



Aatma Capital  
Nurturing Relationships



# Code on Social Security, 2020

## Part II

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A member of



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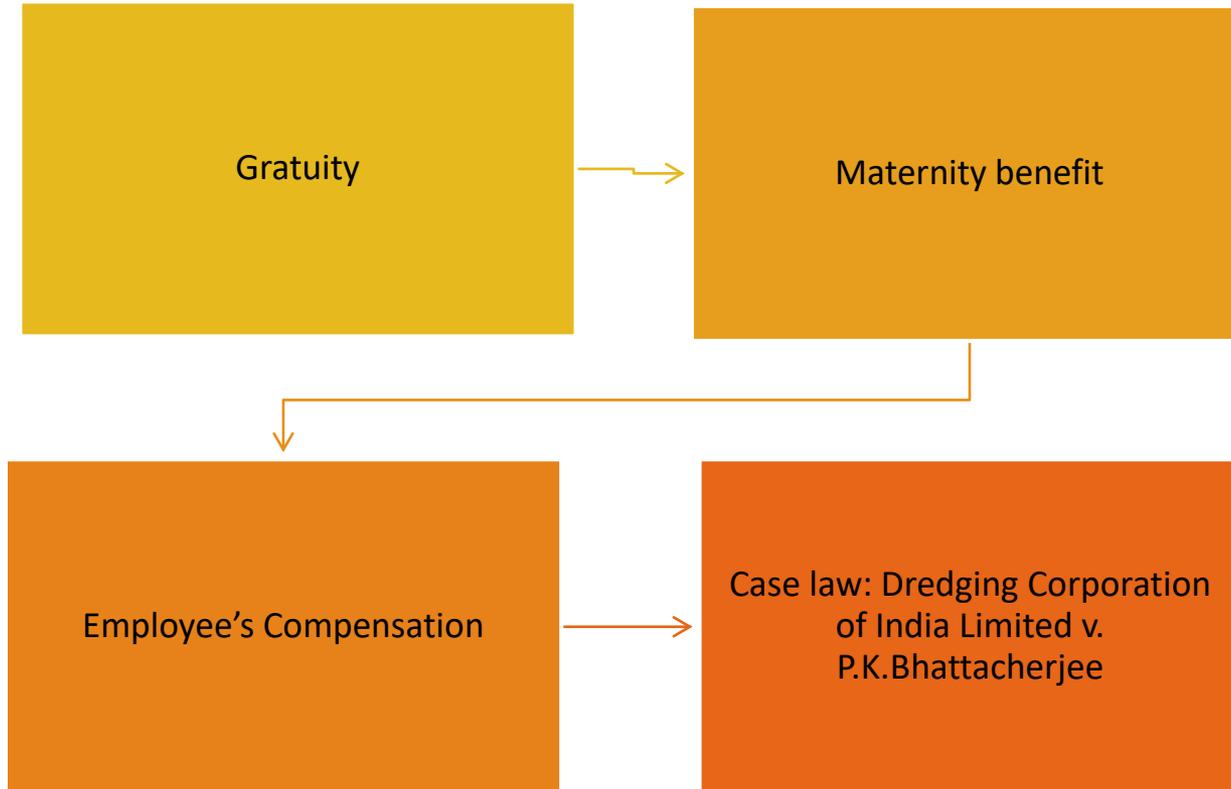
## Credits and Acknowledgments

Iswariya BS

## Legends used in the presentation

Code	Code on Social Security
CG	Central Government
CPC	Civil Procedure Code
HC	High Court
IRDA	Insurance Regulatory and Development Authority
SC	Supreme Court
Sec.	Section

# Presentation Schema



# Definitions

**Competent Authority** means an authority appointed under Chapter V (Gratuity) / Chapter VII (Employee's Compensation) / notified under Chapter VI (Maternity Benefit) by the appropriate Government or the State Government, as the case may be

**Family** means all or any of the relatives of an employee or an unorganised worker, viz., spouse, dependant minor legitimate / adopted child, if child wholly dependant on worker for receiving education then, till the age of 21, unmarried daughter, infirm child, dependent parents (including in-laws of a woman worker) and wholly dependant minor brother / sister (if the worker is unmarried and his parents are not alive)

**Fixed term employment** means the engagement of an employee on the basis of a written contract of employment for a fixed period

# Contd.

## Medical termination of pregnancy

- Means the termination of pregnancy permissible under the provisions of the Medical Termination of Pregnancy Act, 1971
- By the medical practitioners within a specified period, if it involves a risk to the life of the pregnant woman / of grave injury physical / mental health
- Or when there is a substantial risk to the child if it were born

## Miscarriage

- means expulsion of the contents of a pregnant uterus at any period prior to / during the 26 week of pregnancy, but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code

## Occupational disease

- means a disease specified in the Third Schedule as a disease peculiar to the employment of the employee

**Plantation** means any land used / intended to be used for growing tea, coffee, rubber, cinchona, cardamom / other plant which admeasures 5 hectares / more after obtaining approval from the appropriate Government and offices, hospitals, dispensaries, schools and any other premises used for any purpose connected with any plantation but does not include factory on the premises

**Seamen** means any person forming part of the crew of any ship, but does not include the master of the ship

# Chapter V – Gratuity

# Distinguish

Particulars	Payment of Gratuity Act, 1972	Code on Social Security, 2020
<b>Eligibility of gratuity</b>	Superannuation / resignation or retirement / death or disablement	Includes fixed term employee / any event as specified by CG
<b>Authority</b>	Controlling authority (as per sec. 3 of the Act)	Competent authority (as per sec. 58 of the Code)
<b>Provisions</b>	Maximum gratuity payable, eligibility of gratuity are clearly specified in the Act	CG is empowered to prescribe any limit, applicability etc. under the Code

# Common provisions

Definition of continuous service

Nomination by employee for receiving gratuity

Powers of Competent authority are the same as the powers of Controlling authority with all powers of civil court while trying a suit under CPC, 1908

Obtaining insurance by every employer for his liability for payment towards gratuity from any Insurance Company regulated by IRDA

# Chapter VI – Maternity benefit

# Distinguish

Particulars	Maternity benefit Act, 1961	Code on Social Security, 2020
<b>Period during which woman is prohibited from working</b>	6 weeks immediately following the day of delivery / miscarriage	It includes 6 weeks immediately following the day of medical termination of pregnancy
<b>Maternity benefit</b>	Is available during the actual absence immediately preceding & including the day of delivery & 6 weeks immediately following that day	Is available during the actual absence immediately preceding the day of delivery & any period immediately following that day
<b>Eligibility</b>	If worked for a period of not less than 160 days in the preceding 12 months	If worked for a period of not less than 80 days in the preceding 12 months
<b>Maximum period</b>	12 weeks	26 weeks

# Contd.

Particulars	Maternity Benefit Act, 1961	Code on Social Security, 2020
<b>Eligibility of benefit if child below the age of 3 months is adopted</b>	No such provision	Can avail benefit for 12 weeks
<b>Payment of medical bonus</b>	Rs. 25/-	Rs. 3,500/-
<b>Creche facility</b>	No such provision	Every establishment having 50 / more employees
<b>Authority</b>	Inspector (as per section 16 of the Act)	Inspector cum facilitator (as per section 72 of the Code)

# Common provisions

Giving a notice in writing to the Employer for claiming maternity benefit and payment thereof

In case of death of a woman: Eligible for maternity benefit till the date and including the date of death

Employer cannot discharge / dismiss a woman during the period or on account of such absence due to pregnancy

Forfeiture of maternity benefit when a woman works for remuneration during the period when she has been permitted by the employer to absent herself

# Chapter VII – Employees Compensation

Employer is liable to pay compensation-

→ If any injury is caused to an employee by accident / occupational disease

→ Death / injury to the worker / his family members as a result of collapse of a house provided by employer in the plantation

Compensation has to be paid by the Employer when it becomes due, failing which interest has to be paid for delay

Computation of compensation payable to the workers and distribution of such compensation has to be made in the manner as specified in the Code

**Persons eligible for compensation also includes:**

Masters of ships / seamen

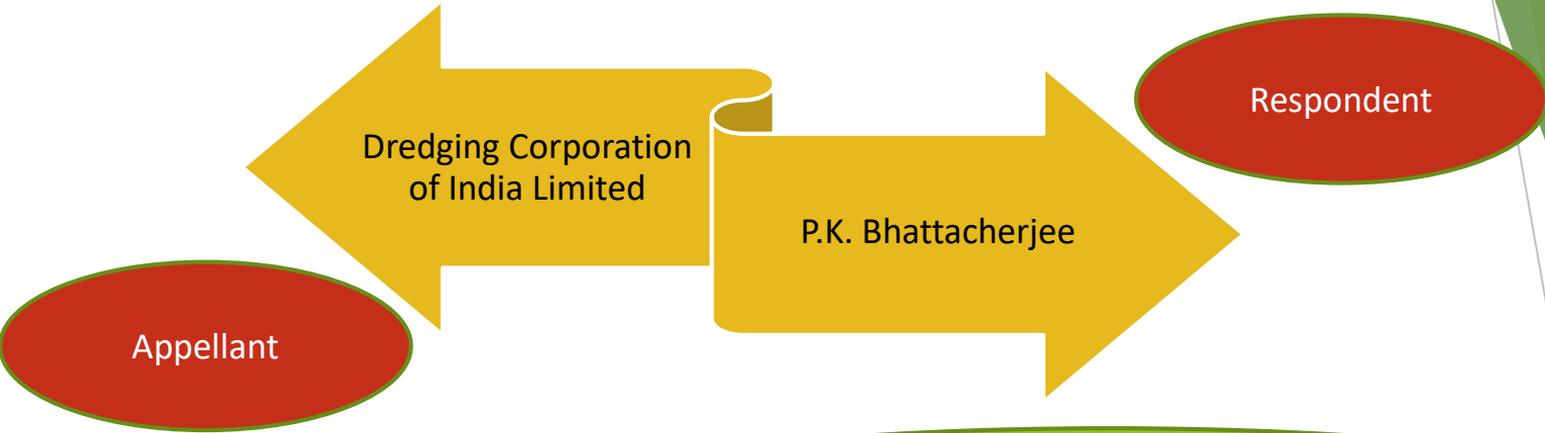
Captain and other members of crew of aircraft

Persons who are recruited by Company registered in India & working abroad

Persons sent for work abroad along with motor vehicles as driver, helpers, mechanics, cleaners / other employee

Any question arises as to liability of any person to pay compensation / amount or duration of compensation, the question shall be settled by a Competent authority (it was Commissioner in the Employee's Compensation Act, 1923)

# Case law



Facts of the case

Civil Appeal No.8278 of 2013

Respondent had met with an accident on 27/12/1999 while in employment of the Appellant

Thus, the Commissioner, Workmen's Compensation, West Bengal held on 24/06/2010 that considering the respondent's age, wages & injury he was entitled to a **Compensation of Rs. 12 lakhs** together with simple interest @ 12% p.a. till the date of realisation

# Contd.

## Appeal to HC

Aggrieved by the order of Commissioner, Appellant approached the HC, but without success as the division bench in its judgement dated 12/08/2011 had dismissed the appeal

## Appeal to SC

Aggrieved by the Order of HC, the Appellant approached the SC

### **Learned counsel of Appellant held that:**

Respondent was diagnosed immediately after 27/12/1999 to be suffering from an ischaemic heart ailment, rendering it legally impermissible for the Appellant Company to continue any further with his services

- Health malady did not arise as a consequence of the respondent's service with the Appellant Company and hence, no compensation was payable
- Compensation has to be paid only in the event of an employee suffering personal injury caused by an accident arising out of and in the course of employment
- Ischaemic heart condition is personal to the constitution of the respondent, totally unrelated to his services

**Learned counsel of Respondent held that:**

Ischaemic heart condition can result from job stress which was continuously encountered by the employee and hence he is eligible for compensation

Employee's compensation Act is intended for the benefit of an employee & quintessentially is no-fault liability

It appears that both the courts have misdirected themselves in law that because the illness of the employee was discovered while he was in actual service, it has led them to the conclusion that compensation is payable under the Employee's Compensation Act

It ought to have distinguished between the discovery of the health condition while in service & the health condition having occurred during service

It appears to be just and expedient to set aside the impugned order of HC and the order of Commissioner, West Bengal and allowed the Appeal made by the Appellant Company



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