

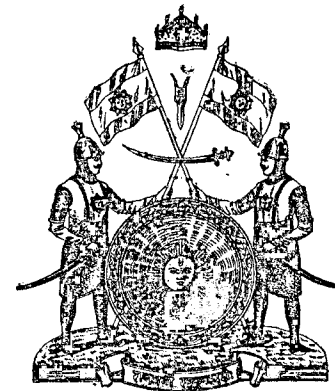
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§ HIGHNESS' GOVERNMENT, JAMMU AND KASHMIR.

ACT VII OF 2000

THE WORKMEN'S COMPENSATION ACT.



JAMMU:

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1943.

HIS HIGHNESS' GOVERNMENT JAMMU AND KASHMIR,
PRAJA SABHA SECRETARIAT.

The following Act which was passed by the Jammu and Kashmir Praja Sabha on 19th April 1943 and received the assent of His Highness on 24th May 1943 is hereby published for general information :—

ACT VII OF 2000

The Workmen's Compensation Act

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.

- Short title 1. (1) This Act may be called the Workmen's Compensation Act, 2000.
- Extent. (2) It extends to the whole of the Jammu and Kashmir State.
- Definitions, 2. (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 15 years ;
- (b) "Commissioner" means a Commissioner appointed for workmen's Compensation 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 widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother; and
- (ii) if wholly or in part dependent on the earnings of the workman at the time of his death, a 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, a minor child of a 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 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 sub-ordinate 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 under the Jammu and Kashmir Medical Registration Act, 1998.

(j) "total disablement" means such disablement whether of a permanent or of a temporary 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 percent:

(k) "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.

(l) "workman" means any person (other than a person whose employment is of a casual nature and who is employ-

ed otherwise than for the purposes of the employer's trade or business) who is on monthly wages not exceeding one hundred 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 His Highness' Forces and any reference to a workman who has been injured shall, when the workman is dead, include a reference to his dependents, or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department 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.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their intention so to do, may by a like notification add to Schedule II any class of persons employed in any occupation which they are satisfied is a hazardous occupation and the provisions of this Act shall thereupon apply to such class of persons:

Provided that in making such addition the Government may direct that the provisions of this Act shall apply to such classes of persons for specified injuries only.

CHAPTER II.

Workmen's Compensation.

3. (1) If personal injury is caused to a workman by Employer's liability for compensation. 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 seven days,

(b) in respect of any 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 a drug, 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.

(2) 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 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 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 purpose 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 in the same kind of employment.

(3) The Government after giving, by notification in the Government Gazette, not less than three months' notice of their 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 case of employments so added the diseases which 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 as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided in sub-sections (2) and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is 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.

4. (1) Subject to the provisions of this Act the amount of compensation shall be as follows, *viz:*—

- A. where death results from the injury—
- (i) in the case of an adult 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, and
 - (ii) in the case of a minor—two hundred rupees.
- B. Where permanent total disablement results from the injury—
- (i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and
 - (ii) in the case of a minor—twelve hundred rupees;
- 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.

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 should have been payable if permanent total disablement has resulted from the injuries.

D. Where temporary disablement, whether total or partial, results from the injury, a half monthly payment payable on the 16th day after the expiry of a waiting period of seven 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 an adult in receipt of monthly wages falling within limits shown in the first column of Schedule III

of the sum shown against such limits in the fourth column thereof, and

(ii) in the case of a minor of one half of his monthly wages, subject to a maximum of thirty rupees:

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, and

(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.

(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.

5. For the purposes of this Act the monthly wages of a workman shall be calculated as follows, namely:—

Method of calculating wages.

(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;

(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 a workman shall be deemed to be 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;

(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.

Explanation.—A period of service shall, for the purposes of this section, be deemed to be continuous which has not

been interrupted by a period of absence from work exceeding fourteen days.

6. (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 of 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. Any right to receive half monthly payments may, by Commutation of half monthly payments. 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. (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 the 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 dependent 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 dependent, 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.

(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) as compensation in respect of a deceased workman the Commissioner shall deduct therefrom the actual costs of the workman's funeral expenses to an amount not exceeding 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 dependent in such manner as he thinks fit calling upon the dependents to appear before him, personally or through some attorney, or for determining the distribution of compensation. If the commissioner is satisfied, after any inquiry which he may deem necessary that no dependent exists he shall repay the balance of the money to the employer by whom it was paid. The commissioner shall, on application, by the employer, furnish a statement showing in details all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall subject to any deduction made under sub-section (4) be apportioned among the dependents 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 dependent.

(6) When 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 behalf, order that the payment be made during the disability to any dependent of the workman or to any other person whom the commissioner thinks best fitted to provide for the welfare of the workman.

(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 dependent or any other sufficient cause, an order of Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent 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 dependent of any sum already paid to him.

(9) Where the Commissioner varies any order under sub-section (8) by reason of the facts that payment of compensation to any person has been obtained by fraud, in personation 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.

9. Save as provided by this Act, no lump-sum of half Compensation not to be assigned, attached or charged, monthly payment 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. (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 one year of the occurrence of the accident or, in case of death within one year 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;

Provided further that the want of or any defect, or irregularity in a notice shall not be a bar to the entertainment of a claim—

(a) if a claim is preferred in respect of the death of a workman 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 the 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 had 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 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 Government may require that any prescribed class of employers 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 injured workman employed on the premises and to any person acting *bonafide* 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.

11. (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.

(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 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.

Power to require from employers statements regarding fatal accident.

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

12. (1) Where, by any law for the time being in force, ^{Report of fatal accidents.} notice is required to be given to any authority, by or on behalf of the employer, of any accident occurring on his premises which result 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 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 Government may, by notification in the Government 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.

13. (1) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, 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 ;

Medical examination.

Provided 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 leave

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 sub-mitted himself for medical examination as required by either of those sub-sections, the 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.

14. (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 immediatly employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for

Contracting.

references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman 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.

15. 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 14 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

16. (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

Remedies of employer against stranger.

Insolvency of employer.

under any greater liability to the workman than they would have been under to 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 insurer 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 Order 21—A of the Jammu and Kashmir Code of Civil Procedure or under section 230 of the Companies Act, 1977, or in the distribution of the property of an insolvent or in the distribution of the assets of the company being wound up to be paid in priority to all other debts, the amounts 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.

17. The Government may by notification in the Government 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 Government may direct.

18. 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

19. 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 a valid certificate granted in respect of such person under section 10 or section 44 of the Jammu and Kashmir Factories Act, 1969, before the occurrence of the injury shall be conclusive proof of the age of such person.

20. (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 11, or
(c) fails to send a report which he is required to send under section 12, or
(d) fails to make a return which he is required to make under section 17 shall be punished with fine which may extend to one hundred rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognisance 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.

21. (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 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.

22. (1) The Government may, by notification in the Government Gazette, appoint any person to be a Commissioner for workmen's compensation for such local area as may be specified in the notification.

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

(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 enquiry to assist him in holding the enquiry.

(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code.

23. Where any matter is under this Act to be done by or before a Commissioner the same shall, subject to the provisions of this Act, and to any rules made hereunder, be done by or before a Commissioner for the local area in which the accident took place which resulted in the injury.

(2) If a Commissioner is satisfied that any matter arising out of the 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:

Provided that the Commissioner shall not, where any party to the proceeding has appeared before him, make any order of transfer relating to the distribution among dependents of a lumpsum without giving such party an opportunity of being heard :

Provided further, that no matter other than a matter relating to the actual payment to a workman or the distribution among dependents of a lump-sum shall be transferred for disposal under this sub-section to a Commissioner save with the previous sanction of the Government 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 has been transferred for report under subsection (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The Government may transfer any matter from any Commissioner appointed by them to any other Commissioner appointed by them.

24. (1) No application for the settlement of any matter by a Commissioner other than an application by a dependent or dependents 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) 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 reasons for such omission ;

(c) the names and the addresses of the parties; and
(d) except in the case of an application by dependents for compensation a concise statement of the matters on which agreement has and 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.

25. (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.

26. The Commissioner shall have all the powers of a civil Court under the Code of Civil Procedure, 1977 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 and the Commissioner shall be deemed to be a civil Court for all the purposes of section 195 and chapter XXXV of the Code of Criminal Procedure, 1989.

27. 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 by an official of an Insurance Company, or with the permission of the Commissioner by any other persons so authorised.

28. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record.

Power of Commissioner to require further deposits in case of fatal accidents.

Powers and procedure of Commissioner.

Appearance of parties.

Mode of recording evidence

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.

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

30. A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

31. (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 to a woman or a person under a legal disability 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;

Provided that—
(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned
(b) the Commissioner may at any time rectify the register
(c) 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 Jammu and Kashmir Contract Act, 1977 or in any other law for the time being in force.

Costs.

Powers to submit cases.

Registration of agreement.

32. Where a memorandum of any agreement, the Effect of failure to register agreement. registration of which is required by section 31 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 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.

33. (1) An appeal shall lie to the High Court from the following orders of a Commissioner, Appeals. 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 dependents of a deceased workman or disallowing any claim of a person alleging himself to be such dependent.

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 14, 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.

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

3) The provisions of section 5 of the Jammu and Kashmir Limitation Act, 1995 shall be applicable to appeals under this section.

34. Where an employer makes an appeal under clause (a) of sub-section (1) of section 33 the With holding of certain payment pending decision of appeal. Commissioner may and if so directed by the High Court shall pending the decision of the appeal withhold payment of any sum in deposit with him.

35. Any amount payable by any person under this Act whether under an agreement for the Recovery. payment of compensation or otherwise may be recovered as an arrear of land revenue.

CHAPTER IV.

RULES.

36. (1) The Government may make rules to carry out Powers of the Government to make rules. 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 subject to which a workman may be required to submit himself for medical examination under sub-section (1) of section 13.

(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 dependents of a deceased workman and for the transfer of money so invested from one Commissioner to another.

(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 withholding by Commissioners whether in whole or in part of half monthly payments pending decision on applications for review of the same.

(i) for regulating the scales 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.

(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 11 ; and

(n) for prescribing the cases in which the report referred to in section 12 may be sent to an authority other than the Commissioner.

37. (1) The power to make rules conferred by section 36 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with section 23 of the Jammu and Kashmir General Clauses Act, 1977, as that after which a draft of rules proposed to be made under section 36 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 the Government Gazette and on such publication shall have effect as if enacted in this Act.

Workmen's Compensation.

SCHEDULE I.

[See sections 2 (1) and (4)].

List of injuries deemed to result in permanent partial disablement.

Injury.	Percent- age of loss of earning capacity.
Loss of right arm above or at the elbow	... 70
Loss of left arm above or at the elbow	... 60
Loss of right arm below the elbow	... 60
Loss of leg at or above the knee	... 60
Loss of left arm below the elbow	... 50
Loss of leg below the knee	... 50
Permanent total loss of hearing	... 50
Loss of one eye	... 30
Loss of thumb	... 25
Loss of all toes of one foot	... 20
Loss of one phalanx of thumb	... 10
Loss of index finger	... 10
Loss of great toe	... 10
Loss of any finger other than index finger	... 5

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 to the loss of that limb or member.

SCHEDULE II.

[See Section 2 (1) (1)].

List of persons who, subject to the provisions of section 2 (1) (1), are included in the definition of workmen.

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

1. (i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or main-

tenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity, or

(ii) employed otherwise than in a clerical capacity 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 clause (g) of section 2 of the Jammu and Kashmir Factories Act, 1999, 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 ; or

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

(v) employed in any mine, in any mining operation, or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground ;

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 in the construction, repair or demolition of—

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twenty feet or more from the ground level to the apex of the roof ; or

(b) any dam or embankment which is twenty feet or more in height from lowest to its highest point ; or

(c) any road, bridge, or tunnel ; or

(vii) 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

(viii) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal pipe-line, or sewer ; or

(ix) employed in the service of any fire brigade ; or

(x) employed upon a railway either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration ; or

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

(xii) employed in any occupation involving blasting operations ; or

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

(xiv) employed in the operation of any ferry boat capable of carrying more than ten persons ; or

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

(xvi) employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical energy or in the generating or supplying of gas ; or

(xvii) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures ; or

(xviii) employed in the training or keeping of wild animals ; or

(xix) employed in lopping, felling or logging of trees, or the transport of timber by inland waters or the control or extinguishing of forest fires ; or

(xx) employed in operations for the catching or hunting of wild animals ; or

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

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

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

(xxii) employed on the collection of fruits from trees exceeding twenty five feet in height.

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.

SCHEDULE III.

(See section 3)

List of occupational diseases.

PART A.

Anthrax	Any employment— (a) involving the handling of wool, hair, bristles, or animal carcasses or the parts of such carcasses, including hides, hoofs and horns; or (b) in connection with animals infected with Anthrax; or (c) involving the loading, unloading or transport of any merchandise.
Compressed air illness or its sequele.	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 sequele, excluding poisoning by lead tetra-ethyl.	Any process involving the use of lead or any of its preparations or compounds except lead tetra-ethyl.
Phosphorous poisoning or its sequele.	Any process involving the use of phosphorous or its preparations or compounds.

Mercury poisoning or its sequele.	Any process involving the use of mercury or its preparations or compound.
Poisoning by benzene and its homologues, or the sequele 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 sequele.	Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium, or their preparations.
Arsenical poisoning or its sequele.	Any process involving the production, liberation or utilisation of arsenic or its compounds.
Pathological - manifestations due to— (a) radium and other radio-active substances, (b) X-rays.	Any process involving exposure to the action of radium, radio-active substances or 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.

Workmens' Compensation.

SCHEDULE IV.

(See section 4).

Compensation payable in certain cases.

Amount of compensation for— Half-monthly
 payment as
 compensation
 for temporary
 Disablement
 of adult.

Monthly wages of Death of Permanent Total Disable-
 the workman Adult. Total Disable-
 injured. ment of
 Adult.

1		2		3		4	
More than.		But not more than.		Rs.		as.	
Rs.	Rs.	Rs.	Rs.	Half his month-ly wages.			
5	10	250	350				
10	15	275	385	5	0		
15	18	300	420	6	0		
18	21	315	441	7	0		
21	24	360	504	8	0		
24	27	405	567	8	8		
27	30	450	630	9	0		
30	35	525	735	9	8		
35	40	600	840	10	0		
40	45	675	945	11	4		
45	50	750	1,050	12	8		
50	60	900	1,260	15	0		
60	70	1,050	2,470	17	8		
70	80	1,200	1,680	20	0		
80	100	1,500	2,100	25	0		
100	200	1,750	2,450	30	0		
200	2,000	2,800	30	0		

(Sd.) SHIVA RAM SARAF,

Secretary to Government, Praja Shaba Department.

