ADJUDICATION OF DISPUTES AND CLAIMS UNDER 'THE EMPLOYEE'S STATE INSURANCE ACT, 1948'

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For the purpose of understanding this topic, the background of the Act itself shall be known. The Employees' State Insurance Act, 1948, was enacted to create a social security system that would protect the interests of industrial and commercial workers and their families by providing them with essential healthcare and financial benefits during various contingencies, thus improving their overall quality of life. As the Bare Act says, *"An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto."* It is also said that The Employees' State Insurance Act of 1948 (ESI Act) was the first major legislation passed by the parliament with an aim to provide social security for the workers.

Firstly, certain definitions within the meaning of this Act as given below must be understood to grasp this topic with ease –

1. Principal Employer – It shall mean the owner of a factory/establishment to which this Act applies, or the managing agent of such owner, the legal representative of such owner(deceased), or the Manager as under the Factories Act, 1948. It shall also include any authority appointed to control and manage the establishment by the Government of India, and if not appointed then the Head of the respective department. In case of any other establishment, the person who is responsible for the supervision of such establishment will be deemed to be the Principal Employer.

2. Immediate Employer – It shall mean any person who has undertaken the execution stages of the establishment to which this Act applies, or under the supervision of the Principal Employer or his agent does any work related to the purpose of such establishment, or who hires an employee to the Principal Employer.

3. Employee – It shall be the person who is employed for getting wages with respect to the work that he provides for the establishment to which this Act applies, or who is directly

employed by the Principal Employer or the Immediate Employer or is let on hire to the Principal Employer by any other person with whom he has entered into the contract of employment.

This section will NOT include the persons who are the member of the Indian Navy, Indian Army, Indian Air Force, and also the persons whose wages exceed the wage as prescribed by the Central Government.

4. Corporation – It shall mean the Employee's State Insurance Corporation established under section 3 of this Act.

5. Contribution – It is the sum of money payable by the Employer on behalf of himself and the Employee to the Corporation.

   Note: The amount of the employee's contribution is to be recovered by deduction from the employee's wages and not otherwise.

6. Insured person – Any person who is/was an employee of any establishment to which this Act applies, and the contributions are/were payable in respect to him, and who is entitled to any of the benefits of this Act.

7. Disablement –

   a. Permanent Partial Disablement – Any physical injury which lead to the disablement of such nature which reduces the earning capacity of an Employee with respect to the employment which he was able to perform at the time of accident which resulted in such injury.

   b. Permanent Total Disablement – Any physical injury which lead to the disablement of such nature which completely incapacitates the Employee with respect to the employment which he was able to perform at the time of accident which resulted in such injury.

   c. Temporary Disablement – Any physical injury which renders the Employee temporarily incapable of performing with respect to the employment which he was able to perform at the time of accident which resulted in such injury.

The chapter of 'Adjudication of Dispute and Claims' in The Employee's State Insurance Act, 1948, contains 8 sections from 74 – 83 (S.80 was omitted Employees' State Insurance (Amendment) Act, 1966).

THE CONSTITUTION OF EMPLOYEE'S INSURANCE COURT

Section 74 of the Employees' State Insurance Act, 1948, is a provision that empowers the state government to make rules and regulations to carry out the purposes and provisions of the Act, it grants the government the authority to create and enforce specific rules and guidelines that are necessary for the proper administration and implementation of the Act by constituting an Employee's Insurance Court by publishing a notice in the Official Gazette (This helps ensure transparency and allows stakeholders to provide feedback on proposed regulations). This section allows the government to delegate the power to make rules and regulations related to the Act. This delegation is often given to the appropriate authorities or agencies responsible for overseeing the implementation of the scheme at the state or regional level. The rules and regulations created under this section are essential for ensuring compliance with the Act and the efficient administration of the Employees' State Insurance scheme. It can do so for any specific local area within the territory of the State. A specific local area may have two or more Courts, and a Court may have two or more local areas within its jurisdiction, in the latter case, the government may order and regulate the distribution of cases. It is also up to the State Government to appoint and decide on the matter of number of Judges for the Court provided that the person getting appointed should be qualified enough for such position.[1] Section 74 provides flexibility to adapt to changing circumstances or requirements in the administration as it confers the power upon the State Government. This means that rules and regulations can be updated or modified as needed to address emerging issues or to improve the functioning of the scheme.

THE SCOPE OF EMPLOYEE'S INSURANCE COURT

Section 75 of the Employee's State Insurance Act, 1948, is a provision which enlists certain matters of disputes and claims to be tried in the Employee's Insurance Court.

The Employee's Insurance Court will be the deciding authority if there's a dispute regarding the validity of employment/the question of employee within the meaning of this Act, or any

[1] Qualification: The person is/was a judicial officer, or a legal practitioner for at least 5 years.

matter relating to the wages, wage period, or any matter relating to the contribution payable by the Employer or any matter involving the right to benefit, or any dispute among the establishment or between the members of establishment and the Corporation with respect to the contribution/benefit/dues.

The Employee's Insurance Court will be the deciding authority if there's matter regarding claims of recovery of contribution amount from the Principal Employer, or the recovery of contribution amount from the Immediate Employer, or the claim for recovery of any benefit arising out of this Act.

The aforementioned provisions are subjected to the matter of disablement. If there arises a question of disablement of any kind of the employee, then the matter is to be resolved on the advice of a Medical Board/Tribunal, and no Civil Court is competent to adjudicate on the matters involving the Medical Board. If such advice is not obtained, then the Court shall direct the Corporation to decide the matter after the advice such Medical Board. The Insurance Court is competent to decide on this matter if there's an appeal by the insured person or the Corporation on not being satisfied with the advice of the Medical Board.

INSTITUTION & COMMENCEMENT OF PROCEEDINGS

Sections 76 & 77 of the Employee's State Insurance Act, 1948, mentions the procedure for the institution and commencement of the proceedings in the Employee's Insurance Court.

It says that a dispute of an insured person, which has to be decided in an Insurance Court, has to be in the local area of that particular Court.

Illustration: Person named 'Goutam', who is an employee in an establishment to which this Act applies, lives in the territory/local area A. He had some dispute with his Principal Employer regarding the matter of his wage. If he wishes to go to an Insurance Court, he has to institute the case before the Court in the local area/limits/territory of A. He cannot institute the case before the Court of another territory (suppose, B).

If the Court in which any matter is pending, deems fit that any other Employee's Insurance Court in the same state can deal with the particular matter more efficiently, then it may transfer the matter to that Court. If any matter is sought to be transferred to another State altogether, it may be done by the State Government with the consent of the State Government of the

particular area to which the case is sought to be transferred, and if the transfer of case is taking place (whether inter or intra-state), the Court to which the case is transferred will be deemed to be the Court of first instance.

After the case is instituted, the case shall be commenced by moving an application before the competent Court within 3 years from the date of cause of action, and such application shall be in the correct format with fee as prescribed by the State Government in consultation with the Corporation.

POWERS & FUNCTIONS OF THE EMPLOYEE'S INSURANCE COURT

Powers & Functions of Employee's Insurance Court is provided in section 78. It states that every Employee's Insurance Court shall have the powers of a Civil Court within the meaning of section 195 of Code of Criminal Procedure, 1973, with respect to the summons or ensuring the presence of the witnesses, or for the discovery of the relevant documents or things, recording the evidence, and administering oath. Every exercise of such power shall be in the accordance with the rules and regulations as prescribed by the State Government, and the order/judgement passed by such Court shall be enforceable as if it were decree passed by a Civil Court.

PROVISION FOR APPEALS

Section 82 provides for the appellate provisions from the Employee's Insurance Court. There is no such provision for the purpose of Appeal from the Employee's Insurance Court, but if the matter is involving a serious/substantial question of law then an appeal can be made to the High Court within a period of 60 days from the order by the Insurance Court. If an appeal is made to the High Court, then the Insurance Court shall act in the accordance of the decision of the High Court. Subsequently, an extension of prescribed period can be sought provided that one has to satisfy the Court that he had sufficient cause for not preferring the appeal or making the application in such effect.

MISCELLANEOUS

Further, according to section 79, in requirement of any application, or any appearance or any act by any person should be done by a legal practitioner or any officer of a registered trade union who is authorised by the person being represented, or by the permission of the Court.

Also, if there is an appeal against the order regarding payment of sum of money of the Insurance Court, the Court shall withhold the payment of such amount if as directed by the High Court.