

ADMINISTRATION OF WORKMEN'S COMPENSATION LAW (1986).

By K.L. Bhatia. Deep & Deep Publications, D1/24, Rajouri Garden, New Delhi-110 027. Pp. xii+312. Price Rs. 200.

WORKMEN'S COMPENSATION is an important area of social security in India, the law on the subject being contained in the Workmen's Compensation Act 1923 (hereinafter called the Act). Except stray commentaries on the Act and few books on the subject, there is no work that can qualify as a standard textbook. No serious empirical study has been undertaken on the working of the Act which is found published, barring the book under review. To that extent it has an importance of its own, and is altogether different compared to the usual type of publications. The subject-matter of the book is confined to the implementation and enforcement of the Act in the States of Jammu and Kashmir as well as Punjab.

The "Introduction" sets out the origin of the right to compensation for accidental injuries as developed under the law of master and servant. The emergence of strict liability through judicial decisions from fault liability, and then the conversion of the same as statutory liability by the English statutes is dealt with in this chapter. An insight into the relevant common law doctrines applied in granting the remedy of compensation by the English courts and some authoritative decisions of these courts as well as those in India are given by the author. Again, the theories that justify payment of compensation for work injuries, and the basic principles of compensation legislation also feature in the discussion. Besides, he states the salient points of the American compensation law, and adverts to the differences in the legislative provisions for quantum measure of compensation in the different countries. Significantly, the author highlights the conceptual problems in applying the statutory provisions for determination of the liability to pay, brought about by the judicial delineation of the phrase "personal injury by accident arising out of and in the course of employment" as applied by the courts in England and India. In this context, the Beveridge report, the Royal Commission report, the Australian Committee report, the National Labour Commission report as well as the Sixty-second Report of the Law Commission of India on workmen's compensation law are cited.

Chapter I of the book gives the data-collection process and procedure with a narration of the problem perceived, the research design, the hypotheses and research questions set for the investigation, using the social science research method. The second chapter on "adjudicative process" deals with claim adjudication and settlement, the liability of the employer to pay to the victims of industrial accidents and the powers and jurisdictional competence of the workmen's compensation commissioner as

the authority of the first instance for the dispensation under the Act. The requirement of a claim petition, the procedural aspect before the commissioner, his functions and duties as the deciding authority are also discussed. The diagrams providing statistical data are instructively drawn. A socio-economic approach to the issue of compensation payment and settlement of claims is projected in the chapter. The work-force data and its statistical analysis on the basis of religion, caste, residence, *etc.*, supplies the social setting of the industries in Jammu and Kashmir. The chart on the organisational set-up of the labour department of this state and Punjab with a comparative analysis of educational qualifications, pay-scales, *etc.*, of the officers of the department, is informative.

Chapter III which deals with accidents in industrial establishments, examines the cause-effect aspect of work related accidents. In the first part on prevention of accidents, legal provisions under the Factories Act have been discussed with statistical data on environmental and causational factors that lead to accidents and occupational diseases. Opinion data provided regarding work-premises, lighting arrangements, *etc.*, in the several type of factories, give sufficient information on the unsatisfactory working conditions and inadequacy of welfare measures. That fatigue is the determining factor in increasing the rate of accidents, while the rationale for providing work facilities and recreational activities is to help reduce the accident rate are the assumptions on which views were expressed by the respondents. On the findings the author is categorical that there is a high degree of correlation between production output, accident on the one side and fatigue. The second part of the chapter discusses the effect of accidents—fatal accidents, permanent and partial disablement in their definitional and theoretical perspective as provided in the Act, along with primary statistical data. The chapter ends with the findings on the primary data which are also summarised. The material contents of this chapter is the core of the research.

Chapters IV and V discuss the settlement of disputes, the formal and informal methods. Under the informal procedure the claim settlement is effected by mutual agreement between the workman and the employer. The mandatory provision for registration of agreements under section 28 of the Act, the modalities for a claim preference and settlement as provided under section 22, the decided cases on the point and the effect of failure to register such agreements as well as the factors that inhibit the informal method, are discussed. In chapter V the powers of the assistant labour commissioner who is an officer of the civil administration department in the Jammu and Kashmir State as the workmen's compensation commissioner, and the corresponding authority in the State of Punjab who is a judicial officer borne on the judicial cadre as the adjudicating authority under the Act are examined. The rules of procedure followed by the said officers in adjudicating a claim, and the factors which facilitate the settlement of claims are also discussed. In the data presentation, the time-dimension of

the adjudicative process, the role of professional practitioners and legal aid, a cost analysis of claim processing is closely examined. The attitude of the parties towards compensation disposal, its adequacy and procedure is also ascertained. The author then comments that, as regards rehabilitation of accident victims, neither the law has anything to say, nor the adjudicating authority pays any attention. He finds that compensation payment for occupational diseases are practically non-existent and only a very small percentage of cases are settled by agreement between the employer and workman in both Jammu and Kashmir as well as Punjab. The discussion is data-based in both the chapters.

In chapter VI the author deals with the appellate process in the compensation claim. The scope of judicial review with reference to the compensation commissioner's decisions, the review power of the commissioner, his revisional power, the right of appeal on a point of law, the writ jurisdiction of the High Court, and provision for special leave appeal before the Supreme Court are within the purview of the critical examination. Citing decided cases and relevant statutory provisions, several aspects, such as substantial questions of law, extension of judicial review to questions of fact, procedural infirmities, and condonation of delay beyond limitation period are carefully examined. In the end, in respect of appeals the finding is that a significant number of the commissioner's decisions are subjected to judicial review which is extraordinarily time-consuming. This, for the weaker of the two parties, namely the worker, even if the decision of the compensation commissioner is not so equitable, proves to be ruinous.

Conclusions and suggestions are set out in the seventh and last chapter. The author feels, if not the U.K. model of national insurance, at least the E.S.I. system should extend to the areas under study, replacing as far as possible the workmen's compensation system. The finding is also made that the compensation commissioners do not seriously question the method of the initial disability determination, and the quantum benefit. The author finds that fairness requires, that the worker be accorded an effective right to challenge the initial determination. Further, neither first-aid facilities exist in the work premises, nor are the workers aware of the obligation of the employer in this regard. In testing the hypotheses and research questions, the conclusion is drawn that the role of the trade unions in helping the workers to secure their rights under the law is negligible, and that legislative measures should be initiated to provide mechanism and scheme to inform the workers of their entitlement. Further, the objective sought by the statute, though not defeated in the implementation of it, is only partially successful on account of the weakened policy of the enforcing authorities. Hence, the employer and workmen need to be educated.

In the suggestion part, the author makes several of them. They are worth considering for improving the law and its administration. Being instruc-

tive, the quarters that matter must take them into account. The book is of a different sort for it cannot be considered as a textbook on the subject. Nor is it a commentary on the Act as such. Nevertheless, it is a book of valuable information, full of statistical data, and should be deemed a welcome addition to the literature on the subject. It will be of immense use to the administrator to improve their performance as the deciding authority under the statute, and for the legislators to bring about the necessary reform of the law. It must find a place in every library.

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