New Labour Codes of India
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Lecture – 35
The Concepts of Arising Out of and in the Course of Employment

Dear students. And we already said that we are going to discuss in this particular class with regard to the interpretation of the concept of arising out and in the codes of employment, the compensation, which is supposed to be paid to the employees; those who are getting injured or die during in the course of employment.

So, there is a lot of jurisprudence, which is actually developed by the Courts through a set of case laws. So, our discussion is very specific to the set of case laws. And what is exactly the jurisprudence with this? What do you exactly mean by in the course of employment? And also the jurisprudence developed by the Court in the case of notional extension. What do you mean by this notional extension?

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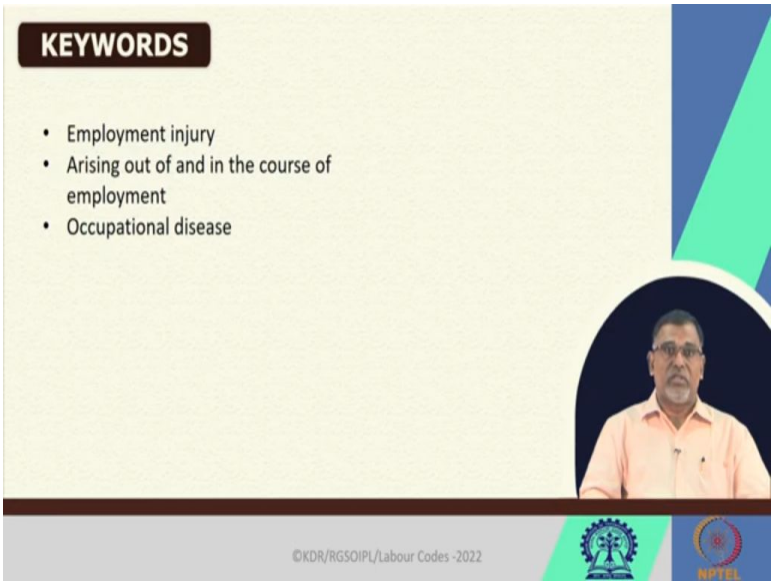

And specifically, we can look into this, the notional extension; and also the employment injuries arising out of and in the course of employment.

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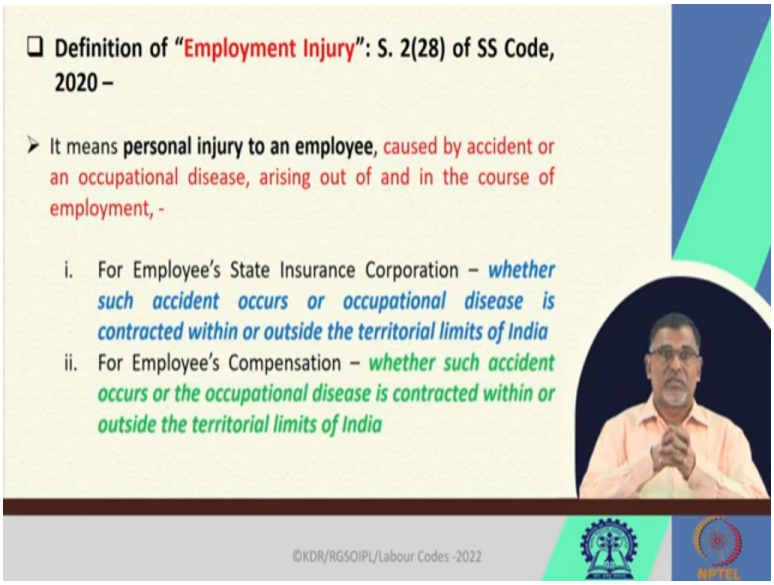

So, here it is very clear the objective of the Act is mentioned. And also we discussed what is exactly the provisions with regard to the compensation. So, here the employment injury, the employment injury is defined in Section 2(28) of the Social Security Code; the employment injury is a personal injury. So, the language used is the personal injury to an employee caused by an accident or an occupational disease arising out of and in the course of employment.

So, our focus of discussion in this class is on the injury arising out of and in the course of employment. So here, if you are taking that in the application of this particular Act; the employees' compensation under the Employees Compensation Act, the earlier Act or the provisions of the Employees' State Insurance provisions.

So, the accident or the occupational disease must be contracted. If it is contracted outside the territorial limits of India, then what are the provisions? Whether such accidents are located in the occupational disease contracted within or outside the territorial limits of India? So, in what are the cases where the employment injury is applicable? Whether this is caused arising out of and in the course of employment which we are going to discuss elaborately.

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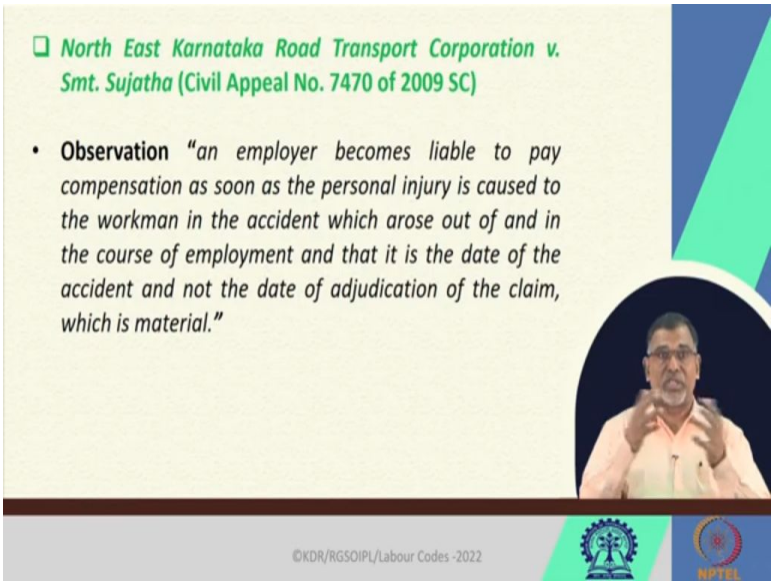

So, here you can see that this particular case was discussed in the earlier class as well. The Court very clearly said the compensation is a personal injury to the workman arising in the course of employment from the date of the accident it is not the date of adjudication.

So, this is social security legislation; so, always the provisions of this particular legislation are in favour of employees. So, the employer is liable to pay the compensation from the date of the accident, not from the date of adjudication.

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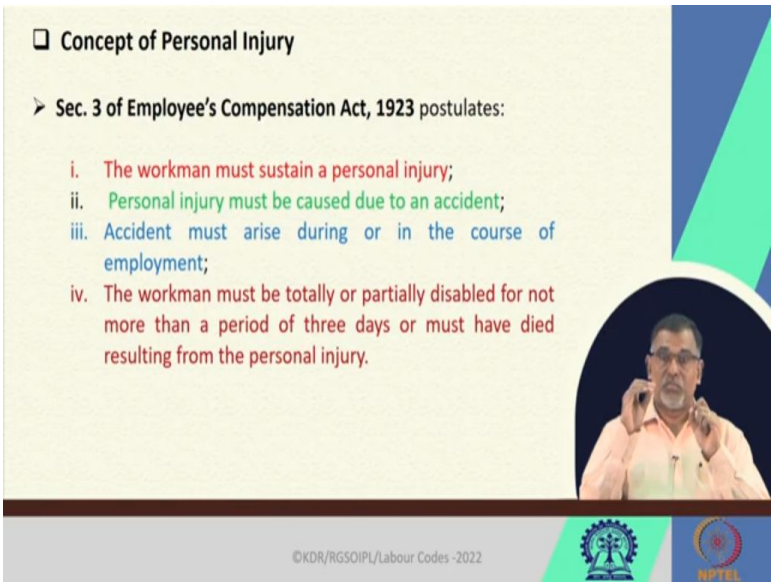

So, here we can see the concept of personal injury. What is personal injury? The personal injury to be caused by an accident, that accident must arise during or in the course of employment. And due to that particular injury, the personal injury, the workman must be totally or partially disabled for more than three days; or must have died resulting from such personal injury.

This is Section 3 of the Employee's Compensation Act, which talks about personal injury. And one of the interpretations of personal injury, we said is closely related to the nature of work.

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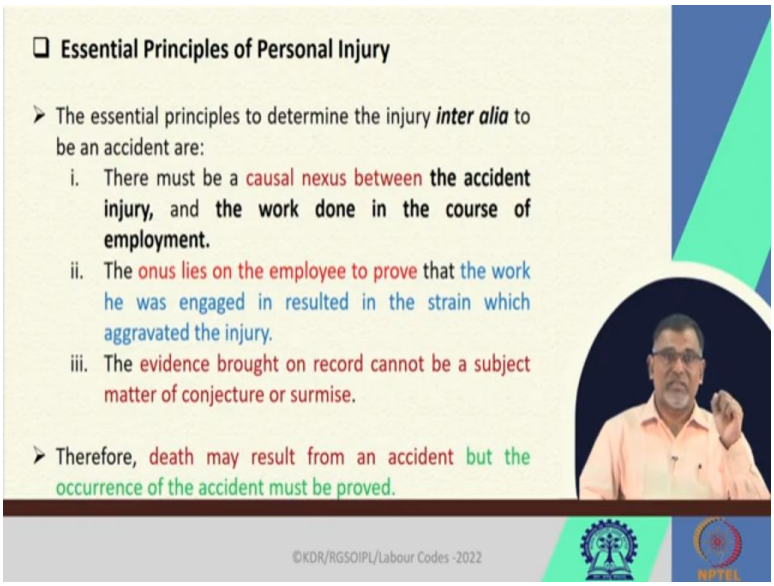

So, what are the essentials of a personal injury? We can say that there must be causal nexus between the accident and the injury; and at the same time, the work done in the courses of employment. So here, the onus of proof lies on the employee to prove that the work he was engaged in resulted in strain or which aggravated the injury.

And so it is you can say that the evidence which leads to, or the evidence on record will prove whether it resulted in a strain which aggravated the injury or not. So, death also must result from such an accident. But, you need not prove the death, you have to prove the occurrence of such an accident. So, so then, the prerequisites of the principles of personal injury can be proved.

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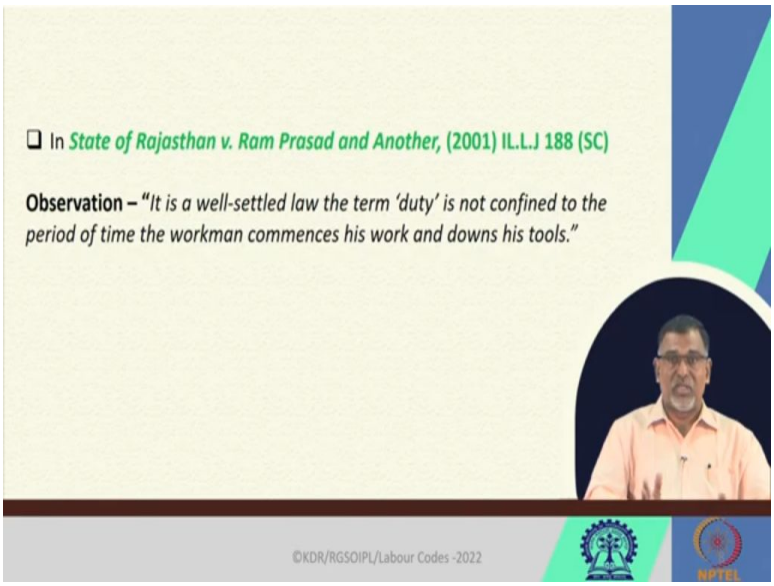

So, in State of Rajasthan versus Ram Prasad and another, 2001 case; the Supreme Court said that it is a well-settled law. The term duty is not confined to the period of time; the workman commences his work, and downs his tools. So, Supreme Court want to say that the workman's duty time is going to be considered to be flexible. This is not exactly when he is the workman commences his work, or his tool is going to be down. So, there must be some more time, in certain circumstances, it can be extended too.

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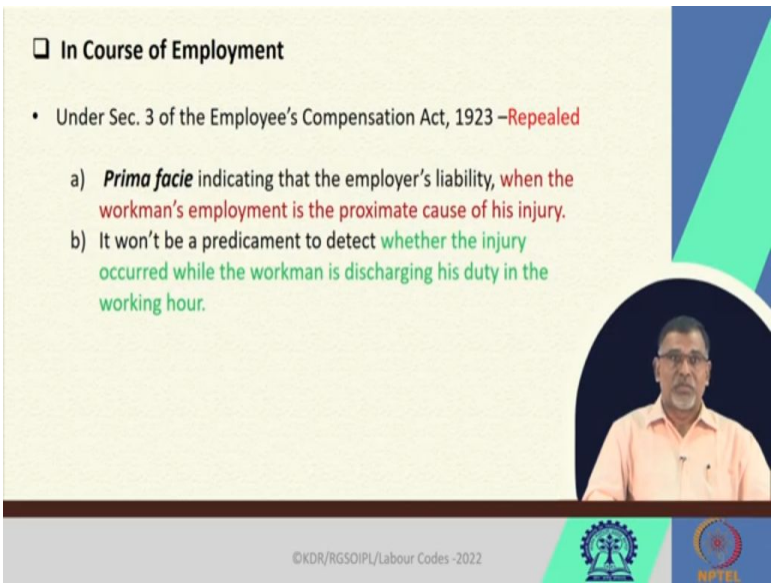

So, we will see the course of employment, what do you mean by the course of employment? So here, so we can see that the prima facie is indicating the employees' liability. If you are not in the course of employment, the employer is not liable to pay compensation. So, then you can see that the workman's employment is the proximate cause of his injury.

So, he has to prove that his work; his employment is the cause of injury, and in the case of even occupational diseases. So, whether the injuries occurred while the workman is discharging duty during the working hour or not; again, will depend upon the facts of each case.

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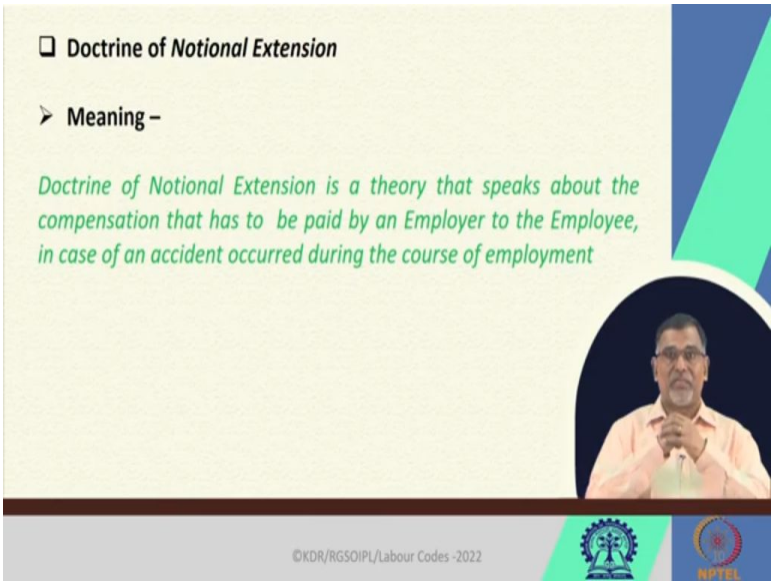

So, whether he is on duty, is also to be a circumstance of each case. So, it is we said that in certain cases, the Court has extended notionally the doctrine of non-notional extension; this extended the duty time in certain cases. So, the doctrine of notional extension is a theory that speaks about compensation that has to be paid by the employer to the employee, in case of an accident occurred during the course of employment; so, the notional extension of the duty time.

So, whether the driver is starting from his official vehicle from his residence; or the driver is going on to the workshop with his official vehicle for repairing the vehicle. The Court has extended the notional extension because the provision says that it must be clearly linked to his work. So, where he is going and where he was travelling was not important; so, the doctrine of notional extension clearly talks about this.

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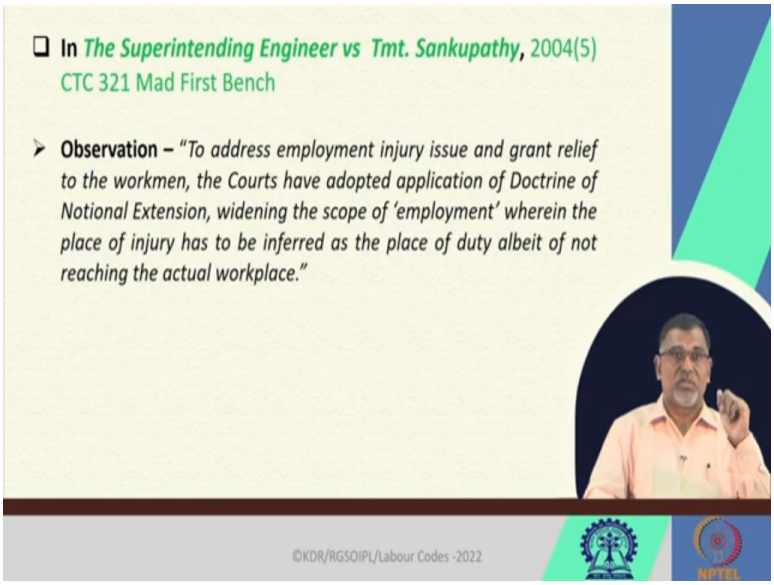

So, in the Superintending Engineer versus Trimadi Sankupathy in 2004, the Madras High Court; the Madras High Court observed that to address employment injury issues and grant relief to the workmen. The Courts have adopted the application of the doctrine of notional extension, widening the scope of employment in inverted commas.

Wherein, the place of injury has to be inferred as the place of duty albeit not reaching the actual workplace. So, I already said that the actual workplace is not important. The question is whether he was in employment at the time of wherein the place of injury?

So, as in the case of a driver, he was going to the workshop with his official vehicle for a repair; definitely, he was on employment, but he was not in the workplace. But, he was in employment; so the actual place of work is not important. So, the Court has extended notionally extended the workplace to him to wherever he is. So, this is the notional extension that talks about.

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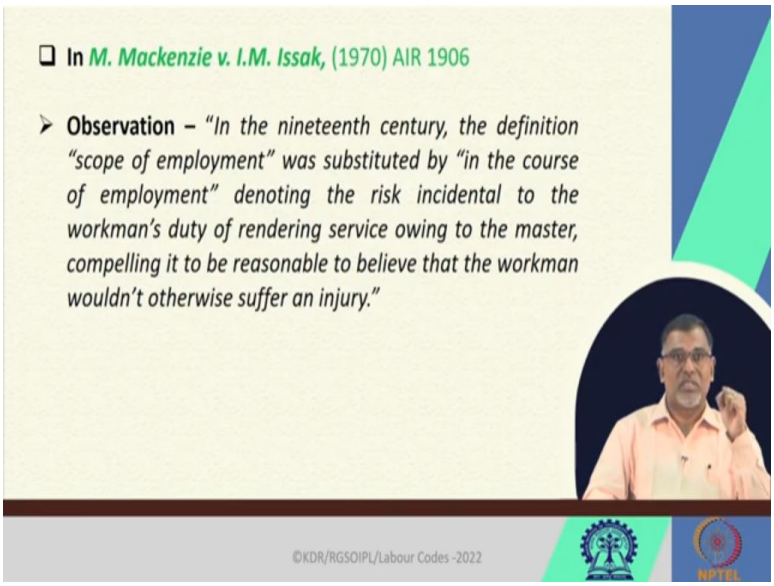

An important case is the Mackenzie versus I.M. Issak. So the Court said, in the nineteenth century, the definition scope of employment, the scope of employment was substituted by in the course of employment; denoting the risk incidental to the workman's duty of rendering service owing to the master, compelling it to be reasonable to believe that the workman would not otherwise suffer an injury.

So, the extension notional extension is started by the various courts from the very beginning in order to give compensation to the workman, those who are met with accidents on duty.

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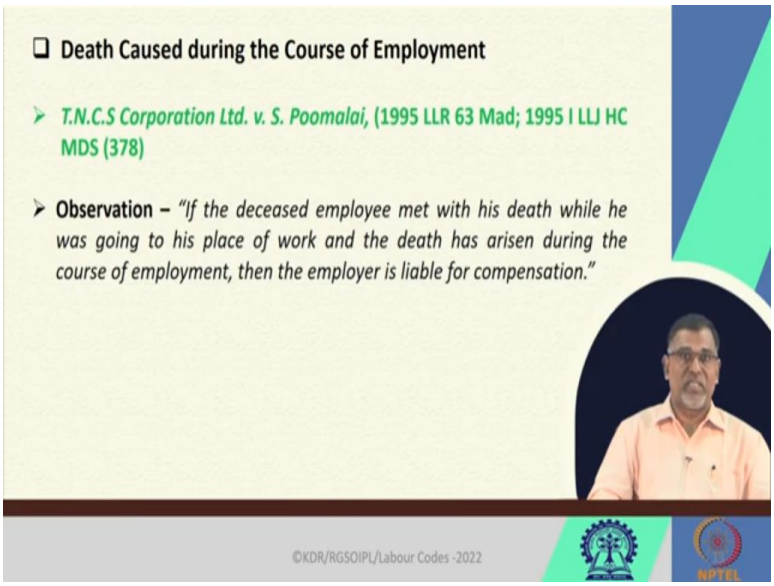

So, in T.N.C.S. Corporation Limited versus Poomalai, the 1995 case; again the Madras High Court. So, said that, if the deceased employee met with his death, while he was going to his place of work, and the death has arisen during the course of employment; then the employer is liable for compensation.

So if the workman started from his home, and he was directly going to the workplace; if he is met with an accident, so then definitely the notional extension is applicable to him; and who is the employer is liable for compensation. So, the Court has extended the workplace or in the course of employment to in certain circumstances to various places.

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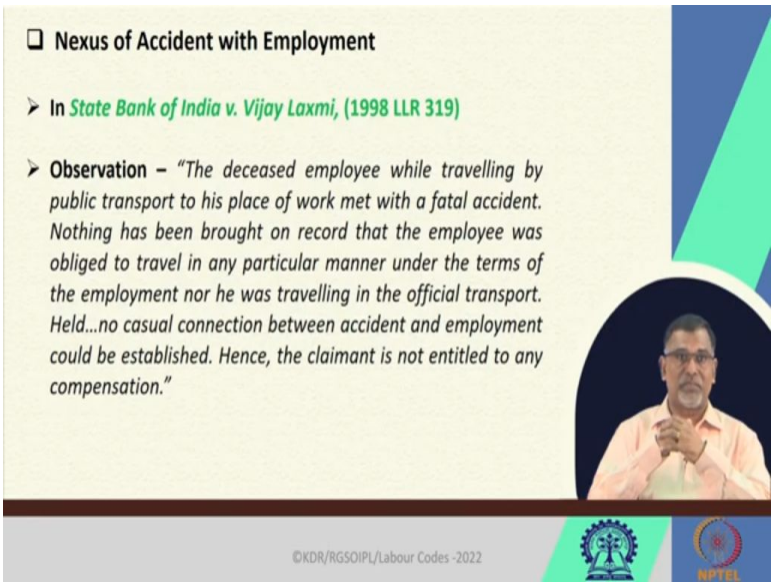

So, in the State Bank of India versus Vijay Laxmi, 1998; the Nexus theory, is the nexus of an accident with employment. So, in this particular case, the Court has observed that the deceased employee while travelling by public transport to his workplace, met with a fatal accident. So in this case, nothing has been brought on record that the employee was obliged to travel in any particular manner, under the terms of the employment; nor he was travelling in official transport.

Held, no causal connection between the accident and employment could be established. Hence, the claimant is not entitled to any compensation; because in this particular case, the victim was travelling on public transport. And there was no connection has been established. But in certain cases, a connection has been established.

For example, in the case of the workers, those who are travelling in the company-provided vehicle. So in that case, has to be provided by the employer. So, if in certain rare circumstances the Court has held against the applicant. So, this is one of the cases where the Court has held against the claimant.

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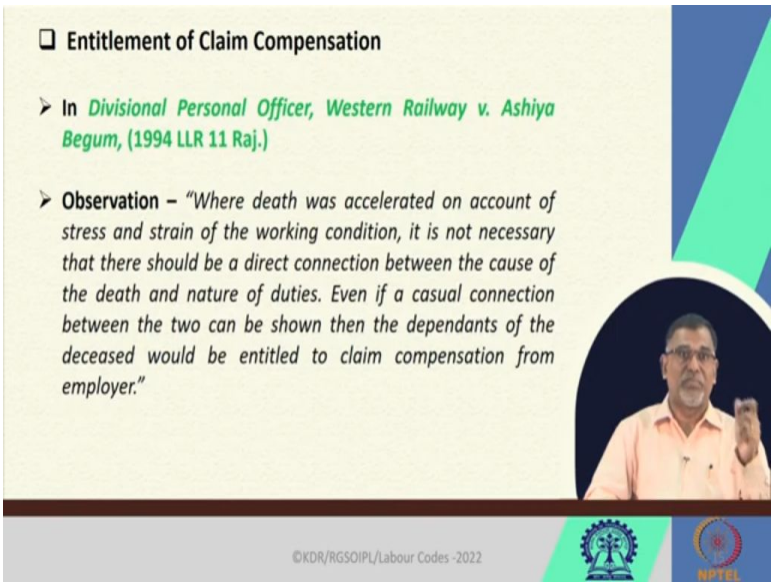

And, if you look into the Divisional Personal Officer, Western Railway versus the Ashiya, Ashiya Begum; 1994 case Rajasthan. Here here, the Court said that where the death was declared or death was accelerated on account of stress and strain of the working condition. There doesn't need to be a direct connection between the cause of the death and the nature of duties. Even if a causal connection between the two can be shown.

Then, the dependants of the deceased would be entitled to claim compensation from the employer. So, I already said that even if the claimants can prove that the death happened because of stress and strain of the working condition; then, they are eligible to get compensation. But, how you are going to prove the stress and strain because of the work depends upon the facts of each case. So, in that case, even if somebody has died because of the stress and strain of the work; he is eligible to get, the claimants will be eligible to get compensation from the employer.

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Here, in Lila Devi versus Ramlal Rahu case, the Court observed that an injury sustained by a workman must be a physical injury on account of an accident. So, then the question is, then what about mental injuries? So, that is why earlier also said that so unlike the developed countries, we have not started taking into the mental injuries. So, here physical injury is a very important factor in providing compensation under the provisions of this particular Court.

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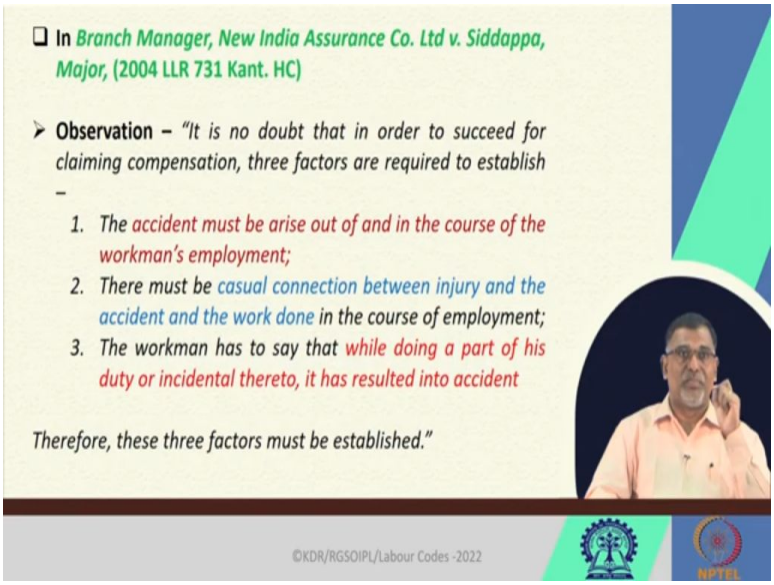

In this case, the Branch Manager New India Insurance Company versus Siddappa; again, Karnataka High Court judgment. Here the Court held that it is no doubt that in order to succeed in claiming compensation, three factors to be established by the claimant.

1. The accident must arise out of and in the course of the workman's employment.

2. There must be a causal connection between the injury and the accident and the work done in the course of employment; the causal link is one of the important factors.

3. The workman has to say that while doing a part of his duty or incidental to his duty, it has resulted in an accident.

So, if the claimant has to pull these three factors, then he or she is eligible to get the compensation under these particular provisions. So, these three factors are very important for the compensations.

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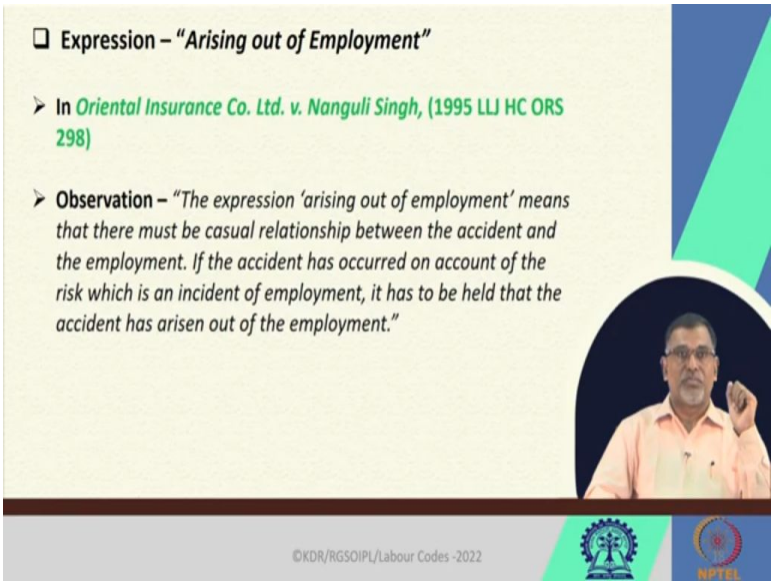

So, in Oriental Insurance Company Limited versus Nanguli Singh. So, here, you can see that the Court said the expression arising out of employment means that there must be a causal relationship between the accident and the employment. So, some other High Court has already mentioned the prerequisites or pre prerequisites.

And also, if the accident has occurred on account of risk, which is an incident of employment; it has to be held that the accident does arise out of employment. So, you have to prove the causal relationship between accidents and employment. The causal relationship is one of the very important requirements to pay compensation or the employer liable to pay compensation.

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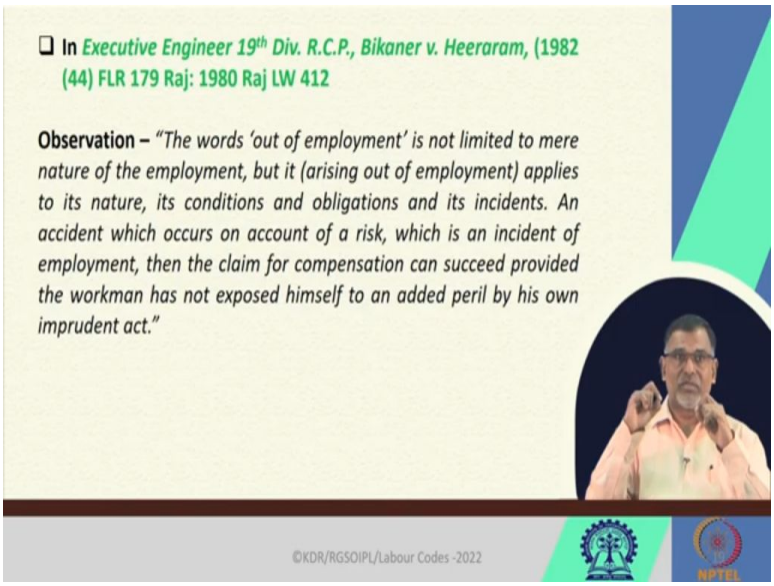

If you can, you can very well see that these Executive Engineer 19th division Bikaner versus Heeraram. In this case, so Court very clearly said what is the words "out of employment". The Court said that it is not limited to the mere nature of the employment; but it arising out of employment applies to its nature, its conditions and obligations and its incidents.

An accident which occurs on account of a risk, which is an incident of employment; then the claim for compensation can succeed, provided the workman has not exposed himself to an added peril by his own imprudent acts in Court. So, if somebody was drunk, and then driving the vehicle and met with an accident, even though he was on duty; a coarser link can be even established. But, if an imprudent act of the claimant or his legal heirs, that is a bar to claim compensation under the provisions of this particular Act.

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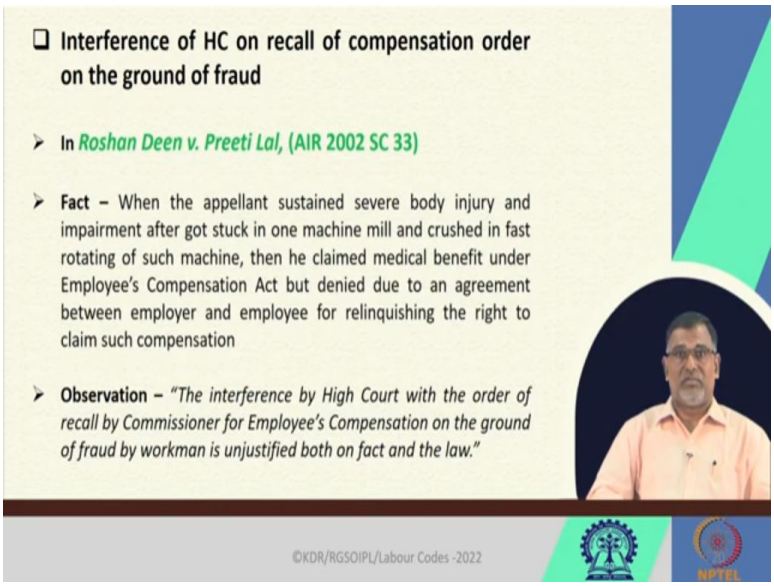

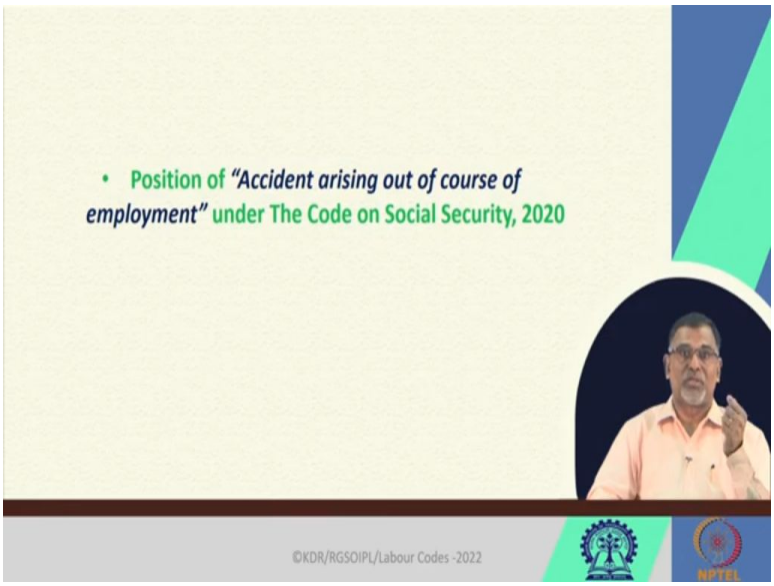

So we can see that in certain cases, the Court has recalled the order of compensation on the grounds of fraud. So, this is one of the cases where Roshan Deen versus the Preeti Lal. The Supreme Court said that so, in this particular case, the appellant sustained a severe bodily injury; and because of getting stuck in a particular machine, a mill machine and he was crushed in a rotating machine fast rotating machine.

So, then he is claiming medical benefits under the Employees Compensation Act. But, he was denied due to an agreement between the employer and employee for relinquishing the right to

claim compensation. So here, the High Court said that the interference of the order of recall by the Commissioner for Employees Compensation on the grounds of fraud by a workman is unjustified both on fact and the law.

So, the ground of fraud is a ground for which the courts are not going to provide compensation under the particular position.

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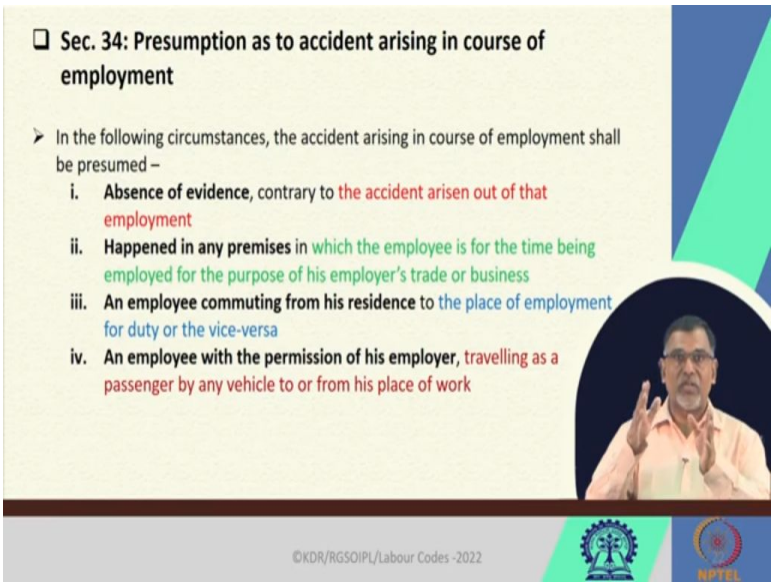

And we can quickly see the provisions in the Court similar to provisions in the Social Security code. Here we can see the circumstances and the accidents arising in the course of employment. So, the employment, the accident will presume in the absence of evidence contrary to the accident arising out of the employment.

Absence of evidence, contrary to the accident arising out of that employment. Happened in any premises in which the employee is for the time being employed for the purpose of his employer's trade or business. So, then it is presumed that is in the course of employment. And an employee commuting from his residence to the place of employment for duty or vice-versa.

So, this is already established by the case laws. So, that is why the new provisions specifically included that if a person is clearly commuting from his residence to the work of place of employment, or returning to the house; it will be considered as in the course of employment.

Then, again the employee with the permission of the employer, travelling as a passenger by any vehicle to or from his place of work.

So, because we saw that the public transport, the Court said that they are not eligible. So, in order to overcome that judgment, a specific provision is included. So, if the workman is travelling by public transport from his residence to the place of employment; then definitely it will come under the purview of these provisions.

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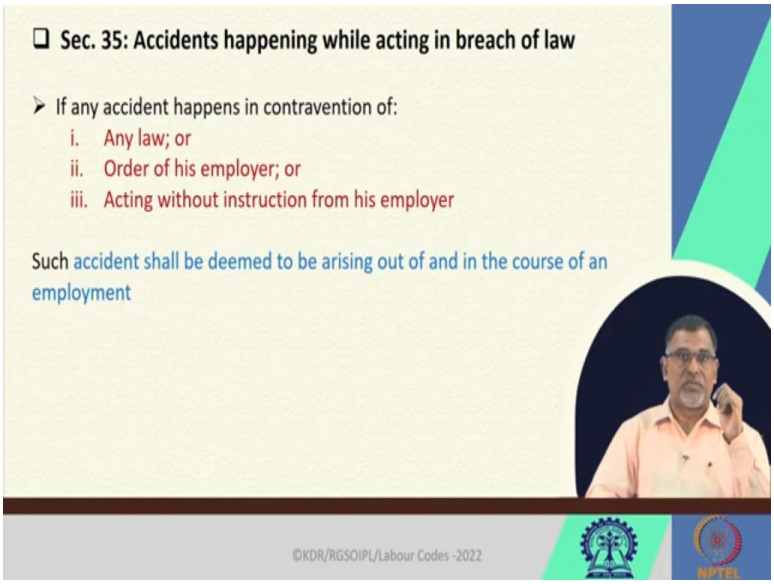

Then, and, if anything is acting in breach of law, and then any specific order of the employer without instruction from the employer; so, then, such accident shall be deemed to be arising out of and in the course of employment. So, in contravention of any of the laws, these factors are to be taken into consideration.

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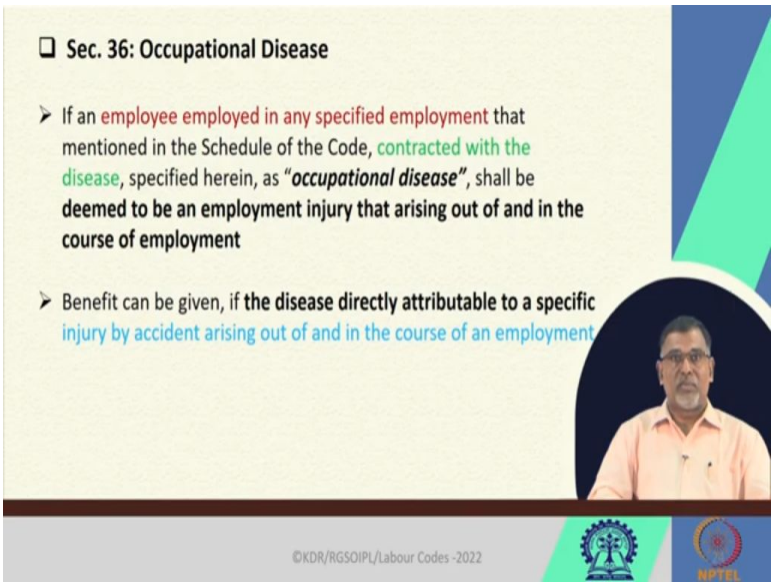

The case of occupational diseases. So, if an employee is employed in any specific employment; and in the scheduled employment particular Code. If he is contracted any diseases, which are mentioned in this schedule, they can be considered as an occupational disease; and deemed to be an employment injury; that is arisen out of that particular in the course of employment.

So, this disease has to be directly attributable to a specific injury. So, that means a causal link between working conditions, that disease and employment. So, if he is contracted out of the employment, then he is not eligible to get compensation under the provisions of this particular code.

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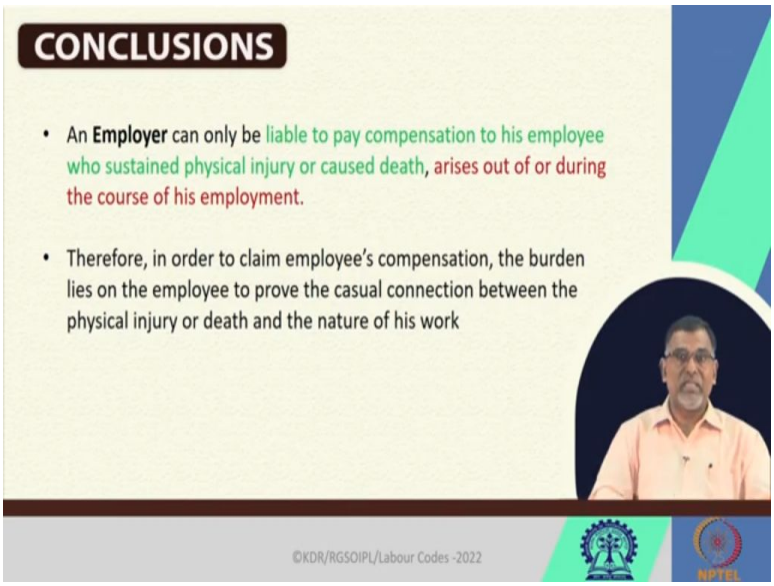

So, we can see that the compensation provisions are very clear. And if you can prove that if you are in the course of arising out of and in the course of employment. And as I already said that the new code has included certain provisions like travelling from the residence to the workplace is included.

Travelling with the permission of the employer in public transport from the house to the place of employment; is included. In all these cases, the employer is liable to pay compensation in the case of physical injury. So, physical injury is an important factor in getting compensation.

So, the claim of compensation by the claimants or legal heirs is important; and the causal link has to be proved, with the physical injury, and the death or disablement of that disablement with regard to the particular work. So, the provisions are elaborate, and also the jurisprudence which has arisen out of this case law is included in the provisions of the new code. So this is going to help the workers to claim compensation in most cases of an accident during and in the course of employment.Thank You.