

THE WORKMEN'S COMPENSATION ACT, 1923

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(ii)

THE WORKMEN'S COMPENSATION ACT, 1923

(1) ACT NO. VIII OF 1923)

[5th March, 1923]

An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

WHEREAS it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident;

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.** — (1) This Act may be called the Workmen's Compensation Act, 1923.

²[(2) It extends to the whole of Pakistan.]

¹For Statement of Objects and Reasons, see Gazette of India, 1922, Pt. V, p. 313; and for Report of Joint Committee, see ibid., 1923, Pt. V, p. 37. See also the Workmen's Compensation (Amtd.) Act, 1939 (13 of 1939) s. 3.

This Act has been extended to the former Baluchistan States Union, see the Baluchistan States Union (Federal Laws) (Extension) Order, 1953 (G.G.O. 4 of 1953) as amended by the Baluchistan States Union (Federal Laws) (Extension) (Second Amendment) Order, 1953 (G.G.O. 19 of 1953).

The Act has been and shall be deemed to have been brought into force in Gwadur with effect from the 8th September, 1958, by the Gwadur (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2.

It has been extended to the State of Bahawalpur by the Bahawalpur (Extension of Federal Laws) Order, 1953 (G.G.O. 11 of 1953), as amended by the Bahawalpur (Extension of Federal Laws) (Amtd.) Order, 1953 (G.G.O. 21 of 1953).

It has also been extended to the Khairpur State, see G.G.O. 5 of 1953, as amended by G.G.O. 24 of 1953.

It has been extended to the Leased Areas of Baluchistan, see G.G.O. 3 of 1950, and applied in the Federated Areas of Baluchistan, see Gazette of India, 1937, Pt. I, p. 1499.

It has also been applied to the Railway servants employed within the Area of the Khyber Agency, see Gazette of India, 1936, Pt. I, p. 1403.

The Act has been applied to the Provincially Administered Tribal Areas or to the parts of those areas to which it does not already apply, see Regulation No. 1 of 1972, s. 2 and Sch.

²The original sub section (2) amended by A.O., 1949 and the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951), s. 8, has been subs. by the Central Laws (Statute Reform) Ordinance, 1960, (XXI of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955).

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

COMMENTS ON SECTION - 1

[The Act is called "The Workmen's Compensation Act, 1923" and the date of its commencement is 5th day of March, 1923. In case, a personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II, of this Act.

By virtue of amendment of sub-section (2) of section 1 by the Central Laws (Statute Reforms) Ordinance, 1960 (21 of 1960), s. 3 and 2nd schedule, it has been extended to the whole of Pakistan with effect from the 14th October, 1955.

The Act has also been applied to the Provincially Administered Tribal Areas or the parts of those areas to which it does not already apply, by virtue of Regulation No. I of 1972, section 2 and schedule.

The Act comes into force on the 1st day of July, 1924.]

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

- (a) "adult" and "minor" mean respectively a person who is not and a person who is under the age of fifteen years;
- (b) "Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20;
- (c) "compensation" means compensation as provided for by this Act;
- (d) "dependant" means any of the following relatives of a deceased workman, namely:-
 - (i) a ¹[widow], minor legitimate son, and unmarried legitimate daughter, or a widowed mother; and
 - (ii) if wholly or in part dependant on the earnings of the workman at the time of his death, a ²[widower], a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, ³[a minor child of a

¹In section 2, clause (d) substituted by the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933), s. 2, for the original clause (d).

²In clause (d), in sub-clause (i), substituted by the Workmen's Compensation (Amendment) Act, 1938 (9 of 1938), s. 2, for "wife".

³In clause (d), in sub-clause (ii), substituted, *ibid*, for "husband".

⁴In clause (d), in sub-clause (ii), words inserted, *ibid*.

deceased daughter where no parent of the child is alive,] or, where no parent of the workman is alive, a paternal grandparent,]

- (e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;
 - (f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;
 - (g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:
- Provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement;
- (h) "prescribed" means prescribed by rules made under this Act;
 - (i) "qualified medical practitioner" means any person registered ¹[* * * * *] under any Act of ²[the ³[Federal] Legislature or any Provincial Legislature] providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the ⁴[Provincial Government], by notification in the ⁵[Official Gazette], to be a qualified medical practitioner for the purposes of this Act;

¹In section 2, in clause (i), words omitted by the Ordinance No. XXVII of 1981, s. 3 & Second Schedule.

²In clause (i), substituted for "any Legislature in British India" by the A.O., 1949.

³In clause (i), substituted for "Central" by the A.O., 1975, Art. 2 & Table, (w.e.f. 14-8-1973).

⁴In clause (i), substituted for "Local Government" by the A.O., 1937.

⁵In clause (i), substituted, *ibid*, for "local official Gazette".

- (j) [* * * * *]
- (k) "seaman" means any person forming part of the crew of any [* * *] ship, but does not include the master of ³[the] ship;
- (l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement;

Provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent;

- ⁴[(l) "Tribunal" has the same meaning as in the Industrial Relations Ordinance, 1969 (XXIII of 1969);]
- (m) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;
- (n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is –
 - (i) a railway servant as defined in section 3 of the Railways Act, 1890 (IX of 1890), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or
 - (ii) employed ⁵[* * *] on monthly wages not exceeding

¹In section 2, clause (j) omitted by the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933), s. 2.

²In section 2, in clause (K), the word "registered" omitted, *ibid.*

³In clause (K), substituted, *ibid.*, for "any such".

⁴In section 2, clause (l) inserted by the Act No. XI of 1975, s. 2 and Schedule.

⁵In clause (n), in sub-clause (ii), the words "either by way of manual labour or" omitted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 2.

⁶[three thousand] rupees, in any such capacity as is specified in Schedule II,

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of ⁷[* * * *] naval, military or air force ⁸[* * * * *]; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department ⁹[acting on behalf of the Government] shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

¹⁰[(3) The ⁶[Provincial Government], after giving, by notification⁷ in the ⁸[official Gazette], not less than three months' notice of ⁹[its] intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which ¹⁰[it] is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply ¹¹[within the Province] to such classes of persons:

Provided that in making such addition the ⁶[Provincial Government] may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.]

COMMENTS ON SECTION - 2

Certain words and phrases repeatedly used in the text of the Act, have been defined in this section comprehensively. Most of these are self-explanatory while others are to be further defined with the citation of decided case-laws, where necessary, as follows:-

¹In section 2, in sub-section (1), in clause (n) (ii), substituted for the words "one thousand" by the Act No. VI of 1987, s. 2, *Gaz. of Pak. Extr.*, Pt. I, Jun 30, 1987, p. 17, which again substituted for "one thousand five hundred" by the Labour Laws (Amendment) Act, 1994 (XI of 1994), *Gaz. of Pak. Extr.*, Pt. I, dated 29th June, 1994, s. 1(1).

²In section 2, in sub-section (1), in clause (n), the words "His Majesty's" omitted by the Ordinance No. XXVII of 1981, s. 3 & Second Schedule.

³In clause (n), the words "or of, the Royal Indian Marine Service" omitted by the A.O., 1937.

⁴In section 2, in sub-section (2), the original words "of the Govt." were first subs. by the A.O., 1937 and then amended by A.O., 1961, Art. 2 (w.e.f. the 23rd March, 1956), to read as above.

⁵Sub-section (3) of section 2, substituted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 2, for the original sub-section (3).

⁶In sub-section (3), substituted by A.O., 1937, for "G.G. in C.".

⁷For such a notification, see *Gazette of India*, 1935, Pt. I, p. 745.

⁸In sub-section (3), substituted by A.O., 1937, for "Gazette of India".

⁹In sub-section (3), substituted, *ibid.*, for "his".

¹⁰In sub-section (3), substituted, *ibid.*, for "he".

¹¹In sub-section (3), words inserted, *ibid.*

Cl. (d) - "defendant" includes widow, minor, legitimate son and unmarried legitimate daughter or a widowed mother etc. etc. as detailed therein.

Distribution of amount of compensation - Management of Mill in which deceased employee was working, sent cheque of dues to Commissioner for distribution among legal heirs - Including the appellant who was second wife of deceased and mother of two minor children - Commissioner awarded the amount of cheque only to two sons of his first wife, who were nominees - Under s. 2 (d) and s. 8 of this Act and Shariat and Muslim Law, all heirs would get their due shares - Court ordered accordingly - Mst. Nazma Begum will get 1/8 of the amount i.e. Rs. 14,254/- and the remaining money will be distributed between the four sons in equal shares i.e. Rs. 24,944.88 each.

(Labour Appellate Tribunal, Sind: 1993 PLC 48: Mst. Nazma Begum *versus* Commissioner, Workmen's Compensation and Authority under the Payment of Wages Act, Sukkur and 2 others: Appeal No. WCS-2, decided on 21st April, 1992.)

Cl. (e) - "employer" is defined to be a body of persons whether incorporated or not, the managing agent of an employer and the legal representative of a deceased employer. When the services of a workman are temporarily lent, or let on hire to any other person on contract of service or apprenticeship, such other person shall be deemed to be an employer, while the workman is working for him.

Cl. (g) - "partial disablement" is explained as that of temporary nature and it reduces the earning capacity of a worker in a particular employment in which he has been engaged, and where the disablement reduces the earning capacity of a worker in any type of employment, is called permanent nature.

For details, please consult Schedule I to see the list of injuries deemed to result in permanent total disablement.

Permanent partial disablement - Workman injured during course of employment - Permanently taken off from duty as skilled worker after recovery - Case, *held*, one of permanently disabled - Appeal dismissed.

(High Court, Lahore: 1975 PLD 363: Pakistan Western Railways, Lahore, through its Vice Chairman *versus* Abdul Majid: First Appeal from Order No. 82 of 1972, decided on 21st May, 1974.)

Cl. (II) - "Tribunal" has the same meaning as in the Industrial Relations Ordinance, 1969 (XXIII of 1969) as defined therein "Tribunal means a Labour Appellate Tribunal constituted under section 38 of this Ordinance".

Cl. (m) - "Wages" includes any privilege or benefit which is capable of being estimated in money but does not include travelling allowance or the value thereof or a contribution payable by the employer towards pension or provident fund or a sum paid to a worker to cover any particular expenses by virtue of the nature of his employment.

Cl. (n) - "Workman" means any person employed on permanent basis and wholly for the purposes of employer's trade or business; or a railway servant as defined in section 3 of the Railways Act, 1890, not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as defined in schedule II; or is employed on monthly wages not exceeding three thousand rupees in any such capacity as specified in Schedule II, whether the contract of employment was made before or after the proclamation of this Act i.e. 5th March, 1923, and whether the same is expressed or implied, oral or written, but does not include in the definition of 'workman' any person working in the capacity of a member of naval, military or air force.

Question of fact can never be decided without opportunity of evidence - Employee whether or not a "workman", question could be decided on the basis of nature of duties - Commissioner without opportunity of evidence to affected person concluding that deceased was not a workman - Order of Commissioner, *held*, involved great miscarriage of justice and was not sustainable - Impugned order set aside in appeal by Labour Appellate Tribunal and case remanded for re-decision after opportunity of evidence to parties.

(L.A.T., Punjab: 1988 PLC 505: Haleema Bibi *versus* Ch. Manzoor Ahmed, Proprietor, News Agency, Bahawalnagar: Appeal No. BR-4 of 1985, decided on 21st August, 1985.)

"Permanently employed" - word "permanent", *held*, does not mean relating to employment as distinguished from temporary employment but only means permanently employed for the office as distinguished from discharge of outdoor duties - In these circumstances a person who is

permanently employed in any administrative District or sub-divisional office of Railway is not a workman - The petitioners cannot be considered to be workmen - Appeal dismissed.

(High Court, Lahore: 1979 PLC 355: Muzaffar Abbas Naqvi and 10 others *versus* Islamic Republic of Pakistan and 4 others: Civil Revision No. 676 of 1978, decided on 3rd April, 1979.)

Driller operating drilling machine for boring to instal tubewell - Whether a workman - Drilling machine neither a lift nor a vehicle - Drilling machine fitted on a truck for easy transport does not bring Driller within ambit of cl. (1) of sch. II - Plea that Driller was covered by cl. (2) of sch. II - No evidence that 10 or more persons work in the premises where manufacturing process was done and no evidence that drilling was done in same premises - Such evidence, *held*, was essential to decide whether Driller was a workman and whether matter was within jurisdiction of Commissioner - Order of Commissioner awarding compensation was set aside in appeal and case remanded for decision afresh after opportunity of evidence to parties.

(Labour Appellate Tribunal, Punjab: 1988 PLC 653: Director of Agricultural Engineering *versus* Nazir Ahmad: Appeal No. FD-14 of 1986, decided on 23rd Feb, 1987.)

Worker though paid wages on daily basis yet is treated regularly employed to work on and near expeller of a factory - Employment of worker, *held*, not of a casual nature - "Workman".

(High Court, Karachi: 1975 PLD 269: Mohabbat Dal Factory *versus* Muhammad Sarwar.)

"Workman" - Civil servant - Special Ticket Examiner of Railways was treated as a workman within the meaning of Workmen's Compensation Act, 1923 and not a civil servant within the meaning of Civil Servant Act, 1973;-

Same contention was taken - Divisional Accounts Officer, Pakistan Railways, Quetta and 2 others - PLD 1985 Quetta 234, and Abdul Salam Khan *versus* Pakistan Railways through Divisional Superintendent, Lahore 1984 PLC 572;-

"Workman" - Connotation - Person no longer in service was not covered by the definition of "workman" - Petitioner who was originally a workman, after his retirement could not be regarded as workman, as referred in the case of Abdul Majid *versus* Garrison Engineer, East, Rawalpindi and others - 1985 PLC (C.S.) 1953.

(High Court, Lahore: 1992 PLC 58: Mst. Nargis Nazar *versus* Divisional Superintendent, Railways, Multan: Writ Petition No. 1642 of 1988, decided on 23rd Dec., 1989.)

Under sub-section (3) of section 2 of this Act, the Provincial Government by giving notification in the official Gazette, not less than three months, may add to Sch. II, any class of persons employed in any occupation to be hazardous, provided that the Provincial Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

Schedule II, clause V, proviso - "Workman" - Definition given in s. 2(1)(n) - Scope - Various items in schedule - Cannot be treated as having restricted definition of workman contained in s. 2(1)(n) - Proviso to clause V of Schedule II - Section 2(1)(a) - Interpretation which enlarges scope of definition of "Workman" in s. 2(1)(n) - To be preferred over that which restrict such definition - None of the contentions raised by the learned Counsel for the appellant succeeds - The appeal therefore dismissed - No order as to costs.

(High Court, Lahore: 1975 PLJ 50: Anwar Munir *versus* Mohd. Iqbal etc: First Appeal from Order No. 106/73, decided on 25.7.1974.)

CHAPTER II

WORKMEN'S COMPENSATION

3. Employers' liability for compensation. - (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :

Provided that the employer shall not be so liable –

- (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding ¹[four] days;
- (b) in respect of any ²[injury, not resulting in death, caused by] an accident which is directly attributable to –
 - (i) the workman having been at the time thereof under the influence of drink or drugs, or
 - (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
 - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen, ³[* *]

³[(c) * * * * * * * * *]

(2) ⁴[If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that of employment], or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in ⁵[Part B of] Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation.— For the purposes of this sub-section a period of service shall be deemed to be continuous which has not included a period of service under any other employer ⁶[in the same kind of employment].

¹In section 3(1), in the proviso, in clause (a), substituted by the Workmen's Compensation (Amdt.) Act, 1957 (11 of 1957), s. 3 for "seven" which had been subs. by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 3, for "ten".

²In section 3(1), in the proviso, in clause (b), substituted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 3, for "injury to a workman resulting from".

³In clause (b), in sub-clause (iii) at the end the word "or" and thereafter clause (c) were omitted by the Workmen's Compensation (Amdt.) Act, 1929 (5 of 1929), s. 2.

⁴In section 3, in sub-section (2), the original words beginning "If a workman" and ending "disease of anthrax" were first amended by the Workmen's Compensation (Amdt.) Act, 1926 (29 of 1926), s. 2, and then by the Workmen's Compensation (Amdt.) Act, 1938 (9 of 1938), s. 3, to read as above.

⁵In sub-section (2), inserted, *ibid.*

⁶In sub-section (2), in the Explanation, words added, *ibid.*

(3) The ¹[Provincial Government], after giving, by notification in the ²[official Gazette] not less than three months' notice of ³[its] intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which ⁴[within the Province] shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply ⁴[within the Province] as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is ⁵[* *] directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury –

- (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or
- (b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

COMMENTS ON SECTION - 3

[Section 3 lays emphasis on the circumstances and conditions under which the liability of an employer is confirmed to pay the compensation to a person specified as "workman" within the meaning of section 2(1)(n) of the Workmen's Compensation Act, 1923, in respect of any injury caused by an accident, arising out of and in the course of his employment. The workman claiming the damages, have to prove that the accident was the outcome of his employment and the accident occurred during the tenure of his employment.

An aggrieved workman may, either claim damages under the Workmen's Compensation Act, 1923 and in case of failure, his suit shall not be maintainable in the Civil Court of law, or he may sue his employer for damages in the ordinary Civil Court, in which case, his rights under the

¹In section 3, in sub-section (3), substituted, by the A.O., 1937, for "G.G. in C."

²In sub-section (3), substituted, *ibid.*, for "Gazette of India".

³In sub-section (3), substituted, *ibid.*, for "his".

⁴In sub-section (3), words inserted, *ibid.*

⁵In section 3, in sub-section (4), the words "solely and" omitted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 3.

Workmen's Compensation Act, 1923, shall be forfeited. He may, choose either way which, in his opinion, suits him better.

However, if he is finally held, not to be a "Workman" during the proceeding under this Act, he can still sue the employer for compensation in a Civil Court, having jurisdiction thereof. In this respect, the Civil Court has the power to admit the suit for hearing, notwithstanding that it was submitted after the expiry of the period of limitation, by waiving off the hurdle of time-bar under the Limitation Act, 1908, if the aggrieved person can prove that he was pursuing for a supposed remedy in another jurisdiction.

Liability of the employer under this Act is of absolute nature - Lady sweeper while cleaning sewerage falling in sewerage-line, resulting in abortion and paralysis and then death - Death in circumstances, *held*, resulted from the accident of falling in sewer and employer could not escape from the liability to pay compensation on the basis of medical certificate showing that abortion took place due to falling - Appeal up-held.

(High Court, Lahore: 1985 PLC 652: Municipal Committee, Lalamusa *versus* Chiragh Masih: Appeal No. GT-5 of 1984, decided on 13th Nov., 1984.)

Assistant Wireman in P.W.R. and employed in Quetta Railway Station - During the course of his employment met with an accident - Grievous injury to his thigh - Admitted in Railway Hospital, Quetta - Certificate of 10% disability - Not satisfied - Got himself admitted in C.M.H. Quetta - Application to the Commissioner, Workmen's Compensation claiming compensation for 60% disability in addition to other expenses of Rs. 788/- - Commissioner awarded him the said amount of Rs. 788/- and for compensation on the basis of 20% disability amounting to total Rs. 1908/- - Filed an appeal - Dismissed, sub-section (5) of section 3, entitles a workman either to claim compensation under this Act or to file a suit for damages, but bars resort to both modes. The summary procedure prescribed in the Act is applicable only in respect of claims for compensation specially provided under the Act, but if a workman desires to claim damages in torts, he can do so only by means of a suit, where such claim, including the quantum of damages, could be more thoroughly examined - Appeal partly allowed.

(High Court, Quetta: 1973 PLC 337: Divisional Superintendent, P.W.R., Quetta *versus* Mian Muhammad: Letters Patent Appeal No. 5 of 1970, decided on 6th April, 1973.)

A person engaged in tannery in scrapping hides and skins - Developed spin-itch on his hands and body - The Commissioner awarded compensation for the injury suffered - The employers, in appeal against his order contended that skin-itch could not be treated as injury arising by accident within the meaning of section 3 of the Workmen's Compensation Act, 1923 - *Held*, though it is impossible to define with exactitude the meaning of the word "accident" as used in section 3(4), but it may be safe to state that accident may either mean some particular occurrence happening at some particular time or it may mean the cumulative effect on series of accidents met by an employee in his work - Case remanded.

(High Court, Karachi: 1973 PLC 324: M/s. S. Mohammad Din Tanneries, Karachi *versus* Rajwali Shah: Civil Misc. Appeal No. 136 of 1971, decided on 8th Feb., 1973.)

Section 3(5) - Trial Court dismissing suit as barred under s. 3(5) on the basis of Order of Commissioner (read-in evidence but formally not formed part of record) - No opportunity allowed to parties to show whether suit filed by plaintiff was as workman and whether vague approach to Commissioner holding plaintiff not workman had effect of barring plaintiff to institute suit - *Held*, finding of trial Court based on no legal issue could not be maintained.

The plaintiff-appellant claimed a sum of Rs. 36,981.00 as compensation - For physical disability caused to him during his employment and also for mental shock sustained by him on account of his unreasonable removal from service. He also claimed expenses, both past and future, in respect of his medical treatment etc. - The employers denying its liability to pay compensation to him for acts done in his own way - The maintainability of the suit was also disputed stating that the plaintiff, having unsuccessfully approached to the Commissioner for Workmen's Compensation, was left no cause to come to the Court.

(High Court, Lahore: 1981 PLJ 59: N.A. Shahriyar *versus* M/s. Conforce Ltd., Lahore: R.F.A. No. 42/80, decided on 11th Oct., 1980.)

The appellant employed in P.W.R. - Whilst on duty was run over by train - Lost his left leg and right foot - Was retired being unfit for service - P.W.R. paid him a sum of Rs. 3,528/- as compensation under the Workmen's Compensation Act, 1923 - The appellant in his plaint contented that due to the disability incurred by him on account of the accident caused by the respondent's negligence, he would have continued working for another twenty-one years and thus earned a sum of Rs. 21,000/- - Therefore he claimed this amount as special damages together with another sum of Rs. 9,000/- as damages for physical pain and mental worry and loss of happiness - The respondent denied - Claim was time-barred - Appellant was also stopped from claiming general damages in tort for negligence as he had accepted the sum of Rs. 3,528/- from the respondent in full satisfaction of his claim under the Act - Appeal dismissed - Because the appellant's suit was time-barred and because the appellant failed to prove the respondent's negligence - Both the parties to bear their own costs.

(Supreme Court: 1980 PLJ 386: Nathey Khan *versus* Govt. of West Pakistan: Civil Appeal No. 45 of 1977, decided on 10th Oct., 1979.)

Inayat Ali, respondent was employed as a machine man at monthly wages - Met with an accident while working on a machine - Resulting in cutting of phalox of four fingers of his right hand - The learned Commissioner accepted the petition and awarded compensation of Rs. 7,000/- - Aggrieved by the Order, the employer preferred this appeal - Raised the legal objection that compensation cannot be awarded under this Act as the worker was a secured person under the W.P. Employees' Social Security Ord., 1965 - *Held*, compensation claim not hit by the provisions of W.P. Employees' Social Security Ord., 1965 - No force in the appeal - Dismissal - No order as to costs.

(Labour Appellate Tribunal, Punjab: 1975 PLC 827: Metal Packages Ltd., Multan *versus* Inayat Ali: Appeal No. MN-26 of 1975, decided on 4th November, 1975.)

Deceased employee, while on his way, on cycle, to Mills to join duty meeting with an accident with a bus on public road at a place about five miles from Mills, caused his death in hospital - Death of employee, *held*, caused by an accident not arising out of and in the course of his employment - Not entitled to any compensation under this Act - Dependents of deceased could not be awarded - Appeal accepted - Set aside the order of the Commissioner - Application of the respondent dismissed.

(1st Labour Court, Punjab: 1978 PLC 5: Colony Thal Textile Mills Ltd., Bhakkar *versus* Muhammad Sharif: Appeal No. Bkr-10 of 1977 (Pb.), decided on 20th April, 1977.)

An appeal against the Order of the Commissioner, Workmen's Compensation, awarding Rs. 10,000/- as compensation to the respondent, widow of the deceased Wali Muhammad who died in an accident - Wali Muhammad was in the employment of the applicant, working at Manora - During lunch break, he proceeded to Keamari for lunch in the launch owned by the applicant - On return, while climbing the stair-case of the launch, he fell down in the sea and subsequently died - Accident did not arise out of and in the course of employment - It happened at the public place, where the deceased himself went of his own choice without any compulsion or direction from the employer/applicant - Appeal allowed and the Order of the Commissioner was set aside - Compensation to be refunded to the applicant.

(L.A.T., Sind: 1976 PLC 218: Trustees of Port of Karachi *versus* Mat. Hanifa: Appeal No. WCK-132 of 1975, decided on 20th January, 1976.)

An appeal against the Order of the Commissioner, Workmen's Compensation, Lyallpur, awarding compensation of Rs. 16,200/- to Lal Din, respondent - Who lost both his legs by amputation - After 12 years of injury received while performing duty - Reason for amputation was stated in the hospital, due to "Burger's disease" - Not caused by the injury - Disease suffered of, in circumstances, *held*, not attributable directly to injuries received by the workman and claim for compensation, held, not tenable - Appeal accepted - Order of the learned Commissioner was set aside.

(L.A.T., Punjab: 1976 PLC 502: Lyallpur Cotton Mills *versus* Lal Din: Appeal No. Lyp-I/Pb. of 1976, decided on 25th May, 1976.)

An appeal against the Order of the Commissioner, Workmen's Compensation, Multan, awarding compensation of Rs. 13,500/- to Mst. Sharifan Bibi, widow of Ali Muhammad, deceased - Workman's death occurred due to heart attack on account of unwarranted stress and strain without rest - Death, in circumstances, *held*, occurred as a result of accident arising out of and in the course

of employment – Sharifan Bibi, widow of the deceased was rightly entitled to receive compensation – No merit in this appeal – Dismissed.

(L.A.T., Punjab: 1976 PLC 708: Divisional Superintendent, P.W.R., Multan *versus* Sharifan Bibi: Appeal No. MN-13 of 1976/Pb., decided on 24th July, 1976.)

Compensation – Burden of proof – Workman while engaged to repair the premises meeting fatal accident – Claim for compensation – Owner of premises denying liability on the ground that worker was engaged by contractor entrusted with repairs work – No evidence to prove such contract – Burden of proof lying on owner – Such burden not being discharged, owner held responsible to pay compensation – Besides, under section 12, the Commissioner concluded that repair of the business premises of the principal was ordinary part of trade or business – Rs. 6,000/- was awarded as compensation to the respondent for the loss of life of her husband – On Appeal, the High Court maintained the Order of the Commissioner.

(Supreme Court of Pakistan: 1974 SCMR 269: The Punjab Religious Book Society *versus* Mst. Amanat: Civil Petition for Special Leave to Appeal No. 595 of 1972.)

4. Amount of compensation. – ¹[(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:–

- ²[A. Where death results from the injury to a workman in receipt of monthly wages falling within limits shown in the first column of Schedule IV – the amount shown against such limits in the second column thereof;
- B. Where permanent total disablement results from injury to a workman in receipt of monthly wages falling within the limits shown in the first column of Schedule IV – the amount shown against such limits in the third column thereof;]
- C. Where permanent partial disablement results from the injury –
 - (i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and
 - (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury;

¹Sub-section (1) of section 4, substituted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 4, for the original sub-section.

²In section 4, in sub-section (1), paragraphs A and B substituted by the Labour Laws (Amendment) Act, 1994 (XI of 1994) Gaz. of Pak. Extr., Pt. I, dated 29th June 1994, s. 1(2)(a) & (b).

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

D. Where temporary disablement, whether total or partial, results from the injury, half-monthly payment payable on the sixteenth day after the expiry of a waiting period of ³[four] days from the date of the disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter, –

- (i) in the case of ²[a workman] in receipt of monthly wages falling within limits shown in the first column of Schedule IV – of the sum shown against such limits in the fourth column thereof, and

²[(ii) * * * * * * * * * * * *]

Provided that –

- (a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be, ³[except payments made to the worker during the period of his convalescence towards medical treatment] ⁴[and the half-monthly payments made for the first four months of disablement];
- (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident; ⁵[and]

²[(c) the amount of half-monthly payments to which a workman

¹In section 4, in paragraph D, substituted by the Act No. XIV of 1973, s. 3, for "Seven".
²In paragraph D, in clause (i), substituted for "an adult," and thereafter clause (ii) omitted by the Labour Laws (Amendment) Act, 1994 (XI of 1994), Gaz. of Pak. Extr., Pt. I, dated 29th June, 1994, s. 1 (2) (c) (i) & (ii).

³In the proviso, in clause (a), certain words inserted by the Workmen's Compensation (Amdt.) Act, 1957 (11 of 1957), s. 4.

⁴Words added by the Act No. XIV of 1973, s. 3.

⁵In clause (b) at the end the word "and" and thereafter new clause (c) added by the Ord. No. IX of 1972.

is entitled shall in no case be less than the amount of half-monthly payments to which a workman drawing lesser monthly wages than such workman is entitled.]

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

COMMENTS ON SECTION - 4

[In awarding compensation, the loss in earning capacity is to be taken into consideration and not the loss in physical capacity. The earning capacity is to be determined on the basis of earning capacity of a worker in his normal occupation and in the similar other occupations as well. Accordingly this section deals with the determination of amount of compensation to be awarded to the aggrieved workman, covering all the possible aspects thereof.

An appeal against the Order of Commissioner, Workmen's Compensation, Multan, awarding compensation of Rs. 7000/- to Inayat Ali, respondent - Employed as machine man - Met with an accident while working on the machine, and lost phalnx of four fingers of his right hand - Appellant raised the legal objection that respondent was not entitled to claim compensation under this Act, as he was a secured person under the W.P. Employees' Social Security Ord., 1965 - As a result the objection was overruled - No force in the appeal and dismissed - No order as to costs.

(L.A.T., Punjab: 1975 PLC 827: Metal Packages Ltd., Multan *versus* Inayat Ali: Appeal No. MN-26 of 1975, decided on 4th Nov., 1975.)

P.W.R. has, by this appeal, challenged the award of compensation amounting to Rs. 4,200/- to Abdul Majid, respondent, under the Workmen's Compensation Act by Order dated 3-4-1972 - Respondent suffered fracture of ribs, in an accident arising out of and in the course of employment - After recovery, he became permanently disabled - Not taken as skilled worker - No force in the appeal and dismissed - No order as to costs - Case, *held*, one of permanent partial disablement.

(High Court, Lahore: 1975 PLD 363: P.W.R., Lahore through its Vice Chairman *versus* Abdul Majid: First Appeal from Order No. 82 of 1972, decided on 21st May, 1974.)

Fixation of percentage of loss in earning capacity - Discretionary power with Commissioner - He may use his own experience and knowledge while fixing percentage of loss in earning capacity and compensation as well - Without doctor's expert opinion, no case can be decided, in so far as nature, location, extent of injury or extent of loss of earning capacity is concerned - Under section 4 of the Workmen's Compensation Act, 1923 - As referred therein.

(High Court, Lahore: 1975 PLJ 50: Anwar Munir *versus* Mohammad Iqbal etc.: F.A.O. 106/73, decided on 25th July, 1974.)

The Workmen's Compensation Act, 1923 is a beneficial enactment for the workmen and speaks of compensation only, whereas the W.P. Employees' Social Security Ord., 1969, speaks only of gratuity and pension, to be acquired as a matter of right - The purpose of two enactments are different, the beneficiaries under the two enactments are different, and the manner of raising funds for payment to the beneficiaries are different - As referred in an appeal under section 30(a) of the Workmen's Compensation Act, 1923.

(High Court, Karachi: 1974 PLD 140: Mst. Lal Jan *versus* M/s. Silver Paper Tube Co., Karachi: Misc. Appeal No. 97 of 1971, decided on 5th Nov., 1973.)

Explanation and Fourth Schedule - Assessment of 60% loss of earning capacity - Unexceptionable, when injuries received by workman are fractures and deformity restricting limb movement - Case of such workman falls within explanation to s. 4(1)(c)(ii) and compensation can also be measured as in the case "total permanent disablement" provided in the Fourth Schedule of the Act - As referred in an appeal under section 30 of the Workmen's Compensation Act, 1923 filed by the Punjab Transport Corporation against the Order of the Commissioner.

(High Court, Lahore: 1975 PLJ 27: Punjab Road Transport Corporation *versus* Fateh Muhammad: F.A.O. 128/1972, decided on 22nd May, 1974.)

5. Method of calculating wages. - ¹[* * *] ²[In this Act and for the purposes thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated] as follows, namely:-

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

³[(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be ⁴[* * *] the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality;]

⁵[(c) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

⁶[* * * * * * * * * * * * * * *]

Explanation. - A period of service shall, for the purposes of ⁷[this section], be deemed to be continuous which has not been interrupted by a period of

¹In section 5, the brackets and figure "(1)" omitted by the Workmen's Compensation (Amtd.) Act, 1938 (9 of 1938), s. 4.

²In section 5, substituted by the Workmen's Compensation (Amtd.) Act, 1939 (13 of 1939) s. 2 (w.e.f. the 30th June, 1934), for "For the purposes of the monthly wages of a workman shall be calculated". The words in brackets "(")" were substituted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933) s. 5, for "section 4".

³In section 5, clause (b) inserted, *ibid*, s. 5.

⁴In clause (b) the words "deemed to be" omitted by the Workmen's Compensation (Amtd.) Act, 1939 (13 of 1939), s. 2.

⁵The original clause (b) was re-lettered (c) by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 4.

⁶The proviso was omitted, *ibid*.

⁷In section 5, in the Explanation, substituted by the Workmen's Compensation (Amtd.) Act, 1938 (9 of 1938), for "sub-section" to read as above, which was first substituted for original words "this section" by the Workmen's Compensation (Amtd.) Act, 1929 (5 of 1929), s. 4.

absence from work exceeding fourteen days.

[(2) * * * * *]

6. **Review.**-(1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

7. **Commutation of half-monthly payments.**-(1) Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

8. **Distribution of compensation.**-(1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

[Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.]

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

¹Sub-section (2) of section 5, which had been inserted by the Workmen's Compensation (Amdt.) Act, 1929 (5 of 1929), and was omitted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 5.

²Sub-section (1) of section 8, substituted by the Workmen's Compensation (Amdt.) Act, 1929 (5 of 1929), s. 4, for the original sub-section.

³In sub-section (1), proviso substituted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 6, for the original proviso.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) ¹[as compensation in respect of a deceased workman] the Commissioner ²[shall deduct] therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding ³[twenty-five rupees] and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied, after any inquiry which he may deem necessary, that no dependant exists, he shall ⁴[not less than two years after the date of deposit, transfer the balance of the money to such fund or funds for the benefit of workmen as the Provincial Government may by notification in the official Gazette specify or establish]. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

⁵[(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made ⁶[under the proviso to sub-section (1) or] under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this

¹In section 8; in sub-section (4), inserted by the Workmen's Compensation (Amdt.) Act, 1929 (5 of 1929), s. 4.

²In sub-section (4), substituted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 6, for "may deduct".

³In sub-section (4), substituted, ibid, for the words "fifty rupees [or so much of that cost or of fifty rupees, whichever is less, as has not already been advanced by the employer on account of such expenses]". The words in brackets were ins. by the Act No. 5 of 1929, s. 4.

⁴In sub-section (4), substituted by the Workmen's Compensation (Amdt.) Act, 1957 (11 of 1957), s. 5, for "repay the balance of the money to the employer by whom it was paid".

⁵Sub-sections (5) to (7) of section 8, were substituted by the Workmen's Compensation (Amdt.) Act, 1929 (5 of 1929), s. 4, for the original sub-section (5).

⁶In sub-section (5), certain words inserted by the Workmen's Compensation (Amdt.) Act, 1957 (11 of 1957), s. 5.

behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.]

¹[(8)] Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

²[(9) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.]

COMMENTS ON SECTION - 8

[Section 8 deals with the distribution of the payment of compensation. Payment of compensation is not to be made directly to the aggrieved person or persons by the employer. The amount of compensation in respect of a workman whose injury has resulted in death, and the payment of lump sum as compensation to a woman or a person under legal disability, is not to be made directly by the employer to the aggrieved person or dependants, but through the Commissioner by depositing the amount with him, except that the employer, in the case of a deceased workman, may make advance upto Rs. 100/- in aggregate to any or all the dependants, to be deducted from the amount of compensation for repayment to the employer.

Management sent cheque of dues of the deceased to the Commissioner, alongwith the list of legal heirs, for distribution among the legal heirs, including the applicant, who was second wife of the deceased and mother of two minor children - But Commissioner awarded the amount of cheque to two sons of first wife of the deceased, who were nominee in this respect - According to definition of "dependants" as given in s. 2(d) and s. 8 of the Act, 1923, and according to "Shariat" and "Muslim Law", all legal heirs of the deceased would get their due shares - Court ordered accordingly - Commissioner was directed to recover the amount and pay the recovered amount to Nazama Begum.

(L.A.T., Sind: 1993 PLC 48: Mst. Nazama Begum *versus* The Commissioner, Workmen's Compensation and Authority under the Payment of Wages Act, Sukkur and 2 others; Appeal No. WCS-2 of 1992, decided on 21st April, 1992.)

¹The original sub-section (6) was re-numbered as sub-section (8) of section 8, by the Workmen's Compensation (Amtd.) Act, 1929 (5 of 1929), s. 4.

²Sub-section (9) of section 8, added, *ibid*.

Mohammad Aslam deceased, an employee of the Railway met with a fatal accident on 16.9.1994 - Railway Authorities deposited a sum of Rs. 6,000/- in the Court of Commissioner for Workmen's Compensation - Thereupon, Commissioner distributed to the three heirs - Mst. Bilqis Begum, widow of the deceased, Rs. 3,000/-, Mst. Kamrun Nisa, mother of the deceased, Rs. 2,000/-, Shahzadi Begum unmarried sister of the deceased, Rs. 1,000/- - During the pendency of the appeal, Bilqis Begum died - Commissioner directed that the sum of Rs. 3,000/- lying in the Court be paid to the mother of the deceased Mst. Kamrun Nisa - Aggrieved by the revised Order of the Commissioner - The heirs of Bilqis Begum, Muhammad Yousuf, her father and Mst. Wilayat Begum, her mother - Filed this appeal - Order of the Commissioner set aside - Commissioner was directed to pay Rs. 3,000/- to the applicants, the legal heirs of the Mst. Bilqis Begum, the widow of the deceased employee Muhammad Aslam - No order as to costs.

(L.A.T., Punjab: 1976 PLC 650: Muhammad Yousuf etc. *versus* Mst. Kamrun Nisa and another; Appeal No. LHR-6 of 1976-Pb., decided on 10th May, 1976.)

Employer paying Rs. 100/- monthly to widow of the deceased workman directly for some time and then stopping payment - Employer, *held*, could not be allowed adjustment of amount so paid to the widow, in the absence of any agreement recorded by the Commissioner, from the amount of the compensation by the Commissioner - Appeal dismissed - Reference taken from an Appeal.

(L.A.T., Sind: 1976 PLC 94: M/s. Habib Sugar Mills Ltd., Karachi *versus* Rabia Bibi; Appeal No. WCK-122 of 1975, decided on 24th Dec., 1975.)

9. Compensation not to be assigned, attached or charged. - Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall, in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

10. Notice and claim. - (1) ¹[No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within ²[three years] of the occurrence of the accident or, in case of death, within ²[three years] from the date of death]:

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

³[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the ⁴[entertainment of a claim] -

(a) if the claim is ⁵[preferred] in respect of the death of a workman

¹In section 10, in sub-section (1), substituted by the Workmen's Compensation (Amtd.) Act, 1938 (9 of 1938), s. 5, for certain words.

²In sub-section (1), substituted for "one year" by the Act No. XIV of 1973, s. 4.

³In section 10, second proviso inserted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 7.

⁴In the second proviso, substituted by the Workmen's Compensation (Amtd.) Act, 1938 (9 of 1938), s. 5, for "maintenance of proceedings".

⁵In the second proviso, in clause (a), substituted, *ibid*, for "made".

resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

- (b) if the employer "[or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed] has knowledge of the accident from any other source at or about the time when it occurred:]

Provided, further, that the Commissioner may "[entertain] and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been "[preferred], in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or "[prefer] the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon "[any one of] several employers, or upon any person "[* * *] responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

[(3) The "[Provincial Government] may require that any prescribed class of employer shall maintain at their premises at which workmen are employed, a notice-book, in the prescribed form which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting *bona fide* on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.]

¹In section 10, in the second proviso, in clause (b), inserted, by the Workmen's Compensation (Amdt.) Act, 1938 (9 of 1938).

²In the third proviso, substituted, *ibid*, for "admit".

³In section 10, in the third proviso, substituted, *ibid*, for "instituted".

⁴In the third proviso, substituted, *ibid*, for "Institute".

⁵In section 10, in sub-section (2), substituted by the Repealing and Amending Act, 1924 (7 of 1924), s. 2 and First Sch., for "any one or".

⁶In sub-section (2), the word "directly" omitted by the Workmen's Compensation (Amdt.) Act, 1938 (9 of 1938), s. 5.

⁷Sub-sections (3) & (4) substituted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 7, for the original sub-section (3).

⁸Substituted by the A.O., 1937, for "Local Government".

COMMENTS ON SECTION - 10

[Before a claim for compensation is entertained by the Commissioner for Workmen's Compensation, the employer must be informed by a notice in the prescribed manner, in respect of an accident, under section 10 of the Act, except, where the employer had already come to know about the occurrence of the accident and where inability to serve notice was due to sufficient reason.

If the claim is preferred before the Commissioner within three years of the occurrence of the accident or, in the case of death, from the date of death, any defect or irregularity in a notice, shall not be a bar to the entertainment of a claim.

An Appeal against the Order of the Commissioner - Who awarded Rs. 8000/- as compensation for the loss of his right eye, as a result of an accident while performing duty as driller on Drilling Machine for the installation of tubewells - The respondent brought the petition under section 10, which was opposed by the appellant - Contented that the respondent being a civil servant, the Commissioner has no jurisdiction and that the petition was time-barred - As a result, appeal was accepted and the impugned Order of the Commissioner was set aside for fresh decision on the points of jurisdiction and limitation - Case remanded.

(L.A.T., Punjab: 1988 PLC 653: Director of Agricultural Engineering *versus* Nazar Ahmed: Appeal No. FD-14 of 1986, decided on 23rd Feb., 1987.)

Under Section 10, second proviso, Part (b) - Notice of accident - Worker soon after accident taken to Mill dispensary - Person incharge of dispensary responsible to employer and having knowledge of accident at time of occurrence - Failure of worker to serve notice, in circumstances, *held*, would not be a bar to entertainment of claim for compensation - So, the lack of inability to give notice to the employer under section 10, would not be a bar to the entertainment of the claim - As referred in an Appeal.

(L.A.T., Punjab: 1975 PLC 827: Metal Packages Ltd., Multan *versus* Inayat Ali: Appeal No. MN-26 of 1975, decided on 4th Nov., 1975.)

Section 10 - Limitation - Workman, Mushtaq Ahmed Khan - Was in employment as car driver of the employer - Met with an accident and died while on duty - Employer paying Rs. 100/- p.m. to widow of deceased workman for some time and then stopping the same - Claim filed before Commissioner, much after one year of the accident - But within one year of stoppage of payment of Rs. 100/- monthly to widow - Claim, in circumstances, *held*, in time and not barred by Limitation - Appeal dismissed - As referred in.

(L.A.T., Sind: 1976 PLC 94: M/s. Habib Sugar Mills Ltd., Karachi *versus* Mst. Rabia Bibi: Appeal No. WCK-122 of 1973, heard on 24th Dec., 1975.)

Note: The period of limitation for submitting the claim has now been raised from one year to that of three years, by virtue of amendment in sub-section (1) of section 10 of the Workmen's Compensation Act, 1923, by the (Amendment) Act XIV of 1973.]

[10-A. Power to require from employers statements regarding fatal accidents. - (1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

¹Section 10-A, inserted by the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933), s. 8.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.]

COMMENTS ON SECTION - 10-A

[In case, the Commissioner receives an information from any other source, that a workman has died in an accident arising out of and in the course of his employment, he may send a notice to the employer, requiring him to submit within thirty days, the circumstances of the death of the workman and whether, he is or is not liable for compensation. If he submits to be liable, he should deposit within thirty days, the amount of compensation and if on the contrary, he submits not to be liable, he shall indicate the grounds thereof.

Where, the employer has not accepted his liability, the Commissioner may inform any of the dependants that it is open to them to prefer a claim for compensation, alongwith any other information as he may think fit.

In such cases, the Commissioner has no jurisdiction to determine the amount of compensation and the liability of the employer.]

[10-B. Reports of fatal accidents.] (1) Where, by any law for the time being in force notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death, the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the death:

Provided that where the ¹[Provincial Government] has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.

(2) The ¹[Provincial Government] may, by notification in the ³[official Gazette], extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.]

¹Section 10-B inserted by the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933), s. 8.

²In section 10-B substituted by the A.O., 1937, for "Local Government".

³In sub-section (2), substituted ibid, for "local official Gazette".

[10-C. Officers authorised may refer cases for payment of compensation.] A Labour Commissioner, an Inspector of Factories or any other officer authorized by the Provincial Government for this purpose may refer, in the prescribed manner, to the Commissioner, cases of workmen who have not been paid due compensation by employers under the provisions of this Act.

[10-D. Fixation of abstracts of the Act or rules at the entrance of the premises.] There shall be affixed in some conspicuous place near the main entrance of every place where workmen are employed, in English and in the language of the majority of the workmen, such abstracts of this Act and of the rules made thereunder as may be prescribed.]

11. Medical examination. ²[(1) Where a workman has given notice of an accident, the employer shall, before the expiry of three days from the time at which service of the notice has been effected, have the workman examined free of charge by a qualified medical practitioner, and the workman shall submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act, shall if so required submit himself for such examination from time to time:

Provided that a workman not examined free of charge as aforesaid may get himself examined by a qualified medical practitioner and the expenses of such medical examination shall be reimbursed to the workman by the employer:

Provided further that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.]

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined, the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3) dies without having submitted himself for medical examination as required by either of those sub-sections, the

¹Sections 10-C and 10-D inserted by the Workmen's Compensation (Amtd.) Act, 1957 (11 of 1957), s. 6.

²In section 11, sub-section (1) substituted, ibid, s. 7, for the original sub-section (1).

Commissioner may, if he thinks fit, direct the payment of compensation to the dependents of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner then, [if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable] in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner [whose instructions he had followed], and compensation, if any, shall be payable accordingly.

COMMENTS ON SECTION - 11

[This is the responsibility of the employer to get the workman examined free of charge, by a qualified medical practitioner, within three days on receipt of the notice from the workman in respect of an accident, and the workman should submit himself for the same accordingly and shall submit himself for such examination from time to time, in case he is getting half-monthly payment under this Act.]

If the workman is not examined free of charge, he may get himself examined by any qualified doctor and the expenses shall be re-imbursted to the workman by the employer and the workman shall not submit himself for the same, at more frequent intervals than prescribed in the Act.

In case, the workman refuses to submit himself or obstructs in any way for examination by a qualified medical practitioner, the right of compensation shall remain suspended till the continuance of refusal or obstruction ends, and also his right of compensation shall be suspended until he returns and offers himself for the examination, where he has left the vicinity of the working place without having so examined.

Where the workman, during such suspension of compensation dies, the Commissioner may, direct the payment of compensation to the dependents of the deceased workman, if he thinks fit, but no compensation shall be payable in respect of the period of suspension as stated above.

If, it is proved by the employer that the workman has not regularly attended the qualified medical practitioner or deliberately failed to follow his instructions, causing aggravation of injury, resulting disablement, this factor may be taken into consideration by the competent authority while fixing the compensation.

¹In section 11, in sub-section (6), substituted by the Workmen's Compensation (Amtd.) Act, 1938 (8 of 1938), s. 6, for "if it is hereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal, failure or disregard was unreasonable".

²In sub-section (6), words inserted, *ibid.*

Medical evidence – Commissioner when examining medical witness – Must record his statement in full – Court, however, under no legal obligation to examine a doctor – Contention that without a doctor furnishing expert opinion, no case can be decided in so far as nature, location and extent of injury, or extent of loss of the earning capacity are concerned, *held*, not correct – There is no legal requirement to examine a doctor except that when the Commissioner does examine a medical witness, he would have to record his statement in full – Reference taken from:

(High Court, Lahore: 1975 PLD 367: Anwar Munir Coal Company, Jhelum *versus* Mohammad Iqbal and another: First Appeal from Order No. 106 of 1973, decided on 25th July, 1974.)

12. Contracting.—(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workmen under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, [or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

COMMENTS ON SECTION - 12

[Where the owner or principal contracts with any other person for the execution of any part of any work of his trade or business, he shall be liable to pay compensation to any workman employed by that person or contractor, as if he would have been liable to pay, if that workman had been employed by him, but the amount of compensation shall be calculated according to the wages of the workman under the employer by whom he is immediately employed, and the principal shall be entitled to be indemnified by the contractor or by any person standing to him in relation of a contractor,

¹In section 12, in sub-section (2), inserted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933).

but all questions as to the right to and the amount of any such indemnity shall be settled by the Commissioner.

An aggrieved workman is entitled to recover compensation from either the contractor or the principal. Protection is not provided in respect of any accident, occurred elsewhere than the premises where the principal usually undertakes to execute the work of his trade or business.

Under sub-section (1) of section 12 – Contractor, liability of – Principal employing contractor for execution of work relating to his trade or business – Principal still liable to pay compensation awardable under the Act, just as though worker were directly employed by him – Exception – Amount of compensation to be calculated with reference to wages of workman paid by contractor, as referred in.

(High Court, Lahore: 1975 PLD 367: *Anwar Munir Coal Company, Jhelum versus Mohammad Iqbal and another*: First Appeal from Order No. 106 of 1973, decided on 25th July, 1974.)

Compensation – Liability – Workman employed by contractor for execution of work, whole or part of which ordinarily, formed part of trade or business of principal – Workman meeting with fatal accident – Principal, held liable to pay compensation – Concluded by the Commissioner that repair of the business premises of the principal was ordinary part of their trade or business – Rs. 6,000/- was awarded as compensation to the respondent for the loss of life of her husband – On Appeal, the High Court maintained the Order of the Commissioner.

(1974 SCMR 269: *The Punjab Religious Book Society versus Mrs. Amanat*: Civil Petition for Special Leave to Appeal No. 595 of 1972.)

13. Remedies of employer against stranger.— Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

14. Insolvency of employer.— (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the

contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman:

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the [Insolvency (Karachi Division) Act,] 1909 (III of 1909) or under section 61 of the Provincial Insolvency Act, 1920 (V of 1920) or under section 230 of the *Companies Act, 1913 (VII of 1913) are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed, if application were made for that purpose under section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

15. Special provisions relating to masters and seamen.— This Act shall apply in the case of workmen who are masters of ²* * * ships or seamen subject to the following modifications, namely:—

¹In section 14, in sub-section (4), substituted for "Insolvency (Karachi Division and Dacca) Act" by the Ordinance No. XXVII of 1981, s. 3 & Second Schedule to read as above, which was earlier substituted by A.O. 1954, Art. 2 and Sch., for "Insolvency (Dacca and the Federal Territory of Karachi) Act", which had been substituted by the Repealing and Amending Ord., 1961, s. 3 and Sch., for "Insolvency (Capital of Federation and Dacca) Act".

²In section 15, the word "registered" omitted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 10.

*Please also consult the Companies Ordinance, 1984 (XLVII of 1984).

- (1) The notice of the accident and the claim for compensation, may except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.
- (2) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost.
- (3) Where an injured master or seaman is discharged or left behind ^{1[* * *]} or in a foreign country, any depositions taken ^{1[* * *]} by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the ²[Federal Government] or any ³[Provincial Government] shall, in any proceedings for enforcing the claim, be admissible in evidence –
 - (a) if the deposition is authenticated by the signature of the ^{1[* * *]} Consular Officer before whom it is made;
 - (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and
 - (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused;

and it shall not be necessary in any case to prove the signature of 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.

¹In section 15, in clause (3) and sub-clause (a), the words "in any part of His Majesty's dominions" and "by any Judge or Magistrate in that part or" and "Judge, Magistrate or" omitted respectively by the Ordinance No. XXVII of 1981, s. 3 & Second Schedule.

²In clause (3), substituted for "Central Government" by the Act No. XVI of 1975, s. 2.

³In clause (3), substituted, *ibid*, for "Local Government".

[* * * * * * * * *]

- ²[(4)] No ³[half-monthly payment] shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in ¹[Pakistan] relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

- ³[(5)] No compensation shall be payable under this Act, in respect of any injury in respect of which provision is made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention Allowances (Indian Seamen, etc.) Scheme, 1941, made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939, or under the War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Central Government.

- (6) Failure to give a notice or make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceedings under this Act in respect of any personal injury, if –

- (a) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and
- (b) the Provincial Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made, makes provision for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and
- (c) the proceedings under this Act are commenced within one month from the date on which the said certificate of the

¹In section 15, the original clause (4) omitted by the Workmen's Compensation (Amtd.) Act, 1938 (9 of 1938), s. 7.

²Clause (5) re-numbered as clause (4), *ibid*.

³In clause (4), substituted by the Repealing and Amending Act, 1924 (7 of 1924), s. 2 and First Sch., for "monthly payment".

⁴In clause (4), substituted by the Central Laws (Statute Reform) Ordinance, 1950 (21 of 1960), s. 3 and 2nd Sch., (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been subs. by A.O., 1949, for "British India".

⁵Clauses (5) & (6) substituted by the Workmen's Compensation (Amtd.) Act, 1942 (1 of 1943) (*w.e.f.* 3rd Sept., 1939), s. 2, for clause 5 which was ins. by the Workmen's Compensation (Second Amtd.) Act, 1939 (42 of 1939), s. 2.

Provincial Government was furnished to the person commencing the proceedings.]

16. **Returns as to compensation.**— The ¹[Provincial Government] may, by notification in the ²[Official Gazette], direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as the ¹[Provincial Government] may direct.

17. **Contracting out.**— Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

18. **Proof of age.**— Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory, ³[a valid certificate granted in respect of such person under section 12 or section 52 of the Factories Act, 1934 (XXV of 1934)], before the occurrence of the injury, shall be conclusive proof of the age of such person.

⁴[18-A. **Penalties.**— (1) Whoever —

- (a) fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10, or
- (b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10-A, or
- (c) fails to send a report which he is required to send under section 10B, or
- (d) fails to make a return which he is required to make under section 16, ⁵[or]

¹In section 16, substituted by the A.O., 1937, for "Governor-General in Council".

²In section 16, substituted, *ibid.*, for "Gazette of India".

³In section 18, substituted by the Workmen's Compensation (Amtd.) Act, 1938 (9 of 1938), s. 7, for "a certificate granted in respect of such person under section 7 or section 8 of the Indian Factories Act, 1911".

⁴Section 18-A ins. by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 11.

⁵In section 18-A, in sub-section (1), in clause (d) at the end the word "or" added by the Workmen's Compensation (Amtd.) Act, 1957, (11 of 1957), s. 8.

¹[(e) fails to affix the abstracts of this Act and of the rules as required by section 10D,]

shall be punishable with fine which may extend to one hundred rupees.

²[(1-A) * * * * *]

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.]

CHAPTER III

COMMISSIONERS

19. **Reference to Commissioners.**— (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by ³[a Commissioner].

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act, required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

COMMENTS ON SECTION - 19

[If, any question arises during any proceedings under this Act, in respect of, liability to pay compensation, any question whether the injured person is a workman or not, amount of compensation, nature or extent of disablement shall, be decided by the Commissioner and no Civil Court shall have the jurisdiction to settle, decided, enforce or deal with any question mentioned above, for which the Commissioner has been made competent authority under the Act.

However, section 19 does not interfere the jurisdiction of the Civil Court to grant relief, where section 5 of the Act gives option to an aggrieved workman to claim compensation either under

¹In section 18-A, in sub-section (1), new clause (e) inserted by the Workmen's Compensation (Amtd.) Act, 1957, (11 of 1957), s. 8.

²In section 18-A, sub-section "(1A) Notwithstanding any thing contained in the Code of Criminal Procedure, 1898 (Act V of 1898), all offences under this section shall be cognizable and be liable" omitted by the Act No. XIV of 1973, s. 5.

³In section 19, in sub-section (1), substituted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 12, for "the Commissioner".

the Workmen's Compensation Act, 1923, or to claim compensation or damages in the Civil Court, whichever, in his opinion, seems more beneficial.

Besides, the dependants of a deceased workman cannot submit the claim for compensation to the Commissioner for Workmen's Compensation, if the deceased workman had already been insured under the Group Insurance Scheme by the employer. The Commissioner has no jurisdiction in this respect. The dependants may sue for damages in the Civil Court of Law.

(1984 PLC 658: Muhammad Iqbal *versus* WAPDA and another.)

Under section 19 of the Act, the Commissioner having jurisdiction is competent to decide, the liability to pay compensation, the question whether the injured person is a workman or not, amount of compensation, nature and extent of disablement etc. while deciding such matters the Commissioner acts judicially and is performing judicial functions. But he has no power to set aside or revise his previous Order made by him, even by mistake.

(1930 AIR Lahore 657.)

20. Appointment of Commissioners. – (1) The ¹[Provincial Government] may, by notification in the ²[official Gazette], appoint, any person to be a Commissioner for Workmen's Compensation for such local area as may be specified in the notification.

³[(2) Where more than one Commissioner has been appointed for any local area, the ¹[Provincial Government] may, by general or special order, regulate the distribution of business between them.]

³[(3)] Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

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

COMMENTS ON SECTION - 20

[Every Commissioner for Workmen's Compensation appointed by the Provincial Government, shall be deemed to be a public servant within the meaning of the Pakistan Penal Code, 1860 (Act No. XLV of 1860) – The Commissioner appointed under section 20 of the Workmen's Compensation Act, 1923 is "Court subordinate to High Court" – Revision is entertained in the High Court, in case the Commissioner has no jurisdiction to entertain the application or has acted illegally or has done irregularity in exercise of his jurisdiction.

(1938 AIR Lahore 855: G.D. Gianchand Perambulators and Tricycle Manufacturers *versus* Abdul Hamid: Civil Revision No. 159 of 1938, decided on 10th May, 1938.)]

21. Venue of proceedings and transfer. – (1) Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to

¹In section 20 substituted by the A.O., 1937, for "Local Government".

²In section 20 substituted *ibid.*, for "local official Gazette".

³A new sub-section (2) was inserted and the old sub-sections (2) and (3) were re-numbered as (3) and (4) respectively, by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 13.

the provisions of this Act and to any rules made hereunder, be done by or before ¹[a Commissioner] for the local area in which the accident took place which resulted in the injury:

Provided that, where the workman is the master of a ²* * * ship or a seaman, any such matter may be done by or before ¹[a Commissioner] for the local area in which the owner or agent of the ship resides or carries on business.

(2) If a Commissioner is satisfied ³[that any matter arising out of any proceedings pending before him] can be more conveniently dealt with by any other Commissioner, whether in the same Province or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

⁴[Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard;]

Provided ⁴[further] that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lump sum shall be transferred for disposal under this sub-section to a Commissioner in the same Province save with the previous sanction of the ⁵[Provincial Government] or to a Commissioner in another Province save with the previous sanction of ⁶[the Provincial Government of that Province], unless all the parties to the proceedings agree to the transfer.

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter

¹In section 21, in sub-section (1) and in the proviso, substituted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 14, for "the Commissioner".

²In sub-section (1), in the proviso, the word "registered" omitted, *ibid.*

³In sub-section (2), substituted by the Workmen's Compensation (Amdt.) Act, 1938 (9 of 1938), s. 9, for "by any party to any proceedings under this Act pending before him that such matter".

⁴In sub-section (2), proviso and the word "further" in the second proviso after the word "Provided" inserted, *ibid.*

⁵Substituted by the A.O., 1937, for "Local Government".

⁶Substituted, *ibid.*, for "Governor-General in Council".

has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

¹[(5) The ²[Provincial Government] may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.]

22. Form of application. – (1) No application for the settlement of any matter by a Commissioner, ³[other than an application by a dependant or dependants for compensation,] shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) ⁴[An application to a Commissioner] may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely :-

- (a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;
- (b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;
- (c) the names and addresses of the parties; and
- (d) ⁵[except in the case of an application by dependants for compensation] a concise statement of the matters on which agreement has and ⁶[of] those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

¹In section 21, sub-section (5) inserted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 14.

²Substituted by the A.O., 1937, for "Local Government".

³In section 22, in sub-section (1), inserted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 15.

⁴In sub-section (2), substituted, *ibid.*, for "Where any such question has arisen, the application".

⁵In sub-section (2), in clause (d), inserted, *ibid.*

⁶In clause (d), substituted by the Repealing and Amending Act, 1925 (37 of 1925), s. 2 and First Sch., for "on".

COMMENTS ON SECTION - 22

[Section 22 deals with the settlement of any matter by the Commissioner, arose on some questions, which the parties have been unable to settle by agreement or compromise. Application by a dependant or dependants for compensation is to be entertained by the Commissioner. The application to a Commissioner may be given according to the prescribed manner as detailed in sub-section (2).]

Application to Commissioner under section 22 – Maintainability – Respondent-workman, in his application to Regional Manager of appellant – Corporation, specially demanding that after completing his accident report, he may be allowed compensation – Respondent-workman waiting for about 18 days but neither any compensation was paid to him during this period nor any body cared to attend to this demand – Applicant-Corporation, however, considering other demands made in the same application and deciding it on or about date when it was made – Respondent-workman filing application u/s 22 – Commissioner treating application as maintainable – Corporation filing appeal to High Court u/s 30 – *Held*, in the circumstances, a question had arisen in connection with compensation between parties and it was respondent-workman's right to approach Commissioner through a formal application u/s 22 – Decision of Commissioner upheld being unexceptionable.

(High Court, Lahore: 1975 PLJ 27: Punjab Road Transport Corporation *versus* Fateh Muhammad: F.A.O. 128/1972, decided on 22-5-1974.)

Payment of group insurance and gratuity – Application filed by a widow of deceased employee for payment of amount of group insurance and gratuity of deceased to her, was dismissed by Commissioner on grounds, firstly that same was not presented by a competent person, secondly that same was not in prescribed form and thirdly that proper fee was not paid – Widow of deceased employee being legal heir of deceased was quite competent to apply to Commissioner for claim preferred by her – Other two grounds were merely defects of procedure which could not under law, constitute a valid basis for throwing out her claim – Such defects could be rectified with permission of Commissioner at any stage – Case was remanded to Commissioner for its decision on merits in accordance with law.

(L.A.T., Punjab: 1994 PLC 7: Mst. Zainab Bibi *versus* Managing Director/Manager, Multan Woollen Spinnery, Multan and another: Appeal No. 36 of 1991, decided on 24th October, 1992.)

[22-A. Power of Commissioner to require further deposit in cases of fatal accident. – (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.]

23. Powers and procedure of Commissioners. – The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, ⁷[and the Commissioner shall be deemed to be a Civil Court for all the purposes of

¹Section 22-A, inserted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 16.

²In section 23 inserted by the Workmen's Compensation (Amtd.) Act, 1929 (5 of 1929), s. 5.

section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).]

COMMENTS ON SECTION - 23

[By virtue of section 23, Code of Civil Procedure, 1908 (V of 1908) empowers the Commissioner for Workmen's Compensation, to exercise all powers of a Civil Court for the purpose of taking evidence on oath, and for the purposes of enforcing the attendance of witnesses, production of documents and material objects, he shall be a Civil Court under section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898.

Review by the Commissioner - Devoid of jurisdiction - Order passed in review would not be saved by relying on review power in CPC -

Workman Farzand Ali, who was employed with the petitioner, died natural death on 1-9-1985 - Respondent No. 2 who claims to be the sister and the only surviving heir of the deceased filed two separate applications - One before the Commissioner for compensation and the second before the authority under the Payment of Wages Act, 1936, for the payment of group insurance and other legal dues - Both the applications were dismissed twice for non-prosecution by the authority - Thereafter respondent No. 2 submitted a review application under section 114, of CPC, which was accepted by respondent No. 1 and the case was ordered to be proceeded on merit - Reference taken from an Appeal.

(High Court, Karachi: 1987 NLR 186: M/s. Hussain Textile Mills Ltd., *versus* Authority under the Payment of Wages Act, etc. Consti. Petition No. S-129 of 1986, accepted on 18-1-87.)

Commissioner competent to decide loss of earning capacity - Non-production of medical evidence to support percentage of loss of earning capacity by itself, *held*, does not render judgement of Commissioner invalid.

This is an appeal against the Order of the Commissioner for Workmen's Compensation, Multan, awarding compensation of Rs. 7,000/- to Inayat Ali, respondent - Employed as machine-man - Met with an accident - Resulting in cutting of phalanges of 4 fingers of his right hand - Aggrieved by the Order of the Commissioner the appellant/employer preferred this appeal - It is true that no medical evidence was produced in this case as to the percentage of loss of earning capacity - This fact alone will not render the judgement of the Commissioner invalid - Objection is over ruled - No force in this appeal which is dismissed - No order as to costs.

(L.A.T., Punjab: 1975 PLC 827: Metal Packages Ltd., Multan *versus* Inayat Ali: Appeal No. MN-26 of 1975, decided on 4th Nov., 1975.)

Order by the Commissioner - Allowing claim in a case where it had not been established that application had any proper *locus standi* to file application before Commissioner - Quashed by High Court on employer's writ petition.

*Since it has not been established that the applicant Ali Mir Jan as an attorney by the father and the brother of the deceased Mir Ahmed Khan, had any proper *locus standi* to file application before the learned Commissioner - No other option to decide that the Order of the learned Commissioner was passed without lawful authority - Petition allowed - Quashed the said order - No order as to costs.

(High Court, Karachi: 1987 NLR 231: Dawood Cotton Mills Ltd., *versus* The Commissioner Workmen's Compensation and another: C.P. No. S-89 of 1984, accepted on 12-2-87.)]

24. **Appearance of parties.** - Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or ¹[by an official of an Insurance Company or registered Trade

¹In section 24, substituted by the Workmen's Compensation (Amtd.) Act, 1938 (9 of 1938), s. 10, for "other person authorised in writing by such person".

Union authorised in writing by such person or, with the permission of the Commissioner, by any other person so authorised.

25. **Method of recording evidence.** - The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceedings, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record:

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided further that the evidence of any medical witness shall be taken down as nearly as may be word for word.

COMMENTS ON SECTION - 25

[Medical evidence - Commissioner when examining medical witness - Must record his statement full - Court, however, under no legal obligation to examine a doctor - Contention that, without a doctor furnishing expert opinion, no case can be decided in so far as nature, location, and extent of injury, or extent of loss of earning capacity are concerned, *held*, not correct - Appeal dismissed with no order as to costs.

(High Court, Lahore: 1975 PLD 867: Anwar Munir Coal Company, Jhelum *versus* Mohammad Iqbal and another: First Appeal from Order No. 106 of 1973, decided on 25th July, 1974.)

26. **Costs.** - All costs, incidental to any proceedings before a commissioner, shall, subject to rules made under this Act, be in the discretion of the Commissioner.

27. **Power to submit cases.** - A Commissioner may, if he thinks fit, submit any questions of law for the decision of the ¹[Tribunal] and, if he does so, shall decide the question in conformity with such decision.

28. **Registration of agreements.** - (1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable ²[to a woman or a person under a legal disability] ³[* * *] a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

¹In section 27, substituted for "High Court" by the Act No. XI of 1975, s. 2 and Sch.

²In section 28, substituted by the Workmen's Compensation (Amtd.) Act, 1929 (5 of 1929), s. 6, for "to a person under a legal disability".

³In section 28, the words "or to a dependant" omitted by the Repealing and Amending Act, 1924 (7 of 1924), s. 3 and Sch. II.

Provided that –

- (a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;
- [(b) * * * * *]
- (c) the Commissioner may at any time rectify the register;
- (d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable [to a woman or a person under a legal disability] [* * *] ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement [and may make such order] including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Contract Act, 1872 (IX of 1872), or in any other law for the time being in force.

COMMENTS ON SECTION - 28

[Registration of Agreement – Object of section 28 is to give opportunity to workman to make representation if any, against agreement in case of change in mind – Agreement is registered if compensation is adequate and free consent of workman is obtained – Then such agreement becomes "agreement in accordance with the provisions of this Act" and claim by workman in Civil Court is barred.

(Supreme Court: 1980 PLJ 386: Nathey Khan *versus* Government of West Pakistan: Civil Appeal No. 45 of 1977, decided on 10-10-1979.)]

29. **Effect of failure to register agreement.** – Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of

¹In section 28, in sub-section (1), in the proviso, clause (b) omitted by the Workmen's Compensation (Amdt.) Act, 1929 (5 of 1929), s. 6.

²In clause (d), substituted, *ibid*, for "to a person under a legal disability".

³In clause (d), the words "or to any dependant" omitted by the Repealing and Amending Act, 1924 (7 of 1924), s. 3 and Sch. II.

⁴In clause (d), substituted, *ibid*, s. 2 and First Sch., for "or may make such order".

this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

30. **Appeals.** – (1) An appeal shall lie to the [Tribunal] from the following orders of a Commissioner, namely: –

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- (b) an order refusing to allow redemption of a half-monthly payment;
- (c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees.

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

[Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.]

¹In section 30, in sub-section (1), substituted for "High Court" by the Act No. XI of 1975, s. 2 and Sch.

²In sub-section (1), third proviso inserted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 17.

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

(3) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908), shall be applicable to appeals under this section.

¹(4) All appeals under this section, and all questions under section 27, pending before any High Court immediately before the commencement of the Labour Laws (Amendment) Act, 1975, shall, on such commencement, stand transferred to, and be disposed of by, the Tribunal within whose jurisdiction the cause of action to which the appeal relates or, as the case may be, the question arose.]

COMMENTS ON SECTION - 30

[By virtue of provisos of sub-section (1) of section 30, an appeal lies only, in case, a substantial question of law is involved therein or where the parties do not agree to abide by the decision of the Commissioner for Workmen's Compensation. While awarding compensation, if the Commissioner did not take any notice of the proceedings served on the employer, reached the conclusion not based on the evidence, adopted the procedure not according to the prescribed manner under this Act and the law, or the sufficient cause for extension of limitation has been ignored shall, be deemed to have provided various grounds for the substantial question of law to be the basis of an appeal to be heard on merits. A wide range of different aspects discussed herein under section 30, on question of law, provide good grounds for appeals as under:-

An appeal has been filed under section 30 of the Workmen's Compensation Act, 1923, against the Order of the Commissioner awarding compensation to the widow of the deceased Mushtaq Ahmed Khan in employment of the appellant as driver - Met with an accident - Management agreed to pay to the widow Rs. 100/- per month as compensation - Paid upto March, 1971 and thereafter it was stopped - So the widow made an application to the Commissioner claiming Rs. 7,000/- as compensation - Claim was resisted on various grounds - One of these was question of limitation as the claim was filed one year after the happening of accident - Prior to stoppage of the payment of compensation, the widow/respondent had no occasion to approach the Commissioner to claim the compensation. - Thus the period of one year would start, after the payment was stopped i.e. March, 1971 and the present claim was filed on 18th March, 1972 - Within one year of the stoppage of the payment which was agreed upon - The application which was filed claiming compensation was therefore, in time - Appeal dismissed.

(L.A.T., Sind: 1976 PLC 94: M/s. Habib Sugar Mills Ltd., Karachi *versus* Mst. Rabia Bibi: Appeal No. WCK-122 of 1975, heard on 24th Dec., 1975.)

Appeal under section 30(a) of the Workmen's Compensation Act, 1923 - Muhammad Yousuf son of the appellant - Employed as workman - Died in the course of employment - Appellant's mother Mst. Lal Jan filed claim before the Commissioner who awarded the compensation a sum of Rs. 6,000/- under section 10 of the Act - Objection was taken that by reason of section 81 of the West Pakistan Employees' Social Security Ord., 1965, proceedings before the Commissioner under the Workmen's Compensation Act, 1923, were barred - Chief Justice setting aside the order for compensation - Remanded the case to the Commissioner to decide under s. 81 of the W.P. Employees' Social Security Ord., 1965 - Thereupon the Commissioner dismissed the order for compensation - Then the present appellant, the mother of the deceased Mst. Lal Jan, being aggrieved with the order, filed this appeal under section 30(a) of the Workmen's Compensation Act, 1923 - It was concluded that while the Workmen's Compensation Act, 1923 speaks of compensation, the W.P. Employees' Social Security Ord., 1965, speaks only of "Death grant" and "gratuity" - The two concepts are entirely

¹In section 30, sub-section (4) added by the Act No. XI of 1975, s. 2 and Sch.

different - The purpose of two enactments are also different and the manner of raising funds for payment to beneficiaries are totally different - So there is no inconsistency so as to be a bar by reason of section 81 of the W.P. Employees' Social Security Ord., 1965 - Appeal allowed and remanded the case to the Commissioner to be re-opened for the decision in the light of facts and circumstances.

(High Court, Karachi: 1974 PLD 140: Mst. Lal Jan *versus* M/s. Silver Paper Tube Co., Karachi: Misc. Appeal No. 97 of 1971, decided on 5th Nov., 1973.)

Liability of employer for compensation - Lady sweeper while cleaning sewerage falling in sewer resulting abortion and paralysis and then death - Death, in circumstances, held, resulted from accident falling in sewer and employer could not escape from liability to pay compensation - Order of Commissioner allowing compensation on basis of medical certificate showing that abortion took place due to falling, arising out of and in the course of her employment - Order of the Commissioner was confirmed in the appeal - Appeal fails and dismissed.

(L.A.T., Punjab: 1983 PLC 652: Municipal Committee, Lalamusa *versus* Chiragh Masih: Appeal No. GT-5 of 1984, decided on 13th Nov., 1984.)

An appeal under section 30 of the Workmen's Compensation Act, 1923, filed by the Punjab Transport Corporation calls in question the order passed by the Commissioner under the Workmen's Compensation Act - Whereby the respondent, a mechanic in the Lahore Omni Bus Workshop, was awarded compensation of Rs. 5,880.00 on account of an accident - Admittedly arising out of and in the course of his employment with the appellant - Found no-merits in the appeal and dismissed - No order as to costs.

(High Court, Lahore: 1975 PLJ 27: Punjab Road Transport Corporation *versus* Fateh Muhammad: P.A.O. 1281/1972, decided on 22-5-74.)

Compensation was awarded to respondent by Commissioner, Workmen's Compensation, against petitioner on the ground that while working in factory of the petitioner, left hand of the respondent was completely cut - Petitioner went in appeal before Labour Appellate Tribunal without filing a certificate alongwith memorandum of appeal showing that he had already deposited with the Commissioner, requisite amount payable under section 30 of Workmen's Compensation Act, 1923 - Labour Appellate Tribunal rejected appeal on that ground - Petitioner challenging order of the Tribunal - Held, order of the Tribunal was just and proper and was passed in the light of law on the subject.

(High Court, Lahore: 1991 PLC 506: Muhammad Sharif *versus* Punjab Labour Appellate Tribunal and others: Writ Petition No. 6974 of 1990, heard on 4th Feb., 1991.)

Compensation for loss of life - Death of deceased workman allegedly due to accident while on duty - Claim resisted on the plea that death was due to prolonged illness - Neither any medical certificate supporting death due to accident produced by the claimant heir, nor any proof in support of alleged illness produced by opposite party - Order of the Commissioner allowing compensation based on oral evidence of single witness claiming to be eye-witness of the accident, in circumstances set aside in appeal and case remanded for re-decision after affording opportunity of evidence to parties.

(L.A.T., Punjab: 1988 PLC 554: Town Committee, Kharian *versus* Rehmat Bibi: Appeal No. GA-2 of 1987, decided on 3rd March, 1987.)

Claim before Commissioner, Workmen's Compensation - Limitation - Question of limitation not properly decided by the Commissioner - Appeal accepted setting aside the impugned order - Case remanded for fresh decision after giving last opportunity to both the parties to produce relevant evidence on the whole case, particularly on the points of jurisdiction and limitation - In this appeal, the respondent is a driller working at Drilling Machine - Lost his right eye as a result of accident - Compensation by the Commissioner awarded - Opposed by the appellant.

(L.A.T., Punjab: 1988 PLC 653: Director of Agricultural Engineer *versus* Nazir Ahmed: Appeal No. FD-14 of 1986, decided on 23rd Feb., 1987.)

An appeal filed under section 30 of Workmen's Compensation Act, 1923 - An employer, the appellant called in question the grant of Rs. 1,000/- as compensation by the Commissioner to the respondent, employed as a minor in the Coal Mines - Part of the Mine caved - Stones fall on the

workman who suffered fracture - Medical certificate produced - Objection were raised as the respondent was not a "workman" and the contractor was responsible for the payment of compensation - None of the contentions, raised for the appellant succeeds - Appeal dismissed with no order as to costs.

(High Court, Lahore: 1975 PLJ 50: Anwar Munir *versus* Mohd. Iqbal: F.A.O. 106/73, decided on 25-7-1974.)

This is an appeal against the order dated 25-7-1967 of the Commissioner for Workmen's Compensation. The appeal was pending in the High Court but in view of the sub-section (4) of section 30 of the Workmen's Compensation Act, 1923, added by the Labour Laws (Amendment) Ordinance XII of 1974, the appeal was transferred to the Tribunal for disposal by the High Court vide order dated 4-2-1976 - Facts rise to the appeal are that Muhammad Aslam deceased, an employee of Railway met with a fatal accident - Railway authorities deposited Rs. 6,000/- in the Court of the learned Commissioner to be distributed among three dependants including Mst. Bilqis Begum, the widow of the deceased, who died during the pendency of the case - The Commissioner ordered that the share of Bilqis Begum, be distributed to the rest of the other two dependants - Question of law arose to this Appeal - Aggrieved by the order, the heirs of Mst. Bilqis Begum preferred this appeal - Appeal was accepted - Order of the learned Commissioner was set aside with the direction that sum of Rs. 3,000/- the share of Mst. Bilqis Begum be distributed to the appellants, the legal heirs of Mst. Bilqis Begum.

(L.A.T., Punjab: 1976 PLC 650: Muhammad Yousuf etc. *versus* Mst. Kamruun Nisa and another: Appeal No. LHR-6 of 1976-Pb, decided on 10th May, 1976.)

Under section 30 of the Act, requirement as to deposite of requisite amount with the Workmen's Commissioner is mandatory - Appeal to Tribunal, without deposit or requisite money, would not be maintainable - Held, appeal in present case before Tribunal was not competent and it was rightly rejected.

(High Court, Lahore: 1991 NLR 109: Muhammad Sharif *versus* Punjab Labour Appellate Tribunal and others: Writ Petition No. 6974 of 1990, decided on 4th Feb., 1991.)

Under section 30 of the Act - Appeal - Maintainability - Appeal filed by the employer was dismissed by the Tribunal on the ground that it failed to annex a receipt showing the deposit of cash amount - Employer submitted cheque for requisite amount - Presentation of a cheque alongwith grounds of appeal was not valid tender as required by section 30 of Act VIII of 1923 - It was the duty of the employee to have deposited the disputed amount in cash and challan form in support of deposit should have been annexed alongwith grounds of appeal with view to meet the requirement of law - That having not been done, appeal of employer was rightly dismissed by the Tribunal.

(High Court, Lahore: 1992 PLC 19: Municipal Corporation, Faisalabad *versus* Mst. Allah Raikhi and others: Writ Petition No. 7976 of 1990, decided on 21st July, 1991.)

Under sections 22 and 30 of the Act - Payment of group insurance and gratuity - Application filed by widow of the deceased employee - Dismissed by the Commissioner on grounds that the same was not presented by a competent person, secondly that the same was not in prescribed form and thirdly proper fee was not paid - Being the widow of the deceased, she was quite competent and the other two objections were merely defects of procedure which could be rectified, could not under law, constitute a valid basis for throwing out the claim of widow - Case was remanded to Commissioner for its decision on merits in accordance of law.

(L.A.T., Punjab: 1994 PLC 7: Mst. Zainab Bibi *versus* Managing Director/General Manager, Multan Woollen Spinnery, Multan and another: Appeal No. 36 of 1991, decided on 24th Oct., 1992.)

This is an appeal u/s 30 of the Workmen's Compensation Act, 1923, challenging the order of the learned Commissioner for Workmen's Compensation, Bahwalnagar, whereby the application of the appellant for grant of compensation for the loss of the life of her son namely Mohammad Ashraf, was dismissed - Commissioner without opportunity of evidence to affected person concluding that deceased was not a workman - Order of Commissioner, held, involved great miscarriage of justice and was not sustainable - Impugned Order set aside - Case remanded for re-decision after opportunity of evidence to parties.

(L.A.T., Punjab: 1988 PLC 505: Haleema Bibi *versus* Ch. Manzoor Ahmed, Proprietor, News Agency, Bahawalnagar: Appeal No. BR-4 of 1985, decided on 21st August, 1985.)

Under section 30, Appeal against Order of the Commissioner - Limitation - Condonation of delay - Delay of each day has to be explained satisfactorily - Valuable right accrues to respondent by lapse of time, which he cannot be deprived of without reason - Appeal delayed by 3 days - No application for condonation of delay - Appeal in circumstances was dismissed as time-barred.

(L.A.T., Punjab: 1988 PLC 522: Proprietor, Tahir Soap Factory, Faisalabad *versus* Bashir Ahmed: Appeal No. FD-10 of 1986, decided on 23rd Feb., 1987.)

³[30-A. Withholding of certain payments pending decision of appeal. - Where an employer makes an appeal under clause (a) of sub-section (1) of section 30, the Commissioner may, and if so directed by the ⁴[Tribunal] shall, pending the decision of the appeal, withhold payment of any sum in deposit with him.]

31. Recovery. - ³[(1)] The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890 (IX of 1890).

³[(2) Without prejudice to the provisions of sub-section (1), the Commissioner may recover in the prescribed manner any amount referred to therein by distress and sale of the movable property belonging to the person by whom the amount is payable, or by attachment and sale of the immovable property belonging to such person.]

CHAPTER IV

RULES

32. Power of the Provincial Government to make rules. - (1) The ⁴[Provincial Government] may make rules⁵ to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;

(b) for prescribing the intervals at which and the conditions

¹Section 30-A inserted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 13.

²In section 30-A, substituted for "High Court" by the Act No. XI of 1975, s. 2 and Sch.

³Section 31, re-numbered as sub-section (1) of that section and thereafter new sub-section (2) added by the Act No. XI of 1976, s. 2 & Sch.

⁴In section 32, substituted for "Governor-General in Council" by the A.O., 1937.

⁵For the Workmen's Compensation Rules, 1924, see Gen. R. & O.

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subject to which a workman may be required to submit himself for medical examination under sub-section (1) of section 11;

- (c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases;
 - (d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;
 - (e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another;
 - ¹[(ee) for prescribing the manner in which any balance of money may under sub-section (4) of section 8 be transferred to a fund or funds for the benefit of workmen and for the establishment and administration of such fund or funds;]
 - (f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;
 - (g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered;
 - (h) for the withholding by Commissioners, whether in whole or in part of half-monthly payments pending decision on applications for review of the same; ²[* * *]
- ²[* * * * * * * * *]

- ³[(i) for regulating the scale of costs which may be allowed in proceedings under this Act;
- (j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act;
- (k) for the maintenance by Commissioners of registers and records of proceedings before them;

¹In section 32, in sub-section (2), clause (ee) inserted by the Workmen's Compensation (Amtd.) Act, 1957 (11 of 1957), s. 9.

²In clause (h), at the end the word "and" & thereafter clause (i) omitted by the A.O., 1937.

³New clauses (i) to (n), which were the same as clauses (a) to (f) of section 33, were inserted,

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- (l) for prescribing the classes of employers who shall maintain notice-books under sub-section (3) of section 10, and the form of such notice-books;
- (m) for prescribing the form of statement to be submitted by employers under section 10-A; ¹[* * *]
- (n) for prescribing the cases in which the report referred to in section 10-B may be sent to an authority other than the Commissioner ²[:] ²[and]]
- ²[(o) for prescribing the abstracts of this Act and of the rules required by section 10-D.]

³[33. * * * * * * * * * * *]

34. Publication of rules.—(1) The power to make rules conferred by ⁴[section 32] shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), as that after which a draft of rules proposed to be made under section 32 ⁵[* * *] will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in ⁶[* * *] the ⁷[official Gazette] ⁸[* * *] and, on such publication, shall have effect as of enacted in this Act.

⁹[35. Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.—¹⁰[(1)] The ¹¹[Federal Government] may, by notification in the ¹²[official Gazette], make rules for the transfer

¹In section 32, in sub-section (2), in clause (m), the word "and" at the end omitted by the Workmen's Compensation (Amtd.) Act, 1957 (11 of 1957), s. 9.

²In clause (n), at the end full stop substituted by semi-colon and the word "and" & thereafter new clause (o) added, ibid.

³Section 33, "Power of Local Government to make rules" repealed by the A.O., 1937.

⁴In section 34, in sub-section (1), substituted, ibid, for "section 32 and 33".

⁵In sub-section (2), the words and figures "or section 33" omitted, ibid.

⁶In sub-section (3), the words "Gazette of India or" omitted, ibid.

⁷Substituted, ibid, for "local official Gazette".

⁸In sub-section (3), the words "as the case may be" omitted, ibid.

⁹Section 35, inserted by the Workmen's Compensation (Amtd.) Act, 1933 (15 of 1933), s. 20.

¹⁰The original, s. 35 was re-numbered as sub-section (1) of that section by the Workmen's Compensation (Amtd.) Act, 1937 (7 of 1937), s. 2.

¹¹Substituted for "Central Government", by the Act No. XVI of 1975.

¹²Substituted by the A.O., 1937, for "Gazette of India".

¹[* * * * *] to any other country of money ²[deposited with] a Commissioner under this Act ³[which has been awarded to, may be due to,] any person residing or about to reside in such ⁴[* * *], country and for the receipt ⁵[, distribution] and administration in ⁶[Pakistan] of any money ⁷[deposited] under the law relating to workmen's compensation ⁸[* * * * *] in any other country, ⁹[which has been awarded to, or may be due to,] any person residing or about to reside in ¹⁰[Pakistan]:

¹⁰[Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed orders determining its distribution and apportionment under the provisions of sub-sections (4) and (5) of section 8.

(2) Where money deposited with a Commissioner has been so transferred in accordance with the rules made under this section, the provisions elsewhere contained in this Act regarding distribution by the Commissioner of compensation deposited with him shall cease to apply in respect of any such money.]

¹In section 35, in sub-section (1), the words "to any Acceding State, or to any part of his Majesty's Dominions" omitted by the Ord. No. XXVII of 1981, s. 3 & Second Sch.

²In sub-section (1), substituted by the Workmen's Compensation (Amdt.) Act, 1937 (7 of 1937), s. 2, for "paid to".

³In sub-section (1), substituted, *ibid.*, for "for the benefit of".

⁴In sub-section (1), the words "state, part or" omitted by the Ordinance No. XXVII of 1981, s. 3 & Sch.

⁵In sub-section (1), inserted by the Workmen's Compensation (Amdt.) Act, 1937 (7 of 1937), s. 2.

⁶In sub-section (1), substituted by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which has been subs. by A.O., 1949, for "British India".

⁷In sub-section (1), substituted by the Workmen's Compensation (Amdt.) Act, 1937 (7 of 1937), s. 2, for "awarded".

⁸In sub-section (1) substituted, *ibid.*, for "and applicable for the benefit of".

⁹In section 35, the proviso and sub-section (2) added, *ibid.*

¹[SCHEDULE I

[See ²[sections 2(1) and 4]]

List of Injuries deemed to Result in permanent total Disablement

Sl. No.	Description of injuries	Percentage of loss of earning capacity
1.	Loss of both hands or amputation at higher sites	100
2.	Loss of a hand and a foot	100
3.	Double amputation through leg or thigh or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100

List of injuries deemed to Result in permanent partial Disablement

Amputation cases – upper limbs (either arms)

1.	Amputation through shoulder joint	90
2.	Amputation below shoulder with stump less than 8" from tip of acromion	80
3.	Amputation from 8" from tip of acromion to less than 4-1/2" below tip of olecranon	70
4.	Loss of a hand or of the thumb and four fingers of one hand or amputation from 4-1/2" below tip of olecranon	60
5.	Loss of thumb	30
6.	Loss of thumb and its metacarpal bone	40

¹Schedule I substituted for the original Schedule by the Ord. No. IX of 1972, s. 2 and 1st Sch.

²Substituted for "Section 2(1) and (4)", by the Act No. V of 1972, s. 2 and 1st Sch.

Sl. No.	Description of injuries	Percentage of loss of earning capacity
7.	Loss of four fingers of one hand	50
8.	Loss of three fingers of one hand	30
9.	Loss of two fingers of one hand	20
10.	Loss of terminal phalanx of thumb	20
<i>Amputation cases - lower limbs</i>		
11.	Amputation of both feet resulting in end-bearing stumps	90
12.	Amputation through both feet proximal to the metatarso-phalangeal joint	30
13.	Loss of all toes of both feet through the metatarso-phalangeal joint	40
14.	Loss of all toes of both feet proximal to the proximal interphalangeal joint	30
15.	Loss of all toes of both feet distal to the proximal interphalangeal joint	20
16.	Amputation at hip	90
17.	Amputation below hip with stump not exceeding 5" in length measures from tip of great trochanter	80
18.	Amputation below hip with stump exceeding 5" in length measured from tip of great trochanter but not beyond middle thigh	70
19.	Amputation below middle thigh to 3-1/2" below knee	60
20.	Amputation below knee with stump exceeding 3-1/2" but not exceeding 5"	50
21.	Amputation below knee with stump exceeding 5"	40
22.	Amputation of one foot resulting in end-bearing	30

Sl. No.	Description of injuries	Percentage of loss of earning capacity
23.	Amputation through one foot proximal to the metatarso-phalangeal joint	30
24.	Loss of all toes of one foot through the metatarso-phalangeal joint	20
<i>Other injuries</i>		
25.	Loss of one eye, without complications, the other being normal	40
26.	Loss of vision of one eye without complication or disfigurement of eyeball, the other being normal	30
<i>Fingers of right/left hand index finger</i>		
27.	Whole	14
28.	Two phalanges	11
29.	One phalanx	9
30.	Guillotine amputation of tip without loss of bone	5
<i>Middle finger</i>		
31.	Whole	12
32.	Two phalanges	9
33.	One phalanx	7
34.	Guillotine amputation of tip without loss of bone	4
<i>Ring or little finger</i>		
35.	Whole	7
36.	Two phalanges	6
37.	One phalanx	5

Sl. No.	Description of injuries	Percentage of loss of earning capacity
38.	Guillotine amputation of tip without loss of bone	2
	<i>Toes of right or left foot great toe</i>	
39.	Through metatarso-phalangeal joint	14
40.	Part, with some loss, to bone	3
	<i>Any other toe</i>	
41.	Through metatarso-phalangeal joint	3
42.	Part, with some loss of bone	1
	<i>Two toes of one foot, excluding great toe</i>	
43.	Through metatarso-phalangeal joint	5
44.	Part, with some loss of bone	2
	<i>Three toes of one foot, excluding great toe</i>	
45.	Through metatarso-phalangeal joint	6
46.	Part, with some loss of bone	3
	<i>Four toes of one foot, excluding great toe</i>	
47.	Through metatarso-phalangeal joint	9
48.	Part, with some loss of bone	3.]

NOTE:- Complete and permanent loss of the use of any limb or member referred to in this Schedule, shall be deemed to be the equivalent of the loss of that limb or member.

SCHEDULE II

[See section 2(1) (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 ¹[* * * * *] on a railway, in connection with the operation or maintenance of ²[a lift or a vehicle propelled by steam or other mechanical power or by electricity]; or
- (ii) employed ³[* * *] in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been employed in any manufacturing process, as defined in ⁴[clause (g) of section 2 of the Factories Act, 1934 (XXV of 1934)], or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used ⁵[* * * * *]; or
- (iii) employed ⁶[in any place to which section 5 of the Factories Act, 1934 has been applied or] 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 on any one day of the preceding twelve months, fifty or more persons have been so employed; or
- (iv) employed in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof, on any one day

¹In Schedule II, clauses (i) to (xxvii) and the Explanation were substituted by the Workmen's Compensation (Amdt.) Act, 1933 (15 of 1933), s. 21, for the original clauses.

²In clause (i), the words "in a clerical capacity" omitted by the Act No. XIV of 1973, s. 6 (c).

³In clause (i), substituted by the Workmen's Compensation (Amdt.) Act, 1938 (9 of 1938), s. 11, for "mechanically propelled vehicles".

⁴In clause (ii), the words "otherwise than in a clerical capacity" omitted by the Workmen's Compensation (Amdt.) Act, 1957 (11 of 1957), s. 10.

⁵In clause (ii), substituted by the Workmen's Compensation (Amdt.) Act, 1938 (9 of 1938), s. 11, for "clause (4) of section 2 of the Indian Factories Act, 1911".

⁶In clause (ii), the words "but not persons employed solely in a clerical capacity in any room or place where no manufacturing process is being carried on" omitted by Act No. XIV of 1973, s. 6.

⁷In clause (iii), words added, *ibid.*

of the preceding twelve months, ten or more persons have been so employed; or

- (v) employed, in any mine as defined in clause (f) of section of the Mines Act, 1923 (IV of 1923), in any mining operation, or in any kind of work [¹* * *] incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground:

Provided that any excavation in which on no day of the preceding twelve months more than fifty persons have been employed or explosives have been used and whose depth from its highest to its lowest point does not exceed twenty feet shall be deemed not to be a mine for the purpose of this clause; or

- (vi) employed as the ²[master, seaman, sailor or otherwise on] –
- (a) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled, or
 - (b) any ship not included in sub-clause (a) of ³[twenty-five] tons net tonnage or over; or
- (vii) employed for the purpose of loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or in the handling or transport within the limits of any port subject to the Ports Act, 1908 (XV of 1908), of goods which have been discharged from or are to be loaded into any vessel; or
- ⁴[(vii-a) employed in loading and unloading of goods in the mechanically propelled vehicles in the ⁵[Karachi Division];]
- (viii) employed in the construction, repair or demolition of –
- ⁶[(a) any building or structure; or]

¹In Schedule II, in clause (v), the words "other than clerical work" omitted by the Act No. XIV of 1973, s. 6.

²In clause (vi), substituted for "master or as a seaman of" by the Workmen's Compensation (Amdt.) Act, 1957 (XI of 1957), s. 10.

³In clause (vi), in sub-clause (b), substituted for "fifty", ibid.

⁴Clause (vii-a) inserted by the Notification No. L.C. 21(73)/58, dated the 30th March, 1959, Gaz. of Pak, 1959, Pt. I, pp. 162-163.

⁵In clause (vii-a), substituted by the A.O., 1964, Art. 2 and Sch., for "Federal Territory of Karachi" which had been sub. by the Repealing and Amending Ordinance, 1961 (I of 1961), s. 3 and 2nd Sch., for "Federal Capital".

⁶In clause (viii), sub-clause (a) substituted by the Workmen's Compensation (Amdt.) Act, 1957 (11 of 1957), s. 10, for the original sub-clause (a).

- (b) any dam or embankment which is twenty feet or more in height from its lowest to its highest point; or
- (c) any road, bridge, or tunnel; or
- (d) any wharf, quay, sea-wall or other marine work including any moorings of ships; or
- (ix) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard for the same; or
- (x) employed [¹* * * * *] in the construction, working, repair or demolition of any aerial ropeway, canal pipe-line, or sewer; or
- (xi) employed in the service of any fire brigade; or
- (xii) employed upon a railway as defined in clause (4) of section 3, and sub-section (1) of section 148 of the Railways Act, 1890 (IX of 1890), either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration; or
- (xiii) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service, or employed in any occupation ordinarily involving out-door work in the ²[* * *] Posts and Telegraphs Department; or
- ³[(xiii-a) employed as treasurer clerks performing out-door duties in the Pakistan Posts and Telegraphs Department in Baluchistan and the ⁴[Karachi Division];]
- (xiv) employed [¹* * * * *] in connection with operations for winning natural petroleum or natural gas; or

¹Words "otherwise than in a clerical capacity" omitted by the Act No. XIV of 1973, s. 6.

²In clause (xiii), the word "Indian" omitted by the A.O., 1949.

³Clause (xiii-a) added by the Notification No. L-C-21 (2)/49, 20th Oct. 1949, Gaz. of Pakistan, Pt. I, 28th Oct. 1949, Page No. 498, in exercise of the powers under s. 2(3).

(i) Punjab Government also added clause (xiii-a) in exercise of powers under section 2(3) by the Notification No. 4958-Ind-49/70592, dated 7th Dec., 1949, Punjab Govt. Gaz. Pt. I, dated Dec. 16, 1949, p. 519, as below:–
"xiii-a) employed as treasurer clerks performing out door duties in the Pakistan Posts and Telegraphs Department in Punjab."

(ii) N.W.F.P. Govt. also added clause (xiii-a) by the Notification No. 42269-9-34, TD-II, dated 14th Nov., 1949, as below:–
"xiii-a) employed as treasurer clerks performing out door duties in the Pakistan Posts and Telegraphs Department in the North West Frontier Province, and adjoining Tribal Areas".

⁴In clause (xiii-a), substituted by the A.O., 1964, Art. 2 and Sch., for "Federal Territory of Karachi" which had been sub. by the Repealing and Amending Ordinance, 1961 (I of 1961), s. 3 and 2nd Sch., for "Capital of the Federation".

- (xv) employed in any occupation involving blasting operations; or
- (xvi) employed in the making of any excavation in which on any one day of the preceding twelve months more than ¹[twenty-five] persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet; or
- (xvii) employed in the operation of any ferry boat capable of carrying more than ten persons; or
- (xviii) employed ²[* * * * *] on any estate which is maintained for the purpose of growing 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 ²[* * * * *] in the generating, transforming or supplying of electrical energy, or in the generating or supplying of gas; or
- (xx) employed in a lighthouse as defined in clause (d) of section 2 of the Lighthouse Act, 1927 (XVII of 1927); or
- (xxi) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; or
- (xxii) employed in the training, keeping or working of elephants or wild animals; or
- ³[(xxiii) employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forest fires; or
- (xxiv) employed in operations for the catching or hunting of elephants or other wild animals; or]

⁴[(xxv)] employed as a driver; ⁵[or]

⁶[(xxvi) employed in the handling or transport of goods in, or within the precincts of,-

¹In clause (xvi), substituted by the Workmen's Compensation (Amtd.) Act, 1957 (11 of 1957), s. 10, for "fifty".

²The words "otherwise than in a clerical capacity" omitted by the Act No. XIV of 1973, s. 6 (d).

³Clauses (xxiii) and (xxiv) inserted by the Workmen's Compensation (Amtd.) Act, 1938 (9 of 1938), s. 11.

⁴The existing clause (xxiii) re-numbered as clause (xxv), *ibid.*

⁵In clause (xxv), at the end the word "or" added and thereafter new clauses (xxvi) and (xxvii) inserted, *ibid.*

- (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 one hundred or more persons have been so employed; or
- (xxvii) employed in any occupation involving the handling and manipulation of radium or X-rays apparatus, or contact with radioactive substances.]

¹[(xxviii) employed as drivers, cleaners, conductors and checkers by Road Transport Service as defined in sub-section (7) of section 2 of the Road Transport Workers Ordinance, 1961 (XXVIII of 1961).]

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.]

¹In schedule II, clause (xxviii) added by the Notification No. I-I-L-IV/65(II) of 13th December 1965, Gaz. of Pak., Pt. 1, dated 7th Jan., 1966, p.13.

SCHEDULE III

[See section 3]

List of occupational diseases

OCCUPATIONAL DISEASEEMPLOYMENT

[PART A]

Anthrax

Any employment -

- (a) involving the handling of wool, hair, bristles or animal carcases or parts of such carcases, including hides, hoofs and horns; or
- (b) in connection with animal infected with anthrax; or
- (c) involving the loading, unloading or transport of any merchandise.

Compressed air illness or its sequelae.

Any process carried on in compressed air.

Poisoning by lead tetra-ethyl

Any process involving the use of lead tetra-ethyl.

Poisoning by nitrous fumes

Any process involving exposure to nitrous fumes.]

[PART B]

Lead poisoning or its sequelae
³[excluding poisoning by lead tetra-ethyl].Any process involving the use of lead ⁴[or any of its preparations or compounds except lead tetra-ethyl].

Phosphorus poisoning or its sequelae.

Any process involving the use of phosphorus or its preparations or compounds.

¹In Schedule III, Part-A inserted by the Workmen's Compensation (Amendment) Act, 1938 (9 of 1938), s. 12.²Part B has been amended in its application to the Federal Capital by the S.R.O. 581, dated the 3rd December, 1959, see Gaz. of Pak., 1959, Pt. I, p. 552.³In part B, added by the Workmen's Compensation (Amendt.) Act, 1938 (9 of 1938), s. 12.⁴In part B, substituted, *ibid*, for "or its preparations or compounds".¹[Mercury poisoning or its sequelae.

Any process involving the use of mercury or its preparations or compounds.

Poisoning by benzene and its homologues, or the sequelae of such poisoning.

Handling benzene or any of its homologues and any process in the manufacture or involving the use of benzene or any of its homologues.

Chrome ulceration or its sequelae.

Any process involving the use of chromic acid, or bichromate of ammonium, potassium or sodium, or their preparations.

²[Arsenical poisoning or its sequelae.

Any process involving the production, liberation or utilization of arsenic or its compounds.

Pathological manifestations due to -

- (a) radium and other radioactive substances;
- (b) X-rays.

Primary epitheliomatous cancer of the skin.

Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances.]

³[Silicosis]³[Any process involving the grinding, clearing, fettling, casting and crushing of stones.]¹In Schedule III, in part B, the entries were inserted by the Workmen's Compensation (Amendt.) Act, 1933 (15 of 1933), s. 22.²In part B, substituted by the Workmen's Compensation (Amendt.) Act, 1938 (9 of 1938), s. 12, for the entry which was added by the Act No. 15 of 1933.³(a) Added by the Notification No. S.R.O. 581, dated 3rd December, 1959, Gaz. of Pak., Pt. I, 11th December, 1959 p. 552, in its application to the Federal Capital only.³(b) Added by the Notification No. VIII-9-18 (L-II)/54 of 25th August, 1961, Gazette of West Pakistan, Exr., 25th August, 1961.

*[SCHEDULE IV

[See section 4]

Compensation payable in certain cases

Monthly wages of the workman injured	Amount of Compensation for		Half monthly payment as compensation for temporary disability
	Death	Permanent disability	
1	2	3	4
More than Rs. 0	But not more than Rs. 3,000	Rs. ¹ [2,00,000] Rs. ¹ [2,00,000]	1/2 of the monthly wages during the period of disable- ment of a period of one year reckoned from the date of in- jury whichever is less and thereafter only in case of chronic lung diseases 1/3 of the monthly wages during the period of disablement or for a period of 5 years, reckoned from the date of injury, which- ever is less.]

*Schedule IV substituted by the Labour Laws (Amendment) Act, 1994 (XI of 1994),
Gaz. of Pak., Extr., Pt. I, dated 29th June, 1994.

¹In Schedule IV, substituted for "1,00,000" by the Labour Laws (Amendment)
Ord., 2001, the Gaz. of Pak., Extr., Pt. I, P. No. 1475, dt. Oct. 6, 2001 (W.e.f. 1st July, 2001).