PRUDENT
THE FUTURE OF INSURANCE

LIABILITY CLAIMS *TAKEAWAYS*

CONTENT

JULY 2021

Welcome to the July edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts

A Employee Compensation Insurance

WHAT WAS THE CLAIM?

The Insured, a manufacturing unit for distilled spirits, suffered a mechanical failure of one of its machines at its plant, resulting in the bodily injury to the workman handling the machine at the time. The nature of injury suffered by the workman was that of temporary total disability. The Insured notified its insurer of the claim under the Employee Compensation Policy (EC Policy) availed by it.

KEY ASPECTS TO CONSIDER:

1. **What is covered under an EC Policy?**

   - An EC Policy covers the statutory liability of an employer for the death, disability, and bodily injuries of their employees caused by accidents arising out of and during the course of their employment
   - The EC Policy enables an employer to demonstrate their ability to meet the obligations imposed under the Employee's Compensation Act, 1923 (EC Act), erstwhile known as The Workmen's Compensation Act, 1923, which is monitored by the Ministry of Labour & Employment
   - The compensation payable by the employer to the employee is in accordance with the EC Act. The calculation of the compensation payable by the employer to the employee, depends on the nature of his/her injury and the average monthly salary or wages paid. However, the minimum and the maximum cap for the compensation is subject to timely revisions by the concerned ministry
   - The EC Policy mirrors the liability under the EC Act. Therefore, the coverage under the policy and value payable by the Insurer to the employer will be the amount that the employer is held liable for under the provisions of the EC Act
   - The EC Policy also covers the employer's liability under common law, and the Insurer is duty-bound to indemnify the employer to the extent of liability afforded on the employer thereunder

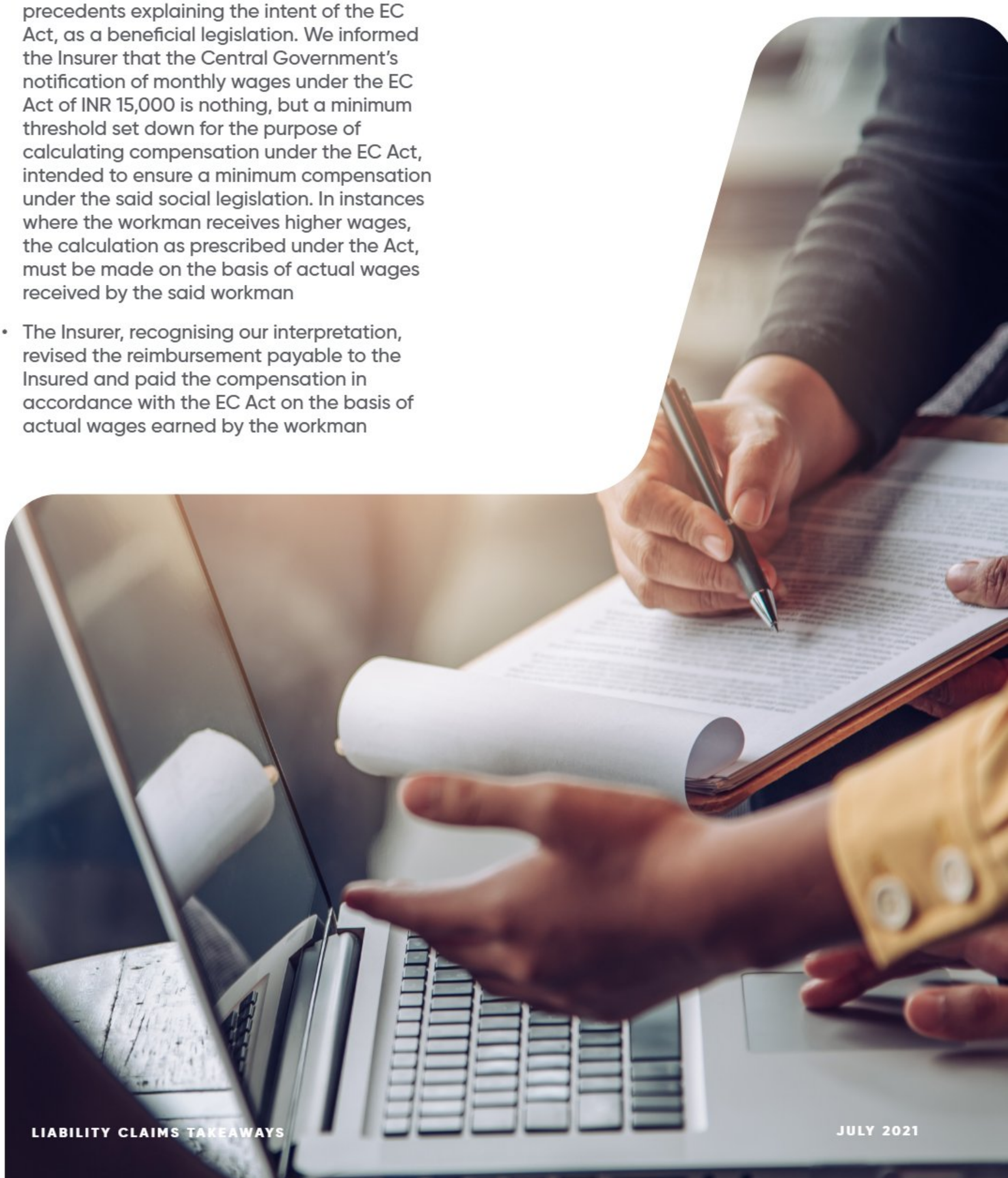
2. **Capping of wages by the Insurer to assess the quantum of claim**

   - As mentioned above, the EC Act lays down the provision for calculation of the compensation payable to an aggrieved employee. Given the EC Act was enacted in 1923, the wages were relatively lower and therefore, the Central Government, from time to time, has revised the minimum threshold of the wages, therefore, enabling a minimum wage earner/ dependant an opportunity to receive sufficient compensation for the injury/loss suffered
   - The wage earner in the instant case received a monthly wage of approximately INR 32,000. This information was shared with the Insurer at the time of notifying the claim. The Insurer, while having admitted the claim, wrongfully calculated the wages of the Insured at INR 15,000 (which was the currently notified wage under the EC Act)

- Since the workman in question was already earning more than double the notified wages, this interpretation of the Insurer was not accepted by the Insured. To resolve the issue, our team (in the capacity of the mandated insurance brokers) met with the insurance company to elucidate the true interpretation of the notification on the basis of the judicial precedents explaining the intent of the EC Act, as a beneficial legislation. We informed the Insurer that the Central Government's notification of monthly wages under the EC Act of INR 15,000 is nothing, but a minimum threshold set down for the purpose of calculating compensation under the EC Act, intended to ensure a minimum compensation under the said social legislation. In instances where the workman receives higher wages, the calculation as prescribed under the Act, must be made on the basis of actual wages received by the said workman

- The Insurer, recognising our interpretation, revised the reimbursement payable to the Insured and paid the compensation in accordance with the EC Act on the basis of actual wages earned by the workman

Claims of this nature also indicate the importance of choosing the right advisors/ insurance brokers who are enabled and well equipped through the right team, to support an Insured in case of a claim.



B Public Liability Insurance Act, 1991

WHAT WAS THE CLAIM?

The Insured was in the business of electric lines and supply, and suffered a fire accident in and around its premises at the time of repairing an underground damaged pipeline. While the fire did not cause any harm to life, it unfortunately damaged four vehicles belonging to third parties who resided around the Insured's premises. The Insured notified the loss under the Public Liability Insurance (Act) Policy ("PLI Act Policy") availed by it, which is a mandatory insurance required to be procured by an entity such as the Insured, who handles hazardous products, under the Public Liability Insurance Act, 1991 ("PLI Act")

KEY ASPECTS TO CONSIDER:

1. **Scope of a PLI Act Policy**

   The PLI Act Policy is a statutorily mandated policy, which means a payout under the PLI Act Policy is only possible if a claim for relief has been made under the PLI Act. These claims are to be made before the Collector who has jurisdiction over the area in which the accident occurred, and such Collector, after its due course of inquiry, passes an award for relief under the Act.

2. **Lower compensation under the PLI Act**

   - The amount of compensation payable under the PLI Act, was stipulated nearly two decades ago. Resultantly, the compensation under the PLI Act is very meager and restricted to the following:
     - → in the case of death or total permanent disability, INR 25,000 per person, in addition to the medical expenses incurred (if any) up to INR 12,500
     - → in the case of injuries, medical expenses incurred up to a sum of INR 12,500 per person to those injured
     - → up to INR 6,000 depending on the actual damage, for any damage to private property
   - In the instant case, the loss suffered by the owners of the third-party vehicles was up to INR 25,00,000, which was claimed from the Insured. However, the Insurer was only able to reimburse the Insured within the limits of the PLI Act, thereby compelling the Insured to bear the uncovered loss suffered on account of the claim, out of pocket

3. **Inadequate insurance**

   - The Insured is clearly in a business wherein bodily injury and property damage resulting from their business or premises is an eminent danger. Despite that, the Insurer in this case, did not opt for a Commercial General Liability Policy which would have provided a far higher limit of liability for similar claims
   - A CGL Policy would typically pay damages that the Insured becomes legally liable to pay on account of bodily injury or property damage that may arise out of the Insured's business or premises
   - Therefore, choosing an appropriate and adequate insurance policy is of utmost importance to ensure that there are no uninsured risks and exposures that the Insured is subjected to
   - Not having an appropriate insurance policy precluded the Insured from efficiently mitigating the risk of this nature

Professional Indemnity Insurance

WHAT WAS THE CLAIM?

The Insured supplied an engine to one of its customers that suffered a sudden mechanical breakdown soon after it was serviced by the Insured, resulting in a significant loss to its customer. The customer claimed the loss from the Insured and accordingly, the Insured notified the claim under the Professional Indemnity Insurance.

KEY ASPECTS TO CONSIDER:

1. **Liability not to be assumed without the consent of the Insurer**

   As a general condition under the policy, the Insured is not permitted to assume any liability/obligation and incur any costs without the prior consent of the Insurer. The Insured in this case, not only bore the complete cost of repairing the machine but it also compensated its customer for the period the machine was inactive, all without seeking the Insurer's prior consent. The Insurer rejected the claim for these costs on the ground that it was a condition precedent to the Insurer's liability under the policy, that the Insured was required to pay any damages or incur defence costs, only with the prior written consent of the Insurer.

2. **Non-disclosure and misrepresentation can result in policy cancellation**

   At the time of policy placement, the Insurer had requested the Insured to fill a proposal form. One of the questions in the form related to "past claims or issues that Insured has faced in the engine it supplies". While previously, the Insured had suffered a similar break down of its engine of the same series, given that the outage time was significantly lower, and a timely repair was able to resolve the issue there was no insurance claim made by the Insured. Accordingly, this information was not disclosed in the proposal form.

   During the investigation of the current claim, Insurer got to know of the previous incident which was not disclosed to the Insurer. The Insurer was able to demonstrate with sufficient proof that the Insured had knowledge of the potential risk of a claim and did not disclose the same to the Insurer. The Insurer has a right to know such details in order to take an informed underwriting decision. This further resulted in the Insurer cancelling the policy for misrepresentation and non-disclosure of material facts.

We are sure you found the anecdotes interesting and got some key points to take away.

Stay tuned for the next edition!

About Prudent Insurance Brokers

We, at Prudent Insurance Brokers, provide industry-leading expertise in designing and managing insurance programs to address unique requirements of your organization. We have a client-centric service infrastructure that delivers proactively & passionately in a highly systematic manner. Our Liability Team comprises of ex-underwriters and the largest number of qualified lawyers and legal professionals who can help you across different areas:

- Identifying and addressing gaps in your current insurance programs
- Arranging the most cost-effective cover from Indian and international markets
- Ensuring contract compliance for your insurable indemnities
- Offering 360° claims management by the largest claims team across any broker in India
- Providing global solutions through the strongest international alliances

Our Claim-Handling Expertise

Our team members come from varied areas of expertise, thereby enabling us to ensure that our clients are assisted thoroughly, through every step of the claims-handling process. We take pride in our professional competency and diligence, and our team is always willing to walk the extra mile in client service.

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