A CRITICAL ANALYSIS OF THE RELIEFS AVAILABLE TO THE EMPLOYEES & THE SCOPE OF LIABILITIES ON THE EMPLOYER UNDER THE EMPLOYEE'S COMPENSATION ACT, 1923

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ABSTRACT:

The rapid development of Technology & Machinery used in Industries meant more associated risks at workplace for Employees. In the late 19th century, the Jurisprudence behind Employers Liability to pay compensation was only pertaining to Industrial Accident as a result of the Employers negligence. The Labour Jurisprudence behind legislations in India would soon evolve when Industrial Inspectors began to realize that the Fatal Accidents Act, 1885 was inadequate to address the issues faced workmen at the workplace.

Soon after the Workmen's Compensation Act, 1923 came into place addressing the concerns of the Labourers, the legislative intent behind the behind the enactment of this Provision was to ensure Social security & Labour welfare. After the 2010 amendment, a wider ambit was given to its applicability, and the term workmen was replaced with Employee's.

It is at the discretion of the Central Government to decide the Monthly Wage amount, which is revised from time to time. The Modi Government raised this said Wage from Rs. 8,000 to Rs. 15,000 in 2020. There has been a big conundrum as to its interpretation in several courts across the country. Several courts have taken different & varied stances, while some have taken a more Liberal approach some have taken a more stringent approach.

This paper aims to analyse the fairness of § 3 of the Act i.e. the burden placed on the Employer to compensate his/her Employees even in cases of added peril. Further this paper discusses the confusion in the Courts as to the Interpretation of the Applicability of the Monthly wage as Maximum or Minimum cap.

Keywords: Social security, Labour welfare, Monthly wage, Labour Jurisprudence, Workmen, Employees, Compensation.

CHAPTER – 1.

INTRODUCTION:

The Employees Compensation Act, 1923 (herein after ECA or the Act.) was enacted as a means to provide payment of compensation by the Employers to the workmen & their dependants[1]. This Act came into force on 1st July, 1924 it enacted with the aim to uplift the poor conditions of Workmen & secure the interests of these workmen by providing them relief in cases of any injury, disablement sustained or death during the course of their Job.[2]

The main intention behind the enactment of this Act was to ensure Labour welfare & social security. It was one of the first social security legislations intended to protect the Employees & compensate in instances of any accident at workplace. The compensation is mandated by the Government under this act to provide damages not only to employees who are Injured on the job or develop an illness as a result of their work, some benefits are provided to their families as well.

Essentially, it is a workers' disability insurance policy that pays out cash benefits, healthcare benefits, or both to employees who get sick or injured at work. The Workers' compensation provides the basic help to the workers who have endured damage or a sickness at work and help them just as their families recover. This is done as means to compensate the family who are the dependants to meet their needs during the time of recovery.

"Industrial society has a duty to make compensation for the necessary human wear and tear."[3] The objective of the Act is to "Provide for the payment by certain classes of employers to their workmen of compensation for injury by accident".[4] Initially known as the Workmen's Compensation Act, 1923 came to be known as the Employees Compensation Act, 1923 vide the 2010 amendment, where it gave a wider scope as to the applicability of this Act.

This Act came into place after the workers started to get injured due to the use of advanced machinery in Industries. The idea behind this compensation is that if there are certain expenses

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[1] Employees Compensation Act, 1923 § 2 (d) - "dependant" means any of the following relatives of deceased [employee].
[2] Employees Compensation Act, 1923. – Preamble.
[3] Jyotsna Nath Mallik, "*WORKMEN'S COMPENSATION ACT AND SOME PROBLEMS OF PROCEDURE*," 3 JILI, 131-60 (1961).
[4] *Supra note* 2 at 3.

set aside for the maintenance of the machinery, there should be some amount set aside to maintain or to prevent the wear and tear of humans of the workmen as well. Before the implementation of this Act, the previous existing legislations only provided for compensation in specific cases, but the Workmen's Compensation Act, 1923 provided for the compensation to be in proportion with the intensity of the injury.

The main aim of this act being that the employee must be able to sustain their livelihood even after there exists some work-related injury. Section 2(e) of the Act defines employer while Section 3 speaks of the Employer's Liability for compensation. Section 3 provides for the conditions where the Employer would be held liable to compensate the workers and situation wherein, he wouldn't. The Act in itself also provides for the amount which is to be compensated to these workmen who are injured with the amount varying with the seriousness of the injury. The Act states that the duties of the employers also encompass taking into account the welfare of their employees.

While the Act is only applicable to the industries specified in it, it protects the workmen from losses or injury caused by accident arising out of the course of employment. There also certain conditions that need to be fulfilled for the employer to be liable. The Act in its entirety is to protect the rights of the labourers and to provide the compensation they rightly deserve.

The applicability of this Act is confined to the employees who work in mines, docks, construction establishments, Factories, Oilfields, plantations & other establishments which are mentioned in the Schedule II of the Act it also covers those hired with the intention of working overseas and those employed outside of India as specified in Schedule II of the Act.

It covers anyone hired to work as a mechanic, driver, assistant, cleaner, or in any other capacity related to a motor vehicle, as well as captains and other crew members of aircraft. Additionally, the Act does not apply to employees covered under The Employee State Insurance (ESI) Act or members of the Union's military forces.

RESEARCH PROBLEM:

All though the Employee's compensation Act was enacted with an intension to provide relief to the Injured workmen during the course of their employment or workhours to ensure labour security and social welfare, it places an unreasonable amount of extended financial burden on

the Employer to compensate. This paper aims to analyse the Liability placed the employer and whether it places an excessive/ unreasonable burden on them.

RESEARCH OBJECTIVES:

1. To Analyse the scope of Liabilities of an Employer and Reliefs available to to an Employee under the Act.

2. To understand Minimum Wages under this the Act applied in the calculation of Compensation provided.

3. To analyse & determine the fairness of the liability the act places on employer.

RESEARCH METHODOLOGY:

The research methodology used in this paper is analytical & applied research methodology in order to critically analyse the provisions of the Employees Compensation Act & determine the imbalances in the employer - employee relationship under this Act. This paper will also be using data from various Primary & secondary sources such as Bare Acts, articles, Journals, and books on the topic as well as Judgments passed by various Indian Courts. This paper aims to incorporate these research methods to analyse the current Legislation and provide an Insight on the unfair burden placed on Employers, based on the Literature & Judgments reviewed in this paper.

CHAPTER – 2.

THE LIABILITIES OF AN EMPLOYER & THE RELIEFS AVAILABLE TO THE EMPLOYEES UNDER THE ACT.

2.1 THE LIABILITIES OF THE EMPLOYER U/S 3 OF THE EMPLOYEES COMPENSATION ACT.

§ 3 is the very cornerstone of this Act which lays down the Liability of the Employers to compensate, it provides relief to the employees who have incurred any personal injuries, arising in or during of the course of employment. This section single handedly addresses the entire objective of the Act since it specifies the instances in which the liability to compensate falls on the employer. However, it is § 4 that addresses the nature and extent of the liability and the amount of compensation to be provided under this Act.

In order to understand the provision, we need to look at some of the key terms used in § 3, here the term personal Injury refers to physical injury endured by the employee either external or internal. Chest pain that develops while on duty following extended periods of hard exertion is an unintentional internal injury. The terms Accident and injury are different when the accident is something that happens suddenly, unexpectedly or due to unforeseeable circumstances which causes harm to an individual, while Injury refers to various bodily injuries internally & externally, Emotional or damage to the Reputation. An injury is said to be caused due to an accident.

Aneurysm rupture, cardiac failure, and other Injuries serve as examples of these circumstances. In Section 3(1), "injury" has a broad meaning that includes all illnesses. It is a more general phrase than bodily injury and does not only refer only to an employee's actual physical harm.

In the case of ***Mackinnon Mackenzie & Co. (P) Ltd. v. Ibrahim Mohammed Issak***[5], a claim for compensation for the death of a missing seaman was made. The Employee worked as a deckhand onboard the ship but the claim was dismissed by Their Lordships, who also overturned the High Court's decision. In this case It was held & restated again that the onus of proof falls on the worker to demonstrate that the accident arose in the due course of Employment. Furthermore, In the case of ***Municipal Corpn. for Greater Bombay v.***

[5] Mackinnon Mackenzie & Co. (P) Ltd. v. Ibrahim Mohammed Issak, (1969) 2 SCC 607.

Sulochanabai Sadashiv Joil [6] more directly addressing the issue the Bombay High Court laid down certain criteria's to be met for liability to be placed on the Employer, The court held this as follows:

"Three factors must be established to attract the liability under Section 3 of the Act. Firstly, there must be an injury. Secondly, it should be caused in an accident. Thirdly, it should be caused in the course of the employment. Mere death in ordinary course by some bodily ailment or even in the course of employment cannot attract liability of the employer under Section 3. The words 'injury' and 'accident' in Section 3 of the Act imply the existence of some external factor to cause death apart from internal ailment of the body."

Similar observations were made in ***Kamla Bai v. Divl. Supdt., Central Railway***,[7] which held that it was obvious that a worker could not be awarded compensation just because he died while performing his job & Liability cannot be placed on the Employer the cases of ***Leticia Martins v. Mackinnon Mackenzie & Co. (P) Ltd.***[8] and ***Sarat Chatterjee & Co. (P) Ltd. v. Khairunnessa***[9] were relied on to reach the Conclusion of *Kamala Bai v. Divl. Supdt., Central Railway*.

Upon analysing the Judgments, now we can understand the emphasis on terms "arising in or during the course of employment" in the provision & its significance. This term is important since it determines whether the liability falls on the employer or not. As stated in the aforementioned cases an employee cannot be compensated just on the mere argument that the employee was injured or died during the course of employment.

Rather it is the duty of the plaintiff/ employee to prove that the accident occurred as a result of the course of employment and not due to other circumstances. Only then is there a liability on the employer to compensate the employee or his dependants since it is his/ her duty as an employer to ensure the welfare of their employees.

Not only is the provision important but the Judicial precedents as well in order to interpret the provision it its truest sense. We can learn a lot from the Interpretation of the ***Municipal Corpn.***

[6] Municipal Corpn. for Greater Bombay v. Sulochanabai Sadashiv Joil 1978 ACJ 208 (Bom).
[7] Kamla Bai v. Divl. Supdt., Central Railway (1971) 1 LLJ 603.
[8] Leticia Martins v. Mackinnon Mackenzie & Co. (P) Ltd. AIR 1977 Goa 12.
[9] Sarat Chatterjee & Co. (P) Ltd. v. Khairunnessa (1968) ILLJ 329.

for Greater Bombay v. Sulochanabai Sadashiv Joil[10] case which states the 3 essential factors to be considered before the employer is made to be liable to pay the compensation. For any compensation to be claimed there must be an injury and not only that it should be caused in an accident, i.e. the failure to comply with the regulations of the workplace, wilful act, or negligence of the employee, shall not make the employer liable for the actions of the employee.

Finally, the third necessary point noted by the Bombay high Court was that the death or Injury sustained should be in during the course of employment and not due to ordinary circumstances by "bodily ailment", this interpretation prevents extended burden on employer and ensures that the provision is not misused in the unfortunate event of sustaining any injury from other circumstances by the employee.

Doctrine of added Peril:

Furthermore, the doctrine of added peril is one exemption to the liability of the employer to pay compensation to the employee. Doctrine of added peril if a concept where, if the employee performs any action that is not required during the course of his/her duty, and this action involves extra dangers to them. Then, the employer cannot be held liable for his/ her actions and compensate for their damages. This doctrine was observed to be used by an employer as a defence in the proceedings of **Devidayal Ralyaram v/s Secretary of State.**[11]

2.2 THE RELIEFS AVAILABLE TO THE EMPLOYEES U/S 4 OF THE EMPLOYEES COMPENSATION ACT.

§ 4 in another important provision of this legislation, this provision explains the "amount of compensation" i.e. the compensation to be paid by the employer to the employee in cases of accidents that lead to an Injury sustained by the employee. While § 3 of the Act states the liability of the employer and when it would be attracted. This provision states the compensation and the extent to which it is to be paid.

The calculation of Compensation as per § 4 of the Act, this provision guides & prescribes the method of calculating the compensation to be paid to the employees.

[10] *Supra note 6 at 7.*
[11] Devidayal Ralyaram v/s Secretary of State (AIR) 1937 Sind 288.

1. "In case of death, the employer is liable to pay the deceased employee's dependents:

   Either 50% percent of the deceased employee's monthly wages multiplied by "the relevant factor OR

   Rs. 1,20,000, whichever is higher.

2. In case of injury that results in permanent total disablement, the employer is liable to pay:

   60 percent of the injured employee's monthly wages multiplied by the relevant factor"OR

   Rs. 1,40,000, whichever is higher.

3. In case of Injury resulting in total or partial temporary disablement, the employer is liable to pay a half-monthly payment of the sum equivalent to 25% of monthly wages."

It is also important to note that there is no wage limit for a worker for becoming eligible for compensation under the Act and as per the provisions of the new Act i.e. after the amendment the relevant factors used for the calculation of the amount to be compensated is mentioned in Schedule IV of the Act and the Minimum wage for computation of the compensation is considered to be Rs,15,000 as per Government Notification.

It is the discretion of the Central Government to Notify & set the Monthly wages under the Act, and revise it from time to time. Now, after the Modi Government came into power, In 2020, The Central Government revised the amount of the monthly wages, which are considered for compensation, The Monthly wages has been raised to 15,000 from Rs. 8,000. This wage limit can only be set by the Central Government.

Furthermore, Schedule I of the Act can be referred in order to get a better understand of the List of Injuries that result in permanent total & permanent partial disablement and the compensation to be provided for that. This schedule mentions these injuries & the employer's scope of liability in great detail.

CHAPTER – 3.

THE DOCTRINE OF NOTIONAL EXTENSION OF WORKPLACE.

The Doctrine of Notional Extension of work place is a concept that arises from the idea of social security & Labour welfare. It takes the idea of Employment outside of the geographical boundaries of the work place. According to the doctrine, employees must receive compensation in the event of an accident that occurs during the course of their Employment. In most countries across the world, it has served as a framework for the creation of laws pertaining to social security and compensation for employees.

This doctrine overrides the previously accepted concept of added peril, which stated that an employer could not be forced to compensate an employee for any injuries sustained as a result of an employee performing above and beyond the call of duty or putting himself in additional danger. The Workmen's Compensation Act of 1923 and the Employees' State Insurance Act of 1948 are two Indian Labour Legislations that embody this Doctrine.

The primary purpose of these Acts is to provide compensation for accidents that cause injury and either death or incapacity. This Injury has either cause total or partial disablement which extends over a period of 3 days or more.[12]

Important key terms used in the Provision itself which needs to be emphasised on are the terms "Arising out of" & "during the course of employment", The concept of hypothetical extension for the employee's relief is entangled in this provision, which is its most significant feature. This broadened the scope of the physical boundaries of a workplace, extending the liability of an employer outside the workplace but in due course of employment.

In the case of ***Sourashtra Salt Mfg. Co. V/S Bai Bula Raja***,[13] was the landmark Judgment wherein the ambit of the terms "course of employment" and "arising out of" expanded the definition of employment beyond the workplace. The Supreme Court held that in some circumstances, an employer may be held liable for a worker's injuries even if the worker was not on the property at the time of the incident.

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[12] The Employees Compensation Act, 1923, § 3.
[13] Sourashtra Salt Mfg. Co. V. Bai Bula Raja AIR 1958 S.C. 881

These terms "Arising out of" & "during the course of employment" are used in the context of Damages or injury sustained, in order for the liability to be attracted by the employer certain factors need to meet before placing the liability on the employer. This provision effectively avoids placing unnecessary liability on the employer and burdening them, by not placing these conditions and considering these factors the employers rights guaranteed under Art. 19 (1) g.[14]

The constitution is the key documents which is also considered as the law of the land, and when any legislation in India is violative of the fundamental rights of the citizens and is ultra vires of the constitution then the said law needs to be repealed or amended in order to ensure the rights of the citizens are protected as guaranteed under the constitution.

By placing unreasonable amount of burden on the employer the employer would be placed under immense financial burden which would also hinder him/her from carrying out their business while keeping their interests in mind as well, i.e. Profit making.

The primary objective of any business is to grow and increase profits, Art. 19 (1) g ensures that these employees can carry out their businesses or trade without any hurdles but with the introduction of the Act, the employer is made liable to compensate for the injuries sustained by the employee during the course of employment. Considering that the Indian Government is moving to a socialist state rather than a communist or capitalistic state like the west, these legislations ensure that the people from the lower income groups are protected and have the minimum means of income, security & welfare.

The doctrine of notional extension of workplace which overrides the doctrine of added peril which gives a wider definition and scope for the provision i.e. the liability on the employer is not only for the accidents occurring in the work premises but rather beyond the physical boundaries. This wider definition and scope for interpretation places added financial burden on the employer & hinders his right to carry out business.

The act's scope was examined in the case of ***Works Manager Carriage and Wagon Shop, EIR v. Mahabir***[15] According to the court, "accidents arising out of and in the course of employment" encompasses not only the work that the employee is required to complete but also work that is

[14] The Constitution of India, Article 19 (1) (g).
"All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business."
[15] Works Manager Carriage and Wagon Shop, EIR v. Mahabir AIR 1954 All 132.

allocated during the employee's employment hours, location of employment, and course of service. The phrase "employment," rather than "work," has been used, and employment has a broader definition. This wider scope interpretation places a larger financial burden for the employer of multiple large-scale industries and also violates their right to carry out any business & trade.

Although by placing certain conditions and criteria for liability to be attracted on an employer the legislators & Judiciary have kept in mind the interests of the employers as well. However, this is only seen to a certain extent, i.e. the state being a more socialist and welfare state one has favoured the employees slightly more than employers. This slight imbalance can be noticed by the extended liability placed on the employer due the doctrine of notional extension of workplace. This slight imbalance will be further analysed in the next chapter more clearly.

CHAPTER – 4.

THE CONUNDRUM OF MONTHLY WAGES UNDER THE ACT.

The Employees' Compensation Act, 1923 (ECA) mandates that an employer must pay compensation to an employee (apart from those covered by the Employees' State Insurance Act, 1948) in the event that the employee (i) any personal injury is sustained by the employee as a result of an accident in the due course of employment, or (ii) becomes ill due to a disease that is specific to the job. "Monthly wages" are one of the components needed to calculate the amount of compensation due to such an employee. Amounts deemed payable for a month's service are defined as "monthly wages" in Section 5 of the ECA. The method for paying the compensation amount is outlined in Section 4.

As per the Act, it is evident that the monthly wages has a direct impact on the total compensation to be provided to the employees. Since the arrival of the new Modi Government in the year 2020 it issued a Official gazetted notification which increased the monthly wages to Rs.15,000 previously this was set to Rs. 8,000 in the year 2010. This can only be done by the central Government.

The main issue at hand here is whether the Monthly wages which is set by the central Government is the base limit or the celling limit for the calculation of the compensation?

In recent times it has been seen that this issue has caused a conundrum in the courts as well, where in different approaches have been taken by various courts in order to reach a conclusion as to whether it the celling or base amount. This issue has been looming over the courts across India & are divided on the same issue.

In the case of before the High Court of Himachal Pradesh in Shimla ***New India Assurance Co. Ltd. v. Govindi Devi.***[16] The claimants after the death of the employee from injuries sustained, had stated that the employee was earning a monthly wage of Rs. 5000 but had failed to prove the same. Therefore, it was upon the High Court of HP to decide the same, & it noted that as per explanation II strictly restricted the monthly wages to Rs.4000 but however the same had be omitted by the way of Act no. 45 of 2009. Further the court noted the arguments made by

[16] New India Assurance Co. Ltd. v. Govindi Devi. 2019 SCC OnLine HP 2529.

the learned counsel for the claimants stating that since no restrictions were places a liberal interpretation was to be made since the Act by itself was a beneficial legislation.

Here the court held that "it is the intention of the legislation that is Important, when the language is unclear". Although the counsel for the Insurance company put forward the argument that the Sum of Rs. 8000 is not to be considered as the base amount when the claimants themselves have admitted to the monthly wage being Rs. 5000. The courts did not concur with the learned counsel for the defendants and stated that "this Court is of the view that the monthly wages specified by the statute by way of amendment at Rs 8000 is appropriate for consideration for the purpose of computing the compensation and as such, the learned court below has rightly calculated the compensation by considering the wages of the deceased workman at Rs 8000, which in no manner requires any interference."[17]

In ***Rajender Kumar v. Shyam Lal***[18], the Himachal Pradesh High Court in Shimla also followed a similar path while deciding on a compensation claim, ruling that the designated monthly wages serve as the base, or the minimum wage level, for determining compensation. In this instance, the claimant stated he made INR 7,500 a month, but he was unable to provide the necessary documentation to support his claims. While relying on the Government Notification from 2010, the High Court held that:

"The amendment came into force while empowering the Central Government to enhance the minimum rates of the said compensation from time to time as well as to specify the monthly wages in relation to an employee for the purpose of the aforesaid compensation, meaning thereby fixing the minimum wages by way of amendment at Rs 8000 is only for the purpose of determining the compensation under the Workmen's Compensation Act and there is scope of further enhancement from time to time."

Similarly, a case came before the Supreme Court as well, ***Jaya Biswal v. Iffco Tokio General Insurance Co. Ltd.***[19] The learned Commissioner in the aforementioned case used a monthly wage of Rs 8000 to determine compensation, but the monthly wage of the deceased equated to Rs 10,000 considering Rs 4000 per month + daily bhatta of Rs 6000 per month prior to the accident. A sum of Rs.10,000 was considered as the monthly wage since none of the parties

[17] *Ibid.*
[18] Rajender Kumar v. Shyam Lal 2019 SCC OnLine HP 1709.
[19] Jaya Biswal v. Iffco Tokio General Insurance Co. Ltd. (2016) 11 SCC 201.

produced any document on record to verify the actual amount of income being earned by the deceased.

The same was relied on the case of ***United India Insurance Co. Ltd. v. Kakali Sarkar Guha***[20], wherein the plaintiffs stated that the dead employee was making INR 13,765 a month when the injury claimed their lives. The Supreme Court's ruling was cited by the High Court of Sikkim in Gangtok when making its decision, and the full month's salary were taken into account when determining damages. The High court held that:

"In the present case, it has been proved that the monthly wages of the deceased was Rs 13,765. The learned Commissioner was thus required to calculate the employer's liability for compensation in the following manner: Rs 13,765 (monthly wages) x 50% x 194.64 (the relevant factor) = Rs 13,39,609.8."

But however different courts have had different approaches & interpretations on the same matter, which has only made the problem more confusing. In a matter before the High Court of Madras, in the case of ***United India Insurance Co. Ltd. v. Seethammal.***[21] The high court held that "it has to be construed by interpreting liberally and in view of omission of Explanation II and the notification issued by the Central Government (Ministry of Labour and Employment) dated 31-5-2010, though a sum Rs 8000 has been mentioned as monthly wages, it should be construed as minimum and not as maximum and therefore, when evidence establishes that the workman was earning Rs 12,000 per month, the same has to be considered for arriving at just compensation." The claimants in this case had argued that there is no restriction on the monthly wages in cases where the employee who is deceased and his wages exceeds Rs. 8000 liberal interpretations have to be made which would benefit the employee, since the legislation itself has beneficial intentions.

Furthermore, the court held that, "Having regard to the above, I am unable to give accept the contention of the learned counsel for the claimants. Accordingly, I am of the view that the monthly wages specified by the statute by way of amendment at Rs 8000 is appropriate for consideration for the purpose of computing the compensation and hence, the Deputy

[20]United India Insurance Co. Ltd. v. Kakali Sarkar Guha 2019 SCC OnLine Sikk 156.
[21]United India Insurance Co. Ltd. v. Seethammal 2014 SCC OnLine Mad 12336.

Commissioner has rightly calculated the compensation by considering the wages of the deceased workman at Rs 8000, which, in my opinion, requires no interference.”

In light of the above Judgments and the interpretations made by the various High courts and the Supreme Court of India. It is abundantly clear that the courts themselves have had a conflicting opinion as to the interpretation of the Monthly wage as a base or celling limit and have had different approaches. Some court believe since the legislative intent is itself beneficial to employees a more liberal interpretations need to be made whereas other courts have held that there is no need for liberal interpretations and a stricter approach is taken. But various courts have decided differently on the matter so there is no conclusion as to whether it is the case or celling limit but rather it is up to the interpretation of the courts deciding on the same subject matters of employee compensation.

In my opinion the amount needs to set as a celling amount in order to avoid placing any unnecessary burden on the employer and prevent any further confusion on the subject matter. Since in most cases where it is seen that employees haven’t been able to prove their wages the courts have taken the monthly wages notification as base, this places unnecessary burden on the employer to compensate in cases where he/she was not liable for the same.

CHAPTER – 5.

AN ANALYSIS OF THE IMBALANCES IN LIABILITIES AND RELIEFS IN THE EMPLOYER – EMPLOYEE RELATIONSHIP.

The liability on the employer is not absolute in certain instances where, the employee is negligent and is disobedient in following the rules, wilfully does not follow the safety regulations or drunk or under the influence during the course of employment & when the injury is sustained for a period not exceeding 3 days regardless of whether the injury is partial or total. This ensures that unreasonable restrictions are not placed on the employer.

However, in cases of death or any Injuries leading to total or partial disablement of the employee exceeding 3 days then the liability of the employer is absolute and he cannot escape or avoid it. This is one of the biggest drawbacks with the provision. The employer in the case of an injury exceeding 3 days although not permanent is not only losing his manpower in the factory which may cause him to lose or slow down production but also is held liable to compensate the employee.

As stated in the provision the Injury sustained shall not exceed a period of 3 days for an employer to not attract any liability.[22] This provision then disregards the doctrine of added peril wherein the employer cannot be held liable for the actions or wilful negligence by the employee. The employees' actions are out of his control and he should not be held liable to compensate for such actions.

Even though the negligence or failure to comply with the safety regulations is on behalf of the employee, if the injuries sustained partial or total exceeding 3 days hold the employer liable. This causes him to slow down his work and face monetary burden by having to compensate the employee, which in turn violates his fundamental rights guaranteed under Article 19 (1) (g) by not being able to efficiently carry out his business. This wider scope for interpretation given by the Judicial precedent and Indian courts has a negative impact on the fundamental rights of the employer financially.

The drawbacks of this Provision and wide scope of interpretation are as follows, when an Employee due to his wilful negligence or disobedience sustains an injury causing him to be

[22] *Supra note 12 at 10.*

temporarily disabled for a period exceeding 3 days and assuming it is over a long duration the employer is made liable to compensate for the damages incurred by the employee.

This places an extended liability on the employer & massive financial burden on him as not only he does he have to compensate his injured employee; the employer loses his workforce & manpower which results in lesser productivity overall in the factory and this reduction in productivity may cause him to generate lesser revenue and income which will result in lower profits earned. This is essentially how the fundamental right to carry out Business and trade of the employer are violated.

Furthermore, to add to the extended financial burden of the employer, in order to compensate for the lack of production due the lesser workforce is required to compensate to increase the workforce and productivity by hiring more workmen for labour. This in turn places more financial burden has the employer has to pay wages to these workmen as well, while compensating the injured employee. Wherefore, this directly hampers the employer's motive to earn more profits & expand his business as well as his rights guaranteed under Art. 19 (1) (g). Previously the employer could claim defence as per the doctrine of added Peril but due to more recent Judgments and wider interpretation the said doctrine is not appliable due to the doctrine on Notional Extension of work.

The wider scope for interpretation, which this paper has analysed was given in the case of ***C. Manjamma & Anr. v. The Divisional Manager, The New Indian Assurance Co. Ltd***.[23] Wherein it was stated by the Court that, the court decided that an employee's place of employment is not constrained by their workplace's boundaries. Furthermore, an employer's obligation is expanded in the event of a natural disaster. Additionally, if stress and strain are directly related to the course of employment, they are also recognized as legitimate reasons that could give rise to an employer's liability.

Furthermore, the Justification given in the case of ***Ramrao Zingraji Shende v. Indian Yarn Manufacturing Co***.[24], as to what amounts to disobedience is not satisfactory on the employers behalf and shows the slight imbalance of favour on the employees behalf. The court in this case held that merely being careless or negligent alone does not equate to disobedience. The

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[23]C. Manjamma & Anr. v. The Divisional Manager, The New Indian Assurance Co. Ltd. Civil Appeal No. 2568 of 2022.

[24]Ramrao Zingraji Shende v. Indian Yarn Manufacturing Co 1994 ACJ 916.

worker's deliberate disobedience is insufficient. Either forgetfulness or spur of the moment impulses might lead to disobedience. This is insufficient since the statute only releases the employer from responsibility in cases where the disobedience is wilful, meaning it is done on purpose. A worker's simple carelessness cannot be interpreted as deliberate disobedience to a clearly stated command.

Although it is a labour welfare state the Justification in this precedent is imbalanced and is against the interests of the employer as it places large amounts of financial burden and liability on the employer. The employer cannot be held absolutely liable in instances where the employee has been careless and negligent. The employer himself also has to keep his best interests in mind and the imbalance in the provision needs to be addressed from the viewpoint of an employer.

An example of favourable decision made in favour of employees and disregarding employers is in the case of ***Works Manager and Wagon Shop E.I.R v. Mahabir***[25] where employer was held liable when one of the employees was run over by an engine. This was not in control of the employer, since the factory was quite far from the railway station, the employees preferred to cross the tracks rather than taking the sub-way. Here we can notice that the doctrine of added Peril is being disregarded for the doctrine of notional extension of workplace. Here the wilful act was due to the actions of the Employee and the employer had no duty prevent the employee from taking this path or control of the employee's actions.

[25] *Supra note 14 at 11.*

FINDINGS & CONCLUSION

Although many employers provide sufficient facilities, appropriate care, and incentives and compensation as needed for their employees. However, there are undoubtedly other contexts in which workers receive extremely unsatisfactory treatment.

The main objective as stated of the Employee's Compensation Act, 1923 is to provide social security to labourers, since most of them are below the poverty line and struggle to meet basic minimum needs. This Act came into place not only to support the employee but his/ her dependants as well. Any of his Lega heirs may claim compensation under this Act.

Overall, from a thorough analysis of various legislations, case laws & their interpretations by the court, gives us an overview of what the objectives of the Employee compensation Act, 1923 are.

The findings of this paper upon relying on the various sources indicates that the aforementioned Labour legislation is slightly more inclined towards the employee's, which is understandable considering it is moving towards a socialist state and ensuring the peoples welfare is key, but it fails to take into consideration the burdens placed on the employer and how the legislation and its interpretations by the courts are imbalanced in favour of the Employee's.

This goes against the interests of employer's and their rights as well, as explained in Chapter 3 & 4 in certain ways these extended liabilities placed on the employer negatively impact their business and right to carry out Business with the main motive of earning profits as a means to grow this indirectly effects their fundamental rights guaranteed under Article 19 (1) (g). As cited from the various Judgments on Employee's compensation, these provisions and precedents are unfavourable for employers.

By concluding the analysis this paper aims to highlight this imbalance in the provision due to the wider scope given to the terms "Arising out of" & "during the course of employment" and how it impacts employers adversely by extending the physical boundaries of the workplace by the doctrine of Notional Extension of workplaces which has replaced the doctrine of added peril, which gave the employer's some room for reduced burden. Now, the notional extension has rather placed extended burden on employers.

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