

# WORKMEN'S COMPENSATION ACT 1952

Workmen's Compensation Act 1952 does not cover all types of workmen. The Act provides its own machinery in the process of claim.

# WORKMEN'S COMPENSATION ACT 1952

- Advantages of WCA 1975

- Negligence needs not to be proven. The only requirement is the employee must prove that the injury is suffered in the course of employment.
- Contributory negligence is irrelevant.
- Under WCA, the “Commissioner” or the “Arbitrator” will decide the case. Therefore, only few cases will go to the court.
- Liability is imposed without fault.



# WORKMEN'S COMPENSATION ACT 1952

- Disadvantages of WCA 1952
  - The amount of compensation is not substantial. The amount would be higher if the case goes to civil court.

# SECTION 2 OF WCA 1952

To whom does the Act apply to?

It applies to all workmen who work for an employer under a contract of service;  
Section 2 of WCA 1952

# SECTION 19 of WCA 1952

- The effect of Section 19 is that the principal is liable to compensate for injuries suffered by workers of the contractor.
- CASE: *Lembaga Kemajuan Tanah Persekutuan v Muda Bin Jusoh & Anor* [1990] 1 LNS 61
- The respondent was injured while he was employed by the contractor of the appellant (LKTP). The claim was made more than 2 years after the accident. The appellant argued that the claim was time barred and the claim should be made against the contractor who was the respondent's employer. The court decided that since the workman was the appellant's contractor workman and the appellant was the principal, therefore the claim was rightly made under Section 19 of the Act.

# SECTION 4(1) OF WCA 1952

- The section refers to where a workman suffers “personal injury by accident”, then he should be entitled to compensation.
- Another important thing in Section 4(1)(a) is that the accident “arising out of and in the course of employment”.



# SECTION 3 OF WCA 1952

- The word “dependant” depends on whether the person:
  - is a family member;
  - Is fully or partly depending on the income of the work.

# SECTION 41 OF WCA 1952

- Section 41 of the Act limits the liability of the employer upon which the workman can only apply one type of claim.
- In other words, the workman must choose either to bring a claim under this Act or to file a suit in court for negligence.
- However, the court has interpreted this provision liberally.
- The workman is not allowed to obtain the compensation at one time under the Act and by the civil court for negligence.
- If a workman has instituted a proceeding in court or has recovered damages in any court, no suit for damages shall be maintainable against the employer.

# PROCEDURES: SECTIONS 12 & 13 OF WCA 1952

- There should be a notice to the employer and it must be given within 7 days from the date of accident. Failure to give notice does not defeat the claim.



- However, by virtue of Section 13, the employer is under an obligation to give notice to the commissioner within 10 days from the date of accident and failure to inform the Commissioner is an offence.

# PROCEDURES: SECTIONS 14, 27 & 28 OF WCA 1952

- Section 14 requires the workman to undergo medical check-up/ examination.
- In Section 27, the Commissioner will decide on the claim and if necessary hold an inquiry.
- If the amount of compensation is agreed, then it would be recorded under Section 28.

# PROCEDURES: SECTIONS 30, 34 & 35 OF WCA 1952

- Under Section 30, if the parties disagree on the amount of compensation, then the question or the matter would be referred to the arbitrator.
- The arbitrator will hold an inquiry.
- Section 35 provides for the power of the arbitrator that includes power to call for evidence, expert witnesses and all other matters for the inquiry.



# PROCEDURES: SECTIONS 38 & 39 OF WCA 1952

- The arbitrator may also refer the question of law to the High Court under Section 38.
- Section 39 notes that decision of the arbitrator is not appealable to the High Court. However, if the High Court judge certifies that question of law which is desirable in the public interest to be determined by the High Court, then the matter will go to the High Court for determination.