

Compensation for Work Related Injury or Illness under the Bangladesh Labour Act

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Abstract: This paper presents the scenario where a worker who becomes more vulnerable after suffering a work-related injury or contracting a work related disease causing incapacity to work. Bangladesh Labour Act 2006 codified all the old law and specifies law to pay damages to employees who have suffered injury or illness through their employer's fault. This paper also compares the Bangladesh Labour Act 2006 law and International Labour Standard in relation to the given recommendations for imposing liability on employers to pay damages to employees who have suffered injury or illness through their employer's fault. Finally, it raises the questions whether the present law can guarantee adequate and sustainable injury compensation scheme for the workers.

Key words: Bangladesh Labour Act 2006-2015, Compensation, Types of injuries, Work related injury, Worker

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I. Introduction

It is a fact that Bangladesh Labour Act 2006 the final amendment of which came into force in 2015, is an amalgamation of the amendments from the previous statutes. It has been implemented in organizations with the primary intention to help and develop the labour and their overall situation, providing safe work place, adequate compensation and well-being. According to the law, the commercial establishment, industries, factories, shops etc. need to implement and follow all the rules and regulations of this Act that are applicable for them respectively. This Act provides a basic guideline for the injured worker and their compensation. This Act overrides the old doctrines of assumed risks, common employment, contributory negligence, and the end of personal actions with the death of the workman. According to the provisions of the Act, the compensation paid to a workman is independent of any negligent or wrongful act on the part of his master or his master's servant.

The Bangladesh Labour Act sets out the circumstances in which 'employers' and others should pay compensation to an injured worker or – when a worker dies – to that worker's dependents. A worker can obtain compensation for an 'occupational disease', when either of these conditions exist: either a) The disease he or she contracts is considered to be 'peculiar' to the kind of employment in which he or she works as specified in Part A of Third Schedule of the Labour Law¹, or b) the worker, after a continuous period of employment of not less than six months in any employment specified in Part B of the Third Schedule², contracts a disease 'peculiar' to that industry. If either of these situations exist, then the disease is treated as an 'injury by accident' and shall be deemed to have arisen during employment.'

Workman's compensation is the term given to the insurance paid by companies to provide benefits to employees who become ill or injured at the work place. Through this scheme, workers are provided with benefits and medical care, and employers have the assurance that they will not be sued by the employee. A system of compensation for work-related injuries or death, paid for by employer compensation insurance contributions. It is a system of compensation for work-related injuries or death, paid for by employer compensation insurance contributions. The enactment of the Workmen's Compensation under the Bangladesh Labour Act 2006, opened a new phase in the lives of the workmen to achieve the ideals of social security and natural justice.

1.1 Relevant questions

This paper looks for answer to the following questions in respect of the states considered:

- a) Who is the responsible party for the payment to the suffered party - the state or the employer?
- b) What are the other steps taken to provide a secure fund from which payments may be drawn, for example insurance?

¹Bangladesh Labour Act 2006 amended by 2013,2015

²Bangladesh Labour Act 2006 amended by 2013,2015

- c) How is the situation of the problem addressed i.e. does the system provide compensation in relation with maintenance or damages or possibly both?
- d) If there are any other steps taken on rehabilitating the victim i.e. suffered person?

1.2 Methodology

This paper was inspired by considering the system that is in force in Bangladesh and a comparative study with the arrangements as provided by the international labour standard that are in operation in various foreign jurisdictions in an attempt to identify a more satisfactory system for injured persons in the work environment in Bangladesh. The research is based on the primary law, i.e., Bangladesh Labour Act 2006, 2013, 2015 and secondary data, i.e., different types of research and conference papers.

II. Workman Compensation

The provision of Workman Compensation imposed a duty on employers to make payment to the victims of industrial accidents irrespective of whether those injuries were caused during the employment.

2.1 Theory Development

Labour law arose due to the demands of workers for better conditions and shows that labour legislation can only fulfill these functions effectively if it is responsive to the conditions that exist in the labour market and needs of the parties involved. The most efficient way of ensuring that these conditions and needs are taken fully into account is if those concerned are closely involved in the formulation of the legislation through processes of social dialogue.

In an ideal situation, the system through which these workers and/or their families could seek compensation would be through the labour law of the country or available insurance scheme. It goes without saying that such option is either difficult to attain or not available at all for those who works in industries. It will be outlining the current position in Bangladesh on employees'/ workers' insurance option and the provisions that exist for workers' compensation under the law of Bangladesh with consideration of how the law helps indicates the weakness of such laws or options.

The Bangladesh Labour Act is comprehensive and progressive. The law is a consolidation and updating of the 25 separate Acts of the Parliament. The comprehensive nature of the law can immediately be gleaned from its coverage including workers' compensation for injury regulation of employment and safety of workers etc.

This Act is also considered as an improvement in many aspects as it removes certain ambiguities in the old and diverse labour acts and aligns the labour law system with the ILO core conventions. Also, its wider coverage including certain welfare and social benefits that have been improved or instituted, e.g., death benefit (financial support to family of deceased worker), adoption of group insurance for establishments with 200 or more workers, and increased employee compensation for work-related injury, disability and death³.

2.2 Who is responsible?

As general rule of the Bangladesh Labour Act, primary responsibility for providing compensation to the injured employee has always rested with the employer⁴ if a worker is bodily or physically injured by an accident arising out of the course of his employment and generally purchase insurance to cover this cost⁵. In addition, according to Article 14, Constitution of the People's Republic of Bangladesh: "It should be a fundamental responsibility of the State to emancipate the toiling masses – the peasants and the workers – and backward section of the people from all forms of exploitation"

2.3 Worker Covered and Scope of protection

The definition of 'worker' may vary in different jurisdictions, however, the core concept remains the same. 'Worker' means any person employed by the employer directly or through contractors⁶. Workers' compensation provides cash and medical benefits to workers who are injured or become ill in the course of their employment and benefits to the survivors of workers killed in an accident while on the job. Benefits are provided without regard to fault and are the exclusive remedy for workplace injuries, illnesses, and deaths.

³BANGLADESH LABOUR LAW: Reform DIRECTIONS, Jakir Hossain Mostafiz Ahmed Afroza Akter in association with BILS Research and Advisory Team, November 2010

⁴Section 150 of the Bangladesh Labour Act 2006, amended 2013, 2015

⁵Section 99 of the Bangladesh Labour Act 2006, amended 2013, 2015

⁶Section 150(8) of the Bangladesh Labour Act 2006, amended 2013, 2015

Therefore, compensation provides for disablement i.e. the loss of the earning capacity resulting from injury caused to a workman by an accident.

According to the Bangladesh Labour Act, the employer shall be liable to pay compensation in respect of any injury which does result in the total or partial disablement of the worker for a period not exceeding three days and in respect of any injury, not resulting in death, caused by an accident which is indirectly attributable to the worker's negligence (under the influence of drink or drugs), or the willful disobedience of the worker or the willful removal or disregard by the worker of any safety guard or other device⁷.

By considering the Act⁸ 'disablements' can be classified as (a) Total, and (b) Partial. It can further be classified into (i) Permanent and (ii) Temporary Disablement.

Total disablement⁹ means such disablement whether permanent or temporary is said to be total when it incapacitates a worker for all the work he could do at the time of the accident resulting in such disablement. In addition, permanent total disablement means if a workman, because of an accident, suffers from the injury or suffers from such combination of injuries as would be the reason leading to the loss of earning capacity when totaled to one hundred per cent or more.

Disablement is said to be permanent partial when it reduces for all times, the earning capacity of a workman in every employment, which he was capable of undertaking at the time of the accident. Every injury specified in Schedule I and Schedule III (including list of occupational disease) is deemed to result in permanent partial disablement.

Temporary disablement reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident.

2.4 Types of Injury (Personal or Mental or Other)

The legislation specifies that personal injury need to be suffered. This means the claimant need to suffer the equivalent of the loss of a body part to recover successfully any benefit. Injury is usually all too apparent. It is necessary to show that the claimant has suffered some change for the worse, there is a physical deterioration in the condition itself.

Stress or mental related illness are not included on the list of prescribed disease under the Schedule I or III. It is one of the dark area where for a worker it is almost impossible to claim. For this purpose, we can use the decision as given by Chief Adjudication Officer V Faulds¹⁰, where it was established that the claimant must establish not only that there has been a specific disturbing event, but also that it constitutes an accident which is the cause of his condition. In addition, the Labour Act offers no compensation for damages to worker's property or for pure economic loss.

2.5 Compensation and Assessment

The maximum amount of compensation¹¹ which may be awarded in cases of workplace deaths to the dependents of a deceased worker is Taka 1,00,000 (one lakh). In case of death, the sum must be deposited in the Labour Court by the employer. In such cases the pay outs are relatively speedy and may be realized within a year or so by the bereaved family members of the deceased worker.

In case a worker suffers **permanent disablement** because of a workplace injury, the amount of compensation provided will be Taka 1,25,000 (one lakh twenty-five thousand) unless the injury is suffered by a person under 18 years of age in which case he must pay Tk10,000 and by the percentage linked to the particular injury in the schedule that represents the likely loss of earning capacity of that worker.

In case of workers who suffer **temporary disablement**, compensation may be assessed for the period of their disablement (on the first day of the month following the month in which it is due after the expiry of a waiting period of 4 (four) days from the date of disablement¹²) or one year whichever is shorter. Thus, the amount of compensation payable for the first two months will be the full monthly wages and the amount of compensation for the next two months will be two-thirds of the monthly wages and for the remaining months, it will be half of the monthly wages.

In the case of prolonged **occupational disease**, compensation for disablement shall be paid at the rate of half of monthly wages during the period of disablement, but such period shall not be exceeded 2 (two) years.

⁷Section 150(2) of the Bangladesh Labour Act 2006, amended 2013, 2015

⁸Bangladesh Labour Act 2006 amended 2013, 2015

⁹S.2(67) of the Bangladesh Labour Act 2015

¹⁰[2000]2 All ER 961

¹¹Fifth Schedule of the Bangladesh Labour Act 2015

¹²Section 151(d) of the Bangladesh Labour Act 2015

For this purposes, any period of service shall be deemed to be continuous which is not interrupted by a period of absence from work for exceeding 14 (fourteen) days.

2.6 Compulsory Group Insurance

In an establishment where at least 100 (one hundred) permanent workers are employed, the employer shall introduce group insurance under the existing insurance laws. For this purpose, the recovery of the insurance can claim due to death of a worker shall be the responsibility of the employer and he shall make arrangement for payment of the amount so recovered from such insurance claim directly to the dependents, it shall be settled by joint initiatives of the insurance company and the employer within 120 (one hundred and twenty) days from the date of raising such claim¹³.

2.7 Payment of Monthly Compensation by Lump-sum

The employer may pay monthly compensation payable to a worker by paying a lump-sum amount¹⁴ based on the agreement between the parties in cases of deaths or permanent disabilities resulting from work-related accidents.

III. Evaluation And Conclusion

3.1 The first exclusions of the scheme are compensating only if workers are injured 'in the course of employment' and their wrongdoing may affect entitlement and have had only a limited role to play in compensating victims of disease and ill-health even though these are increasingly being related to work. The Act requires to proof of fault to play in a claim for benefit. The defence of contributory negligence reduces damages, cannot take place under the Act. In addition, under the Act fault can be relevant in determining not only the course of employment but also causation issues and it is required for employers to be liable because strict liability is imposed.

Whereas an objective approach divorced from the claimant's particular circumstances is taken under the industrial injuries scheme and disablement benefit is fixed by using simple tables related to the degree of disability so that all in the same support get the same award irrespective of their real losses. That means the Act is only offers in the indemnity and it also privileges what has been classified in the schedule. According to the Act it is employers' duty to pay compensation but most of the time it became failure to pay compensation amounts due to their insolvency or bankruptcy.

3.2 As the Daily Star reports on 29 April, 2013, though the owners of the five factories had fire and marine insurance to cover their export-import business, they did not insure their workers. While there is no ostensible obligation under the law of the country to provide commercial medical or life insurance for each individual worker. The Bangladesh Garment Manufacturer and Exports Association (BGMEA), of which the five factories are members, provide group insurance for their member factories, whereby employees get Tk. 1 lac (Tk. 100,000) in compensation if there is an accident. However, this insurance only covers 20 workers¹⁵.

In comparison to Australia, for instance, the Government of the State of Victoria has put in place an insurance system, where most employers have to pay a percentage of the total remuneration that they give to their employees (i.e. wages, salaries, benefits etc.) to Work Safe Victoria, which covers the costs of benefits if their workers become injured or become ill because of their work¹⁶. Furthermore, if the worker suffers a work-related death, then their dependents will be entitled to burial/cremation expenses, family counselling services, lump sum payments to dependents, weekly pensions for dependents for a fixed number of years and damages¹⁷.

Therefore, by comparing the law of the Australia, it may argued that there is an option of the participation fund in this Act by giving a part payment from the wages, therefore it is necessary to give more stringent efforts to ensure compliance on the parts of the employers and the Government.

3.3 The quality and effectiveness of each system has been examined in detail above but a fundamental question may be asked, is this preference justified and how efficient and fair are our systems of compensation?

For these questions to be answered in a meaningful manner, the scope of the Act can be considered. The Act does cover many of the injuries suffered at work for permanent total or partial disability. Many Rana Plaza

¹³Section 99 of the Bangladesh Labour Act 2015 was substituted for original section 99 by section 32 of the Bangladesh Labour (Amendment) Act, 2013

¹⁴Section 154 of the Bangladesh Labour Act 2015

¹⁵Sajjadur Rahman, 'Insurers won't pay RMG Units of Rana Plaza' The Daily Star (Dhaka 29 April 2013)

<<http://www.thedailystar.net/beta2/news/insurers-wont-pay-rmg-units-of-rana-plaza/>>

¹⁶A guide for employers: Your Work Cover Insurance 2015/2016;

<https://www.worksafe.vic.gov.au/__data/assets/pdf_file/0004/164632/INSURANCE-BOOKLET-2015-16.pdf>

¹⁷'Entitlements Following a Work-related Death' (WorkSafe Victoria, 01 July 2012) <<http://www.worksafe.vic.gov.au/injury-and-claims/compensation-and-entitlements/entitlements-following-a-work-related-death>>

victims did not fall into these categories of injuries. For example, the following types of injuries are not covered by the Labour Act: spinal cord injuries, paralysed limbs, kidney malfunction, head trauma, back pain, psychological consequences and damage¹⁸.

Although the approach adds to the expense of dealing with claims, it offers claimants compensation for their injury as per schedule but did not justify for their livelihood, this something which often cannot be obtained under the Labour Act. For example, The compensation amounts are paid in a lump sum and cannot guarantee lifetime income security for the injured workers or their dependents.

The compensation amounts do not meet the minimum standards of the ILO's Employment Injury Benefits Convention, 1964 (No. 121). According to Convention No. 121, a widow aged 25 with two children (aged 3 and 5) should receive a periodical benefit equal to 50 per cent of the deceased worker's wage at the time of the accident. Calculating this at the minimum wage of BDT3,000 a month at the time of the accident, the total compensation would be at least BDT600,000¹⁹.

3.4 In practice, the compensation they provide is less important than the social security system overall in meeting the needs of those who are disabled. It is necessary that whole system supposedly tailors its award to the precise losses suffered by the individual including the ways for future earnings, to return the claimant to the financial future enjoyed before the injury. In *Employment Injury Protection and Rehabilitation Scheme for Workers in the Garment and Leather Industries*,

“All in all, employees are not adequately protected against workplace accidents. The basic approaches currently in existence are fragmented, inefficient and their implementation is not sufficiently monitored.”²⁰

For this purpose the Government is going to take a vital role for the injured party to set up a long-term, rights-based and sustainable protection mechanism that provides protection, as well as prevention and rehabilitation measures, in a systematic way with the ILO and the Government of Germany to explore the possibility of setting up of a national Employment Injury Protection & Rehabilitation (EIP&R) Scheme in line with the ILO Employment Injury Benefits Convention, 1964 (No. 121)²¹.

3.5 In the Universal Declaration of Human Rights, a Treaty that is accepted as jus cogens under international law:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”²²

Therefore, as a right for a worker it is necessary for the industry to improve the safety and health conditions and compensation mechanisms for workers by including mental injury and other physical injury. Employers need to strictly follow the law under the Labour Act to keep them in a good position for paying the compensation amount properly. To setup the establishment of health and rehabilitation facilities and to ensure good coverage in urban and rural areas as soon as possible. By which a worker can return to work facilities and programmers, providing support to victims to re-enter the job market. Employers need to start to give proper education and training for different industries to reduce accidents and improve health and safety standards therefore a worker can give adequate attention in the work place.

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²¹ *ibid* ILO Social Protection Department | Bangladesh: Employment Injury Insurance

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Compensation for work related injury or illness under the Bangladesh Labour Act

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