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## 232. Is a Driver Working in a Factory Through a Contractor Eligible for Compensation Under the Employee's Compensation Act, 1923 in Case of Accidents or Injuries While on Duty?

The Employee's Compensation Act, 1923 (formerly Workmen's Compensation Act) applies to employees who suffer injuries or accidents arising out of and in the course of employment. This Act covers various categories of employees, including:

- Workers directly employed by an employer.
- Workers employed through a **contractor**, if they are engaged in work related to the employer's trade or business.

A driver working in a factory through a contractor can be considered an employee under Section 2(1)(dd) of the Employee's Compensation Act, which includes contract labour engaged for work connected to an employer's trade or business.

### Liability for Compensation in Case of an Accident/Injury

- If the driver is injured while on duty, the principal employer (factory owner) and/or the contractor can be held liable for compensation.
- Section 12 of the Act states that when a principal employer hires workers through a contractor for work related to the employer's trade or business, the principal employer is responsible for compensation as if the worker was directly employed by them.
- However, if the contractor has taken out an insurance policy or is liable to compensate under an agreement, the principal employer may recover the compensation from the contractor.

### Impact of the Employees' State Insurance (ESI) Act, 1948

The Employees' Compensation Act, 1923 and the Employees' State Insurance Act, 1948 (ESI Act) cannot be availed simultaneously due to Sections 53 and 61 of the ESI Act.

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- If the driver is covered under the ESI Act (i.e., if contributions are made towards ESI), then he or his dependents cannot claim compensation under the Employees' Compensation Act or any other law for employment injury. Instead, they must claim benefits under the ESI Act.
- If the driver is NOT covered under ESI (e.g., his wages exceed the threshold for ESI eligibility or the employer is not covered under ESI), then he is eligible to claim compensation under the Employees' Compensation Act, 1923.

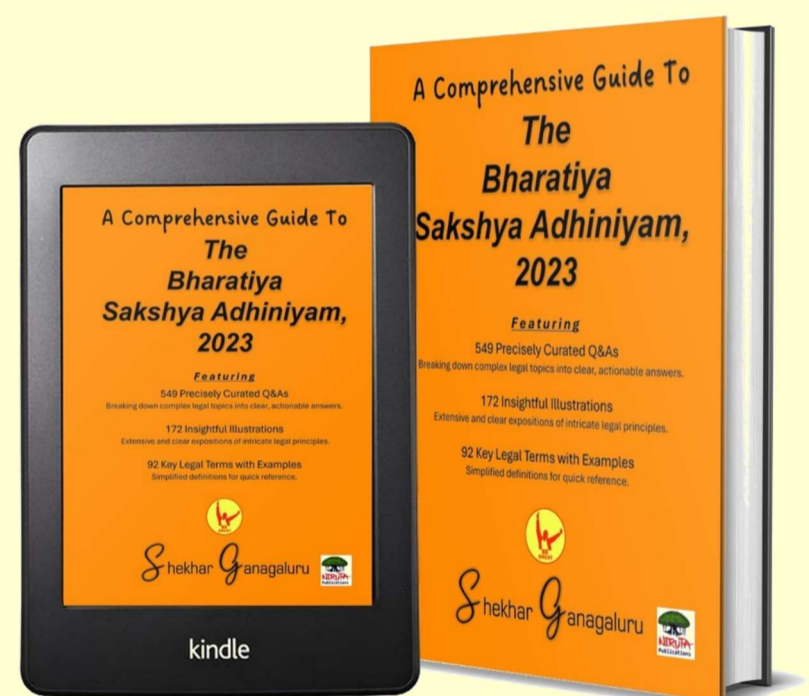
### Key Legal Precedents and Interpretations

- The Supreme Court and High Courts have consistently upheld that contract workers engaged in hazardous employment or essential services (such as driving for a factory) are entitled to compensation under the Employees' Compensation Act if ESI does not apply.
- Case Law: In *Lingaraj Mohanty v. Divisional Manager, ORT Co. Ltd.*, the court held that drivers employed through a contractor but working for a principal employer are eligible for compensation if they suffer an accident while on duty.

### Conclusion

- A driver working in a factory through a contractor is eligible for compensation under the Employees' Compensation Act, 1923, provided ESI does not cover him.
- If ESI is applicable, then he must claim benefits under the ESI Act, 1948 and cannot seek compensation under the Employees' Compensation Act due to the bar under Sections 53 and 61 of the ESI Act.
- The principal employer (factory owner) is liable for compensation if the contractor fails to compensate, as per Section 12 of the Employees' Compensation Act.

Thus, the driver's eligibility for compensation depends on whether he is covered under ESI or not.



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