

CHAPTER VII

EMPLOYMENT OF YOUNG PERSONS

66. Prohibition of employment of children.—No child who has not completed fourteen years of age shall be required or allowed to work in any factory.

67. Non-adult workers to carry tokens.—A child who has completed fourteen years of age or an adolescent shall not be required or allowed to work in any factory unless—

- (a) a certificate of fitness granted to him under section 68 is in the custody of the manager of the factory;
- (b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

68. Certificate of fitness.—(1) A Certifying Surgeon shall, on the application of any young person or his parent or guardian, accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any person wishes to work, examine such person and ascertain his fitness for work in such factory.

(2) The Certifying Surgeon may, after examination, grant to such young person in the prescribed form or renew—

- (a) a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, has attained the

prescribed physical standards and is fit for such work;

- (b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his sixteenth year and is fit for a full day's work in a factory :

Provided that unless the Certifying Surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew certificate under this sub-section until he has examined such place.

(3) A certificate of fitness granted or renewed under sub-section (2)—

- (a) shall be valid only for the period of twelve months from the date thereof;
- (b) may be made subject to re-examination of the young persons before the expiry of a period of twelve months, or subject to conditions in regard to the nature of the work in which the young person may be employed.

(4) A Certifying Surgeon shall revoke any certificate granted or renewed under sub-section (2) if, in his opinion, the holder of it is no longer fit to work in the capacity stated therein in a factory.

(5) Where a Certifying Surgeon refuses to grant a certificate or a certificate of the kind requested, or revokes a certificate, he

shall, if so requested by any person who could have applied for the certificate or the renewal therefor, state his reasons in writing for such refusal.

(6) Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.

(7) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person or his parents or guardian.

69. Effect of certificate of fitness granted to adolescents.—(1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 68, and who, while at work in a factory, carries a token giving reference to the certificate, shall, subject to the provisions of sub-section (1) of section 70, be deemed to be an adult for all the purposes of Chapters VI and VIII.

(2) An adolescent, who has not been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 68, shall, notwithstanding his age, be deemed to be a child for the purposes of this Act.

70. Working hours for children.—(1) No child or adolescent shall be required or allowed to work in any factory—

(a) for more than five hours in any day; and

(b) between the hours of 7 p. m. and 7 a. m.

(2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than seven and a half hours each.

(3) A child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

(4) The provisions of section 51 shall apply also to child workers, no exemption from the provisions of that section shall be granted in respect of any child.

(5) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

71. Notice of periods of work for children.—(1) In every factory in which children are employed, there shall be displayed in the manner laid down in sub-section (2) of section 109, a notice of periods of work for children, showing clearly the periods within which children may be required or allowed to work.

(2) The periods shown in the notice under sub-section (1) shall be fixed beforehand in the manner laid down for adult workers in section 60 and shall be such that children working on those periods would not be working in contravention of section 70.

(3) The provisions of sub-sections (8), (9) and (10) of section 60 shall apply also to the notice under sub-section (1).

(4) The Government may make rules prescribing the form of the notice under sub-section (1) and the manner in which it shall be maintained.

72. Register of child workers.—(1) The manager of every factory in which children are employed shall maintain a register of child workers to be available to the Inspector at all times during working hours showing—

- (a) the name and date of birth of each child and adolescent worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shifts, the relay to which he is allotted;
- (e) the number of his certificate of fitness granted under section 68 and the date of its renewal; and
- (f) such other particulars as may be prescribed.

(2) The Government may make rules prescribing the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

73. Hours of work to correspond with notice under section 71 and register under section 72.—No child shall be required or allowed to work otherwise than in accordance with the notice under sub-section (1) of section 71

and the entries made beforehand against his name in the register maintained under section 72.

74. Power to require medical examination.—Where an Inspector is of opinion—

- (a) that any person working in a factory without a certificate of fitness is a child or an adolescent, or
- (b) that a child or adolescent working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein,

he may serve on the manager of the factory a notice requiring that such person or that such child or adolescent, as the case may be, shall be examined by a Certifying Surgeon and such person, child or adolescent shall not, if the Inspector so directs, be allowed to work in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness as the case may be, under section 68 or has been certified by the Certifying Surgeon examining him not to be a child or adolescent.

75. Power to make rules.—The Government may make rules—

- (a) prescribing the form of certificates of fitness to be granted under section 68, providing for grant of duplicates in the event of loss of the original certificates and renewals thereof and fixing the fees

which may be charged for such certificates and renewals thereof and such duplicates;

- (b) prescribing the physical standards to be attained by children and adolescent working in factories; and
- (c) regulating the procedure of Certifying Suregon under this Chapter and specifying other duties, which they may be required to perform in connection with the employment of children and adolescent in factories and fixing the fees which may be charged for such duties.

76. Provisions of this Chapter not in derogation of Act XXVI of 1938.—The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938.

Note

[See the Employment of Children Act, 1938]

CHAPTER VIII

LEAVE AND HOLIDAYS WITH WAGES

77. Application of the Chapter.—Nothing in this Chapter shall affect any right or privilege to which a worker has been entitled on the date this Act comes into force, under any existing law or under any award, agreement, settlement, contract, custom or usage, if such right or privilege is more favourable to him.

78. Annual leave with wages.—(1) Every worker who has completed one year of continuous service in a factory, shall be allowed during the subsequent period of twelve months' leave with wages for a number of days calculated at the rate of—

- (i) if an adult, one day for every twenty-two days of work performed by him during the previous period of twelve months;
- (ii) if a child, one day for every fifteen days of work performed by him during the previous period of twelve months:

Provided that a period of leave shall be inclusive of any holiday which may occur during such period.

(2) If a worker does not, in any such period of twelve months, take the leave to which he is entitled under sub-section (1), either in whole or in part, any such leave not taken by him shall be added to the leave to be allowed to him under that sub-

section in the succeeding period of twelve months :

Provided that a worker, if an adult, shall cease to earn any leave under this section when the earned leave due to him amount to twenty days and if a child, shall cease to earn any such leave when the earned leave due to him amounts to thirty days :

Provided further that any leave applied for by a worker but refused by the occupier or manager or his authorised officer for any reason shall be added to the credit of such worker beyond the aforesaid limit.

(3) For the purpose of this section a worker shall be deemed to have completed a period of continuous service in an establishment notwithstanding any interruption in service during that period due to—

- (a) any holiday;
- (b) any leave with wages;
- (c) any leave with or without wages due to sickness or accident;
- (d) any maternity leave not exceeding twelve weeks;
- (e) any period of lay-off arising due to failure, refusal or inability of an employer on account of shortage of coal, power or raw-material or the accumulation of stock or the break-down of machinery or for any other reason, to give employment to a worker whose name is borne in the muster rolls of his factory;
- (f) a strike which is not illegal or a lock-out which is not legal.

79. Festival holidays.—(1) Every worker shall be allowed at least ten days' festival holidays with wages in a year. The days and dates for such festivals shall be fixed by the occupier or manager in such manner as may be prescribed.

(2) A worker may be required to work on any festival holiday, but two days' additional compensation holidays with full pay and a substitute holiday shall be provided for him in accordance with the provisions of section 51.

80. Casual leave and sick leave.—(1) Every worker shall be entitled to casual leave with full wages for ten days in a year.

(2) Every worker shall be entitled to fourteen days' sick leave on half-average wages in a year :

Provided that sick leave or casual leave admissible under this section shall not be accumulated and carried forward to the succeeding year.

Notes

The annual leave is based on the number of days actually worked. In the case of a worker who had availed all kinds of leave during the previous year, the entitlement for annual leave in the subsequent year will be counted as follows :

As per section 51, out of 365 days 52 weekly holidays are to be counted; while under section 79 festival holidays of 10 days are to be calculated, under sub-section (1), there will be 10 days' casual leave; while under section 88 (2) there will be 14 days' sick leave and 12 days' annual leave will be available during the

past year, which means 98 days in all. If we divide the balance of 267 working days by 22 we find that only 12 days annual leave can be given during the subsequent year. In the same way, a child will be entitled to 17 annual holidays.

81. Wages during leave or holiday periods.—For the leave or holidays allowed to a worker under the provisions of this Act, he shall be paid—

- (a) in case of leave with full wages, at the rate equal to the daily average of his full time earnings, including dearness allowance, if any, for the days on which he worked during the month immediately preceding his leave, but excluding any over-time earnings and bonus; and
- (b) in case of leave with half-average wages at the rate equal to half the daily average of his earnings calculated in the manner provided in clause (a).

82. Payment in advance in certain case.—**ANY** worker who has been allowed leave for not less than four days in the case of an adult, and five days in the case of a child, under section 78 shall, before his leave begins, be paid, the wages due for the period of the leave allowed.

83. Power of Inspector to act for workers.—Any Inspector may institute proceedings on behalf of any worker to recover any sum required to be, but has not been, paid under this Chapter by an occupier or manager.

84. Power to make rules.—(1) The Government may make rules to carry into effect the provisions of this Chapter.

(2) Without prejudice to generality of the foregoing power, rules made under this section may provide for maintaining by managers of factories of registers showing such particulars as may be specified and requiring such registers to be preserved and made available for examination by Inspectors.

85. Power to exempt factories.—Where the Government is satisfied that the leave rules applicable to the workers in a factory provide benefits which, in its opinion, are on the whole not less favourable than those provided for in this Chapter, it may, by order in writing, exempt a factory from all or any of the provisions of this Chapter subject to such conditions as may be specified in the order.

CHAPTER IX

SPECIAL PROVISIONS

86. Power to exempt public institution.—The Government may exempt, subject to such conditions as it may impose, any workshop, or workplace where a manufacturing process is carried on, which is attached to a public institution and maintained for the purpose of education, training or reformation, from all or any of the provisions of this Act :

Provided that no exemption shall be granted from the provisions relating to hours of work and holidays unless the person having the control of the institution submits for the approval of the Government, a scheme for the regulation of the hours of employment, intervals for rest and meals and holidays of the persons employed in or attending the institutions and the Government is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of this Act. -

87. Dangerous operations.—Where the Government is satisfied that any operation carried on in a factory exposes any person employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to such factory or class of factories in which such operation is carried on—

- (a) specifying the operation and declaring it to be hazardous:

- (b) prohibiting or restricting the employment of women, adolescents or children in the operation;
- (c) providing for the periodical medical examination of persons employed in the operation and prohibiting the employment of persons not certified as fit for such employment;
- (d) providing for the protection of all persons employed in the operation or in the vicinity of the places where it is carried on; and use of any specified materials or processes in connection with the operation.

88. Notice of certain accidents.—Where in any factory an accident occurs which causes death, or which causes any bodily injury whereby any person injured is prevented from resuming his work in the factory during the forty-eight hours immediately following the accident or which is of such a nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to the Inspector in such form and within such time, as may be prescribed.

Note

The manager has been made primarily responsible for notifying the accident though, as a matter of fact, both the occupier and the manager are jointly and severally responsible for contravening the provisions of the Act (see also section 93).

89. Notice of dangerous occurrences.—The Government may, by notification in the official Gazette, extend

the provisions of section 88 to special class of accidents, such as explosion, fire, collapse of buildings, accidents to machinery or plant occurring in a factory, although no death or bodily injury has been caused to any person.

90. Notice of certain diseases.—(1) Where any worker in a factory contracts any disease specified in the Schedule, the manager of the factory shall send notice thereof to the Inspector in such form and within such time as may be prescribed.

(2) If any medical practitioner attends on a person who is, or has been employed in a factory and who is, or is believed by such medical practitioner to be, suffering from any disease specified in the Schedule, the medical practitioner shall, without delay, send a report in writing to the Chief Inspector stating—

- (a) the name and full postal address of the patient;
- (b) the disease from which he believes the patient to be suffering;
- (c) the name and address of the factory in which the patient is or was last employed.

(3) The Government may add to or subtract from the Schedule any disease by notification in the official Gazette.

91. Power to direct enquiry into cases of accident or disease.—(1) The Government may, if it considers it expedient so to do, appoint a competent person under intimation to all concerned to enquire into the causes of any accident occurring in a factory, or into any case where a disease specified

in the Schedule has been or is suspected to have been contacted in a factory and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such enquiry.

(2) The person appointed to hold an enquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects, and may also, so far as may be necessary for the purposes of the enquiry, exercise any of the powers of an Inspector under this Act; and every person required by the person making the enquiry to furnish any information shall be deemed to be legally bound so to do within the meaning of section 176 of the Penal Code, 1860.

(3) The person holding an enquiry under this section shall make a report to the Government stating the causes of the accident or as the case may be, disease, and any attendant circumstances, and adding thereto any observations which he, or any of the assessors, may think fit to make.

(4) The Government may, if it thinks fit, cause to be published any report made under this section or any extract therefrom.

(5) The Government may make rules for regulating the procedure of enquiries under this section.

92. Power to take samples.—(1) An Inspector may, at any time during the normal working hours of a factory, after informing the occupier or the manager of the factory or other person, for the time being purporting to be the manager of the

factory, take, in the manner hereinafter provided, a sufficient sample of any substance used or intended to be used in the factory such use being, in the opinion of the Inspector—

- (a) in contravention of any of the provisions of this Act or the rules made thereunder, or
- (b) likely to cause bodily injury to or injury to the health of, workers in the factory.

(2) Where the Inspector takes sample under sub-section (1), he shall, in the presence of the person informed under the sub-section unless such person wilfully absents himself, divide the sample into three portions and effectively seal and suitably mark them and shall permit such person to add his own seal and mark thereon.

(3) The person informed as aforesaid shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section.

(4) The Inspector shall—

- (a) forthwith give one portion of the sample to the person informed under sub-section (1);
- (b) forthwith send the second portion to a Government analyst for analysis and report thereon; and
- (c) retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance.

(5) Any document, purporting to be a report under the hand of any Government analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceedings instituted in respect of the substance.

CHAPTER X

PENALTIES AND PROCEDURE

93. General penalty for offences.—Save as is otherwise expressly provided in this Act and subject to the provisions of section 94, if in, or in respect of, any factory, there is any contravention of any of the provisions of this Act or any rules made thereunder, or of any order in writing given thereunder, the occupier and the manager of the factory shall each be guilty of an offence punishable with fine which may extend to Taka one thousand and, if the contravention is continued after conviction, with a further fine which may extend to Taka seventy-five for every day of the period during which the contravention continues.

Notes

The questions as to who is the occupier must depend, among others, upon three considerations, viz.—

- (a) who has the right of using the factory for purposes under which it is constructed.
- (b) who has the right of regulating and controlling it.
- (c) who has the predominant possession or general superintendence over it.

94. Liability of owner of premises in certain circumstances.—(1) Where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services

such as approach roads, drainage, water supply, lighting and sanitation.

(2) The Chief Inspector shall have, subject to the control of the Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of subsection (1).

(3) Where in any premises, independent or self-contained floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of—

- (i) latrines, urinals and washing facilities in so far as the maintenance of the common supply of water for these purposes is concerned;
- (ii) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier;
- (iii) safe means of access to the floors or flats and maintenance and cleanliness of staircases and common passages;
- (iv) precautions in case of fire;
- (v) maintenance of hoists and lifts; and
- (vi) maintenance of any other common facilities provided in the premises.

(4) The Chief Inspector shall have, subject to the control of the Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of subsections (3).

(5) The provisions of sub-section (3) relating to the liability of the owner shall apply where in any premises independent rooms with common latrines, urinals and washing facilities are leased to different occupiers for use as separate factories :

Provided that the owner shall be responsible also for complying with the requirements relating to the provisions and maintenance of latrines, urinals and washing facilities.

(6) The Chief Inspector shall have, subject to the control of the Government, the powers to issue orders to the owner of the premises referred to in sub-section (5) in respect of the carrying out of the provisions of section 45 or 47.

(7) Where, in any premises, portions of a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of the provisions of—

- (i) Chapter III, except sections 15 and 16;
- (ii) Chapter IV, except sections 24, 25, 29, 36, 37 and 41 :

Provided that in respect of the provisions of sections 23, 26 and 34 the owner's liability shall be only in so far as such provisions relate to things under his control :

Provided further that the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him;

- (iii) Section 43.

(8) The Chief Inspector shall have, subject to the control of the Government, power to issue orders to the owner of the

premises in respect of carrying out the provisions of sub-section (7).

(9) In respect of sub-sections (5) and (7), while computing for the purposes of any of the provisions of this Act the total number of workers employed, the whole of the premises shall be deemed to be a single factory.

95. Enhanced penalty after previous convictions.—If any person, who has been convicted of any offence punishable under section 93 is again convicted of an offence involving a contravention of the same provision, he shall be punished, on a subsequent conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to Taka one thousand or with both :

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the subsequent offence.

96. Penalty for obstructing Inspector.—Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by the Inspector any register or other document in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents any worker in a factory from appearing before, or being examined, by an Inspector, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Taka five hundred or with both.

97. Penalty for wrongful disclosure of information.—Whoever, except in so far as it may be

necessary for the purpose of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of any analysis made under section 92 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Taka five hundred or with both.

98. Restriction on disclosure of information.—(1) No Inspector shall, while in service or after leaving the service, disclose other than in connection with the administration of this Act any information relating to any manufacturing or commercial secret which may come to his knowledge in the course of his official duties.

(2) Nothing in sub-section (1) shall apply to any disclosure of information made with the previous consent in writing of the owner of such business or process or for the purposes of any legal proceeding (including arbitration) pursuant to this Act or of any criminal proceedings which may be taken, whether pursuant to this Act or otherwise, or for the purposes of any report of such proceedings as aforesaid.

(3) If any Inspector contravenes the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Taka one thousand or with both.

99. Offences by workers.—(1) Subject to the provisions of section 111, if any worker employed in any factory contravenes any provision of this Act or any rules or orders made thereunder imposing any duty or liability on workers, he shall be punishable with fine which may extend to Taka fifty.

(2) Where a worker is convicted of an offence punishable under sub-section (1), the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention unless it is proved that he failed to take all reasonable measures for its prevention.

100. Penalty for using false certificates of fitness.—Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 68 a certificate granted to another person under the section, or who, having procured such a certificate, knowingly allows it to be used, or allows another person to attempt such a use, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to Taka fifty or with both.

101. Penalty for double employment of a child.—If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to Taka fifty unless it appears to the Court that the child so worked without the consent, connivance or wilful default of such parent or guardian or person.

102. Offences by a firm, company, etc.—(1) Where a person guilty of an offence punishable under this Chapter for which the occupier of a factory is punishable—

- (a) is a firm or other body of individuals, every partner or member thereof; or

(b) is a company other than a private company, every director thereof; or

(c) is a private company, every shareholder thereof:

shall be deemed to be guilty of such offence :

Provided that where any such firm, body or company gives notice to the Inspector nominating one of its partners, members, directors or in the case of a private company, shareholders, who is a resident of Bangladesh to be the occupier of the factory for the purposes of this Chapter, such partner, member, director or shareholder, as the case may be, shall so long as he is so resident, be deemed to be such occupier until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner, member, director or shareholder.

(2) Where a person guilty of an offence punishable under section 94 for which the owner of a premises or building is punishable, is a firm, body of individuals or company, reference in this section to an occupier shall be deemed to be reference to an owner and the provisions of this section shall apply accordingly.

103. Exemption of occupier or manager from liability in certain cases.—(1) Where the occupier or manager of a factory is charged with an offence under this Act, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge.

104. Power of the Court to make orders.—(1)

Where the occupier or manager of the factory is convicted of an offence punishable under this Act, the Court may, in addition to awarding any punishment, by order in writing require him, within a period specified in the order, which may, on application in that behalf be extended from time to time to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the occupier or manager of the factory, as the case may be, shall not, during the period specified therein or extended period, if any, be liable under this Act for continuation of the offence for which he has been convicted.

(3) If the order of the Court under sub-section (1) is not fully complied with during the aforesaid period, the occupier or manager, as the case may be, shall, on the expiry of such period, be deemed to have committed further offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Taka one hundred for every day after the expiry of the said period during which the order has not been complied with, or with both.

105. Presumption as to employment.—Every person, who is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, shall, until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder, to be, at that time, employed in the factory.

106. Onus as to age.—(1) When an act or omission would, if a person were under or over a certain age, be an

offence punishable under this Act, and such person is, in the opinion of the Court, apparently under or over such age, the burden of proving that such person is not under or over such age shall be on the accused.

(2) A declaration in writing by a Certifying Surgeon relating to a worker that he has personally examined him and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of the workers.

107. Cognizance of offences.—(1) No Court shall take cognizance of an offence under this Act except upon complaint made by, or under the authority of or with the previous permission in writing of, an Inspector :

Provided that no case lying before a Court shall be withdrawn without the prior permission of the Chief Inspector of Factories.

(2) No Court inferior to that of a Magistrate of the First Class shall try an offence under this Act or any rules or order made thereunder.

CHAPTER XI SUPPLEMENT

108. Appeals.—(1) Where an order in writing of an Inspector has been served under this Act on the manager of a factory, such manager or the occupier of the factory may, within thirty days of the service of the order, appeal against it to the Appellate Authority which may, subject to rules made in this behalf, confirm, modify or reverse the order.

(2) Subject to rules made in this behalf, the Appellate Authority may, and, if the appellant so requires, shall, hear an appeal under sub-section (1) with the aid of two assessors, one of whom shall be appointed by the Appellate Authority and the other by such body representing the industry concerned as may be prescribed :

Provided that no assessor is appointed by such body, or if the assessor so appointed fails to attend at the time and place fixed for hearing the appeal, the Appellate Authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor or, if it thinks fit, without the aid of any assessor.

(3) Subject to such rules as the Government may make in this behalf and subject to such conditions as to partial compliance or the adoption of temporary measures as the Appellate Authority may, in any case think fit to impose, the Appellate Authority may, if it thinks fit, suspend the order appealed against pending the decision of the appeal.

(4) The Government may make rules for the purpose of this section and such rules may specify the classes of appeals which shall not be heard with the aid of assessors.

(5) In this section, 'Appellate Authority' means the Government or such Authority as the Government may appoint in this behalf.

109. Display of notice.—(1) In addition to the notices required to be displayed in any factory by this Act or the rules made thereunder, there shall be displayed in every factory the official address of the Inspector and the Certifying Surgeon and a notice containing such abstracts of this Act and of the rules made thereunder as may be prescribed.

(2) All notices required to be displayed in a factory by or under this Act shall be—

- (a) written in Bengali, English and, where the mother tongue of the majority of the workers is other than Bengali, in Urdu;
- (b) displayed at a conspicuous and convenient place at or near the main entrance to the factory; and
- (c) maintained in a clean and legible condition.

(3) The Chief Inspector may, by order in writing served on the manager of any factory, require that there shall be displayed in the factory any other notice or poster relating to the health, safety or welfare of the workers in the factory.

110. Service of notice and returns.— The Government may make rules—

- (a) prescribing the manner of the service of orders under this Act, and

- (b) requiring owners, occupiers or managers of factories to submit such return, occasional or periodical, as it may consider necessary for the purposes of this Act.

111. Obligation of workers.—(1) No worker in a factory shall—

- (a) wilfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein;
- (b) wilfully and without reasonable cause do anything which is likely to endanger himself or other.
- (c) wilfully neglect to make use of any appliance or other things provided in the factory for the purposes of securing the health or safety of the workers therein.

(2) If any worker employed in a factory contravenes any provision of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Taka one hundred, or with both.

112. General power to make rules.—The Government may make rules providing for any matter which under any of the provisions of this Act is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act.

113. No charge for facilities and convenience.—Subject to the provisions of section 45, no fee or charge shall be realised from any worker in respect of any arrangements or

facilities to be provided or an equipment or appliances to be supplied by the occupier under this Act.

114. Publication of rules.—(1) All rules made under this Act shall be subject to the condition of previous publication of the draft thereof with a notice specifying a date, not later than three months from the date of such publication on or after which the draft will be taken into consideration.

(2) All such rules shall be published in the official Gazette and shall come into force on the date of such publication.

(3) Rules made under this Act may provide that a contravention thereof shall be punishable with fine not exceeding Taka two hundred and fifty.

115. Protection to persons acting under this Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is, in good faith, done or intended to be done under this Act.

116. (Repealed.) *Repealed by the East Pakistan Repealing and Amending Ordinance, 1966 (E. P. Ord. XIII of 1966)*

THE SCHEDULE

(See Sections 90 and 91)

List of notifiable diseases.

1. Lead poisoning including poisoning by any preparation or compound of lead or their sequelae.
2. Lead teracthyl poisoning.
3. Phosphorus poisoning or its sequelae.

4. Mercury poisoning or its sequelae.
5. Manganese poisoning or its sequelae.
6. Arsenic poisoning or its sequelae.
7. Poisoning by Nitrous fumes.
8. Carbon bisulphide poisoning.
9. Benzene poisoning including poisoning by any or its homologues, their nitro or amido derivatives or its sequelae.
10. Chrome alceration or its sequelae.
11. Anthrax.
12. Silicosis.
13. Poisoning by Halogens or Halogen derivatives of the Hydrocarbons of the aliphatic series.
14. Pathological manifestations due to—
 - (a) Radium or other radio-active substances.
 - (b) X-rays.
15. Primary equithlimatous cancer of the skin.
16. Toxic anaemia.

WORKMEN'S COMPENSATION ACT, 1923

[Act No. VIII of 1923]

(As modified by Act LIII of 1974)

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

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Workmen's Compensation Act, 1923.

(2) It extends to the whole of *Bangladesh.

(3) It shall come into force at once.

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

(a) "adult" and "minor" mean respectively a person who is not and a person who is under the age of fifteen years;

(b) "Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20;

*[Subs. by Act LIII of 1974]

(d) "dependant" means any of the following relatives of a deceased workman, namely :—

(i) a ¹[widow,] minor legitimate son and unmarried legitimate daughter or a widowed mother; and

(ii) if wholly or in part dependant on the earnings of the workman at the time of his death, a ²[widower,] a parent other

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than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, ³[a minor child of a deceased daughter where no parent of the child is alive,] or, where no parent of the workman is alive, a paternal grand-parent ;

- 1. The word "widow" was substituted by Act, IX of 1938
- 2. Subs. Ibid for wife
- 3. Ins by Act, IX of 1938

~~Substituted~~

~~Amended~~

~~Amended~~

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(ff) 'medical reference' means a qualified medical practitioner appointed under section 24A as a medical reference for the purpose of this Act.*

(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement.

~~Amended~~

~~Amended~~

and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

Provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement.

Note

Every injury specified in Schedule I is to be deemed to result in permanent partial disablement irrespective of the nature or extent of injury or the degree of the loss of earning capacity. As per Schedule I such injuries are *loss of arm, leg, eye, hearing, thumb, toe, finger, etc.*M

*[Ins. by Act VI of 1942]

(h) "prescribed" means prescribed by Rules made under this Act;

(i) "qualified medical practitioner" means any person registered under the [Medical Council Act, 1973] or

any person declared by the Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act; [Subs by Act VIII of 1973 & Act, LIII of 1974]

(j) Omitted by Act XV of 1993

(k) "seaman" means any person forming part of the crew of any ship, but does not include the master of the ship;

(l) "total disablement" means such disablement, whether of temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement :

Provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred percent.;

(m) "wages" includes any privilege or benefit which is capable or being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to workman to cover any special expenses entailed on him by the nature of his employment;

(n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is —

(i) *the railway servant as defined in section 3 of the Railways Act, 1890, 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

[Subs. by Act LIII of 1974]

(ii) employed on monthly wages not exceeding *[Three Thousand Taka] in any such capacity as is specified in Schedule II,

*[Subs. by Act, XXXIV of 1987]

whether the contract of employment is expressed or implied oral or in writing,** 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.

**[Omitted by Act LIII of 1974]

(2) The exercise and performance of the powers and duties of local authority or of any department acting on behalf of the Government shall, for the purpose of this Act, unless a contrary intention appears, be deemed to be the trade or business or such authority or department.

(3) The Government, after giving, by notification in the official Gazette, not less than three months' notice of ¹[its] intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which ²[it] is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply to such classes of persons :

Provided that in making such addition the Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

1. Subs. by A. O., 1937.
2. Subs. Ibid for 'his'.

CHAPTER II WORKMEN'S COMPENSATION

~~3~~ **Employers' liability for compensation—**(1) 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 this Chapter :

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding four* days;

*[Subs. by Act of XI of 1957]

(b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

~~4~~ If a workman employed in any employment specified in Part A of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that of employment, or if a workman, whilst in the service of an employer in whose service

he has been employed for a continuous period of not less than six months in any employment specified in *[Part B] of Schedule III, contacts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation.—For the purposes of this sub-section a period of service shall be deemed to be continuous which has not included a period of service under any other employer in the same kind of employment.

(3) The Government, after giving, by notification in the official Gazette not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which *** shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions or sub-section (2) shall thereupon apply *** as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

*** [Omitted by Act LIII of 1974]

(4) Save as provided by sub-sections (2) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

~~3~~ Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury —

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

Notes

'Accident', as defined in section 3(1), means *mishap* or untowered event not designed or expected. To be actionable, the accident must be connected with the employment and must arise out of it. Necessarily, therefore, there must be some sort of link between the employment and the accidental injury. In the case of death by heart attack, if it is proved that the workman's death is a natural outcome of the disease and there is nothing to show that such an attack was due to exceptional strain of work which he performed on that fateful day, no claim for compensation will lie. (*Parwatibai Vs. Manager Rajkumer Mills, Indore*. A. I. R. 1959 M. P. 281). It was held in the case of *Abu Hossain Vs. Secretary of State* (A. I. R. 1933-Rang 244) that a worker is entitled to compensation even if he was employed only for two days for the employer's trade or business.

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

- A. ¹[Where death results from the injury, a workman
- (I) in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof,]
- B. Where permanent total disablement results from the injury—
- (i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof, and
 - (ii) in the case of a minor Taka Two* thousand.
- *[Subs. by Act XI of 1957]
- C. Where permanent partial disablement results from the injury—
- (i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablements as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

1. Subs. by Act, XXVI of 1980

- (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

*Explanation.*²[—]Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation-2 In case of loss of earning capacity above twenty percent as per schedule 1, if the employer or the injured workman is not satisfied about the percentage of loss or earning capacity, the case shall be referred to the medical board to be constituted by the Government by notification in the official Gazette with members not exceeding two, for different industrial areas, district and the decision of such medical Board shall be final the expenses of such examination if any shall be borne by the employer or the ord. who may seek such opinion of the Medical Board;

Provided that where the party concerned is not satisfied will the opinion of a specialist under sub section (7) of section 11, the Government may refer the case to a Medical Board of another district where the specialist is available or constitute a special Medical Board for this purpose]

*[Added by Act XXVI of 1980]

- D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day after the expiry of a waiting period of four* days from the date of the disablement and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter,—

*[Subs. by Act IX of 1957.]

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

5. Method of calculating wages.—In this Act and for the purposes thereof the expression “monthly wages” means the amount of wages deemed to be payable for a month’s service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely :—

- (a) Where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period.
- (b) Where the whole of the continuous period of service immediately preceding the accident during

which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed in similar work in the same locality.

- (c) In other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

(d) Omitted by Act XV of 1933]

Explanation.—A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

[N.B.—Sub-section (2) Omitted by Act XV of 1933.]

6. Review.—(1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the workman accompanied by the certificate of a qualified

medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject of the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

Notes

Rule 4 of the Workmen's Compensation Rules, 1924 provides that if, on examining an application for review by an employer in which the reduction or discontinuance of half-monthly payment is sought, it appears to the Commissioner for Workmen's Compensation that there is reasonable ground for believing that the employer has a right to such reduction or discontinuance, he may, at any time, issue an order withholding the half-monthly payments in whole or in part pending his decision on the application.

Rule 3 (Ibid) makes provision for cases when application may be made without a medical certificate. This rule provides that an application for review of a half-monthly payment may be made under this section without a medical certificate—

- (a) by the employer, on the ground that since the right to compensation was determined, the workman's wages have increased;

- (b) by the workman, on the ground that since the right to compensation was determined, his wages have diminished;
- (c) by the workman, on the ground that the employer, having commenced to pay compensation has ceased to pay the same, notwithstanding the fact that there has been no change in the workman's condition such as to warrant such cessation;
- (d) either by the employer or by the workman, on the ground that the determination of the rate of compensation for the time being in force was obtained by fraud and undue influence or other improper means;
- (e) either by the employer or by the workman on the ground that in the determination of compensation there is a mistake or error apparent on the face of the record.

7. Commutation of half-monthly payments.—Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months on the application of either party to the Commissioner be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

8. Distribution of compensation.—(1) No payment of compensation in respect of a workman whose injury has resulted

in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation.

Notes

Rule 6 of the Workmen's Compensation Rules provides for deposit under section 8(1) thus—

(1) An employer depositing compensation with the Commissioner under sub-section (1) of section 8 in respect of a workman whose injury has resulted in death shall furnish therewith a statement in Form A and shall be given a receipt in Form B. In other cases of deposits with the Commissioner under sub-section (1) of section 8 the employer shall furnish a statement in Form AA, and shall be given receipt in Form B.

(2) If, when depositing compensation in respect of fatal accidents, the employer indicates in the statement referred to in sub-rule (1) that he desires to be made a party to the distribution proceedings, the Commissioner shall, before allotting the sum deposited as compensation, afford to the employer an opportunity of establishing that the person to whom he proposes to allot such sum is not a dependant of the deceased workman or, as the case may be, that no one of such persons is a dependant.

(3) The statement of disbursements to be furnished on application by the employer under sub-section (4) of section 8 shall be in Form C.

Rule 7 (Ibid) provides for publication of lists of deposits. According to this rule, the Commissioner shall cause to be displayed in prominent position outside his office an accurate list of the deposits received by him under sub-section (1) of section 8, together with the names and addresses of the depositors and of the workmen in respect of whose death or injury the deposits have been made :

Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of Taka *[five] hundred and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

*Ins by Act XXVI of 1980

(2) Any other sum amounting to not less than Taka ten which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman, the Commissioner shall deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding Taka twenty-five and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such

manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any enquiry which he may deem necessary, that no dependant exists, he shall, *not less than two years after the date of deposit, transfer the balance of the money to such fund or funds for the benefit of the workman as the government may, by notification in the official Gazette, specify or establish. *The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

*[Substituted by Act XI of 1957]

(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under the proviso to sub-section (1) *or under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit or may in the discretion of the Commissioner, be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

*[Inserted by Act XI of 1957]

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in

such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

Note

Rule 10 provides for the investment of money in the hands of the Commissioner who can deposit the same in a post office savings bank or invest it in the form of Government securities or post office cash certificates. This is allowed for the benefit of the dependants of a deceased workman.

(8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on th part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be

made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(9) Where the Commissioner varies any order under subsection (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

9. Compensation not to be assigned, attached or charged.—Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall, in any way, be 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.

10. Notice and claim.—(1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is referred before him within one year of the occurrence of the accident or, in case of death, within one year from the date of death :

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Provided further that the want of or any defect or irregularity in a notice shall not be bar to the entertainment of claim—

- (a) if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or
- (b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred :

Provided further, that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of

the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting *bonafide* on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

Notes

This section sets out that it is necessary to give the employer a notice of an accident within twelve months before a claim for compensation is presented by the employee. To this general rule there are some exceptions, namely—

- (a) where the employer had knowledge of the accident from other source at or about the time of it happening, and,
- (b) where, due to sufficient cause, notice was not given.

It was observed in the case of *Bai Diva Kaluji vs. Silver Cotton Mills Ltd.*, (AIR. 1956 Bom 424) that, if the Commissioner, after having considered the facts, condones the delay in making the claim for compensation, the Appellate Court must accept it.

10A. Power to require from employers statements regarding fatal accidents.—(1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall, in his statement, indicate the grounds on which he disclaimed liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

10B. Reports of fatal accidents.—(1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death, the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the death :

Provided that where the Government has so prescribed the person required to give the notice may, instead of sending such report to the Commissioner, send it to the authority to whom he is required to give the notice.

(2) The government may, by notification in the official Gazette, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

***10C. Officers authorised may refer cases for payment of compensation.**—(1) The chief Inspector and all other Inspectors under section 9 of the Factoris Act, 1965, (IV of 1965) shall be the Inspectors under this Act and may refer, in the prescribed manner, to the commissioner cases of a workman who have not paid due compensation by employers under the provision of this Act.

(2) The Chief inspector and every Inspector shall be deemed to be a public person within the meaning of section 21 of the Penal Code, 1860 (Act XLV of 1860) and may, make any such examination of any record, register or other document relevant to

the calculation or payment of compensation and take on the spot or otherwise such evidence of any person and exercise such other powers of inspection as he may deem necessary for carrying out the purpose of this act.

*[Inserted by Act XXVI of 1980]

Notes

Rule 12-A specifies the persons empowered to refer cases and compensation as follows :—

(1) The Director of Labour, the Chief Inspector of Factories, the Deputy Director of Labour, the Assistant Director of Labour and the labour officer may refer to the Commissioner in Form V cases of workmen who have not been paid due compensation by the employer.

(2) The Commissioner on receiving the reference under sub-rule (1), shall notify the parties fixing date and place of hearing, and after hearing the parties, if necessary, decide if any compensation is actually due to the workman and if so due, shall fix the amount payable by the employer. If the employer concerned fails to deposit the money awarded by the Commissioner within a month from the date of passing the award, the awarded money shall be realised by *distress warrant* through the Deputy Commissioner of the District concerned.

(3) On realisation of the awarded money, it shall be disbursed to the workman or his dependants or his legal heirs by the Commissioner in accordance with the provisions of section 8 of the Act.

(4) The Commissioner shall forward a copy of the award to the referring officer.

10D.** There shall be affixed in some conspicuous place near the main entrance of every place where workmen are employed, in English and in *Bengali** such abstracts of this Act and of the rules made thereunder as may be prescribed.

*[Inserted by Act XI of 1957.]

**[Subs. by Act LIII of 1974.]

11. Medical examination.—(1) Where a workman has given notice of an accident, the employer shall, before the expiry of three days from the time at which service of the notice has been effected, have the workman examined free of charge by a qualified medical practitioner, and the workman shall submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act, shall, if so required, submit himself for such examination from time to time:

Provided that a workman not examined free of charge as aforesaid may get himself examined by a qualified medical practitioner and the expenses of such medical examination* shall be reimbursed to the workman by the employer :

Provided further that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

*[Subs. by Act XI of 1957.]

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves, without having been so examined, the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner whose instructions he had followed, and compensation, if any, shall be payable accordingly.

(7) Where an employer or an injured workman is not satisfied with the report of the medical examination by a qualified medical practitioner, he may refer the case for re-examination to a medical specialist at least of the rank of an Associate professor of a medical college, and the expenses of such examination shall be borne by the employer, or the workman, as the case may be]

*[Added by Act, XXVI of 1980]

12. Contracting.—(1) Where any person hereinafter in this section referred to as the principal in the course of or for the purposes of his trade or business contracts with any other

person (hereinafter in this section referred to as the contractor) for the execution by or under the contract or of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

13. Remedies of employer against stranger.—

Where a workman has recovered compensation in respect of any injury caused under circumstances creating legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

14. Insolvency of employer.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer, is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer so, however, that the insurers shall not be under any

greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or condition of the contract (other than a stipulation for the payment of premium), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the *Insolvency Act, 1909, or under section 61 of the Insolvency Act, 1920, or under section 230 of the Companies Act, 1913, or in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the

date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

*[The word 'Provincial' omitted by Act LIII of 1974.]

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3); but otherwise those provisions shall not apply when the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

15. Special provisions relating to masters and seamen.—This Act shall apply in the case of workmen who are masters of ships or seamen subject to the following modification, namely :—

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer; but where the accident happened and the disablement commenced on

board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost.

(3) Where an injured master or seaman is discharged or left behind.*** Omitted by Act XXVI of 1980, in a foreign country, any depositions taken by any Judge of Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Government; or any *Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

*[The word "Provincial" omitted by Act LIII of 1974]

- (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
- (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and
- (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such

deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is under any law in force for the time being in the country relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

(5) No compensation shall be payable under this Act in respect of any injury in respect of which provision is made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention Allowances (Indian Seamen, etc.) Scheme, 1941, made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939, or under the War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Government.

(6) Failure to give a notice or make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceedings under this Act in respect of any personal injury, if—

(a) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and

(b) the Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made, makes provision for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and

(c) the proceedings under this Act are commenced within one month from the date on which the said certificate of the Government was furnished to the person commencing the proceedings.

16. Returns as to compensation.—The Government may, by notification in the official Gazette, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as the Government may direct.

17. Contracting out.—Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

18. Proof of age.—Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory, a valid certificate granted in respect of such person under section *11 or section 68 of the Factories Act, 1965, before the occurrence of the injury shall be conclusive proof of the age of such person.

*[Substituted by Act LIII of 1974]

18A. Penalties.—(1) Whoever—

(a) fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10, or

(b) fails to send to the commissioner a statement which he is required to send under sub-section (1) of section 10A, or

(c) fails to send a report which he is required to send under section 10B, or

(d) fails to make a return which he *is required to make under section 16, or

*[Added by Act XI of 1957]

(*e) fails to affix the abstracts of this Act and of the rules as required by section 10D;

*[Inserted by Act XI of 1957]

shall be punishable with fine which may extend to Taka one hundred.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.