

Workplace Injury Claims in India, a Survey

Kaviraj Singh, SARALWEB

ABSTRACT

Injuries inevitably occur in the workplace, and the Indian industrial labour environment offers mechanisms to insure against accidental injury. These are the government mandated Employee State Insurance (ESI) and privately offered Workmen's Insurance (WC). This document discusses ESI and WC, their applicability, trade-offs, and procedural requirements - in particular the procedures required to avoid denial of insurance claims. Issues arising out of contract/outsourced employees are also discussed.

1. Workplace Injury Claims

The Employee's Compensation Act, 1923 [1] defines workmen's compensation rules, including compensation for injury by accident. The Employees State Insurance (ESI) Act 1948 created a self-funding insurance entity to cover workmen against injury. In addition, Workers Compensation (WC) insurance is available from insurance companies to cover against similar events.

2. ESI and WC - applicability

It is best to consider WC as an option where ESI is not applicable, since - if applicable - ESI is mandatory, and in fact, prevents WC from being allowed [2].

As of today, ESI is applicable [3] for a wide range of industries, for employees with salaries below Rs. 21,000 per month (Rs. 25,000 if disabled). ESI coverage might not yet be available in some geographical areas, although most industrial areas are covered.

The following classes of risk may therefore need additional WC insurance, available through private providers [4]

- Workers in ESIC non-covered locations
- Workers whose wages exceed Rs. 21,000 per month
- Visitors

3. Contract Employees

Should WC be obtained for contract employees working on premises ?

While it seems convenient to “blanket cover” contract employees through a WC purchase, there remains a legal risk: ESI may well be applicable to those contract employees given the nature of their work and salaries.

Therefore it is prudent to mandate ESI coverage to be procured by the contractor as applicable.

4. Cost

ESI costs are contributed as 3.25% of salary by employer and 0.75% by employee. For a salary of Rs. 21,000 the cost of ESI works out to Rs. 840 per month.

Typical price of WC coverage range from Rs. 210 / worker / month to Rs. 2,040 / worker / month depending on risk of occupation and extensions [5].

It appears that for low risk occupations, WC could work out less expensive than ESI, but the lower cost option is only available if ESI is not applicable in the first place.

5. Supporting procedures

Whether employees are covered by ESI or WC, there are some basic procedures which are required to avoid denial of injury claims, as well as to limit their scope.

5.1 Attendance / access records

An accurate attendance record of all persons entering and leaving the premises is required to support any injury claim [6]. Biometric devices are very helpful to ensure accuracy in large scale applications.

Further, an accurate record of entry and exit of employees also helps preclude frivolous injury claims, since injury claims are limited to workplace activity only [7].

In WC situations, it is also important to ensure that the number of people in premises do not exceed the maximum cover stated in the policy. Depending on the policy, the maximum limits may also apply on specific designations.

5.2 Safety procedures and their documentation

Safety procedures must not only be followed, but also documented to avoid denial of injury claims. The Factories Act 1948 offers general guidelines on health and safety procedures [8], and industry bodies, including automotive manufacturers [9], conduct ongoing research to examine health and safety issues in specific workplaces, as well as to respond to emerging health issues such as Covid19.

A basic record of health and safety measures would involve a record keeping system which performs the following tasks:

5.2.1 Routine evidence snapshot of specific conditions

Annexure 1 presents a check-list of basic health related items from the Factories act 1948. A system can be designed with the following features:

- Collect a photographic snapshot of various areas of the plant at scheduled intervals
- Capture manual review and approval of check-list from authorized supervisor
- Report on compliance/violation trends over time by department.

The check-list approach can be extended to safety precautions also, with similar evidence snapshot and review.

5.2.2 Trouble tickets

A related feature of the system is a health and safety related trouble ticket system wherein authorized staff can log issues as they are observed. For example, a chemical spill might be reported from the mobile device of authorized staff person in the area.

Each such trouble ticket type may be defined with a follow up procedure, which offers a step by step procedure to correct the issue, as well as collects assertions to the effect from authorized staff.

In the chemical spill example, the system may send a notification to the clean-up crew, whose supervisor can dispatch workers to clean up the spill, as well as record the completion of clean-up tasks, along with photographic evidence from mobile devices.

6. International trends

The following trends are worth noting in the international context:

6.1 Third party liability insurance

Most businesses carry third party liability insurance to cover accidents within their premises that may cause injury and damage to unrelated parties. For example, a casual visitor getting hit by falling machinery.

6.2 Automation of health and safety procedures

Leading providers of such systems include Enablon, Gensuite, Sphere, Cority and Intelx. The solutions tend to be enterprise scale and customized to specific vertical requirements. In essence they deliver a combination of checklist recording and trouble ticketing.

7. Summary

Injury claims are a significant liability in most industrial concerns. The insurance methods available in India include ESI and WC, of which ESI is mandatory where applicable.

Contract employees should be treated at par with regular employees for the purpose of injury claim insurance based on their trade and salary; if applicable, contractors should be mandated to carry ESIC for their contract employees.

Finally, automated systems should be implemented to document health and safety measures in the workplace in order to avoid denial of injury claims by insurance providers.

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Annexure 1 : Health check-list from Factories Act 1948

A basic check-list of generally applicable health related “evidence snapshots” to be collected on a routine basis [10] [11]

1. Cleanliness (routine task, dates when done)
 - Washing date
 - Colour washing date
 - Varnish date, Sweeping date
2. Disposal of Trade Wastes and Effluents.
3. Ventilation and temperature.
 - Temperature to be recorded at each hygrometer (As per form 8)
4. Dust and fume
 - Conditions to be measured routinely and recorded
5. Artificial Humidification
 - Conditions to be measured routinely and recorded
6. Overcrowding
 - Person counts in specific areas to be recorded, preferably automatically via access control dates.
7. Lighting of interior parts and prevention of glare
 - Conditions to be measured routinely and recorded, preferably via video camera
8. Drinking Water facilities & quality
 - Conditions to be measured routinely and recorded, using combination of video camera and measurement devices.
9. Washroom & Urinals
 - Conditions to be measured routinely and recorded, preferably via video camera
10. Spittoons
 - Conditions to be measured routinely and recorded, preferably via video camera

11. Health Records of Workers in hazardous process

- Digital records to be maintained on per worker basis

12. Records of Fitness Certificates issued as per form 5 and form 23

- Digital records to be maintained on a per worker basis

13. Health Register as per form 24

- Digital records to be maintained on a per worker basis

References

[1]: Employment Claims Act, 1923

https://www.indiacode.nic.in/bitstream/123456789/2378/1/AAA1923Employee___08.pdf

[2]: SCOI judgement in “Shivalik Steel And Alloys Pvt. vs Workmen'S Compensation”

Case History:

Ashok Kumar was employee of Shivalik Steel and had lost his life in an accident in course of his work. His family was compensated as per ESI Act,1948 but had raised a compensation demand under WC,1923 over and above the ESI compensation

Decision:

The Supreme Court of India has defined the meaning of section 53 and section 61 of ESIC which bars the beneficiaries of ESIC from receiving/recovering compensation under any other law.

<https://indiankanoon.org/doc/265899/>

[3]: ESIC Applicability

<https://www.esic.nic.in/coverage>

[4]: HDFC Employee Compensation Insurance Policy

<https://www.hdfcergo.com/commercial-insurance/specialty-insurance-policy/employee-compensation-insurance-policy>

[5]: Insuropedia workmens compensation insurance expense calculator

<https://securenow.in/insuropedia/expensive-workmen-compensation-insurance/>

[6]: SCOI judgement in “Shivalik Steel And Alloys Pvt. vs Workmen'S Compensation”

The judgement specifically mentions the attendance register's entry to ensure that the responsibility of compensating lies with the employer

<https://indiankanoon.org/doc/265899/>

[7]: SCOI judgement in “Regional Director, ESI Corporation v Francis De Costa”

Case History:

Francis met with an accident on his way to the factory. He was hit by a lorry belonging to his employers. Also, he was riding the bicycle that was bought by taking a loan from the employer.

Decision: ESI compensation was rejected since there was no casual connection between the employer and accident.

Quoting from the SCOI judgement: "In our view this cannot be a ground for departing from the principle laid down by the aforementioned cases that the employment of the workman does not commence until he has reached the place of employment. What happens before that is not in course of employment." <https://indiankanoon.org/doc/1095646/>

[8]: Factories act, 1948

https://labour.gov.in/sites/default/files/Factories_Act_1948.pdf

[9]: Automotive workplace safety research

https://www.business-standard.com/article/current-affairs/automakers-firm-up-measures-to-safeguard-workforce-amid-covid-19-surge-121050200210_1.html

[10]: Factories Act : (page 15 , chapter III, section 11 to 20)

https://www.indiacode.nic.in/bitstream/123456789/1530/1/AAA1948___63.pdf

[11]: Factories Act Rules : (page 18, rule 20 to 56)

https://upload.indiacode.nic.in/showfile?actid=AC_CEN_6_6_000010_194863_1517807319577&type=rule&filename=model_factories_rules_as_on_01.03.2019.pdf

Version History

This document follows Semantic Versioning for Documents. See <https://semverdoc.org/>

The version number is given as MAJOR.MINOR.PATCH where

MAJOR version when the document has undergone significant changes,
MINOR version when new information has been added to the document or
information has been removed from the document,
PATCH version for minor changes (e.g. fixing typos, formatting).

Version 1.0.0 19 Dec 21

First release

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Formatting changes: One column layout, Left aligned titles, DejaVu Serif font.