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CONCEPT OF ACCIDENTS 'ARISING OUT OF' AND 'IN THE COURSE OF' EMPLOYMENT UNDER ECA, 1923: AN INDIAN PERSPECTIVE'

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ABSTRACT:

India has seen a paradigm shift in the area of industrial jurisprudence. Before independence, industrial jurisprudence existed in a way of rudimentary form but now it covers all the sectors and every problem of employment. The growth of this branch of jurisprudence can not only be noticed from the number of legislations and codes enacted but also from the various judicial interpretations of the matters decided by the courts. The stakeholders of industrial jurisprudence form the bulk of the society, so it is significant to note the scope of the industrial legislations. These laws have modified the traditional master-servant relationship and brought about a huge change in employment practices. There is no more hire and fire at the will of the master, for that matter, there is no more master-servant relationship. They are employers and employees and the terms of employment are fixed by statutory provisions and contracts. The legislations seek to build a harmonious relationship between the stakeholders and also work to protect the interests of both employers and employees. In this background, there has been the development of many social security legislations. All the benefits arising from these legislations are directly in link with the employment and scope of employment. In this scenario, the phrase "arising out of and in the course of employment" has been used in many legislations and even in the recent labour codes. This paper tries to mark the scope of this phrase through various judiciary interpretations as it has not been defined in any of the legislative works. Through the findings, we deduct if there is any shift of interpretation of the laws due to socio-economic conditions prevailing in the country.

INTRODUCTION:

The most crucial link which keeps the workforce of the country running is the employer and employee relationship. In any industrial society the problem of labour management becomes so important that some sort social security and social insurance is needed to provide adequate protection from losses caused to the labourers by accidents. Many significant social security legislations have been introduced in our country before independence. The urgency of such schemes had been more badly felt after independence. The country was in a time of dire need of social security measures during the development stages. As during that time the country and the stakeholders involved in the development are more vulnerable for exploitation. So social security came as a relief especially to the worker and employees. Social security measures adopted in any country are based on many factors like population, economic resources, standard of living and development of industry. Workmen's Compensation act was one of the first legislations in the direction of social security measure. It was designed to protect and safeguard the interests of the labour that was in the nature of social assistance and not social insurance. It was passed in 1923 and enforced in 1924. Since then a number of amendments have been made to suit the changing needs and conditions of the workmen.

The origin of the act in India can be traced back to 1884 it was the times when Germany introduced its version of workmen compensation act. During that time what Germany introduced was one of a kind which was adopted by many countries according to their socio-economic needs. In India the question of payment of compensation to workmen involved in serious or fatal accidents was raised when there was inhuman treatment of people who worked in Factories and Mining sectors. This warranted immediate legislative protection of workmen. But the importance was realized by Government of India only in 1920. A committee representing all the stakeholders involved was formed and then we got the legislation. The act was mainly based on the principles propounded by the English and American model. The act provided for setting up of tribunals to decide the disputes, appointment of commissioners with wide powers and limited right to appeal to the High court based on the above models.

Employee Compensation Act, 1923:

It was enacted as workmen's compensation act but it was amended to employee compensation act in 2010. The purpose of changing the word workmen to employee is to have gender equality

and improve the diginity of labour force. The object of the act as construed form the preamble is to provide for the payment by certain classes of employers to their employees of compensation for injury by accident. The reason for that compelled the initiation of the act was attributed to the growing complexity of industry with the increase in use of machinery and consequent danger to workmen from those machinery coupled with the comparative poverty rendered the workmen helpless. So it was advisable to protect them from harm and hardships arising from accidents. The actual intention of such acts is the rehabilitation of workmen himself or the dependant. For the progress of welfare state, democratic and socialism principles it is important to socialize the needs and miseries of man for production of wealth and welfare. The act was framed with a view to provide for compensation to a workman incapacitated by an injury from accident arising out of and in the course of employment. It is a guarantee against hazards of employment to which a workman is exposed because of his employment. The main object of the act was to make provision for the payment of compensation not only to the employee in case of an injury but also his dependants in the case of death. But compensation is not the only benefit flowing from the act, it has a greater impact. It has important effects in furthering the work on prevention of accident via providing an incentive to employers to prevent any accidents from happening, it further creates a statutory right and duty on the employees and employers respectively for compensation by which the employees have greater freedom from anxiety and also this mechanism renders the industry attractive.

Principles governing compensation: Unlike the English Act, the Indian Legislation is not applicable to all employees or workmen. It is applicable to workmen of certain industries. It affords the protection to a workman from loss or injury caused by accident arising out of and in the course of employment. It is not necessary the accident should have been caused by some wrongful act of the employer. Compensation is only payable when the conditions prescribed by the act are fulfilled. The rights and liabilities of parties stand crystallize dint he act. The employee compensation act as already mentioned is based on the British model of the same pattern. Therefore under the act payment of compensation has been made obligatory on all employers whose employees are entitled to claim the benefit under the act. The purpose of the act is not only to provide solatium for the workmen or his dependants but to make good the actual loss suffered by them. Compensation is in the nature of insurance of the workman against certain risks of accidents. The rule to give compensation is that the death or injury must be as a

consequence of an accident arising out of and in the course of employment. That principle is again based on four conditions: A casual connection or nexus between the injury/accident and the course of work done, the onus is on the claimant to establish that the injury was the outcome of work done or strain, it is not necessary for the employee to be at the actual place of work or actually working at the time of injury and the final one is the evidence adduced should be reasonable so as to link the injury with the work contributed.

Nature of Liability and Contributory Negligence: The act creates a new type of liability. It is neither strict liability nor a tortuous liability but is a liability arising out of the relationship of the employer and the employee. The main principle governing the compensation is neither solely dependent on suffering or expenses incurred in their treatment, but is based on the difference between his wage earning capacity before and after the accident. Irrespective of the wrongful or negligent act of the employer he should pay compensation. As the liability is not a tort liability contributory negligence cannot be taken as ground for reducing or escaping the liability of compensation. Mere negligence on behalf of employee cannot be considered as willful disobedience to an order given expressly by the employer. Only when there is willful disobedience or not following the standards by the employee the compensation cannot be given.

Section 3: Accidents Arising out of and in the course of Employment:

Arising out of and within the course of employment is a phrase used in most of the labour legislations so is the case with this act as well. Be it British or American or Indian statute this phrase appears and has been interpreted differently basing on the then existing socio-economic, political and legal circumstance. This phrase is a question of law and is decided based on case to case basis as well along with the other factors. This phrase is the pillar of coverage under workers' compensation law, the requirement that the workers have sustained the injury "arising out of" and "in the course of employment" is mandatory. The worker who has clocked in and is hard at work at the lathe when injured will obviously meet this two-part test. In India the judiciary has done an impeccable job in establishing certain principles in various cases but still, many gray areas exist that give rise to disputes.

Section 3 of the 1923 act states the principles for employee compensation, it also speaks about the situations where employer is not liable to pay compensation. It reads as follows:

3. Employer's liability for compensation.—(1) If **personal injury** is caused to a employee 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: …

If we notice the essential condition highlighted by the section are personal injury and accident **arising out of and in the course of his employment**. An 'accident arising out of employment' and an 'accident during the course of employment' are two related but distinct concepts. The former contemplates the origin and cause of the accident as emanating out of the nature of that particular employment — the employment being the contributory cause of accident. The employment may be direct or indirect or proximate cause which contributed to the accident. In all such cases the employer is liable. There are special cases of occupational diseases also. There is a doctrine of added peril which talks about the limiting the scope in the case of accidents arising out of employment. The latter refers to the time, place and circumstances of the accidents. It is where the doctrine of notional extension and other principles like reasonable time after or before employment arise where in the employer is liable for a particular time and place of the employment which is reasonable and incidental to the employment. In either case it is always a question of fact, variable with the varying circumstances of each case. Arising out of and in the course of employment, is a formula which is susceptible of a wide or narrow interpretation, by which it is possible to limit as well as enlarge the scope of the liability of the employer.

In this background it is important to note the judicial tests laid down in the British law. Lord Atkin gave the laid down the control of premises which was later considered not essential. It states that to know whether the workman is in the course of employment is to see "whether the workman was at the time and place where the accident occurred doing something in performance of a duty to the employer arising out of the contract of employment." In later decisions of the House of Lords and Court of Appeal, the locus of employment or the premises of the employer, for the purposes of liability was extended up to and from the work-site. The test of "obligation" or "necessity" of the workman to be at the place where he met with the accident by reason of the "contract of service" was introduced instead of the previous test. Then came the doctrine of 'added peril' or the theory of "absence of obligation" on the part of the workman who was employed so as to limit the liability of the employer. There was another test known as positive test which was considered many times, it is known as positive test. The test was that whether it

was for the purposes and in connection with the employer's trade or business that the workman deviated from the ordinary route. If that is so, the accident arose during the course of employment. These principles and judicial interpretations have paved a path to the Indian judiciary as well and it has been followed not to the letter but to increase the value of this act. There are some special cases where it is ambiguous to decide whether the accident arose out of liability or not, they are as follows:

Risks common to all: Mostly all the accidents arising out of machinery or any other process involved in an industry are risks common to all and fairly so the employer is liable for such risks. But there are other risks like risks by out of natural disasters and calamities like fire or lightning, or risks out of human interference like bombardment or war. All these risks are common to all mankind not only to the employees. So the question is whether the employer is still liable in such cases as the accidents involving these risks are not the direct or indirect result of employment. The court has given various interpretations in various cases. There was never a unanimous decision but after some case it was an established principle that the mere fact that the accident has resulted from a risk common to all does not lead to the conclusion that the accident has not arisen out of the employment. Therefore the risk common to all mankind factor does not disentitle the employee from compensation.

Altercations or Assaults by third persons or Injury from Insects or animals: In all these cases the employer is liable for compensation. The judicial interpretations construe that any act or assault by third person, be it customer or fellow employee or any stranger constitutes an accident under the act. Where the injury is concerned with animals or insects also the employer is liable as the duty of the employee took him to the place where he met with an injury, then the accident arose out of the employment.

In any case the injury or accident should be incidental to the employment then the employee is entitled for compensation.

Transportation to and from the place of employment: Generally when the employee is injured while travelling to or from the place of employment the employer is liable up to a reasonable time and place it is again question of fact, but in most cases it is construed to come within the scope of employment. There are special circumstances when the employer provides

for special transportation. It is further divided into two things: when there are alternative transportations available, and when there are alternative transportations not available. In the former case when the employee takes an alternative transportation as the employee is neither bound nor there is necessity to use the employer provided transportation, then the employer is not liable. But as long as he takes the transportation provided by the employer, the employer will be liable till he reaches the determined premises or house. In this scenario it is important to note the observation of Justice Subba Rao in the case of B.E.S.T. Undertaking v. Agnes[1]: "A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion"

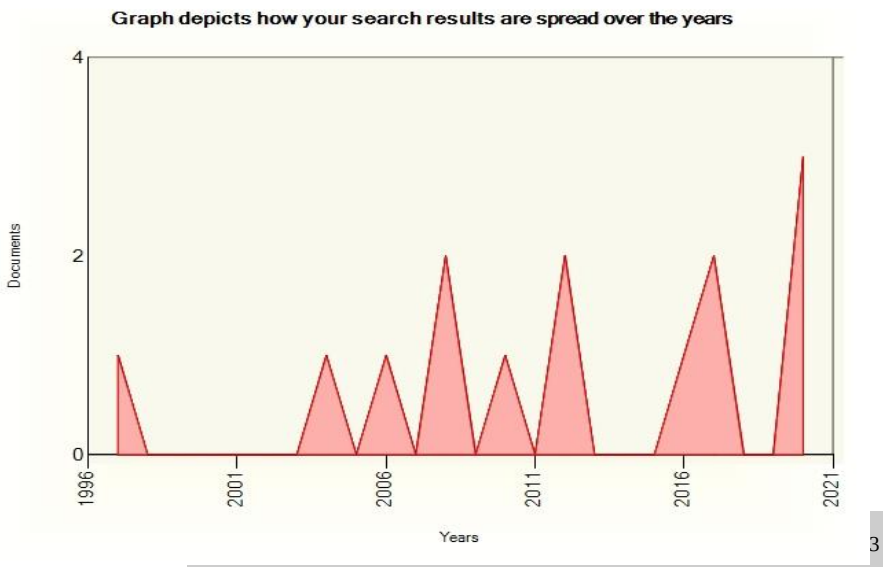
In the same case the majority judgement has given a very important principle to determine compensable injury:

"The question when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the 'down tool' signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension as both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment."[2]

CASE LAWS:

There have been many judicial interpretations over the years which state the scope and ambit of the phrase accidents arising out of and in the course of employment. The graph below depicts the number of case where the Supreme Court has decided whether the employees are entitled for compensation under the Employee Compensation Act, 1923 in the past two decades.

[1] (1963) II L.L.J.
[2] *Id* at 622.



[3]

Out of them these are the case which gave the scope and ambit of accidents arising out of and in the course of employment was defined.

1. **Heart attacks:**

a. Jyothi Ademma v. Plant Engineer, Nellore and Ors.[4]: In this case the employee died at work spot due to hear attack. He was previously treated with a chest disease and the duty of the employee was only to switch on and off. Such duty does not have any stress involved. Therefore the court held that the death was not due to the course of employment and hence is not arising out of employment. The employment was not contributory cause or accelerating factor to cause death therefore the deceased or dependants of deceased not entitled to compensation.

b. Rashida Haroon Kupurade v. Div. Manager, Oriental Ins. Co. Ltd. and Ors.[5]: In this case the court held that when there is no nexus between the death or accident and employment, the employer is not liable to pay compensation. The accident in this case happened six month before the death of employee due to heart attack. The High Court held that the employer is liable but the Supreme Court reversed the judgement and stated that

[3] Manupatra.
[4] AIR 2006 SC 2830.
[5] AIR 2010 SC 1006.

" It will be clear from the wording of Section 3 of the Act that compensation would be payable only if the injury is caused to a workman by accident arising out of and in the course of his employment. There has to be an accident in order to attract the provisions of Section 3 and such accident must have occurred in the course of the workman's employment. As indicated hereinabove, in the instant case, there is no nexus between the accident and the death of the workman since the accident had occurred six months prior to his death."

c. Mst. Param Pal Singh through Father v. National Insurance Company and Ors.[6]: In this case the deceased was a truck driver. He suffered from heart attack while driving from Delhi to Jharkhand. The court held that: "There was Causal Connection to the death of the deceased with that of his employment as a truck driver. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation, it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an 'untoward mishap' can, therefore, be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business." The court considered the grave stress and strain undergone by the driver while driving such long distances and held that the death arose out of and in the course of employment. Another observation by the court was that although the deceased suffered the attack after parking the vehicle due to uncomfortable feeling the accident falls within the course of employment.

2. Notional extension:

The above cases talks about accidents arising "out of employment". Notional extension is the doctrine applicable to the second part of the condition-"in the course of employment" via the time and space of employment. This doctrine extends the scope of place and time of employment to a reasonable level basing on the fact and circumstances of a particular case.

[6] AIR 2013 SC 974.

a. Jaya Biswal and Ors. v. Branch Manager, IFFCO Tokio General Insurance Company Ltd. and Ors.[7]: In this case the accident happened while returning back to the truck after delivering some goods. The court held that the accident clearly arose out of and in the course of employment as returning to the truck to gain control is a normal course of business and any reasonable person would do the same. The same action cannot be construed as negligent. Even though there is negligence the 1923 act does not provide for reduction.

b. Daya Kishan Joshi and Ors. v. Dynemech Systems Pvt. Ltd.[8]: In this case on the order of employer the employee was promoting the sales of certain products and met with the an accident while returning from the sales on the road. The court held that it was within the scope of employment and applied doctrine of notional extension. The court stated that: "There could not be any dispute that the question as to when an employment begins and when it ceases, depends upon the facts of each case. There was a notional extension at both entry and exit by time and space. There may be some reasonable extension in both time and space and a workman may be regarded as in the course of his employment even though he had not reached or has left employer's premises."

c. Poonam Devi and Ors. v. Oriental Insurance Co. Ltd.[9]: The employee was a truck driver and died while fetching water and bathing in a canal. The court held that the employee was in the course of employment considering the circumstances like long journey and lack of air conditioning in the cabin. There was an argument stating that there was no nexus between the act and employment and it was a mere act of refreshment and nothing in furtherance of employment. But the court held that "…the act was done to ensure his own safety by a safe journey for himself had to be considered as incidental to the employment by extension of the notional employment theory. A truck driver who would not keep himself fresh to drive in such heat would be a potential danger to others on the road by reason of any bonafide errors of judgment by reason of the heat." Therefore the employer is liable to pay compensation.

ANALYSIS AND CONCLUSION:

[7] AIR 2016 SC 956.
[8] AIR 2017 SC 4134.
[9] AIR 2020 SC 1305.

From the above cases and the many juridical interpretation we can say that the court did not give a hard and fast rule. Like any other area of law, the compensation law is also evolving through judicial activism. There have been many interpretation and none of them are unanimous they change on a case to case basis as it is a question of act. But a trend can be noticed from all the interpretation, the accident should have arisen while doing something incidental or in furtherance of the duties given under the employment. The accident should have occurred at a place or time where he was performing his duties and should have a rational nexus or some form of casual connection to the terms and duties of employment. The interpretation of the courts has changed over the years. Currently as the country evolved into a developing and welfare state the courts have started giving liberal interpretation to the provisions than in the past. In the past the courts were inclined towards the employer, in order to attract more employers and change the status of the country. Then the realization dawned on the politico-legal system of the country that without the welfare of workers there is no development. They are one of the most important pillars of the country and the economy. We could see the policy changes since then as a result the court also has changed its stance from strict interpretation to liberal interpretation to realise the true potential of the socio-welfare legislation like the Employee Compensation Act, 1923.

To conclude, the paper shows how in the field of the law of workman's compensation, the liability of the employer is invariably correlated with the right of the employee; and is statutorily deemed to be co-extensive with it. of late the courts have upheld this statutory and judicial right of the employees. The recent code on social security, 2020 also uses the phrase accidents arising out of and in the course of employment, but it does not define it anywhere. The phrase is specified as a condition to fulfill the requirement of employment injury under clause 28 of the definitions provision. Only time can tell us whether the trend of liberal interpretation will continue or will it be subjected to restrictions. But for now this kind of interpretation promotes both welfare and social security for the labour force.

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