

# 'Tire Them Out'

Challenges of litigating compensation claims under the Bangladesh Labour Act 2006

Taqbir Huda

**blast**  
ব্লাস্ট



## BLAST report: snapshot summary

For years, Bangladesh labour law has come under national and international criticism for the inadequate compensation and cumbersome process to redress facing many injured workers and families of those who die or are injured because of workplace accidents and illness.

However, Bangladesh is now closer than ever to ratifying the International Labour Organisation Convention No. 121. This obligates the country to introduce an Employment Injury Insurance (EII) scheme to ensure that compensation for industrial accidents and deaths is incorporated as a component of social security and awarded on a no-fault basis. At present, victims have to file claims before overburdened Labour Courts and endure lengthy and often unsuccessful legal action under the terms of the Bangladesh Labour Act 2006 (BLA) if employers do not voluntarily pay compensation or reach an agreement with victims.

While this current system is widely understood to be inefficient, there is little empirical data and analysis available to assess the pros and cons of such a system versus the proposed EII. This research report, by legal aid organisation BLAST, aims to fill this gap and unearth the common hurdles facing injured workers and bereaved families as they navigate the challenges of litigation.

The study analyses 80 disposed cases where BLAST has represented claimants or sued on their behalf before the country's Labour Courts since 2008. Combined with Key Informant Interviews (KIIs), discussions with legal professionals and a review of ILO standards and local legislation, it highlights the scope and drawbacks of the current system and makes a number of final recommendations for Government, workers' organisations and the legal fraternity.

## Key findings

Out of 80 cases, the Labour Court awarded compensation in 35, while the claim was dismissed in 36 and a pre-award settlement was reached in the remaining nine. However, deeper analysis reveals that a Court award does not always result in money in victims' pockets. Compensation was successfully recovered in 19 of the 35 cases where an award was made. In the remaining 16 cases, a criminal case for non-payment of compensation is either pending against the employer or preparatory steps are being taken to initiate such action.

All 80 cases pertain to either permanent total disablement or death, and protracted legal battles cause undue hardship for victims who have already paid the highest price. The average time taken for the Court to order an award of compensation from the date of application was 630 days – more than 10 times the statutorily prescribed limit of 60 days.

## Amount of compensation



When awards were made, Labour Courts granted the compensation amount stipulated in the BLA prior to the 2018 amendment: 100,000 BDT for death (approximately USD 1,180), and 125,000 BDT (approximately USD 1,475) for permanent total disablement. However, in five of the 35 cases, the Court awarded a higher amount to recover overheads such as litigation costs, excess for late payment and medical treatment. These extras were inconsistently granted by Labour Courts – highlighting one of a number of discrepancies in how the BLA is interpreted and applied in practice. Importantly, however, it shows that claimants can claim – and Courts have the power to award – higher sums of compensation than the statutorily stipulated amounts.

## Common challenges



Of the 36 dismissed cases, the most common reason for dismissal was the non-appearance of claimants at hearings. While this appears to indicate a lack of interest on the claimants' behalf – and is presented as such by defence lawyers – KIIs reveal that these absences are wholly understandable given prolonged and frustrating litigation periods.

The average distance between the claimant's subdistrict and the Labour Court in which the claim had to be filed was as high as 201 km, which made attendance in court hearings itself a major hurdle. The litigation period was prolonged due to case backlogs at overburdened Labour Courts.

### **Supplementary sources of monetary relief under labour law**



As well as the litigation-based route to compensation, Bangladesh makes provisions for injured workers and bereaved families through other mechanisms, including the Group Insurance Scheme, Central Fund and Bangladesh Welfare Foundation Fund. However, there was no evidence to suggest claimants in these 80 cases received any supplementary monetary relief from these mechanisms. Reports suggest that it has been challenging to ensure compliance on the part of employers in financing these social protection mechanisms, as they are required to do under existing labour laws and as they will also be obliged to do under an EII.

### **Employer's unwillingness to pay**



Indeed, this research suggests the compensation mechanism under the BLA relies too heavily on the willingness (rather than the ability) of employers to pay compensation to claimants. Repeated refusal to pay compensation, including when ordered by courts, appears to be commonplace – with little to no practical consequences for non-compliance. This will also need to be addressed with the introduction of the EII.

### **Recommendations**



The failings uncovered in this report mean many injured or sick workers and families remain uncompensated or easily coerced into accepting out of court settlements for far less than they are entitled to. Government, workers' organisations and the legal fraternity must take decisive action to see justice prevail.

In terms of legal reform, the Government of Bangladesh can begin by ratifying ILO Conventions No. 102 and 121. An EII system must then be established in place of the current Group Insurance System, while preserving workers' rights to sue employers in cases of negligence.

### **The report recommends the following changes to the BLA:**



- Amending the existing capped lump sum amounts so these are the minimum amount of compensation payable in the event of death or permanent disablement.
- Introducing a provision that obliges Labour Courts to follow the basic principles of damages assessment when adjudicating compensation cases.
- Introducing a factual test of dependency in place of the closed list of dependents that currently excludes close relatives from receiving compensation.

### **Government can also take a number of actions where institutional reform is concerned:**



- Ensuring Labour Courts recognise the locus standi of labour rights organisations to file compensation claims on behalf of victims.
- Requiring Labour Courts to order interest to accrue to incentivise timely payment of compensation.
- Introducing a strict monitoring mechanism to ensure the timely disposal of Labour Court cases.
- Increasing the number of Labour Courts and introducing relevant training for judges.
- Ensuring all Labour Courts operate simultaneously and full time to address the case backlog.

### **The Ministry of Labour and Employment can improve transparency by:**



- Introducing a national repository containing information on the total number of workplace accidents every year, alongside the total number of compensation claims filed in Labour Courts.
- Ensuring the repository is publicly accessible and available in real time.
- Including information about any payments made from the Central Fund, Group Insurance Scheme and Labour Welfare Foundation Fund in the repository.

### **Workers' rights organisations can:**



- Focus legal awareness campaigns on informing workers of the need to preserve copies of documents like ID cards and employment contracts with their family members.
- Highlight the two-year limitation period for filing compensation cases.
- Use data from the repository to track the claim status and overall response rates.

### **Finally, lawyers and legal aid organisations can:**



- Learn from this research and maximise compensation awards by ensuring that plaints are drafted to include the statutorily prescribed amount of compensation and the additional heads of recovery permissible, such as litigation costs, excess for delay in payment and medical bills.
- File a criminal case against the defendant employer under Section 293 of the BLA if they fail to comply with the Labour Court order of compensation, in order to compel speedy payment to the claimant(s).

**Read the full report here**

For queries or clarifications, please write to: [taqbirhuda@gmail.com](mailto:taqbirhuda@gmail.com)

