

JOINT SELECT COMMITTEE
REPORTS OF LEGISLATIVE
ASSEMBLY - 1923

The Workmen's Compensation Bill

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Joint Committee to which the Bill to define the

1. Paper No. I (Opinions from Madras, Burma and Bengal).
2. Paper No. II (Opinions from Bombay, Bengal, Madras, North-West Frontier Province and the United Provinces).
3. Paper No. III (Opinions from Burma, Madras, Bengal and the United Provinces).
4. Paper No. IV (Opinions from Bombay, Bengal, Ajmer-Merwara, Delhi, the United Provinces and London).
5. Paper No. V (Opinions from Delhi, Bihar and Orissa, Bengal, Bombay and Coorg).
6. Paper No. VI (Opinions from Panjab, Bengal, Bombay and Assam).
7. Paper No. VII (Opinions from Baluchistan, the United Provinces and Bombay).
8. Paper No. VIII (Opinions from Bombay, the Central Provinces, Burma, Bihar and Orissa and Bengal).
9. Paper No. IX (Opinion from Bengal).
10. Paper No. X (Opinions from Bengal).
11. Paper No. XI (Opinion from Bengal).
12. Paper No. XII (Opinion from the Panjab).
13. Paper No. XIII (Opinion from Bombay).
14. Précis of opinions.

liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report with the Bill as amended by us annexed thereto.

2. Since the Joint Committee was appointed one member from the Council of State and two members from the Legislative Assembly have resigned their seats; and two other members of the Committee have been prevented from attending any meetings.

At the first meeting of the Committee, the Honourable Mr. Innes was elected Chairman.

3. *Title and Preamble.*—Perhaps the most important alteration which we have made in the Bill is the elimination of the provisions relating to employers' liability. The majority of us are not satisfied that it is either necessary or wise to retain these provisions in the Bill. It has not been demonstrated to our satisfaction that the Courts in India will apply the judge-made doctrines of common employment and assumed risk. If these doctrines are accepted by the Courts in India, legislation on the lines of the Employers' Liability Act, 1850 (43 and 44 Vict., Cap. 42), will have to be considered. But in that event the defences of common employment and assumed risk, if they are regarded as inequitable, should be removed not merely for the very limited classes of workmen to whom this Bill will apply, but for all workmen. On the whole, therefore, we are of opinion that it is wiser to restrict the scope of the present Bill to workmen's compensation and to avoid anticipating a difficulty which may arise, and for which the Bill, as drafted, contained only a partial remedy.

Clause 2 (1) (c) [now clause (2) (1) (d)].—We have considered very carefully the question of modifying the definition of "dependant". We are of opinion that to introduce, as has been suggested, a provision requiring proof of dependence as apart from relationship, would confer no benefit upon the employer, because the number of workmen who have no dependants is negligible. On the other hand it would involve the family of a deceased workman in numerous internecine disputes, with consequent loss and delay in the payment of compensation. Nor do we think that it is possible to introduce without risk of dangerous complication any system of ranking relations in grades of dependency. Accepting these principles we are of opinion that the list of dependants should be as limited as possible. We have, however, decided to include minor brothers and unmarried sisters of a deceased workman.

Clause 2 (1) (f) [now clause 2 (1) (g)].—We have added to Schedule I as a cause of permanent partial disablement the loss of one eye and have fixed 30 per cent. as the percentage of disablement caused thereby.

Clause 2 (1) (h) [now clause 2 (1) (i)].—We prefer in defining the expression "qualified medical practitioner" to follow the definition contained in the Indian Factories Act, 1911.

Clause 2 (1) (s) [now clause 2 (1) (j) and (k)].—In deference to the opinions expressed on behalf of the maritime interests in India, we have excluded the masters of ships from the definition of "seaman" in the Bill. As, however, the Bill will not extend to the masters of ships other than those already mentioned in sub-clause (j), the change involves a new definition, namely, of "registered ship"; it also involves consequential alterations in clause 18 (now clause 15) of the Bill.

A much larger question which arises with regard to seamen is the possibility of applying the Act in the case of the crews of vessels registered, whether in or outside of British India, under the Merchant Shipping Act, 1894 (57 and 58 Vict., Cap. 60). We realise that there are important legal difficulties in providing an alternative remedy in the cases of such seamen, but we recommend that the whole question be taken up with the British Government and we hope that some solution may eventually be found under which a seaman employed on a ship on the British register will have a more speedy remedy than he at present possesses.

Clause 2 (1) (k) [now clause 2(1)(m)].—We have made it clear in this definition that “wages” is not to include any contribution paid by an employer towards a pension or provident fund, as such a fund is itself designed to secure to the workman benefits of a similar kind to those conferred by the Bill.

Clause 2 (1) (l) [now clause 2 (1) (n)].—We recognise the reason for the inclusion of all railway servants (other than those excepted) in the definition of “workman” as originally drafted, but we think that where railway servants fall under any class specified in Schedule II their eligibility for compensation should be subject to the conditions regarding employment by way of manual labour or of a maximum wage to which other persons included in that Schedule are subject.

We have added to Schedule II persons engaged in the setting up, repairing, maintaining or taking down of any overhead electric cable, and in the case of sewage workers we have extended the definition so as to cover persons engaged in the construction of underground sewers.

Clause 2 (3).—We have adopted a suggestion made that the power of extending the scope of the definition of “workman” which is conferred by this sub-clause should be exercised only after not less than three months’ notice has been given of the intention to do so. This will give the Government an opportunity of abandoning or modifying the intention after consideration of any objections which may be received.

Clause 6 (1) [now clause 3 (1)].—Strong objection has been taken in several quarters to the expression “which he may reasonably be expected to have remembered” in sub-clause (2) of proviso (b) to this clause. We are impressed by the argument that it would be difficult for an employer to prove that a workman could reasonably be expected to have remembered any particular order, and it would be equally difficult for a Commissioner to come to any decision on such a question. We have therefore altered the sub-clause so as to confine the exception to which it relates to the case of wilful non-compliance with an order or regulation made for safety purposes. We have also inserted the word “wilful” in sub-clause (3), in order to prevent the clause operating in cases where the removal of the safeguards was a pure accident.

In the Bill as referred to us provision was made that, although the accident was directly attributable to the misconduct of the workman, the employer would be liable to pay half compensation if the accident resulted in the death or complete permanent disablement of the workman. The majority of us have been impressed by the volume of opinion to the effect that it is unjust to the employer to make him liable to pay any compensation at all in a case where he has done everything in his power to prevent an accident. We recognise that not the least of the advantages which may be hoped to result from this legislation is an increased degree of care and precaution against accidents on the part of employers, and apart from the obvious injustice of penalising an innocent person for an occurrence which is beyond his control, we consider that such a provision would actually run counter to one of the main principles on which the Bill is based. We have accordingly provided definitely that no compensation shall be payable in the cases referred to in clause (b) of this proviso.

In clause (c) of the same proviso, we consider that there is no adequate justification for limiting the protection afforded to persons employed in sewage maintenance to fatal accidents due to sewer gas. We have accordingly deleted the first part of this proviso.

Clause 6 (3) [now clause 3 (3)].—We consider that, before a fresh disease is scheduled, sufficient time should be given for the expression of public opinion upon such a proposal. We have accordingly provided for the giving of three months’ notice before a final notification is issued scheduling any disease as an occupational disease.

Clause 7 (now clause 4).—We have given long and earnest consideration to the scales of compensation laid down in this clause and have come to the conclusion that on the whole they represent a very fair compromise between the divergent interests. Apart, therefore, from slight drafting alterations, we have made only three changes. In the first place, we have increased the amount of compensation in the case of a fatal accident to a minor from Rs. 60 to Rs. 200. In doing so, we have in mind the necessity of guarding against any provision which would infringe the well-known principle which forbids the insurance of the life of a child and might encourage the deliberate planning of fatal accidents to child workers. In our view the increase of the amount to Rs. 200 whilst not infringing this principle meets the views of those who were of opinion that the original provision appeared to hold somewhat cynically cheap the life of a minor.

Secondly, we have reduced the period over which half-monthly payments may extend from seven to five years. The number of cases of temporary disablement lasting for any considerable period will be extremely small and we are of opinion that the period specified in the original Bill may be reduced with safety, more especially as we have modified the provisions for review in order to safeguard more thoroughly the interests of the workmen.

Thirdly, we decided in considering the provisions of clause 9 (now clause 6), that it ought not to be necessary in every case to review the half-monthly payment of a minor when he attains the age of fifteen years. We have accordingly provided in this clause that on the attainment by a minor of that age, his half-monthly payment shall automatically be increased to half of the full amount of the wages which he drew at the time of the accident subject to the limit of Rs. 15.

Clause 8 (now clause 5).—We accept generally the method of calculation laid down in this clause, but we observe that under clause (a) a workman who has been in continuous employment and who has during the twelve months preceding the accident received an annual bonus will have earned only a proportion of that bonus which will decrease according to the time which has elapsed between the receipt of the bonus and the accident. For example, if a bonus is paid on the 1st of January in respect of the preceding twelve months' work and the workman is injured on the 1st of July next following, only half the amount of the bonus would have been earned during the twelve months preceding the accident and it would not be possible to assume that a bonus on the same scale or any bonus at all had been earned by the last six months' work. We have accordingly made a slight alteration in clause (a) to meet this point. It does not, however, arise in respect of clause (b) which deals with labour which is *ex hypothesi* not continuous and would therefore not rank for bonus. In order to make this clause more exclusively applicable to such cases and in view of the fact that few, if any, Indian workmen work continuously without at least one break of more than ten days in a year, we have altered from ten to fourteen days the period of absence from work which should be deemed to break the continuity of service.

Clause 9 (now clause 6).—Apart from the question of the compulsory review of the half-monthly payments made to a minor with which we have already dealt in our remarks on clause 7 (now clause 4) we have amplified the provisions of this clause in order to cover the case where temporary disablement turns out to be permanent. We have also made it clear that a half-monthly payment payable under an agreement may be brought under review and, if the employer has stopped payment, may be continued by order of the Commissioner.

Clause 11 (now clause 8).—We do not see any reason for giving the Commissioner power to withhold direct payment of compensation to any adult who is not under any legal disability, and have provided accordingly.

The subject-matter of sub-clause (7) of this clause has been the object of considerable discussion in the Committee. This clause, as originally drafted, while permitting the Commissioner to pay the whole sum deposited with him, restricted the recurring payments which he could make to Rs. 15 half-monthly. The clause would normally come into operation only when the Commissioner had reason to fear that the death of the workman might ensue, and in such cases payment on a more liberal scale might prove of the utmost assistance to the injured workman. We have therefore made a small modification in this clause to enable the Commissioner to make such half-monthly payments as he may consider suitable. At the same time, the majority of us are not prepared to accede to the view of those members of the Committee who would prefer the total excision of the latter part of this clause.

Clause 13 (now clause 10).—We have given careful consideration to the opinions of those who consider that the period of notice originally fixed at 72 hours from the time of the accident is too short or that the manner in which the period is fixed is too rigid, and we have decided to adopt the language of section 2 of the Workmen's Compensation Act, 1906 (6 Edw. VII, Cap. 5c), including the stipulation that the notice must be given before the workman has voluntarily left the employment in which he has been injured. This latter provision appears to us peculiarly necessary in view of the migratory character of Indian labour. We think that, under the clause as modified and considered along with the proviso which gives the Commissioner discretion to admit a claim where the notice or claim has not been made in due time, the risk of a workman being undeservedly deprived of compensation by a technicality will be obviated.

Clause 14 (now clause 11).—The majority of us think that, if the employer on receipt of notice of an accident requires the workman to be medically examined, he need not be given so long as seven days in which to make the offer to the workman. We have accordingly reduced the period of seven days referred to in sub-clause (1) to three days.

We think that a rigid provision automatically penalising any workman who refuses to submit himself to medical examination would be apt to operate hardly upon a workman who is prevented by circumstances which he has no power to control from complying with the requisition. We have accordingly given a discretion, which will eventually devolve upon the Commissioner, to decide whether the reasons for the refusal were sufficiently cogent or not.

We observe that, under the clause as drafted, the workman was not penalised for a refusal to submit himself to medical examination which he does not maintain after the tenth day from the disablement, as no compensation is, under the Bill, payable in respect of the waiting period of the first ten days. We have accordingly by a majority decided to amplify sub-clause (3) to provide that the waiting period shall be extended by the period during which the refusal was continued.

Clause 15 (now clause 12).—Under this clause, as drafted, the liability to pay compensation was thrown primarily upon the employer. Sub-clause (2) which gave him a statutory right of indemnity against a contractor applied only to contracts made before the commencement of the Act. The effect of this was that, in the case of a contract made after the passing of the Act, the employer would not be entitled to be indemnified by the contractor unless he had inserted in the contract a special stipulation to this effect. In most cases written contracts are not entered into and the employer would have little or no protection against collusion between the contractor and the workman. In other cases, the contractors are themselves men of substance and it would be more convenient for all the parties concerned if the workmen

were able to recover compensation from the contractor in the first instance. We have accordingly modified this clause to bring it into line with the principles followed in section 5 of the English Act. The workman is thus enabled to proceed against the contractor or against the employer, and the contractor is liable to indemnify the employer in all cases. We have at the same time made the application of the section somewhat clearer by substituting the words "which is ordinarily part of the trade or business of the principal" for the words "which has been or is ordinarily undertaken by the principal in the course of or for the purposes of his trade or business."

We have, further, eliminated the provision which in the Bill as introduced exempted the Government and local authorities from the liability imposed by this clause.

Clause 18 (now clause 15).—In view of the alteration which we have made in clause 13 (now clause 10) regarding the period of notice, sub-clause (2) of this clause has become unnecessary, and we have omitted it.

Clause 24 (now clause 21).—We think there is force in some of the opinions which have been expressed to the effect that it would be unfair to the employer to give the Commissioner unlimited power to transfer a case to a place remote from the place where the accident occurred so long as any question remains outstanding or might arise respecting the payment, increase or decrease of compensation. We have accordingly provided that, save with the consent of the parties, the sanction of the Local Government or of the Governor General in Council shall be required to a transfer for disposal of such a case according as it is transferred to another Commissioner in the same province or to another Commissioner in another province.

Clause 32 (now clause 29).—The intention of this clause, as drafted, was that the employer, if he failed to register an agreement, should be compelled to pay full compensation notwithstanding any payments which he had already made under the agreement. We think that this penalty would be unduly severe and we also think that it was doubtful under the clause, as originally drafted, whether the employer would not still be entitled, under the proviso to clause 7 (now clause 4), to deduct those payments. We have accordingly redrafted the clause and have provided that the employer shall not in any case be liable to lose more than half the amount of any payments which he has already made, while it will be possible for the Commissioner to reduce the penalty further if he thinks fit.

4. The other alterations which we have made in the Act are chiefly of a drafting nature. Those which are not, do not, in our opinion, require any special comment.

5. The Bill was published in the Gazette of India, dated the 16th September, 1922.

6. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

C. A. INNES.

V. G. KALE.

G. S. KHAPARDE.

A. H. FROM.*

A. C. CHATTERJEE.

TEK CHAND.

N. M. JOSHI.*

K. C. NEOGY.*

T. RANGACHARIAR.*

RAZA ALI.*

P. C. SETHNA.

M. B. DADABHOY.

P. P. GINWALA.

DARCY LINDSAY.

B. S. KAMAT.

A. R. Murray

DELHI:

The 23rd January, 1923. }

I reserve my right to dissent to clause 12.

A. H. FROOM.

The 23rd January, 1923.

Signed subject to the following minute of dissent.

(1) In clause 2, sub-clause (1), sub-section (c) I would include among the dependents, grand-father and grand-mother in case both the parents are dead and minor and fatherless grand-son and minor and fatherless grand-daughter.

(2) Instead of omitting the sections referring to the employers' Liability I would have extended the application of their principle to all workmen.

(3) In clause 3, sub-clause (1) sub-section (b) I would like to retain the words which provided for compensation in case of death and permanent total disablement even where serious and wilful misconduct has been proved. This is in accordance with English practice for departing from which no reason can be shown.

(4) In clause 3, sub-clause (5) I would follow the English principle and allow the civil court, before which a case for damages for injury according to the common law has been lodged, to send the case to the Commissioner if it finds that no case for damages could be made out but a claim for compensation under this Act could be proved.

(5) In clause 4, sub-section (1) (a) I would give a minimum compensation of Rs. 500 in case of the death of an adult person where the amount of his 30 months' wages is less than Rs. 500. In the same clause sub-clause (b) (1) and (2) I would like to suggest that a minimum compensation of Rs. 1,000 be paid.

(6) *Clause 8, sub-clause (7).*—I consider this section to be unnecessary and unfair to the workmen. In the first place in the case of a permanent disablement especially permanent total disablement it would have been fair and humane if we had adopted the English practice of providing for the maintenance of the disabled person throughout his life. But we do not adopt the English proposals in order to lighten the burden on the industry. In this Bill the industry is not made responsible for the maintenance of a disabled workman if he lives longer than, say, seven years after the accident. But we take advantage of the likelihood of early death of the man and give its benefit to the employer. I think this is mean. We do this in order to enable the employer to make a saving of Rs. 1,000 and even less. If the workman is a child and is highly paid, no doubt there will be a large saving to the employer but there will be a great danger of the child not receiving adequate treatment and comfort during the period of the illness. I, therefore, am of opinion that this sub-clause be deleted. If this view is not adopted I propose that the award of a lump sum as compensation for permanent disablement be changed into the payment of monthly instalment equal to half his salary till the end of his life. This will be fair both to the employer and to the workman.

N. M. JOSHI.

The 22nd January, 1923.

I generally agree with Mr. Joshi.

2. I understand that Government propose to extend the benefits of this Bill to certain classes of the employees of the Postal Department, under sub-clause (3) of clause 2 of the Bill. I would like Government to make their position clear on this point when this report is considered in the Legislative Assembly.

K. C. NEOGY.

The 23rd January, 1923.

I agree with Mr. Joshi and wish to add the following :—

1. I agree with Mr. Joshi that the word "dependent" may include the grand-parent in the absence of a parent and also include a fatherless grand infant child.

2. (4) "Qualified Medical Practitioner". I would give power to all Local Governments in all areas to notify persons other than a registered practitioner as a "qualified medical practitioner" and would therefore omit all the words "in any area where no such last mentioned Act is in force". Local Governments may well be trusted and they are not going to qualify wholly disqualified practitioners. There may be persons who for reasons of their own may not wish to register themselves or who are not fully qualified to come on the register and yet qualified enough to say "a man lost a finger", etc.

3. I am not satisfied that it is *ultra vires* for the Indian Legislature to legislate for Indian seamen employed in foreign registered ships. It is competent to the Indian Legislature to legislate for all persons and things in British India and for all Indian subjects. Foreign registered ships when they are in India and Indian waters will be in Indian jurisdiction, also most of them have agents in British India carrying on business here—why should the seamen on such a ship be driven to seek remedy in a far off corner of the globe. I would amend the definition of 'registered ship' to include such cases also. If the ship is not in the jurisdiction or has no agency here there will be no remedy here.

4. Section 3, sub-clause 5, goes too far in my opinion in preventing a civil suit if a claim to compensation has been instituted before a Commissioner. In a civil suit the person claiming damages has to prove a number of other circumstances which he need not prove under this Act. The amount to be awarded under this Act is quite limited and may be unsuited in some cases. A man permanently disabled is provided under this Act with maintenance only for 42 months. What is he to do for the rest of his life? There may be some cases of neglect on the part of the employer in which the award of heavy damages will be just and equitable. At the same time a man should not be vexed twice over for the same cause of action is also a wholesome rule. Having regard to both these considerations I would amend the latter portion of the clause as follows:—"and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury if he has received compensation in respect of the injury under the provisions of this Act except with the leave of the Commissioner and in any suit so instituted the amount of compensation recovered under this Act shall always be taken into account in awarding damages."

5. *Clause 6.*—The majority are anxious to avoid loopholes for litigation and yet provide for such a loophole here in clause (b) of the proviso which is a departure from the English Law. It is a common sense rule to believe that no man will wilfully kill or permanently disable himself unless he was a lunatic or temporarily insane. Why should the employer escape liability. I would retain the section as it was which gave only half compensation.

T. RANGACHARIAR.

The 22nd January, 1923.

Signed subject following dissent.

I am afraid I am unable to agree with the majority in accepting clause (3) (1) (b). My view is that the provision as embodied in clause (6) (1) (b) of the original Bill should be retained. According to the English Law the employer is liable to pay full compensation in the case of death or permanent total disablement even if the accident is due to the misconduct of the workman. The original Bill made provision, in cases where the accident was attributable to his misconduct, for compensation being paid at half the prescribed rate if it resulted in death to the workman or in his total permanent disablement. I think this is quite fair to employers of labour in India.

The 23rd January, 1923.

RAZA ALI.

(Words printed in italics indicate the amendments suggested by the Committee.)

▲
BILL

TO

Provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

WHEREAS it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Workmen's Short title, extent and Commencement.
Compensation Act, 1924 .
commencement.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

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

2. (1) In this Act, unless there is anything repugnant in the subject or Definitions. context,—

(a) "adult" and "minor" mean respectively a person who is *not* and a person who is *under* the age of fifteen years;

(b) "Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20;

(c) "*compensation*" means *compensation as provided for by this Act*;

(d) "*dependant*" means the wife, husband, father, mother, minor son, minor daughter, *minor brother or unmarried sister* of a deceased workman;

(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 a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman 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;

(g) "*partial disablement*" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of 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 in 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 under the Medical Act, 1858, or any Act amending the same, or under any Act of any Legislature in British India 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 Local Government, by notification in the local official Gazette, to be a qualified medical practitioner for the purposes of this Act; 21 & 22 Vict. c. 90.
- (j) "registered ship" means any sea-going ship registered under the Bombay Coasting Vessels Act, 1-38, or the Indian Registration of Ships Act, 1-41, or the Indian Registration of Ships Act (18-1) Amendment Act, 1851, or any home-trade ship so registered of a registered tonnage of not less than three hundred tons, or any inland steam-vessel as defined in section 2 of the Inland Steam Vessels Act, 1917, or of a registered tonnage of not less than one hundred tons; XIX of 1838, X of 1841, XI of 1850, I of 1917.
- (k) "seaman" means any person forming part of the crew of any registered ship, but does not include the master of any such ship;
- (l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of 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;
- (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 a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;
- (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—

IX of 1896.

(i) a railway servant as defined in section 3 of the Indian Railways Act, 1890, 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

(ii) employed, either by way of manual labour or on monthly wages not exceeding three hundred rupees, 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 His Majesty's naval, military or air forces or of the Royal Indian Marine Service; 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.

(2) The exercise and performance of the powers and duties of a local authority or of any department 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.

(3) The Governor General in Council after giving, by notification in the Gazette of India, not less than three months' notice of his intention so to do, may, by a like notification, direct that the provisions of this Act shall apply in the case of 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 employed by way of manual labour or on monthly wages not exceeding three hundred rupees in any occupation declared by such notification to be a hazardous occupation, or that the said provisions shall apply in the case of any specified class of such persons or in the case of any such person or class to whom any specified injury is caused; and any person in whose case the said provisions are so made applicable shall be deemed to be a workman within the meaning of this Act.

CHAPTER II.

WORKMEN'S COMPENSATION.

3. (1) If personal injury is caused to a workman 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:

Employer's liability for compensation.

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 workman for a period exceeding ten days;

(b) *in respect of any injury to a workman resulting from an accident which is directly attributable to—*

(i) *the workman having been at the time thereof under the influence of drink or drugs, or*

(ii) *the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or*

(iii) *the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen; or*

(c) *except in the case of death or permanent total disablement, in respect of any workman employed in the construction, repair or demolition of a building or bridge.*

(2) *If a workman employed in any employment involving the handling of wool, hair, bristles, hides or skins contracts the disease of anthrax, or if a workman whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Schedule III, 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 employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.*

Explanation.—For the purposes of this subsection a period of service shall be deemed to be continuous which has not included a period of service under any other employer.

(3) *The Governor General in Council, after giving, by notification in the Gazette of India, not less than three months' notice of his 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 the 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 the provisions of subsection (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.*

(4) *Save as provided by sub-sections (2) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is solely and 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 a workman 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 a workman 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 workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

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—

- (i) in the case of an adult, a sum equal to thirty months' wages or two thousand five hundred rupees, whichever is less, and
- (ii) in the case of a minor, two hundred rupees ;

B. Where permanent total disablement results from the injury—

- (i) in the case of an adult, a sum equal to forty-two months' wages or three thousand five hundred rupees, whichever is less, and
- (ii) in the case of a minor, a sum equal to eighty-four months' wages or three thousand five hundred rupees, whichever is less ;

C. Where permanent partial disablement results from the injury—

- (i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and
- (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury ;

Explanation—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day after the expiry of a waiting period of ten days from the date of the disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter,—

- (i) in the case of an adult, of fifteen rupees or a sum equal to one-fourth of his

monthly wages, whichever is less, and

- (ii) in the case of a minor, of a sum equal to one-third or, after he has attained the age of fifteen years, to one-half of his monthly wages, but not exceeding in any case fifteen rupees :

Provided that there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be, and no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

5. For the purposes of section 4 the monthly wages of a workman shall be calculated as follows, namely :—

Method of calculating wages.

- (a) where the workman 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 workman 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 ;
- (b) in other cases, 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 :

Provided that the sum arrived at by a calculation under clause (a) or clause (b) shall be increased or decreased, as the case may be, to the amount specified in the second column of Schedule IV against the head specified in the first column thereof within the limits of which such sum is included.

Explanation.—A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

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

7. 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. (1) Compensation payable in respect of a workman whose injury has resulted in death shall be deposited with the Commissioner, and any sum so deposited shall 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 such dependant, and the sum so allotted to any dependant shall be paid to him or, if he is a person under any legal disability, be invested, applied or otherwise dealt with for his benefit during such disability in such manner as the Commissioner thinks fit.

(2) Any other compensation payable under this Act may be deposited with the Commissioner and, when so deposited, shall be paid by the Commissioner to the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any amount deposited with him under sub-section (1) or sub-section (2).

(4) On the deposit of any money under sub-section (1), the Commissioner may 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.

(5) Where a half-monthly payment is payable under this Act to a person under any legal disability, the Commissioner may, of his own motion or on application made to him in this behalf, order that the half-monthly payment be paid during the disability to any dependant of the workman or to any other person whom he thinks best fitted to provide for the welfare of the workman.

(6) 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.

(7) Where any lump sum has been paid to an injured workman or, under the orders of the Commissioner, to any person on his behalf, and such sum exceeds in amount the sum which would have been payable if the injury had resulted in the death of the workman, the employer shall not be entitled to recover the balance in the event of the death of the workman; but if the employer has deposited such lump sum with the Commissioner, the Commissioner may, for reasons to be recorded in writing, make to the workman, during a period not exceeding six months *from the date of the accident*, half-monthly payments of such amount as he thinks fit, and withhold payment of the balance during the continuance of such payments. If the workman dies before the balance is paid to him, the Commissioner shall repay to the employer the difference between the amount paid by the employer and the amount payable under this Act in the case of the death of the workman, or the balance remaining in the hands of the Commissioner, whichever is less.

9. 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 workman by operation of law, nor shall any claim be set off against the same.

10. (1) No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been instituted within six months of the occurrence of the accident or, in case of death, within six months 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 workman was continuously absent from work in consequence of the disablement caused by the disease:

Provided, further, that the Commissioner may admit and decide any claim to compensation in any case *notwithstanding that the notice has not been given, or the claim has not been instituted, in due time as provided in this sub-section*, if he is satisfied that the failure so to give the notice or *institute 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 upon any one or several employers, or upon any person directly responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The notice may be served by delivering the same 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.

11. (1) Where a workman has given notice of an accident, he shall, if the employer within *three days* offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman 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 a workman 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) If a workman, 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 and to take or prosecute any proceeding in relation to compensation or, in the case of a workman in receipt of half-monthly payments, his right to receive half-monthly payments shall be suspended until such examination has taken place *unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.*

(3) Where under sub-section (2) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, *where the suspension is due to refusal or obstruction in respect of a medical examination which the employer has offered within three days of the notice of the accident, the waiting period referred to in clause D of sub-section (1) of section 4 shall be increased by the period during which the refusal or obstruction has continued.*

(4) Where an injured workman 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, if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal, failure or disregard 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 the workman had been regularly attended by a qualified medical practitioner, and compensation, if any, shall be payable accordingly.

12. (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 any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman 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 workman 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, 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 workman 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. Where a workman 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.

Remedies of employer against stranger.

14. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, 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

Insolvency of employer.

relating to insolvency or the winding up of companies, be transferred to and vest in the workman; 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, &c, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman 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 workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give 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, or under III of 1909, section 61 of the Provincial Insolvency Act, 1920, V of 1921, or under section 230 of the Indian Companies Act, 1913, are in the distribution of the property VII of 1913, 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 whereof 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 application 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.

15. This Act shall apply in the case of workmen who are *masters of registered 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 within six months 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.

(3) Where an injured *master or seaman* is discharged or left behind in any part of His Majesty's dominions or in a 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 Governor General in Council or any Local 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.

(4) In the case of the death of a *master or seaman* leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being in British India relating to merchant shipping liable to pay the expenses of burial of the *master or seaman*, return to the employer the full amount of the compensation deposited under sub-section (1) of section 8 without making the deduction referred to in sub-section (4) of that section.

(5) No 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 being in British India relating to merchant shipping liable to defray the expenses of maintenance of the injured *master or seaman*.

16. The Governor General in Council may, by notification in the Gazette of India, direct that every person employing workmen, 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 Governor General in Council may direct.

17. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman 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. Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory, a certificate granted in respect of such person under section 7 or section 8 of the Indian Factories Act, 1911, before the occurrence of the injury shall be conclusive proof of the age of such person. XII of 1911.

CHAPTER III.

COMMISSIONERS.

19. (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 a workman) 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 the 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.

20. (1) The Local Government may, by notification in the local official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such local area as may be specified in the notification.

(2) 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.

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

21. (1) Where any matter is under this Act 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 local area in which the accident took place which resulted in the injury :

Provided that, where the workman is *the master of a registered ship or a seaman*, any such matter may be done by or before the Commissioner for the local area in which the owner or agent of the ship resides or carries on business.

(2) If a Commissioner is satisfied by any party to any proceedings under this Act pending before him that such matter can be more conveniently dealt with by any other Commissioner, whether in the same province 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 :

Provided that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lump sum shall be transferred for disposal under this sub-section to a Commissioner in the same province save with the previous sanction of the Local Government or to a Commissioner in another province save with the previous sanction of the Governor General in Council, unless all the parties to the proceedings agree to the transfer.

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire therein 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.

22. (1) No application for the settlement of any matter by a Commissioner 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) Where any such question has arisen, the application 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) a concise statement of the matters on which agreement has and on 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.

23. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose or 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. V of 1908.

24. 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 other person authorised in writing by such person.

25. 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.

26. 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. 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. 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 payable to a person under a legal disability or to a dependant, 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 ;
- (b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation and the employer proves that the workman has, in fact, returned to work and is earning the same wages as he did before the accident and objects to

the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Commissioner thinks just in the circumstances ;

- (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 to a person under any legal disability or to any dependant, 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 agreement or may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

29. 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 the workman by way of compensation whether under the agreement or otherwise.

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 for a lump sum ;
- (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, 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.

(2) The period of limitation for an appeal under this section shall be sixty days.

31. The Commissioner may recover as an arrear of land-revenue any amount payable by any person under this Act, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890.

I of 1890.

CHAPTER IV.

RULES.

32. (1) The Governor General in Council 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 a workman may be required to submit himself for medical examination under subsection (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 workman 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 ; and
- (i) for any other matter which is not, in the opinion of the Governor General in Council, a matter of merely local or provincial importance.

33. The Local Government may, subject to the control of the Governor General in Council, make rules to provide for all or any of the following matters, namely :—

- (a) for regulating the scales of costs which may be allowed in proceedings under this Act ;

- (b) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act ;
- (c) for the maintenance by Commissioners of registers and records of proceedings before them ; and
- (d) generally for carrying out the provisions of this Act in respect of any matter which is, in the opinion of the Local Government, a matter of merely local importance in the province.

34. (1) The power to make rules conferred by sections 32 and 33 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, as that after which a draft of X of 1897. rules proposed to be made under section 32 or section 33 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 the Gazette of India or the local official Gazette, as the case may be, and on such publication, shall have effect as if enacted in this Act.

SCHEDULE I.

[See sections 2 (1) and 4.]

List of injuries deemed to result in permanent partial disablement.

Injury.	Percentage of loss of earning capacity.
Loss of right arm above or at the elbow	70
Loss of left arm above or at the elbow	60
Loss of right arm below the elbow	60
Loss of leg at or above the knee	60
Loss of left arm below the elbow	50
Loss of leg below the knee	50
Permanent total loss of hearing	50
Loss of one eye	30
Loss of thumb	25
Loss of all toes of one foot	20
Loss of one phalanx of thumb	10
Loss of index finger	10
Loss of great toe	10
Loss of any finger other than index finger	5

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

SCHEDULE II.

[See section 2 (1) (a).]

List of persons who, subject to the provisions of section 2 (1) (a), are included in the definition of workmen.

The following persons are workmen within the meaning of section 2 (1) (a) and subject to the provisions of that section, that is to say, any person who —

- (a) employed in connection with the service of a tramway as defined in section 3 of the Indian Tramways Act, 1886 ; or XI of 1866.

- (ii) employed within the meaning of clause (2) of section 2 of the Indian Factories Act, 1911, in any place which is a factory within the meaning of sub-clause (a) of clause (3) of that section; or XII of 1911
- (iii) employed within the meaning of clause (c) of section 3 of the Indian Mines Act, 1901, in any mine as defined in clause (d) of that section; or VIII of 1901.
- (iv) employed as the master of a registered ship or as a seaman; or
- (v) employed for the purpose of loading, unloading or coaling any ship at any pier, jetty, landing place, wharf, quay, dock, warehouse or shed, on, in or at which steam, water or other mechanical power or electrical power is used; or
- (vi) employed in the construction, repair or demolition of—
- (a) a building which at the time when the accident on account of which compensation is claimed takes place comprises more than one storey wholly or partly above ground, or
 - (b) a building which is used or intended to be used for industrial or commercial purposes, or
 - (c) a bridge exceeding or intended to exceed fifty feet in length; or
- (vii) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any overhead electric cable; or
- (viii) employed in the construction, inspection or upkeep of any underground sewer; or
- (ix) employed in the service of any fire brigade.

SCHEDULE III.

(See section 3.)

List of occupational diseases.

Occupational disease.	Employment.
Lead poisoning or its sequelae.	Any process involving the use of lead or its preparations or compounds.
Phosphorus poisoning or its sequelae.	Any process involving the use of phosphorus or its preparations or compounds.

SCHEDULE IV.

(See section 5.)

Table of assumed wages.

Limits.		Assumed wages.		
When the sum arrived at by a calculation under clause (a) or clause (b) of section 5 is—				
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
less than	9 0 0	...	8 0 0	
not less than	9 0 0 but less than	1 0 0	10 0 0	
"	11 0 0 ditto	13 0 0	12 0 0	
"	13 0 0 ditto	17 8 0	15 4 0	
"	17 8 0 ditto	22 8 0	20 0 0	
"	22 8 0 ditto	27 8 0	25 0 0	
"	27 8 0 ditto	32 8 0	30 0 0	
"	32 8 0 ditto	37 8 0	35 0 0	
"	37 8 0 ditto	43 8 0	40 0 0	
"	43 8 0 ditto	50 0 0	46 4 0	
"	50 0 0 ditto	60 0 0	55 0 0	
"	60 0 0 ditto	70 0 0	65 0 0	
"	70 0 0 ditto	80 0 0	75 0 0	
"	80 0 0	83 5 4	

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Joint Committee on the
Bill to provide for the payment by
certain classes of employers to their
workmen of compensation for injury
by accident, with the Bill as amended.