

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 2

2024

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Fair Employee Compensation and Changing Landscape of the Motor Vehicle Act 1988 and the Code on Social Security, 2020: An Analysis

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ABSTRACT

The Article intend to examine the cases and situation of employee who are working in motor vehicle in the different capacity as driver, helper, coolie, labourer etc. on the transport vehicle. Any fatal accident or any other unforeseen occurrence makes the loss of life or some times disablement. As the employer of Such employee are liable to compensate the compensation under the Employee Compensation Act and other applicable laws in India. In the process of getting the compensation by the victim employee, they are facing challenges too from many stakeholder who may be instrumental for the compensation. Author would like to analyse the what are the difficulties to the such employees who is working in any motor and due to any accident, he/she seeks any compensation from the forums.

2nd, Author also would like to examine that what are the role of Insurance Company in India who has insured the vehicle of such transport vehicle which is instrumental in providing the compensation.

Keywords: *Employee Compensation, Social Security, Motor Vehicle, Accident.*

I. INTRODUCTION

The Workmen's Compensation Act 1923 was enacted to provide the relief to the injured person or his/her legal heir³, in case of death, financially and otherwise when they got injured or disabled or succumb to the death arising out of motor accident in which they are employed and arising out of employment. Through the Workmen's Compensation (Amendment) Act 2009, which had amended the expression 'workman' or 'workmen' and substituted the term

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³ Debasree Dhar & Dhiraj Kumar Nite, *The Compensation Law and Its Antagonistic Administration: The Indian Coalfield of Raniganj, 1923-71*, 63 LABOR HISTORY 391 (2022), <https://www.tandfonline.com/doi/full/10.1080/0023656X.2022.2109010> (last visited Feb 29, 2024).

‘employee’ or ‘employees’ respectively.⁴ The term ‘employee’⁵ is also defined for the purpose of the Employee Compensation (erstwhile workmen’s compensation) which is exhaustive definition and covers the helper, cleaner, driver or mechanic who is employed in the motor vehicle or employed for other categories. However, the new four labour codes⁶ uses the term employee⁷ or worker⁸ for the person who is skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, which is used in wider sense.⁹ In particular to the employee of Motor Vehicle i.e. such drivers or other employee of motor vehicle are facing risks of life or risk of getting bodily injury daily in the transport which rises with the increases of the urbanizations and increasing demands of the motor and transport vehicles.¹⁰ The Global Injury related data show that injury related disability adjusted life years ranks 7th most reason globally.¹¹ The latest report of NCRB¹² published for the year 2022 shows that 430504 accidental deaths have been occurred out of the same, 45.1% death was occurred due to traffic accidental death whereas the accident from Bus

⁴ Sec 5 of the Workmen’s Compensation (Amendment) Act 2009 provides ‘. Throughout the principal Act, for the words "workman" and "workmen", wherever they occur, the words "employee": and "employees" shall respectively be substituted, and such other consequential amendments as the rules of grammar may require shall also be made.’ Available at https://labour.gov.in/sites/default/files/compensation-act_0.pdf ; Last accessed on 28-02-2024.

⁵ See Sec 2(dd) which states that "employee" means a person, who is-- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or (ii) (a) a master, seaman or other members of the crew of a ship, (b) a captain or other member of the crew of an aircraft, (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle, (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or 2 in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them.

⁶ Code on Wages, 2019 (“Wages Code”), Code on Social Security, 2020 (“SS Code”), Industrial Relations Code, 2020 (“IR Code”) and Occupational Safety, Health and Working Conditions Code, 2020 (“OSH Code”).

⁷ “employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied”

⁸ Sec. 2 (zzl) "worker" means any person employed in any establishment to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists and sales promotion employees, but does not include any such person— (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who is employed in a supervisory capacity drawing wage exceeding eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time;

⁹ <https://www.natlawreview.com/article/india-s-new-labor-codes-comparison-employee-v-worker> ; accessed on 29/02/2024.

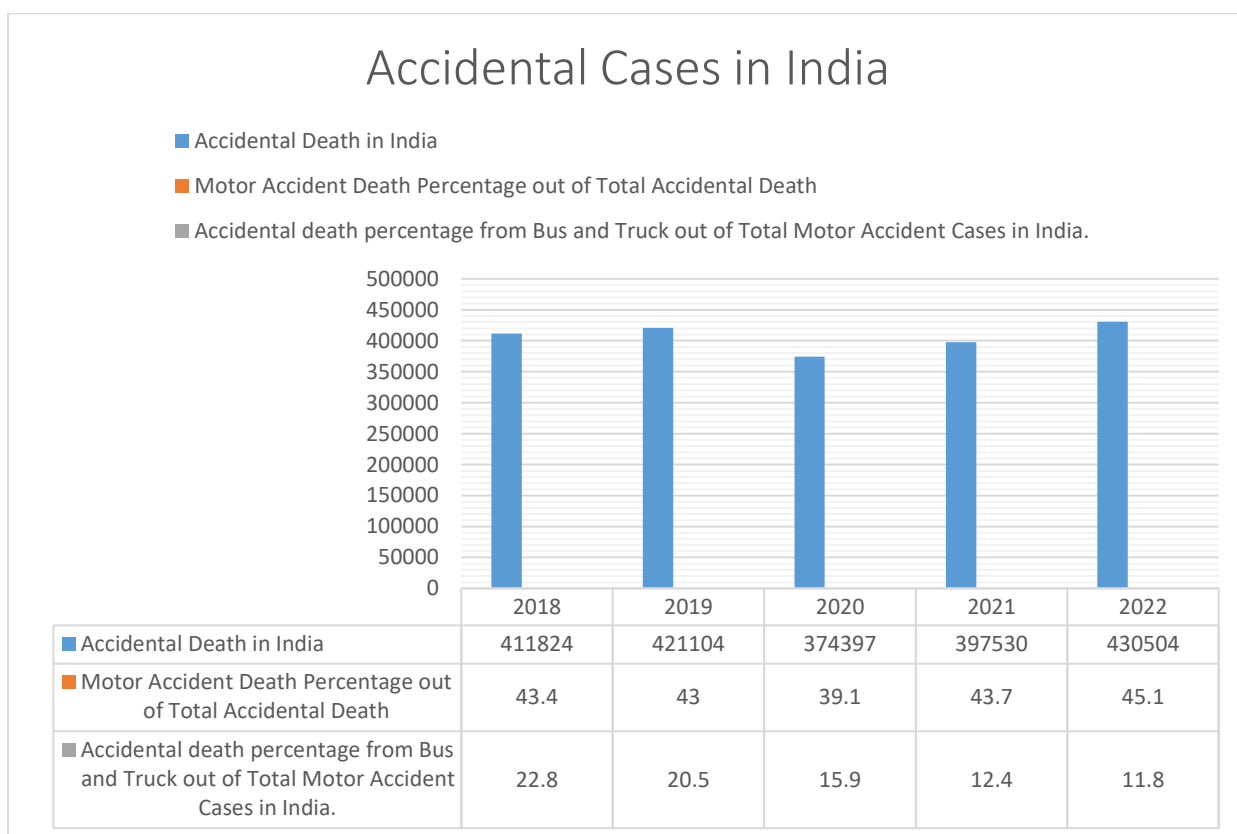
¹⁰ Fa Chen et al., *Global, Regional, and National Burden and Attributable Risk Factors of Transport Injuries: Global Burden of Disease Study 1990–2019*, 136 CHINESE MEDICAL JOURNAL 1762 (2023), <https://journals.lww.com/10.1097/CM9.0000000000002744> (last visited Feb 29, 2024).

¹¹ Ibid.

¹² National Crime Record Bureau.

and truck are resulted up to 11.8% of the motorized transport accident.¹³ In the last 5 years, the accidental death percentage are ranging from 39.1%-45.1% of the total accidental deaths whereas the accidental deaths from Bus and Trucks are resulted as 11.8%-22.8% of total motorized accidental death for the year 2018-2022 in India. The following data in Figure-1 will depict the clear picture of the accidental death and accident arising out of motor vehicle in last 5 years. The accidental deaths arising out of motor accident and specifically from Bus and trucks are less in comparison to the bike or other motor vehicle¹⁴ whereas the accidents from Bus and trucks are fatal in nature. The nature of the victims arising out the accidents from the Bus and trucks are the third party¹⁵ or the employee employed in the Bus and trucks.

Figure-1.



Source: NCRB Data from 2018-2022 (ADSI Year Wise Data).¹⁶

The Motor Accident in any form is happening due to poor working conditions of driver and other reason associated with the road safety, vehicle safety standard and behavioral pattern of people moving on the roads etc. The driver are facing the certain difficulties like prolonged

¹³ <https://ncrb.gov.in/uploads/files/AccidentalDeathsSuicidesinIndia2022v2.pdf> ; last accessed on 05/03/2024.

¹⁴ See Supra note 11.

¹⁵ Sec 145 (i) of the Motor vehicle Act 1988 defines the third party as “third party” includes the Government, the driver and any other co-worker on a transport vehicle.

¹⁶ <https://ncrb.gov.in/accidental-deaths-suicides-in-india-year-wise.html?year=2022&keyword=> ; last visited on 05/03/2024.

sitting, restricted posture, uncomfortable sitting, urban violence, alcohol consumptions, high accidental rates, various health problems like stress, hearing loss, infectious diseases and lack of social security measures for well being of the driver in the society.¹⁷ In India, keeping in view of the medical facilities at operating centres and halting stations; uniform, raincoats and other like amenities for protection from rain coats from rain or cold for motor transport worker is provided in the Occupational Safety, Health And Working Conditions Code, 2020¹⁸ whereas adequate shelter and rest room, lunch room for motor employee who is required to halt; is made mandatory.¹⁹ The work of the worker in transport has to be so arranged that the worker does not work for more than ten days consecutively without a holiday for a whole day intervening; unlike the other worker who will not work more than 6 days in the week. The Conditions in transport vehicle is made in such manner so that the work of the employer in transport' s vehicle may not affect and same time the occupational safety, health and working conditions of the employee in transport vehicle may be ensured.²⁰ The employee in the motor vehicle if receives any injury or death arising out of use of the motor vehicle and in the course of employment, even after the occupational safety, health and working conditions prescribed in the code as discussed above; the employee compensation Act 1923 read with the Motor Vehicle Act 1988, as amended time to time, prescribes for the adequate compensation to the employee. The employee or his legal heir may seek the compensation against motor accident as third party against the vehicle responsible for the injury or the death or against the employer.

II. EMPLOYER'S LIABILITY FOR THE LOSS ARISING OUT OF ACCIDENT AND IN THE COURSE OF EMPLOYMENT

The employer is responsible for the personal injury to the employee by accident arising out of and in the course of employment under the Employee Compensation Act 1923.²¹ To compensate the employee by the employer is a mechanism of welfare state²² ensured by the legislation of 1923 where the losses in the course of and arising out of accident are compensated. Sec 3 provides the following provisions namely:

¹⁷ Yulia Roma Ito, Gerry Silaban & Eka Lestari Mahyuni, *Occupational Accidents on Transport Workers*, 8 J. SCI. N.A (2023), <https://aisyah.journalpress.id/index.php/jika/article/view/8160> (last visited Mar 5, 2024).

¹⁸ See Sec 24(2) of THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020; at https://labour.gov.in/sites/default/files/osh_gazette.pdf ; last visited on 06/03/2024.

¹⁹ Ibid.

²⁰ See Sec 26 of THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020 ; https://labour.gov.in/sites/default/files/osh_gazette.pdf ; last accessed on 06/03/2024.

²¹ See Sec 3 of the Employee's Compensation Act 1923.

²² See More Prakash Sarangi, *NOTION OF "STATE" IN JOHN RAWLS' THEORY OF JUSTICE* (2024). available at : <https://www.jstor.org/stable/41855551> ; Last accessed on 25/03/2024

- The personal injury is caused to the employee (earlier workmen), by an accident.
- The accident was occurred arising out of and in the course of employment.²³
- The employee shall be liable for the compensation against such losses to the employee.

The losses of employee may be the death, permanent partial or total disablement, temporary total disablement etc. of the employee; which are covered under the provision of sec 3 of Employee's Compensations Act 1923. The deceased employee received injury while going to the workplace by public transport, no causal connection was established by the representative of deceased employee. The employer was not held liable.²⁴ If the death happens during the course of employment; in the instant case, the deceased received injury resulted into death during and in the course of employment, employer was held responsible for the compensation.²⁵ The direct connection of death is not required if the death is resulted on account of stress and the strain of working condition, then also the employer is liable.²⁶ In case of injury, the injury must be physical injury to the employee.²⁷ The expression "arising out of employment" has requires the causal relationship between the accident and the employment²⁸ or the conditions of the work required to be performed and the injury suffered²⁹ whereas the "in the course of employment" means the injury is connected to the employee's employment with respect to the time, place and the activity consistent with the obligation and the expectation of the employment.³⁰ The liability arising out of such losses may have the exceptions also where if the specific misconduct is on the part of employee such as intoxication due to drug or the alcohol, wilful disobedience of any rules prescribed, or the wilful removal of any such safety devices; the employee may not be entitled to get the compensation but same time if the losses is more than 50 % injury; the compensation may not be denied.³¹ The occupational hazards is also connected with the employment in certain cases. The cases of employee compensation of the workmen/ employee employed in motor vehicle for eg. Truck or the Bus or like vehicle may arise similarly if they are employed in such vehicle and received any injury in the course of and

²³ Kalayni P. v. Divisional Manager, Southern Railway (Personal Branch), Divisional Office, Madras, 2004 LLR 207 (Mad HC): 2004 1 LLJ 49.

²⁴ See State Bank of India v. Vijay Laxmi, 1998 LLR 319

²⁵ T.N.C.S. Corporation Ltd. v. s. Poomalai, 1995 LLR 63 (Mad): 1995 1 LLJ HC MDS (378).

²⁶ Divisional Personal Officer, Western Railway v. Asluya Segam, 1994 LLR 11 (Raj).

²⁷ Leela Devi v. Ramlal Rahu, 1990 LLR 213 (HP).

²⁸ Oriental Insurance Co. Lid. v. Nanguli Singh, 1995 LLJ HC ORS (298).

²⁹ Available at: https://www.wcb.yk.ca/getmedia/1ae0d5bc-13dc-42f1-9b9b-862e6015d277/2-1-Arising-Out-Of-and-In-The-Course-of-Employment_1.pdf?ext=.pdf ; last accessed on 04-04-2024.

³⁰ Ibid.

³¹ Available at: <https://www.manupatrafast.in/ba/disppot.aspx?nActCompID=26428&iPage=1&hText=> ; last accessed on 05-04-2024.

arising out of an accident.

III. CALCULATION OF EMPLOYEE COMPENSATION UNDER THE EMPLOYEE COMPENSATION ACT 1923

The Compensation to the employee for loss from an accident in the course of employment and arising out of employment is given under section of 4 of the Employee Compensation Act 1923.

- **In case of death:** If the death is the result of the injury, in such circumstances the 50% of monthly wages of employee is multiplied by the relevant factor as prescribed in the second column of schedule 4 in the Act of 1923³² or an amount of Rs. 120,000/-; whichever is more.
- **In Case of Injury:** If the Injury is being in the nature of permanent total disablement is assessed by the competent doctor as per the Act of 1923 and Labour Commissioner may award the compensation under section 4; an amount of 60% of monthly wages multiplied in relevant factor or an amount of Rs. 140,000/- whichever is higher.
- In case the nature of disablement are the permanent partial disablement resulting from the injury³³ or temporary disablement, whether total or partial, results from the injury³⁴; the compensation are given as per the prescribed norms under section 4 of the Act of 1923.

IV. EFFECTS OF THE CHANGES IN THE MOTOR VEHICLE ACT 1988 AND THE ENACTMENT OF THE THE CODE ON SOCIAL SECURITY, 2020

The Section of 147 of The Motor Vehicle Act 1988 prior to the Motor Vehicles (Amendment) Act, 2019³⁵ was dealing with requirement of policies and limits of liability where the scope of coverage of the workmen's/employee's compensation was as follows:

“(ii) against the death of or bodily injury to any passenger of a public service vehicle caused

³² "relevant factor", in relation to a employee means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the 14[employee] on his last birthday immediately preceding the date on which the compensation fell due.

³³ See section 4(1) (C) (i) provides for the compensation as : in the case of an injury specified in Part II of 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 (as assessed by the qualified medical practitioner) permanently caused by the injury;

³⁴ Section 4(1)(d) provides for the compensation as: a half monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the 14[employee], to be paid in accordance with the provisions of sub-section (2).

³⁵ w.e.f 01.04.2022, Vide Notification No. SO859(E), dated 25.02.2022.

by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or..."

After the amendment of the Motor Vehicle Act 1988 through the amending Act of 2019, the above cited provision as to the compensation to the employee is replaced with such provision which does not provide specifically on the employment compensation in the motor accident cases, though the accident prior to the amendment and the matter already pending before the courts shall be dealt as per the existing applicable laws. Whereas, in case of accident after the enforcement date of amendment of 2019 in the Motor Vehicle Act 1988, which has been effected from the 01.04.2022³⁶, may not be dealt under the Motor Vehicle Act 1988. The Other changes is made through the enactment of Code on Social Security, 2020³⁷, which repeals the Employee Compensation Act 1923 with an objective to provide the social security of the person of organised and unorganised sector persons. The enforcement date shall be such date; the date which shall be notified by the central government.³⁸ The Government has notified the certain provision of The Code On Social Security, 2020³⁹ like provident funds⁴⁰ etc. whereas the draft Code on Social Security (Employee's Compensation) (Central) Rules, 2021 which sets to repeal the three old rules⁴¹ relating to employee compensation; are not yet notified for the general masses. Under the circumstances, the objective of new code is not being fulfilled in true sense. Other Challenges are to the employee; they are unable to prove the employment and also facing

³⁶ Ibid.

³⁷ See more <https://labour.gov.in/code-social-security> .

³⁸ See Section 1 of the CODE ON SOCIAL SECURITY, 2020

³⁹ Available at: <https://www.mondaq.com/india/employee-benefits--compensation/1256860/code-on-social-security-2020> ; last accessed on 05/04/2024

⁴⁰ Available at: <https://www.sconline.com/blog/post/2023/05/05/govt-notifies-social-security-code-effective-date-for-pf-pension-scheme-provisions/> ; last accessed on 05/04/2024.

⁴¹ (i) Employee's Compensation Rules, 1924; (ii) Employee's Compensation (Transfer of Money) Rules, 1935; and (iii) Employee's Compensation (Venue of Proceedings) Rules, 1996;

difficulty in proving the wages applicable to the compensation. After the amendment in section 147 of Motor Vehicle Act 1988, the scope to explore the Motor Vehicle Act for the employee compensation against the Insurance Company is limited and same time the Code on Social Security, 2020 is not implemented effectively; the scope of Insurance is being made limited in section 147 of MV Act. Furthermore, the awareness to get compensation is limited to the people and the beneficiaries.

V. CONCLUSIONS AND SUGGESTIONS

The employee was being compensated in the employee Compensation Act 1923 and in the Motor Vehicle Act 1988 also if the employee like helper, colie, driver, helper etc. receives the injury in the course of employment and arising out of employment when the vehicle which is insured is being in use. After the amendment in the Motor Vehicle Act 1988 through the Motor Vehicle (Amendment) Act 2019, which replaced the new provision in sec 147 and the provision relating to the employee compensation in the motor vehicle is no more existing. Same time, the new Code; the Code on Social Security 2020 has also repealed the Employee Compensation Act 1923 and also sets to replace the rules dealing with the employee compensation; are not yet notified by the Central government. Under the circumstances, the challenges are still to achieve the objective of the code on Social security, 2020 and to compensate the employee adequately is a challenge. Therefore, it may be suggested that the implementation of Code on Social Security, framing of scheme under the Code on Social Security, awareness among the employee are very much required.
