

Bill No. 55 of 2008

THE WORKMEN'S COMPENSATION (AMENDMENT) BILL, 2008

A

BILL

further to amend the Workmen's Compensation Act, 1923.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Workmen's Compensation (Amendment) Act, 2008. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

8 of 1923.

2. In the long title to the Workmen's Compensation Act, 1923 (hereinafter referred to as the principal Act), for the word "workmen" the word "employee" shall be substituted. Amendment of long title.

3. In the principal Act, in the preamble, for the word "workmen", the word "employee" shall be substituted. Amendment of preamble.

4. In section 1 of the principal Act, in sub-section (1), for the word "Workmen's", the word "Employees'" shall be substituted. Amendment of section 1.

Substitution of references to certain expressions by certain other expressions.

5. Throughout the principal Act, for the words “workman” and “workmen” wherever they occur, the words “employee” and “employees” shall respectively be substituted, and such other consequential amendments as the rules of grammar may require shall also be made.

Amendment of section 2.

6. In section 2 of the principal Act, in sub-section (I),—

(i) after clause (d), the following clause shall be inserted, namely:—

‘(dd) “employee” means any person who is—

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

24 of 1989.

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

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

(c) recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

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

(ii) clause (n) shall be omitted.

Amendment of section 4.

7. In section 4 of the principal Act,—

(i) in sub-section (I), after clause (b), *Explanation II* shall be omitted;

(ii) sub-section (IA) shall be re-numbered as sub-section (IB) thereof, and before sub-section (IB) as so re-numbered, the following sub-section shall be inserted, namely:—

“(IA) For the purposes of sub-section (I), the Central Government may, by notification in the Official Gazette, specify such monthly wage in relation to an employee as it may consider necessary.”;

(iii) in sub-section (4), for the words “two thousand and five hundred rupees”, the words “not less than three thousand rupees or such sum, as the Central Government may, by notification in the Official Gazette, specify,” shall be substituted.

Amendment of section 20.

8. In section 20 of the principal Act, in sub-section (I), after the words “appoint any person”, the words “who is or has been a member of a State Judicial Service for a period of not less than five years or has been for not less than five years an advocate or a pleader” shall be inserted.

Amendment of Schedule II.

9. In the principal Act, in Schedule II,—

(i) for the word, number, brackets and letter “section 2 (I) (n)”, wherever they occur the word, number, brackets and letters “section 2(I) (dd)” shall be substituted;

(ii) in item (i) for the words “employed, otherwise than in a clerical capacity or on a railway”, the words “employed in railways” shall be substituted;

(iii) in item (ii), the words “otherwise than in a clerical capacity” shall be omitted;

(iv) in item (iii), the words “wherein or within the precincts whereof twenty or more persons are so employed” shall be omitted;

(v) in item (v), the words “other than clerical work” shall be omitted;

(vi) in item (vi),—

(a) clause (b) shall be omitted;

(b) in clause (c), the words, brackets and letter “or sub-clause (b)” shall be omitted;

(vii) in item (x), the words “otherwise than in a clerical capacity” shall be omitted;

(viii) in item (xiv), the words “otherwise than in a clerical capacity” shall be omitted;

(ix) in item (xvi), the words “in which on any one day of the preceding twelve months more than twenty-five persons have been employed” shall be omitted;

(x) for item (xviii) the following item shall be substituted, namely:—

“(xviii) employed on any estate which is maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea; or”;

(xi) in item (xix), the words “otherwise than in a clerical capacity” shall be omitted;

(xii) in item (xxvi),—

(a) in clause (a), the words “and in which on any one day of the preceding twelve months ten or more persons have been so employed” shall be omitted;

(b) in clause (b), the words “in which on any one day of the preceding twelve months fifty or more persons have been so employed” shall be omitted;

(xiii) in item (xxx), the words “otherwise than in a clerical capacity” shall be omitted;

(xiv) in items (xl) and (xli), the words “in which on any one day of the preceding twelve months more than twenty-five persons have been employed” occurring at both items shall be omitted;

(xv) the *Explanation* occurring at the end shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Workmen's Compensation Act, 1923 provides for payment of compensation to the workmen and their dependants in the case of injury by industrial accidents including certain occupational diseases arising out of and in the course of employment resulting in death or disablement. The Act applies to certain railway servants and persons employed in hazardous employments such as factories, mines, plantations mechanically propelled vehicles, construction work, etc., specified in Schedule II of the Act. However, the Act is not applicable to the employees who are covered under the Employees' State Insurance Act, 1948.

2. The Second National Commission on Labour set-up in the year 2002 has made recommendations relating to amendment of the Workmen's Compensation Act, 1923. The recommendations have been examined in consultation with the concerned Ministries/Departments/State Governments/Union Territory Administrations.

3. The salient features of the Bill are as follows:—

(1) It provides for substitution of the work 'workman' with the word 'employee' so that the Act is applicable to all classes of employees and to make the expression gender-neutral.

(2) To re-name the Workmen's Compensation Act, 1923 as the Employees' Compensation Act, 1923.

(3) To omit restrictive clauses in Schedule II of the Act, so as to make it more workers friendly.

(4) Keeping in view the changing trend in the wage level of employees, it is proposed to have an enabling provision to revise the wage ceiling from time to time by the Central Government.

(5) To enhance the funeral expenses of the deceased workman from Rs. 2500/- to Rs. 3000/- and also to empower the Central Government to enhance such expenses from time to time.

(6) Provision is being made so that persons who have a minimum qualification of not less than five years as a member of a State Judicial Service or not less than five years of experience as an advocate or a pleader shall be eligible to become the Commissioner.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 19th September, 2008.

OSCAR FERNANDES.

FINANCIAL MEMORANDUM

Sub-clause (ii) of clause 7 of the Bill empowers the Central Government to revise the wage ceiling from time to time for calculation of maximum amount of compensation where death or permanent total disablement or permanent partial disablement results from the injury. Sub-clause (iii) of the Bill, provides for the enhancement of the funeral expenses of the deceased workman from an amount of Rs. 2500 to Rs. 3000, and also empowers the Central Government to enhance such sum as the funeral expenses from time to time.

2. The above-mentioned proposals in their application to the workmen employed by the Central Government will involve increased expenditure from the Consolidated Fund of India by way of payment of compensation. However, as compensation becomes payable only in the event of employment injury resulting in disablement or death, it is not possible to estimate in advance the amount of additional expenditure involved.

3. The Bill does not involve any other expenditure whether recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (ii) of Clause 7 of the Bill seeks to specify such monthly wage in relation to an employee as the Central Government may, consider necessary for calculation of maximum amount of compensation. Similarly, sub-clause (iii) of the Bill seeks to increase the funeral expenses from Rs. 2500 to Rs. 3000 or such sum, as the Central Government may specify, by notification in the Official Gazette.

2. The matters in respect of which the Central Government is empowered by notification to specify certain amounts are matters of administrative details or of procedure and it is not possible to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

Explanation I.— For the purposes of clause (a) and clause (b) “relevant factor” in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

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

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(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

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(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of two thousand and five hundred rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.

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Appointment
of
Commissioners.

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

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SCHEDULE II

[See section 2(1) (n)]

LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF SECTION 2(1)(n),
ARE INCLUDED IN THE DEFINITION OF WORKMEN

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

(i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation, repair or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or

(ii) employed, otherwise than in a clerical capacity, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948, is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, whether or not employment in any such work is within such premises or precincts and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof twenty or more persons are so employed;

Explanation.— For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected, with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts; or

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35 of 1952. (v) employed, in any mine as defined in clause (j) of section 2 of the Mines Act, 1952, in any mining operation or in any kind of work other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground; or

(vi) employed as the master or as a seaman of—

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(b) any ship not included in sub-clause (a), of twenty-five tons net tonnage or over; or

(c) any sea-going ship not included in sub-clause (a) or sub-clause (b) provided with sufficient area for navigation under sales alone; or

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(x) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline or sewer; or

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(xiv) employed, otherwise than in a clerical capacity, in connection with operation for winning natural petroleum or natural gas; or

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(xvi) employed in the making of any excavation in which on any one day of the preceding twelve months more than twenty-five persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twelve feet; or

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(xviii) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed; or

(xix) employed, otherwise than in a clerical capacity, in the generating, transforming transmitting or distribution of electrical energy or in generation or supply of gas; or

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(xxvi) employed in the handling or transport of goods in, or within the precincts of,—

(a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed; or

(b) any market in which on any one day of the preceding twelve months fifty or more persons have been so employed; or

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(xxx) employed, otherwise than in a clerical capacity, in the construction, working, repair or maintenance of a tube-well; or

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(xl) employed in cleaning of jungles or reclaiming land or ponds in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

(xli) employed in cultivation of land or rearing and maintenance of live-stock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

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Explanation.— In this Schedule, “the preceding twelve months” relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.

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LOK SABHA

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further to amend the Workmen's Compensation Act, 1923.

(Shri Oscar Fernandes, Minister of State for Labour and Employment)