

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 5

NOTE : Answer **ALL** Questions.

1. The problem is relating to compensation under section 3 of Workmen's Compensation Act. The sole point in the matter is whether the accident which occurred on 25th May, 2018, in the railway Yard at Lucknow and resulted in the loss of both legs of the respondent Mahabir, a machine man employed in the Carriage and Wagon Shops of East Indian Railway, Alambagh, Lucknow, arose 'out of and in the course of his employment' within the meaning of section 3 of the Act.

As facts of case Mahabir lives in Village Mahmudpur which is close to Malhaur railway station on the East Indian Railway. He used to come free of cost to Lucknow junction every morning from Malhaur along with other employees in a workmen's special provided by the railway and proceed after crossing the lines to the Alambagh Workshop which is at a distance of about a mile from the junction across the railway yard. This was a somewhat shorter route and it was taken as a matter of routine for going to and coming from the works in preference to a sub-way and two other overbridge routes which were also available.

When the workmen were on night shift, they were provided with special permits for travelling by ordinary passanger trains free of charge between Lucknow junction and Malhaur Station. Mahabir was on duty on the night between the 21st and 22nd May, 2018. He finished work at 5.30 a.m. and was returning as usual to the Lucknow junction station over the yard in order to catch the passanger train which left there at 8 a.m. for Malhaur. When he was within a short distance of the station platform, he crossed the line and in doing so he was run over by a shunting engine at about 6.30 a.m. As a result of the accident Mahabir's legs were crushed and they had to be ultimately amputated.

Mahabir file a case against Works Manager, Carriage and Wagon Workshop for compensation under the Workmen's Compensation Act, 1923.

As per section 3 of W.C. Act, 1923 "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.

The expression 'out of and in the course of his employment' occurring in the aforesaid section has been the subject of interpretation in numerous case and it has been found almost a hopeless task to give such a comprehensive or exhaustive meaning as may be applicable to all cases.

In cases, therefore, which arise in consequence of an injury caused to an employee while he is actually engaged in the work for the doing of which he is employed, it is hardly controversial on the ground of interpretation that this matter come under the section of Workman Compensation Act, 1923. The word 'employment', however has been given a wider meaning than the word 'work' and it has been universally accepted that a man may be in the course of employment without being actually engaged on work for the doing of which he is engaged.

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From what has been said above, it would appear to be a legitimate corollary that what may be called environmental accidents, that is accidents resulting from the surroundings in which the workman is employed or through which he has to reach his place of work in order to carry out his obligations to his employer, may fall within the scope of the phrase 'arising out of or in the course of his employment.

On the basis of the above facts, answer the following :

- (a) Whether the accident of worker is in course of employment ?
- (b) Whether the principle of notional extension can apply in case ? Discuss.
- (c) Whether the term accident comes in definition of permanent disablement ? Explain.
- (d) What are the procedure of Employer's Liability for Compensation ? Discuss.
- (e) Discuss the concept of 'arising out of and in course of employment'.

(8 marks each)

2. (a) Mohan collect the tendu leaves from nearby forest during day time and along with his family roll them to bidies at night. He supply the finished product of bidies to nearby factory i.e., ABC Bidi Ltd.. Factory does the quality inspection of the finish product as per their fixed standards and accordingly accept or reject the product. Payments are made for the accepted quantity of bidies as per the factory rates.
- In the above kind of factual circumstances, decide with the help of set principle whether Mohan is an employee of the factory.

(6 marks)

- (b) Ramesh is working with XYZ Motor Manufacturing Ltd. as senior motor mechanic. The manufacturing company has two active trade union. Ramesh being introvert and shy in personality, has not shown much of the interest in trade union politics and not member of them. One day during course of employment on duty time, due to malfunction of machine, accident occurs causing him partially paralysed. He was admitted to hospital for one month. In his absence, company arbitrarily terminate him from job without paying proper and adequate compensation. On recovery he raise issue with company. The company dismiss his claim and blame him for being negligent on duty and cause of accident.

Can Mohan raise an Industrial Dispute ? Advice.

(6 marks)

3. (a) Discuss the various provisions under the Factories Act, 1948 regarding the health of the Workers.

- (b) Discuss the judicial activism in reference to Contract Labour Abolition Act, 1970.

(6 marks each)

4. (a) Under the Workmen's Compensation Act, 1923 there must be some nexus between the death of workman and his employment in order to make the employer liable to pay compensation. Explain.

(6 marks)

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- (b) A factory worker having a heart disease, while coming out of the factory, after four hours of work in the factory, profusely sweated and died aride the factory premises. Is the employer liable to pay compensation ?

(6 marks)

5. (a) Write a brief essay on the Concept of bonus and profit sharing.
(b) Define and explain the term 'Continuous Service' as laid down in the Payment of Gratuity Act, 1972.

(6 marks each)

6. Define Strike and Lock-out. When are Strikes and Lock-outs illegal ? Can financial aid be given to workers engaged in such illegal Strikes and Lock-out ?

(12 marks)

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