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THE ROAD TO SOCIAL JUSTICE AND LABOUR WELFARE THROUGH THE
EMPLOYEE'S STATE INSURANCE ACT, 1948 AND JUDICIAL
CONTRIBUTION*

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Abstract:-

The Employees State Insurances Act, 1948 is social welfare legislation aimed at ensuring certain benefits to all covered employees (medical care and cash allowance during sickness, maternity and employment injury, pension for dependents on the death of the worker due to employment injury, and funeral benefit towards the expenditure on the funeral of an insured person), the benefits are provided through dispensaries and hospitals set up by the Employees State Insurance Corporation. The Act provides a scheme under which the employer and the employee must contribute a certain percentages of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities.

The Employee's State Insurance Act, 1948

This was the first social security legislation enacted by India after its independence. It is an important step in the field of social insurance on the basis of the report given by Prof. B.P.

Adarkar to the Government of India in the form of the Workmen's State Insurance Bill, the Employee's State Insurance Act, 1948 was passed. This Act was amended in 1951, 1966] 1975 1984, 1989 and 2010. The Employee's State Insurance Act, 1948 has been the first of its kind which attempt at introducing a compulsory integrated system of social insurance covering for medical care and cash allowance during sickness, maternity and employment injury, pension for dependents on the death of the worker due to employment injury & funeral benefit towards the expenditure on the funeral of an insured person.¹

The Act extends to the whole of India, it provides for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

(I) Application of the Act, 1948

The Act shall apply in the first instance to all factories (Including factories belonging to the Government) other than seasonal factories, run with power & employing 20 or more persons, the appropriate Government may in consultation with the Corporation & where the appropriate Government is a state Government, with the approval of the Central government after giving notice [one month's] authorized to extend it partially or wholly to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.¹ The Act has also been extended to new classes of establishment using power in the manufacturing process and employing 10 or more persons and non-using power factories shops, hotel and restaurants, cinema, preview, theatres, motor transport and newspaper establishment employing 20 or more persons.² It covers persons employed directly or indirectly as also the clerical staff, manual, supervisory and employees engaged by and through contractors whose remuneration does not exceed Rs. 1600 a month and are connected with any work of or incidental or preliminary to or connected with the work of the factory or establishment to which it applies but does not include any members of armed forces.³ Employee means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies &

- i who is directly employed by the principal employer;
- ii who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent;
- iii Whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service & includes any person employed for wages on any work connected with the administration of the factory or with the purchased of raw materials for or the distribution or sale of the product of the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act 1961, [and include such person engaged as apprentice whose training period is extended to any length of time].⁴

The Employees State Insurances Act, 1948 is social welfare legislation aimed at ensuring certain benefits to all covered employees (in case of sickness, maternity and employment injury), the benefits are provided through dispensaries and hospitals set up by the Employees State Insurance Corporation. The Act provides a scheme under which the employer and the employee must contribute a certain percentages of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. On 22 December 2016, the Ministry of Labour and Employment issued a notification increasing the wage limit for coverage under the ESI Act to Rupees 21,000. This change will come into effect on 1 January 2017; the wage ceiling was last raised in 2010, where the wage limit was increased from Rupees 10,000 to Rupees 15,000. More employees will be covered due to the impact of increasing in the wage ceiling, now employer will also be required to make contribution for employees earning between Rupees 15,000 and Rupees 21,000.⁵ The ceiling wage for employees with disability has been relaxed to Rupees 25,000 per month. The ceiling wage is revised from time to time to take care of inflation, but once an employee has been covered, he/she remains covered for the entire service period. The Ministry of Labour and Employment vide notification dated January 20, 2017 in exercise of the powers conferred by section 95 of the Employees State Insurance Act, 1948 after consultation with the Employees' State Insurance Corporation has amended the Employees' State Insurance (Central) Rules, 1950. The rules termed as the Employees' State insurance (Central) Amendment Rules, 2017 have inserted in rule 2, after clause (6), clauses 6 A which extended the concept of 'insured woman' & inserts a separate category. An insured women would mean a woman who is or was an employee in respect of whom contribution is or were payable under the Act and who is by reason thereof, entitled to any of the benefits provided under the Act & shall include a commissioning mother who as biological mother wishes to have a child and prefers to get embryo implanted in any other woman as well as a woman who legally adopts a child of up-to three months of age. It is a progressive step that Government has extended the benefit to women and has

¹ Section 1 (4), (5)] (6)] of the Employees State Insurance Act, 1948

² Dr. T.N. Bhagoliwal, "Economics of Labour & Industrial Relations", Ed. 1989, Sahitya Bhawani Pub. P. 516

³ Ibid

⁴ Section 2 (9) of the Employees State Insurance Act, 1948 & Amendment Act, 2010

⁵ Anshul Prakash & Prag Bhide, India: Enhancement of wage Limit under ESI Act, 1948, Dec. 2016, Available at <http://www.mondaq.com/india/X/556792/Employees...>

recognized surrogating, surrogated & adopting women.⁶ Employees' State Insurance is a contributory type scheme based on 'tripartite contribution' principle in which employers, employees & state government is included, in addition to contribution the corporation can accept donation, grants & gifts from Centre and State governments, local bodies and even from any individual too. Employers' contribution represents the responsibility of the industries towards its workers. Similarly the worker's contribution represents their responsibility towards themselves & their dependents, while the State's subsidy represents the responsibility of a welfare state towards its citizens.⁸

Section 3 of the Act provides for the establishment of 'Employees' state Insurance Corporation for the administration of the schemes under this Act. It shall be a body corporate by the name of Employee's State Insurance Corporation having perpetual succession and a common seal and shall sue & be sued. Under section 8 a standing Committee of the corporation shall be constituted for its better functioning. Under section 10 the Central Government shall constitute a Medical Benefit council with an object to give advice to the corporation and the standing committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits & other connected matters.⁷ The Corporation is under an obligation to promote measures for the improvement of the health and welfare of insured persons & for the rehabilitation & re-employment of insured persons who have been disabled or injured.⁸ Section 26 states that all contributions paid under this Act and all other moneys received on behalf of the corporation shall be paid into a fund called the 'Employees' State Insurance Fund which shall be held & administered by the corporation for the purposes of this Act. Section 28 of the Act provides for the purposes for which the fund may be expended, it shall be expended only for the following purposes;

- a- payment of benefits and provision of medical treatment and attendance to insured persons & to their families;
- b- payment fees & allowances to members of the concerned authorities;
- c- payment of contributions to any state Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons & to their families;
- d- establishment and maintenance of hospitals, dispensaries and other institutions;
- e- defraying the cost (including all expenses) of the Employee's Insurance Courts set up under the Act;
- f- defraying expenditure, within the limits prescribed, on measures for the employment of the health & welfare of insured persons & for the rehabilitation & re-employment of insured person who have been disabled or injured etc.⁹

Section 45 of the Act provides that the corporation may appoint such persons as 'social security officers' as it thinks fit & shall exercise such functions & perform such duties as may be authorized by the corporation.

Section 46 of the Act provides about 'benefits' to which the insured person, their dependents or the persons as specified as the case may be shall be entitled. The benefits shall comprise of medical care and cash benefits.

(i) Sickness Benefits

An insured person is entitled to receive periodical payments in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualification & experience as the corporation may by regulations specify in this behalf. It is a qualifying type of benefit & to get the benefit of this an insured person should have paid contribution not less than 78 days during the corresponding contribution period. A newly entered person in insurable job has to wait till nine months to become eligible for this benefit. This benefit is payable up-to 91 days in any two consecutive periods. No benefit is admissible for the first two days of the spell of sickness which is called waiting period. Sickness benefit is divided in two parts-

(a) Extended Sickness Benefit

It can be given to an insured person only in long term ailments like leprosy, mental disease, T.B. etc. It will give at a rate 50 percent more than the sickness benefit rate, for a period of 124/309 days. The aggregate benefit period would be up to 250 days for all specified disease & 400 days in chronic disease.¹⁰

(b) Enhanced Sickness Benefit

This benefit is given to insured person for vasectomy and tubectomy, to avail the benefit the relevant contribution period of payment is at least 78 days. The rate of benefit is twice the standard benefit rate not less than full wages. The duration of enhanced benefit is up-to 7 days in the case of vasectomy and up-to 14 days in tubectomy from the date of operation. Any person in receipt of sickness benefit is required to remain in under medical care & treatment at dispensary/ hospital or any other institution as recognized in the Act. Cash benefit is paid by local office either personally to an employee or is remitted by post.¹¹

⁶ Arunima Bhattacharya, ESI (Central) Amendment Rules 2017 Notified Benefits Extended To Surrogate & Adopting Mothers, Jan 26, 2017 available at, <http://www.livelaw.in/esi-central-amendment-rules...> ⁸
Supra Note No. 1, P. 114

⁷ Section 22 of the Employees' State Insurance Act, 1948

⁸ Section 19 of the Employee's State Insurance Act, 1948

⁹ Section 28 of the Employee's State Insurance Act, 1948

¹⁰ Dr. Ravi Prakash Yadav, "Social Security in India", Aavishkar Publishes Distributors, Jaipur 2015, P. 178

¹¹ Supra Note No 1, p.170

(ii) Medical Benefit

It is of utmost importance since these benefits forces the pivot around which the entire scheme revolves. A person shall be entitled to medical benefit during any period for which contribution are payable in respect of him or in which he or she is qualified to claim sickness benefit, maternity benefit or disablement benefit. Such treatment or medical benefit has now also been extended to the family members of the insured. The insured person may be entitled to such medical benefit either in the form of out-patient or in patient treatment and attendance in a hospital, dispensary, by visit of authorized doctor at the home of insured person or at any other clinic or institution. An insured person and (where such medical benefit is extended to his family) his family shall be entitled to receive medical benefit only of such kind & on such scale as maybe provided by the State Government or by the Corporation & shall not be entitled to claim reimbursement from the Corporation of any expenses incurred in respect of any medical treatment, except as may be provided by the regulations.

The State Government shall provide to an insured person and where such benefit is extended to their families, to them in the State reasonable medical, surgical and obstetric treatment. The Corporation may with the approval of the State Government establish and maintain in a State such hospitals, dispensaries and other medical & surgical services as it may think fit for the benefit of insured persons and their families (where such medical benefit is extended to their families).¹²

(iii) Maternity Benefit

Maternity Benefit is given to an insured woman at the rate of hundred percent of average daily wages subject to contributory conditions, it shall be granted in case of confinement, miscarriage, sickness arising out of pregnancy, primitive birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf.¹⁵ Maternity benefit shall be paid for 26 weeks of which not more than eight weeks shall precede the date of her expected delivery.¹³ In case of miscarriage an additional benefit (by the amendment 1966 of the Act) is given on production of such proof for a period of 6 weeks from the date following the miscarriage. A supplementary period of one month is given in case of any sickness or complication arises out during pregnancy or premature birth of child or miscarriage.¹⁷

The maximum period for which any women shall be entitled to maternity benefit shall be twenty-six week of which not more than eight weeks shall precede the date of her expected delivery;¹⁴

Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided also that where a women, having been delivered of a child dies during delivery or during the period immediately following the date of her delivery for which she is entitled or the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period then for the days up to and including the date of the death of the child.

After sub section (3) of following provision shall be inserted namely

“Provided that the maximum period entitled to maternity benefit by a women having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery”.

Sub section (4) provides that a woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefits for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

Sub section (5) in case where the nature of work assigned to a women is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the women may mutually agree.¹⁵

(iv) Disablement Benefit

It consists of a periodical payment payable to insured workers in case of employment injury and occupational disease in the course of the employment. Section 2 (8) of the Act defines ‘employment injury’ as a personal injury to an employee caused by accident or occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational diseases contracted within or outside the territorial limits of India. The disablement benefits are classified in two following categories-

a- Temporary Disablement Benefits

As per Section 2 (21) defines ‘temporary disablement’ as a condition resulting from an employment injury which requires a medical treatment and renders an employee, as a result of such injury temporarily incapable of doing the work which he was doing prior to or at the time of the injury. A person shall be entitled to periodical payment at such rates and for such periods and subject to such conditions as may be prescribed by the Central government, where he sustains temporary

¹² Sections 56, 57,58 & 59 of the Employees' state Insurance Act, 1948 ¹⁵

Section 46 (1) (b) of the Employees' state Insurance Act, 1948

¹³ Section 5(3) Amended by the Maternity Benefit (Amendment) Act 2017 ¹⁷

Section 50 of the Employees State insurance Act 1948

¹⁴ Section 5 (3)Amended by the Maternity Benefit (Amendment) Act 2017

¹⁵ The Maternity (Amendment) Act 2017

disablement for not less than three days excluding the day of accident. It is payable at the rate about 70 % of the wages till the disability exist.¹⁶

b- Permanent Disablement Benefits

It can be classified into two categories-

- i- As per section 2 (15 A) 'permanent partial disablement' means such disablement of a permanent nature as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.
- ii- As per Section 2 (15B) 'permanent total disablement' means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.¹⁷

Section 46 (1) (c) provides for disablement benefits to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf. As per section 51 (b) a person who sustains permanent disablement, whether total or partial shall be entitled to periodical payment at such rates and for such periods & subject to such conditions as may be specified by the central Government. The cash benefit is to be paid at the rate about 70% of wages for lifetime and actual amount depends upon the loss of earning capacity of workers as prescribed in the schedule.¹⁸

In case of 'occupational disease disablement', the disease (contracted an employment injury) should be directly attributable to a specify injury arising out of or in the course of employment and such a case the actual amount of compensation depends up on the loss of earning capacity as may be determined by a medical board under the Act.¹⁹

(v) Unemployment Benefit

Unemployment allowance shall be given to an insured person under the Employee's State Insurance Act, 1948 on the date of loss of insurable employment on account of retrenchment, closure of the factory or establishment or in case of permanent invalidity arising out of employment injury. The Employee's State Insurance Corporation introduced 'Rajiv Gandhi Sharmik KalyanYojna' for insured person to provide them unemployment allowances at the time of unemployment with effect from 1/April/2005. In order to avail benefit under this scheme, the workers should have to contribution for three or more years & shall be entitled to claim unemployment allowance for a maximum period of 6 months or till reemployed whichever is earlier. Medical care and health facilities are also provided to affected workers & their families from the Employees' State Insurance hospitals or dispensaries during unemployment period. Unemployment allowance is not eligible, if similar benefit is made available to the effected insured persons under the provision of any other Acts/Schemes in force. Unemployment allowance shall not the admissible in the following situations-

- a- During lockout b- Lay off/temporary closure of factory or establishment. c- Strike resorted to by the employers. d- Voluntary abandonment of employment, voluntary retirement or premature retirement. e- On death of insured person. f- Dismissal or termination under disciplinary action g- On being re-employed elsewhere during the period of unemployment allowance. h- Convicted (Punished for false statement) under provision of section 84 of ESI Act. i- On attaining age of superannuation or 60 years whichever is earlier.²⁰

(vi) Dependents Benefit

Dependents benefits is payable to dependents of an insured person who dies as a result of an employment injury sustained as an employee under this Act. Section 2 (6A) defines the term 'dependent' means any of the following relatives of a deceased insured person namely.

- i- a widow, a legitimate or adopted son who has not attained the age of twenty five years, an unmarried legitimate or adopted daughter, ia- a widowed, mother,
- ii- if wholly dependent on the earnings of the insured persons at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm,
- iii- If wholly or in part defendant on the earnings of the insured persons at the time of his death a parent other than a widowed mother, b- a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed & a minor, c- a minor brother or an unmarried sister or a widowed sister of a minor, d- a widowed daughter in law, e- a minor child of a pre-deceased son, f- a minor child of a pre-deceased daughter where no parent of the child is alive, or g- a paternal grandparent if no parent of the insured personas is alive.²¹
- iv- Under this benefit pension is given to the dependents of expired employed. Widow receives the pension for whole life or until, the second marriage however minor children get it till the age of 18 years. Where neither a widow nor a child is left, the said benefit is payable to dependent parent or grandparent for life equivalent to 3/10 of the full rate.²²

¹⁶ Section 51 of the Employee's State Insurance Act, 1948

¹⁷ Section 2 (15A), (15B) of the Act, 1948

¹⁸ Section 51 (b) of the Act, 1948

¹⁹ Section 52 A of the Employees' State Insurance Act, 1948

²⁰ Rajiv Gandhi Sharmik Kalyan Yojanan 2005, <http://www.esicmadrai.org/enemploymentallowance..>

²¹ Section 2 (6A) of the Employees' State Insurance Act, 1948

²² Section 52 of the Employees ' State Insurance Act, 1948

(vii) Funeral Benefit

A funeral Benefit has been paid to the eldest surviving member of the family in case of death of an insured person or where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person.²³ Rate of funeral expenses of deceased insured person has been increased from of Rs. 5,000 to Rs. 10,000²⁴.

(viii) Rehabilitation Allowances / Vocational Allowances

Rehabilitation allowances at such rate (i.e. double the standard sickness benefit rate but not less than full wages) shall be given for each day on which insured person remains admitted in Artificial Limb Center for fixation/ repair or replacement of artificial limb. The Employees State Insurance Corporation on in 1994 approved the scheme for vocational rehabilitant of permanently disables insured persons. These schemes provide for financial assistance to the insured persons who are referred to vocational rehabilitation center for training. It is applicable to the following classes of persons.

- i. Whose permanent loss of earning capacity has been determined as 40% or more,
- ii. Who is in receipt of permanent disablement benefit under the ESI Act, 1948?
- iii. Who is not in any gainful employment &
- iv. Who is not more than 45 years of age on the date of his application?²⁵

(ix) Medical care to permanently disabled and retired insured persons

With the amendment of ESI Act in 1989, following provisions were added to Section 56 (3) w.e.f.1/2/91, which provides that subject to payment of contribution and such other conditions as may be prescribed by the Central Government an insured person who ceases to be in insurable employment on account of permanent disablement shall continue to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement. It also provides that an insured person, who has attained the age of superannuation, a person who retires under voluntary retirement scheme or takes premature retirement and his spouse shall be eligible to receive medical benefit subject to payment of contribution & such other conditions as may be prescribed after being insured for not less than five years.²⁶

Section 65 Provides for benefits not to be combined-

As per section 65 an insured person shall not be entitled to receive for the same period

- a- both sickness benefit and maternity benefit, or
- b- both sickness benefit and disablement benefit for temporary disablement, or
- c- both maternity benefit and disablement benefit for the temporary disablement.

Choice to choose is with the insured person, where he/she is entitled to more than one of the benefits. Section 73 of the Act states that employer not to dismiss or punish employee during period of sickness etc. no employer shall dismiss, discharge or reduce or otherwise punish an employee during the period of sickness benefit or maternity benefit.

(II) Resolution of Dispute and Claims

Section 74 provides for 'Constitution of Employees Insurance Court' the State Government shall by notification in the official Gazette constitute an Employees Insurance Court for such local area as may be specified. It decided the following issues-

- a- Whether any person is an employee or whether liable to pay contribution, or
- b- the rate of wages or average daily wages of an employment,
- c- the rate of contribution payable by a principal employer, d- the persons who is or was the principal employer, e- the right of any person to any benefit and as to the amount and duration thereof, ee- any direction issued by the Corporation under Section 55A, f- any other matter of dispute.²⁷

Sub section 2 of section 74 provides about the claims which shall be decided by the Employees' Insurance Court namely-

- a- Claim for the recovery of contribution from the principal employer,
- b- Claim by a principal employer to recover contributions from any immediate employer.
- c- Claim against a principal employer, where a principal employer fails or neglects to pay any contribution,
- d- Claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto, &
- e- If any claim for the recovery of any benefit admissible under the Act.²⁸

The proceeding shall be commenced by filing an application within a period of three years from the date on which the cause of action arose. The court shall have all the powers of a civil court. An order of the Employees Insurance court shall

²³ Section 46 (f) the Employees State Insurance Act, 1948

²⁴ Jeet Singh Mann, "Comprehensive Social Security Scheme for Workers", Deep & Deep Publication, New Delhi 2015, P. 130

²⁵ Other Important Matters Concerning Insured Persons & Their Families, 499 CHAPTER XII, 9 Feb 2009; P.4, esic.nic.in/unlinks/ch12.pdf

²⁶ *Ibid*

²⁷ Section 74, of the Employees State Insurance Act, 1948

²⁸ Section 74(2) of the Act, 1948

be enforceable as if it were a decree passed in a suit by a civil court. Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance court other than appearance of a person required for the purpose of this examination as a witness may be made or done by a legal practitioner or by an officer of a registered trade union as authorized.²⁹ Section 82 provides that save as expressly provided no 'appeal' shall lie from an order of an Employees' Insurance court, an appeal shall lie to the High Court from an order if it involves a substantial question of law, the appeal shall be made within 60 days. Section 84 provides for punishment for making or giving any false statements for the purpose of causing any increase in payment or benefit or causing any payment or benefit to be made where no payment or benefit is authorized, shall be punishable with imprisonment for a term which may extend to 6 months or with fine not exceeding two thousand rupees or with both. Where an insured person is convicted he shall not be entitled for any cash benefit under this Act for such period as may be prescribed by the Central Government. Where any person fails to pay any contribution which he is liable to pay, he shall be punishable with imprisonment for a term which may extend to 3 years but shall not be less than one year, in case of failure to pay the employees contribution which has been deducted by him from the employee's wages & shall also be liable to fine of 10,000 Rupees or shall not be less than 6 months, in any other case & shall also be liable to fine of 5,000 Rupees & in other case like obstructs any Inspector or other official of the corporation in the discharge of his duties or fails or refuses to submit any return required by the regulations or makes a false return or where employer reduce wages & dismisses or punish any employee during the period of sickness etc. shall be punished for a term which may extend to 1 year or with fine which may extend to 4000 rupees or with both.³⁰ As per section 85 A enhanced punishment shall be imposed where anyone commit the same offence, for every such subsequent offence, be punishable with imprisonment for a term which may extend to 2 years & with fine of 5000 rupees. Provided that where such subsequent offence is for failure by the employer to pay any contribution which he is liable to pay, he shall for every such subsequent offence be punishable with imprisonment for term which may extend to 5 year but which shall not be less than two years & shall also be liable to fine of 25,000 rupees.³¹ If the Central Government is satisfied that the benefit under this Act are being misused by insured persons that Government after giving a reasonable opportunity of being heard may be order, published, in the official gazette, disentitle such person from such of the benefits.³² Central Government, State Government & the Corporation has the power to make rules for the administration & better implementation of the provisions of the Act.³³

In August 2009, the Employees State Insurance Corporation for the efficient working of Employees State Insurance Act, 1948 has started a online portal named 'IT Roll Out Plan' [Project Panchdeep] to online connectivity of the ESIC branches, offices, dispensaries, hospitals regional/sub regional offices etc. Project Panchdeep provides online facilities to employers and insured people for registration, payment of premium and disbursement of cash benefits. It also provides for a unique health care administration programme aimed at automating health care services to number of beneficiaries spread across the country. With each insured person being given two biometric cards one for worker and another for his family, family members can avail medical services even when the insured person is away at another location. This plan result in faster processing of claims, increased operational efficiency & improved decision making.³⁴

(III) Limitations of the Employee's State Insurance Act, 1948

The Employee's State Insurance Act, 1948 suffers from certain drawbacks, which are listed below:

- a- Even after a long period of its operation the entire eligible section remain un-benefited because the rate of progress has been slow, it may be due to lack of awareness among the majority of employees & lack of enthusiasm on the part of certain State Governments.
- b- The scope of the Scheme is modest; it covers only three contingencies sickness, maternity and employment injury. Other contingencies such as old age, unemployment and invalidity have not been protected.
- c- The participation under the Employees State Insurance Scheme is limited i.e. bipartite. The financial contribution should be tripartite.

For the better implementation of the Scheme, it may be rightly said that efforts must be made for improvement of the schemes and removal of its defects

(IV) Role of Judiciary in Expanding the Horizon of the Employees State Insurance Act, 1948

In **ESIC V. M/s Hotel Kalpaka International**³⁵, the Supreme Court held that "the Employee's State Insurance Act, 1948 is a beneficial piece of 'Social Security' legislation in the interest of labour in factories in the first instance and with power to extend to other establishments".

²⁹ Section 77-79 of the Act, 1948

³⁰ Section 84, 85 of the Employees State insurance Act, 1948

³¹ Section 85A, the Employees State Insurance Act, 1948

³² Section 91 B of the Act, 1948

³³ Section 95, 96 & of the Act, 1948

³⁴ Available at <http://esic.nic.in/panchdeep.php>.

³⁵ (1993) I LLJ 939 (SC)

In Royal Talkies, Hyderabad V. ESIC,³⁶ the Supreme Court explained the goal of the Employee's State Insurance Act, 1948. "The ESI is a legislation enacted with an intention to confer benefits on the weaker segment in situations of distress as is apparent from the preamble".

In M/s. Kenchamba Service Station V. The Union of India, the Hon'ble Court held that the Employee's State Insurance Act, 1948 is beneficial piece of legislation mainly meant for the benefit of the employees to provide an insurance coverage when in distress during sickness, maternity, employment injury etc.³⁷

In M/s, Southern Agencies, Rajahmundry V. A.P Employees State Insurance Corporation,³⁸ Andhra Pradesh High Court held that "the Employee's State Insurance Act, 1948 is one of the most comprehensive legislation in the field of social security to safeguard the interest of the working section of the people of India.

In A. Trehan V. M/s. Associated Electrical Agencies,³⁹ Supreme Court observed that the Employee's State Insurance Act, 1948 has much wider scope to provide social security to the employees.

In Tata Project Ltd; Hyderabad V. ESIC,⁴⁴ the appellant company was a professional firm of consulting service tendering advice to clients on engineering projects. It had its branches at several places. It is contended by ESI Corporation that the appellant company is liable to pay contribution in respect of all employee, either engaged by it directly or through immediate employer. The ESIC further contended that all the persons who are drawing wages of rupees 6500 per month and working in the establishment are covered under the Employee's State Insurance Act, 1948. The High Court held that the appellant company was a factory within the meaning of section 2 (12) of the ESI Act 1948 & hence liable to pay contribution under the Employee's State Insurance Act, 1948.

In M/s. Modi Rubber Limited v. The Regional Director, ESIC, A.P High court held that the Employee's State Insurance Act provides that whenever the main factory or establishment is covered by the Act, the branches will be covered. In this case a company after manufacturing the goods out of rubber at its Mohipuram factory conveys the same to its depot-cum-sale at Hyderabad from where it supplies the goods to the distributors. The contention of the company is that it is not covered under the Act & not liable to any contribution. The Court held that depot.-cum-sales office at Hyderabad will be covered under this Act.⁴⁰

In ESIC Gauhati V. Rajsri Pictures Private Limited,⁴¹ the main business of Rajsri Pictures Private Limited was head office at Jaipur and its branch was carried on at Guahati, wherein less than 20 persons were employed. The High court observed that the Employee's State Insurance Act, 1948 is a beneficial piece of legislation protecting the interest of labour in factories. Hence the branch at Guahati is part of the main establishment at Jaipur, the employees at Guahati branch, even though less than 20 are a part of the main establishment at Jaipur and therefore branch office is covered by the Employee's State Insurance Act, 1948.

In ESIC V. R.K Swamy and others,⁴² the issue for discussion was whether an advertising agency is a shop for the purposes of coverage. The Supreme Court observed that the advertising agency sells its expert service to a client to introduce on effective advertising comparing his product. The premises of an advertising agency can therefore reasonably be said to be a shop. The court further states that the Act is a beneficial piece of legislation & therefore advertising agency must be brought within its purview.

In International Ore and Fertilizers (India) Private Limited V. ESIC, a limited company representing foreign principle in the role of fertilizers in India, imports fertilizers which is purchased by Central Government through State Trading Minerals and Metals Trading Corporation of India having central office at Secunderabad. The government of A.P. extends the provisions of the Employee's State Insurance Act, 1948 to shops in which 20 or more person were employed for wages on any day of the preceding 12 months. A dispute arose regarding the liability of the company; the company contended that its establishment at Secunderabad is not the shop. The Supreme Court observed that the word shop is not defined in the Act or in the notification issued by the State Government. As per dictionary meaning shop means a house or building where goods are made or prepared for sale and sold. It also means place of business or place where one's ordinary occupation is carried on. The establishment of the company at Secunderabad carried a commercial activity facilitating emergence of contract of sale between its foreign principals and State Trading Corporation of India. In view of several such activities the premise of the company at Secunderabad is a shop where trading activity is carried on, the ESI Act, 1948 is applicable to the company.⁴³

In Kirloskar Brothers Ltd. V. ESIC,⁴⁴ the Supreme Court in this case clearly observed that the Employee's State Insurance Act, 1948 provide for certain benefits to employees in case of sickness, maternity, employment injury & for certain other matters in relation thereto. The Act enjoins upon the employer to make payment of contribution & deduction of the contribution of the employees from their wages at the rates specified in the first schedule to the Act and to credit

³⁶ AIR 1978 SC 1478

³⁷ 1999 Lab IC 1166 (Kant)

³⁸ 1998 Lab IC 2008 (A.P)

³⁹ 1996 Lab IC 1723 SC ⁴⁴

2006 I LLJ 229 A.P.

⁴⁰ (1988) I LLJ 9 (A.P)

⁴¹ (1991) 1 LLJ 109 Gauhati

⁴² (1994) 1 LLJ 636 S.C.

⁴³ (1988) 1 LLJ 235 S.C.

⁴⁴ 1996 SCC (L&S) 533

the same to their account. In return the employees would receive treatment for sickness, maternity, payment for employment injury etc. Every human being has the right to live and feed himself and his dependants. Security of one's own life and livelihood is a precondition for orderliness. It should be the duty of the State to consider that welfare measures are implemented effectively and efficaciously. Economic security and social welfare of the citizens are required to be recorded under rule of law. Health is state of complete physical, mental and social well being and right to health therefore is a fundamental and human right of the employees. The Supreme Court further states that interpretation of the provisions of the Act therefore must be read in the light of not only the goals of the Act but also the Constitutional, fundamental and human rights.

In Transport Corpn. of India V. ESIC,⁴⁵ the Supreme Court observed that the Employee's State Insurance Act, 1948 is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various contingencies during the course of their employment. Being a beneficial legislation, it has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment. When two views are possible on its applicability to a given set of employees, that view which furthers the legislative intention should be preferred to the one which would frustrate it.

In M/s. East West Hotels Ltd. V. Regional Director, ESIC,⁴⁶ the Regional Director directed the hotelier to pay contribution in E.S.I. Fund in respect of 82 workmen employed in East West Hotel, Bangalore. An application was filed with the contention that the establishment of a hotel is not covered by the provisions of the Employee's State Insurance Act, 1948. The application was dismissed by the E.S.I. Court holding that the concerned hotel is a factory and is bound to pay the contribution under the Act. An appeal was filed in the High Court of Karnataka against the order of E.S.I. Court. The High Court held that to determine whether a particular premises is a factory under the Act, it is necessary to find out whether any manufacturing process is being carried on with the aid of power or is ordinarily so carried on in the premises or precincts thereof, employing twenty person any day preceding twelve months. In a kitchen attached to a hotel several commodities along with the other ingredients are subjected to a process or treatment in the preparation of different dishes to cater to customer. Preparation and services of food items in a hotel to the residents as well as to non residents or to casual customers who come to eat in the restaurant shall amounts to sale. The Hon'ble court therefore held that an establishment like hotel or restaurant satisfies the definition of factory for the purpose of Employee's State Insurance Act, 1948 subject to the order condition being satisfied.

In G.L. Hotels Ltd. V. T.C Sarin and Ritz Pvt. Ltd.⁴⁷ the Supreme Court held that a hotel is a factory within the meaning of the Employee's State Insurance Act, 1948. The Court observed that it cannot be denied that kitchen is an integral part of the hotel business. Those who occupy a hotel do depend upon the food & the beverages which are prepared in its kitchen. It is not possible to conceive of a hotel without a kitchen. Lodging & boarding are both important tasks of the services rendered by a hotel. It cannot be denied that the activity in the kitchen has connection with activities carried on in the rest of the hotel premises. It should not further be forgotten that the definition of certain premises as a factory or of certain activities as an industry, etc given in social welfare legislations like the present, are necessarily artificial. The aim is to extend the welfare coverage to as large a section of the individuals as possible. Such definitions cannot be tested on the anvil of the common usage of the terms defined. The present is the illustration of the kind. On these grounds hotel was held to be factory within the meaning of the Employee's State Insurances Act, 1948.

In the Osmania University V. Regional Director, ESIC,⁴⁸ the issue for determination was whether the provisions of the Employee's State Insurance Act, 1948 are applicable in respect of the employees engaged in the Department of Publication & Press of the Osmania University. The Supreme Court held that the Department of Publication & Press is engaged in carrying on a manufacturing process in the printing of text books, journals, forms and other items of stationary. Therefore the Department in question is a factory within the meaning of the Act, 1948.

In ESIC V. Ram Chander,⁴⁹ the respondent Ram Chander was the owner of M/s Commercial Tailor, Jodhpur. He employed at a relevant time about 10 or 12 persons as tailors & employed more than 20 persons once for the purpose of running a tailoring shop where clothes were stitched. The Employee's State Insurances Court determined it to be a tailoring shop by holding that it makes use of power in the shape of electric press which is used for ironing of stitched clothes for customers. In an appeal filed to the High Court set aside the order of the ESI Court. The Supreme Court granted special leave. The Supreme Court observed that in order to answer the question whether the establishment of the respondent covers within the purview of the Employee's State Insurance Act, 1948, it is necessary in view of the facts to determine only whether manufacturing process was carried on with the aid of power. In present case it is contended that there is use of electric power in the process of tailoring and it is manifest that the shop engaged more than 10 but less than 20 persons. The Supreme Court further held that it cannot also be disputed that by stitching commercially different goods are brought into existence. Therefore the tailoring shop comes clearly within the preview of the Act & the employees are covered by the Act. The order of the E.S.I. Court was restored.

In Bombay Anand Bhavan Restaurant V. Deputy Director, ESIC,⁵⁰ the Supreme Court observed that where the restaurant was carried the activities like making and selling coffee, tea, other beverages, sweets & savories. It employed

⁴⁵ 2000 SCC (L&S) 121

⁴⁶ (1986) 1 LLJ 172 (Karnataka)

⁴⁷ (1994) SCC (L&S) 3

⁴⁸ (1986) 1 LL J 136 (SC)

⁴⁹ (1988) II LLJ 141 (SC)

⁵⁰ (20009) 2 SCC (L & S) 573

more than 10 employees using power for coffee roasting machine and bottle cooler and LPG for preparation of sweets & savories, the Supreme Court held it to be a factory on the ground that the appellants' establishments involve a manufacturing process with the aid of LPG, the use of which satisfies the definition of power as it is mechanically transmitted, therefore Employee's State Insurance Act, 1948 will apply to these establishments.

In **Qazi Noorul H.H.H Petrol pump V. Deputy Director, ESIC**,⁵¹ the Supreme Court held that the petrol pump running by the appellant for dispensing petrol, diesel, to be covered with the purview of Employee's State Insurance Act on the ground that the said establishment is a factory.

In **M/s. Hindu Jea Band, Jaipur V. The Regional Director ESI etc.**,⁵² the provisions of the Employee's State Insurance Act, 1948 are extended to a firm carrying on business of playing music on occasions by a notification issued by the State of Rajasthan. The liability to pay contribution was challenged by the firm on the contention that the place where it was carrying on business was not a shop and the business carried out by it was intermittent and of seasonal character. This petition was rejected by the Employee's State Insurance Court and the appeal filed against the decision of the Employee's State Insurance Court was also dismissed. The special leave petition was filed to Supreme Court. Dismissing the special leave petition, the Supreme Court held that the word 'shop' has not been defined under the Act and the word 'shop' cannot be construed narrowly because the Act is a beneficial legislation. The firm has been making available on payment of the stipulated price the services of the members of the group of musicians employed by it on wages. Hence the place where the firm has been carrying on business is the shop. The fact that the services are rendered by the employees intermittently or during marriages does not entitle the petitioner to claim any exemption from the operation of the Act.

In **Christian Medical College V. ESIC**,⁵³ in this case appellant is a hospital which is a part of medical college. It has a department called 'Equipment Maintenance Department' which maintains equipments in the hospital such as X-Ray, ECG, Kidney dialysis, heart and lungs machine etc. 45 persons are engaged in this department. ESIC issued a notice to the appellant stating that the Equipment Maintenance Department come under the expression factory. The dispute was arose whether the act become applicable or not. The Supreme Court observed that if any repairing takes place with a view to use the equipment then it amounts to manufacturing process. It is the appellant's own case that the Equipment Maintenance Department maintains and repairs their equipments for efficient use of the equipment in the hospital. Hence this department is clearly covered by the term factory under the Employee's State Insurance Act, 1948.

In **Regional Director, ESI Madras V. South India Flour Mills (P) Ltd. and others**,⁵⁴ Where a company running a flour mill and another company owning a textile mill employed workers for construction of additional building in the campus of existing factory as part of its expansion. Such workers were engaged on daily wages basis. The ESIC directed the companies to pay contribution in respect of such workers. The Supreme Court held that the definition of the term 'employee' includes within its ambit any person employed on any work incidental or preliminary to or connected with the factory under the Employees State Insurance Act 1948.

In **Royal Talkies, Hyderabad V. ESIC**,⁵⁵ the Supreme Court held that the employers of a cycle stand and canteen run in a cinema theatre by contractors were covered by the definition under the Act. It was observed that the establishments were such that they had to cater on day to day basis to the needs of persons visiting the theatre & therefore the running of a canteen or maintaining of a cycle stand was a feature which has continuity. The feature of continuity is the basis requirement for an employee of continuity is the basic requirement for an employee for the purposes of coverage under the Employee's State Insurance Act, 1948.

In **ESIC V. Apex Engineering (P) Ltd.**,⁵⁶ the Supreme Court after examining the provisions of the Employee State Insurance Act, 1948 observed that before a person can be said to be an employee the following characteristics must exist regarding his service conditions-

- a- a person should be employed for wages. This would presuppose relationship between him as employee on the one hand and the independent employer on the other,
- b- such employment must be in connection with the work of the factory or establishment to which the Act applies,
- c- he must be directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of the factory or establishment,
- d- in the alternative he should be employed by or through an immediate employer on the premises of the factory or establishment or under supervision of the principal employer or his agent,
- e- person whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service,
- f- the wage of person so employed excluding remuneration for overtime should not exceed such wages as specified by the Central Government,
- g- a person should not be covered with the exempted categories of persons.

⁵¹ (2010) 1 SCC (L& S) 484

⁵² (1987) 1 LLJ 502 (S.C.)

⁵³ 2001 SCC (L&S) 220

⁵⁴ (1986) II LLJ 304 (SC)

⁵⁵ (1978)II LLJ 390 (SC)

⁵⁶ 1998 SCC (L&S) 178

In Regional Director, E.S.I.C. V. Ranga Rao and others,⁵⁷ Sudhindra Kumar was working as a refrigerator operator in M/s Mysore Breweries Ltd., Bangalore. One day when he was on his way to the factory to join duty he was met with an accident causing his death on the spot. The appellants moved E.S.I. Court an application for claiming the benefits payable on the ground that their son died as a result of an employment injury. The company was argued that employee was killed in a road accident while walking on a public road, therefore his death was not out of and in the course of employment. The E.S.I. Court did not accept the contention of the Regional Director and held that death was caused in the course of employment and the dependants are entitled to benefits under the Employee's State Insurance Act, 1948. In appeal, the High Court held that after the amendment to section 2 (8) in 1966 it is not material where the accident occurred, whether it was inside the factory or outside. It is equally not relevant about the time of the accident whether it was during the office hours or after. It may now be sufficient if it is proved that the injury to the employee was caused by an accident arising out of and in the course of his employment, and not matter when it occurred or where it occurred. There is not even geographical limitation. The accident may occur within or outside the limits of India. The place or time of the accident however should not be totally unrelated to his employment. There should be a nexus or a causal connection between the accident and employment.

In B.E.S.T. Undertaking V. Agnes,⁵⁸ the Supreme Court has observed that "the question when does an employment being 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 of both the entry and exist by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may being not only when the employee begins to work or leaves his tools but also when he uses the means of access and egress to and from the place of employment."

In Regional Director, ESIC. V. Batulibi,⁵⁹ the workman of textile Mill died in the mill canteen of mio-cardiac infraction during short recess. The widow and the son of the deceased have claimed benefits under the Employee State Insurance Act before the Employee State Insurance Court. It was held that the employee joined duty and he was still on duty he was still on duty when he died at the canteen. He had gone to canteen during the short recess but that period is not so long as to disrupt the continuity of the employment. The court held that the death has arisen out of and in the course of his employment.

In Regional Director, ESIC. V. Francis De Costa and another,⁶⁰ the respondent an employee while going on his bicycle to join duty on road leading to the factory at a distance of 1 kilometer the lorry owned by company hit him and knocked him down on the road. Due to an accident he became permanently and totally incapacitated to work in the factory. He therefore, laid claim before the ESI Court. The ESI Court held him entitled to the benefits under the Employee State Insurance Act, 1948. On appeal the High Court upheld these findings. In an appeal to the Supreme Court the question for consideration was whether the injury caused by an accident on a public road, while on his way to join the duty just 15 minutes before reporting to duty at a distance of one kilometer from the factory premises arising out of and in the course of employment. The Court observed that literal construction of the phrase arising out of his employment carries the idea that there must be some sort of connection between the employment and the injury suffered to an employee due to an accident. The phrase arising out of the employment applies to employment as such to its nature, its conditions by reason of which its employee is brought within the zone of danger and resultant injury, disease or death. In the context of the claims of the labour for social justice under welfare legislation the principle is that the employer & employees are so interrelated and dependent on each other that it is in interest of society that both should be kept functioning in harmony with each other. The casual relationship between employment and the accident does not logically necessitate direct or physical connection. It may be of various steps, namely direct, physical, approximate, indirect or incidental. The liability of the employer to pay compensation to the insured employee is based neither on any contract nor upon any act or omission by the employer but upon the existence of the casual connection between the employments during the course of which the employee had been injured. The Employee's State Insurance Act, 1948 supplants the action at law, based not upon the fault but as an aspect of social welfare, to rehabilitate a physically and economically disabled employee who is adversely affected by sickness, injury or livelihood of dependants by death of an employee. The Supreme Court realizing the need of broad interpretation observed that the Employee's State Insurance Act is social security legislation. It is a settled law that to prevent injustice or to promote justice and to effectuate the object & purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from liberal construction. The Supreme Court held that the respondent was trekking down to attend the duty which was found to be the accustomed route to reach the factory and just few minutes before reporting to duty he was hit by the lorry resulting in the employment injury. It therefore occurred during the course of his employment and thereby is entitled to amount as compensation under the Employee's State Insurance Act, 1948.

In this case on account of difference of opinion between the two judges deciding the case, the matter was directed to be placed before the larger Bench. The case was again before the Supreme Court,⁶¹ for consideration. The Supreme Court observed that the employee in order to succeed in this case will have to prove that the injury he had suffered arose out of

⁵⁷ (1982) 1 L.L.J. 29 (Karnataka)

⁵⁸ (1963) II L.L.J. 615

⁵⁹ (1988) II L.L.J. 29

⁶⁰ 1994 SCC (L&S)195

⁶¹ Regional Director, E.S.I.C. V. Francis De Costa, 1996 (SCC) (L&S) 1361

and was in the course of his employment. Both the conditions must have to be satisfied before he could claim any benefit under the Act. It does not appear that the injury sustained by the employee in the instant case arose in any way out of his employment. The accident took place one kilometer away from the place of employment. Unless it can be said that his employment began as soon as he set out for the factory from his home it cannot be said that the injury was caused by an accident arising out of his employment. A road accident may happen anywhere at any time. By using the words "arising out of his employment", the legislature gave a restrictive meaning to "employment injury." The injury must be of such an extent as can be attributed to an accident or an occupational disease arising out of this employment. A mere road accident, while an employee is on his way to place of employment cannot be said to have its origin in his employment in the factory. If employment "being from the moment the employee set out from his house for the factory, then even if the employee stumbles and falls down at the doorstep in his house, the accident will have to be treated as to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided". The Supreme Court considering the provision of Section 51 C, which came into force by way of an amendment effected in ESI Act in 1966 widen the scope of the phrase "in the course of employment" to include travelling as a passenger by the employer's vehicle to or from the place of work. The legal fiction contained in Section 51 C however does not come into play in this case because the employee was not travelling as a passenger in any vehicle owned or operated by or on behalf of the employer. The Supreme Court held that the employee was unable to prove that the accident had any casual connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment.

In Mohan Meakin Ltd. V. Employees ESIC,⁶² the appellant company had a brewery company at Solan in Himachal Pradesh, which had given the job of washing empty bottles and packing the same to the contractors. These contractors employed the casual workers for this job in the premises of the principal employer. It was held that the appellant company was the 'principal employer' with respect to casual workers who are employed by the contractors, therefore the principal employer was primarily liable to pay contribution with respect to those employees the contractor that employed these casual employees were held to be immediate employer.

In M/S. Sidheshwar Ltd., Hubli V. ESIC, Bangalore,⁶³ The Supreme Court held 'casual employee' within the definition of 'employee.' It was held that "the definition appears to be of wider connotation. It does not appear to exclude casual labourer or casual employee. Even the person whose services are lent to the principal employee is included in the definition of employee."

In The Regional Director, ESIC, Thrissur V. K. Sainaba,⁶⁴ The Hon'ble Court observed that it is true that the Employees State Insurance Act, 1948 is a social welfare legislation and since it is introducing welfare measures, it should be interpreted liberally in favour of the beneficiaries, but at the same time, ESIC is not liable to pay compensation for the dependants benefit if the death has no connection with the employment. In this case the bus conductor fell unconscious in the bus itself at the end of work and died subsequently. The medical evidence was very clear that the accident had no connection with the employment & it was certified by the doctor that the bus conductor died due to advanced liver disease and it has no connection with his employment. In this case the Court held that only sickness benefits and funeral benefits are payable to dependants of the deceased.

In National Insurance Co. Ltd. V. Hamidia Khatoon & Others,⁶⁵ The Supreme Court observed that a comparison of the relevant provisions of two Acts (Employee's Compensation Act, 1923 and Employee's State Insurance Act 1948) makes it clear that both the Acts provide for compensation to an employee for personal injury caused to him by accident arising out of and in the course of his employment. The Employee's State Insurance Act is a later Act and has a wider coverage. It is more comprehensive. It also provides for more compensation than what an employee would get under the Employee's compensation Act. The benefits which an employee can get under the Employee State Insurance Act are more substantial than the benefits which he can get under the Employee's compensation Act. The only disadvantage is that an employee will get compensation under the Employee State Insurance Act by way of periodical payments and not in a lump sum as under the Employee's compensation Act, if the legislature in its wisdom thought it better to provide for periodical payments rather than lump sum compensation its wisdom cannot be doubted. Even if it is assumed that the employee had a better rights under the Employee's Compensation Act, 1923 in this behalf it is open to the legislature to take away or modify that right.

Thus from the above discussed cases, it is very much clear that the Employee State Insurance Act, 1948 is one of pioneering Act which provides for social security measures. Being one of the most comprehensive legislation relating to the issue of social security, it guarantees majority of the benefits to the employees and their dependants with a view to safeguard their interest. The Employee's State Insurance Scheme is the first contributory scheme.

⁶² (2006) 1 L.L.J. 164 H.P.

⁶³ 1998 Lab. I.C. 157 SC

⁶⁴ 2005 Lab. I.C. 3753

⁶⁵ (2010) 1 SCC (L&S) 251