

# Personal Injury Under Employees Compensation Act, 1923- Judicial Interpretation

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## **LIST OF CASES**

1. Sunita Devi vs Autar Singh And Anr 2004 (101) FLR 214
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31. *Ritta Fernandes* AIR 1931 Bom 105
32. *Clover, Clayton & Co. v Hughes* 1910 AC 242
33. *Raj Kumar v. Ajay Kumar* (2011) 1 SCC 343
34. *Taskinuddin&Ors.Vs. State (NCT of Delhi) &Anr* AIR 2013 Del 2948

## **INTRODUCTION**

The Employees Compensation Act, 1923 is a piece of social security and welfare legislation. The growing complexity of industries with the increasing use of machineries and consequent danger to workmen along with the comparative poverty of the workmen themselves, rendered it advisable that they should be protected, as far as possible, from hardship arising from accidents. The law was enacted with a dominant purpose. The main objective of the Act was to impose an obligation upon the employers to pay compensation to workers for accidents arising out of and in the course of employment.

The Act applies to any person who is employed otherwise than in a clerical capacity, in railway, factories, mines, plantations, vehicles propelled by steam or other mechanical power or by electricity or in connection with loading and unloading work, construction, maintenance and repairs of roads and bridges, electricity generation, cinemas, catching or trading of wild elephants, circus, and other hazardous occupations and other employments specified in Schedule II to the Act. Under section 2(3) of the Act, the State Governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months' notice in the Official Gazette. The Act, however does not apply to members serving in the Armed Forces of the Indian Union, and employees covered under the provisions of the Employees' State Insurance Act, 1948 as disablement and dependents' benefits are available under this Act.

However, the provisions of the Act should not be interpreted narrowly so as to debar the workmen from compensation. The intention of the legislature is to make the employer an insurer of the workmen responsible against the loss caused by the injuries or death, which ought to have happened, while the workman was engaged in his work.<sup>1</sup> While interpreting the law liberally, the Tribunal/Court is also bound to see that the benevolent purpose of law is not misplaced and that in genuine cases a workman or his representatives are entitled to get adequate compensation as prescribed by law<sup>2</sup>.

### **THE WORD 'ACCIDENT' AND 'PERSONAL INJURY'**

Section 3 of the Employees Compensation Act, 1923 provides for Employer's liability in cases of personal injury. For an employer to be liable, the following conditions should be fulfilled-

- a. The workman must have sustained personal injury
- b. The personal injury must have been caused by an accident;
- c. The accident may have arisen out of and in the course of employment; and

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<sup>1</sup> *Sunita Devi vs Autar Singh And Anr* 2004 (101) FLR 214

<sup>2</sup> *ShriSankarKal, Vs.Sri Sunil Kumar Saha* (2012) IV LLJ 629 Gau

- d. The personal injury caused to the workman must have resulted either in the total or partial disablement of the workman for a period exceeding three days or it must have resulted in the death of the workman.

The employee concerned is seen to be entitled to receive the compensation, considering definition of the term 'employee', 'employer' and 'managing agent'. These definitions are as below:-

*"(2). (dd) (ii) "employee" means person, who is -*

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

*(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 an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee 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;"*

### **THE WORKMAN MUST HAVE SUSTAINED PERSONAL INJURY**

The compensation is payable in cases of personal injury caused to the workman by accident arising out of and in the course of his employment. The expression "personal injury" has not been defined. Personal injury under the Act means physiological injury. It is a bodily injury or a physical injury to which would also include abnormal mental conditions. Personal injury includes any harmful change in the body. It need not involve physical trauma, but may include such injuries as disease, sunstroke, nervous collapse, traumatic neurosis, hysterical paralysis and

neurasthenia.<sup>3</sup> It may be external, or may be internal. In the case of chest pain arising during duty after remaining busy in strenuous work for many hours may be termed as an accidental internal injury.

The word 'personal injury' being wider than bodily injury also includes all physical injuries which may be caused by an accident arising out of and in the course of employment. It also includes all mental strains or mental tension or mental illness or psychological diseases, provided such mental conditions have arisen by accidents arising out of and in the course of employment. Similarly, a death from heat stroke has also been held to be personal injury entitling the dependant to compensation.<sup>4</sup> The expression 'personal injury' does not only mean physical injury but it may include a mental strain or mental disbalance.

In *India News Chronicle Ltd v Luis Lazarus*<sup>5</sup> where a workman was under duty as an electrician to go to heating room and from there to a cooling room frequently where the temperature was kept low. While on duty the workman went to the cooling room and thereafter fell ill and subsequently died of pneumonia. The Court held that the 'injury' in Section 3 of the Workmen's Compensation Act does not mean mere physical but may include a strain which causes a chill. The death of the workman was due to personal injury. What is important is that the result of injury must be such as to either kill a workman or partially or totally incapacitate him from work for a period exceeding three days. Thus if an injury is sustained whether physical or mental by accident arising out of and in the course of employment the workman becomes entitled to compensation, provided the injury results in either death of the workman or it results into his partial or total disablement for a period exceeding 3 days. If it results into death of the workman the compensation becomes payable to his dependents.

No doubt, the word, "injury" in Section 3(1) is of wide connotation and includes a disease. It is a wider term than bodily injury and is not confined to some actual physical hurt to the body of the employee. It may include a stress and strain. It may also include nervous shock caused by an excitement and alarm resulting from a fatal accident to a fellow workman. It may also include an occupational disease. But consumption of alcohol in heavy quantity by the workman, while

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<sup>3</sup>LARSEN'S WORKMENS' COMPENSATION LAW, 2009, VOL I, 613

<sup>4</sup>MrsSantan Fernandez v B.P.(India) Ltd 58 Bom.LR 149

<sup>5</sup> AIR 1951 Punj. 102

taking rest or sleeping during night time, can in no way be termed as an injury because of an accident arising out of employment.<sup>6</sup>

The word, "accident" has not been defined in the statute but the judgment law by the time adequately defined it. 'Accident' should be understood in the popular and ordinary sense as an unlooked for mishap or an untoward event which is not expected or designed. For the purpose of law relating to the compensation for personal injuries sustained by workman and the employer's liability in that behalf includes any injury, which is not designed by the workman himself, and it is of no consequence that the injury was designed and intended by the person inflicting the same. Self inflicted injuries cannot be said to have been caused by an accident as the mishap or accident has to be looked at from the point of view of the person, who suffers from it. Mere death in the ordinary course by bodily ailment or for the reason attributable to himself, even in the course of employment cannot attract the liability of the employer under section 3. The words, "injury and accident" in Section 3 imply the existence of some external fact to cause apart from internal ailment of the body.

***Divisional Personal Officer, Southern Railway v Kartiyani***<sup>7</sup>

There was a polluted water body at the place of employment as a result of which the employees drinking the same died. Kerala High Court held it to be a personal injury and made the employer liable on the ground that it was a part of duty of employer to provide safe drinking water to the employees.

***Regional Director, ESI Corporation v Francis De Costa***<sup>8</sup>

Francis de Costa met with an accident while he was on his way to his place of employment. The accident occurred at a place which was about 1 km to the north of the factory at 4:15pm and the duty shift of Francis de Costa was to commence only at 4:30am. Francis was going to the factory and was hit by a lorry belonging to his employers and sustained fracture in the collar bone. His claim for disablement benefit was allowed by the ESI Court but was rejected by High Court and finally the case went to Supreme Court. Supreme Court rejecting the appeal held that since there

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<sup>6</sup> *Shri Sankar Kal, Vs. Sri Sunil Kumar Saha* (2012) IV LLJ 629 Gau

<sup>7</sup> (1994) 3 LLJ Supp 65

<sup>8</sup> (1997) 1 LLJ 34

is no causal connection between the employer and the accident. Francis De Costa is not entitled to compensation.

Further, the Supreme Court also laid down the following guidelines for determining what constitutes personal injury:-

- i. There must be causal connection between the injury and the accident and the work done should be performed in the course of employment.
- ii. The onus is upon the applicant to show that it was the work and its resulting strain which contributed or aggravated the injury.
- iii. If the evidence brought on record establishes a greater probability which satisfies a reasonable man then the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.

### **THIN LINE OF DIFFERENCE BETWEEN INJURY AND ACCIDENT**

Accident is only the unexpected incident happening but injury is the outcome of that injury. Accident and injury are wrongly taken as one and the same. Accidental injuries are distinct in cases where accident is an event happening externally to a man, but sometimes an accident may be an event happening internally to a man and in such cases accident and injury coincide.

It has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear, of the employment no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable<sup>9</sup>.

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<sup>9</sup>JyothiAdemma v. Plant Engineer, Nellore ( 2006) 5 SCC 513

In a recent decision of *Shakuntala Chandrakant Shresthi v Prabhakar Maruti Garvali*<sup>10</sup> the factors required to be established to be proved as an accident has taken place and has culled out , are as follows:

- i. Stress and strain arising during the course of employment
- ii. Nature of employment
- iii. Injury aggravated due to stress and strain

The Madhya Pradesh High Court in the case of *Sundarbai v Ordinance factory*<sup>11</sup> the Court while differentiating between ‘accident’ and ‘injury’ laid down the following principles:-

- a. Accident means an untoward mishap which is not expected or designed by the workman. ‘Injury’ means physiological injury.
- b. ‘Accident’ and ‘injury’ are distinct in cases where accident is an event externally happening to a man, eg when a workman falls from a ladder and suffers from injury. But accident may be an event happening internally to a man and in such cases ‘accident’ and ‘injury’ coincides. Such cases are illustrated by bursting of aneurism, leading to heart failure and finally his death.
- c. Physiological injury suffered by a workman due mainly to the progress of the disease unconnected with employment, may amount to injury arising in and out of in the course of employment if the work which the workman was doing at the time of occurrence of injury contributed to its occurrence.
- d. The connection between strain and employment may be furnished by ordinary strain of work if the strain in fact did contribute or accelerate the injury.

## **PERSONAL INJURY :- JUDICIARY’S VERDICT**

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<sup>10</sup>AIR 2007 SC 248

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## A. DEATH

### I. Death per se

#### *Nisbet vs. Rayne & Burn*<sup>12</sup>

In this case, Nisbet was a cashier employed by the appellants and in the course of his duty he was carrying large sum of money to pay the wages of the colliers and while travelling in the train in the discharge of his duty, the bag of money was stolen and he was also killed. Though it was a criminal act, the claim of compensation by the widow of Nisbet was allowed considering that it was an accident arising out of and in the course of the employment.

#### *Agra Road Service Centre v Commissioner*<sup>13</sup>

In this case, the deceased was a driver of employer's vehicle. His duty was to fill petrol in the petrol tank of the vehicles coming for the purpose, it is alleged that some dacoits came there and stabbed Nand Ram and Nanda succumbed to fatal blows. Finally, the person died and the Court ordered the employer to pay compensation under Sec 4A of the Workmen's Compensation Act, 1923.

#### *Board of Management of Trim Joint District School vs. Kelly*<sup>14</sup>.

In this case, John Kelly was employed by the appellants as an Assistant Master of Trim School and he was the Superintendent of the boys in the School and in the play ground. The boys were angry with Kelly because he had stopped them playing hurley, or hockey, in the school. On the evening of February 12, 1912, the boys collected in a shed adjoining the school, armed with hurley sticks, etc. and when Kelly came out from the School and went to the shed, the boys struck on him and he received fracture injury on his head and consequently died. The claim of compensation was allowed in the case of Kelly (supra) considering that the death was arisen out of and in the course of employment.

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<sup>12</sup> (1910) 2 KB 689 CA

<sup>13</sup> S. B. Civil Misc. Appeal No. 1257 of 2003, S. B. Civil Misc. Stay Application No. 1762 of 2003 with S. B. Civil Cross Objection No. 39 of 2007

<sup>14</sup>(1914) AC 667

## **II. Assumption of death due to the person involved being missing**

*Sri Laxman v Divisional Manager, Oriental Insurance Company*<sup>15</sup>

In this case, a workman went missing after his work and the High Court ordered the Commissioner to pay compensation to the workman's dependants under Sec 3 of the Workmen's Compensation Act, 1923. High Court held that under Sec 108 and 109 of the Evidence Act a person is assumed to be dead if he is found missing for 7 years. The driver in this case was missing since 7 years. But, the Supreme Court reversed the High Court's order and held that the accident did not arise in the course of employment and hence holding the employer liable for compensation is not correct.

## **III. Doctrine of Added Peril**

*Shri Sankar Kal, S/o Late Narayan Kal. V Sri Sunil Kumar Saha, S/O Late Nishi Kanta Saha*<sup>16</sup>

In this case, the deceased was employed as a Helper-cum cleaner five months before his death. The deceased had consumed excessive quantity of alcohol due to which he died although there was no accident that had taken place. Appellant, who was the brother of the deceased filed application before Commissioner for granting him adequate compensation for death of his brother who died in course of his employment. The doctrine of added peril may be relevant for work undertakes to do something, which he is not ordinarily called upon to do and it involves extra danger, he cannot hold his master liable for the risks arising there-from. The doctrine, therefore, comes into play when the workman is, at the time of meeting the accident, performing his duty.

It appeared that deceased voluntarily consumed heavy quantity of ethyl alcohol as result of which he died due to myocardial heart failure. Therefore doctrine of added peril was not applicable to case of deceased. Further a person could not be permitted to take advantage of his own wrong, he would not be allowed to found a claim upon his own iniquity. In the case at hand, the deceased voluntarily consumed heavy quantity of ethyl alcohol as a result of which he died

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<sup>16</sup> 2012 LLR 1060

due to myocardial heart failure. The doctrine of added peril, therefore, is applicable to the case of the deceased. Further, the maxim "*Nemo ex proprio dolo Consequitur actionem*", which means that a person cannot be permitted to take advantage of his own wrong, he will not be allowed to found a claim upon his own iniquity. The maxim is applicable in the case of the deceased workman. Maxim was applicable in case of deceased workman. Therefore Appeal was found without merit and hence dismissed.

#### **IV. Death due to fire in the employer's building**

***Taskinuddin&Ors. Vs. State (NCT of Delhi) &Anr.*<sup>17</sup>**

The deceased workmen along with petitioner no. 8 were working as "helper" with M/s. Amazing Creation, dealing in the manufacture and packing of garments and export of various type of garments - according to the petitioners and, dealing in dry cleaning, according to respondent No. 2. According to the petitioners, the duties performed by the workmen included the acts of thread cutting, ironing, and chemical washing of the garments for export. The respondent no. 1 is the State (NCT of Delhi) and respondent no. 2 is the owner of the factory, M/S. Amazing Creations Co, Mr. Shamim Khan.

It is the case of the petitioners that on the fateful day of the fire accident, all the deceased workmen and the injured workmen were working on the fifth floor of the factory, when suddenly the boiler in the hall area of the said floor burst, resulting into a massive fire. Due to highly inflammable liquid being stored near the boiler, the fire spread rapidly-engulfing the area where the workers had been working. The petitioners further allege that due to the narrow staircase, and placement of generator near the staircase, the workmen could not escape from the fire. Moreover, the walls and roof of the floor were made of fibre sheet, which aggravated the fire, trapping all the workmen in its embrace. The petitioners claim that the loss of life and injuries to the injured has resulted in severe impairment of the fundamental right to life guaranteed by Article [21](#) of the Constitution of India, and the said accident took place due to the acts and omissions of the respondents.

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<sup>17</sup> Judgment delivered on: 11.09.2013

The court held that not only the respondent godown owner was liable, but also respondent MCD was equally liable as it was negligent in discharging its statutory function and ensuring that citizens' right to health and pollution free environment was not infringed. Similar verdict was given in the case of **Jaipur Golden Gas Victim Association v. Union of India & Ors.**<sup>18</sup> Wherein a huge fire had broken out in the godown of the employer, but even though the employees were rescued they were affected by the phosphine gas produced in the fire as a result of which they were badly affected and they subsequently died.

**V. Death due to nervous shock or drowning**

***United India Insurance Co. Ltd., Divisional Branch Vs. Padmini***<sup>19</sup>

The death of one Mr. Prahaldan, a Night Watchman in Devarshola Estate, Thasishola Plantation Pvt. Ltd., Devarshola, Nilgiris District. On 12.3.2007, when he was engaged in his duty, he fell down from a vulnerable post. He sustained injuries. Besides, there was shock. Though, he was provided with first aid and treated in Estate Garden hospital and thereafter, rushed to Sultan Battery MES Hospital, about 25 kms away from the Estate, he died. The certificate issued by the hospital indicated death was due to stroke as a result of Cerebral Hemorrhage, and also hypertension. According to the Insurance company, admittedly the deceased was suffering from hypertension and other diseases, which ultimately led to cerebral hemorrhage and stroke and hence the death was only due to the disease and not due to any employment injury, alleged to have occurred on 12.3.2007. But the Court, held this as a personal injury resulting from an accident.

***Param Pal Singh v National Insurance Company***<sup>20</sup>

A person was employed as a truck driver by an employer. While driving, the truck driver felt dizzy while he was almost near his destination and therefore he parked his truck in a hotel nearby. Immediately after parking the truck, the person fainted and he was taken to the nearby hospital wherein the doctors declared him brought dead. The Court holding it as personal injury

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<sup>18</sup> 164(2009) DLT 346 DB

<sup>19</sup> (2013) III LLJ 176 Mad

<sup>20</sup> (2013) 3 SCC 409

under Sec 3 of Workmen's Compensation Act,1923 said that the death was as a result of the stress and strain due to long hours of driving.

***Malikarjun G.Hiremath v Branch Manager, Oriental Insurance Company limited***<sup>21</sup>

The driver of a bus, who was employed by his employer to take the passengers to a nearby temple had gone to a pond after parking the bus in front of the temple. He accidentally slipped while taking a dip in the pond, drowned and subsequently died. The Court made the employer liable to pay compensation.

**B. DISABLEMENT**

The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution ensures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity.<sup>22</sup>

Where any injury is to be compensated by damages, in settling the sum of money to be given.... you should as nearly as possible get at that sum of money which will put the person who has been injured.... in the same position as he would have been in if he had not sustained the wrong.

**I. Partial disablement**- Section 2(1)(g) defines " partial disablement" as the disablement which 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 1[ in Part II of Schedule I] shall be deemed to result in permanent partial disablement. It divides disablement into 2 types-

a. Temporary partial disablement

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<sup>21</sup> (2009) 13 SCC 405

<sup>22</sup> *Nizam's Institute of Medical Sciences v. Prasanath S. Dhananka* 2009 (6) SCC 1

b. Permanent partial disablement

The test of such disablement is the reduction in the earning capacity of the employee. In *Ball v William Hunt*<sup>23</sup> the Court held that there is a difference between incapacity for work and incapacity to work. It was also held that “incapacity for work” includes ‘inability to get work’. There is incapacity for work when a man has physical defect which makes his labour unsaleable in any market reasonably accessible to him.

The following propositions need to be taken into account in deciding the nature of disablement<sup>24</sup>:-

- i. Earning is not the same as earning capacity. There is difference between earning of a person and his capacity to earn.
- ii. Rise in earning may be because of various factors and rise in wages is not decisive of no loss of earning capacity
- iii. Loss of physical capacity is not co-extensive with loss of earning capacity;
- iv. Loss of physical capacity or physical incapacity may be relevant in assessing to what extent there is loss of earning capacity for every employment which the employee was capable of undertaking at that time or the employment in which he was engaged at the time of the accident as the case falls for consideration.

***Gadagottu Pandurangarao Thirupathaiiah Vs. P. Bal Reddy and The Branch Manager***<sup>25</sup>

The appellant was working as a labourer with the first respondent and while travelling on 10.11.2001 in a Tractor with Trailer, owned by the first respondent, met with an accident. In the said accident, the appellant sustained fracture injury to both bones of left leg, abrasion to left knee, abrasion to left foot and multiple and grievous injuries on various parts of the body. The Tractor and Trailer owned by the first respondent was covered by insurance extended by the second respondent.

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<sup>23</sup> 1912 A.C. 496

<sup>24</sup> *Calcutta Licensed Measures Bengal Chamber of Commerce v Md. Hossain* AIR 1969 Cal. 378

<sup>25</sup> AIR 2013 AP 628

The appellant was admitted in a private hospital and rods were inserted into left leg bones. Subsequently, he was discharged from the hospital. The Doctor who has treated the appellant examined him clinically and physically and issued disability certificate holding the disability for malunited fracture of both bones of left leg. He described that the injury was painful, would have restricted movements of the left knee and post traumatic stiffness of the left foot. The appellant was aged 21 years at the time of the accident.

The Commissioner framed two issues for consideration. The first issue for consideration was whether the applicant is a workman and whether the accident occurred during the course of employment under opposite party No. 1. The second issue is whether the applicant is entitled to compensation and if so what relief can be granted and against which opposite party.

On first issue, the Commissioner held that the applicant is a workman and was working with the opposite party No. 1 and the accident occurred during the course of employment. On the second issue, the Commissioner held that the disability suffered by applicant is 40% and arrived at the compensation payable as Rs. 96,211.00.

***Challis vs. London and South Western Railway Company***<sup>26</sup>

In the case, the deceased workman was an engine driver in the employment of the respondents and while the train was passing under a bridge a stone was pelted from the bridge by a boy which struck and broke the 'eye-glass' of the driver's cab on the engine, and as a result, the driver received severe injury and after some months he died. Compensation was claimed and in that case it was held by the King's Bench Division that the accident was arising out of and in the course of employment, and so, the compensation was allowed.

***National Insurance Company Ltd. Vs. Murali***<sup>27</sup>

Employee was working as a toddy tapper and he fell down from a coconut tree and the accident occurred in the course of his employment He was working for the employer. According to the employee, he sustained commuted fracture of right hip, dislocation of right elbow with fracture head of radius, fracture of metacarpal bones of right hand, bilateral calcaneal fracture and

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<sup>26</sup> (1905) KB 154 CA

<sup>27</sup> 2013(3)KLJ233

dislocation of bones of right hand. Contention raised by the employee is that on account of the injuries, he sustained permanent partial disability, seriously affecting his earning power. Hence he claimed compensation of ` 5,00,000/- from the employer and the insurer.

**II. Total disablement-** Section 2(1)(l) defines the word “total disablement” which 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 every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more. The expression ‘incapacitates an employee for all work’ does not mean any and every work which he may do but means such work as is reasonably capable of being sold in the market.

The Act is not concerned with physical injury as such, nor with the mere effect of such injury on the physical system of the employee. It is concerned only with the effect of such injury or of the diminution of physical power caused thereby, on the earning capacity of the affected employee. In other words, it means there must be incapacity from all work resulting in hundred percent loss of earning capacity.

***Rekha Jain v Oriental Insurance Company Limited***<sup>28</sup>

Due to an accident in her office, the Appellant, a film actress, the physical appearance particularly the facial features are very important to act in the films and serials and she had lead the evidence that on account of the accident her face was disfigured and due to other medical complications due to accident all opportunity for her future opportunities has come to an end. Court held that in such event her permanent disability should be treated as 100% functional disablement causing functional disability ,

The loss of earning capacity is not a matter for a medical opinion but a question of fact.<sup>29</sup>

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<sup>28</sup> 2013(9)SCALE752

<sup>29</sup> *United India Insurance Co. vs Sethu Madhavan* 1993 ACJ 1035

In *Janardhan K. V United India Insurance Co.Ltd and Another*<sup>30</sup> appellant was a tanker driver. He suffered an injury by accident and his right leg had been amputated upto knee. He claimed to have suffered 100% disability and incapacity to earn his livelihood as he had become ineligible for obtaining a license. The High Court reduced the claim of disability to 65% but on appeal to Supreme Court the same was reversed and he was given 100% disability certificate.

It is the manifest duty of the Tribunal to give as perfect a sum as was within its power'. There are many losses which cannot easily be expressed in terms of money. If a person, in an accident, loses his sight, hearing or smelling faculty or a limb, value of such deprivation cannot be assessed in terms of market value because there is no market value for the personal asset which has been lost in the accident, and there is no easy way of expressing its equivalent in terms of money. Nevertheless a valuation in terms of money must be made, because, otherwise, the law would be sterile and not able to give any remedy at all.<sup>31</sup> Although accuracy and certainty were frequently unobtainable, a fair assessment must be made. Although undoubtedly there are difficulties and uncertainties in assessing damages in personal injury cases, that fact should not preclude an assessment as best as can, in the circumstances be made.<sup>32</sup>

### C. INJURY RESULTING FROM PRE-EXISTING DISEASE

In the case of *Ritta Fernandes*<sup>33</sup> the Court held that “Even if a workman dies from a pre-existing disease , if the disease is accelerated or aggravated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in *Clover, Clayton & Co. v Hughes*<sup>34</sup> where the deceased whilst tightening a nut with a spanner, fell back on his hand and died. A post-mortem examination of the large aneurism of the aorta, and that death was caused by the rupture of aorta. The aneurism was in such an advance stage that it could have resulted in the death of the man while he was asleep and even a slight strain or stress would have resulted in that rupture. The County Court Judge that the death was a result of the strain arising out of the ordinary work of the deceased operating upon a condition of the body which was such as to render the strain fatal, and held upon the authorities that this was

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<sup>30</sup>2008 II LLJ 960 (S.C.)

<sup>31</sup> *K. Narasimha Murthy vs The Manager, Oriental Insurance* 2004 (3) KarLJ 288

<sup>32</sup> *M.V. Chowdappa vs Mohan Breweries And Distilleries* 2004 (4) KarLJ 121

<sup>33</sup> AIR 1931 Bom 105

<sup>34</sup> 1910 AC 242

an accident within the meaning of the Act.”His decision was upheld by both Court of Appeal and the House of Lords:-

‘.....No doubt the ordinary accident[,said Lord Loreburn , L.C] is associated with something external; bursting of boiler, or an explosion in a mine, for example. But it may from man’s own miscalculation, such as tripping and falling. Or it may be due to both external and internal conditions, as if a seaman were to faint in the rigging and tumbling of sea. I think it also may be something going wrong within the human frame itself, such as the straining of muscle or the breaking of blood a vessel. If that occurred when he was lifting a weight it would properly be described as an accident. So, I think, rupturing an aneurism while tightening a nut with a spanner may be regarded as an accident.”

### **COMPENSATION FOR INJURY**

The Compensation awarded to the victim must be just and reasonable and unjust enrichment to the victim must be avoided. In *Raj Kumar v. Ajay Kumar*<sup>35</sup>, the Court considered some of the precedents and held:

The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

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<sup>35</sup> (2011) 1 SCC 343

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability. (iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).<sup>36</sup>

Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

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<sup>36</sup>Taskinuddin&Ors. Vs. State (NCT of Delhi) &Anr AIR 2013 Del 2948

## **CONCLUSION**

Personal injury is not only an injury caused to the human body but is also concerned with the vacuum caused to the life of the victim and the family and societal ties he has. Compensating for a personal injury does not mean reimbursing a person for the injury but the loss caused due to that which may be either the medical expenses or the salary for that period. It is generally presumed that an accident is arising out of and in the course of employment so as to fulfil the whole and sole objective of the Act. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'.

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