

37

**STANDING COMMITTEE ON LABOUR
(2008-2009)**

FOURTEENTH LOK SABHA

MINISTRY OF LABOUR AND EMPLOYMENT

THE WORKMEN'S COMPENSATION (AMENDMENT) BILL, 2008

THIRTY-SEVENTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December 2008/Agrahayana, 1930 (Saka)

THIRTY-SEVENTH REPORT

**STANDING COMMITTEE ON LABOUR
(2008-09)**

(FOURTEENTH LOK SABHA)

MINISTRY OF LABOUR AND EMPLOYMENT

THE WORKMEN'S COMPENSATION (AMENDMENT) BILL, 2008

Presented to Lok Sabha on 19th December, 2008

Laid in Rajya Sabha on 19th December, 2008



**LOK SABHA SECRETARIAT
NEW DELHI**

December 2008/Agrahayana, 1930 (Saka)

CONTENTS

	PAGE(s)
COMPOSITION OF THE COMMITTEE	(ii)
INTRODUCTION	(iv)
REPORT	1-13

ANNEXURES

(i)	The Workmen's Compensation (Amendment) Bill, 2008	14-24
(ii)	Minutes of the sitting of the Standing Committee on Labour (2008-09) held on 12.11.2008 and 17.12.2008.	25-28

**COMPOSITION OF THE STANDING COMMITTEE ON LABOUR
(2008-2009)**

Shri Suravaram Sudhakar Reddy-CHAIRMAN

**MEMBERS
LOK SABHA**

2. Shri Furkan Ansari
3. Shri Ramdas Bandu Athawale
4. Shri Subrata Bose
5. Shri Santasri Chatterjee
6. Shri Thawar Chand Gehlot
- **7. Shri Munawar Hasan
8. Smt. Sushila Kerketta
9. Shri Mohammad Tahir Khan
10. Shri Virendra Kumar
11. Shri Rajesh Kumar Manjhi
12. Shri Basangouda R. Patil
13. Shri Devidas Pingle
14. Shri Chandra Dev Prasad Rajbhar
15. Shri Mohan Rawale
16. Shri Dhan Singh Rawat
17. Shri Kamla Prasad Rawat
18. Smt. C. S. Sujatha
19. Shri Paras Nath Yadav
20. Vacant
21. Vacant

RAJYA SABHA

- *22. Chowdhary Mohammad Aslam
23. Shri Rudra Narayan Pany
24. Shri Narayan Singh Kesari
25. Shri K. Chandran Pillai
- *26. Shri Gandhi Azad
27. Smt. Renubala Pradhan
28. Shri Arjun Kumar Sengupta
29. Vacant
30. Vacant
31. Vacant

* Vacancy caused due to retirement of Shri Chowdhary Mohammad Aslam w.e.f. 29.11.2008 and Shri Gandhi Azad w.e.f. 25.11.2008.

** Expired on 10.12.2008.

SECRETARIAT

- | | | |
|---------------------|---|----------------------------|
| 1. Shri S.K. Sharma | - | Secretary |
| 2. Shri Brahm Dutt | - | Joint Secretary |
| 3. Shri R.K. Bajaj | - | Director |
| 4. Shri N.K. Pandey | - | Deputy Secretary |
| 5. Ms. Mili George | - | Senior Executive Assistant |

INTRODUCTION

I, the Chairman of the Standing Committee on Labour having been authorized by the Committee to submit the report on their behalf, present this Thirty-Seventh Report on "The Workmen's Compensation (Amendment) Bill, 2008" of the Ministry of Labour and Employment.

2. The Bill was introduced in the Lok Sabha on 20.10.2008 and was referred to the Standing Committee on Labour by the Hon'ble Speaker, Lok Sabha under Rule 331E (b) of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and report within three months from the date of publication of the reference of the Bill in the Bulletin Part- II of Lok Sabha dated 31.10.2008.

3. The Bill seeks to provide (i) for substitution of the word 'workman' with the word 'employee' so that the Act is applicable to all classes of employees and to make the expression gender-neutral (ii) To re-name the Workmen's Compensation Act, 1923 as the Employees Compensation Act, 1923, (iii) To omit restrictive clauses in Schedule II of the Act, so as to make it more workers friendly, (iv) To have an enabling provision to revise the wage ceiling from time to time by the Central Government keeping in view the changing trend in the wage level of employees, (v) To enhance the funeral expenses of the deceased workman from Rs. 2500/- to Rs. 3000/- and also to empower the Central Government to enhance such expenses from time to time, and (vi) To effect changes in the eligibility criteria of persons to become Commissioner.

4. The Committee took oral evidence of the representatives of the Ministry of Labour and Employment on 12.11.2008 in connection with the examination of the Bill. Further, the Committee sought written information regarding the various aspects of this Bill from the nodal Ministry.

5. The Committee also invited the views of Central Trade Unions through written replies to the List of Points circulated to them. In addition to that an on-the-spot study visit was also undertaken by the Committee to Ranchi, Bangalore, Kochi and Thiruvananthapuram from 26th November to 4th December, 2008 to have first hand information about the problems and difficulties of the workmen engaged in various organizations/establishments besides holding discussions with the representatives of various trade unions to know their views on the proposed amendments in the Bill in these places. The officials of the various organizations/establishments also deposed before the Committee expressing their views on the proposed amendments.

6. Taking into account the submissions made by the representatives of the Ministry, workmen, trade unions and officials of the organizations/establishments and also in view of the replies furnished both by the Ministry of Labour and Employment and the Central Trade Unions, the Committee have arrived on certain conclusions regarding the various aspects of the proposed amendments in the Bill. The same are reproduced in the Report in the form of observations/recommendations of the Committee.

7. The Committee considered and adopted the draft report on the Bill at their sitting held on 17th December, .2008.

NEW DELHI;

17th December, 2008
26 Agrahayana , 1930 (Saka)

SURAVARAM SUDHAKAR REDDY,
Chairman,
Standing Committee on Labour

REPORT

BACKGROUND

The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen and their dependents in case of injury and accident (including certain occupational disease) arising out of and in the course of employment and resulting in disablement or death. The Act applies to railway servants and persons employed in any such capacity as is specified in Schedule II of the Act. Schedule II includes persons employed in factories, mines, plantations, mechanically propelled vehicles, construction works and certain other hazardous occupations. Minimum rates of compensation for permanent total disablement and death have been fixed at Rs.90,000/- and Rs.80,000/- respectively. Maximum amount for death and permanent total disablement can go up to Rs.4.56 lakh and Rs.5.48 lakh respectively depending on age and wages of workmen.

2. Keeping in view the recommendation of the Second National Commission on Labour and suggestions received from the related Ministries/Departments, and State Governments/Union Territory Administrations, it is proposed to carry out the following amendments in the Workmen's Compensation Act, 1923, namely:-

- The term 'workman' in Section 2 (1) (n) of the Workmen's Compensation Act, 1923 may be replaced by the term 'employee'. Wherever the term 'workman' occurs, the same shall be replaced with the term 'employee' and wherever the term workmen occurs, the same shall be replaced with the term 'employees' so that the Act is applicable to all classes of employees. Accordingly, the name of the Workmen's Compensation Act, 1923 may be renamed as 'Employees' Compensation Act, 1923'. Similarly, in the long title, preamble and the short title of the Act, the word 'workman' will be substituted with the word 'employee'.
- To omit restrictive clauses in Schedule II, so as to make it more worker friendly. Details of amendments of Restrictive Clauses in Schedule-II of the Act are enclosed at Annexure.
- In order that the Central Government may revise the wage ceiling keeping in view the changing trend in the wage level of employees, it is proposed to have an enabling provision by inserting a new sub-section in section 4 of the Act to revise the wage ceiling from time to time.

- To enhance the amount of Rs.2500/- payable towards funeral expenses of the deceased workman to Rs.3000/- under sub-section (4) of section 4 of the Act and also to empower the Central Government to enhance the funeral expenses from time to time.
- It is proposed that only those persons who have legal background shall be able to become Commissioner for workers' compensation and accordingly substitute the phrase 'any person' after the word 'appoint...' in clause (1) of section 20 of the Workmen's Compensation Act, 1923 with the words and phrase 'any person who has or has been judicial officer or legal practitioner of 5 years experience shall be qualified....'.

3. Elaborating the objectives of proposed amendments, the Ministry of Labour and Employment brought out in the 'Object and Reasons' to the Bill that intended objective of the proposed Act is to make the title gender-neutral by substituting the word 'workmen' by the term 'employees'. When the Ministry was asked whether this meant that hitherto there have been gender based discrimination as far as the implementation of this Act is concerned, the Ministry in their written reply furnished as follows:-

"The Second National Commission on Labour had recommended that in the Workmen's Compensation Act, 1923 the term 'workman' may be replaced by the term 'employee' so as to make the Worker's Compensation Act applicable to all categories of employees; the term 'employee' may be defined to mean any person employed in employment specified in Schedule II. Also, the Task Force set up by the PMO to carry out Gender related Amendments has recommended that the title of the Act should be made gender neutral, namely "The Workers' Compensation Act". Keeping in view these suggestions, the amendments are proposed to be carried out in the Act to make the expression in the title gender-neutral."

4. For the purpose of this Act, the term 'employee' has *inter-alia* been defined in the amendment Bill to be a person who is (i) a railway servant as defined in Clause 34 of Section 2 of the Railways Act, 1989, (ii) (a) a master seaman or other member of the crew of a ship, (b) a captain or other member of the crew of an aircraft, (c) recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle, (d) recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle or company, as the case may be, is registered in India or (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a

member of the Armed Forces of the Union; and any reference to a employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them.

5. On being asked whether the definition of 'employee' is comprehensive and inclusive and the reasons for non-inclusion of a person working for Indian Railways or its subsidiaries executing contracts abroad in sub-section (d) of (ii) of Section 6 of the Act, the Ministry stated in their written reply as under:-

".....A person who is employed in railways as defined in clause (31) of section 2 and sub-section (1) of section 197 of the Railways Act, 1989 (24 of 1989), either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration; or employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service is already covered under entry (xii) and (xiii) of the Scheduled II of the Act."

6. The Ministry when further asked to state the reasons for not specifying self-containing the list of employments as given in Schedule II of the Act for the purpose of defining 'employee', they furnished thus:-

"Schedule II of the Act already gives an exhaustive list of nature of employments/establishments which are hazardous in nature. It also takes care of the new establishments/industries coming as a result of new technologies. Giving an exhaustive list would also leave room for non-coverage of new industries/employments."

7. It has been proposed in sub-section 1A of Section 7 of the Bill that the Central Government may specify such monthly wage in relation to an employee as it may consider necessary. On being asked to state the criteria to be adopted for specifying the monthly wages of an employee, the Ministry in their written reply gave as follows:-

"The enhancement in compensation based on monthly wages at Rs.4000/- per month was made by taking into consideration the increase in Consumer Price Indices (CPI) for industrial workers since it was fixed last time. The CPI for industrial workers is proposed to be used for enhancing the monthly wage for calculation of the compensation with respect to the CPI for industrial workers available in December, 2000 when the limit was last raised. Based on this criteria, the monthly wage is proposed to be increased from Rs.4000/- to Rs.6000/- and also the Central Government should be empowered to enhance this limit from time to time taking into account the CPI for industrial workers."

8. The funeral expenses of deceased employee have been proposed to be raised to Rs.3000/- from Rs.2500/-. When the Committee sought to know since when the Rs.2500/- was paid as funeral expenses and whether it was sufficient to meet the entire expenditure, the Ministry in their written reply stated as under:-

“The funeral expenses was increased from Rs.1000/- to Rs.2500/- with effect from 8th December, 2000. The funeral expenses are sought to be increased to bring them at par with that of Employees’ State Insurance Corporation (ESIC). The Government is seeking power to increase it from time to time to bring it in tune with the changed price index.”

9. On the matter of amount of compensation, the Ministry was asked whether the compensation payable to employees in India and abroad will be determined on same yardsticks and what will be the factors that will be taken into account for determining the compensation amount for various category of injuries, the Ministry stated:-

“The Compensation payable to an employee in India and abroad will not be determined on the same yardsticks as it would be determined according to the law applicable to the workman where he is residing and working.

While fixing the amount of compensation payable to a workman in respect of an accident occurring outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country as provided in section 4 (1 A) of the Act.”

10. In the replies furnished by the Ministry, it has been stated that minimum rates of compensation for permanent total disablement and death have been fixed at Rs.90,000/- and Rs.80,000/- respectively. Maximum amount for death and permanent total disablement can go upto Rs.4.56 lakh and Rs.5.48 lakh respectively subject to age and wages of workmen. When the Committee sought clarification regarding the reasons for such a huge difference in the minimum and maximum rate of compensation and the reasons for fixing lower amount of compensation in cases of death vis-à-vis for permanent total disablement, the Ministry clarified as under:-

“In the year 2000, the minimum amount of compensation for permanent total disablement and death was fixed at Rs.90,000/- and Rs.80,000/- respectively taking into account the recommendations made by the Standing Committee in 1994 and the increase in wages/prices at the relevant time. As regards the maximum, it becomes payable by the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the

workman on his last birthday immediately preceding the date on which the compensation fell due. If a worker gets compensation at a younger age, he will get it more on the basis of higher multiplying factor at the young age and the compensation amount shall get decreased while the worker gets older.

The reasons for fixing lower amount of compensation in cases of death vis-à-vis for permanent total disablement is because one time payment of compensation is made to the family of the deceased worker in the former case. Whereas in case of a total disablement, the worker has to sustain himself alongwith his family for a considerable period in a disadvantageous position and as such, more compensation is paid to him.

Following discussion held in the meeting of the Standing Committee on Labour on 12th November, 2008 and increase in Consumer Price Indices for the Industrial Workers, it is felt that the minimum rates of compensation payable to a worker fixed in December, 2000 as Rs.80,000/- for death and Rs.90,000/- for permanent disability should be changed according to the present minimum rates of wages to Rs.1.20 lakh and Rs.1.40 lakh respectively. Further, the Government should be empowered to enhance the minimum rates of compensation from time to time."

11. The Committee sought to know whether the amount payable as compensation to employees on account of injuries is paid by insurance company or is paid from the budgetary allocation of the establishment and in case it is paid from budgetary grant, what are the liabilities of the insurance company to indemnify the victim of accident, the Ministry in their written reply clarified thus:-

"If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of the Workmen's Compensation Act, 1923.

If the insurance company has agreed to discharge the liability of the employer under the Workmen's Compensation Act, the liability of the insurance company to indemnify the insurer shall have to be determined by the Commissioner for Workmen's Compensation in the very same proceedings by virtue of the provisions contained in section 14 of the Act. The Compensation is not paid out of budgetary grant."

12. As per the provisions contained in the Act, for the purpose of determining compensation, there are more than 50 categories of injuries to assess the percentage of loss of earning capacity ranging from 1% to 100%. When the Ministry was asked whether the categorization of injuries into these many numbers does not make the process of paying compensation cumbersome and officious and why can't the injuries be categorized to the bare minimum categorizing them as simple injury, serious injury, grievous injury and fatal injury bringing all kinds of injuries enumerated in Schedule I into these four categories, the written reply given by the Ministry is as follows:-

“In Section 4 of the Act, the injuries of a workman have already been classified in four broad categories viz. (a) where death results from the injury; (b) where permanent total disablement results from the injury; (c) where permanent partial disablement result from the injury; and (d) where temporary disablement whether total or partial results from the injury. However, in the interest of justice and fair play, it is essential to find out the exact percentage of loss of earning capacity of the workman so as to claim appropriate compensation from the employer. The percentage of the loss of earning capacity is determined by a medical expert under the orders of the Commissioner and as such, there is no room for any confusion in this regard. This is a universally accepted principle.”

13. The Ministry was asked whether the amount payable as compensation to an employee is subject to any condition, whether administrative, procedural or otherwise and whether the compensation is also subject to any kind of recovery outstanding against the person who is being compensated for injury, the written reply went as follows:-

“The Workmen’s Compensation Rules, 1924 provide for the procedure for implementation of the Act and the State Governments have been empowered to make rules to carry out the purposes of the Workmen’s Compensation Act, 1923.

As per section 9 of the Act, compensation paid in any way is not 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. “

14. According to the proposed amendments in the Bill, a new provision has been introduced to specify minimum qualification for appointment of a person as Commissioner. The Committee sought to know the circumstances as to when a Commissioner can be appointed under the Act, the Ministry furnished in their written reply as follows:-

“As per section 20 of the Act, the State Government may, by notification in the Official Gazette, appoint any person to be Commissioner for Workmen’s Compensation for such area as may be specified in the notification. Where more than one Commissioner has been appointed for any area, the State Government, may, be general or special order, regulate the distribution of business between them. Any Commissioner, may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry. Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).”

15. The Ministry when further asked to narrate the terms and conditions of such an appointment and the powers and jurisdiction of the Commissioner so appointed under the Act, their written reply stated as under:-

“Not available at present. Hence, a provision is being made so that persons who have a minimum qualification of not less than five years as a member of a State Judicial Service or not less than five years of experience as an advocate or a pleader are eligible to become the Commissioner so as to improve the quality of awards.”

16. The Committee also asked the Ministry as to whether the Commissioner has the authority to determine or decrease or increase in the amount of compensation, the reply given by the Ministry stated as under:-

“The jurisdiction of the Commissioner is given in section 19 of the Act and his powers and duties have been prescribed in various sections under the Act such as section 6, 12, 22 and 23 etc.

Yes, the Commissioner has the power of ‘Review’ under section 6 of the Act.”

17. On being asked regarding the time frame laid down for the Commissioner to decide the issue pending before him, the Ministry submitted in their written reply as follows:-

“There is no time frame laid down for the Commissioner to decide the issue pending before him. However, the Commissioner has all the powers of a Civil Court under the Code of

Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling the production of documents and material objects under section 23 of the Act.”

18. The Committee take note that the proposed amendments in clauses (1) to (5) of the Workmen's Compensation Act are being carried out with a view to widen the scope of the Act besides making it gender neutral despite the fact that there has been no gender bias (perceptible or otherwise) as far as the application of the Act is concerned. The substitution of term 'workmen' by 'employee' wherever it occurs in the Act will universalize it as far as the beneficiaries of the Act are concerned. However, the term employee needs a revisit for the purpose of the Act as no changes have been incorporated with the proposed substitution of the term which are essential in the present environment of employment. The Committee feel that simple substitution of the term 'employee' with 'workman' may not cover the entire spectrum of the workforce in the ever growing and fast changing trend of job scenario in the context of outsourcing, computerization and mechanization of the sector, defeating the very objective of the intended amendment. The Committee, therefore, recommend that the term 'employee' for the purpose of this Act may appropriately be recast in the following manner:

'Employee' is a person, including workers working on casual or contract basis, engaged by an individual, group of individuals, company, establishment, which may also be juridical in nature and who are engaged in trade, commerce or any activity wherein their business interests are proliferating, whether directly or indirectly with the employment of the services of such persons whether working within the country

or aboard and also on land, sea or air or where employers use the skills, experience and expertise of such persons (employee) whether directly or indirectly, in furtherance of manufacturing of goods, trade, commerce and business.

19. The Committee note that the Government propose to insert a new sub-section in Section 4 of the Act to empower the Government to revise the wage ceiling from time to time keeping in view the changing trend in the wage slabs of the employees. Government also propose to enhance the funeral expenses from the current ceiling of Rs.2,500/- to Rs.3,000/- to the deceased employee. The funeral expenses are sought to be increased to bring them at par with that of ESIC. The Committee are of the view that these actions are affirmative in nature but insufficient in application as well as in quantum. The amount of funeral expenses sought to be increased is negligible in view of the present cost of living. Moreover, the ESIC primarily caters to the section who are organizedly unorganized workers and hence their benefit cannot and should not be a benchmark for determining the amount for any welfare activities of the employees sought to be benefited by this Act. Hence, the increase in funeral expenses equaling it with ESIC is not acceptable to the Committee. Similarly, the enabling provision to revise the wage ceiling from time to time without any time stipulation is an open ended approach without a sense of commitment to the need of the workforce. It will be most unlikely that any periodical review of wage ceiling will be undertaken to determine the benefits of the beneficiaries under the Act. The Committee, therefore, strongly emphasize that enhancement in funeral expenses should be revised to a minimum of Rs.5,000/- as of now and linked to periodic upward revision from time to time. Simultaneously, the revision in wage ceiling of employees to determine their benefits under the Act should be done at regular intervals but not exceeding a gap of five years.

20. The Committee find that the Bill does not envisage any changes in the list of injuries under the Act affecting the wage earning capacity of the employee. Though they are quite exhaustive and enumerative, but explicitly they are external in nature and does not include any kind of injuries which may be of serious proportion contracted during course of employment but not palpable and external in appearance. The Committee note that there could be a number of cases wherein severe internal injuries could have been caused to employees but not compensated under the Act. Appropriately, occupational hazards which workers are exposed to should be categorized based on the degree of hazards, industry-wise. The workers working on such employment be not only medically evaluated, but adequate amount of compensation be also paid to them under the Act after the occurrence of certain physical and medical deficiencies. The Committee, therefore, strongly recommend that besides external injuries, the internal injuries caused during course of employment, which inter-alia should include passage from residence to workplace and vice-versa, be also incorporated in the appropriate schedule of the Act to determine the compensation payable to the employee.

21. The Committee observe that the Workmen's Compensation Act, 1923 does not have any provision regarding reimbursement of the expenditure to the employee incurred over the treatment due to injuries which he/she received during the course of employment. It defines only compensation depending upon the percentage of impairment of the wage earning capacity of the employee caused due to accident. The reimbursement of the expenditure incurred over the treatment of injuries caused due to accidents is natural corollary prior to compensation. To have a provision for a latter contingency and not for the treatment expenditure is beyond any rational approach and requires consideration. It is imperative that provision for reimbursement of medical expenditure is brought within the purview of the Act. The Committee, therefore, strongly emphasize that the provision for reimbursement of actual medical expenditure incurred for treatment of injuries caused during course of employment be made part of the Act.

22. The Committee note that the Government proposes to lay down certain eligibility criteria for the appointment of Workmen Compensation Commissioner under Section 20 of the Act whereby only those persons who have legal background shall have the eligibility to become the commissioner under this Act. The Committee are of the opinion that restricting the eligibility criteria only for the persons of legal background will be too restrictive. Since there is a well defined principle for determining the compensation amount, the role of the Commissioner is more administrative than legal in nature, hence person with legal acumen may not be of much consequences as far as functioning of the Commissioner under the Act is concerned. This is more so when the decision of the Commissioner is not a finality as far as the award and amount of compensation is concerned. Besides, there is also no provision of time limit within which the Commissioner has to take decision regarding compensation. The Committee, therefore, strongly recommend that the eligibility criteria for appointment of Commissioner under the Act needs to be widened. Besides, persons from legal background, other educational qualifications like Personnel Management, Human Resource Development, Industrial Relations, etc. may also be included within the ambit of eligibility criteria for appointment as Commissioner. Moreover, a stipulated time frame may be fixed within which the Commissioner should take a decision regarding compensation. This will go a long way in streamlining and expediting the delivery mechanism under the Act.

NEW DELHI;

17th December, 2008
26 Agrahayana , 1930 (Saka)

SURAVARAM SUDHAKAR REDDY,
Chairman,
Standing Committee on Labour

APPENDIX

As introduced in Lok Sabha

Bill No.55 of 2008

THE WORKMENS' COMPENSATION (AMENDMENT) BILL, 2008

A

BILL

further to amend the Workmens' Compensation Act, 1923.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:.

1. (1) This Act may be called the Workmen.s Compensation (Amendment) Act, 2008.
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In the long title to the Workmen's Compensation Act, 1923 (hereinafter referred to as the principal Act), for the word .workmen. the word .employee. shall be substituted.
3. In the principal Act, in the preamble, for the word .workmen., the word ."employee" shall be substituted.
4. In section 1 of the principal Act, in sub-section (1), for the word .Workmen.s., the word .Employees.. shall be substituted.
5. Throughout the principal Act, for the words .workman. and .workmen. wherever they occur, the words .employee. and .employees. shall respectively be substituted, and such other consequential amendments as the rules of grammar may require shall also be made.

6. In section 2 of the principal Act, in sub-section (1),.

(i) after clause (d), the following clause shall be inserted, namely:.

(dd) .employee. means any person who is.

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

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

(d) recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to an employees who has been injured shall, where the employee is dead, include a reference to his dependants or any of them..;

(ii) clause (n) shall be omitted.

7. In section 4 of the principal Act,.

(i) in sub-section (1), after clause (b), *Explanation II* shall be omitted;

(ii) sub-section (1A) shall be re-numbered as sub-section (1B) thereof, and before sub-section (1B) as so re-numbered, the following sub-section shall be inserted, namely:.

.(1A) For the purposes of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such monthly wage in relation to an employee as it may consider necessary.;

- (ii) in sub-section (4), for the words .two thousand and five hundred rupees., the words .not less than three thousand rupees or such sum, as the Central Government may, by notification in the Official Gazette, specify., shall be substituted.

8. In section 20 of the principal Act, in sub-section (1), after the words .appoint any person., the words .who is or has been a member of a State Judicial Service for a period of not less than five years or has been for not less than five years an advocate or a pleader. shall be inserted.

9. In the principal Act, in Schedule II,.

- (i) for the word, number, brackets and letter .section 2 (1) (n)., wherever they occur the word, number, brackets and letters .section 2(1) (dd). shall be substituted;
- (ii) In item (i) for the words .employed, otherwise than in a clerical capacity or on a railway., the words .employed in railways. shall be substituted;
- (iii) in item (ii), the words .otherwise than in a clerical capacity. shall be omitted;
- (iv) in item (iii), the words .wherein or within the precincts whereof twenty or more persons are so employed. shall be omitted;
- (v) in item (v), the words .other than clerical work. shall be omitted;
- (vi) in item (vi),.
 - (a) clause (b) shall be omitted;
 - (b) In clause (c), the words, brackets and letter .or sub-clause (b). shall be omitted;
- (vii) in item (x), the words .otherwise than in a clerical capacity. shall be omitted;
- (viii) in item (xiv), the words .otherwise than in a clerical capacity. shall be omitted;

- (ix) in item (xvi), the words .in which on any one day of the preceding twelve months more than twenty-five persons have been employed. shall be omitted;
- (x) for item (xviii) the following item shall be substituted, namely:
 - (xviii) employed on any estate which is maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea; or.;
- (xi) in item (xix), the words .otherwise than in a clerical capacity. shall be omitted;
- (xii) in item (xxvi),.
 - (a) in clause (a), the words .and in which on any one day of the preceding twelve months ten or more persons have been so employed. shall be omitted;
 - (b) In clause (b), the words .in which on any one day of the preceding twelve months fifty or more persons have been so employed. shall be omitted;
- (xiii) in item (xxx), the words .otherwise than in a clerical capacity. shall be omitted;
- (xiv) in items (xl) and (xli), the words .in which on any one day of the preceding twelve months more than twenty-five persons have been employed occurring at both items shall be omitted;
- (xv) the *Explanation* occurring at the end shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Workmen's Compensation Act, 1923 provides for payment of compensation to the workmen and their dependants in the case of injury by industrial accidents including certain occupational diseases arising out of and in the course of employment resulting in death or disablement. The Act applies to certain railway servants and persons employed in hazardous employments such as factories, mines, plantations mechanically propelled vehicles, construction work, etc., specified in Schedule II of the Act. However, the Act is not applicable to the employees who are covered under the Employees. State Insurance Act, 1948.

2. The Second National Commission on Labour set-up in the year 2002 has made recommendations relating to amendment of the Workmen's Compensation Act, 1923. The recommendations have been examined in consultation with the concerned Ministries/Departments/State Governments/Union Territory Administrations.

3. The salient features of the Bill are as follows:.

- (1) It provides for substitution of the word 'workman' with the word 'employee' so that the Act is applicable to all classes of employees and to make the expression gender-neutral.
- (2) To re-name the Workmen's Act, 1923 as the Employees. Compensation Act, 1923.
- (3) To omit restrictive clauses in Schedule II of the Act, so as to make it more workers friendly.
- (4) Keeping in view the changing trend in the wage level of employees, it is proposed to have an enabling provision to revise the wage ceiling from time to time by the Central Government.
- (5) To enhance the funeral expenses of the deceased workman from Rs. 2500/- to Rs. 3000/- and also to empower the Central Government to enhance such expenses from time to time.

- (6) Provision is being made so that persons who have a minimum qualification of not less than five years as a member of a State Judicial Service or not less than five years of experience as an advocate or a pleader shall be eligible to become the Commissioner.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 19th September, 2008.

OSCAR FERNANDES.

FINANCIAL MEMORANDUM

Sub-clause (ii) of clause 7 of the Bill empowers the Central Government to revise the wage ceiling from time to time for calculation of maximum amount of compensation where death or permanent total disablement or permanent partial disablement results from the injury. Sub-clause (iii) of the Bill, provides for the enhancement of the funeral expenses of the deceased workman from an amount of Rs. 2500 to Rs. 3000, and also empowers the Central Government to enhance such sum as the funeral expenses from time to time.

2. The above-mentioned proposals in their application to the workmen employed by the Central Government will involve increased expenditure from the Consolidated Fund of India by way of payment of compensation. However, as compensation becomes payable only in the event of employment injury resulting in disablement or death, it is not possible to estimate in advance the amount of additional expenditure involved.

3. The Bill does not involve any other expenditure whether recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (ii) of Clause 7 of the Bill seeks to specify such monthly wage in relation to an employee as the Central Government may, consider necessary for calculation of maximum amount of compensation. Similarly, sub-clause (iii) of the Bill seeks to increase the funeral expenses from Rs. 2500 to Rs. 3000 or such sum, as the Central Government may specify, by notification in the Official Gazette.

2. The matters in respect of which the Central Government is empowered by notification to specify certain amounts are matters of administrative details or of procedure and it is not possible to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE
EXTRACTS FROM THE WORKMEN.S COMPENSATION ACT, 1923
(8 OF 1923)

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

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

It is hereby enacted as follows:.

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Workmen.s Compensation Act, 1923.

* * * * *

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

* * * * *

(n) . workman. means any person who is.

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 not permanently employed in any administrative, district or subdivisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ia) (a) a master, seaman or other member of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,
(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

* * * * *

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

(a)	Where death results from the injury	an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor;
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or

an amount of eighty thousand rupees, whichever is more;

(b)	where permanent total disablement results from the injury	an amount equal to sixty per cent. from the injury of the monthly wages of the injured workman multiplied by the relevant factor;
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or

an amount of ninety thousand rupees, whichever is more;

Explanation I. For the purposes of clause (a) and clause (b) .relevant factor. in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II. Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only;

* * * * *

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of two thousand and five hundred rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.

* * * * *

20. (1) The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen.s Compensation for such area as may be specified in the notification.

* * * * *

SCHEDULE II
 [See section 2(1) (n)]
 LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF SECTION 2(1)(n),
 ARE INCLUDED IN THE DEFINITION OF WORKMEN

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

- (i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation, repair or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or
- (ii) employed, otherwise than in a clerical capacity, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948, is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, whether or not employment in any such work is within such premises or precincts 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 twenty or more persons are so employed;

Explanation.. For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected, with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts;
 or

* * * *

- (v) employed, in any mine as defined in clause (j) of section 2 of the Mines Act, 1952, 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; or

(vi) employed as the master or as a seaman of.

* * * * *

(b) any ship not included in sub-clause (a), of twenty-five tons net tonnage or over; or (c) any sea-going ship not included in sub-clause (a) or sub-clause (b) provided with sufficient area for navigation under sales alone; or

* * * * *

(x) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline or sewer; or

* * * * *

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

* * * * *

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

* * * * *

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

(xix) employed, otherwise than in a clerical capacity, in the generating, transforming transmitting or distribution of electrical energy or in generation or supply of gas; or

* * * * *

(xxvi) 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 fifty or more persons have been so employed; or

* * * * *

(xxx) employed, otherwise than in a clerical capacity, in the construction, working, repair or maintenance of a tube-well; or

* * * * *

(xl) employed in cleaning of jungles or reclaiming land or ponds in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

(xli) employed in cultivation of land or rearing and maintenance of live-stock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

* * * * *

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.

* * * * *

LOK SABHA

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A

BILL

further to amend the Workmen's Compensation Act, 1923.

....

(Shri Oscar Fernandes, Minister of State for Labour and Employment)

**MINUTES OF THE NINTH SITTING OF THE STANDING COMMITTEE ON
LABOUR HELD ON WEDNESDAY, 12TH NOVEMBER, 2008**

The Committee met from 1500 hours to 1700 hours in Committee Room 'C', Parliament House Annexe, New Delhi to have briefing by the Ministry of Labour and Employment on the Bills 'The Employees' State Insurance (Amendment) Bill, 2008' and 'The Workmen's Compensation (Amendment) Bill, 2008'.

PRESENT

Shri Suravaram Sudhakar Reddy - CHAIRMAN

MEMBERS

LOK SABHA

2. Shri Furkan Ansari
3. Shri Subrata Bose
4. Shri Santasri Chatterjee
5. Shri Virendra Kumar
6. Shri Basangouda R. Patil
7. Shri Chandra Dev Prasad Rajbhar
8. Shri Kamla Prasad Rawat
9. Smt. C.S. Sujatha

RAJYA SABHA

10. Shri Narayan Singh Kesari
11. Shri K. Chandran Pillai
12. Shri Gandhi Azad
13. Smt. Renubala Pradhan
14. Shri Arjun Kumar Sengupta

SECRETARIAT

- | | | | |
|----|-------------------|---|------------------|
| 1. | Shri Brahm Dutt | - | Joint Secretary |
| 2. | Shri R.K. Bajaj | - | Director |
| 3. | Shri N. K. Pandey | - | Deputy Secretary |

REPRESENTATIVES OF THE MINISTRY OF LABOUR & EMPLOYMENT

1. Smt. Sudha Pillai, Secretary (L&E)
2. Shri S. Krishnan, Special Secretary
3. Shri S.K. Verma, Director
4. Shri A.V. Singh, Director

2. At the outset, the Chairman welcomed the representatives of the Ministry of Labour and Employment to the sitting of the Committee being held to have briefing on the Bills 'The Employees' State Insurance (Amendment) Bill, 2008' and 'The Workmen's Compensation (Amendment) Bill, 2008'.

3. XX XX XX

4. The major points which were discussed on 'The Workmen's Compensation (Amendment) Bill, 2008' *inter-alia* included:-

- (i) The extent to which the definition of 'employee' as proposed in the Bill is comprehensive and inclusive.
- (ii) The reasons for not self-containing the list of employments as given in Schedule II of the Act.
- (iii) The reasons for not including the contract/casual worker within the definition of the term 'employee'.
- (iv) The factors that were taken into account for determining the amount of compensation for various category of injuries.
- (v) The parameters for deciding the amount of compensation for employees working abroad.
- (vi) The qualification and jurisdiction of the person to be appointed as Commissioner.

3. Thereafter, the Secretary, Ministry of Labour and Employment clarified some of the questions and queries raised by the Chairman and other Members of the Committee. The Chairman then requested the Secretary to send written replies to those questions whose replies were not readily available within ten days to the Committee.

The witnesses then withdrew.

4. A verbatim record of the proceedings has been kept.

The Committee then adjourned.

MINUTES OF THE TENTH SITTING OF THE STANDING COMMITTEE ON LABOUR HELD ON WEDNESDAY, THE 17TH DECEMBER, 2008

The Committee met from 1500 hours to 1700 hours in Committee Room No.139, Parliament House Annexe, New Delhi to have briefing by the representatives of the Ministry of Labour and Employment on 'The Plantations Labour (Amendment) Bill, 2008' and to consider and adopt draft Thirty-Sixth and Thirty-Seventh reports on 'The Employees' State Insurance (Amendment) Bill, 2008' and 'The Workmen's Compensation (Amendment) Bill, 2008'.

PRESENT

Shri Suravaram Sudhakar Reddy - CHAIRMAN

MEMBERS

LOK SABHA

4. Shri Furkan Ansari
5. Shri Ramdas Bandu Athawale
6. Shri Santasri Chatterjee
7. Shri Thawar Chand Gehlot
6. Shri Virendra Kumar
7. Shri Basangouda R. Patil
8. Smt. C.S. Sujatha
9. Shri Parasnath Yadav

RAJYA SABHA

10. Shri K. Chandran Pillai

SECRETARIAT

- | | | | |
|----|-------------------|---|------------------|
| 1. | Shri Brahm Dutt | - | Joint Secretary |
| 2. | Shri R.K. Bajaj | - | Director |
| 3. | Shri N. K. Pandey | - | Deputy Secretary |

2. XX XX XX

3. XX XX XX

4. XX XX XX

5. Thereafter, the Committee took up the following draft reports for consideration:-

(i) XX XX XX

(ii) Draft Thirty-Seventh Report on 'The Workmen' Compensation (Amendment) Bill, 2008'.

6. After discussing the contents of the Reports, the Committee adopted the reports with some verbal modifications.

7. The Committee then authorized the Chairman to finalise the above Reports and present the same to the Parliament.

8. The Committee also placed on record their appreciation for the service rendered to them by the officers/staff attached to the Committee.

9. XX XX XX

The Committee then adjourned.