LIABILITY OF EMPLOYER IN LABOUR LAW

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INTRODUCTION

In India there are plenty of legislations in order to protect the interest of the workers. These laws helps meeting the social needs of the workers and protecting the well-being of the workers. For an example laws assuring workers to get minimum wages to workers, laws providing compensation to workers in case of accidents during the course of employment, laws to prevent retrenchment, layoff and dismissal of workers, laws regulating the working condition of workers which includes all safety and health measures in order to protect worker, laws providing insurance to protect the interest of workers at time of contingencies and many more these all are the welfare legislations in order to protect the interest of the worker. These all aims to assure social security to the workers employed in India.

As we all know that in India the labour cost is low, more and more labours are need of jobs, these innocent peoples agree to work and sign documents without reading and understanding which is on the other side disadvantage is taken by the employer. There can be many ways where an employee can be exploited by the employer therefore in order to protect them there are legislations as well as case laws where it has been decided that employer will be held liable for the acts of employee. Employer if hiring or employing the employee in his factory will be even liable for the acts of employee vicariously; employer may also be liable in the case of negligence and many other reasons how an employer can be held liable. We have to analyze how and when employer can be held liable.

TYPES OF EMPLOYER AND THEIR LIABILITY

As a layman language we all know Employer means a person or organization that employs people are termed as employer. There are different types of employers with different liability such as follows:-

- *Principal Employer* means

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(i) in a factory the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person been named as the Manager of the Factory under the Factories Act 1948 (63 of 1948), the person so named;

(ii) In any establishment under the control of any department of any government in India, the authority appointed by such government in this behalf or where no authority is so appointed, the head of the department;

(iii) In any other establishment, any person responsible for the supervision and control of the establishment;[1]

The definition of "principal employer" refers to the owner or occupier of a factory; it is obvious that the principal employer can either be the owner or the occupier depending upon the facts of each case. It is not difficult to contemplate a case where the owner of a factory may be a person different from the one who is actually running the factory. For example, a factory in a running condition or merely the factory itself may be let out by the owner, in which case the owner will have nothing to do with the employment of the employees, because the person empowered to appoint the employees and the actual person who is running the factory will then be the person who will be the principal employer. The definition "principal employer", therefore, is obviously intended to provide for all contingencies and any possible contingency will be covered by designating the owner as the principal employer where the owner himself is running the factory or in the case Where the owner himself is not running the factory, the person who runs the factory in whatever capacity, becomes the principal employer by virtue of being the occupier of the factory. The word "or" between the 'owner' and the occupier' must, therefore, be read disjunctively and cannot be read as "and" because reading of the word "or" as "and" is bound to introduce an uncertainty in fastening the obligation to deduct the employees' contribution and to pay the employer's contribution as well as the employees 'contribution.[2]

Principal Employer's Liability: When a worker is employed by contractor that's worker liability is also on principal employer then the contractor. In a very important judgement, the Bombay High Court has laid down a substantial point of law, saying the liability towards an

[1] Section 2(17) of Employee's State Insurance Act, 1948

[2] *Suresh Tulasi Das* v. *Collector of Bombay* 1984 (64) FJR 399; 1984 (1) LLN 312; 1984 LIC 1614

employee engaged by a contractor or managing agent is on the principal employer.[3] The court recently upheld the decision of 'Mumbai Commissioner for Workmen's Compensation' to award monetary relief to a worker, who died in an accident despite the fact that he was not employed by the principal employer but by a contractor.

An appeal was filed by United Assurance Company Ltd, which challenged the award of compensation to a driver who was hired by MGM Motors to transport vehicles on behalf of Mahindra & Mahindra Ltd (M&M).The Judge noticed that this being an appeal under The Employee's Compensation Act, the appellant has to substantiate the challenge on substantial questions of law. He directed to pin point and address the court whether a principal employer would be liable to pay compensation to a worker employed by a managing agency. It was admitted that the victim was not employed by M&M, a top auto firm, which owned the vehicles. The victim was rather employed by MGM Motors to whom the work/contract for transport of vehicles was entrusted by the auto company. The vehicles were required to be transported by a driver engaged by MGM Motors on behalf of M&M. Thus, the HC held the liability towards an employee engaged by contractor or a managing agent is on the principal employer (in this case M&M). It was viewed that since the driver was engaged by MGM Motors, the appellant (United India Assurance) does not have the liability towards payment of compensation. The HC, however, said it is not proved that due to any terms of contract between the two sides, the liability towards employees' compensation was to be borne by MGM Motors.

In other decided case also the dispute arise where the employees engaged by a contractor who did not pay their wages and the employees flied their claim for their unpaid wages against the management of Indian Airlines. As per section 21 (4) of the Contract Labour (Regulation and Abolition) Act it provides that in case the contractor fails to pay the wages, the principal employer is responsible to make the payment of wages and also the contract labour employed by the contractor can claim wages either from the contractor or from the principal employer to pay wages to the employees, engaged by the contractor is recognized in section 21(4) of, the Contract Labour (Regulation and Abolition) Act, 1970. Thus if the contractor fails to pay

[3] "*Liability of employee is on principal employer: HC*" The Times of India, 05 2013, 04 2014 Available on: http://timesofindia.indiatimes.com/city/mumbai/Liability-of-employee-is-on-principal-employer-HC/articleshow/20361935.cms

wages to his employees engaged by him the principal employer will be liable to pay the same.[4]

- *"Immediate employer"* in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory, or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor".[5] In the case where the Royal talkies vs. ESIC[6] it was held that if a contractor undertakes to run a canteen or a cycle stand in a theatre, he undertakes the execution of whole or part of the work which is ordinarily part of the work of the theatre of the principal employer or is incidental to the purpose of the theatre, and as such he would come within the definition of immediate employer and the owner of the theatre within the definition of the principal employer. The image of immediate employer comes to a picture only when the employees are working under a contractor who carries out the work of the principal employer under a contract.

- *Independent contractor* includes workers who have the right to control or direct only the work they perform. Independent Contractor has no control from the employer side as other employees working in an establishment have control and supervision from the employer. If a person is working for an establishment by using his own tools, works on his own schedule, works from his own office that person generally will be classified as an independent contractor. They are liable for that piece of work only which they are assigned. A contractor is liable for the payment of wages to each employer employed by him as an independent contractor.

[4] *Indian Airlines* v. Presiding Officer Labour Court & Others [1988 Lab IC 818 (Delhi HC)]

[5] Section 2(13) of Employee's State Insurance Act, 1948

[6] (1978) II LLJ 390, p 396 (SC)

TORT & LIABILITY

A tort is referred as 'actionable wrong'. According to Salmond, "tort is a civil wrong, for which the remedy is an action for damages, and which is not solely the breach of a contract or the breach of trust or other merely equitable obligations."[7] Liability signifies that state of affairs which gives rise to an obligation to do a particular thing to be enforced by action; liability may arise from contract either express or implies or in consequences of torts committed. Thus liability is closely connected with tort.[8]

Employer has vicarious liability towards the acts of employees he engaged in his establishments. Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. In a workplace context, an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment. The most important condition to impose liability on Employer is that the act happens during the course of employment.

If a car accident occurs while an individual is driving a vehicle in order to perform his or her work duties or to do something for his or her employer, there may be employer liability. This is most often a problem in cases in which a truck driver or a commercial vehicle driver causes an accident and his or her employer is sued. In any case, whether or not an employer will be liable depends on whether there is some legal reason for assigning responsibility to the employer.

Vicarious liability doesn't necessarily require that the employer was negligent in any way themselves. Vicarious liability is a doctrine of law that asserts that the actions of an agent are essentially the same as the actions of the principle directing the agent. This means that an employer is considered to be the "principle", and when the employer tells employees (the agents) to do something, it is just as if the principle is the one acting. Of course, this rule only applies if the agent is actually in the process of doing something for the principle at the time when the accident happened.

[7] Salmond on Jurisprudence , PJ Fitzgerald(ed), 12th edn, Tripathi, 1988

[8] EM Rao, Industrial Jurisprudence: A Critical Review, LexisNexis Butterworths, p 495 ,New Delhi, 2008

For example, if an employee is sent to the store to pick up copies and got into an accident on the way to picking up those copies, then the employer could be liable. If the employee decides to stop for coffee on the way back and gets into an accident while getting coffee, he/she isn't acting on behalf of the employer/agent, so the employer usually won't be responsible. There are also usually exceptions that an employer will not be liable for intentional bad acts done by the employee, so if the employee decides he wants to run someone over, the employer won't be at fault.[9]

Employer Negligence

Employer negligence may involve, for instance, negligent hiring of the employee or negligent supervision of the employee. When a company hires someone that they know will be driving a company vehicle, the employer has a duty to exercise reasonable due diligence in order to make sure that the employee is a safe driver.

At a minimum, if the employee is going to be driving a commercial vehicle, the employer should make sure that the employee has a commercial driver's license that is in good standing and that has not been suspended. Many employers also take additional precautions like checking a past driving record or performing drug testing.

Negligent Supervision

Negligent supervision is another way in which an employer can become responsible for employee accidents. Employers should have reasonable safety policies in place and should make sure all of their drivers comply with safety laws. This means if an employer has truck drivers working for him/her, the employer should make sure the drivers follow logging requirements set by federal and state law and that cargo is properly weighted and loaded. If an employer fails to check and make sure that the employee is exhibiting reasonable care and skill in doing the job required, then that employer is liable for negligence.

The close connection required for vicarious liability for intentional torts committed by an employee is to be found in the fact that the employee has discretion to act which his employer has given him and the assault occurs in the course of or as reasonably incidental to exercising

[9] Available on http://www.alllaw.com/resources/car-accident-claims/employer-liability.htm [Accessed on 13/04/2014 at 5:00pm]

that discretion. Thus, in **Gravil** v **Carrol,**[10] there was a sufficient connection to make the employer liable for a player throwing a punch following a scrum because this act was on the evidence a reasonably incidental risk to playing rugby which the employee was employed to do. The Indian courts were attracted by the proposition (once popular in England) that there can be no vicarious liability unless the master *benefits* from the employee's wrong but the Bombay High Court held in the 1950s that this was no longer good law [11]

The other liability on employer from which he cannot avoid is *Scienti non fit injuria* which means that only knowledge of the risk is not enough to claim defence there must be acceptance to undergo the resultants of the risk undertaken. There had to be consent and mere knowledge is not sufficient. If employee has a knowledge that there is a risk in that place and he has not given consent to work in case by chance he got injuries , employer will be held liable as mere knowledge does not mean that employee is taking a voluntarily risk. As its welfare legislations Employer will be held liable.

CONCLUSION

Employer has a liability towards his employee; he has to provide him social security and all other thing which is required by employee and at no point of time the employer can escape from his liability. If an employer is hiring or employing worker he has an obligation towards that worker and which he cannot breach. The principle of Employer's liability to provide social security as it is explained under the employer liability systems, workers are usually protected through Labour Codes whereby affected Employers are required to provide specified payments or services directly to their employees, such as payment of lump sum gratuities, to the aged or the disabled, provision of medical care, paid sick leave,. or both, payment of maternity benefits or family allowances ; provision of temporary or long term cash benefits and medical care in the case of work injury; or payment of severance indemnities, in the case of dismissal. There are welfare legislations whose sole motive to protect the interest of workers.

[10] [2008] ICR 1222

[11] *Dinbai R. Wadia and Ors.* v *Farukh Mobedjna* 1956