

NOTES ON LABOUR LAWS – 2

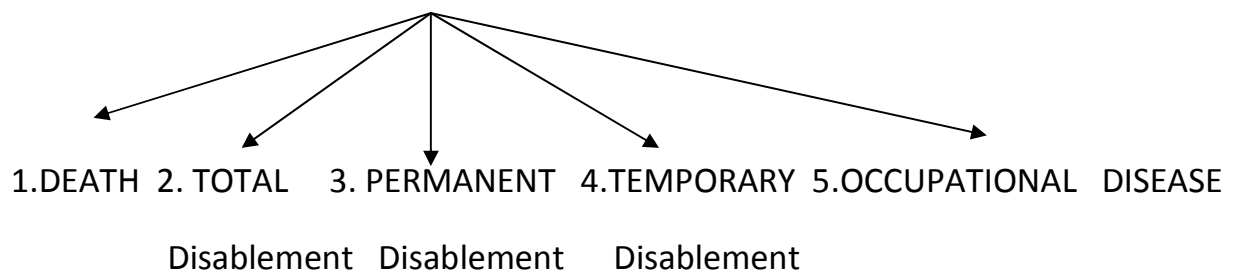
- I. EMPLOYEES COMPENSATION ACT, 1923 (OBJECTIVES OF THE ACT , TYPES OF DISABLEMENT & LIABILITY OF COMPENSATION)
- II. AUTHORITIES , DUTIES AND POWERS OF AUTHORITIES UNDER M.R.T.U. & P.U.L.P., Act, 1971

- PART TIME PROFESSOR ADVOCATE AMIT. SHASTRI

- I. EMPLOYEES COMPENSATION ACT , 1923.

SOCIAL SECURITY LEGISLATION WHICH AIMS AT PROVIDING COMPENSATION AS A SOCIAL SECURITY TO EMPLOYEES OR TO THE DEPENDENTS OF THE DECEASED EMPLOYEE.

OBJECTIVES OF THE EMPLOYEES COMPENSATION ACT, 1923
COMPENSATION FOR ACCIDENTS DURING/IN THE COURSE OF EMPLOYMENT AND OUT OF EMPLOYMENT RESULTING IN THE FOLLOWING -



LOGICAL CAUSE AND EFFECT –

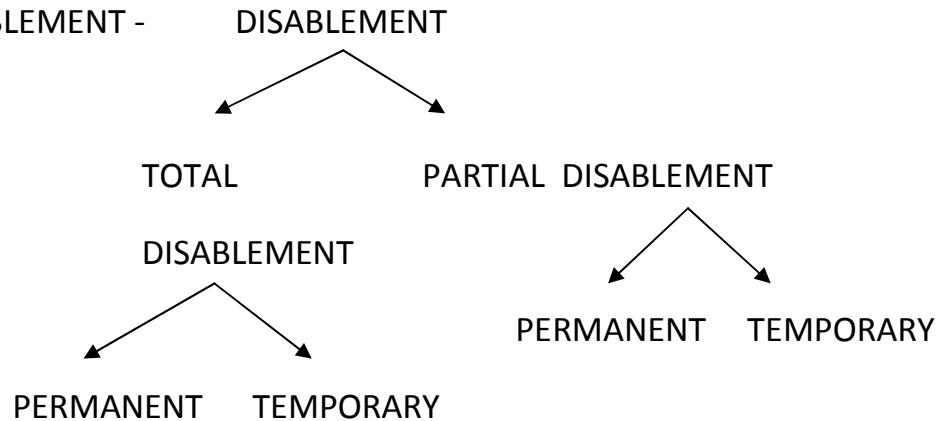
CAUSE – ACCIDENTS DURING/IN THE COURSE OF EMPLOYMENT AND OUT OF EMPLOYMENT RESULTING IN PERSONAL INJURIES.

EFFECT- PERSONAL INJURIES LEADING TO DEATH, TOTAL DISABLEMENT, TEMPORARY DISABLEMENT, PARTIAL DISABLEMENT AND OCCUPATIONAL DISEASES.

PROF . AMIT . SHASTRI

COMPENSATION → EMPLOYEES OR DEPENDENTS OF DECEASED EMPLOYEE.

TYPES OF DISABLEMENT -



TOTAL DISABLEMENT ↔ TOTAL INCAPACITATES FROM ALL EMPLOYMENT

Total Disablement: According to Section 2(1) (I) of the Employees Compensation Act, 1923, total disablement means such disablement, whether of a temporary or permanent nature, which incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement, provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I, where the aggregate percentage of the loss of earning capacity as specified in that schedule against those injuries, amounts to one hundred per cent.

Example 1. - If a Carpenter's left hand above elbow is amputated as a result of a personal injury suffered in the course of his employment, it is total disablement because a carpenter cannot work with one hand.

Example 2.- If a Truck Driver's both legs are amputated as a result of a personal injury suffered in the course of his employment, it is total disablement because a truck driver cannot work without his legs.

PARTIAL DISABLEMENT ↔ REDUCTION/LOSS OF EARNING CAPACITY TO WORK

Partial Disablement: Disablement, in ordinary language, means loss of capacity to work or move. Such incapacity may be partial or total and accordingly there are two types of disablement, partial and total. In the Act both types of disablement are further subdivided into two classes, temporary and permanent.

According to Section 2 (1) (g) of the Employees Compensation Act, 1923, Temporary Partial Disablement means such disablement which reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident and Permanent Partial Disablement means such disablement as reduces his earning capacity in every employment he was capable of undertaking at that time.

In a case of Partial Disablement it is necessary that (a) there should be an accident, (b) as a result of the accident the workman should suffer injury, (c) which should result in permanent disablement and (d) as a result whereof his earning capacity must have decreased permanently. In the proportion in which his earning capacity has been decreased permanently he is entitled to compensation. The medical evidence showing loss of physical capacity is a relevant factor but it is certainly not the decisive factor as to the loss of earning capacity. It is the loss of earning capacity that has to be determined.

Example- If a Machine mechanic loses one of his small fingers as a result of a personal injury, in an accident in the course of his employment, then he is said to be in Partial Disablement.

LIABILITY FOR COMPENSATION –

In order to attract section 3 (1) of the Employees Compensation Act, 1923, the following three conditions must be fulfilled: (a) personal injury (b) accident and (c) arising out of and in the course of employment.

In order to succeed in an application for getting compensation under section 3 of the Act the following points are required to be established.

(1) that the accident must arise out of and in the course of the workman's employment .

(2) there must be causal connection between the injury and the accident and the work done in the course of the employment.

(3) the workman has to say that while doing a part of his duty or incidental thereto it has resulted into an accident. It is necessary that the workman must be actually working at the time of the injury or the accident. Therefore, the three factors, that there must be injury, which must be caused in an accident, it must be caused in the course of and out of the employment must be established .

DEFENCES FOR THE EMPLOYER –

Prior to the passing of this Act, the employer was liable to pay compensation only if he was guilty of negligence. Even in case of proved negligence, the employer could get rid of his liability by using any of the following defenses:

1. The Doctrine of Assumed Risks: If the employee knew the nature of the risks he was undertaking when working in a factory, the employer had no liability for injuries. The court assumed in such case that the workman had voluntarily accepted the risks incidental to his work. The doctrine followed from the rule 'Volenti Non Fit Injuria' , which means that one, who has volunteered to take a risk of injury, is not entitled to damages if injury actually occurs.

2. The Doctrine of Common Employment: Under this rule, when several Persons work together for a common purpose and one of them is injured by some act or omission of another, the employer is not liable to pay compensation for the injury.

3. The Doctrine of Contributory Negligence: Under this rule, a person is not entitled to damages for injury if he was himself guilty of negligence and such negligence contributed to the injury.

PROF.AMIT.SHASTRI

SUPREME COURT OF INDIA CASE-

Mackinnon Mackenzie & Co. Pvt. Ltd.

V/S.

Ibrahim. Mahommed . Issak

Coram- Justice V.RAMASWAMI IN BENCH

DATE OF JUDGEMNT- 14/08/1969

The Apex Court in India held that The Liability of the employer to pay compensation to the employee for personal injuries arising out of accidents occurred in and out of the course of employment is a paramount liability and obligation of every employer in every organization and the employer cannot absolves himself from such a liability as per Section 3 of the Employees Compensation Act, 1923 . The onus and burden of proof that the personal injury arose out of accidents occurring in and out of the course of employment is upon the claimant/applicant employee or the dependent in case of deceased employee, which can be proved with the help of medical examination report.

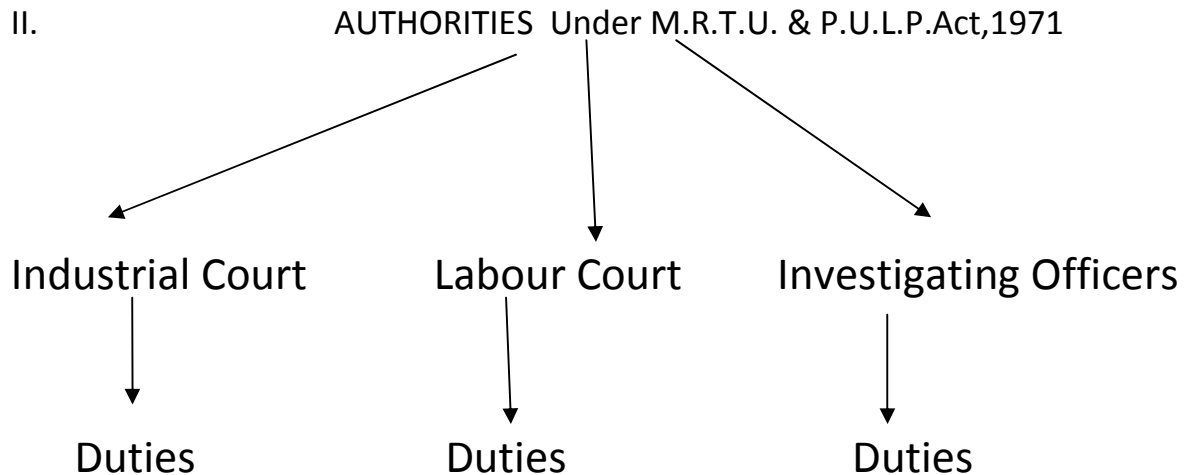
Smt. Laxmibai Atmaram

vs

Bombay Port Trust - CORAM- BENCH of Chagla & Dixit .

(1954) ILLJ 614 Bom Date - 15 July, 1953

The Bombay High Court Held that for the entitlement of compensation under the Workman Compensation Act, 1923, the first condition is that the workman must suffer from a personal injury , that must be caused by an accident and the second condition is that the accident must arise out of and in the course of employment .



Section 4 – INDUSTRIAL COURT –

(i)Constituted - The State Government will constitute an Industrial Court by Notification in the Official Gazette.

(ii)Composition- The Industrial Court, will consist of at least three members, one of whom will be the President.

(iii)Qualifications- Every member of the Industrial Court will be a person who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court . One member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters and is not directly or indirectly connected with the complaint or with the industry against whom the complaint is made.

Section 5 – Duties of Industrial Court

(i) Duty to decide an application by a union for grant of recognition to it.

(ii) Duty to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act.

(iii) Duty to decided an application from another union or an employer for withdrawal or cancellation of the recognition of a union.

PROF. AMIT .SHASTRI

(iv) Duty to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV of the Act.

(v) Duty to assign work and to give directions to the Investigating Officers in matters of verification of membership of unions and investigation of complaints relating to unfair labour practices.

(vi) Duty to decide references made to it on any point of law either by any civil or criminal court.

(vii) Duty to decide appeals under section 42 of the MRTU & PULP Act, 1971

Section 6- LABOUR COURT –

(i) Constituted -The State Government will constitute one or more Labour Courts, by Notification in the Official Gazette, having jurisdiction in such local areas, as may be specified in such notification, and will appoint persons having the prescribed qualifications to preside over such Courts .

(ii) Qualifications- Qualified for being eligible to enter the judicial service of the State of Maharashtra and is not more than sixty years of age, as prescribed under Article 234 of the Constitution of India.

Section 7 – Duties of Labour Courts -

It will be the duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under the MRTU & PULP Act, 1971 .

Section 8 - INVESTIGATING OFFICERS -

(i) Constituted - The State Government may appoint such number of Investigating Officers for any area as it may consider necessary, by notification in the Official Gazette .

(ii) Objective & Purpose- The Investigating Officers are appointed to assist the Industrial Court and Labour Courts in the discharge of their duties.

Section 9 – Duties of the Investigating Officers –

(i) The Investigating Officer will be under the control of the Industrial Court and will exercise powers and perform duties imposed on him by the Industrial Court.

(ii) The Investigating Officer is duty bound to assist the Industrial Court in matters of verification of membership of unions and to assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices.

(iii) The Investigating Officer is duty bound to report to the Industrial Court or as the case may be, the Labour Court the existence of any unfair labour practices in any industry or undertaking and to report the name and address of the persons said to be engaged in unfair labour practices and any other information which the Investigating Officer may deem fit to report to the Industrial Court or as the case may be the Labour Court.

POWERS OF THE AUTHORITIES UNDER MRTU & PULP Act, 1971 -

Section 37 –POWERS OF THE INVESTIGATING OFFICERS -

(1) An Investigating Officer shall exercise the powers conferred on him by or under this Act, and shall perform such duties as may be assigned to him, from time to time, by the Court.

(2) For the purpose of exercising such powers and performing such duties, an investigating Officer may, subject to such conditions as may be prescribed, at any time during working hours, and outside working hours after reasonable notice, enter and inspect –

(a) any place used for the purpose of any undertaking;

(b) any place used as the office of any union;

(c) any premises provided by an employer for the residence of his employees; and shall be entitled to call for and inspect all relevant documents which he may deem necessary for the due discharge of his duties and powers under this Act.

(3) All particulars contained in, or information obtained from, any document inspected or called for under sub-section (2) shall, if the person, in whose possession the document was, so requires, be treated as confidential.

(4) An Investigating Officer may, after giving reasonable notice, convene a meeting of employees for any of the purposes of this Act, on the premises where they are employed, and may require the employer to affix a written notice of the meeting at such conspicuous place in such premises as he may order, and may also himself affix or cause to be affixed such notice.

The notice shall specify the date, time and place of the meeting, the employees or class of employees affected, and the purpose for which the meeting is convened :

Provided that, during the continuance of a lock-out which is not illegal, no meeting of employees affected thereby shall be convened on such premises without the employer's consent.

(5) An Investigating Officer shall be entitled to appear in any proceeding under this Act.

(6) An Investigating Officer may call for and inspect any document which he has reasonable ground for considering to be relevant to the complaint or to be necessary for the purpose of verifying the implementation of any order of the Court or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes the Investigating Officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (V of 1908) in respect of compelling the production of documents.

Section 38-POWERS OF LABOUR COURT IN RELATION TO OFFENCES

(1) A Labour Court shall have power to try offences punishable under this Act.

(2) Every offences punishable under this Act shall be tries by a Labour Court within the limits of whose jurisdiction it is committed.

Section 39- COGNIZANCE OF OFFENCE –

The Labour Court will take cognizance of any offence only on a complaint of facts constituting such offence made by the person affected thereby or a recognised union or on a report in writing by the Investigating Officer.

Section 40- POWERS AND PROCEDURE OF LABOUR COURTS IN TRIALS-

In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, V of 1898, of Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence, shall follow the procedure laid down in Chapter XXII of the said Code for a summary trial in which an appeal lies; and the rest of the provisions of the said Code shall, so far as may be, apply to such trial.

Section 41- POWERS OF LABOUR COURT TO IMPOSE HIGHER PUNISHMENT-

Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Labour Court to pass any sentence authorised under this Act in excess of its powers under section 32 of the said Code.

Section 42- APPEALS-

(1) An appeal shall lie to the Industrial Court – (a) against a conviction by a Labour Court, by the person convicted.

(b) An Appeal will lie against an acquittal by a Labour Court in its special jurisdiction, by the complainant.

(c) An Appeal will lie for the enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the State Government.

Limitation time of Appeal - Every appeal should be made within thirty days from the date of the conviction, acquittal or sentence, as the case may be .

Condonation of Delay - The Industrial Court may condone or allow an appeal after the expiry of the said period of 30 days, only when the appellant shows and gives sufficient reason for the delay in filing an appeal.

Section 43 - POWERS OF INDUSTRIAL COURT. –

(1) The Industrial Court in an appeal under section 42 may confirm, modify, to, or rescind any order of the Labour Court appealed against; and may pass such order thereon as it may deem fit.

PROF. AMIT.SHASTRI

PROF. AMIT SHASTRI

(2) In respect of offences punishable under this Act, the Industrial Courts shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898, V of 1898.

(3) A copy of the order passed by the Industrial Court shall be sent to the Labour Court.

Section 44- INDUSTRIAL COURT TO EXERCISE SUPERINTENDENCE OVER LABOUR COURTS —

The Industrial Court shall have superintendence over all the Labour Courts and may —

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and in particular, for securing the expeditious disposal of cases;

(c) prescribe form in which books, entries and accounts shall be kept by officers of any such Courts; and

(d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.

Section 45 -POWER OF INDUSTRIAL COURT TO TRANSFER PROCEEDINGS —

Power to Withdraw and Transfer any pending proceedings-

The Industrial Court may, by order in writing, and for reasons to be stated therein, **withdraw** any proceeding under this Act, which is pending before a Labour Court, and **transfer** the same to another Labour Court for disposal and the Labour Court to which the proceeding is so transferred may dispose of the proceeding, but subject to any special direction in the order of transfer, proceed either de novo or from the stage at which it was so transferred.

PROF AMIT.SHASTRI

CASE LAW –

Ashok Vishnu Kate And Ors.

V/S

M.R. Bhope And Anr. -Bombay High Court Bench: M. Pendse, S .Kapadia

Date of Judgment - 6 March, 1992

The Division Bench of the Hon'ble Bombay High Court Held that the Labour Court can entertain complaint of an employee under item 1 of Schedule IV of the MRTU & PULP Act, 1971 , before the employer had discharged and dismissed the employee, if the grounds of discharge are covered under Item 1 of the Schedule IV of the Act .

M.R. Patil & Anr.

V/S

The Member, Industrial Court & Anr. SUPREME COURT OF INDIA

CORAM- Bench of Mukherjee & Kirpal , JJ Date of Judgment-01/04/1997

The Apex Supreme Court Held that the Powers of the Labour Court to try offences which are punishable within the limits of whose jurisdiction , it is committed under the Act , as specifically laid down in Section 39 of the MRTU & Pulp Act, 1971 and will take cognizance of an offence only after receiving complaint in writing by the aggrieved person or recognized Union or on a report made by the Investigating Officer.

