

A CRITICAL REVIEW ON BENEFITS FOR EMPLOYMENT INJURY IN MYANMAR

Aye Moh Moh Tun¹

Abstract

This research will focus on the benefits for employment injury under the Workmen's Compensation Act, 1923 and the problems of not losing worker's rights in the injury case. Employment injury means a worker who suffers injuries by an accident arising out of and in the course of employment. A safe and healthy working environment is very important for the worker. It is the duty of the employer and the worker. On the part of the employer, they need to provide a safe and healthy working environment for the prevention of danger to their workers. Similarly, every worker has to abide by the workplace rules and disciplines. In the analytical study, in Myanmar, if a worker is caused by injury at work, he has the right to file for workers' compensation. His employer shall be liable to pay compensation under the provisions of the Workmen's Compensation Act, 1923 if an injured worker is not covered by the Social Security Law, 2012. Under the Social Security Law, 2012, if a worker is an insured person, he or she has the right to enjoy benefits prescribed by the Law. However, there is a situation that cannot be entitled to receive compensation or enjoy benefits. As a result of this study, the amount of compensation payable is inadequate and insufficient for the current situation. Relating to the amount of compensation, the provisions of the amount of compensation under the Bill of Workmen's Compensation Law, 2018 is more than the amount of compensation under the Workmen's Compensation Act, 1923.

Keywords: benefits, injury, amount, compensation

Introduction

The employer and worker have to take care of each other and other people who might be affected by their acts. The employer needs to provide a safe and healthy working environment for their workers. Similarly, worker also needs to abide by the workplace rules, disciplines, instructions, and procedure given by their employer and use all devices properly for their protection. Worker has a right to a safe and healthy working environment but not only the employer is responsible for worker safety, but workers are responsible, too. A worker is entitled to receive compensation/benefit when he/she suffers injury by accident arising out of and in the course of his employment. Compensation relating to employment injury was covered by Workmen's Compensation Act, 1923 and Social Security Law, 2012. Workmen's Compensation Act does not describe the employer to contribute for his worker. A worker who is not insured under Social Security Law, 2012, is covered by the Workmen's Compensation Act relating to employment injury benefits. In 2018, the Bill of the Workmen's Compensation Law was drafted.

Material and Methods

- Studying on the Workmen's Compensation Act, 1923
- Studying on the Bill of the Workmen's Compensation Law, 2018
- Studying on journals and cases

¹ Department of Law, Meiktila University

Aim and Purpose

- To know the Workmen's Compensation Act in Myanmar
- To know the benefits for the workers relating to employment injury
- To know the amount of compensation in the case of employment injury

Findings

By carrying out a study of the benefits for employment injury under the Workmen's Compensation Act, 1923, the amount of compensation payable has been found to be inadequate and insufficient for the current situation. As a result, the Workmen's Compensation Bill was drafted in 2018. According to the bill, the minimum and maximum compensation for death shall be 15 lakhs and 30 lakhs. For permanent injury, the minimum and maximum compensation payable shall be 30 lakhs and 60 lakhs, respectively.

Employment Injury under the Workmen' Compensation Act

To get compensation or benefit for a worker who suffers injury by accident arising out of and in the course of his employment. Compensation relating to employment injuries was covered by the Workmen's Compensation Act, 1923. In order to get compensation under the Workmen's Compensation Act, the employee must be covered by the relevant law, and the accident must arise out of or in the course of employment.

Persons Concerned with Workmen's Compensation

Persons concerned with workmen's compensation are workmen under the Workmen's Compensation Act, 1923. The definition of workman was described in Section 2 (n) of this Act, 1923. Workman means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing and also includes a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise, but does not include-

- (i) any person employed otherwise than by way of manual labour whose wages exceeds the amount prescribed by notification made by the Ministry of Labour with the approval of the Government or
- (ii) a person employed in agriculture, that is to say, the cultivation of crops other than those grown on any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea on which any one day in the preceding twelve months twenty-five or more persons have been so employed; or
- (iii) 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, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or
- (iv) any person working in the capacity of a member of the naval, military or air forces of the Union of Myanmar or

- (v) member of a police force; or
- (vi) an outworker; or
- (vii) a member of the employer's family dwelling in his house¹

It should be noted that public servants, self-employed workers, persons concerned with Military Law, members of a police force and persons covered by Social Security Law are not covered by the Workmen's Compensation Act, 1923.

In the case of **Daw Saw Mei V Maung Mya Than and Workmen's Compensation Scrutiny Committee**², the Court held that Maung Mya Than applied that he was an employee of Daw Saw Mei. He drove a taxi owned by Daw Saw Mei. He suffered an injury from the accident of this taxi. Maung Mya Than claimed the compensation from Daw Saw Mei. Daw Saw Mei appealed that Maung Mya Than was not her employee because he did not have the licence to drive a taxi. Maung Mya Than was only a relative and his injury did not occur in during working hours. According to the statement of witnesses, Maung Mya Than was an employee of Daw Saw Mei. Whether Maung Mya Than did not have a licence to drive a taxi or not, did not concern Maung Mya Than being an employee or not. The Court decided that Maung Mya Than was an employee of Daw Saw Mei under the Workmen's Compensation Act, 1923.

If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employment shall be liable to pay compensation in accordance with the provisions of this chapter;

Provided that the employer shall not be so liable 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 drug, or
- (ii) the willful 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 willful 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.³

In the case of **Daw Paw Law (a) Daw Dora V Daw Thein Shwe and Township Workmen's Compensation Scrutiny Committee**⁴ decided by the Court, Daw Paw Law (a) Daw Dora was the owner of motorboat. Daw Thein Shwe's was an employee in this motorboat. At the port of Pathein, U Aye Maung went to drink alcohol. Then he returned to perform his duty on the motorboat. There were other three motorboats, he slipped down into the river then he died. Daw Thein Shwe applied for the Township Workmen's Compensation Scrutiny Committee in Pathein and the Commissioner decided to pay compensation. Employer appealed to the Court. U Aye Maung was an employee in this motorboat. When he went to drink alcohol, he met U Ohon Myint (master of this motorboat). U Ohon Myint ordered U Aye Maung to go back and to take up duty. While U Aye Maung was returning to motorboat for duty, he slipped down into the river

¹ Section 2 (n) of the Workmen's Compensation Act, 1923.

² Daw Saw Mei V Maung Mya Than and Workmen's Compensation Scrutiny Committee, 1974 M.L.R P-6.

³ Section 3 (1) of the Workmen Compensation Act, 1923.

⁴ Daw Paw Law (a) Daw Dora V Daw Thein Shwe and Township Workmen's Compensation Scrutiny Committee, 1977 M.L.R (C.C) P-38.

and then he died. So his accident arose out of and in the course of employment. Therefore, employer was liable to pay compensation under Section (3) of the Workmen's Compensation Act, 1923. This case employee was injured while doing his work. Relating to this case, the employee died in the course of employment and the employer was liable to pay compensation. It should be noted that the employee was injured while doing his work.

According to Section 3(2) of the Workmen Compensation Act , 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 List A of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of disease shall be deemed to be an injury by accident within the meaning of this Section and unless, the employer proves to the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

According to the explanation of Section 3 (2) of this Act; a term of service which does not include a period of employment by any other employer shall be considered as continuous for the purposes of this subparagraph.

If a workman contracts any disease specified in List B of Schedule III, and it is certified by a qualified medical practitioner that the disease is directly due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of disablement, 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 to the contrary the accident shall be deemed to have arisen out of and in the course of the employment aforesaid: Provided that the compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due.¹

In the Schedule (III) List A and List B of the Workmen's Compensation Act states the occupational disease as follows; According to Schedule (III) List A of the Workmen's Compensation Act , Occupational diseases are anthrax, lead poisoning or its sequelae, mercury poisoning or its sequelae, phosphorus poisoning by phosphorus or its compound or its sequelae, arsenic poisoning by arsenic or its compounds and its sequelae, poisoning by benzene or its homologues, their intro-and amido-derivatives, and its sequelae, poisoning by intro-and amido-derivatives benzene or its homologues, poisoning by nitrous fumes or its sequelae etc.²

According to Schedule (III) List B of the Workmen's Compensation Act, occupational diseases are dermatitis produced by dust or liquids, ulceration of the skin produced by dust or liquids, ulceration of the mucous membrane of the nose or mouth produced by dust, writer's cramp twister's cramp caused by twisting of cotton or woolen yarns inflammation, ulceration, malignant disease of the skin and sub-cutaneous tissues, due to exposure to X-rays or radioactive substances.³

¹ Section 3(2) of the Workmen's Compensation Act, 1923.

² Schedule (III) List A of the Workmen's Compensation Act, 1923.

³ Schedule (III) List B of the Workmen's Compensation Act, 1923.

A workman who contracts an occupational disease in the course of his work is to be considered as having suffered an injury by accident arising out of and in the course of his employment.

Procedure for Claiming Compensation

According to Section 10 of the Workmen Compensation Act, 1923, an employee who was injured can claim for compensation within twelve months of the occurrence of the accident or, in case of death, within twelve months from the date of death before Commissioner. Moreover, Section 30 of this law, an appeal can be made to the Supreme Court if decision of the Commissioner is not satisfactory. And the period of limitation for an appeal under this section shall be sixty days.¹

Benefits and Compensation for Temporary and Permanent Disablement

In cases where the injury results in incapacity of such a nature that the injured workman must have the constant help of another person, additional compensation equivalent to twenty-five percent of the compensation payable in respect of the injury shall be paid to the injured workman.²

Under the Workmen's Compensation Act, 1923, "total disablement" means such disablement, whether of a 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 per cent;³

Where permanent total disablement results from the injury-

- (i) in the case of an adult, a sum equal to 36 times 140 per cent of the workman's monthly wages calculated in accordance with this Act: Provided that the minimum and the maximum payment in such a case shall be 3,024 Kyats and 10,080 Kyats respectively, and
- (ii) in the case of a minor twelve hundred kyats.⁴

And then, "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, 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;⁵

¹ Section 10 and Section 30 of the Workmen Compensation Act, 1923.

² Section 4 (1) (E) of the Workmen's Compensation Act, 1923.

³ Section 2 (l) of the Workmen's Compensation Act, 1923.

⁴ Section 4 (1) (B) of the Workmen's Compensation Act, 1923.

⁵ Section 2 (g) of the Workmen's Compensation Act, 1923.

The amount of compensation where permanent total disablement results from the injury under proviso of clause B (i) and B (ii) of sub-section (1) of section 4 shall be from the minimum of 200,000 Kyats to a maximum of 600,000 Kyats.¹

In the Bill of Workmen's Compensation Law, 2018, the minimum and maximum compensation payable shall be 30 lakhs and 60 lakhs, respectively for permanent injury.

Benefits and Compensation for Death

If the injured party is dead, their dependents can claim compensation. The definition of dependent was described in this Act. "Dependent" means any of the following relatives of a deceased workman, namely; (i) a widow a minor legitimate son and unmarried legitimate daughter, or a widowed mother; (ii) if wholly or in part dependent on the earnings of a workman at the time of his death, a widower, a parent other 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, a minor child of a deceased daughter where no parent of child is alive or, where no parent of the workman is alive, a paternal grandparent.²

In the case of **Ma Aye Mu (daughter of deceased U Hla Kyi) V U Moe Kyi and 2**³, it was decided by the Court that appellant Daw Aye Mu applied for compensation because she was the eldest daughter of the deceased U Hla Kyi. This application was rejected by the Workmen's Compensation Committee under Section 2(1) (d) of the Workmen's Compensation Act. Although she was the daughter of deceased U Hla Kyi, she was married, and she was not entitled to compensation. So, she appealed to the Court under Section 30 of the Workmen's Compensation Act. Daw Kyin Hmwe was wife of the deceased U Hla Kyi. Daw Kyin Hmwe died on the fourth day after the death of U Hla Kyi before claiming compensation. In this case, defendant 1 and 2 was responsible to pay compensation for the death of U Hla Kyi. Daw Kyin Hmwe was alive at the time of U Hla Kyi's death and she was absolutely entitled to compensation by the defendants. In other words, it was Daw Kyin Hmwe's money. This money was entitled to the successors of Daw Kyin Hmwe. Daw Kyin Hmwe died before applying for compensation.

Therefore, Ma Aye Mu was a successor of Daw Kyin Hmwe. Ma Aye Mu was entitled to compensation for the death of U Hla Kyi.

Where death results from the injury, in the case of an adult, a sum equal to 36 times the workman's monthly wages calculated in accordance with this Act; provided that the minimum and the maximum payment in such a case shall be kyats 150,000 to kyats 450,000 respectively.⁴

Exactly the same minimum and maximum amount are contained in the Ministry of Labour which state the amount of compensation where death result from the injury under proviso of clause A (i) and A (ii) of sub-section 4, shall be from the minimum of kyats 150,000 to a maximum of kyats 450,000 respectively.⁵

¹ Notification (1/2005) of the Ministry of Labour (Ministry of Labour, Immigration and Population).

² Section 2 (1) (D) of the Workmen's Compensation Act, 1923.

³ Ma Aye Mu (daughter of the deceased U Hla Kyi) V U Moe Kyi and 2, 1976 M.L.R (C.C) P-83.

⁴ Section 4 (1) A (i) of the Workmen's Compensation Act, 1923.

⁵ Notification No (1/2005) of the Ministry of Labour (Ministry of Labour, Immigration and Population).

According to the Bill of the Workmen's Compensation Law, 2018, the minimum and maximum compensation for death shall be 15 lakhs and 30 lakhs.

Under Section 2 (2) of this Act, any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.

In the case of **Thein Thein Win Tiger Balm and Khin Maw Li Plastic Production V The Workmen's Compensation Commissioner**,¹ the court held that, there were no official starting and ending of working hours in the appellant's workplace and also that no announcement had been made about working hours to the public. The employee, Maung Thein Aung, did not live in the workplace or near the workplace, so he had to come to work early before the normal working hour. On the day of the incident, the employee arrived early at the workplace and started carrying out his duties for the benefit of his employer. In this case, there was no prohibition against starting work before normal working hours and the employee had died while carrying on his duties before the normal working hours. So it could be said that he died during working, that is, died in the course of employment.

This case pointed out that how claims for compensation for death in the course of employment are decided on whether or not the employee was at the time of engaged in work for the employer.

It should be noted that when workers suffer injury by accident arising out of and in the course of their employment, a worker is entitled to compensation. Compensation relating to employment injury was covered by Workmen's Compensation Act, 1923. In order to get compensation under the Workmen's Compensation Act, the employee must be covered by the relevant law and the accident must arise out of or in the course of employment

Conclusion

An injured person is entitled to workmen's compensation for an injury arising out of or in the course of employment. So, to get compensation under this practice, the employer must not have been under the influences of drugs or alcohol at the time of the injury, must not have disobeyed the rules and conditions of the workplace or neglected to use the safety guards event of the death of an employee, his spouse or dependents are entitled to the benefits or compensation. Relating to the amount of compensation, the amount of compensation payable has been found to be inadequate and insufficient for the current situation. In 2018, the Workmen's Compensation Bill was drafted. Under the bill, the minimum and maximum compensation for death shall be 15 lakhs and 30 lakhs. For permanent injury, the minimum and maximum compensation payable shall be 30 lakhs and 60 lakhs, respectively. Therefore, it should be found that to enact this law as early as possible, efforts should also be made.

¹ Thein Thein Win Tiger Balm and Khin Maw Li Plastic Production V the Workmen's Compensation Commissioner, 1967, M.L.R, P-752.

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