

THE EMPLOYERS' LIABILITY ACT, 1938

ACT NO.24 OF 1938

[AS ON 1995]

{This Act has been extended in Dadra and Nagar Haveli by Reg.6 of 1963, s.2 and Sch.I and Pondicherry by Reg.7 of 1963, s.3 and Sch.I.}

[24th September, 1938]

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An Act to declare that certain defences shall not be raised in suits for damages *{The words " in the provinces" omitted by the A.O.1950.}* in respect of injuries sustained by workmen.

WHEREAS it is expedient to declare that certain defences shall not be raised in suits for damages *{The words " in the provinces" omitted by the A.O.1950.}* in respect of injuries sustained by workmen.

It is hereby enacted as follows :-

1.Short title and extent

.- (1) This Act may be called the Employers' Liability Act, 1938.

(2) It extends to the whole of India *{The words " except the state of Jammu and Kashmir" omitted by Act 51 of 1970, s.2 and Sch.(w.e.f.1-9-1971).}*

2.Definition

.- In this Act, unless is anything repugnant in the subject or context,-

(a) "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, oral or in writing; and

(b) "employer" includes any body of persons whether incorporated or not, any managing agent of an employer, and the legal representatives of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

3. Defence of common employment barred in certain cases

.- Where personal injury is caused to a workman-

(a) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or

(b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

(c) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or

{Subs. by Act 5 of 1951, s.2.} [(d) by reason of the act or omission of any person in the service of the employer done or made-

(i) in the normal performance of the duties of that person ; or

(ii) in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved); or

(iii) in obedience to particular instructions given by any other persons to whom the employer has delegated authority in that behalf;]

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of or in the service of, or engaged in the work of, the employer.

{Ins by Act 5 of 1951, s.3.} [

3A. Contracting out.-

Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto, shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of person in common employment with him.]

4.Risk not to be deemed to have been assumed without full knowledge

.- In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk was fully explained to and understood by the workman and that the workman voluntarily undertook the same.

5.Saving

.- Nothing in this Act shall affect the validity of any decree or order of a Civil Court passed before the commencement of this Act in any such suit for damages.

STATEMENT OF OBJECTS AND REASONS

Under the common law of England in civil suits for damages for injuries sustained by workman it is open to the employer to plead-

(1) the doctrine of common employment, by which the employer is not normally liable to pay damages to a workman for an injury resulting from the default of another workman ;

(2) the doctrine of assumed risk, by which an employee is presumed to have accepted a risk if it is such that he ought to have known it to be part of the risks of his occupation.

2.The Royal Commission on Labour regarded both these doctrines as inequitable and recommended by a majority that a measure should be enacted abrogating these defences.provincial Governments were consulted in 1932 and were almost unanimously in favour of legislation for the purpose.in the meantime judicial decisions in British India while generally agreeing as to the inequity of the doctrines have been such as to leave it open to employers in most provinces to have recourse to them.The Bill seeks to abolish these defences in the case of all workmen.