

THE EMPLOYERS' LIABILITY ACT, 1938

ACT NO. 24 OF 1938 1*

[24th September, 1938.]

An Act to declare that certain defences shall not be raised in suits for damages 2*** in respect of injuries sustained by workmen.

WHEREAS it is expedient to declare that certain defences shall not be raised in suits for damages 2*** in respect of injuries sustained by workmen;

It is hereby enacted as follows:--

1.

Short title and extent.

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

(2) It extends to the whole of India 3***.

2.

Definitions.

2. Definitions.- In this Act, unless there 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 rent 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.

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

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1. 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.
 2. The words "in the Provinces" omitted by the A. O. 1950.
 3. 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).

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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

1*[(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 person 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.

3A.

Contracting out.

2*[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
persons in common employment with him.]

4.

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

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.

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.

1. Subs. by Act 5 of 1951, s. 2.
2. Ins. by s. 3, ibid.