

The Employee's Compensation Act, 1923

THE EMPLOYEE'S COMPENSATION ACT, 1923¹

1 Short title, extent and commencement. □

(1) This Act may be called the ¹ [Employee's] Compensation Act, 1923.

² [(2) It extends to the whole of India ³ [***]].

(3) It shall come into force on the first day of July, 1924.

2 Definitions. □

(1) In this Act, unless there is anything repugnant in the subject or context, □ ⁴ [***]

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;]

(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 ⁵ [an employee] are temporarily lent or let on hire to another person by the person with whom the ⁶ [employee] has entered into a contract of service or apprenticeship, means such other person while the ⁶[employee] is working for him;

(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;

State Amendment West Bengal. □in section 2, in sub-section (1), after clause (f), insert the following clause, namely:□ □(ff) "medical reference" means a qualified medical practitioner appointed under section 24A as a medical reference for the purposes of this Act'. [Vide Bengal Act 6 of 1942, sec. 3 (w.e.f. 19-11-1942).]

⁷ [(ff) □minor□ means a person who has not attained the age of eighteen years;]

(g) □partial disablement□ means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a ⁶ [employee] 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 ⁸ [in Part II of 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 ⁹ [***] under any ¹⁰ [Central Act, Provincial Act, or an Act of the Legislature of a ¹¹ [State]] providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act; ¹² [***]

(k) □seaman□ means any person forming part of the crew of any ¹³ [***] ship, but does not include the master of ¹⁴ [the] ship;

(1) □total disablement□ means such disablement, whether of a temporary or permanent nature, as incapacitates ¹⁵ [an employee] for all work which he was capable of performing at the time of the accident resulting in such disablement:¹⁶ [Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. or more;]

(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 ¹⁵ [an employee] towards any pension or provident fund or a sum paid to ¹⁵ [an employee] to cover any special expenses entailed on him by the nature of his employment; ¹⁷[***]

(2) The exercise and performance of the powers and duties of a local authority or of any department ¹⁸ [acting on behalf of the Government] shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

¹⁹ **(3)** The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons: Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.] □(n) □workman□ means any person who is□

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative,

district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ia) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle, (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and 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 Employer's liability for compensation. □

(1) If personal injury is caused to ²⁰ [an employee] 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 □

(a) in respect of any injury which does not result in the total or partial disablement of the ²¹ [employee] for a period exceeding ²² [three] days;

(b) in respect of any ²³ [injury, not resulting in death ²⁴ [or permanent total disablement] caused by] an accident which is directly attributable to □

(i) the ²¹ [employee] having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the ²¹ [employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of ²⁵ [employees], or

(iii) the wilful removal or disregard by the ²¹ [employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of ²¹ [employee], ²⁶ [***]. ²⁷ [***]

²⁸ [(2) If ²⁰ [an employee] employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if ²⁰ [an employee], whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if ²⁰ [an employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, 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 contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment: ²⁹ [Provided that if it is proved, □

(a) that ³⁰ [an employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section: Provided further that if it is proved that ³⁰ [an employee] who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.]]

³¹ [(2A) If ³⁰ [an employee] employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.]

³² [(3)] ³³ [The Central Government or the State Government], after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of 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 thereupon the provisions of sub-section (2) shall apply ³⁴ [, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State] ³⁵ [***] as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.]

(4) Save as provided by ³⁶ [sub-sections (2), (2A)] and (3) no compensation shall be payable to ³⁷ [an employee] in respect of any disease unless the disease is ³⁸ [***] directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on ³⁷ [an employee] 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 ³ [an employee] 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 ³⁹ [employee] and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

⁴⁰ [4A Compensation to be paid when due and penalty for default. □

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the ⁴¹ [employee], as the case may be, without prejudice to the right of the ⁴¹ [employee] to make any further claim.

⁴² [(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall□

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty: Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed. Explanation. □ For the purposes of this sub-section, □scheduled bank□ means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

⁴³ [(3A) The interest and the penalty payable under sub-section (3) shall be paid to the ⁴⁴ [employee] or his dependant, as the case may be.]]

5 Method of calculating wages. □ ⁴⁵ [***] ⁴⁶ [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 ⁴⁷ [employee] 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 ⁴⁷ [employee] 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;

⁴⁸ [(b) where the whole of the continuous period of service immediately preceding the accident during which the ⁴⁷ [employee] was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the ⁴⁷ [employee] shall be ⁴⁹ [***] the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by ⁵⁰ [an employee] employed on the same work by the same employer, or, if there was no ⁴⁷ [employee] so employed, by a workman employed on similar work in the same locality;]

⁵¹ [(c)] ⁵² [in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)]], 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. ⁵³ [***] Explanation. □ A period of service shall, for the purposes of ⁵⁴ [this⁵⁵ [section]] be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days. ⁵⁶ [***]

6 Review . □

(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 ⁵⁷ [employee] accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the ⁵⁷ [employee] 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 1 [employee] is entitled less any amount which he has already received by way of half-monthly payments.

7 Commutation of half-monthly payments . □ 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.

8 Distribution of compensation. □ ⁵⁸ [

(1) No payment of compensation in respect of ⁵⁹ [an employee] whose injury has resulted in death, and no payment of a lump sum as compensation to ⁵⁹ [an employee] 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: ⁶⁰ [Provided that, in the case of a deceased ⁵⁹ [employee], an employer may make to any dependant advances on account of compensation ⁶¹ [of an amount equal to three months' wages of such ⁵⁹[employee] and so much of such amount] 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 ten rupees 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), ⁶² [as compensation in respect of a deceased ⁵⁹ [employee]] the Commissioner ⁶³ [***] 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.

⁶⁴ [(5) Compensation deposited in respect of a deceased ⁵⁹ [employee] shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased ⁵⁹ [employee] 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 the 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 ⁶⁵ [employee] or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the ⁶⁵ [employee].]

⁶⁶ [(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.

⁶⁷ [(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.] STATE AMENDMENTS Andhra Pradesh. □ In section 8, to sub-section (4), add the following proviso, namely: □ □ Provided that in respect of a workman belonging to an establishment to which the Andhra Pradesh Labour Welfare Fund Act, 1987 applies, the Commissioner shall pay the said balance of the money into the fund constituted under that Act in lieu of repaying to the employer. □ [Vide Andhra Pradesh Act 34 of 1987, sec. 40 (w.e.f. 1-5-1988).]

Goa □ Same as in Andhra Pradesh except the name of the Act is Goa, Daman and Diu Labour Welfare Fund Act, 1986. [Vide Goa Act 4 of 1987, sec. 40 (w.e.f. 26-1-1990).]

9 Compensation not to be assigned, attached or charged. □ 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 ⁶⁸ [employee] by operation of law nor shall any claim be set off against the same.

10 Notice and claim. □

(1) ⁶⁹ [No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within ⁷⁰ [two years] of the occurrence of the accident or in case of death within ⁷⁰ [two years] 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 ⁷¹ [employee] was continuously absent from work in consequence of the disablement caused by the disease: ⁷² [Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the ⁷¹ [employee] to absent himself from work, the period of two years shall be counted from the day the ⁷¹ [employee] gives notice of the disablement to his employer: Provided further that if ⁷³ [an employee] who, having been employed in an employment for a continuous period, specified

under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:]⁷⁴ [Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the⁷⁵ [entertainment of a claim]□

(a) if the claim is⁷⁶ [preferred] in respect of the death of a⁷⁷ [an employee] resulting from an accident which occurred on the premises of the employer, or at any place where the⁷⁸ [employee] at the time of the accident was working under the control of the employer or of any person employed by him, and the⁷⁸[employee] died on such premises or at such place, or on any 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 employer⁷⁹ [or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured⁷⁸ [employee] was employed] had knowledge of the accident from any other source at or about the time when it occurred:] Provided further that the Commissioner may⁸⁰ [entertain] and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been⁸¹ [preferred], in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or⁸² [prefer] 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 upon⁸³ [any one of] several employers, or upon any person⁸⁴ [***] responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

⁸⁵ [(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which⁷⁸ [employees] are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured⁷⁸ [employee] 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.]

⁸⁶ [10A Power to require from employers statements regarding fatal accidents .□

(1) Where a Commissioner receives information from any source that a⁸⁷ [an employee] 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 ⁸⁸[employee], and indicating whether, in the opinion of the employer, he is or 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 ⁸⁸[employee] 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.]

⁸⁹ [10B Reports of fatal accidents and serious bodily injuries. □

(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 ⁹⁰ [or serious bodily injury], the person required to give the notice shall, within seven days of the death ⁹⁰ [or serious bodily injury], send a report to the Commissioner giving the circumstances attending the death ⁹⁰[or serious bodily injury]: Provided that where the State Government 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. ⁹¹ [Explanation. □□Serious bodily injury□ means an injury which involves, or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.]

(2) The State Government may, by notification in the Official 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.]

⁹² [(3) Nothing in this section shall apply to factories to which the Employees' State Insurance Act, 1948 (34 of 1948), applies.]

11 Medical examination. □

(1) Where ⁹³ [an employee] 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 ⁹⁴ [employee] 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: Provided that ⁹³ [an employee] 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) If⁹³ [an employee], 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) If⁹³ [an employee], 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) Where⁹³ [an employee], 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 deceased⁹⁴ [employee].

(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, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (d) of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured⁹⁴ [employee] 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,⁹⁵ [if it is proved that the⁹⁴ [employee] has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure 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 the⁹⁶ [employee] had been regularly attended by a qualified medical practitioner⁹⁷ [whose instructions he had followed], and compensation, if any, shall be payable accordingly.

12 Contracting. □

(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 any⁹⁸[employee] employed

in the execution of the work any compensation which he would have been liable to pay if that ⁹⁸ [employee] 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 ⁹⁸ [employee] 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 ⁹⁹ [, or any other person from whom the ⁹⁸ [employee] 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 ⁹⁸ [employee] could 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 ¹⁰⁰ [an employee] 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.

13 Remedies of employer against stranger. □ Where ¹⁰¹ [an employee] 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.

14 Insolvency of employer. □

(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any ¹⁰² [employee], 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 ¹⁰² [employee], 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 ¹⁰² [employee] than they would have been under the employer.

(2) If the liability of the insurers to the ¹⁰² [employee] is less than the liability of the employer to the ¹⁰² [employee], the ¹⁰² [employee] 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 ¹⁰²[employee]: Provided that the provisions of this sub-section shall not apply in any case in which the ¹⁰² [employee] fails to give the 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 Presidency-towns Insolvency Act, 1909 (3 of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under ¹⁰³ [section 530 of the Companies Act, 1956 (1 of 1956)], 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 applications 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.

¹⁰⁴ [14A Compensation to be first charge on assets transferred by employer.

□ Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefor accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything

contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.]
15 Special provisions relating to masters and seamen. □ This Act shall apply in the case of¹⁰⁵ [employees] who are masters of¹⁰⁶ [***] 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 within¹⁰⁷ [one year] after the news of the death has been received by the claimant or, 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:¹⁰⁸ [Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.]

(3) Where an injured master or seaman is discharged or left behind in any part of¹⁰⁹[India or]¹¹⁰ [in any 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 Central Government or any State Government 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.¹¹¹ [***]

¹¹² [(4)] No¹¹³ [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 being¹¹⁴[***] relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

¹¹⁵ [(5)] No compensation shall be payable under this Act in respect of any injury in respect of which provision is made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances

(Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention Allowances (Indian Seamen, etc.) Scheme, 1941, made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939 (2 & 3 Geo. 6, c. 83), or under the War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Central Government.

(6) Failure to give a notice or make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceedings under this Act in respect of any personal injury, if

(a) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and

(b) the State Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made makes provision for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and

(c) the proceedings under this Act are commenced within one month from the date on which the said certificate of the State Government was furnished to the person commencing the proceedings.]

¹¹⁶ [15A Special provisions relating to captains and other members of crew of aircrafts. This Act shall apply in the case of ¹¹⁷ [employees] who are captains or other members of the crew of aircrafts 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 captain of the aircraft, be served on the captain of the aircraft and if he were the employer, but where the accident happened and the disablement commenced on board the aircraft it shall not be necessary for any member of the crew to give notice of the accident.

(2) In the case of the death of the captain or other member of the crew, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the aircraft has been or is deemed to have been lost with all hands, within eighteen months of the date on which the aircraft was, or is deemed to have been, so lost: Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim had not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured captain or other member of the crew of the aircraft is discharged or left behind in any part of India or in any other 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 Central Government or any State Government 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;

(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.]

¹¹⁸ [15B Special provisions relating to ¹¹⁹ [employees] abroad of companies and motor vehicles. □ This Act shall apply □

(i) in the case of employees who are persons recruited by companies registered in India and working as such abroad, and

(ii) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 (59 of 1988) as drivers, helpers, mechanics, cleaners or other ¹¹⁹ [employees], subject to the following modifications, namely: □

(1) The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.

(2) In the case of death of the workman in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant: Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim had not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured ¹¹⁹ [employee] is discharged or left behind in any part of India or in any other 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 Central Government or any State Government shall, in any proceedings for enforcing the claims, 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;

(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.]

16 Returns as to compensation. □The ¹²⁰ [State Government] may, by notification in the Official Gazette, direct that every person employing ¹²¹ [employees], 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 ¹²⁰ [State Government] may direct.

17 Contracting out. □Any contract or agreement whether made before or after the commencement of this Act, whereby ¹²² [an employee] 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.

18 Proof of age. □[Rep. by the Employee's Compensation (Amendment) Act, 1959 (8 of 1959), section 12 (w.e.f. 1-6-1959) .]

¹²³ [18A Penalties. □

(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 ¹²⁴ [five thousand] rupees.

(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 ¹²⁵ [within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner].]

19 Reference to Commissioners .□

(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 ¹²⁶ [an employee]) 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 ¹²⁷ [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.

20 Appointment of Commissioners. □

(1) The State Government may, by notification in the Official Gazette, appoint any person ¹²⁸ [who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted officer for not less than five years having educational qualifications and experience in personnel management, human resource development and industrial relations] to be a Commissioner for ¹²⁹[Employee's] Compensation for such ¹³⁰ [***] area as may be specified in the notification.

¹³¹ (2) Where more than one Commissioner has been appointed for any ¹³⁰ [***] area, the State Government may, by general or special order, regulate the distribution of business between them.]

¹³² (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.

¹³² (4) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

21 Venue of proceedings and transfer. □ ¹³³ [

(1) Where any matter under this Act is 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 the Commissioner for the area in which □

(a) the accident took place which resulted in the injury; or

(b) the ¹³⁴ [employee] or in case of his death, the dependant claiming the compensation ordinarily resides; or

(c) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned: Provided further that, where the ¹³⁴ [employee], being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or ¹³⁵ [an employee] in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for

transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.]

(2) If a Commissioner is satisfied ¹³⁶ [that any matter arising out of any proceedings pending before him] can be more conveniently dealt with by any other Commissioner, whether in the same State or not, 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: ¹³⁷ [Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard:] ¹³⁸ [***]

(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.

¹³⁹ [(5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.]
¹⁴⁰ [22A Power of Commissioner to require further deposit in cases of fatal accident. □

(1) Where any sum has been deposited by an employer as compensation payable in respect of ¹⁴¹ [an employee] 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.]

23 Powers and procedure of Commissioners. □The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), 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, ¹⁴² [and the Commissioner shall be deemed to be a Civil

Court for all the purposes of¹⁴³ [section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)].

¹⁴⁴ [24 Appearance of parties. □ 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 by an official of an Insurance Company or a registered Trade Union or by an Inspector appointed under sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), or under sub-section (1) of section 5 of the Mines Act, 1952 (35 of 1952), or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the Commissioner, by any other person so authorised.] STATE AMENDMENT Sections 24A and 24B West Bengal. □ After section 24, insert the following sections, namely: □ □ 24A. Reference of disputed medical questions to a medical referee. □ (1) If any question arises in any proceedings under this Act pending before the Commissioner as to □

(a) the nature and extent of the permanent disablement of a workman, or

(b) the duration of his temporary disablement, or

(c) whether the incapacity of a workman is due to personal injury by accident, or

(d) whether a workman has contracted any occupational disease specified in Schedule III,

the question shall, in default of agreement, on the joint application of both parties or on the application of either party in the prescribed manner, and on payment in the prescribed manner by the parties, or the party making the application, as the case may be, of the prescribed fees and expenses, be referred by the Commissioner to a medical referee appointed by him in his discretion from amongst the medical practitioners included in the list prepared under section 24B: Provided that where an application is made by only one of the parties, if the Commissioner is of the opinion that the question is one which ought not on account of the exceptional difficulty of the case or of any other sufficient reason be referred to a medical referee, he may after recording his reasons in writing reject the application: Provided further that if the parties themselves jointly select any medical practitioner included in the said list for appointment as the medical referee, the Commissioner shall, on payment of the prescribed fees and expenses in the prescribed manner, appoint that medical practitioner: Provided further that a medical practitioner whose services have been used for the medical treatment of an injury by accident to a workman, or of an occupational disease specified in Schedule III contracted by such workman, by or on behalf of such workman or his employer or by or on behalf of any insurers interested in any proceeding under this Act arising out of such injury or disease, shall not act as a medical referee in any proceedings under this Act in respect of such injury or disease.

(2) The Medical referee to whom such a reference is made under subsection (1) shall, in accordance with the prescribed rules, require the workman to submit to a medical examination by him or under his personal direction and shall personally or with such medical assistance as he may deem necessary examine the workman medically and send to the Commissioner who has made the reference a report in respect of the question specifically mentioned in the order of reference.

(3) If a workman refuses to submit himself for medical examination by or under the personal direction of the medical referee to whom a reference has been made under this section, or if a workman in any way obstructs the medical examination by or under the personal direction of the medical referee the workman's right to compensation under this Act and his right to continue any proceedings under this Act shall be suspended until such examination has taken place.

(4) In any proceedings under this Act in which evidence is recorded, the report of the medical referee shall as between the parties to the proceedings be conclusive proof of the facts related therein within the meaning of section 4 of the Indian Evidence Act, 1872: Provided that such report shall not be so regarded as conclusive proof of the facts related therein if in the particular proceedings the Commissioner, either of his own motion or on application being made to him by either party, for reasons to be recorded by him in writing, deems it expedient in the interests of justice to allow the parties to adduce further evidence on such facts.

24B. List of qualified medical practitioners for appointment as medical referees. □ The State Government shall prepare a list of qualified medical practitioners who may be appointed as medical referees under section 24A and shall publish the said list in the Official Gazette. □ [Vide Bengal Act 6 of 1942, sec. 4 (w.e.f. 19-11-1942).]

25 Method of recording evidence. □ 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.

145 [25A Time limit for disposal of cases relating to compensation. □ The Commissioner shall dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.]

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

27 Power to submit cases. □ 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.

28 Registration of agreements. □

(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 so settled as being payable¹⁴⁶ [to a woman, or a person under a legal disability]¹⁴⁷ [***] 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;¹⁴⁸ [***]

(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,¹⁴⁶ [to a woman or a person under a legal disability]¹⁴⁹ [***] 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 agreement¹⁵⁰ [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 Indian Contract Act, 1872 (9 of 1872), or in any other law for the time being in force.

29 Effect of failure to register agreement. □ 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 the¹⁵¹ [employee] by way of compensation whether under the agreement or otherwise.

30 Appeals. □

(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;

¹⁵² [(aa) an order awarding interest or penalty under section 4A;]

(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 ¹⁵³ [employee], 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 three hundred rupees: 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:¹⁵⁴ [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 ¹⁵⁵ [the Limitation Act, 1963 (36 of 1963)], shall be applicable to appeals under this section.

(i) The mere difficulty of applying the facts to the law will not amount to a substantial question of law; *Asmath Bedi (dead) v. Marlmuthu*, 1990 LLR 450 (Mad).

(ii) An appeal against the order of the Compensation Commissioner lies only when a substantial question of law is involved; *Mangala Ben v. Dalip Motwani*, 1998 LLR 656.

(iii) Scope of section 30 of the Workmen's Compensation Act for entertaining the appeal against the order passed by the Commissioner is very limited. The said section 30 very clearly provides that the award of the Commissioner passed under the aforesaid Act can be challenged in the appeal where substantial question of law are involved; *General Manager, C.C. Ltd. v. Bhim Yadav*, 2003 LLR 574 (Jhk HC).

¹⁵⁶ [30A Withholding of certain payments pending decision of appeal.

□ 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.]

31 Recovery. □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, 1890 (1 of 1890). STATE

AMENDMENT Section 31A West Bengal. □After section 31, insert the following section, namely:□ □31A. Application of section 36 of Act XVIII of 1879 to touts in office of the Commissioner. □

(1) The provisions of section 36 of the Legal Practitioners Act, 1879, shall subject to the provisions of this section, be applicable, so far as may be, to the framing and publication of a list of touts to the exclusion of touts included in the list from the precincts of the Court of the Commissioner and to the arrest, detention, trial and punishment of such touts.

(2) A Commissioner shall, for the purposes of the said section 36, be deemed to be an authority referred to in sub-section (1) of that section.

(3) For the purposes of this section □tout□ means□

(a) □tout□ as defined in clause (a) of section 3 of the Legal Practitioners Act, 1879; or

(b) a person who habitually frequents the precincts of the Court of a Commissioner□

(i) for the purpose of procuring work as an agent under section 24, or

(ii) otherwise than as a party to or a witness in any proceedings before the Commissioner or as a bona fide agent appointed under section 24.□ [Vide Bengal Act 5 of 1942, sec. 12.] him.]

32 Power of the [State Government] to make rules. □

(1) The [State Government] 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 [an employee] 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 [employee] 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;
- (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; [***]. [***]
- [(i) for regulating the scales of costs which may be allowed in proceedings under this Act;
- (j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act;
- (k) for the maintenance by Commissioners of registers and records of proceedings before them;
- (l) 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;
- (m) for prescribing the form of statement to be submitted by employers under section 10 A; [***]
- (n) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner;]
- [(o) for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts;
- (p) for prescribing the manner in which diseases specified as occupational diseases may be diagnosed;
- (q) for prescribing the manner in which diseases may be certified for any of the purposes of this Act;
- (r) for prescribing the manner in which, and the standards by which, incapacity may be assessed.]

West Bengal. □ In section 32, in sub-section (2), after clause (f), insert the following clauses, namely: □ □ (ff) for prescribing the procedure relating to the refence of medical questions to medical referees under sub-section (1) of section 24A; (ff-1) for regulating the procedure relating to the medical examination of a workman by or under the personal direction of a medical referee and the submission of the report of such medical referee, under sub-section (2) of section 24A; (ff-2) for prescribing and determining the fees and expenses payable in connection with references of medical questions to medical referees under sub-section (1) of section 24A. □ [Vide Bengal Act 6 of 1942, sec. 5 (w.e.f. 19-11-1942).] -----

[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.] State Amendment

(1) For Statement of Objects and Reasons, see Gazette of India, 1922, Pt. V, p. 313, and for Report of Joint Committee, see Gazette of India, 1923, Pt. V, p. 37. This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941), to Goa, Daman and Diu by Reg. 12 of 1962, sec. 3 and Sch.; to Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and Sch. I, to Pondicherry by Reg. 7 of 1963, sec. 3 and Sch. I, and to Laccadive, Minicoy and Amindivi

Islands by Reg. 8 of 1965, sec. 3 and Sch., and has also been declared in force in the district of Khondmals by sec. 3 and Sch. of the Khondmals Laws Regulation, 1936 (4 of 1936) and in the district of Angul by sec. 3 and Sch. of the Angul Laws Regulation, 1936 (5 of 1936). Extended to Sikkim w.e.f. 1-11-1986 vide G.S.R. 529 (E), dt. 30-12-1986. This Act has been modified in its application to apprentices under the Apprentices Act, 1961 (52 of 1961) by sec. 16 and Sch. to that Act.

(2) The words "G.G. in C." successively substituted by the A.O. 1937 and the A.O. 1950 to read as above.

(3) Subs. by Act 45 of 2009, sec. 5, for "a workman" (w.e.f. 18-1-2010).

(4) Subs. by Act 45 of 2009, sec. 5, for "workman" (w.e.f. 18-1-2010).

(5) The word □and□ omitted by the A.O. 1937.

(6) Clause (i) omitted by A.O. 1937.

(7) Clauses (a) to (f) of section 33 after being re-lettered as clauses (i) to (n) respectively were added to sec. 32 by A.O. 1937.

(8) The word □and□ omitted by Act 58 of 1960, sec. 3 and Sch. II (w.e.f. 26-12-1960). Earlier the word □and□ was inserted by the A.O. 1937.

(9) Ins. by Act 8 of 1959, sec. 16 (w.e.f. 1-6-1959).

(10) Ins. by Act 4 of 1986, sec. 2 and Sch. (w.e.f. 15-5-1986).

33 Power of Local Government to make rules. □[Rep. by the A.O. 1937 .]

34 Publication of rules. □

(1) The power to make rules conferred by ¹⁵⁷ [section 32] shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897) as that after which a draft of rules proposed to be made under section 32 ¹⁵⁸ [***] 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 ¹⁵⁹ [***] the Official Gazette ¹⁶⁰ [***], and on such publication, shall have effect as if enacted in this Act.

¹⁶¹ [35 Rules to give effect to arrangements with other countries for the transfer of money paid as compensation. □ ¹⁶² [

(1)] The Central Government may, by notification in the Official Gazette, make rules for the transfer ¹⁶³ [***] ¹⁶⁴ [to any foreign country] of money ¹⁶⁵ [deposited with] a Commissioner under this Act ¹⁶⁶ [which has been awarded to or may be due to], any person residing or about to reside in ¹⁶⁷ [¹⁶⁸ [such foreign country]] and for the receipt ¹⁶⁹ [, distribution] and administration in ¹⁷⁰ [any State] of any money ¹⁷¹ [deposited] under the law relating to ¹⁷² [employees's] compensation ¹⁷³ [***] ¹⁷⁴ [***] ¹⁷⁵ [in any foreign country,] ¹⁷⁶ [which has been awarded to, or may be due to] any person residing or about to reside in ¹⁷⁰ [any State]:] ¹⁷⁷ [Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned under 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.]

¹⁷⁸ [36 Rules made by Central Government to be laid before Parliament. □ Every rule made under this Act by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in ¹⁷⁹ [two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

THE EMPLOYEE'S COMPENSATION ACT, 1923¹ 22. Form of application.

□ 2[(1) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before the Commissioner. (1A) Subject to the provisions of sub-section (1), no application for the settlement] of any matter by Commissioner, 3[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) 4[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) 5[except in the case of an application by dependants for compensation] a concise statement of the matters on which agreement has and 6[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.

----- 1. For Statement of Objects and Reasons, see Gazette of India, 1922, Pt. V, p. 313, and for Report of Joint Committee, see Gazette of India, 1923, Pt. V, p. 37. This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941), to Goa, Daman and Diu by Reg. 12 of 1962, sec. 3 and Sch.; to Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and Sch. I, to Pondicherry by Reg. 7 of 1963, sec. 3 and Sch. I, and to Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, sec. 3 and Sch., and has also been declared in force in the district of Khondmals by sec. 3 and Sch. of the Khondmals Laws Regulation, 1936 (4 of 1936) and in the district of Angul by sec. 3 and Sch. of the Angul Laws Regulation, 1936 (5 of 1936). Extended to Sikkim w.e.f. 1-11-1986 vide G.S.R. 529 (E), dt. 30-12-1986. This Act has been modified in its application to apprentices under the Apprentices Act, 1961 (52 of 1961) by sec. 16 and Sch. to that Act. 2. Subs. by Act 30 of 1995, sec. 11, for □(1) No application for the settlement□ (w.e.f. 15-9-1995). 3. Ins. by Act 15 of 1933, sec. 15. 4. Subs. by Act 15 of 1933, sec. 15, for □Where any such question has arisen, the application□. 5. Ins. by Act 15 of 1933, sec. 15. 6. Subs. by Act 37 of 1925, sec. 2 and Sch. I, for □on□.