

LAW COMMISSION OF INDIA

ONE HUNDRED THIRTY-FOURTH
REPORT

ON

REMOVING DEFICIENCIES IN CERTAIN PROVISIONS
OF THE WORKMEN'S COMPENSATION ACT, 1923

1989

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SHASTRI BHAVAN
NEW DELHI

D.O. No. F.5(5)/89-LC (LS)

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TO

Shri B. Shankaranand,
Minister for Law and Justice,
Government of India,
Shastri Bhavan,
New Delhi.

Dear Minister,

The earlier two reports (132nd and 133rd) were centred on the woes of the women. The report being presented herewith, the 134th report, is focussed on the woes of the workmen who sustain injuries in the course of and arising out of their employment and on the distress of the dependants of a workman who loses his life as a result of such employment injury in an employment of a hazardous nature specified in the Act. The title of the report is -

"REMOVING DEFICIENCIES IN CERTAIN PROVISIONS
OF THE WORKMEN'S COMPENSATION ACT, 1923".

The Commission, in this suo motu exercise, has aimed at making the concerned provisions more purposeful and benevolent in keeping with the leitmotif of socio-economic justice which permeates the Act.

The Commission trusts that the recommendations, when accepted and acted upon, will ameliorate the plight of the concerned workmen.

With warm regards,

Yours faithfully,

(M. P. THAKKAR)

Encl: 134th Report.

CHAPTER I

INTRODUCTION

1.1. Concern for the workers who sweat for the 'immediate' benefit of the employer and the 'ultimate' benefit of the Nation is understandable. There is greater reason for concern when workers engaged in hazardous occupations sustain injuries resulting in temporary, partial, or permanent disablement or 'lose' their lives in the course of and arising out of such employment. That is the raison d'etre for the Workmen's Compensation Act of 1923.

1.2. The Act in its entirety was taken up for revision by the Law Commission of India (L.C.I.) at the initiative of the Government upon a reference being made to it. The L.C.I. presented its report in October, 1974 after the survey and scrutiny of the Act as a whole. That is the main reason why the present exercise has been restricted to the scrutiny of only some of the provisions which call for attention in the light of the felt need to remove the deficiencies which were noticed, erase the creases which came to light, and to update the provisions.

1.3.1. On May 12, 1984, nearly ten years after the 62nd Report was presented by the L.C.I., the Act

was amended with the evident object of making it more benevolent. Coverage was extended even to workmen whose monthly wages exceeded Rs.1000 (who were till then not protected by the Act). Apparently, this was done upon realising that the plight of the workman who sustained injuries rendering him temporarily, partially, or permanently incapable to work, or of the dependants of a deceased workman earning Rs.1000 plus, could not be less pathetic than that of a workman earning Rs.1000 or less. A great stride was thus taken in the area of social and economic justice by so amending the definition of "workman" embodied in section 2 in conformity with the recommendation made in the 62nd report of the L.C.I.

1.3.2. Another measure adopted was that of substituting a new section 4 with an appropriate schedule based on the age of the concerned workman and a multiple factor to be applied to his monthly wages for computing compensation. But while extending coverage to workmen earning monthly wages of Rs.1000 plus, and defining the quantum of compensation on the basis of the relevant factor, a rider was added in the form of Explanation II creating a fiction that the concerned workman's wages would be "deemed" to be only Rs.1000 even if

the wages in actuality were in excess of Rs.1000.

1.3.3. It needs to be mentioned that the rider added as per Explanation II in 1984 was not mooted or inspired by the L.C.I. in its 62nd Report made in 1974.

1.4. The stream of time has rapidly flown and has in the course of its journey revealed a number of deficiencies in the existing provisions of the Act and also the need for improving and updating the same. Hence this suo motu exercise.

1.5. We hope and trust that the recommendations being made by this report will ameliorate the distress of the injured workman, and of the dependants of the deceased workman who loses his life in the course of and arising out of the employment covered by the Act. At the same time these recommendations will not cast any unreasonable burden on the employer even if the employer has not made arrangements for 'self-insurance' or insurance with an insurance company.

1.6. We accordingly proceed to identify the provisions which need overhauling and to examine the issues involved in the present exercise.

CHAPTER II

PROVISIONS WARRANTING SCRUTINY

The existing provisions of the Workmen's Compensation Act, examination of which reveals the need for revision in order to remove deficiencies, deserve to be extracted¹ for the sake of ready reference:-

'Definition of "dependant"

2. (1)(d) "dependant" means any of the following relatives of a deceased workman, namely:-

(i) a widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death -

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and a minor or if widowed and a minor,

1. The underlining in the extracted provisions is not in the text but has been added for the sake of emphasis.

(d) a minor brother or an unmarried sister or a widowed sister, if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a paternal grand-parent if no parent of the workman is alive;"

Definition of workman

"2. (1) (n) "workman" means any person (other than a person whose employment is of casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is-

- (i).....
- (ii)....."

Amount of Compensation

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

(a) where death results from the injury, an amount equal to forty per cent. of the monthly wages of the deceased workman multiplied by the relevant factor;

or

an amount of twenty thousand rupees, whichever is more;

(b) Where permanent total disablement results from the injury, an amount equal to fifty per cent of the monthly wages of the injured workman multiplied by the relevant factor;

or

an amount of twenty-four thousand rupees, whichever is more.

Explanation I.

Explanation II.- Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be one thousand rupees only."

(c)
(d)"

Interest and penalty payable in case of default

"4A. (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 may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent. per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent. of such amount, shall be recovered from the employer by way of penalty."

Distribution of Compensation

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

Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

(2)
(3)"

(4) On the deposit of any money under subsection (1), as compensation in respect of a

deceased workman the Commissioner shall deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding fifty rupees, and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may in the discretion of the Commissioner, be allotted to any one dependant.

- (6).....
- (7).....".

Appeals

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

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- (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 workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided further.....

Provided further that no appeal by an employer under Cl.(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."

Withholding of payments pending appeal

"30-A. 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."

CHAPTER III

'WHICH' PROVISIONS OF THE WORKMEN'S
COMPENSATION ACT, 1923 REQUIRE TO BE
AMENDED AND 'WHY'?

3.1.1. Undesirability of leaving the matter of selection of the beneficiary and also the extent of compensation in respect of a victim of a fatal accident entirely to the unguided discretion of the Commissioner.- Under the Workmen's Compensation Act, an obligation is imposed on the employer to deposit with the Commissioner compensation as prescribed by the relevant provisions, inter alia in respect of an injury caused by accident to a workman "in the course of and arising out of employment" which injury results in his death. The compensation so deposited has to be paid to the dependants (as defined in the Act) of the deceased 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 as provided by section 8(5) of the Act. The Legislature has thus invested the Commissioner with very wide and unguided discretion. The resultant position is that the Commissioner in his sole discretion -

- (1) may select any one or some of the dependants to the exclusion of all others,
- (2) may apportion the compensation in such

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proportion as he may determine amongst such of the dependants whom he chooses to select as beneficiaries.

The Legislature has not armed the Commissioner with any guidelines as to when and in what circumstances he may select only one or some of the dependants to the exclusion of the others. Nor have any guidelines been provided as to in what proportion apportionment should be made. Such being the position, the Commissioner has uncontrolled and arbitrary powers to make selection of the beneficiaries out of the defined dependants and to make apportionment as he deems fit. The unfortunate consequence is that the dependants are at the total mercy of the wisdom of the Commissioner as regards 'who' should share the compensation amount and, if so, 'to what extent'. This gives rise to a number of anomalies, problems and complications, such as:-

- (1) The same Commissioner may adopt different yardsticks from case to case. His successor in office may evolve his own criteria, again, from case to case.
- (2) There would be a number of Commissioners in every State and the norms or criteria applied by each Commissioner from case to case would again differ.
- (3) No dependant would know whether he or she has any right and, if so, what is his

or her right.

(4) The proceedings may drag on for a very long time and the dependants would be totally in the dark as regards their rights till the ultimate conclusion of the proceedings.

(5) Even if, having regard to the circumstances, one or more dependants have a better claim, they would have to resort to further litigation by way of an appeal, the cost of which they can ill afford, if they are not satisfied by the determination made by the Commissioner.

It would, therefore, appear to be extremely unjust and unfair to drive the dependants of a workman who has met with a fatal accident to such desperation, particularly when they would be reeling under the tragedy of the loss of the bread-winner. Under the circumstances, we are of the opinion that instead of leaving the entire matter to the absolute, uncontrolled, and unguided discretion of the Commissioner, it would be more conducive to justice to identify the beneficiaries and define their share in the compensation payable to them.

3.1.2. The Law Commission of India, in its Sixty-second Report on Workmen's Compensation Act, 1923

presented in October 1974, had an occasion to deal with this aspect. The recommendation of the Commission is contained in paragraph 4.7 which is reproduced below:-

4.7. It is plain that distribution of the compensation amongst the dependants is a matter entirely for the determination of the Commissioner and sub-section (5) furnishes no guidelines to him.

In our view, it is desirable to insert some guidelines in this regard. Without attempting to be exhaustive we may state that the Commissioner should take into account -

- (i) nearness of relationship - e.g., the dependant being the widow, child or parent of the deceased;
- (ii) the means of the dependant and the extent of his dependence on the workman;
- (iii) the desirability of not distributing compensation amongst a very large number of persons, - which may lead to its being frittered away.

We, therefore, recommend that the following proviso should be inserted below section 3(5):

"Provided that in exercising his discretion under this sub-section, the Commissioner shall have due regard to -

- (i) the nearness of relationship of the dependant to the deceased;
- (ii) the means of the dependant and the extent to his dependence on the deceased;
- (iii) the desirability of ensuring that the amount of compensation is not distributed amongst an excessively large number of persons so as to lead to its being frittered away; and

(iv) other relevant considerations.

[Emphasis added]

3.1.3. The recommendation in the aforesaid terms made nearly 15 years back has remained unimplemented till now. We have accorded anxious consideration to this problem. It appears that enacting guidelines in the aforesaid terms will not adequately solve the problem. Notwithstanding the guidelines which are in general terms, the criticism levelled in the course of the earlier discussion will survive inasmuch as the Commissioner will have wide discretion in the matter of choosing or excluding one or more beneficiaries and in the matter of apportionment. To 'whom' to pay and 'how much' will remain within the sphere of the discretion of the Commissioner. A more fair and just solution would be to identify the beneficiaries and define their share in the compensation. That task must be addressed immediately.

3.1.4. 'Who' should get the compensation and in 'what proportion?' - This is a vexed question which calls for close and careful consideration. Before approaching the question as regards the most desirable solution, it would be appropriate to broadly outline the present scheme embodied in

section 8(5) [relating to apportionment amongst the dependants at the discretion of the Commissioner] read with section 2(1)(d) [which defines the term "dependant"]. The emergent position is as under:-

The "dependants" have been classified into three groups -

The first group consists of widow, minor legitimate son and unmarried legitimate daughter or a widowed mother. A person falling under this group is entitled to receive the share of compensation irrespective of the fact whether he or she was actually dependent on the workman at the time of his death or not. In other words, a widowed mother, a widow, a minor legitimate son and an unmarried legitimate daughter would be entitled to the compensation merely by virtue of such relationship with the deceased workman. In their case, actual dependency is not the criteria.

In respect of the persons falling in the second group, namely, a major son or daughter who is infirm, he/she must be proved to be wholly dependent on the deceased workman at the time of death before he or she can be paid any share in the compensation of the deceased.

The third group consists of persons related to the deceased workman who, before they are held entitled to a share in the compensation amount,

must be shown to be either wholly or in part dependent on the earnings of the workman at the time of his death.

And in case no such dependant exists, the deposited amount has to be returned to the employer as provided by section 8(4) of the Act.

The definition of the term "dependant", it may be mentioned, does not operate to benefit all the legal heirs of a deceased workman. It embraces only those relations who, to some extent, depend upon him for their daily necessities. So much so that even some of his dearest and nearest ones, e.g., sons who have attained majority, married daughters and illegitimate daughter, whether married or unmarried, are excluded if they are not dependents on the worker's earnings, wholly or in part. Kinship coupled with dependency, is thus made the sole criterion for a person to fall within the ambit of the definition of "dependant".¹

3.1.5. It has to be realised that the Workmen's Compensation Act is a legislation enacted substantially by way of a social insurance measure in order to insulate from economic distress the

1. B.M. Habeebullah V. Periaswamy, AIR 1977 Madras 330.

dependant members of the family of the workman who meets with a fatal accident in the course of and arising out of his employment. The basic idea is to prevent sudden economic dislocation in the wake of the loss of the bread-winner and to ensure continued protection of the economic umbrella which would have been extended had the workman not lost his life whilst serving his employer. It is not a payment by way of compensation on account of a tortious act. It is a "fault or no fault" liability created by the statute in order to prevent the domestic ship of the workman from being scuttled on the sudden demise of the captain. The point which needs to be emphasised is that the compensation amount does not constitute a part of the estate of the deceased. The economic assistance which was hitherto being extended by the deceased workman to his dependants would now be extended to them in the form of lump sum compensation to be deposited by the employer. It is apparently for this reason that not all the heirs of the deceased workman are treated as dependants eligible for payment of compensation under the present scheme. Those who were not dependant on the deceased workman or who were in a position to earn for themselves have, therefore, been excluded from the scheme of compensation.

The scheme as at present is rather complex and complicated as has been noticed by the Law Commission in its 62nd Report in paragraph 2.3. Besides, the scheme does not define the proportion in which the compensation should be apportioned. Under the circumstances, there is good justification for recasting the scheme, albeit adhering to the basic idea of extending the economic umbrella to those of the nearest kin of the deceased workman who were dependant on the deceased workman, in preference to those who could be considered to be capable of earning for themselves (such as major sons) and those who are not dependant on the deceased by the nature of things (such as married daughters).

3.1.6. Fortunately, such a scheme, which takes care of the afore-mentioned basic idea, has been enacted by the Legislature in the Employees' Provident Funds and Miscellaneous Provisions Act read with the Employees' Provident Funds Scheme of 1952. The scheme is comprised in para 2(g) pertaining to the definition of "family" read with para 70 as regards the payment of accumulations of a deceased member. It may be profitably reproduced:-

'2.(g) "family" means-

(i) in the case of a male

member, his wife, his children whether married or unmarried, his dependent parents and his deceased son's widow and children:

Provided that if a member proves that his wife has ceased, under the personal law governing him or the customary law of the community to which the spouses belong, to be entitled to maintenance, she shall no longer be deemed to be a part of the member's family for the purpose of this scheme, unless the member subsequently intimates by express notice in writing to the Commissioner that she shall continue to be so regarded; and

(ii) in the case of a female member, her husband, her children, whether married or unmarried, her dependent parents, her husband's dependent parents and her deceased son's widow and children:

Provided that if a member by notice in writing to the Commissioner expresses her desire to exclude her husband from the family, the husband and his dependent parents shall no longer be deemed to be a part of the member's family for the purpose of this scheme, unless the member subsequently cancels in writing any such notice.

Explanation.- In either of the above two cases, if the child of a member or, as the case may be, the child of a deceased son of the member has been adopted by another person and if, under the personal law of the adopter, adoption is legally recognized, such a child shall be considered as excluded from the family of the member;'

"70. Accumulations of a deceased member, to whom payable.- On the death of a member before the amount standing to his credit has become payable or where the amount has become payable before payment has been made -

(i) if a nomination made by the member in accordance with para 61 subsists,; or

(ii) If no nomination subsists or if the nomination relates only to a part of the amount standing to his credit in the fund; the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall become payable to the members of his family in equal shares:

Provided that no share shall be payable to -

- (a) sons who have attained majority;
- (b) sons of a deceased son who have attained majority;
- (c) married daughters whose husbands are alive;
- (d) married daughters of a deceased son whose husbands are alive;

if there is any member of the family other than those specified in Cls. (a), (b), (c) and (d):

Provided further that the widow or widows, and the child or children of a deceased son shall receive between them in equal parts only the share which that son would have received if he had survived the member, and had not attained the age of majority at the time of the member's death;

(iii) in any case, to which the provisions of Cls. (i) and (ii) do not apply the whole amount shall be payable to the person legally entitled to it.

Explanation.- For the purpose of this paragraph a member's posthumous child, if born alive, shall be treated in the same way as a surviving child born before the member's death."

(Emphasis supplied)

The statutory beneficiaries in whom the accumulations vest for being distributed in equal shares are the members of the family as defined in para 2(g) with the rider embodied in the proviso that no share shall be payable to sons and sons of a deceased son who have attained majority and to married daughters, or married daughters of a deceased son whose husbands are alive. It also takes care of the situation where the designated members of the family do not exist. In that event, the amount is payable to the person legally entitled thereto (meaning thereby heirs under the ordinary law).

3.1.7. There are very good reasons for recasting the scheme for payment of compensation under the Workmen's Compensation Act on the model of the Provident Fund scheme (P.F. scheme, for short) of compensation outlined hereinabove which is more just, equitable, and beneficial. The reasons are:-

(1) What is considered as a good solution to prevent economic dislocation of the family and for securing socio-economic justice by the Legislature in the case where a bread-winner of a family suddenly dies in the course of service [in cases where there is no nomination under the Provident Fund Act and the Scheme] for protection of the dependant family members of a deceased employee can justly be considered as good enough in regard to the dependant family members of a workman who meets with a fatal accident in the course of and arising out of his employment. Whether sudden death is natural or accidental, consequences are the

same.

(2) On an analysis of the P.F. Scheme, it is evident that care has been taken of the principle which informs the existing scheme under the Workmen's Compensation Act, namely, of extending a protective umbrella to the dependant family members in preference to those who are capable of making their own living and are not dependent on others.

(3) Instead of leaving the matter as to 'whom' to pay and 'how much' to the Commissioner as per the existing scheme, the model scheme identifies the beneficiaries and defines the proportion in which compensation is to be distributed amongst them. In the said scheme, all dependants are entitled to share equally.

(4) Care has been taken in the P.F. scheme to ensure that the widow of a deceased workman and the minor children of the workmen are by the very nature of things accorded preference vis-a-vis the other close relatives by reason of the fact that the plight and need of the former is obviously greater than that of the others.

(5) The P.F. scheme unlike the existing workmen's compensation scheme also takes care of the situation where the deceased workman happens to be a female, which aspect has assumed importance by reason of the fact that now more and more women are being engaged in employment.

(6) A widower under the existing provision has to show that he was wholly or partly dependant on the workman at the time of her death before he could claim a share in the amount of compensation, whereas under the P.F. scheme he has been equated with a "widow" and he need not prove actual dependency.

(7) A widowed daughter-in-law and children of a pre-deceased son under the existing scheme must be wholly or partly dependant on the earnings of the deceased, whereas in the P.F. scheme actual dependency is not required to be proved.

(8) As per the existing scheme dependant parents-in-law of a deceased female

workman are not entitled to compensation. Under the P.F. scheme they have been made entitled to a share in compensation.

(9) Under the P.F. scheme the compensation amount does not lapse if the specified dependants do not exist and is in such an event inherited by the legal heirs.

The P.F. scheme is thus superior to the existing scheme under the Workmen's Compensation Act.

3.1.8. In one respect, however, the P.F. scheme taken as a model needs to be improved upon. While a major son might be excluded on the premise that he must be considered capable of earning for himself so that the minors who are not capable of looking after themselves are preferred to those who have attained majority, the case of a physically or mentally handicapped major son or daughter would deserve a sympathetic consideration. The Commission is, therefore, of the view that such a child should not be excluded. The scheme which is proposed to be recommended, therefore, takes care of this aspect.

3.1.9. The Commission accordingly recommends that the definition of "dependant" contained in section 2(1)(d) of the Workmen's Compensation Act, as also the scheme of distribution as contained in section 8(5) of the Act, should be deleted and should be replaced by proposed provisions on the following lines by making suitable amendments:-

'Proposed clause (d) of sub-section (1) of section 2 in the light of the recommendations

(d) "dependant" means any of the following members of the family of a deceased workman:

(i) in the case of a male workman,-

his wife, his children whether married or unmarried, his dependant parents and his deceased son's widow and children.

(ii) in the case of female workman,-

her husband, her children whether married or unmarried, her dependant parents, her husband's dependant parents, and her deceased son's widow and children.

Explanation.- In either of the above two cases, if the child of the deceased workman or, as the case may be, the child of a deceased son of the workman has validly been adopted by another person, such child shall be considered as excluded from being dependant of the deceased workman.

Proposed Sub-section (5) of Section 8 in the light of the recommendations

8. (5) Compensation deposited in respect of a deceased workman shall be dealt with as under:-

(i) If the deceased workman has left dependants and their number is more than one, such compensation shall be apportioned amongst those dependants in equal shares:

Provided that -

(a) subject to the provisions of Explanation II to this clause, no share shall be payable to sons who have attained majority on or before the death of the deceased workman;

(b) subject as aforesaid no share shall be payable to sons of a deceased son who have attained majority on or before the death of the deceased workman;

(c) no share shall be payable to married daughters;

(d) no share shall be payable to married daughters of a deceased son;

if there is any dependant other than those specified in clauses (a), (b), (c) and (d):

Provided further, that the widow or widows of a deceased son, and child or children of a deceased son, shall receive

between them in equal parts only the share which that son would have received, if he had survived the workman and had not attained majority on or before the death of the workman.

- (ii) If the deceased workman has left only one dependant, the whole amount shall be payable to that dependant.
- (iii) In any case to which the provisions of clause (i) or clause (ii) do not apply, the whole amount shall be payable to the person who, under the law of succession applicable to the deceased workman, would be legally entitled to succeed to the estate of the deceased workman on intestacy.

Explanation I.- For the purposes of this subsection, a workman's posthumous child, if born alive, shall be treated in the same way as a child born before the workman's death who survives him.

Explanation II.- For the purposes of this subsection, a son or daughter whose capacity to earn is affected by any physical or mental abnormality or injury shall be treated in the same way as a son or daughter who has not attained majority and shall not be excluded under clause (a) or clause

3.1.10. The Commission is firmly of the view that upon the Act being amended in terms of the recommendations and proposals made hereinabove a scheme for compensation in respect of a deceased workman which is more just, fair and equitable will emerge.

3.2. Need to amend section 2(1)(n) to the extent that it excludes persons whose employment is of casual nature from the purview of the Act. The provision in so far as material reads thus:-

'2(1)(n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is -

(i)...

(ii)...' (Emphasis added).

So long as the workman is acting in the course of his employment, a workman who sustains injury or the dependants of a workman who loses his life stand on the same footing as workmen who are regularly employed, regardless of the fact that the employment of the victim of accident was of a casual nature. Since the Act casts the obligation to pay compensation to an injured workman, or the dependants of a workman who loses his life, in order to mitigate the economic distress and economic dislocation visiting the workman or his family, there is no reason why a workman who has

been employed on a casual basis should be denied compensation. Experience shows that such a defence is often taken lightly for the sake of form and it results in a protracted litigation which the injured or the dependants of a deceased workman can ill-afford. Since the provision for compensation is one which has been made with the objective of imposing an obligation to compensate on a person, who carries on hazardous business for the purposes of his profit, for the sake of protecting workmen who are obliged to secure employment in such a hazardous trade or business merely to earn their bread, it would be unfair to exclude workmen who have been employed on a casual basis from the benefits of the benevolent Act on such a ground. It may have been considered appropriate in 1923 when the Act was framed. But, with the passage of time, in the post-Constitutional era when the considerations of social justice inform the provisions of the Constitution and the Directive Principles embodied in Chapter IV point out the direction in which the legislation has to take steps in order to conform to the conscience of the Constitution, such a provision excluding the casual workmen has become inappropriate. It would, therefore, be just and proper that the words "other than a person whose

employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business" in the bracketed portion of the first paragraph of the definition of section 2(1)(n) are deleted by amending the provision.

3.3.1. Need to remove the injustice resulting from treating unequals as equals by deleting Explanation II to section 4. The compensation payable to the injured workman or the dependants of the deceased workman is linked to the monthly wages drawn by him at the time of the occurrence. However, Explanation II to section 4 provides that where the wages of a workman exceed one thousand rupees, his monthly wages for the purposes of clauses (a) and (b) shall be 'deemed' to be one thousand only. In other words, while a workman earning monthly wages exceeding Rs.1,000 is entitled to compensation, the compensation has been delinked from his wages. For the workman earning more than Rs.1,000, whatever be the monthly wages, by a fiction introduced by the deeming provision contained in the Explanation, the compensation would be computed as if his monthly wages is only Rs.1,000. Even if his monthly wages is Rs.3,000, he would be paid compensation as if he was earning only Rs.1,000.

Evidently, it is extremely unjust and unfair. A few facts relating to the historical background of this provision deserve to be stated. Before 1984, the Workmen's Compensation Act did not provide for compensation to workmen earning more than Rs.1,000. In other words, they were not covered by the Act at all.

The National Commission on Labour, in order to extend coverage to such workmen also, in paragraph 13.22 of its report, recommended as under:-

"13.22 The monthly wage limit for coverage under the Act was raised from Rs.400 to Rs.500 by the Amendment Act of 1962. The supervisory staff and others drawing monthly wages exceeding Rs.500 and employed in mines, manufacture of explosives and other similar operations are exposed to the same employment hazards as those within the monthly wage limit of Rs.500. We consider that all workmen including supervisors employed in the occupations covered under the Act should be eligible without any wage limit for compensation for work-injury."

(Emphasis added)

The Law Commission of India on its part, in its Sixty-second Report, recommended coverage to such workmen for the reasons reflected in para 2.33:-

"2.33 The above comments for verbal improvements (with reference to the category of railway servants) have been made on the assumption that the present separate category of railway servants is to be retained. It seems to us, however, that this matter itself requires serious consideration. The present scheme seems to constitute a discrimination between railway servants and other workmen

similarly placed. A railway servant (if he satisfies certain conditions mentioned above) is not subject to a maximum regarding the wages. Others are so subject. This discrimination is difficult to support in the face of article 14 of the Constitution and on the merits, appears to be unjustified. We are therefore of the view that this discrimination should be removed and like railway servants, other employees (if they satisfy the other conditions of the definition) also should be brought within the Act if they fall within the Second Schedule irrespective of their wages."

3.3.2. It will thus be seen that the Law Commission had made the point that while railway employees, regardless of whether their monthly income was in excess of Rs.1000 or not, would be entitled to compensation, the workmen in other employments of a hazardous nature who are covered by the Act would not be so covered. This would introduce hostile discrimination which would be obnoxious to article 14 of the Constitution of India. Thus, the Law Commission as also the National Commission on Labour recommended coverage for all workmen who were employed in hazardous occupations listed in Schedule II of the Act. The recommendation was for extending coverage so as to enable the injured workmen or dependants of a deceased workman to claim compensation irrespective of his monthly income (regardless of whether he was earning more than Rs.1,000 under the Act). However, when in 1984, the Act was amended, whilst accepting the recommendation, a

5- rider, not indicated or mooted either by the National Commission on Labour or by the Law Commission, was added as is evident from a reading of paragraphs 2 and 3 of the Statement of Objects and Reasons, which are reproduced below:-

"2. The Act at present applies to railway servants and persons employed in certain hazardous employments specified in Schedule II of the Act and drawing wages not exceeding Rs.1000/- per month. The National Commission on Labour had recommended inter alia that the wage limit for coverage under the Act may be removed altogether. The Law Commission of India, which had reviewed the provisions of the Act, had also made a similar recommendation. It is, therefore, now proposed to do away with the wage limit for coverage altogether. It is likely to benefit a large number of workmen who are at present drawing wages exceeding Rs.1000/-per month."
(Emphasis added)

"3. Section 4 of the Act provides for payment of compensation at the rates specified in Schedule IV of the Act. These rates of compensation were last revised in 1976 and there is a demand for its upward revision. Further, the amount of compensation is at present determined without reference to the age of the workman. This is not considered fair. It is, therefore, now proposed to provide for payment of compensation in terms of percentage of monthly wages linked to the age of the workman at the time of his disablement or death. The proposed revised rates of compensation are based on the rates specified in the ILO Convention concerning Minimum Standards of Social Security, except that the compensation payable in respect of those drawing wages exceeding Rs.1000/- per month is proposed to be restricted to the amount payable on the wages of Rs.1000/- per month."
(Emphasis added)

3.3.3. It needs to be stressed that the rider to restrict the amount payable on the fictional basis

of Rs.1,000, notwithstanding that the monthly wages of the workman were in excess of Rs.1,000, was not referable to the recommendation of the Labour Commission. Nor was it warranted by the ILO Convention. The artificial pegging of the compensation by linking it to the deemed wages of Rs.1,000 regardless of the actual wages being in excess of Rs.1000 is prima facie unjust and unwarranted. Since the scheme of compensation in Schedule IV evidences the formula of applying the specified multiple to the monthly wages of a workman (taking into account his age) it is difficult to justify the discriminatory treatment meted out to workmen earning monthly wages in excess of Rs.1000. In para 3 of Statement of Objects and Reasons extracted hereinabove, it is declared in no unclear terms that ... "it is now proposed to provide for payment of compensation in terms of percentage of monthly wages...". Evidently the rationale of the formula is to compensate the injured workman or the dependants of the deceased workman for the loss of monthly wages of the injured or deceased workman. Obviously the loss of monthly wages in respect of a workman earning Rs.2000 would be twice that in respect of a workman earning Rs.1000. The family of the deceased workman who was earning Rs.2000

would have to be compensated for a loss of that magnitude. The greater the loss the greater is the need for the compensation. To make good the monthly loss of Rs.2000 the compensation cannot be the same as needed to make good the monthly loss of Rs.1000. To do so would be to treat two unequals as equals. An injured workman earning Rs.2,000 would get the same compensation as an injured workman earning Rs.1,000, though, such workman earning Rs.1,000 would get twice the amount of compensation as compared to the workman earning Rs.500. Similar will be the fate of dependants of deceased workmen. Apart from the fact that the provision in question would be exposed to the charge of being violative of article 14, it is difficult to justify it from the platform of logic, philosophy, or ethics. This injustice prejudicially affects thousands of workmen as the wages have been revised upwards and very many more workmen are in the Rs.1000 plus range in view of inflation. There is, therefore, no escape from the conclusion that Explanation II to section 4 incorporated by Act 22 of 1984 with effect from July 1, 1984, which has introduced the fiction that the compensation should be computed on the basis that a workman was earning Rs.1,000 even if his earning was in excess of that amount, must be deleted or repealed.

3.4. The desirability of amending section 4 of the Act in order to make it more just and equitable to the injured workman or the dependants of the workman who has lost his life .- Section 4 (pertaining to the amount of compensation payable to the injured workman or the dependants of the deceased workman engaged in a hazardous occupation who loses his life), as originally embodied in the Act of 1923, has been substituted by new section 4 which has come into force from 14th May, 1984. By the newly substituted section 4, the original scheme for computation of compensation has been replaced by an altogether new scheme. Clauses (a) and (b) of sub-section (1) of section 4 of the Workmen's Compensation Act respectively prescribe Rs.20,000/- as the minimum amount to be awarded to the dependants of the deceased workman and Rs.24,000/- as the minimum amount of compensation in the case of permanent total disablement. This minimum amount was fixed by virtue of the Amendment Act of 1984. The minimum wage payable to a workman as on 31st March, 1984 was Rs.300/-¹ per month. The present rate of minimum wages with

-
1. Notification Nos. F.12(142)/79-MW/Lab. and F.12(165)/80-MW of Delhi Administration published in Delhi Gazette (Extraordinary) Part IV, dated February 23, 1982.

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effect from May 1, 1989 is Rs.750/-per month.
In other words, there is 150 per cent. increase in
the minimum wages. As a result of the revision in
the minimum wages, there is a need for revision in
the minimum amount of compensation payable in
case of death of a workman or in case of permanent
or total disability. Having regard to the rise in
cost of living and the resultant fall in the value
of money and in view of the upward revision of the
minimum wages by 150%, minimum compensation
deserves to be revised upwards by substituting the
figures Rs.50,000 and Rs.60,000 for the figures
Rs.20,000 and Rs.24,000 respectively.

3.5. Rate of interest payable in case of delay or
default on the part of the employer to pay the
amount of compensation. - Section 4A of the Act
enjoins the employer to make payment of the
compensation payable by the employer in the event
of the death or disablement of the employee as
soon as it falls due. The section also provides
for payment of interest to the injured workman or
the dependant of the deceased workman, entitled to
the compensation, in case of default. The
provision in this behalf is embodied in sub-

-
1. Notification No.F.12(1)/88-MW/Lab. dated
April 28, 1989, issued by the Delhi
Administration, and Times of India, New
Delhi, dated May 1, 1989.

section (3) of section 4A, which is reproduced below:-

"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 may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, be recovered from the employer by way of penalty." (Emphasis added).

It will be seen that the Act provides for payment of interest at 6% on the amount due. This provision was introduced by Act 8 of 1959 with effect from June 1, 1959. The 6% rate of interest has now become outdated with the passage of 30 years since the provision was introduced. It is common knowledge that the rates of interest have risen sharply. The Law Commission in its 62nd Report presented on 15th October, 1974 had in para 3.54 recommended that rate of interest should be increased from 6 per cent. to 9 per cent. - which recommendation has not yet been accepted. We are of the opinion that 15 years having elapsed, cognisance should be taken of the presently prevailing rates. What is more, the Central Government itself is obliged to pay interest at 15% per annum with effect from 1-10-1984 on refunds payable to the assessee in view of amended section 244 of the Income Tax Act, 1961.

The Supreme Court has confirmed the award of interest at 15% in Ranade's case.¹ There is, therefore, a sound basis for recommending an increase in the rate of interest to dependants of unfortunate workmen who meet with fatal accidents whilst working for the benefit of their employers. Under the circumstances, the provision contained in sub-section (3) of section 4A requires to be modified by substituting the words "simple interest at the rate of fifteen per cent." in place of the words "simple interest at the rate of six per cent."

3.6. Modification of the provision pertaining to making of advances to dependants of a deceased workman.- Under the proviso to sub-section (1) of section 8, an employer is authorised to make advances on account of compensation to a dependant of a deceased workman not exceeding an aggregate of one hundred rupees. This limit was introduced in the Act of 1923 more than sixty years back. It is of little use to make an advance of a petty sum of one hundred rupees in the context of the steep fall in the value of the rupee on account of inflation in the course of the last six decades.

1. L.I.C. V. G.V. Ranade, 1989 (2) Scale p.499 (p.505), para 23.

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An upward revision of the existing upper limit of Rs.100 is, therefore, clearly and urgently called for. Instead of recommending that advances up to a higher specified amount may be made by the employer to the dependants, it appears to us more appropriate to recommend that an amount up to three month's wages should be permitted to be advanced to the dependants so that upward revision from time to time may not be necessitated. It is absolutely necessary to make such a provision with urgency, for the plight of the dependants of the deceased workman can be readily envisioned. They would be in dire straits and in need of urgent relief in the wake of the sudden and tragic loss of the bread-winner. We, therefore, recommend that section 8(1) should be amended accordingly.

3.7.1. Need for making the provision for payment of 'funeral expenses' of the deceased workman more humane.- The existing provision in regard to payment of 'funeral expenses' of the deceased workman who loses his life in the course of and arising out of his employment is embodied in subsection (4) of section 8. In substance, it authorizes a payment of up to Rs.50 in connection with funeral expenses which can be deducted from the compensation amount deposited by the employer.

It is evident therefrom that -

(1) there is no obligation to pay any amount for the funeral expenses of the deceased workman;

(2) the maximum amount which can be paid is Rs.50; and

(3) the employer has the right to deduct such amount if paid from the compensation payable to the dependants of the deceased workman.

3.7.2. Whatever be the merits of this provision in the first quarter of the twentieth century when it was enacted, the need for exhibiting more compassion and making it more humane cannot be disputed in the dying decade of the century. Would it be too much to expect the employer to pay for the last rites of a workman who has lost his life in his employment to a reasonable extent? For the sake of maintaining good relations with the workmen, but for whom the employer would not be able to run his hazardous business, if not in the name of milk of human kindness, the employer surely would not mind bearing such expenses. In any case the community which takes pride in the socialist professions inscribed in indelible ink in the preamble of its Constitution, and reflected in the "Directive Principles of State policy"

enshrined in Part IV of the Constitution, cannot hesitate to impose such an obligation any longer.

3.7.3. It is accordingly strongly recommended that by virtue of a suitable amendment of the relevant provisions of the Act it should be provided that the employer may incur the actual funeral expenses of the deceased workman subject to an upper limit of a sum equivalent to two months' wages if so desired or may pay to the widow or the eldest major son or, in the absence of any of them, to the nearest kin of the deceased workman a sum equivalent to two months' wages for the funeral expenses of such workman on the very day of the demise of the workman concerned. It should also be provided that such expenditure or payment will be over and above the employer's liability to deposit compensation in accordance with the other provisions of the Act. And that in case of the employer's failure to adopt any of the two alternative courses, over and above the compensation amount, a sum equivalent to two months' wages shall be deposited by the employer with the Commissioner for being paid to the dependants legally entitled thereto. And that such amount shall be recoverable from the employer under the Act in the same manner as the amount of compensation required to be deposited by him.

3.8. Need for amendment of the first proviso to section 30 providing that no appeal shall lie against an order for payment of compensation unless the amount in dispute is not less than three hundred rupees. - The Legislature has, in its wisdom, engrafted a rider to the provision relating to appeals arising out of order for payment of compensation having regard to the pettiness of the amount involved. The concerned provision reads thus:-

"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;
- (aa) an order awarding interest or penalty under Sec.4-A;
- (b) an order refusing to allow redemption of a half-monthly payment;
- (c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Sec. 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 Cl (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided....:

Provided....". (Emphasis added)

The Legislature had considered it appropriate not to confer a right of appeal when the sum involved is less than Rs.300. This provision was made in 1923. Having regard to the fall in the value of the rupee and the erosion which has taken place in the wake of the inflation over a period of more than 50 years, the figure of Rs.300 has become irrelevant and out of tune with the realities. Under the circumstances, in order that the provision serves some purpose, it requires to be modified by substituting the figure of Rs.3,000 in place of Rs.300 for two reasons. Firstly, having regard to the steep rise in the litigation expenses, the parties are likely to spend nearly the amount involved (Rs.3,000) in contesting the litigation. Ultimately, no party will gain from the transaction. Secondly, the appeal has been provided to the High Court and the High Court, being over-burdened with work, the dispute would

remain in abeyance for very many years. In any case, in view of the changed circumstances, the figure of Rs.300 in the first proviso to section 30(1) deserves to be substituted by the figure of Rs.3,000 by a suitable amendment.

3.9. Employer's obligation to deposit the payment of the amount ordered by the Commissioner in order to be entitled to prefer an appeal under section 30.- The Legislature has in its wisdom provided that the deposit of the amount ordered to be paid by the employer in respect of compensation payable to the workman or to the dependants of the deceased workman shall be a condition precedent for preferring an appeal. A reference may be made to the third proviso to sub-section (1) of section 30 which reads thus:-

"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."

In the proviso, a reference has been made to an appeal under clause (a) having regard to the fact that at that point of time no appeal was provided against an order awarding interest or penalty under section 4A. Subsequently, by virtue of section 15 of Act 8 of 1959, which came into force

with effect from June 1, 1959, sub-clause (aa) has been added to clause (1) which provides for an appeal against an order awarding interest or penalty under section 4A. The resultant position is that while the employer would have to deposit the amount ordered to be paid as compensation for preferring an appeal under clause (a), he will not be required to make any such deposit in respect of an appeal directed against an order awarding interest or penalty under clause (aa) of section 30(1). The same reasoning will apply pro tanto to an appeal against an order awarding interest or penalty. If the employee has to make recourse to recovery proceedings after a protracted litigation, it will work great hardship. It is, therefore, desirable that the third proviso to section 30(1) be amended by substituting the words "Provided further that no appeal by an employer under clause (a) shall lie...." by the words "Provided further that no appeal by an employer under clauses (a) and (aa) shall lie unless....". We, therefore, recommend accordingly.

3.10. Withholding of amount awarded to the workman pending appeal preferred by the employer.- The concerned provision in section 30A is in these terms:-

"30-A. Withholding of certain payments pending decision of appeal. - Where an

employer makes an appeal under Cl.(a) of sub-section (1) of Sec.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."

Merely because the employer has preferred an appeal, it would be unfair to deprive the injured workman or the dependants of the deceased workman to avail of the fruits of the litigation. The power conferred on the Commissioner to withhold payment upon mere appeal being filed is, therefore, liable to be used in such a manner that causes untold hardship to the workman. On the other hand, the employer can always obtain a suitable order of stay from the High Court provided the High Court is satisfied that there is a case for granting stay on such conditions that the High Court may choose to impose on taking into account the relevant considerations and the facts of the case before the Court. Section 30A has, therefore, become redundant and serves no useful purpose. Its existence is liable to result in injustice whereas its repeal is not liable to cause any hardship to any party since the High Court can always pass a suitable order of stay if it is called for by the circumstances of the case. Section 30A, therefore, deserves to be repealed.

3.11. Commissioner to decide the compensation case within six months. By the very nature of things, a case relating to compensation under the Act requires to be disposed of with expedition and urgency. For, delay in such cases will defeat the very purpose of the legislation, and offend the spirit underlying the benevolent provisions of the Act. It is, therefore, recommended that the Act should be amended by introducing a new provision requiring the Commissioner to dispose of the matter within six months of its institution as far as practicable.

3.12. Need for consequential amendments in statutes where a reference has been made to the relevant provisions of Workmen's Compensation Act, as they exist. In Dangerous Machines (Regulation) Act of 1983 and in the Scheme framed under the Personal Injuries (Compensation Insurance) Act of 1963, the provisions of the Workmen's Compensation Act, 1923, have been incorporated by reference in regard to determination and payment of compensation. If the recommendations being made under the present report are accepted and appropriate amendments are incorporated in the Workmen's Compensation Act as it exists today, there is a likelihood of a serious complication arising in the administration of the aforesaid two

Acts. For, it would not be clear whether the reference to the Workmen's Compensation Act should be treated as the reference to the Act as it then stood or to the Act as it is amended from time to time. The legal position in this respect is extremely uncertain. Under the circumstances, it would be appropriate to make consequential amendments in the concerned provisions of the aforesaid two Acts so as to avoid any confusion in the administration of these statutes. It will be necessary to amend sub-section (2) of section 22 of the Dangerous Machines (Regulation) Act of 1983 as also paragraphs 2(h) and 17 of the Scheme framed under the Personal Injuries (Compensation Insurance) Act, 1963 by substituting the words "Workmen's Compensation Act, 1923, as amended from time to time" in place of the words "Workmen's Compensation Act, 1923".

3.13. We are wholly convinced and fully satisfied that amendments to the relevant provisions of the Workmen's Compensation Act, 1923, in the manner indicated hereinabove will result in ameliorating the distress of the workmen who sustain injuries and of the dependants of the workmen who lose their lives whilst serving their masters, to a considerable extent. We, therefore, recommend accordingly with the hope that the meritorious

cause of the workers will receive earliest attention.

(M.P. THAKKAR)
CHAIRMAN

(Y.V. ANJANEYULU)
MEMBER

(P.M. BAKSHI)
MEMBER

(G.V.G. KRISHNAMURTY)
MEMBER SECRETARY

NEW DELHI, DATED THE 28TH SEPT., 1989.