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LABOUR LAW–II
(SOCIAL SECURITY LEGISLATION)

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I INTRODUCTION

THE DIRECTIVE Principles of State Policy as contained in part IV of the Constitution forms the basis for social security legislation in India. These lay down compulsory social security benefits to the employees, either at the cost of employers solely, or on the basis of contributions from both employers and employees. Until now, the employees working in the organized sector were the main beneficiaries of these social security schemes. However, during the year under survey, the Ministry of Labour and Employment has taken steps to extend the social security schemes to workers in the unorganized sector also, which, *inter alia*, includes weavers, handloom workers, fishermen and fisherwomen, toddy tappers, leather workers, plantation labour, beedi workers, etc.[1] To this effect a bill, viz., "Unorganised Sector Workers' Social Security Bill, 2007" was introduced in Parliament on 10.9.2007.

The bill essentially seeks to provide suitable welfare schemes relating to life and disability, health and maternity benefits, old age pension and other benefits that may be decided by the government. The bill has proposed setting up of a national board for the purpose of formulating and monitoring suitable schemes for workers in the unorganized sector at various levels.

Another important social security measure has been the launching of 'Rashtriya Swasthya Bima Yojana" (RSBY) on 1.10.2007 by the central government. Under this scheme, all below poverty line (BPL) families are to be covered in the next five years. The scheme is to be implemented in a phased manner and would cover 1.2 crore BPL workers in the first year and all the six crore by 2012-13. The central government is to contribute 75 per cent of the premium amount. The scheme envisages issuance of a smart card to the worker to facilitate cashless transaction upto Rs. 30,000 while seeking medical treatment. The salient features of the scheme are : (a) Total sum insured would be Rs. 30,000 per family (unit of five) per annum on a family

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1 Government of India, Ministry of Labour & Employment, *Annual Report 2007-08* at 1.

floater basis; (b) cashless attendance to all covered ailments; (c) hospitalization expenses, taking care of most common illnesses with as few exclusions as possible; (d) all pre-existing diseases to be covered; and payment of transportation costs (actual with maximum limit of Rs. 100 per visit) within an overall limit of Rs. 1000.[2]

Another scheme, 'Aam Aadmi Bima Yojana' launched on 2.10.2007 intends to provide death and disability insurance cover to rural landless household. Under the scheme, the head of the family or one earning member therein is to be insured. Fifty per cent of the premium amount of Rs. 200 per annum is to be borne by the central government and the remaining amount by the state government. The benefits under the scheme include Rs. 30,000 in case of natural death and Rs. 75,000 in case of death or permanent disability due to accident. In case of partial disability due to accident, the insurance cover would be Rs. 35,000. The children of beneficiaries studying in classes 9th to 12th including ITI courses will be eligible to a scholarship of Rs. 300 per quarter per child for a maximum period of four years.[3]

In the organized sector sphere also there have been lot of activities during the year under survey. Thus, for example, the Employees' State Insurance Corporation has increased its networks to 144 hospitals, 42 hospital annexes, 1422 dispensaries, 45 regional/sub-regional/divisional offices, 620 branch offices and 193 pay offices covering 3.94 crore beneficiaries. The total number of insured persons covered under the ESI scheme increased from 91.48 lakh as on 31.3.2006 to 101.57 lakh as on 31.3.2007 and number of beneficiaries increased from 3.54 crore as on 31.3.2006 to 3.94 crore as on 31.3.2007. This indicates a net increase of 10.09 lakh insured persons and 40 lakh beneficiaries.[4]

During 2006-07, the ESI scheme was implemented in 49 new geographical areas covering additional 93.91 thousand employees. From 1.4.2006 to 30.9.2007 the scheme was implemented in 19 areas covering 61,425 additional employees. Upto 31.8.2007 a payment of Rs. 2,19,31,507 was made in 1624 cases under the Rajiv Gandhi Shramik Kalyan Yojna introduced to provide unemployment allowance to the insured persons who have been rendered unemployed involuntarily due to the closure of the factory/establishment, retrenchment or permanent invalidity arising out of non-employment injury.[5]

The wage ceiling for coverage of employees under the Employees' State Insurance Act, 1948 has been enhanced from Rs. 7,500 to Rs. 10,000 per month with effect from 1.10.2006 and 10 more slabs of daily standard benefit rates have been added from Rs. 150 to Rs. 195. The ESI Corporation has decided to enhance the funeral expenses on the funeral of a deceased insured person from Rs. 2500 to Rs. 3000. The ceiling of expenditure on

2 *Id.* at 2-3.
3 *Id.* at 3.
4 *Id.* at 12.
5 *Ibid.*

medical care to the state governments has been enhanced from Rs. 900 to Rs. 1000 with effect from 1.4.2007 per insured person family unit. Another important amendment, which came into effect from 1.8.2007, has been that employees drawing wages upto Rs. 70 per day have been exempted from payment of employees share of contribution.[6]

The government has amended the Payment of Bonus Act, 1965 with effect from 1.4.2006 and the same was notified on 13.12.2007. Resultantly, the eligibility limit has been enhanced from Rs. 3500 to Rs. 10,000 per month and calculation ceiling from Rs. 2500 to Rs. 3500 per month. The amendment has also made the employees employed through contractors on building operations eligible for payment of bonus.

There has been an increase in the coverage of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. As on 31.3.2007 there were 4,71,678 establishments and factories covered under the Act with a membership of 444.04 lakh both in the exempted and unexempted sectors.[7]

With the intent to effectuate two amendments in the Maternity Benefit Act, 1948 the central government has introduced an amendment bill during the year under survey (i) to enhance the medical bonus from Rs. 250/- to Rs. 1000 if no pre-natal confinement and post-natal care is provided by the employer free of charge; and (ii) to enhance the medical bonus from time to time to an amount of Rs. 20,000.[8]

From the judicial front, though there have been lot of cases reported during the year under survey, decision in most of the cases has been on expected lines. The only departure being that henceforth an ESI beneficiary can sue the ESI hospital or dispensary in the consumer forum in case there is negligence or deficiency in their service.

II CONTRACT LABOUR

Power of reference

In *Rashtriya Chem. & Fertilizers Ltd. and Another* v. *General Employees' Association & Others*[9] the central government being the appropriate government issued a circular refusing to abolish and prohibit contract labour in civil works and carpentry establishment of the appellant-company. Aggrieved, the respondent-association approached the Bombay High Court questioning the legality of the circular as according to them few of the contractors were dummy and sham contractors. Although it was conceded by the association that the high court was not the appropriate forum for deciding the said question under article 226 of the Constitution, it requested the court to issue an order referring the matter to the industrial tribunal and meanwhile to grant interim relief to the affected workers.

6 *Id.* at 13.
7 *Id.* at 64.
8 *Id.* at 68.
9 2007 LLR 898.

A division bench of the court acceded to their request and issued, *inter alia*, the following directions : (a) whether the contracts between the appellant and contractors (nos. 5 to 10) are sham and bogus and a camouflage to deprive the concerned contract employees of the benefits available to permanent workmen of the appellant; (b) whether the employees listed at Exhibit A of the petition should be declared as permanent workmen of the appellant; (c) what are the wages and consequential benefits to be paid to these employees; (d) in case the contractor is changed by the appellant, the new contractor shall engage the same workers subject to the order of the industrial tribunal.[10] The appellants have challenged these directions in the apex court.

Relying on *Steel Authority of India Ltd.* v. *National Union Waterfront Workers*[11] it was contended on behalf of the appellants that the high court ought not to have given directions in the manner it has done. It has even formulated the terms of reference, which is impermissible. Allowing the appeal, the apex court held that it is now well settled that high courts will not straight away direct the appropriate government to refer an industrial dispute to the industrial tribunal. It is for the government to apply its mind to relevant factors and satisfy itself as to the existence of a dispute before deciding to refer the same. The only exception is if the court finds that the appropriate government refuses to make a reference on unjustifiable grounds. Hence, it was not appropriate on the part of the high court to give direction to the appropriate government to make reference and grant interim relief to the contract workers. The court, however, left it open to the respondent-association to move the appropriate government seeking reference of the purported dispute to the tribunal without itself expressing any opinion on the desirability or otherwise of making such a reference.[12]

Powers of labour commissioner

Hindustan Paper Corporation Ltd. v. *Kagajkal Thikadar Sramik Union and Others*[13] was an appeal against the judgment delivered by a division bench of the Gauhati High Court directing the appellant to pay equal and similar wages and other benefits to the contract labour who work in the finishing job as per rule 25(2)(v) of the Contract Labour (Regulation and Abolition) Assam Rules, 1971. The sole question to be considered by the apex court was whether the order of the division bench was justifiable when the labour commissioner had passed an interim order for continuing the existing conditions of wages and other facilities till a final settlement was arrived at.

10 *Id.* at 900.

11 (2001) 7 SCC 1.

12 *Supra* note 9 at 903. See also, *Muniraj Singh Chauhan , S/o Sh. Gugan Ram, Village Rangpuri* v. *Union of India through the Secretary, Ministry of Labour, Delhi and Others*, 2007 LLR 20; *Air India Ltd.* v. *Jagesh Dutt Sharma and Others*, 2007 LLR 23.

13 Civil Appeal No. 8601 of 2001 decided on 14.12.2007.

In the instant case, on the basis of a representation received from the respondent union for payment of equal wages on par with regular employees, the labour commissioner instructed the labour officer to submit a report after personal verification about the nature of the work done by regular workers and contract labour. The management took the stand that the contract labour and regular labour stood on different footings and that there was a reasonable classification between them. On the basis of the report submitted by the labour officer, the labour commissioner passed the above-mentioned interim order. Aggrieved, the respondent union filed a writ petition in the high court which was dismissed by a single judge on the reasoning that the matter whether the works done by the contract labour was the same or similar as done by the regular workmen was to be decided by the labour commissioner and not by the court. In writ appeal preferred by the union, a division bench of the court, after perusing all the relevant materials from the records, directed the appellant-mill to provide all the benefits to the contract labour on par with regular workers as if it were the appropriate authority.

Allowing the appeal, the Supreme Court held that when the competent authority, i.e., the labour commissioner was seized of the matter, and issued certain interim directions, the division bench ought not to have decided the issue bypassing the appropriate authority. It committed an error in deciding the same on merits and issuing positive direction to the mill. "It is settled position that before sorting out the controversy, the authority is free to take interim arrangement pending final decision and in such matter it is not desirable for the courts to interfere and take a decision as if there is no competent authority for the same."[14]

Setting aside the impugned order of the division bench, the apex court, without expressing any opinion on the merits of the claim of both parties, directed the labour commissioner to decide the issue within a period of three months after affording an opportunity to both the parties.

Prohibition of contract labour – only appropriate government has jurisdiction

The writ petitioner in *National Thermal Power Corporation* v. *Government of National Capital Territory*[15] is a public sector undertaking engaged in generation of electricity in the country having branches/regional offices throughout India. For operation and maintenance of air conditioning system of its office in New Delhi, it engaged contract labour through M/s Utility Engineers (P) Ltd. Respondent no. 2, a trade union, had earlier filed a writ petition before the Supreme Court under article 32 of the Constitution praying that its members be directed to be absorbed and regularized by the petitioner. It also requested the court to direct the Delhi Administration to abolish contract labour system for the maintenance of air conditioning system. The apex court by its order dated 29.3.1995 directed the appropriate

14 *Ibid. BHEL Workers Association, Hardwar and Others* v. *Union of India and Others*, (1985) 1 SCC 630 was relied on.

15 2007 LLR 369.

government to take a decision on this matter in accordance with section 10 of the Contract Labour (Regulation and Prohibition) Act. On a representation filed by the union in pursuance thereof, the Delhi Government referred the matter to labour advisory board for its opinion. The corporation also filed its statement before the board and took the stand that the labour advisory board of Delhi Government had no jurisdiction over it for issuance of notification under section 10 of the Act. It also submitted that the work of maintenance of air conditioning plant was not perennial but only seasonal. The Lt. Governor, Delhi, however, issued the impugned notification prohibiting employment of contract labour in the operation and maintenance of air conditioning system. Hence this writ petition in the Delhi High Court.

Two pleas were taken by the petitioner corporation. One, the appropriate government for issuance of the requisite notification was the central government and not the state government; and second, the relevant factors specified under section 10 (2) of the Act were not considered before issuing the impugned notification. Allowing the writ petition the court held that it is an undisputed fact that the petitioner-corporation is a public sector undertaking under the central government and it exercises full control over the petitioner. Therefore, for purposes of the Act the appropriate government would be the central government and not the state government. Thus, the impugned notification issued by the state government was without jurisdiction.[16]

III EMPLOYEES STATE INSURANCE

ESI hospitals under CP Act

One of the most important milestones in the area of consumer protection in the country has been the enactment of the Consumer Protection Act, 1986 (CP Act). It is a potent and vibrant legislation that has come to the aid of consumers in various spheres of human activity. As regards the applicability of this Act to dispensaries/hospitals run or managed by the Employees' State Insurance Corporation, the law applicable hitherto was that an employees' state insurance beneficiary not being a 'consumer' and the 'service' rendered by an ESI dispensary/hospital being gratuitous in nature, could not be considered to be falling under the purview of the CP Act. The decision of the Supreme Court in *Kishore Lal* v. *Chairman, Employees State Insurance Corpn.*[17] has changed this perception.[18] The facts of the case which prompted the court to hand down such ruling were as follows:

The appellant, an insured employee whose monthly contribution towards the ESI scheme was being regularly deducted from his salary and deposited

16 *Hindustan Aeronautics Ltd. and Another* v. *Hindustan Aero Canteen K. Sangh and Others*, 2002 (95) FLR 1178 (SC) was relied on.

17 2007 (6) SCALE 660.

18 For case comment, see, Thomas Paul, "Consumer Empowerment : ESI Hospitals under CP Act", 49 *JILI* 409 (2007).

by his employer with the corporation, admitted his wife in the ESI dispensary, Sonepat in 1993 for treatment of diabetes. Finding her health deteriorating, he got her examined in a private hospital, which revealed that she was diagnosed and treated, incorrectly by the ESI dispensary. He filed a complaint under the CP Act before the district forum seeking (i) compensation towards mental agony, harassment, physical torture, pain, suffering and monetary loss for the negligence of the authorities; (ii) direction for removal of and improvement in the deficiencies; and (iii) direction for payment of interest on the amount of reimbursement bills.

The corporation contended that the complaint was not maintainable as the complainant was neither a 'consumer' nor the facility of medical treatment provided at the ESI dispensary a 'service' under the CP Act. It was also contended that by virtue of section 75 of the Employees' State Insurance Act, 1948, the dispute was to be decided by the employees' insurance court established under section 74 of the ESI Act and as such the consumer forum had no jurisdiction to decide the matter.

The district forum, relying on *Birbal Singh* v. *ESI Corpn.*,[19] which under similar fact situations had held that the complainant did not come within the definition of 'consumer' because of the gratuitous nature of the medical services provided by the ESI dispensary, dismissed the complaint. The state commission as also the national commission agreed with the district forum. Hence he approached the Supreme Court by special leave to appeal.

The twin questions that the apex court framed for consideration were: (a) whether the service rendered by an ESI hospital is gratuitous or not and consequently whether it falls within the ambit of 'service' as defined in the Consumer Protection Act, 1986; and (b) whether section 74 read with section 75 of the ESI Act ousts the jurisdiction of the consumer forum as regards issues involved for consideration in the case.

An analysis of the ESI Act would show that all employees in a factory or establishment where the Act applies are required to be insured under the insurance scheme.[20] The contribution which is required to be paid to the ESI corporation for the insurance scheme shall comprise of the contribution payable by the employer and the employee and shall be at such rates as may be prescribed by the central government.[21] The principal employer is liable to pay both these contributions, employer's as well as employees' and he may recover the contribution made for the employees by deducting the same from their wages.[22] The ESI corporation is, with the approval of the state government, required to establish and maintain in a state such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of the insured persons and their family members.[23]

19 1993 II CPJ 1028.
20 Employees' State Insurance Act, 1948, s. 38.
21 *Id*., s. 39.
22 *Id.*, s. 40.
23 *Id.*, s. 50.

The apex court, after a detailed interpretation of the definitions of 'consumer' and 'service' and the matters which are to be decided by the employees' insurance court under section 75 of the CP Act, allowed the appeal. It was held that the appellant was a 'consumer' within the ambit of section 2(1)(d) and the medical service rendered in the ESI dispensary by the respondent corporation fell within the scope of 'service' as defined under section 2(1)(o) of the CP Act and as such the consumer forum had jurisdiction to adjudicate upon the case of the appellant. According to the court ESI scheme is an insurance scheme and it contributes for the service rendered by the ESI hospitals/dispensaries, of medical care in its hospitals/ dispensaries, and as such service rendered therein to a member of the scheme or his family could not be treated as gratuitous in the sense that the expenses incurred for the service availed of in the hospital would be borne from the contributions made to the insurance scheme by the employer and the employee.

The court approvingly quoted the observations in *Indian Medical Association* v. *V.P. Shantha*,[24] to the effect that the service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing of the service has taken an insurance policy for medical care whereunder the charges for consultation, diagnosis and medical treatment are borne by the insurance company, since such service would fall within the ambit of 'service' under the Act.[25] And similarly, where as a part of the conditions of service the employer bears the expenses of medical treatment of an employee and his family members dependent on him, then the service rendered by a medical practitioner or a hospital/nursing home would not be treated to be free of charge and would constitute 'service' under section 2(1)(o) of the Act.[26]

As regards the jurisdiction of the consumer forum to entertain the complaint, the court held that in the instant case since the appellant's claim was for damages for the negligence on the part of the ESI dispensary and the doctors working therein and none of the provisions of section 75(1)[27] which lay down matters to be decided by the employees' insurance court speak about medical negligence, the jurisdiction of the consumer forum has not been ousted. The contention of the respondent that the claim for damages for negligence of doctors in the ESI hospital/dispensary would tantamount to claiming benefit under sub-section (e) of section 75(1) of the ESI Act and,

24 (1995) 6 SCC 651.

25 *Id.* at 682.

26 *Ibid.*

27 *Matters to be decided by Employees' Insurance Court* :- (1) If any question or dispute arises as to (a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or (b) the rate of wages or average daily wages of an employee for the purpose of this Act, or …..(e) the right of any person to any benefit and as to the amount and duration thereof, or …. shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act."

therefore, it was the employees' insurance court alone which had jurisdiction to decide the matter was negated by the court. The court held that the benefit, which has been referred to in the said sub-section, has reference to the benefits under the Act as provided under the rules viz., maternity benefits; disablement benefits; dependents' benefits; medical benefits to insured persons who cease to be in an insurable employment on account of permanent disablement; and medical benefits to retired insured persons.[28] The appellant's claim for damages for the negligence on the part of the ESI hospital/dispensary and the doctors working therein has no relation to any of the benefits, which are provided in the rules and, therefore, insurance court has no jurisdiction.

According to the court, a cause of action for negligence arises only when damage occurs and thus the claimant has to satisfy the court on the evidence that three ingredients of negligence, namely (a) existence of duty to take care; (b) failure to attain that standard of care; and (c) damage suffered on account of breach of duty, are present for the defendant to be held liable for negligence.[29] These issues could not be adjudicated upon by the employees' insurance court which has been given specific matters for adjudication and decision. Thus, the court held that the claim for damages for negligence of the doctors or the ESI hospital/dispensary is clearly beyond the jurisdictional power of the employees' insurance court.

After referring to various cases[30] the court observed that "the trend of the decisions of this court is that the jurisdiction of the consumer forum should not and would not be curtailed unless there is an express provision prohibiting the consumer forum to take up the matter which falls within the jurisdiction of civil court or any other forum as established under some enactment". The court had gone to the extent of saying that "if two different fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the consumer forum would not be barred and the power of the consumer forum to adjudicate upon the dispute could not be negated."[31]

The court, thus, while allowing the appeal and setting aside the impugned order, remitted the matter to the district forum for decision in accordance with law as laid down.

Earlier, the apex court in *Regional Provident Fund Commissioner* v. *Shiv Kumar Joshi*[32] had held that the respondent who was a contributor to

28 See, Employees' State Insurance (Central) Rules, 1950, rules 56, 57, 58, 60 and 61, respectively.

29 See *Jacob Mathew* v. *State of Punjab and Another*, (2005) 6 SCC 1.

30 *M/s Spring Meadows Hospital and Another* v. *Harjol Ahluwalia and Another*, AIR 1998 SC 1801; *State of Karnataka* v. *Vishwabarathi House Building Co-op. Society and Others*, AIR 2003 SC 1043; and *Thirumurugan Cooperative Agricultural Credit Society* v. *M. Lalitha and Others*, (2004) 1 SCC 305.

31 *Supra* note 17 at 671.

32 2000 LLR 217 (SC).

the provident fund was a consumer, the provident fund scheme was a service and the CP Act was applicable to the case.

It is difficult to understand why the court in *Kishore Lal* had to send the case back to the district forum for a fresh decision. It had taken more than 13 years for the appellant to get a favourable decision. The purpose of enacting the consumer protection law was to create a framework for speedy disposal of consumer disputes and to remove the existing evil of the ordinary court system. By sending back the case to the district consumer forum, the appellant has to start all over again. Considering the spirit of the appellant to fight the case right up to the apex court (since he lost at all the three forums), and the years that have gone by fighting the case, the court should have decided the matter and done complete justice to the appellant under article 142 of the Constitution.

However, this is the first case of its kind wherein the Supreme Court has brought ESI hospitals under the ambit of the Consumer Protection Act, enabling an employee covered under the employees' state insurance scheme to sue ESI hospitals in case of medical negligence. It can thus be said that slowly but steadily and surely the courts are recognizing the sovereignty of the consumer.

Section 82(2) of the Act – high court required to analyze the factual position

The appellants in *Hyderabad Industries Ltd.* v. *ESI Corporation*[33] challenged the decision of the division bench of the Andhra Pradesh High Court which held that the appellants were the principal employer so far as the workers who were employed were concerned and, therefore, they were liable to pay contribution under the ESI Act.[34] In support of their appeal it was contended before the apex court that the high court had dismissed their appeal in an abrupt manner without analyzing the factual position and formulating the right issues. It was also submitted that there were different categories of persons involved and one uniform yardstick could not be applied so far as they were concerned.

According to the apex there were many issues such as: whether the persons engaged by the contractors for loading and unloading at the railway sidings were employees of the contractor; were they doing the work under the supervision of the appellant or its agent; was the contractor in the nature of immediate employer under section 2(13) of the ESI Act and as such the appellant was liable as principal employer; etc., were questions which were to have been considered by the high court when it dealt with an appeal under section 82(2) of the Act. As the court did not analyze the factual position to see whether the definition of 'employee' under section 2(9) of the Act applied or not to the facts of the case and upheld the decision of the

33 2007 LLR 1263 (SC).

34 It had arrived at this conclusion on an interpretation of 'employee' under s. 2(9) of the Act and relying on *Rajkamal Transport* v. *ESIC, Hyderabad*, 1996 (3) SCALE 806.

employees' insurance court by applying the common yardstick, the apex court remitted the case to the high court for analyzing the actual position and decide whether the workers were employees of the appellant and the provisions of the Act were applicable to them.

IV GRATUITY

Service in various units of same establishment to be taken into account

It was observed by the Supreme Court in *M.C. Chamaraju* v. *Hind Nippon Rural Industrial (P) Ltd*.[35] that the Payment of Gratuity Act, 1972 has been enacted with a view to grant benefit to workers, a 'weaker section' in industrial adjudicatory process. In interpreting the provisions of such beneficial legislation, therefore, liberal view should be taken.[36]

In the instant case the appellant was appointed as supervisor by one V.K. Poddar, managing director of Agarwal Investments, Poddar Granites and Hind Nippon Co. Ltd. He worked in these companies at different places and for different periods from September 1984 to February 1993 as all of them had functional integrality. His services were neither terminated nor was he paid any salary since March 1993. In September when his request for payment of gratuity was not acceded to by the management he approached the controlling authority under section 7(4) of the Act read with rule 10(1) of the Payment of Gratuity (Central) Rules, 1972. The controlling authority, after hearing both the parties and perusing the materials placed before him, held that the appellant was entitled to gratuity as he had completed five years' continuous service, the eligibility criterion to claim gratuity. It noted that all the three establishments were run by the same management and that there was interchangeability in the services of the appellant.The authority also ordered payment of interest at 10 per cent till the date of payment as the respondent failed to pay gratuity within 30 days of the leaving of service. The appeals filed before the appellate authority under the Act and also before the single judge of the high court were dismissed. The division bench of the high court, however, allowed the appeal on the finding that it was not established by the appellant workman that he had worked for more than five years continuously in the company so as to be eligible to claim gratuity.

Allowing the appeal the apex court held that the division bench while exercising the power of judicial review ought not to have undertaken the exercise of fact finding which had been done both by the controlling as well as the appellate authority and confirmed by the single judge of the high court. When a benefit had been extended by the authorities by recording a finding that the appellant had completed the requisite service of five years to be eligible to get gratuity, even if another view was possible, it should not have interfered with such a finding.[37]

35 2007 LLR 1129.
36 *Id*. at 1131.
37 *Ibid.*

The apex court, thus, thwarted the designs of the management to deprive the appellant of his statutory benefits.

Criminal prosecution for non payment of gratuity, existence of *mala fide* essential

Section 9 of the Gratuity Act is the penal provision which lays down that non-payment of gratuity would be deemed to be an offence. It was held by the Jharkhand High Court in *Dr. M. Mukhopadhaya* v. *State of Jharkhand*[38] that mere non-payment of gratuity might not attract penal consequences unless the facts indicated that the non-payment was intentional, deliberate and without reasonable excuse. For prosecution of the employer, there must exist *mala fide* intention on his part.

Applicability of the Act

For any establishment to be covered under the Act, it must employ or must have employed 10 or more employees on any day of the preceding 12 months. In *Zameer Ahmed* v. *Appellate Authority, Under Payment of Gratuity Act, 1972 and Another*[39] the controlling as well as the appellate authority under the Act dismissed the claim petition of the appellant on the ground that the provisions of the Act were not applicable to respondent no. 2 as it had at no point of time employed 10 or more persons in the preceding 12 months. Dismissing the writ petition filed by the appellant, the Delhi High Court held that it would not under article 226 interfere with the orders of an inferior tribunal or a subordinate court arrived at on a finding of fact, unless they suffered from an error of jurisdiction, or breach of the principles of natural justice or vitiated by a manifest or apparent error of law.[40]

Statutory interest

In the facts and circumstances of the case, the Jharkhand High Court in *Pyare Mohan Prasad* v. *Regional Labour Commissioner (C) Dhanbad and Others*[41] decided that payment of gratuity is the responsibility of the employer. If it is not paid within 30 days from the date it became due, the employee is entitled to statutory interest at the rate of 10 per cent. Late submission of application by the employee for payment of gratuity cannot be a ground for non-payment of interest by the employer.

V PROVIDENT FUND

To be a branch of the other – supervisory, financial or managerial control is must

It was held by the apex court in *Regional Provident Fund Commissioner* v. *M/s Raj's Continental Exports (P) Ltd.*[42] that merely because the

38 2007 LLR 1183.
39 2007 LLR 807.
40 *Id.* at 809.
41 2007 LLR 173.
42 2007 LLR 642.

proprietor of one concern was the managing director of the other would not be sufficient evidence to establish that one was the branch of the other for the purposes of coverage under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. To be considered a branch of the other there must exist clear evidence of supervisory, financial or managerial control. In the instant case the respondent claimed infancy protection under the provisions of the Act. It submitted that it was not a department of M/s Continental Exporters, a proprietorship concern of Mr X, who was also the managing director of the respondent company. It was separately registered under the Factories Act, 1948, Central Sales Tax Act, 1956, Income-tax Act, 1961 and Employees' State Insurance Act, 1948. Both the concerns were separate and distinct, had separate balance sheets and audited statements and had no financial integrality between the two. The appellants, on the other hand, contended that the respondent was nothing but a department or branch of M/s Continental Exporters and therefore, not entitled to claim infancy protection.

A single as well as a division bench of the Karnataka High Court accepted the contentions of the respondent and held that though the manufacturing of goods was in respect of the same article, that by itself would not make it a branch or department of M/s Continental Exporters.[43] There was total and independent exercise of power and the employees were also separately appointed and controlled in both the concerns. The apex court upheld the concurrent findings of both benches of the high court and dismissed the appeal as sans merit.[44]

Clubbing of two or more establishments for coverage under the Act

While deciding the question as to whether two industrial establishments owned by the same management constitute separate units or one establishment for its coverage under various labour and social security legislation, several relevant factors need to be considered. Some of these factors are : functional integrality, inter-dependence or community of financial control and management, community of man-power and its control, recruitment and discipline, the manner in which the employer has organized different activities, whether he has treated them as independent of one another or as inter-connected and inter-dependent. These tests are, however, only inclusive and not exhaustive, the reason being that the relevant factors

43 In this regard, see also *Regional Provident Fund Commissioner* v. *EPF Appellate Tribunal*, 2007 LLR 350, holding that outsourcing is one of the modes of doing business and most of the automobile companies get different components manufactured from different sources, hence they cannot be clubbed together since they are independent business entities despite the fact that they are dependent upon the automobile companies or the engineering companies.

44 Reliance was placed on *Pratap Press* v. *Their Workmen*, 1960 I LLJ 497; *and Regional Provident Commissioner* v. *Dharamsi Morarji Chemical Co. Ltd.,* (1998) 2 SCC 446.

would not be the same in each case. Therefore, each case has to be decided on its own facts.[45]

In *Regional Provident Fund Commissioner* v. *Nath Traders*[46] the Delhi High Court had to consider the applicability of PF Act to the establishments of the respondent. The facts were : Two establishments – M/s Nath Oil Company and Nath Trading were operating from the same premises having one common entry. There was nothing to distinguish or demarcate the two establishments. Both had same owner – S. Nath – in one concern as sole proprietor and in the other as one of the two partners, his wife being the other; one firm had LPG dealership and the other, distribution of kerosene oil; telephone numbers were the same and employees inter-mingled; and accounts of both were looked after by one person. Combined strength of the employees was 24. On the basis of these facts, viz., functional integrality, unity of ownership, inter-transfer of employees, geographical proximity, unity of management, supervision and control, the appellant treated both the concerns as one establishment for purposes of the PF Act.

In appeal by the respondent, the employees' provident funds appellate tribunal held that the Act could not be made applicable since the two establishments could not be clubbed into one. It reasoned that the two were dealing in two different commodities; were having separate income-tax and sales tax registrations, and possessed separate licences from the respective authorities. Besides, one was a partnership firm and the other a sole proprietor concern. As such, one could survive without the other and this was a crucial factor to be considered while clubbing two establishments together.

Reversing the tribunal's finding, the Delhi High Court, after a detailed analysis of the case law[47] held that it is now well settled that it is neither the test of functional integrality nor whether one can exist without the other, which are absolute tests for holding the two establishments as one for the purposes of coverage of PF Act. The court has to consider all the facts and circumstances of the case to arrive at such a conclusion. In the instant case, S.Nath opened two agencies and obtained separate licences for them instead of one. This was, according to the court, done only to deprive the employees of the benefits of beneficial legislations and labour laws. The fact that management, control and supervision remained with him, both the firms operated from the common premises, employees of both firms intermingled, used same phone numbers, all go to show that both firms were, in fact, one

45 See, *Western India Company* v. *The Workmen*, AIR 1964 SC 472; *Management of Wenger and Company* v. *Their Workmen*, AIR 1964 SC 864; *Associated Cement Companies Ltd.* v. *Their Workmen,* 1960 I LLJ 1; *Pratap Press* v. *Their Workmen*,1960 I LLJ 497; *South Indian Mill Owners' Association* v. *Coimbatore District Textile Workers' Union,* 1962 I LLJ223; etc.

46 2007 LLR 378.

47 *State of Punjab* v. *Satpal and Another,* 1970 Lab IC 772; *Regional Provident Fund Commissioner, Jaipur* v. *Naraini Udyog and Others*, (1996) 5 SCC 522; *Fine Knitting Co. Ltd.* v. *Industrial Court,* 1962 I LLJ 275; *DCM Chemical Works* v. *Its Workmen*, 1962 I LLJ 888*; Rajasthan Prem Krishan Goods Transport* v. *RPF Commissioner*, 1997 Lab IC 146, etc.

establishment working under one management. According to the court, merely having separate sales tax and income tax registrations would not change the unity of the establishment. The division of employees between two firms was merely to escape the liabilities under different labour laws including the PF law. The court, accordingly, set aside the tribunal's order and restored that of the regional provident fund commissioner.[48]

VI WORKMEN'S COMPENSATION

Liability is on employer to pay compensation

Definition of 'employer' under section 2 (e) of the Act includes not only the person who employs another either permanently or on temporary basis but also those who are in control of the workman temporarily lent or let on hire to them by the person with whom the workman has entered into a contract of service. In *Zila Sahakari Kendra Bank Maryadit* v. *Shahjadi Begum*[49] the deceased was a jeep driver employed with the appellant cooperative bank. The state, respondent no. 2 requisitioned the vehicle for election duty and it was under the control of the district election officer, defendant no. 4. The deceased driver while under his control, met with an accident and died resultantly. The commissioner of workmen's compensation held the appellant liable on the ground that the vehicle belonged to the bank and it was the bank which had lent the services of the deceased to respondent no. 4. Appeal filed by the bank was dismissed by the high court as barred by time.

The question before the apex court was whether the respondents, state and the district election officer, should be directed to reimburse the appellant the amount of compensation payable to the claimant. Answering in the affirmative, the court held that since the appellant was bound under the statute to comply with the order of requisition of the vehicle for election duty and the deceased was completely under the control of the district election officer, the compensation commissioner committed a jurisdictional error in directing the appellant to deposit the amount of compensation. The order was, therefore, a nullity. Holding that under the facts of the case the requisitioning authority would be the employer, the court directed it to pay the amount of compensation to the claimant and to reimburse the appellant the amount it had deposited with the compensation commissioner.[50]

Liability to pay compensation – pre-requisites

Section 3 of the Act enjoins on the employer to pay compensation if a personal injury is caused to a workman by accident arising out of and in the

48 *Supra* note 46 at 383. See also *Times Publishing House Ltd., Jaipur* v. *Regional Provident Fund Commissioner,* 2007 LLR 842 holding that clubbing of three establishments for the purposes of employees provident funds would be appropriate when there is functional integrality between them and as such they would not be entitled to infancy benefits.

49 2007 LLR 102 (SC).

50 *Id.* at 104.

course of his employment. The necessary ingredients of the section are that: (i) an injury must be caused to a workman; (ii) such injury must have been caused by an accident; and (iii) it arose out of and in the course of his employment.

In *Shakuntala Chandrakant Shreshti* v. *Prabhakar Maruti Garvali and Another*[51] the deceased who was working as a cleaner in the vehicle belonging to the respondent suddenly developed chest pain while on duty and died as a result of cardiac arrest due to rupture aortic aneurysm. There was no other injury on the body of the deceased. In the claim petition filed by the appellant before the compensation commissioner she claimed that her son who was working with the respondent had died due to the strain of work. The commissioner after approvingly quoting the observations of Lord Atkin who called such occurrence as an 'internal accident' wherein it is hardly possible to distinguish between the 'accident' and 'injury', and that "an accident happening to a person in or about any premises at which, he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of employment", granted compensation.[52]

The high court in appeal held the finding of the commissioner 'perverse and inconsistent' as also 'bereft of any reason' since 'there was no evidence to demonstrate that the workman was put through a sudden stressful condition in the course of his duties, which brought on a cardiac arrest.'[53]

In appeal before the Supreme Court, it was contended on behalf of the appellant that (a) the high court committed a manifest error insofar as it failed to take into consideration the strain of work, which accelerated the cause of death; and (b) a finding of fact arrived at by the compensation commissioner could not have been interfered with by the high court in exercise of its jurisdiction under section 30 of the Act, as no substantial question of law was involved for its consideration.

While negating the first contention, the apex court held that to succeed in cases of this nature there must be some evidence that the employment contributed to the death of the deceased since it is required to be established that death occurred during the course of employment. Besides, there must be a causal connection between the injury and the accident and the work done in the course of employment. The onus is also upon the applicant to show that it was the work and the resulting strain, which contributed to or aggravated the injury. In the instant case, there was no such evidence that the deceased met with his death by reason of strain of work and the appellant had no personal knowledge as regards the quantum of or nature of work required to be performed by the deceased.

51 2007 LLR 185 (SC).

52 *Id*. at 187.

53 *Ibid.* For this observation the court referred to *Regional Director, ESI Corporation* v. *Francis De Costa,* 1996 (74) FLR 2326 (SC); and *Saurashtra Salt Mfg. Co*. v. *Bai Valu Raja*, AIR 1958 SC 881 (SC).

As regards the second issue, the court held that there is a crucial link between the causal connection of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction. A jurisdictional question will involve a substantial question of law. A finding of fact arrived at without there being any evidence would also give rise to a substantial question of law.[54]

But in the instant case, the commissioner did not go into the jurisdictional facts not arrived at any finding based on any legal evidence in regard to the causal connection between the employment and the death.[55] The court, accordingly, dismissed the appeal.

***Ex-gratia* payment to workman will not take away liability of employer to pay compensation**

Section 17 of the Act lays down that any agreement entered into between the employer and the workman whereby the latter relinquishes his right of compensation from the former, shall be null and void insofar as the agreement purports to remove or reduce the liability of any person to pay compensation under the Act. Therefore, if any employer enters into such an agreement he does so at his own peril since the same shall be null and void and unenforceable in any court of law. The purpose of section 17 is to protect the ignorant workman who may be induced by the employer to agree to less compensation or to abandon something to which he is entitled to under the Act. If the employer pays some amount as *ex gratia* to the workman or to his dependants he will not be entitled to get set-off or reduction under section 8 of the amount so paid.[56]

In *M/s Govind Dal Mill*, *Japipur* v. *Dhunni Lal*[57] it has been held by the Rajasthan High Court that the *ex-gratia* payment made to the workman by the respondent, would not absolve him of his liability for payment of compensation under the Act.

Learner allowed to operate machinery sustains injury – employer liable to pay compensation

The substantial question of law involved in *Hanil Era Textiles Ltd*. v. *Namdeo Mukund Deoghare*[58] was whether the respondent who was a learner could be considered as workman entitled to compensation under the Act. Keeping in view the intent and purport of the Act which is to provide financial protection to a workman in case of accidental injury by payment of compensation, the court answered the question in the affirmative. It was held that the very fact that the claimant-respondent, though a learner, was allowed

54 *Id.* at 188, 190.
55 *Id*. at 191. On this point see also, *Branch Manager, United India Insurance Company Limited, Hunsur* v. *Srinivasa,* 2007 LLR 481 (Kar).
56 See, *Mrs. Kathleen Dias* v. *H.M. Coria & Sons*, AIR 1951 Cal 513.
57 2007 LLR 241 (Raj).
58 2007 LLR 1093 (Bom).

to operate the machine due to which he sustained injuries, entitled him to be compensated for his injury.[59]

Appointment letter not necessary to establish an employee as workman under the Act

In *United India Insurance Co. Ltd., Hyderabad* v. *K. Anjaneyulu*[60] it was held by the Andhra Pradesh High Court that the definition of 'workman' under the Act is very wide and it does not contemplate that there should be a letter of appointment to establish the relationship of employer and employee. The court, accordingly, held that there was no error in the calculation of compensation made by the compensation commissioner.

Continued employment or even promotion will not deprive the claimant of accident compensation

The Karnataka High Court in *General Manager, M/s Tungabadra Minerals Ltd*. v. *Sri G. Ameer*[61] has laid down certain general principles as regards employer's liability to pay compensation. The respondent workman in the instant case sustained partial permanent disablement as a result of an injury in the course of his employment and was laid up for few days. The appellant-employer paid the full salary for the period, paid his medical expenses, retained him in service and also promoted him. On behalf of the appellant-employer it was contended that since there was no loss or reduction in his earning and the partial disablement did not result in the reduction of his earning capacity, the appellant was not entitled to claim compensation. For the respondent-workman it was contended that compensation cannot be traded off just because he was continued in employment. Denying compensation on that ground would only result in the negation of the beneficial provisions of the Act which are intended to benefit such unfortunate workman like him.[62] It was also contended that compensation for permanent disablement suffered by workman in the course of his employment has to be paid independent of compensation for the period during which he could not attend to his duties.[63]

Making a clear distinction between loss of earning capacity and loss of earning, the court stated that the former should not be confused with the latter. Entitlement to compensation for loss of earning capacity due to permanent/partial disablement is not forfeited merely because the workman has been retained or even given promotion in the same establishment. The amount of compensation is fixed by the Act based on the difference between the wage earning capacity before and after the accident.[64] The court, accordingly, dismissed the appeal.

59 *Id*. at 1094.
60 2007 LLR 1075 (AP).
61 2007 LLR 1051 (Kar).
62 For this view, reliance was placed on the division bench decision of the High Court of Judicature at Madras in *Management of Sree Lalithambika Enterprises, Salem* v. *S. Kailasam*, (1988) 1 LLJ 63.
63 *Mohammed* v. *Cochin Port Trust*, 2002 ACJ 1039.
64 *Executive Engineer, OSEB* v. *Keder Charan Lenka*, 1997 Lab IC 37; and *State of Gujarat* v. *Rajendra Khodabhai Deshdia,* 1991 ACJ 638 were relied on.

Payment of compensation governed by provisions of the Act

Under section 8 of the Act compensation is payable to a dependent of the deceased workman. 'Dependent' under section 2(d) of the Act means (i) a widow, son, an unmarried daughter, or a widowed mother; (ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm; and (iii) if wholly or in part dependent on the earnings of the workman at the time of his death: a widower, a parent other than a widowed mother, a minor brother, sister, etc. In *Sohanbeer* v. *Workmen's Compensation Commissioner, Muzaffarnagar and Others*[65] the compensation commissioner allowed the claim of compensation by respondent no. 2, the widow of the deceased workman and rejected the claim of parents, brother and sister of the deceased. On a writ petition filed in the Allahabad High Court, it was contended on their behalf that the petitioner being the father of the deceased was entitled to compensation under the law of inheritance. It was also contended that the petitioner was dependent upon the income of the deceased and was, therefore, entitled to receive compensation. It was further contended that respondent no. 2, having remarried after one year from the death of the deceased, was no longer entitled to receive any compensation.[66]

Dismissing the writ petition, it was held that payment of compensation is governed by the provisions of the Act and not by the law of inheritance. Also there was a categorical finding by the commissioner that the petitioner was not a dependent either wholly or partly on the earnings of the deceased at the time of his death. Besides, there is nothing in the Act which prohibits a widow from remarrying nor debars her from claiming compensation solely on the ground that she had remarried.[67]

Relevant factors relating to loss of earning capacity

The twin questions to be decided by the Supreme Court in *National Insurance Co. Ltd.* v. *Mubasir Ahmed and Another*[68] were: whether the judgment of the high court without any discussion on the loss of earning capacity was sustainable or not; and, whether the rate of interest of 12 per cent as fixed by the high court could be faulted.

The three respondents in the instant case were working as either labourer, cleaner or driver of the vehicle which was involved in the accident. They suffered injuries which were not specified in schedule I of the Act. The doctor who examined them indicated the permanent/partial disability

65 2007 LLR 791.

66 Reliance was placed on two compensation cases decided under the Motor Vehicles Act, viz., *Oriental Fire and General Insurance Company Limited* v. *Shrimati Chandrawati,* AIR 1983 All 174; and *Maharashtra State Road Transport Corporation* v. *Lalnipuii,* IT 2007 (1) SC 480. In both these cases it was decided that if a widow remarries, she would not be entitled to claim compensation.

67 *Smt. Mankuwarbai, Mandsaur* v. *Kusum Lata,* 1998 (56) FLR 675; and *Veerappan* v. *Muthamma Veerappan,* 1999 (3) LLJ 451 were relied on.

68 2007 LLR 566.

suffered by them as 65 per cent; functional disability as 65 per cent in two cases and 70 per cent in one case; and loss of earning capacity as 65 per cent in one case and 80 per cent in the other two cases. The compensation commissioner awarded them compensation based on the above finding. Dissatisfied, the claimants filed appeals in the high court which held that in each case there was 100 per cent loss of earning capacity and fixed the compensation accordingly along with a direction to the appellant to pay interest at 12 per cent per annum from the date of accident till actual realization of the amount. There was, however, no discussion or reasoning by the court as regards the percentage of loss of earning capacity. Hence this appeal to the apex court by the appellant insurance company.

Allowing the appeal partially, the Supreme Court held that in cases relating to injuries which were not specified in schedule I of the Act, when the doctor indicated the percentage of permanent and temporary disablement, functional disability and loss of earning capacity by taking into account the relevant factors, the high court was not justified in holding that there was 100 per cent loss of earning capacity, without indicating any reason or basis therefor. The court held that cases related to injuries which are not specified in schedule I are covered by section 4(1)(c) Explanation (ii). In terms of the explanation, the doctor is required to assess loss of earning capacity having due regard to percentage of loss of earning capacity in relation to the different injuries in the schedule. It also provides that where there are more than one injury, the aggregate of all injuries has to be taken so that the amount which would be payable for permanent total disablement is not exceeded.

According to the court, loss of earning capacity is not a substitute for percentage of physical disablement; it is only one of the factors to be taken into account. In the instant case since the doctor had noted the functional disablement of the claimants and taken into account the relevant factors relating to loss of earning capacity, the high court should not have interfered with such finding without adequate reasons.[69] The first question was, thus, answered in the negative.

As regards the second question, viz., liability to pay interest at 12 per cent, the court held that it is covered under section 4(a)(3) of the Act which lays down that where any employer is in default in paying the compensation due within one month from the date it fell due, the commissioner may direct the payment of simple interest at six per cent. Since the accident in the instant case took place after the section was amended in 1995 enhancing the rate of interest to 12 per cent, the order of the high court could not be faulted.[70] However, the court held that the period as fixed by it was wrong. The starting point for imposition of fine could not be the date of the accident, but the date of adjudication of the claim. The reason being that section 4A(1)

69 *Id.* at 568.

70 Reliance was placed on *Maghar Singh* v. *Jashwant Singh*, (1998) 9 SCC134.

prescribes that compensation under section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. Adjudication in some cases involves assessment of the loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation does not arise. This is all the more clear when sub-section (2) of section 4A provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The legislature has not used the expression 'from the date of accident' but has used the expression 'falls due'. Therefore, unless there is adjudication, the question of an amount falling due does not arise.

Thus, the second question was answered partly in favour of the appellant and partly in favour of the claimants.

Determination of compensation amount

It was held in *Ganga Devi and Others* v. *M/s O.S. Motors Ltd. and Another*[71] that in the absence of proper evidence either from the employer or from the claimants as regards the exact earning of the deceased workman, calculation of compensation shall be made on the basis of the minimum wages as laid down by the Minimum Wages Act, 1948.

Notional extension of time

The question that was referred to the full bench of the Kerala High Court was: how far the notional extension theory could be applied so as to make the insurance company liable to compensate the victim arising out of the use of motor vehicle even if it was established that the accident occurred during the course of his employment? In the instant case[72] the first respondent (claimant) was employed by the second respondent as a tempo driver. On 15.5.1999 he carried goods to another town and while unloading the same there a dog bit him on the hand and while trying to ward off further dog bite he fell down and sustained serious injuries. Upon a claim petition filed by him the compensation commissioner after considering the oral and documentary evidence awarded Rs. 42,804/- as compensation along with interest at 12 per cent from the date of filing the application. Since the tempo was validly insured with the appellant it was made to indemnify the owner of the vehicle the entire amount of compensation awarded.

Before the high court, it was contended on behalf of the appellant that the accident occurred not during the course of employment and hence the notional extension theory could not be extended to the facts of the case. It was also submitted that the vehicle was stationary and was not under use and hence the appellant could not be made liable. Further, even if the contention of the claimant was accepted that the accident had occurred during the course of employment, the appellant should not be made liable to pay the amount of

71 2007 LLR 874.
72 *Oriental Insurance Co.Ltd.* v. *Joseph,* 2007 LLR 988.

compensation since it was not an accident involving the motor vehicle. On claimant's behalf it was submitted that the accident occurred during the course of employment as well as when the vehicle was under use.[73]

The court after referring to a number of cases[74] where the theories of *notional extension*, *causal connection* and *reasonably incidental work* have been discussed to determine the claim for compensation, held that in the instant case the claimant has satisfied his claim on all counts. Facts of the case clearly indicated that the claimant got down from the motor vehicle so as to unload the goods and it was at that juncture he sustained dog bite and the injuries. There was causal connection; goods once loaded needed to be unloaded and the vehicle was under use. Unloading the goods was an incidental work proximately connected with the work of loading. The court, thus, upheld the compensation awarded by the compensation commissioner.

VII CONCLUSION

The most notable decision of the apex during the year under survey has been the one it rendered in *Kishore Lal*,[75] wherein the court, overruling its own judgment in *Birbal Singh*,[76] held that the ESIC which is under the statute required to maintain and establish hospitals and dispensaries to provide medical and surgical services to insured employees and their families, will be liable for medical negligence under the Consumer Protection Act, 1986.

73 He placed reliance on *Oriental Insurance Co. Ltd*. v. *Thankappan,* 2005 (3) KLT 480.

74 *Regional Director, ESI Corpn*. v. *Francis D'Costa*, 1996 (2) KLT 799 (SC); *Saurashtra Salt Manufacturing Co.* v. *Bai Valu Raja,* AIR 1958 SC 881; *Jyothi Ademma* v. *Plant Engineer, Nellore*, 2006 (3) KLT 426 (SC); *Shivaji Dayanu Patil* v. *Smt. Vatschala Uttam More*, AIR 1991 SC 1769; *Mary* v. *Mathew*, 2003 (1) KLT 592; *Babu* v. *Ramesan*, 1995 (2) KLT 300; and *Mackinnon Mackenzie and Co. Pvt. Ltd*. v. *Ibrahim Mahommad Issak*, AIR 1970 SC 1906.

75 *Supra* note 17.

76 *Supra* note 19.