

Q & A



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Krishna Vijay Singh is a senior partner at Kochhar & Co., one of the leading and largest law firms in India with offices at New Delhi, Gurgaon, Bengaluru, Chennai, Hyderabad, Mumbai, Dubai, Riyadh, Jeddah, Singapore, Tokyo and Atlanta (USA). The firm represents some of the largest multinational corporations from North America, Europe, Japan and India (many of which are Fortune 500 companies) in diverse areas of corporate and commercial laws.

We are a company with our factory in East Delhi. One of our employees working in the cement factory died in a road accident while returning home in a Delhi Transport Corporation Bus after the end of his shift at the factory. In the above scenario, please let us know if we are legally liable to compensate his widow or family in view of the tragic incident.

Please note that as per Section 3(1) of the Workmen's Compensation Act, 1923, the liability of an employer for an injury caused to an employee by an accident is limited to the one that may have occurred during the course of his employment. Although, in certain cases, the liability may be extended to include both entry and exit space and time using the principles of national extension but in the present case, we do not see a scope for extension of the liability.

Further, in a similar case of General Manager, B.E.S.T. Undertaking, Bombay vs Mrs. Agnes AIR1964SC193, it was held by the Hon'ble Supreme Court that an employee using public transportation of his own accord would not be eligible for compensation in case he suffers injuries during the commute. The Hon'ble Court held that such a case would not fall under 'injuries received in an accident arising in and out of course of employment'

Consequently, we are of the considered view that your company is not liable to compensate the deceased employee's widow or family on account of the unfortunate incident.

I own an establishment which manufactures certain metallic components. An employee of mine acted contrary to the mandatory safety instructions and did not use a safety harness while scaling a

container to check for some technical problems. This was not a part of his employment, since he was employed in the capacity of a supervisor. As a result, he fell from a height of 40 feet and died instantly. Am I obliged to compensate his dependants under the Workmen's Compensation Act?

Your above query is a specific example of the Doctrine of Added Peril. The said doctrine provides that when a workman during the course of his employment willfully undertakes an act of a dangerous nature, not being a part of his regular employment which results in an injury or death of the employee, the said incident cannot be held to be caused due to any accident arising out of the employee's actions.

The said doctrine was well explained by the Hon'ble Patna High Court in the case of Bhurangya Coal Co. vs Sahebjan where in paragraph 19 of its judgment the Hon'ble Court held that:

"The principle of added peril contemplates that if a workman while doing his master's work undertakes to do something which he is not ordinarily called upon to do and which involves extra danger he cannot hold his master liable for the risks arising therefrom"

Further, the proviso in sub clause b(ii) of Section 3 of the Workmen's Compensation Act, 1923 safeguards an employer against the claim for compensation from a personal injury caused to a workman due to his willful disobedience to an order expressly given or to a rule expressly framed for the purpose of securing the safety of workmen.

Hence, it can be safely considered that for the case in hand, you are not obliged to compensate the dependants of your employee under the Workmen's Compensation Act, 1923. (HC)

Understanding the Standing Orders

The employer and the employee can never be on an equal footing and hence any contract entered between them is bound to be biased towards the employer. Employment contracts being no different are drafted by the employer unilaterally without being subject to any review, modification or addition from the employee. Hence, with the view to safeguard the employees from such one-sided contracts that govern the terms and conditions of their employment, the Parliament gave birth to the concept of standing orders with the enactment of the Industrial Employment (Standing Orders) Act, 1946 ("Act").

The provisions of the Act provide for drafting of standing orders by the employer which contain the terms and conditions of employment. The said draft standing orders are submitted to the Certifying Officer who forwards the copy of the draft to the trade union or to the workmen (if there is no trade union) for seeking objections, if any. Thereafter, opportunity of being heard is given to both the parties and modifications, if any, are made to the draft Standing Order before registration of the same. Thus, Standing Orders facilitate a process wherein the employee gets the opportunity to negotiate the terms and conditions of his employment with the help of Certifying Officer as the negotiator to ensure that a contract is not left to be negotiated by two unequal persons and yet be statutorily imposed.

The schedule to the Act provides that while framing the Standing Orders, the employer should keep in mind every matter which may be applicable to the industrial establishment and must prepare the draft in accordance with the requirements and policies specific to the industry. Hence, the Standing Orders of different industries may be different in its contents. However, the Act provides for model standing orders which the employer is required to adhere to. The Act does

not require the employer to draft the Standing Orders verbatim as given in the Schedule or reproduce the format as it is. The requirement is to conform to the basic structure provided in law.

Although, as per the provisions of the Act, Standing Orders are meant to define the rules of conduct only for workmen, they can also govern the service conditions of other employees of the establishment, who may not otherwise fall in the category of workmen. The Act applies to all industrial establishments employing one hundred or more workmen. The industrial establishments covered under the Act may be a factory, dock, wharf, mine quarry, oil-field, plantation, workshop or other establishments where articles are produced or manufactured or any other establishment which deals in any work relating to construction, development or maintenance of building or relating to generation, transmission and distribution of electricity, etc. However, employees of certain establishments' interalia such as civil servants, civilians in defense services, railway employees are exempted from the provisions of the Act and are governed by their own respective rules.

In order to ensure compliance, the Act provides for fine extendable up to twenty thousand rupees to an employer who fails to submit draft standing orders to the Certifying Officer within six months from the date on which the Act becomes applicable to its establishment. In case of continuing offence, there is a further penalty extendable up to Rs 200 for every day after the first day,

during which the offence continues. Further, the Act prescribes penalty extendable up to one hundred rupees for an employer who does any act in contravention of the standing orders finally certified under the Act and in the case of continuing offence with a further fine which may extend to Rs 25 for every day after the first day,

Must in Standing Orders

1. Classification of workman, e.g., whether permanent, temporary, apprentices, probationers;
2. Manner of intimation to workmen about the periods and hours of work, holidays, pay-days and wage rates;
3. Shift working;
4. Attendance and late coming;
5. Conditions, procedure to apply for and the authority for grant of leave and holidays;
6. Requirement to enter the premises by certain gates and liability to search;
7. Closing and re-opening of the sections of industrial establishment, and temporary stoppages of work and rights and liabilities of the employer and workmen arising therefrom;
8. Termination of employment, and the notice thereof to be given by employer and workmen arising therefrom;
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct;
10. Means of redress for workman against unfair treatment or wrongful exactions by the employer or his agents or servants; and
11. Any other matter which may be prescribed.

during which the offence continues.

However, in view of the relatively low monetary penalties, the Act leaves enough room with most organizations to breach the provisions of the Act. Although, avoidance of unnecessary litigations still holds as an important deterrent factor for organizations to adhere to the provisions of the Act, an amendment to the provisions of the Act to increase the penal amounts should go a long way in protecting the interests of the workmen and serving the very concept of standing orders. (HC)