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Editorial

CHANGE OF LABOUR LAWS

There is a total confusion about the initiative of the Central Government in the name of the consolidation of the Labour Laws and codification of the same. The amendment bill to this effect has been placed before the Parliament and the Parliament has since accepted the resolution of the Central Government. The proposal of the Government is to club all these laws which is about 45 to 50 in number under 4 broad codes as claimed by the Government.

The Central Government was hasty in their approach. Their idea was to create an impression to the foreign investors as well as the industrialists in the country by these moves they are providing level playing field to them so that they can run their institutions with total control over the workmen. They wanted that they should be free to hire and fire. They do not want to follow any of the laws that are impediment to their profiteering and hence they were insisting that the Government should take back all its interference in the garb of protecting the labourers from exploitation.

The Central Trade Unions have been fighting against these initiatives on the part of the Government. However, in view of the brutal majority that the Government commands and the divided opposition, it has managed to ensure smooth passage to the Codes that it intends to bring in as future labour laws.

One of the initiative of the Central Government in regard to the fixation of the minimum wages at ₹ 18,000/- went into rough weather with the ruling party ministers themselves opposing this direction and wanted that they should be free to decide about the minimum wages depending upon the financial condition of their respective ministries. As such a provision was made in the proposed law that the various ministries at the Central Government will have a inhouse committee and decide about the capability of accepting the proposal for fixing a minimum wage of ₹18,000/-, thus one of the important initiative of the Labor Department to fix a minimum wages at ₹ 18,000/- was blocked by the other Ministries in the Central Government.

There are several initiatives which should have been taken by the Government as suggested by the Central Government in regard to ensuring minimum social security and protection to the unorganized sector. Unfortunately, the Government is yielding to the pressures of the Industrialists and has been allowing free hand to the State Governments to make changes wherever it is required according to their own judgment. One of the recent such initiative was in regard to the overtime work by the women employees including the night shift etc., There was a lot of restriction in regard to the women workers for doing overtime. The nightshift was totally prohibited in their cases. However due to the changing scenario in several sectors in particular IT and BT, the Service Sector etc., these restrictions have been relaxed and the State Governments are empowered to make suitable amendments to shop and establishment act as well as the factory act etc., so that the women employees can be called upon to work in all the shifts etc.,

The initiative of the Central Government and the draft Bills should have been extensively discussed at places providing full opportunity to all the stake holders to raise the objections and come out with their own version wherever necessary. The Government should have invited the public participation and sufficient time should have been provided for the unions to come out with their opinion on all the changes proposed by the Government.

The Central Trade Unions have been demanding a thorough discussions on several core issues connected with the job security, the social security measures etc., including the superannuation benefits before the Government takes up major changes as proposed by it. Unfortunately, when these major laws were brought for discussions on the floor of the house, the poor attendance and putting through the bills without any discussions in a smooth manner is definitely against the interest of the working class in this country.

WORKING CLASS UNDER STRAIN

One of the greatest challenges that the trade unions of the workers in the country are facing is the impact of covid on the working class, like the mass exodus of skilled, semi-skilled workers to their native places during the lock down on account of preventive measures announced by the Central Government to control the covid impact on our country. The Government failed to arrest these movement of workers from the major cities to the villages creating a serious problems to industries in almost all parts of the country. The building of infrastructure that was an ongoing scheme all over the country came to a standstill. The State Government was not able to take care of the basic requirements of these workers whose number is very substantial.

The stoppage of the transportation, the movement of goods and labourers from place to place has become a major issue for the Government to resolve. Though the Centre is claiming that the normalcy in the economic activity is getting slowly revived is not giving the comfort to the workers all over the country. The frequent directions in regard to the control of the covid and also revival of the economy is yet another critical area to provide sufficient comfort to the workers in the country.

The industry that flourished very well is technology. The digitalization of the business transaction, trade and commerce, communication etc., was rapid. The virtual transactions became order of the day. The meetings, the negotiations, the discussions etc., were conducted through virtual meetings. The people were taught to become techno savvy and lot of incentives and cash back benefits were made available to inculcate the habit online business amongst the common man in all parts of the country.

The work from home was all pervasive. The physical presence was almost nil in the IT and BT except for the essential services, though IT and BT companies were permitted to use about 30% workforce through physical presence. The IT and BT companies found that the concept of work from home is more beneficial to them. These companies managed to

TO SEEK A FAVOUR IS TO BARTER AWAY ONE'S FREEDOM save a lot on their overheads especially on the establishment, conveyance, security etc., The corporate made use of the situation and reduced their workforce. Some of the industries in particular travel and hospitality is reported to have thrown major portion of their workforce from their establishment. The Airways which is now largely managed by the Private Sector has also taken similar steps. The salaries for those who were engaged in these corporate were also not paid regularly. The same situation prevailed in several Public Sector units managed by Centre as well as State due to the close down of the operation.

The Banking Industry functioned as usual despite the rapid spread of Corona Virus in the country. The Branches and Offices were kept open so that the financial activity continue to keep the economy going. The employees and officers took lot of risk in attending the branches/offices. In the process many of our employees were affected by Covid. The Management provided certain relief to all such employees and officers in the bank. However, such instances had a telling effect on the psyche of the staff and also vis-a-vis the members of their families, their neighborhood, relatives and friends in the society. The Government and other agencies are claiming that the economy is reviving. Normalcy is being restored in all sectors of the economy. The RBI and the managements of the banks have been claiming that the normalcy is being restored in the economic activity and the banking business is now picking up.

Unfortunately, there are no material information quoting the data by the various agencies in particular the Central Government about the living conditions of the working class in the country. The inflation is rampant. The increase in the price of the essential commodities is affecting the day to day life of the common man in the country. A time has come for all the organizations in particular the Central Trade Unions, Federations and Associations of all the Financial Institutions to mobilize a movement against the sufferings of the Working class and demand a detail survey of the present labour condition in the country.

LABOUR COMMITTEE SCRUTINIZES PENSION CORPUS INVESTMENTS

The parliamentary committee on labour on Wednesday raised doubts about the move by the Union government to make investments from the Employees' Provident fund Organization's (EPFO) corpus during the coronavirus pandemic.

The committee at its meeting on Wednesday asked representatives of the ministry of labour to submit all replies in writing after these were found to be not satisfactory. The meeting was called to discuss the functioning of the EPFO with special reference to the EPF Pension Scheme. A key concern flagged in the meeting was investing the corpus in equities and the results it has shown, according to people with knowledge of the development.

"Investments from EPF corpus were made in equity and debt instruments, mainly in equity, in March when it was known that the situation was gloomy......

The panel is not satisfied with the oral replies of the representatives of ministry of labour and that is why it asked them to send the replies in writing, said one of the persons mentioned above.

Members of the standing committee also pointed out that it was known that there was a possibility of negative return on investments and questioned who had sanctioned these investments from the EPFO corpus.

"The ministry representatives were asked what share of the corpus has gone to the markets, to which companies, what the position is now, and about refund by that institution. Several companies have been hit during the pandemic and their ratings have gone down. So there was also concern about whether they are in position to refund that amount," said the person quoted above, requesting anonymity.

Another meeting of the committee could be called in the first week of November after which it would submit its recommendations to the Centre, the person said. The impact of the working of the EPFO being subsumed in the labour code was also discussed at the meeting. It was also suggested that the EPFO could consider a social security scheme for unorganized and home-based workers.

"The government officials said that only a part of the funds has gone to the markets and there should be no cause of concern," the person quoted above said.

Source: The Mint, Dt.22.10.2020

COVID-19 LOCKDOWN IN INDIA HAS IMPACTED EDUCATION OF OVER 247 MILLION SCHOOL CHILDREN

However, the report has highlighted the efforts done by the central and state government to continue education for children through multiple e-platforms like web portals, mobile apps, TV channels, etc

A report prepared by UNICEF has revealed that COVID-19 pandemic in India and lockdown has impacted 247 million children enrolled in elementary and secondary education, besides 28 million children who were undergoing pre-school education in Anganwadi centres.

According to the report, at least 600 million South Asian children have been threatened by the impact of COVID-19 pandemic.

Pointing out the revelations in India's perspective on education and learning of a child, the UN report said, "In India, school closures have impacted 247 million children enrolled in elementary and secondary education. It has impacted about 28 million children who were attending pre-school education in Anganwadi centres. This is in addition to more than six million girls and boys who were already out of school prior to the COVID-19 crisis." However, the report has highlighted the efforts done by the central and state government to continue education for children through multiple e-platforms like web portals, mobile apps, TV channels, radio and podcasts to reach children, Diksha platform, Swayam Prabha TV channels, e-Pathshala and the National Repository of Open Educational Resources. In the wake of COVID-19 lockdown, recently, the National Council for Educational Research and Training (NCERT) has prepared an alternative academic calendar for classes 1 to 12 with suggested activities to guide learning at home.

Importantly, UNICEF report has indicated that approximately only a quarter of households (24 per cent) in India have access to the internet and there is a large rural-urban and gender divide. A large number of children are likely to miss out on distant learning opportunities, the report said.

On issues related to child protection, Child Protection — 'CHILDLINE', a service of the Ministry of Women and Child Development had received 460,000 calls in 21 days from March 20 to April 10, a 50 per cent increase from their regular call volumes.

"Nearly 10,000 of these were intervention cases which required CHILDLINE staff to reach the children in need of support. Of these 30 per cent were related escalation in violence, child sexual abuse, child marriage and child labour," said the report.

Dr Yasmin Ali Haque, UNICEF Representative in India said, "The pandemic has exposed the fragility of children, less by the virus itself but much more by the indirect and long-term fallout. Millions of vulnerable children are losing out on their development and learning opportunities and their right to survive. The most vulnerable families need to be protected by social protection schemes that can help them access healthcare, schooling for children, afford nutrition etc. This can only be ensured by a firm commitment from the governments and all stakeholders."

The secondary impact of the COVID-19 crisis has aggravated the access to affordable and nutritious food for children.

"In India, around 20 million children under five years of age are suffering from wasting, over 40 million children are chronically malnourished and more than half of Indian women aged 15-49 years are anaemic," said the UN report.

According to the newly published study by Johns Hopkins, Bloomberg School of Public Health in the Lancet Global Health Journal, due to reductions in routine health service coverage levels, disruption in life-saving immunisation activities and an increase in child wasting, up to 3,00,000 children could die in India alone in the next six months.

Source: Business World, dt: June.24 2020

41 LAKH YOUTH LOSE JOBS IN INDIA DUE TO COVID-19 PANDEMIC: ILO-ADB REPORT

As many as 41 lakh youth in the country lost jobs due to the COVID-19 pandemic while construction and farm sector workers account for the majority of job losses, according to a joint report by the International Labour Organization (ILO) and the Asian Development Bank (ADB). "For India, the report estimates job loss for 4.1 million youth. Construction and agriculture have witnessed the major job losses among seven key sectors," said the ILO-ADB report, titled 'Tackling the COVID-19 youth employment crisis in Asia and the Pacific', released .

The young people's employment prospects in Asia and the Pacific are severely challenged due to the pandemic, it added.

Youth (15-24 years) will be hit harder than adults (25 and older) in the immediate crisis and risk bearing higher longer-term economic and social costs, said the report.

The report is based on regional assessment of the 'Global Survey on Youth and COVID-19' and arrived at estimates based on available unemployment data in different countries.

It said that in India, two-thirds of firm-level apprenticeships and three quarters of internships were completely interrupted during the pandemic.

The report calls on governments in the region to adopt urgent, large-scale and targeted measures to generate jobs for the youth, keep education and training on track, and to minimise future scarring of more than 660 million young people in the region.

Even before the COVID-19 crisis, youth in Asia and the Pacific faced challenges in the labour market, resulting in high unemployment rates and large shares of youth excluded from both school and work.

In 2019, the regional youth unemployment rate was 13.8 per cent, compared to 3 per cent for adults; and more than 160 million youth (24 per cent of the population) were not in employment, education or training.

Four in five young workers in the region were engaged in informal employment - a higher share than among adults - and one in four young workers was living in conditions of extreme or moderate poverty.

"The pre-crisis challenges for youth are now amplified since COVID-19 hit. Without sufficient attention, our fear is that this risks creating a 'lockdown generation' that could feel the weight of this crisis for many years to come," said Sara Elder, lead author of the report and head of the ILO Regional Economic and Social Analysis unit.

The report cites three ways in which young people are affected in the current crisis. These are job disruptions in the form of reduced working hours and earnings, and job losses for both paid workers and the self-employed; disruptions in their education and training; and difficulties in transitioning from school to work, and moving between jobs in a recession.

Youth unemployment rates in the region increased sharply in the first quarter of 2020 from the last quarter of 2019, it said.

Compared to the first quarter of 2019, the youth unemployment rate increased in six of the nine economies with available data - Australia, Indonesia, Japan, Malaysia, and Vietnam, as well as in Hong Kong, China, which showed the largest increase of 3 percentage points. In all these economies, youth rates increased more than adult rates, the report showed.

Between 1 crore and 1.5 crore youth jobs (full-time equivalent) may be lost across 13 countries in Asia and the Pacific in 2020, according to the report's projections.

According to the report, reasons young people in the region face greater labour market disruption and job losses than adults is that nearly half of them (more than 10 crore) were employed in the four sectors hardest hit by the crisis. The sectors are wholesale and retail trade and repair; manufacturing; rental and business services; and accommodation and food services.

Young women are over-represented in three of the four most-affected sectors, particularly in accommodation and food services, it said.

Compounded by the forced suspension of education and training, the COVID-19 crisis will affect young people's transitions to and within labour markets, and could result in scarring effects, as seen in previous crises, according to the report.

It recommends urgent, large-scale and targeted responses, including youth-targeted wage subsidies and public employment programmes, and measures to mitigate the impact on students of the disruption to their education and training.

Governments should consider balancing the inclusion of the youth in wider labour market and economic recovery measures, with youth-targeted interventions to maximise effective allocation of resources.

"Prioritizing youth employment in the COVID-19 recovery process will improve Asia and the Pacific's future prospects for inclusive and sustainable growth, demographic transition and social stability," said Chris Morris, head of the ADB NGO and civil society center and leading ADB's Youth for Asia initiative.

Source: Economic Times, Dt.18th .Aug, 2020.

EMPLOYMENT RESILIENT IN LISTED COMPANIES

The nominal wage bill of listed companies grew by 8.5 per cent in 2019-20. This is at the lower end of the annual growth rates of wages recorded in the past four years. Nominal wages of listed companies had grown by between 9 and 12 per cent in the preceding four years. Growth in 2019-20 was not only lower than in the recent past but, it was also barely higher than the inflation rate recorded during the year. Therefore, much of the increase in the wage bill was offset by the 7.5 per cent consumer price inflation. The inflation adjusted wage bill of listed companies saw a meagre 0.95 per cent increase in 2019-20. This was the lowest annual growth in real wages in ten years.

The 8.5 per cent nominal increase in the wage bill of listed companies was the combined outcome of an increase in employment and a simultaneous increase in the nominal wage rate. The average wages per employee of listed companies was Rs.715,082 per annum. This was 5.6 per cent higher than it was a year ago. However, this increase in the wage rate was lower than the 7.5 per cent inflation in the year. As a result, the inflation adjusted wage rate declined for the first time in over ten years. It declined by 1.8 per cent.

Listed companies increased their headcount by 2.8 per cent in the year. These estimates are drawn from the audited annual financial statements of 2,623 listed companies for the financial year 2019-20 available in CMIE's Prowess database. These companies employed 8.2 million people during the year.

The 2.8 per cent increase in employment by these listed companies is heartening. Overall employment had grown by only 0.6 per cent during the year according to CMIE's Consumer Pyramids Household Survey. And, the count of salaried employees had declined by 2 per cent from 87.7 million in 2018-10 to 85.9 million in 2019-20. Listed companies did much better on providing additional jobs than the rest of the economy.

These companies provide better quality jobs and so it is particularly reassuring to see these jobs grow faster than the overall growth of jobs in India. In 2018-19, overall salaried jobs grew by 0.1 per cent according to CPHS but the listed Prowess companies saw a growth of 5.2 per cent in employment. Earlier, in 2017-18, while CPHS showed a 1.6 per cent increase in salaried jobs, Prowess showed a 2.6 per cent increase in jobs. This is an encouraging feature of the kind of jobs growing in India. Currently, jobs in listed Prowess companies account for less than ten per cent of all salaried jobs.

Quarterly financial statements of listed companies indicate a substantial deterioration of employment conditions during the first half of 2020-21.

In the first quarter of 2020-21 which ended in June 2020, their nominal wage bill recorded its lowest year-on-year growth of 2.2 per cent. Quarterly financial statements are usually available for around 4,500 companies per quarter. Results for the second quarter, ended September 2020 are still flowing in. As of November 8, data for 1,314 companies were available in the Prowess database. These indicate that the wage bill grew by 6.5 per cent during this quarter. Given that companies whose performance is relatively poor tend to delay releasing their financial statements, it is likely that the growth in wages seen thus far could deteriorate in the coming weeks as the sample size rises to more than 4,000. Nevertheless, it may be fair to assume an improvement in the growth in the wage bill compared to the 2.2 per cent growth recorded in the first quarter.

It is likely that the year-on-year growth in the wage bill of listed companies during the first half of 2020-21 could be between 3 and 4 per cent. This, of course, would be its worst record in decades. A 3-4 per cent increase in nominal wages implies a fall in real wages because inflation has been around 6.8 per cent during this period. It is possible that real wages fell by 3 per cent in the listed companies of India.

Employment data is not available systematically for all listed companies in their quarterly financial statements like they are available in their audited annual financial statements. As a result, we cannot comment with confidence on the employment trend in these companies during 2020-21. But, we may conjecture that even listed companies must have seen substantial job losses in the first half of 2020-21.

If part of the 3-4 per cent fall in real wages is the result of a fall in the wage rate (a fair assumption), then the fall in employment in listed companies is likely to be less than 3 per cent during the first half. This reflects remarkable resilience of jobs in the listed companies even during the lockdown. This is particularly encouraging because according to CPHS the fall in salaried jobs during the first half was of the order of 20 per cent. Apparently, the fall in salaried jobs happened mostly in unlisted companies and in the unorganised sector where 90 per cent of such jobs exist.

Writer: Mahesh Vyas MD and CEO, CMIEP Ltd
Business Standard: dt.10/11/2020

FORTUNE FAVOURS THE BRAVE

NEARLY 87% OF INDIAN FIRMS ARE PLANNING SALARY HIKES IN 2021

As many as 87% of Indian companies plan to raise employee salaries in 2021, up from 71% this year, underscoring optimism among India Inc. about a potential turnaround in fortunes after the widespread turbulence caused by the covid-19 pandemic.

These companies are expected to offer an average 7.3% salary hike to their employees in 2021, rising from a dismal 6.1% average increase this year, according to the India Salary Increase Trend Survey by global human resource consultancy.

The proportion of companies among those surveyed who will not offer any pay hike next year is likely to more than halve to nearly 14%, compared to the 29% of companies that did not hike pay this year.

Next year's expected 7.3% increase would still be the lowest in 14 years excluding this year and 2008-2009 when the world was engulfed by the global financial crisis.

The survey, which collated data from more than 1,050 companies across 20 industries, said employees still won't receive a high salary increase and only 47% are expected to offer more than 8% increment next year against 44% this year.

As of September-October 2020, 61% of the companies surveyed plan to offer salary increases between 5% and 10% next year. This compares with only 46% who issued 5%-10% increases this year, according to the Aon survey.

"Despite the gravity of the covid-19 pandemic in India and its deep impact on the economy, organizations in the country have shown tremendous resilience and a mature view on talent," said Nitin Sethi, a partner at Aon, and CEO of the firm's performance and rewards solutions practice in India.

Industries that aim to offer the highest salary increases belong to the hi-tech, information technology (IT), IT Enabled Services (ITeS), life sciences, e-commerce, chemicals, and professional services sectors, as per the survey.

Companies in hospitality, retail, real estate, and infrastructure sectors will be laggards in raising employee salaries in 2021. Some of these sectors were among the worst hit by the pandemic.

"Business and human resource leaders made hard decisions in second and third quarters of 2020 and are now betting on the green shoots of improving consumer demand. They see the need to invest in talent as a critical part of their recovery and growth prospects," Sethi said.

Navneet Rattan, director at Aon in India's performance and rewards solutions practice, said the impact of covid-19 has been "varied on different sectors and organizations.".

"We see high differentials in salary increases, both intra and inter-industry. The difference between industries with highest increase to lowest increase hits 7.2% points as compared to a mere 2.4% points in 2019," he said.

Source: The Mint, Dt.05-10-2020

STRONG REASONS MAKE STRONG ACTIONS

[2020 (165) FLR 359]
(SUPREME COURT)
ASHOK BHUSHAN and NAVIN SINHA ,JJ.
Civil Appeal No(s) 1836 of 2020
March 6, 2020
Between
POONAM DEVI and others
And
ORIENTAL INSURANCE CO.LTD.

Workmen's Compensation Act, 1923-Section 4-A (3) (b)-Deceased, a driver slipped into the Canal and died-He was in employment of respondent No.2 and was driving her vehicle-Workmen's compensation commissioner allowed the claim of appellants-High Court allowed the appeal of Insurance Company on the ground that merely because death had occurred in the course of employment would not be sufficient till it is not established that it was incidental and arose out of employment-Hence, the instant appeal-Held, the truck was not air conditioned-In the middle of the afternoon in June, 2003 in Yamunanager (Haryana),it was necessary for the deceased to stay fresh and alert not only to protect the truck but also to ensure a smooth journey and protect his own life by safe driving-Truck was also requiring water to prevent overheating could not be completely ruled out-To ensure the safety of truck and to ensure his own safety and a safe journey for himself has to be considered as incidental to the employment by extension of the notional employment theory-Order of High court set aside-

Appeal allowed.[Paras 11 to 15]

JUDGMENT

NAVIN SINHA, J.- The appellants are the legal heirs of the deceased. They were granted compensation of 4,45,420/- with interest at the rate of 12 per cent by the Commissioner, Workmen's Compensation Act from the date of accident up to the date of deposit in addition to a penalty imposed on the employer under Section 4A(3)(b) of the Workmen's Compensation Act, 1923 (hereinafter called "the Act"). The High Court on 09.05.2014 has allowed the appeal of the respondent holding that the death occurred during the course of employment but did not arise out of the employment.

2. The deceased was aged 21 years, in the employment of respondent No.2 (since deleted), and was driving her TATA 407 vehicle bearing registration No. UP 15P 1689 on 11.06.2003 from Ambala to Meerut, a distance of approximately 200 Kms. At about 12.30 PM, when he approached the bridge near village Fatehpur, the deceased went to the Yamuna canal to fetch water and also to have a bath. Unfortunately, he slipped into the canal and died. The vehicle was insured with the respondent Insurance Company. P.W.2, who was standing near the bridge, deposed that the deceased had gone to fetch water in a can along with the cleaner who tried to save him, but both slipped into the canal. The Workmen's Compensation Commissioner by order dated 12.12.2005 allowed the claim as aforesaid.

3. The High Court in appeal by the Insurance Company held that the deceased may have died during the course of the employment but death did

MAN IS THE ARCHITECT OF HIS OWN FUTURE

not arise out of the employment, as bathing in the canal was not incidental to the employment but was at the peril of the workman. There was no casual connection between the death of the workman and his employment. He had gone to fetch water for personal consumption and it was not his case that the truck was over heated.

4. Mr. Vikas Bhadana, learned counsel for the appellants, submitted that there was a causal connection of the death with the employment. In the extreme heat of the month of June at noon, a presumption would arise that the deceased had gone to the canal to fetch water not only to cool the truck but also himself to ensure a proper and safe journey of the vehicle belonging to the employer and his own safety. Reliance was placed on Leela Bai and another. v. Seema Chouhan and another.

5. Mr. Ajay Singh, learned counsel for the respondent opposing the appeal, submitted that the High Court has rightly held that there was no casual connection between the death of the deceased with the employment. Merely because death may have occurred in the course of the employment will not suffice unless it is established that it was incidental and arose out of the employment. Reliance was placed on Malikarjuna G. Hiremath v. Branch Manager, Oriental Insurance Company Limited and another.

6. We have considered the submission on behalf of the parties and have also perused the impugned orders as also the case law cited before us.

7. The Workmen's Compensation Act, 1923 (now christened as "Employee's Compensation Act, 1923") is a piece of socially beneficial legislation. The provisions will therefore have to be interpreted in a manner to advance the purpose of the legislation, rather than to stultify it. In case of a direct conflict, when no reconciliation is possible, the statutory provision will prevail only then.

8. Relevant to the discussion is Section 3 of the Act. The relevant extract reads as follows:

> "3. Employer' s 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:
>
> XXXX"

9. In Manju Sarkar & Others. v. Mabish Miah and Others, the deceased was driving the employer's truck from Agartala to Churaibari FCI godown. When he reached near Dharam Nagar, he got down to make arrangements for repairing some mechanical problems in the truck when he was hit on the road by another vehicle and died in the hospital. Applying the principle of notional extension, it was held that death occurred in the course of employment relying upon B.E.S.T. Undertaking v. Agnes.

> "Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. 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 at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As 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."

10. More recently in Daya Kishan Joshi & another v. Dynemech Systems Pvt. Ltd., the deceased was

employed as an engineer for promoting sales and installation of products which required him to move around in the field. While returning from field work, he met with an accident resulting in death. Holding that his being on the road related to the nature of his duties, not only the injury was caused during the currency of the employment but also arose out of the employment.

11. Coming to the facts of the present case, the deceased was driving the truck of respondent no.2 from Ambala to Meerut. Indisputably he was in the course of his employment. We can take judicial notice of the fact that considering the manufacturer's specification, the cabin of the truck was not air conditioned and would have been a baking oven in the middle of the afternoon in the sultry monsoon heat of June 2003, when the temperature was touching 42.6^{0}C in Yamunagar (Haryana) (source: weatheronline.in). It was a compulsion for the deceased to stay fresh and alert not only to protect the truck of respondent No.2 from damage but also to ensure a smooth journey and protect his own life by safe driving. We can also take judicial notice of the fact that the possibility of the truck also requiring water to prevent overheating cannot be completely ruled out. In these circumstances, can it be said that the act of the deceased in going to the canal to fetch water in a can for the truck and to refresh himself by a bath before continuing the journey was not incidental to the employment? Every action of the driver of a truck to ensure the safety of the truck belonging to the employer and to ensure his own safety by a safe journey for himself has 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 judgement by reason of the heat. The theory of notional extension noticed in the Agnes (supra) and followed in Leela Bai (supra) is extracted hereunder:

> "9. In the facts of the present case and the nature of evidence, there was a clear nexus between the accident and the employment to apply the doctrine of "notional extension" of the employment considered in Agnes (supra) as follows:
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> "...It is now well--settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all time this theory of notional extension."

12. In Leela Bai (supra), the deceased having completed his journey as a driver stayed back on the roof of the bus to ensure early scheduled departure the next morning by not going home. While he was coming down the roof of the bus he slipped and died. It was held at paragraph 7 as follows:

> "7. In the facts of the case, and the evidence available, it is evident that the deceased was present at the bus terminal and remained with the bus even after arrival from Indore not by choice, but by compulsion and necessity, because of the nature of his duties. The route timings of the bus required the deceased to be readily

A GOOD MAN DOES NOT ARGUE, HE WHO ARGUES IS NOT A GOOD MAN available with the bus so that the passenger service being provided by Respondent 1 remained efficient and was not affected. If the deceased would have gone home every day after parking the bus and returned the next morning, the efficiency of the timing of the bus service facility to the travelling public would definitely have been affected, dependent on the arrival of the deceased at the bus-stand from his house. Naturally that would bring an element of uncertainty in the departure schedule of the bus and efficiency of the service to the travelling public could be compromised. Adherence to schedule by the deceased would naturally enure to the benefit of Respondent 1 by enhancement of income because of timely service. It is not without reason that the deceased would not go home for weeks as deposed by the appellant. Merely because the deceased was coming down the roof of the bus after having his meal, cannot be considered in isolation and interpreted so myopically to hold that he was off duty and therefore would not be entitled to compensation."

13. We see no reason why the application of the theory of notional extension will therefore not apply in the facts of the present case also.

14. Malikarjuna (supra) is distinguishable on its own facts as the deceased had completed his journey from Siraguppa to the Gurugunta Angreshwar temple, after which he went to the pond and while taking a bath slipped and drowned. The case is completely distinguishable on its own facts.

15. We, therefore, find the order of the High Court to be unsustainable. It is set aside. The order of the Workmen's Compensation Commissioner dated 12.12.2005 is restored. The payments in terms of the order of the Workmen's Compensation Commissioner be made to the appellants within a period of six weeks from today. Since respondent No.2 stands deleted, the question of payment of penalty by her does not arise.

16. The appeal is allowed.

Appeal Allowed.

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