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THE BENEFITS PAYABLE IN RESPECT OF INDUSTRIAL ACCIDENTS ACT OF JANUARY 23, 1968

(principles, regulation, commentary)

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INTRODUCTION

The Benefits Payable in Respect of Industrial Accidents Act[1] is closely connected with the Work Safety and Hygiene Act of 1965 [2] and implements its principles re. benefits payable to persons injured, victims of industrial accidents and occupational diseases. The Work Safety Act charged all the employing institutions (herein after referred to also as employer) with the duty to ensure to all the employed persons safe and hygienic working conditions excluding all possible threat for their lives and health. The said duty is to be fulfilled with the help of modern science and technics being inherent in the operations of any enterprise.[3] The socialist employment and apprenticeship relations imply social and production risks to be borne by the employer [4] therefore any financial consequences of personal injuries arising out of and in the course of employment should be fully refunded. [5] Moreover, competent State agencies are engaged to provide conditions for full rehabilitation of disabled persons. These principles have their source in the Constitution of the Polish People's Republic, according to which work is the highest value in the socialist society and the right to health protection and aid in the event of sickness or disablement for work is classified

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[1] Dziennik Ustaw [Journal of Laws, hereinafter referred to as J. of L.] No. 3, item 8, hereinafter referred to as the Industrial Accidents Act.

[2] The Act of March 30, 1965, J. of L., No. 13, item 91 hereinafter referred to as the Work Safety Act.

[3] Art. 1 of the Work Safety Act.

[4] Cf. M. Święcicki, *Prawo Pracy* [Labour Law], Warszawa 1968, p. 146 ff.

[5] Re. trends of shaping the employer's liability cf. W. Szubert, *Ochrona 'pracy* [Protection of Labour], Warszawa 1966, p. 240 ff.

as one of the fundamental rights of the citizen.[6] This right is being put into effect through the development of social insurance and various forms of social services.[7]

2. The subject of industrial accidents, being an important social issue in the highly developed modern economy,[8] has always advanced an equally vital problem of compensation for personal injuries. Essential are not only the methods and scope of compensation, but also preventive and repressive functions involved. To adequately present fundamental principles of the Industrial Accidents Act we shall briefly outline the present legal position as compared with the former valid laws.[9]

The compensation for personal injury caused by an industrial accident was based on a traditional construction of two parallel sources of compensation with two courses of action open. The first source was represented by social insurance benefits in the form of disablement pension or a pension for members of the disabled person's family for which claims had to be laid before the relevant body of Social Insurance, or litigated before a social insurance tribunal. The purpose of social insurance benefits was to compensate the wages or salary lost or reduced in consequence of an industrial accident. The second source of compensation was the damages paid by the employer within civil liability for torts, the amount of social insurance benefits being deducible from the damages paid. In such instances a civil law suit could be raised either by the worker who had suffered injury or — in case of his death — by the entitled members of his family. The civil liability of the employer being

[6] Re. trends in the socialist social security, cf. W. Jaśkiewicz, C. Jackowiak, W. Piotrowski, *Prawo pracy* [Labour Law], Poznań 1967, p. 429 ff., and W. Piotrowski *Świadczenia pieniężne uspołecznionego zakładu pracy z tytułu wypadku przy pracy* [Benefits Payable by a Socialized Enterprise in Respect of an Industrial Accident], "Nowe P*rawo," 1969, No. 1, p. 24 ff.

[7] Art. 14 and 60 of the Constitution of the Polish People's Republic.

[8] Relevant regulations of the Constitution are discussed in: E. Modliński, *Podstawowe zagadnienia prawne ubezpieczeń społecznych* [Basic Legal Problems of Social Insurance], Warszawa 1968, p. 52 ff.

[9] According to "Rocznik Statystyczny" ["Statistical Yearbook"], Warszawa 1967, p. 69; with an increased total number of workers in Poland, the number in industrial accidents revealed no proportionally growing tendency. On the other hand, the number of days of incapacity for work caused by industrial accidents increased. Cf. also S. Garlicki *Zasady odpowiedzialności za wypadek przy pracy i zakres świadczeń* [Principles of Liability for Industrial Accidents and the Scope of Compensation], "Państwo i Prawo," 1968, No. 10, pp. 599, 600.

a socialized enterprise was based on the principle of a qualified fault of the employer which arose when the injured person could prove that the relevant industrial accident had resulted from an infringement of rules and regulations of the protection of the worker's life and health.

Such a qualified fault of the employer was a specific form of fault as formulated by civil law,[10] narrower in the Civil Code according to which liability was based on risk involved when using forces of nature.[11]

On the other hand, the liability of the employer who privately owned an enterprise for damage caused by industrial accidents was based on the Civil Code regulations, particularly on risk.[12] The liability for damages of the employers included a suplementary pension, amounting to the difference between previous wages or salary of the employee and his pension paid by the social insurance, a compensation for physical pain and moral prejudice suffered, for expenses resulting from his increased needs because of aggravated living conditions as well as for the restoration of the so-called "material losses." As pensions were assessed according to a differentiated zoning of their bases, with lower per cent indices applicable to higher assessment bases, a progressive increase of wages and salaries brought about a degression of pensions, which began to play a merely maintenance function. As a result, the functions previously adopted and the proportion between social insurance benefits and civil law damages paid by the employer got distorted. Former regulations used only the concept of an accident during employment, which comprised not only industrial accidents directly connected with the production process, but also accidents that occured outside the work process and place, in the form of accidents on the way to and from work, and accidents involving work tools outside the workplace. With such a broad interpretation of an industrial accident

[10] Cf. the Law-decree of June 25, 1954, re. General Pensions Scheme for Employees and Their Families (consolidated text in J. of L. No. 23, item 97 of 1958), in particular art. 24 of the Law-decree.

[11] Cf. T. Zieliński, H. Jachimowicz *Terminy dochodzenia roszczeń od zakładów uspołecznionych z tytułu wypadków przy pracy* [Time for Making Claims Against Socialized Enterprises in Respect of an Industrial Accident], "Nowe Prawo," 1969, No 6, p. 962 and the bibliography quoted.

[12] Cf. A. Kędzierska, Cieślak, *Odpowiedzialność uspołecznionego zakładu pracy względem pracownika za szkody związane z pracą* [The Liability of a Socialized Enterprise to Its Employee in Respect of Injury Sustained in Connection with Work], Warszawa 1967, p. 69.

relevant disablement pensions were only slightly privileged in comparison with pensions in case of disablement brought about by causes other than an accident during employment. Thus the deficiences of the previous legal regulation consisted — generally speaking — on the one hand, in the reduction of the compensatory function of disablement and family pensions to a merely maintenance function. On the other hand, socialized employers took the bulk of the compensatory burden conceived as their financial liability based on the principle of a qualified fault, admitting the possibility of a partial employe's fault.[13] As a result it proved necessary to resort to the system of supplementary payments, chiefly in the form of the employer concluding a contract of insurance against civil liability and accidents.[14] Insurance payments being effected more speedily in comparison with longer, sometimes protracted, law courts proceedings made the damage compensation method unwieldy; the more as, the decisions of law courts were far from being uniform.

3. The principles and proposals of a new regulation of compensation for industrial injuries or occupational diseases were put forward by the trade union movement, and also expressed in labour law literature.[15] In particular, the resolution taken by the 6th/12th Trade Union Congress in 1967 postulated that statutes ought to be issued [16] for a comprehensive regulation compensation for industrial accidents and occupational diseases as follows:

a) social insurance should compensate the loss of wages or salary because the worker is unable to resume his regular occupation

[13] In 1966 the number of workers employed in the socialized economy was of 8,610,000, compared with 131,000 of those privately employed, cf. "Rocznik Statystyczny," 1967, p. 69. The principle of qualified fault was nevertheless largely corrected by judicial decisions which tended to alleviate the requirements of the employee proving the fault of the enterprise, which consisted in an infringement of work safety rules. As a result the difference was diminished between the liability arising from qualified fault and that based on risk, a.o. when the enterprise accepted responsibility even in absence of intentional negligence, e.g., resulting from a structural defect of the machine. Cf. W. Formański, *Dochodzenie roszczeń odszkodowawczych za wypadki przy pracy i choroby zawodowe w "okresie przejściowym"* [Claims in Respect of Industrial Accidents and Occupational Diseases in the "Transitional Period"], "Nowe Prawo", 1968, No. 7/8, p. 1148.

[14] Cf. C. Jackowiak, *Podstawowe kierunki reformy systemu emerytalnego* [Basic Trends in the Reform of Pensions System] "Państwo i Prawo," 1969, No. 1, p. 147.

[15] Cf. the bibliography in Garlicki, op. cit., p. 600.

[16] Cf. *Uchwała VI/XII Kongresu Związków Zawodowych* [Resolution of the 6th/12th Trade Union Congress], Warszawa 1967, pp. 40, 41.

or a suitable occupation of equivalent standard, thus dispensing with going to law;

b) claims for compensation for injury sustained and injury benefits should not be made subject to the employer having infringed work safety and hygiene rules and regulations;

c) the hitherto applied, long and complicated procedure of establishing causes and circumstances of accidents and the benefits awarding should be simplified, and the adjudicative bodies should be brought into a closer contact with the workplace;

d) preventive measures taken by employer should be made more effective by setting up special post-accident enquiry committees.

The above legislative postulates of the trade union movement were fully realized by the Industrial Accidents Act and its implementing orders.[17]

THE SCOPE OF THE ACT

The Industrial Accidents Act is applicable on two concurrent conditions. The first one is that bodily injury or death has happened to an employee of a socialized enterprise. The second — that injury has been caused either by an industrial accident or occupational disease within the meaning of the Industrial Accidents Act or relevant implementing orders.

1. The Industrial Accidents Act covers all the employees of socialized [18] enterprises irrelevant of the mode in which they have entered into employment, and in the case of employee's (pensioner's) death resulting from an industrial accident or an occupational disease — his family. Thus it includes the employees whose employment is based on a contract of employment, appointment, no-

[17] In particular, the Order of the Council of Ministers of June 18, 1968, re. the principles and procedure of establishing circumstances and causes of industrial accidents and further appeals (J. of L. No. 22, item 143), hereinafter referred to as Order No. 1; the Order re. Single Benefits and Other Allowances Accruing in Case of Industrial Accidents (J. of L. No. 22, item 144) — Order No. 2; and the Order re. the Industrial Accidents Act being applicable to occupational diseases (J. of L. No. 22, item 145) — Order No. 3.

[18] The workers employed in privately-owned enterprises are still entitled to claim benefits in respect of industrial accidents under the General Pensions Scheme for Employees and Their Families Pensions Act (of January 23, 1968, J. of L. No. 3, item 6) with the right to sue the enterprise for damages on the ground of the liability for the risk of using forces of nature. The only justification for such a duality of legal regulation is the difficulty to set up post-accident enquiry committees in private enterprises.

mination and election, as well as a contract of apprenticeship, training to do a specified job, or initial practice after graduation, members and candidates for membership in a small-producers'cooperative society employed by the said society. Besides the employees the Act extends to small-producers that work on order and to the account of a socialized enterprise and for a remuneration of an established rate, also advocates those associated in joint offices.[19] The Act covers also family members of all these persons and the family members of the pensioners i.e. the formerly employed persons who in consequence of industrial accidents or occupational diseases became pensioners and then died in causal conjunction with the accident or occupational disease.[20]

2. The Act covers what has been defined as an industrial accident and occupational diseases. The Act distinguishes between a proper industrial accident and other accidents during employment, with benefits payable to the latter group being equalized with those of the former.[21] The Act defines an industrial accident as a sudden event brought about by an external cause, which occured in connection with work, in the course of or in connection with executing usual functions or orders of persons to whom the employee is subordinated due to being employed, or acting in the interests of the employer without instruction; also while storing, cleaning, repairing or carrying tools in the workplace, even if these are supplied by the employee himself. It is also considered an industrial accident if the employee sustained injury on the way from the enterprises to the place where he had been ordered by the employer to exercise his functions, provided he was transported in a vehicle which either belongs to or is regularly used by the employer.[22] Only such events if they caused personal injury to the employee are classified as an industrial accident. The statutory concept of an accident emphasizes the causal direct conjunction with the process of work and the place where work is performed, as this is the only sphere

[19] The Industrial Accidents Act extends to these persons pursuant to Art. 26 of the Act in conjunction with Art. 5.2 of the General Pensions Scheme for Employees and Their Families Act of Jan. 23, 1968 (J. of L. No. 3, item 6) hereinafter referred to as the General Pensions Act.

[20] Cf. S. Garlicki, op. cit., p. 603.

[21] These are sometimes called "social accidents." Cf. M. Piątkowski, *Nowe emerytury ₂ renty 'pracownicze* [New Retirement Pensions and Disablement Pensions], Warszawa 1968, p. 53.

[22] Only such a traffic accident entitles to benefits under the Industrial Accidents Act.

of the employee's activities where the employer can discharge his duties imposed by the Work Safety and Hygiene Act. Thus, in contradistinction to the previous legal position, an accident on the way to and from work has not been equalized with industrial accidents.

An accident on the way to and from work is classified as an accident during employment and is regulated by the General Pensions Act and compensated by benefits of insurance against traffic accidents.[23]

In an analogical way was considered an accident which occured to an employee or an unemployed person while performing functions and tasks assigned by State agencies, political, trade union, or social organizations, provided it happened while acting in the interests of the enterprise.[24]

Beginning Sept. 1, 1968,[25] the right to benefits arising in respect of an industrial accident was extended to cover the cases in which a temporary incapacity for work, permanent injury, disability or death of the worker were the result of a disease mentioned in the list of occupational diseases qualifying for benefits, and inherent in a given type of work or in working conditions which incur the occupational disease in question.[26] The necessary condition for the adjudicative compensation under the Industrial Accidents Act is an acknowledgment by competent organs of Sanitary Inspection Board of the existence of an occupational disease and a due statement that personal injury sustained by the employee has resulted from an occupational disease, which constitutes a presumption that the

[23] An accident which involved the tools of work, but happened outside the place where work is done, is not classified as an industrial accident, but as an accident during employment.

[24] It refers, in particular, to accidents while a person is acting in the capacity of a member of the Polish United Workers' Party Committee, or a member of the works committee, workers' council, or an agency of the Trade Union which associates workers of a given enterprise; also when acting in boards of youth organizations operating in the enterprise, technical and scientific organizations; finally, when participating in military self-defence training in the enterprise.

[25] Cf. Order No. 3 and the principles of awarding benefits therein.

[26] Relevant postulates to extend the right to benefits to cover personal injuries caused by occupational diseases have been set forth for a long time by the Trade Union movement and theoreticians of labour law. Cf. R. Garlicki, *Odpowiedzialność majątkowa zakładu pracy za choroby zawodowe* [The Entreprise's Liability for Occupational Diseases], "Praca i Zabezpieczenie Społeczne," 1968, No. 3, p. 28.

worker has been employed in conditions in which the disease from which he is suffering constitutes an occupational disease.

THE ACQUIREMENT OF THE RIGHT TO COMPENSATION

1. The right to pecuniary compensation both that within the social insurance scheme and the one borne by the employer — arises *ex lege,* automatically, in respect of any industrial accident which has resulted in personal injury of the employee, as specified in the Act, irrespective of the cause of the accident. There is only one exception from the said rule, namely, when the sole cause of the accident has been an infringement of the work safety and hygiene rules and regulations, through gross negligence or intentionally,[27] by the employee himself whose guilt has been proved by the employer. The right to compensation — both that within the social insurance scheme and the one borne by the employer — is based on the rule of a specific risk, characteristic of labour law, i.e. the so-called "risk involved in work"[28] connected with the liability of the employer for a result,[29] that is, for the industrial accident occuring.[30] This follows from the general rule that personal injuries sustained by the employee of any socialized enterprise are covered by social and production risks involved in the activities of the

[27] Cf. Art. 1 of the Industrial Accidents Act. There is no exception, however, if the employee did not follow rules of conduct dictated by experience with regard to safe work, i.e., when the said rules have not been explicitly stated in work safety and hygiene regulations. When an industrial accident happened as a result of a cause which does not entitle to compensation under the Industrial Accidents Act, the employee and his family are entitled to benefits under sickness insurance or within the General Pensions Scheme, or under special pensions acts (e.g. applicable to miners and railway employees). The claim to compensation under the General Pensions Scheme arises irrespective of the cause of an accident in the course of employment, except when the accident was caused by intentional misconduct.

[28] It seems to be a controversial question in legal literature how the right to be compensated arises under the Act. Usually it is interpreted as the rule of risk involved in work (of. the views presented by T. Zieliński and H. Jachimowicz, op. cit., p. 929). R. Korolec in his article *Świadczenia służące wyrównaniu szkody na osobie pracownika* [Benefits for Compensation for the Injury Sustained by the Employee), "Nowe Prawo," 1968, No. 11, p. 1596, speaks of the risk borne by the employer being a higher risk.

[29] Cf. S. Gar1icki, op. cit., p. 604.

[30] Consequently the basis of the right to be compensated exceeds the scope of the employer's liability based on risk pursuant to Art. 435 of the Civil Code.

enterprise and the employment of workers. An exception from this rule is justified by the principles of socialist morality, i.e. in the case of a highly reprehensible behaviour of the worker in course of the work, that is, when he infringes the work safety and hygiene regulations in a drastic degree, if this was the sole cause of the industrial accident.

Thus the new regulation with regard to the compensation to be borne by the employer has departed from the principle of an qualified fault of the employer, thereby making a divided fault of both the parties to the employment contract inadmissible. The right to be compensated arises also when the accident has been caused by *vis major* or an exclusive fault of a third party for whom the employer is not responsible. *Culpa levis* of the employee in the form of negligence in observing work safety rules and regulations, which consists in not taking due care while working[31] — when this is the sole cause of the industrial accident — does not debar the employee from the right to compensation. On the contrary: even gross negligence on the part of the worker by no means debars him from full benefits payable by the employer, provided the slightest negligence on the part of the employer contributed to the accident arising. Intentional action or gross negligence on the part of the worker do not debar him from compensation provided the worker did not have qualifications or abilities required for a given job, or he had not been properly trained regarding work safety and hygiene rules and regulations, or the employer had not ensured working conditions keeping with the regulations and technical requirements to a degree that enables to observe work safety regulations, or the employer had not adequately seen to it that the said regulations be observed.[32]

On the other hand, if the accident was caused exclusively by the worker being intoxicated, with a duly detected specified alcohol content in blood,[33] the worker has no right to compensation. The worker's intoxication always constitutes an infringement of work safety regulations, but this fact excludes the right to benefits only when it was the sole cause of the industrial accident, unless the employer could have prevented the personal injury sustained by the

[31] These may be the cases of carelessness arising from routine, monotony of productive processes, getting used to work hazards, fatigue. They may result in careless behaviour in the course of work.

[32] Par. 17 of Order I, which is explicit in this respect.

[33] Cf. above.

worker in consequence of his intoxication.[34] It is one of the fundamental duties of any worker to keep sober.[35]

THE SYSTEM OF PECUNIARY COMPENSATIONS

General Principles

The system of compensations comprises both the benefits payable from the social insurance funds and the allowances payable from the works funds. The duality of the compensation has been maintained, their functions, however, having changed. Benefits, both the ones paid by social insurance and the ones borne by the employer, specified in and claimed under the Industrial Accidents Act, compensate *ex lege* all damages resulting from an industrial accident or occupational disease with regard to an employee of a socialized enterprise.[36] In comparison with the previous legal position, it is essential that pensions are financed exclusively from social insurance funds, because supplementary pensions payable by the employer to compensate the difference between the social insurance pension and the worker's wages or salary prior to the accident have been abolished.[37]

Both the disablement and family pensions have been considerably increased: they amount in cases of full disability up to 90 per cent, or even 100 per cent of the previous wages or salary. Consequently, pensions have acquired the function of compensation for a lost or reduced subsistence basis of the employee and his family. Their payment is effected speedily and warranted by the State. Conditions have been provided to maintain the amount of the pension in case of the pensioner subsequently undertaking a paid job or receiving an income from other sources. Thus a separate accidents insurance[38] has been introduced, departing from the system of pension degres-

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[34] This view is controversial.

[35] Cf. I. Jankowska, *Wpływ stanu nietrzeźwości na pojęcie wypadku przy pracy lub zatrudnieniu i na prawo do świadczeń z tytułu wypadku* [The Influence of Intoxication on Industrial Accidents in the Course of Employment and the Right to Benefits Arising Therefrom). "Praca i zabezpieczenie społeczne," 1969, No. 8/9, p. 31.

[36] Consequently benefits claimed in a different way have been retained, e.g. death benefits or allowances specified in collective agreements.

[37] A full compensation with a supplementary pension payable by the employer was, nevertheless applicable only in cases of a fully proved guilt of the employer.

[38] Cf. R. K or ole c, op. cit., p. 1611.

sion that is now applicable only to non-accident pensions, regulated by the General Pensions Act. On the other hand, benefits payable by the employer, fully specified and detached from the civil liability basis, in spite of their compensatory nature, have become single benefits or short-term allowances. They are financed from the turnover means of the enterprise, charged to extraordinary losses account.[39] Although under the former compensations scheme,[40] also the pensioners with a low group disablement percentage could receive a supplementary pension payable by the employer and the said pension could be increased when the pensioner became subject to an unforseen aggrevation of the results of the injury sustained in an industrial accident, in a general way, the new system, of compensations more adequately meets the present-day social requirements thanks to a considerably increased number of those entitled to compensations based on the principle of the risk involved in work, as well as thanks to social insurance benefits taking up the bulk of compensations burden and the employer being released from paying supplementary benefits.[41]

Social Insurance Benefits

Pecuniary benefits from the Social Insurance Board are payable:

1. To the employee who in consequence of an industrial accident or occupational disease has suffered a health detriment;

2. On the death of the employee — to the entitled members of his family.

Ad. 1. Social insurance benefits due to the worker cover:

a) a disablement pension the amount of which depends on the defined disablement group to which worker has been assigned (with 100 per cent of the previous wages/salary in group I, 90 per cent — in group II, and 65 per cent — in group III).[42] The basis for pension

[39] Cf. Prime Minister's circular letter of August 2, 1968 re. Social Insurance Allowances and Benefits specified in the Industrial Accidents Act "Monitor Polski," No. 24, item 239.

[40] Under the Industrial Accidents Act the pensioners with a low disablement percentage group are all entitled to compensatory benefits payable by the employer.

[41] Cf. A. Mirończuk, *Nowy system odszkodowań za wypadki przy pracy i choroby zawodowe* [A New System of Compensation for Industrial Accidents and Occupational Diseases], "Praca i Zabezpieczenie Społeczne," 1968, No. 3, p. 54.

[42] Art. 12 of the General Pensions Act distinguishes three groups of disablement, according to the degree of the disability for work, unemployabil-

calculation is net income wages/salary this being the object of compensation. Thus the worker who has become a disabled person assigned to one of the groups is entitled to a disablement pension. There is no waiting period for acquiring the right to a benefit;

b) an extra allowance payable in the case of 100 per cent disability (group I), as the pensioner is unable to do any work and requires constant attendance of a third person. The extra allowance is to refund the constant attendance expenses.

If the disabled person assigned to group I takes up a remunerative employment or receives an income from other sources, his pension remains intact and he merely loses his right to a constant attendance allowance. A silimar situation with regard to the disablement pensions of persons assigned to group II and III affects the amount of the pension in the way that the pension plus the income may not exceed 100 per cent of the amount of previous net salary/ wages;

c) the employes who became victim of an industrial accident or suffers from an occupational disease is entitled to a supplement to the social insurance sickness benefit while he is receiving medical treatment in a hospital or a sanatorium. The supplement is payable even in cases in which the employee was exclusively guilty of causing the accident, intentionally or by negligence.

Ad. 2. The members of the family of the employee (pensioner) [43] who died in consequence of an industrial accident or an occupational disease are entitled to the following allowances:

a) a family pension which amounts — depending on the number of the members of the family — from 60 to 83 per cent of the pension due to the deceased employee if he were assigned to group II on the date of his death; The persons entitled to a family pension, when assigned to group I, are moreover given a supplementary benefit to their pensions; [44]

b) a funeral grant.

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ity, and inability to earn living: group I — completely unemployable and requiring constant attendance of another person; group II — unemployable; group III — markedly limited in their capacity to earn living (cf. Art. 12.3 of the General Pensions Act).

[43] The members of the family entitled are specified in Art 30 ff. of the General Pensions Act.

[44] It amounts to zl. 200. If the persons receiving a family pension obtain wages/salary for employment or an income from another source, their right to the pension is suspended for that period, as provided by the General Pensions Act, with the exception of the miner's widows. Besides the ones

Benefits Payable by the Enterprise

The benefits payable by the employer take the form either of a single or of short-term payments. It has been assumed that the liability to pay these benefits arises out of employment,[45] and in spite of their compensatory nature,[46] they resemble social insurance benefits.[47]

There are various forms of benefits payable by the employer:

1. A single compensation for permanent injury sustained by the employee or in respect of his death. The worker injured is entitled to a single compensation only if his injury is of a permanent nature, though not necessarily irreversible. The amount of a single compensation is statutorily limited in proportion to the degree of the subject's incapacity for work. In case of industrial accidents, with no less than 80 per cent disablement e.g. with assignation to the I and II group of disablement the single compensation amounts to zl 40,000. With lower disablement percentages the single compensation is proportionally reduced, the minimum limit, however, being not less than zl 2,000.[48] In the cases of disablement caused by an occupational disease, the single compensation amounts to zl 40,000

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quoted above, no other extra allowances — similar to those provided in the General Pensions Act — are added to pensions under the Industrial Accidents Act with the exception of a family allowance.

[45] Cf. S. Garlicki, op. cit., p. 605, where the author emphasizes that "because the employer assumes full liability for the consequence, it becomes an institution safeguarding the interests of the worker in a regular work process, the said institution being an essential element of employment [...] and consequently the liability becomes contractual and not the one based on tort." This is so because the benefits payable by the employer are based on a *sui generis* "liability" of the socialized employer, unconnected with any guilt on the part of the employer with regard to causing an industrial accident. Similar arguments to be found in T. Zieliński, H. Jachimow i c, op. cit., p. 932 ff.

[46] T. Zieliński, H. Jachimowicz, op. cit., p. 934 recognize a compensatory nature of such claims as arising out of employment. On the other hand, E. Modliński, *Zakładowe komisje rozjemcze po przejęciu spraw wypadkowych* [Work Arbitration Committees after Taking over Industrial Accidents Cases], "Przegląd Ustawodawstwa Gospodarczego," 1969, No. 2, p. 39, considers the benefits payable by the employer to be covered by civil law claims — though to a large extent regulated by the law — as not arising directly from employment.

[47] Also R. Koro1ec, op. cit., pp. 1597 - 1660, classifies the benefits payable by the employer to compensatory benefits different from civil law damages, and points to their similarity with social insurance benefits.

[48] 1 per cent of the basis zl 40,000 corresponds to 1 per cent of the

if the employee has been assigned to the disablement group I or II, and zl 30,000 [49] for the disablement group III. If the employee dies in consequence of an industrial accident, his family is entitled to a death benefit amounting to zl 20,000. When the family consists of more than two persons entitled to a family pension, the single compensation is increased by zl 5,000 per each one entitled member of the family.[50] The same principles are applicable to the single compensation on behalf of the entitled members of the family if the employee died in consequence of an occupational disease. The unrecurring (single) compensations are characterized by a system of compensatory limitation. Although it does not permit to conform the amount of damages to the concomitant circumstances of a given accident, yet they are shaped at the level of average property insurance premium applicable on the basis of the liability insurance contracts concluded by the employer. In certain justifiable cases the top limits of the single compensation may be exceeded, if the competent Minister so decides. The Council of Ministers may also increase the top limits of compensations prescribed by the Industrial Accidents Act. It may also set up higher amounts of single compensations for certain groups of workers exposed to special risks,[51]

The legal nature of the single compensation has been a controversial question in labour law literature. The same applies to the legal nature of any benefits payable by the employer,[52] among which the single compensation is basic. It constitutes — in terms of the Industrial Accidents Act — a compensation for a permanent health detriment or the death of the employee. The notion of single compensation payable by the employer has been interpreted in various ways: as a compensation by its very nature different from civil law damages,[53] as a substitute for a civil law compensation in respect of an injury sustained because it represents an equivalent for physiological impairment; [54] or simply as a compensation for the harm done,[55] all the more so as under certain circumstances the members

permanent injury sustained. The single compensation depends only on the percentage of the disability for work, irrespective of the physical pain and moral prejudice sustained.

[49] Cf. the principle expounded in Order No. III.

[50] Cf. Order No. II where the principles are expounded.

[51] Art. 11 par. 2 and 3 of the Industrial Accidents Act.

[52] Cf. p. 13 of the present paper, footnotes 49 - 51.

[53] Cf. W. Formański, op. cit., p. 1153.

[54] In this trend cf. A. Mirończuk, op. cit., pp. 52, 53.

[55] According to S. Garlicki, op. cit., p. 601.

of the deceased person's family entitled to the single compensation may not have sustained any financial loss in consequence of his death.[56] According to some authors the single compensation is considered neither to be damages,[57] nor is it sensed to correspond to social insurance benefits.[58] As stated above, there is also no agreement as to whether the single compensation arises out of employment.[59] An opinion may also be expressed that the single compensation is a global compensation [60] to cover all the injury and losses except those for which the Industrial Accidents Act provides separate benefits. Thus interpreted the single compensation would cover — first of all — a compensation for the injury sustained, and a global compensation for any other damage or losses which have not been compensated with other forms of benefits paid by the employer.

We must add that the right of the members of the employee's family to the single compensation is not dependendent on the change for the worse of the living standard of the employee's family in consequence of his death.

2. Another form of compensation payable by the employer is an allowance compensating the difference between the sickness benefit increased by a supplement thereto and the income of the employee injured, prior to the accident. The compensating allowance is payable only while the employee is receiving medical treatment, or — strictly speaking — while he is receiving a sickness benefit. Only disabled persons are entitled to the compensating allowance, particularly its full amount is payable to persons assigned to the disablement group I and II, and 80 per cent of the difference specified — to persons assigned to the disablement group III.[61]

[56] According to W. Piotrowski, op. cit., p. 36.

[57] Cf. W. Piotrowski, op. cit., p. 36.

[58] As interpreted by T. Zieliński, H. Jachimowicz, op. cit., p. 928.

[59] This view is supported by T. Zieliński and H. Jachimowicz, op. cit., p. 930 ff. Cf. also J. Jończyk, *Odpowiedzialność odszkodowawcza w prawie pracy* [Liability for Damages in Labour Law], "Państwo i Prawo," 1964, No. 5/6, p. 755 ff.

[60] As interpreted by C. Jackowiak, op. cit., p. 147.

[61] Salaried workers receive no compensatory supplement for three months' temporary inability, as during that period they are salaried by the employer. It may seem to be purposeless to reduce the amount of the compensatory supplement with regard to the disablement group III, and refuse such a supplement when the employee has not been assigned to any disablement group. A similar opinion was expressed in S. Garlicki, op. cit., p. 609.

3. An employee is entitled to a compensatory allowance from his employer provided he is suffering from a permanent health detriment, involving the loss of his earning power to be not less than 25 per cent, if he has not been assigned to any disablement group and if his actual income is less than 80 per cent of his income prior to the accident.

The compensatory allowance amounts to the difference between 90 per cent of the average income prior to the accident. The purpose of the said allowance is to compensate losses involved in impaired physical or mental faculty which reduces the ability for work, manifested by a permanent decline in the employee's income.[62] The compensatory allowance is thought not only to compensate the loss, but also to counteract the staff shifting to other jobs. It also performs a discipline promoting function. The employee loses his right to a compensatory allowance if he terminated the contract of employment in a manner which disrupts the continuity of employment i.e. as a rule, if he quits the job.[63] The employee also loses the said right if the employer terminated the contract of employment without notice because the employee's fault.[64] Moreover, the employer is not liable to pay a compensating allowance if he proves that the worker's wages/salary have decreased because the worker has not performed his duties properly.[65]

4. The last item in the list is the benefits payable by the employer in respect of proved loss or damage — in connection with an industrial accident[66] — to personal belongings of the employee. The amount of compensation is established by the manager of the enterprise concerned in consultation with the works council.

The forms of compensation payable by the employer under the Industrial Accidents Act constitute a close, fully specified system of claims of the employee, or the entitled members of his family, against the employer, to be made and settled under the Act. Thus

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[62] Order No. I specifies the principles of awarding these allowances.

[63] This regulation may seem to be controversial. Cf. also W. Piotrowski, op. cit., p. 39.

[64] Cf. the Law-decree of Jan. 18, 1965, re. limited admissibility of terminating contracts of employment without notice and safeguarding the continuity of employment J. of Laws, No. 2, item 11.

[65] In other cases the employee does not forfeit his right to a compensatory benefit; in particular, when he is working in another enterprise he retains his claim with regard to the enterprise which was engaging him at the time of the accident.

[66] W. Piotrowski points to the over-narrowed construction of the said damages, op. cit., p. 40.

they are construed as a global compensation by the employer of all the injury and losses sustained by the employee or his family in consequence of an industrial accident or occupational disease.[67] On the other hand, persons who sustained damage may claim to be indemnified directly by the person who has caused an accident, following civil law regulations on torts.

Adjudicative Bodies and Procedure for Making Claims And Settling Disputes

1. The Industrial Accidents Act aimed to simplify, speed up, and concentrate in the employer-enterprise all the actions involved in awarding compensation. The compensation payable by the employer differing considerably from civil law damages,[68] it was found necessary to refer any relevant disputes to Social Insurance Tribunals. As a result, the Industrial Accidents Act introduced far-reaching reforms as to the competences in assessing and awarding compensations, mainly those payable by the employer. The competent bodies and procedure are as follows:

a) the local body acting *ex officio* in the employer-enterprise directly after the accident in a post-accident enquiry committee [69] which establishes facts and undertakes necessary steps to determine if the employee will be found qualified for a compensation. Particularly, it establishes if a given accident is an industrial accident as construed by the Industrial Accidents Act, or if there are any circumstances on the part of the employee which might disqualify him in respect of compensation; [70]

b) the employer and the person deemed entitled may appeal from the decision of the post-accident enquiry committee, contained

[67] There is no uniformity of opinions as to the non-claim and limitation of claim for damages against the employer. Cf. T. Zieliński, H. Jachirnowicz, op. cit., p. 928 ff.

[68] Cf. K. Kolasiński, *Pojęcie i kryteria rozróżnienia form zabezpieczenia społecznego* [Concepts and Criteria in Distinguishing Various Forms of Social Security], "Praca i Zabezpieczenie Społeczne," 1969, No. 5, pp. 16, 21. Re. the concept of social security and social insurance cf. also E. Modliński, *Podstawowe zagadnienia prawne ubezpieczeń społecznych* [Basic Legal Aspects of Social Insurance], Warszawa 1968.

[69] They have been operating since 1966, but their nature and competences have considerably changed.

[70] Cf. the view expressed by J. Jończyk that post-accident enquiry committee are bodies affording legal protection in the administration of justice (unpublished materials from a conference of the Polish Academy of Sciences and the Central Board of Trade Unions held in February 1969).

in a formal record,[71] to the competent post-accident enquiry appeal committee, appointed by the unit supervisory to the enterprise concerned. The findings arrived at in the proceedings are binding both on the organs of social insurance and on the employer, as regards awarding or refusing compensation; [72]

c) when the employer refuses to pay the full compensation or its part the litigation may be referred in the first instance — to the Works Arbitration Committee; [73] in the second instance — to the competent District Social Insurance Court. The competences of these courts have been extended to decide about litigations arising out of employment, litigations concerning compensations payable by the employer belonging to this group;

d) social insurance benefits are awarded by the Social Insurance Board on the basis of a legally valid resolution of a works post-accident enquiry committee, an appeal from the said decision of the Board to be laid before the supervisory committee of the local branch of the board. Re. pensions, further appeal has to be laid before district court of social insurance, and then, in the presence of certain

[71] Cf. T. Jackowski, op. cit., pp. 46 - 47 re. the legal nature of the official records prepared by works post-accident enquiry committee, establishing circumstances and causes of accidents.

[72] The decision of the employer-enterprise awarding or refusing compensation seems to be a declaration of will as regards compensation. A similar interpretation is to be found in T. Zieliński, H. Jachimowicz, op. cit., p. 928. A different point of view is represented by S. Garlicki, op. cit., p. 612, who assumes that the employer when issuing a decision acts in the capacity of an organ of State administration. Nevertheless the statements contained in the decision issued by the works post-accident enquiry committee must be considered as not binding on the bodies that settle litigation about compensation. Such a view is represented by J. Jończyk, op. cit., (post-accident enquiry committee — materials from a discussion) pp. 10, 11; A. Bubik, J. Kurcyusz, O *świadczeniach pieniężnych uspołecznionego zakładu pracy za wypadki przy pracy* [Pecuniary Compensations Payable by the Employer Being a State Enterprise in Respect of Industrial Accidents], "Palestra," 1968, No. 10, p. 27; similarly T. Jackowski, op. cit., p. 47.

[73] In absence of a works arbitration committee, or if such a committee is incompetent (with regard to the management of the enterprise), or cannot arrive at a unanimous decision, the body competent to settle a litigation in the first instance is a unit supervisory to the employer. A legally valid decision re. compensation payable by the employer-enterprise issued by the works arbitration committee cannot be an object of an extraordinary protest lodged to the Central Council of Trade Unions. To this effect was taken the Resolution of 7 Judges of the Supreme Court on March 20, 1969 (Ref. No. III PZP 2/69), "Orzecznictwo Sądu Najwyższego 1969," No. 9, item 152, p. 24.

grounds for a review, an appeal action has to be brought before the Social Insurance Tribunal.

Thus the social insurance courts have taken over the jurisdiction with reference to all the pecuniary compensation litigations, the usual courts being no longer competent to settle claims for damages against employers-socialized enterprises. The new Act has also contributed to an orderly appointment and functioning of specialistic bodies such as Medical Boards for Disablement and Employment,[74] whose statements are decisive in granting pensions, and in awarding compensation payable by the employer, teams of physicians of the Social Insurance Board ascertaining and certifying permanent health detriment. On the other hand, a corresponding team of the Sanitary Inspection Board certifies as regards occupational diseases.

2. To speed up the proceeding relating to compensations payable by the employer — despite complex procedure and several instances of adjudicative organs — both the consultative and adjudicative organs have been given short time limits for their operation. When analyzing this aspect we find that in particularly complex cases the maximum total period to acquire a legally valid decision of a works post-accident enquiry committee is of 3 months.[75]

3. The Industrial Accidents Act and its implementary orders [76] provided trade unions bodies — particularly works councils and district boards of a relevant trade union — with broad powers to assist in taking decisions re. compensations. It applies, primarily, to the activities of the works post-accident enquiry committee and the appeal committee, through a member of the works council pre-

[74] Cf. the Order of the Council of Ministers of August 12, 1968, re. Structure and Scope of Action of Medical Boards for Disablement and Employment (J. of L. No. 31, item 206).

[75] The post-accident enquiry commission is bound by the following time limits: 7 days to complete proceedings, with a possible extension to 1 month if the case is complicated or an expert opinion is needed. Re. appeals, a dissatisfied claimant may appeal within 30 days (the employer within 14 days) subsequently 7 days (in special cases 1 month) to complete proceedings in the post-accident enquiry appeal committee. If the employer refuses to pay compensation, the litigation may be referred to the competent arbitration committee where the time limits are short; further appeal from the decision of the arbitration committee may be laid before the district social insurance court within 30 days for both the litigating parties. Court experience shows that the persons injured or the members of their families usually brought an action to claim benefits within a year or two after the accident. The delay was usually caused by the necessity of first obtaining a pension. Cf. W. Formański, op. cit., p. 1146.

[76] Order No. I.

siding in the works committee, and trade union officers being committee members. Trade union agencies take part when the supervisory unit takes decisions with regard to the employer-enterprise. Moreover, works councils and district boards of trade unions are obliged in every respect to assist the persons injured in consequence of an industrial accident or an occupational disease when these persons claim benefits, by the trade union intervening on their behalf, or pursuing a claim when the employer refuses to pay compensation.[77]

4. It is worth noting that a preventive function is performed by the statutory system of the Social Insurance Board recovering from the employer-socialized enterprise an equivalent of any social insurance benefits paid to the persons entitled.[78]

[77] Cf. directives of the Central Council of Trade Unions of Feb. 13, 1968 ("Bulletin of the Central Council of Trade Unions," No. 3, item 22).

[78] With exclusion of the arbitration way of litigation settlement and with adoption of the system according to which the Social Insurance Board charges full amount of pensions and benefits to the accounts of relevant employers. Cf. M. Olkowski, *Poszukiwania regresowe wypłaconych odszkodowań za wypadki 'przy pracy* [Recovery Proceedings of Compensations Paid in Respect of Industrial Accidents], "Przegląd ustawodawstwa gospodarczego," 1968, No. 3, p. 7'6. This is a specific recovery as the Industrial Accidents Act has adopted the rule of risk involved in work. Opinions are sometimes expressed that the rule of risk may diminish prevention in respect to the employee observing work safety rules and regulations. Cf. K. Koro1ec, op. cit., p. 403.