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NOTIFICATION

No.H. 12017/4/95-LJD, the 28th February, 1996. The following Acts is hereby published for general information.

Rolura Saile,
Deputy Secretary to the Govt. of Mizoram.

THE WORKMEN'S COMPENSATION (AMENDMENT) ACT, 1995

AN

ACT

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

Be it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows :—

1. (1) This Act may be called the Workmen's Compensation (Amendment) Act, 1995,

Short title
and com-
mencement

(2) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

8 of 1923

2. In section 2 of the Workmen's Compensation Act, 1923 (hereinafter referred to as the principal Act),—

Amend-
ment of
section 2.

(a) in sub-section (1),—

(i) in clause (d),—

(I) in sub-clause (i), for the word "legitimate" occurring at both the places, the words "legitimate or adopted" shall be substituted;

(II) in sub-clause (iii), in item (c), for the words "legitimate or illegitimate", the words "legitimate or illegitimate or adopted" shall be substituted;

(III) the following Explanation shall be inserted at the end, namely :—

"Explanation.—For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (ii), references to a son, daughter or child include an adopted son, daughter or child respectively."

(ii) in clause (n),—

(I) in sub-clause (i), for the words and figures "section 3 of the Indian Railways Act, 1890", the words, brackets and figures "clause (34) of section 2 of the Railways Act, 1989" shall be substituted;

9 of 1890.
24 of 1989.

(II) after sub-clause (i), the following sub-clause shall be inserted, namely :—

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

(d) a person 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";

(b) for sub-section (3), the following sub-section shall be substituted, namely :—

"(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons :

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only..."

Amendment of section 3.

3. In section 3 of the principal Act,—

(a) in sub-section (1), in the proviso, in clause (b), after the word "death", the words "or permanent total disablement" shall be inserted;

(b) in sub-section (3),—

(i) for the opening portion beginning with the words, "The State Government" and ending with the words and letter "Part C of that Schedule", the words "The Central Government or the State Government" shall be substituted;

(ii) after the words "shall apply," the words, "in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State" shall be inserted.

4. In section 4 of the principal Act,—

Amendment of section 4.

(a) in sub-section (1),—

(i) in clause (a), for the words "forty per cent." and "twenty thousand rupees", the words "fifty per cent." and "sixty thousand rupees" shall respectively be substituted.

(ii) in clause (b), for the words "fifty per cent." and "twenty four thousand rupees," the words "sixty per cent." and "sixty thousand rupees" shall respectively be substituted;

(iii) in Explanation II, for the words "one thousand rupees," at both the places where they occur, the words "two thousand rupees" shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(IA) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of 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 reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country."

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) If the injury of the workman results in his death, compensation under sub-section (1) deposit with the Commissioner a sum of one thousand 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."

5. In section 4A of the principal Act, for sub-section (3) the following sub-section shall be substituted, namely:— **Amendment of section 4A.**

"(3) the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum amount by way of penalty :

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.— For the purposes of this sub-section, “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

2 of 1934.

(3A) The interest payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be, and the penalty shall be credited to the State Government.”

Amend-
ment of
section 8.

6. In section 8 of the principal Act,—

(a) in sub-section (1), in the proviso, for the words “not exceeding an aggregate of one hundred rupees, and so much of such aggregate”, the words “of an amount equal to three months, wages of such workman and so much of such amount” shall be substituted ;

(b) in sub-section (4), the words “shall deduct therefrom the actual cost of the workman’s funeral expenses, to an amount not exceeding fifty rupees and pay the same to the person by whom such expenses were incurred, and” shall be omitted.

Amend-
ment of
section
14.

7. In section 14 of the principal Act, in sub-section (4), for the words and figures “section 230 of the Indian Companies Act, 1913”, the words and figures “section 530 of the Companies Act, 1956” shall be substituted.

7 of 1913.
1 of 1956.

Insertion
of new
sections
15A and
15B.

8. After section 15 of the principal Act, the following sections shall be inserted, namely:—

Special
provisions
relating to
captains
and other
members
of crew of
aircrafts.

“15A. This Act shall apply in the case of workmen who are captains or other members of the crew of aircrafts 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 captain of the aircraft, be served on the captain of the aircraft as if he were the employer, but where

the accident happened and the disablement commenced on board the aircraft it shall not be necessary for any member of the crew to give notice of the accident.

(2) In the case of the death of the captain or other member of the crew the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the aircraft has been or is deemed to have been lost with all hands, within eighteen months of the date on which the aircraft was, or is deemed to have been, so lost;

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured captain or other member of the crew of the aircraft is discharged or left behind in any part of India or in any other 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 Central Government or any State Government shall, in any proceedings for enforcing the claims, 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 ;

(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.

15B. This Act shall apply—

Special provisions relating to workmen abroad of companies and motor vehicles.

59 of 1988.

(i) in the case of workmen who are persons recruited by companies registered in India and working as such abroad, and

(ii) persons sent for work abroad alongwith motor vehicles registered under the Motor Vehicles Act, 1988 as drivers, helpers, mechanics, cleaners or other workmen, subject to the following modifications, namely :—

(1) The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.

(2) In the case of death of the workman in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant :

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured workman is discharged or left behind in any part of India or in any other 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 Central Government or any State Government shall, in any proceedings for enforcing the claims, 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 ;

(c) if the deposition was made in the course of a criminal proceeding, on proof that 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."

Amend-
ment of
section
18A.

9. In section 18A of the principal Act for the words "five hundred", the words "five thousand" shall be substituted.

Amend-
ment of
section
21.

10. In section 21 of the principal Act,—

(i) for sub-section (1), the following sub-section, shall be substituted, namely :—

"(1) Where any matter under this Act, is 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 area in which—

(a) the accident took place which resulted in the injury :

or

(b) the workman or in case of his death, the defendant claiming the compensation ordinarily resides; or

(c) the employer has his registered office :

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned :

Provided further that, where the workman, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a workman in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situated, as the case may be.

(1A) If a Commissioner, other than the Commissioner with whom any money has been under section proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or money remaining with the latter and on receipt of such a request, he shall comply with the same.”;

(i) second proviso to sub-section (2) shall be omitted.

11. In section 22 of the principal Act, for the brackets, figure and words “(1) No application for the settlement”, the following shall be substituted, namely :- Amendment of section 22.

“(1) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim provisions of this Act, be made before the Commissioner.

(1A) Subject to the provisions of sub-section (1), no application for the settlement”.

12. In section 23 of the principal Act, for the words and figures “section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898”, the words and figures “section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973” shall be substituted. Amendment of section 23.

5 of 1898.
2 of 1974.

13. In section 30 of the principal Act, for the words and figures “the Indian Limitation Act, 1908”, the words and figures “the Limitation Act, 1963” shall be substituted. Amendment of section 30.

9 of 1908.
36 of 1963.

14. In Schedule I of the principal Act, in Part II, Amendment of Schedule/I

(i) in the column relating to description of injury, against serial numbers 2,3,4,17,18,19,20 and 21, for the figures ‘8’, ‘4½’, ‘5’, and ‘3½’, wherever they occur, the figures and abbreviations “20.32 cms.”, “11.43 Cms.”, “12.70 cms.” and “8.89 cms.” shall respectively be substituted;

(ii) after serial number 10 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

“10A, Guillotine amputation of tip of thumb without loss of bone. 10”;

(iii) in the column relating to percentage of loss of earning capacity, against serial numbers 21,22

and 23, for the figures and word "40", "30", and "30" the figures and word "50", "50", and "50" shall respectively be substituted;

(iv) after serial number 26 and the entries relating thereto, the following serial number and entries shall be inserted, namely :—

"26A. Loss of partial vision of one eye . . . 10".

15. In Schedule II of the principal Act,—

Amend-
ment of
Schedule II.

(i) in item (i), after the words "railway, in connection with the operation", the word, "repair" shall be inserted;

(ii) in item (vii), for the words and figures "the Indian Ports Act, 1908", the words and figures "the Ports Act, 1908 or the Major Port Trusts Act, 1963" shall be substituted; 15 of 1908. 38 of 1963.

(iii) in item (xii), for the words, brackets and figures "clause (4) of section 3, and sub-section (1) of section 148 of the Indian Railways Act, 1890", the words, brackets and figures "clause (31) of section 2 and sub-section (1) of section 197 of the Railways Act, 1989" shall be substituted; 9 of 1890. 24 of 1989.

(iv) for item (xix), the following item shall be substituted, namely :—

"(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";

(v) in item (xxix), for the words "employed in farming", the words "employed in horticultural operations, forestry, bee-keeping or farming" shall be substituted;

(vi) after item (xxxiii) and before the Explanation, the following items shall be inserted, :—

"(xxxiii) employed as watchman in any factory or establishment; or

(xxxiv) employed in any operation in the sea for catching fish; or

(xxxv) employed in any employment which requires handling of snakes for the purpose of extraction

of venom or for the purpose of looking after snakes or handling any other

(xxxvi) employed in handling animals like horses, mules and bullocks; or

(xxxvii) employed or unloading any mechanically the handling or transport of goods have been loaded in such vehicles; or

(xxxviii) employed in cleaning of sewer lines or septic tanks within the limits of a local authority; or

(xxxix) employed on surveys and investigation, exploration or gauge or discharge observation of rivers including drilling operations, hydrological observations and flood forecasting activities ground, water surveys and exploration; or

(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

(xlii) employed in installation, maintenance or repair of pumping equipment used for lifting of water from wells, tubewells, ponds, lakes, streams and the like; or

(xliii) employed in the construction, boring or deepening of an open well or dug well, bore well, bore-cum-dug well, filter point and the like; or

(xliv) employed in spraying and dusting of insecticides or pesticides in agricultural operations or plantations; or

(xlv) employed in mechanised harvesting and threshing operations; or

(xli) employed in working or repair or maintenance of bulldozers, tractors, power tillers and the like; or

(xlvii) employed as artist for drawing pictures on advertisement boards at a height of 3.66 metres or more from the ground level; or

(xlviii) employed in any newspaper establishment as defined in the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and engaged in outdoor work".

45 of 1955.

16. In Schedule III of the principal Act, in Part B, after serial number 24 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely :—

Amendment of Schedule III.

- | | |
|--|---|
| "25. Snow blindness in snow bound areas. | All work involving exposure to the risk concerned." |
| 26. Disease due to effect of heart in extreme hot climate. | All work involving exposure to the risk concerned. |
| 27. Disease due to effect of cold in extreme cold climate. | All work involving exposure to the risk concerned." |