalangeal joint | 20 |
| 16. | Amputation at hip | 90 |
| 17. | Amputation below hip with stump not exceeding [12.70 Cms.] in length measured from tip of great trochanter | 80 |
| 18. | Amputation below hip with stump exceeding [12.70 Cms.] in length measured from tip of great trochanter but not beyond middle thigh | 70 |
| 19. | Amputation below middle thigh to [8.89 Cms.] below knee | 60 |
| 20. | Amputation below knee with stump exceeding [8.89 Cms.] but not exceeding [12.70 Cms.] | 50 |
| 21. | Amputation below knee with stump exceeding [12.70 | 50 |

| | | |
|------|--|----|
| Cms] | | |
| 22. | Amputation of one foot resulting in end bearing | 50 |
| 23. | Amputation through on foot proximal to the metatarsophalangeal joint | 50 |
| 24. | Loss of all toes of one foot through the metatarso-phalangeal joint | 20 |

Other injuries

| | | |
|------|---|----|
| 25. | Loss of one eye, without complications, the other being normal | 40 |
| 26. | Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal | 30 |
| 26A. | Loss of partial vision of one eye | 10 |

A—Fingers of right or left hand Index finger

| | | |
|-----|---|----|
| 27. | Whole | 14 |
| 28. | Two phalanges | 11 |
| 29. | One phalanx | 09 |
| 30. | Guillotine amputation of time without loss of bone. | 05 |

Middle finger

| | | |
|-----|---|----|
| 31. | Whole | 12 |
| 32. | Two phalanges | 09 |
| 33. | One phalanx | 07 |
| 34. | Guillotine amputation of tip without loss of bone | 04 |

Ring or little finger

| | | |
|-----|---|----|
| 35. | Whole | 07 |
| 36. | Two phalanges | 06 |
| 37. | One phalanx | 05 |
| 38. | Guillotine amputation of tip without loss of bone | 02 |

B—Toes of right or left foot Great toe

| | | |
|-----|------------------------------------|----|
| 39. | Through metatarso-phalangeal joint | 14 |
| 40. | Part, with some loss of bone | 03 |

Any other toe

| | | |
|-----|------------------------------------|----|
| 41. | Through metatarso-phalangeal joint | 03 |
| 42. | Part, with some loss of bone | 01 |

Two toes of one foot, excluding great toe

| | | |
|-----|------------------------------------|----|
| 43. | Through metatarso-phalangeal joint | 05 |
|-----|------------------------------------|----|

| | | |
|-----|--|----|
| 44. | Part, with some loss of bone | 02 |
| | <i>Three toes of one foot, excluding great toe</i> | |
| 45. | Through metatarso-phalangeal joint | 06 |
| 46. | Part, with some loss of bone | 03 |
| | <i>Four toes of one foot, excluding great toe</i> | |
| 47. | Through metatarso-phalangeal joint | 09 |
| 48. | Part, with some loss of bone | 03 |

Note.—Complete and permanent loss of the use of any limb or member referred to in the Schedule shall be deemed to be the equivalent of the loss of that limb or member.

Note.- Schedule I under Workmen's Compensation Act is also same as Schedule II of the ESI Act.

BIBLIOGRAPHY

1. Labour and Industrial Laws by Dr. V. G. Goswami
2. Commentaries on the Workmen's Compensation Act, 1923 by K. D. Srivastava
3. Simplified Approach to Labour Laws by Dr. J. P. Sharma
4. [http://ncw.nic.in/acts/The WORKMENS COMPENSATION ACT 1923.pdf](http://ncw.nic.in/acts/The%20WORKMENS%20COMPENSATION%20ACT%201923.pdf)
5. <http://www.vakilno1.com/wrkmscompensation/workmenscompensationact.html>