

# WORKMEN'S COMPENSATION ACT

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## SCHEDULES

### An Act to make provisions for the payment of compensation to workmen for injuries suffered in the course of their employment.

[1987 No. 17.]

[12th June, 1987]

[ Commencement.]

#### 1. Meaning of workman

(1) Subject to this section and to section 2 of this Act, a person shall be deemed to be a workman if either before or after the commencement of this Act he has entered into or is working under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing.

(2) Notwithstanding subsection (1) of this section, a person shall not be deemed to be a workman if-

- (a) he is a person employed under a contract of service or collective agreement approved for exemption by the Minister charged with responsibility for matters relating to labour; or
- (b) a person who is employed otherwise than for the purposes of his employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or
- (c) an outworker; or
- (d) a member of the employer's family dwelling in his house; or
- (e) a person employed in agricultural or handicraft work by an employer who normally employs less than ten workmen; or
- (f) any class of persons whom the Minister may by order published in the *Federal Gazette* declare not to be workmen for the purposes of this Act.

(3) If in any proceedings for the recovery of compensation under this Act, it appears to the court that the contract of service or apprenticeship under which the injured person was working at the time when the accident causing the injury happened was illegal, the court may, if having regard to all the circumstances of the case it thinks proper so to do, deal with the matter as if the injured person had at the same time aforesaid been a person working under a valid contract of service or apprenticeship.

(4) Except for the purposes of section 16 of this Act, any reference to a workman who has been injured shall, unless the context otherwise requires, where the workman is dead, include a reference to his legal personal representatives, or to his dependants or any of them or the Attorney-General of the Federation or such other officer as the Minister may appoint to act on behalf of the dependants of the workman.

(5) In this section, contract of service includes service as a tributer.

#### 2. Application to workmen employed by the Government

(1) Subject to the provisions of this section, this Act shall apply to a workman employed-

- (a) in the public service of the Federation or of any State thereof; and
- (b) in the Nigeria Police Force,

in the same way and to the same extent as if the employer were a private person.

(2) Without prejudice to the generality of the provisions of subsection (1) of this section, this Act shall not apply to-

- (a) any member of the Nigerian Army, the Nigerian Navy or the Nigerian Air Force other than a person employed in a civilian capacity; or
- (b) any workman employed in the public service of the Federation who has been first engaged in a place outside Nigeria and is not a Nigerian citizen.

(3) In this section, the expression "public service of the Federation or of any State thereof" has the meaning assigned to it in section 318 of the Constitution of the Federal Republic of Nigeria, 1999.

[Cap. C23.)

### **3. Employer's liability for compensation for death or incapacity resulting from accident**

(1) Subject to subsection (2) of this section, if in an employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the provisions of this Act.

(2) Notwithstanding subsection (1) of this section-

- (a) an employer shall not be liable to pay compensation under this Act in respect of any injury which does not incapacitate the workman for a period of at least three consecutive days from earning full wages at the work at which he was employed;

(b) if it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed,

but where the injury results in death or serious and permanent incapacity, the court, on a consideration of all the circumstances, may award the compensation provided by this Act or such part thereof as it shall think fit.

(3) For the purposes of this Act, an accident resulting in the death or serious and permanent incapacity of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention-

- (a) of any statutory or other regulation applicable to his employment; or
- (b) of any orders given by or on behalf of his employer; or
- (c) that he was acting without instructions from his employer,

if such act was done by the workman for the purposes of and in connection with his employer's trade or business.

(4) No compensation shall be payable under this Act in respect of any incapacity or death resulting from a deliberate self-injury.

(5) No compensation shall be payable under this Act in respect of any incapacity or death resulting from personal injury, if the workman has at any time represented to the employer that he was not suffering or had not previously suffered from that or a similar injury, knowing that the representation was false.

### **4. Compensation in fatal cases**

Where death results from the injury and-

- (a) the workman leaves any dependant wholly dependent on his earning, the amount of compensation shall be a sum equal to 42 months' earnings; but where in respect of the same accident compensation has been paid under the provisions of section 5, 7, or 9 of this Act, there shall be deducted from the sum payable under this paragraph any sums so paid as compensation;
- (b) the workman does not leave any dependant wholly dependent on his earnings, but leaves any dependant in part so dependent, the amount of compensation shall be such sum, in any case not exceeding the amount payable under paragraph (a) of this section, as may be determined by the court to be reasonable and proportionate to the injury, to the said dependant;
- (c) the workman leaves no dependant, reasonable expenses commensurate with

the last position held in his employment by the deceased, shall be paid by the employer.

## **5. Compensation in the case of permanent total incapacity**

Where permanent total incapacity results from the injury, the amount of compensation shall be a sum equal to 54 months' earnings.

## **6. Additional compensation**

Where an injury results in permanent total incapacity of such a nature that the injured workman must have the constant help of another person, additional compensation shall be paid amounting to one quarter of the amount which is otherwise payable under section 5 of this Act.

## **7. Compensation in the case of permanent partial incapacity**

(1) Where permanent partial incapacity results from the injury, the amount of compensation shall be-

- (a) in the case of an injury specified in the Second Schedule to this Act, such percentage of the compensation which would have been payable in the case of the permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

[Second Schedule.]

- (b) in the case of an injury not specified in the Second Schedule to this Act, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is not inconsistent with the provisions of the said Schedule.

(2) Where the injury has particular consequences, having regard to the special nature of the workman's occupation, and the court, upon application by the workman, considers that the percentage of the loss of earning capacity which would otherwise have been determined in accordance with paragraph (a) or (b) of subsection (1) of this section is clearly inadequate, the court may declare such workman to have incurred such higher degree of incapacity as it deems equitable.

(3) Where more injuries than one are caused by the same accident, the amount of compensation payable under the provisions of this section shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity has resulted from the injuries.

## **8. Medical assessors**

(1) The Minister may, on the recommendation of the Minister charged with responsibility for matters relating to health, compile a list of medical practitioners to act as medical assessors for the purposes of this Act.

(2) The court may in its discretion summon to its assistance from the list so compiled any medical assessor to act in an advisory capacity in the hearing of any application for compensation in cases of injuries which are not specified in the Second Schedule to this Act but such assessors shall not be employees of, or associated in any pecuniary way with, the employer by whom the workman is employed.

[Second Schedule.]

(3) A medical assessor may examine the workman in private, and in making any such examination, he shall also examine as to any allegations which have been made to him in writing either by the workman or by the employer respecting the condition of the workman, and the conclusions arrived at by him on such examination may be taken into consideration in deciding the question in dispute.

(4) A person shall not be summoned, nominated or selected or, if summoned, or selected, shall not sit or act as an assessor, if he has in connection with the injury or death out of which the application arises, given professional assistance or advice with regard to the accident or question in dispute to either party to the application or to any person with whom an insurance has been effected in respect of the payment of compensation under this Act to that workman.

(5) There shall be paid out of the Consolidated Revenue Fund of the Federation to any assessor for sitting or acting as aforesaid, or for any other assistance or advice given in connection with matters to be determined under this Act, fees according to a scale fixed by regulations to be made by the Minister.

## **9. Compensation in the case of temporary incapacity**

- (1) Where temporary incapacity, whether total or partial, results from the injury-
- (a) the injured workman's basic pay shall continue to be paid for a period of six months and thereafter, if the injured workman has not resumed the duties of his office, he shall be paid a sum equal to half of his basic pay for an additional period of three months; and
  - (b) if at the expiration of the total period mentioned in paragraph (a) of this subsection, the injured workman has not resumed the duties of his office and compensation due to him has not been determined, he shall be entitled to a sum equal to one quarter of his monthly salary for the next succeeding fifteen months, but any sum paid under this subsection shall be deducted from any sums payable as compensation.
- (2) Where a workman in receipt of any payments under the provisions of this section intends to leave the neighbourhood in which he was employed, for the purpose of residing elsewhere-
- (a) he shall give notice of such intention to the employer who may agree with the workman for the redemption of such payments by a lump sum, or for the continuance of such payments;
  - (b) where the employer and workman are unable to agree, either party may apply to the court which may order such redemption and determine the amount to be paid or order the continuance of such payments;
  - (c) any lump sum ordered to be paid together with any payments already made to the workman shall not exceed the lump sum which would be payable in respect of the same degree of incapacity under the provisions of section 5 or 7 of this Act, or as the case may be, if the incapacity were permanent.
- (3) If a workman in receipt of any payments under the provisions of this section, leaves the neighbourhood in which he was employed for the purpose of residing elsewhere without giving notice as provided in subsection (2) of this section or, having given such notice, leaves the neighbourhood as aforesaid without having come to an agreement with his employer for the redemption or continuance of such payments, or without having made an application to the court under the provisions of subsection (2) (b) of this section, he shall not be entitled to any benefits under this Act during or in respect of the period of his absence; and if the period of such absence shall exceed six months, the workman shall cease to be entitled to any benefits under this Act.

## **10. Method of calculating earnings**

(1) For the purposes of this Act, the monthly earnings of a workman shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated during the previous twelve months if he has been so long employed by the same employer, but, if not, then for any less period during which he has been in the employment of the same employer.

(2) Where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average monthly amount which, during the twelve months previous to the accident, was being earned by a person of similar earning capacity in the same grade employed at the same work by the employer, or, if there is no person so employed, by a person of similar earning capacity in the same grade employed in the same class of employment and in the same local government area where he resides.

(3) For the purpose of subsection (2) of this section, employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(4) Where the workman had entered into concurrent contract of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his monthly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident, whether he was or was not employed by the other employer or employers as a workman as defined in this Act:

Provided that the earnings of the workman under the concurrent contract shall be taken into account only so far as the workman is incapacitated from performing the concurrent contract.

(5) Upon request of the workman to the employer liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that workman upon which the amount of the monthly earning may be calculated for the purposes of this section.

## **11. Persons entitled to compensation**

(1) Compensation shall be payable to or for the benefit of the workman or, where death results from the injury, to or for the benefit of his dependants as provided by this Act:

Provided that in the case of death, a medical certificate as to the cause of death shall be produced by the dependants of the deceased workman to the employer.

(2) Where there are both total and partial dependants, nothing in this Act shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

(3) Where a dependant dies before a claim in respect of death is made under this Act or if a claim has been made before an order for the payment of compensation has been

made, the legal personal representative of the dependant shall have no right to payment of compensation, and the claim for compensation shall be dealt with as if that dependant had died before the workman.

## **12. Distribution of compensation**

(1) Compensation payable where death of a workman has resulted from an injury, shall be paid to the court, and the court may order any sum so paid to be apportioned among the dependants of the deceased workman or any of them in such proportion as the court thinks fit, or in the discretion of the court, to be allotted to anyone such dependant, and the sum so allotted to any dependant shall be paid to him or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

(2) Where on application being made in accordance with rules made under this Act, it appears to the court that, on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order made under subsection (1) of this section ought to be varied, the court may make such order for the variation of the former order as in the circumstances of the case as the court may think just.

(3) Compensation payable under the provisions of section 5 or 7 of this Act and lump sums payable under the provisions of section 9 of this Act, shall be paid to the court, and any sum so paid shall be paid to the person entitled thereto or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

(4) Nothing in this section shall prevent an employer from making any payment to a workman pending the settlement or determination of the claim and the court may order that the whole or any part of such payment shall be deducted from the amount of compensation payable to him under the provisions of this section.

(5) Any other compensation payable under this Act may be paid to the workman or to the court and when paid to the court shall be paid by the court to the person entitled thereto.

(6) The receipt of the Registrar or other officer of the court shall be a sufficient discharge in respect of any amount paid to the court under the provisions of this Act.

(7) Any order or directions of the court under this section shall be final.

## **13. Requirement as to notice of accident and application for compensation**

(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless-

- (a) notice of the accident has been given by or on behalf of the workman as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured; and
- (b) the application for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury or, in the case of death, within six months from the time of death.

(2) The want of, or any defect or inaccuracy in, any notice given under subsection (1) of this section, shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the accident from any other source at or about the

time of the accident, or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause.

(3) The failure to make an application within the period specified in subsection (1) of this section shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake or other reasonable cause.

(4) Notice in respect of an injury under this Act shall be given as prescribed.

#### **14. Employer to report the death of a workman**

(1) When the death of a workman from any cause whatsoever is brought to the notice or comes to the knowledge of his employer, the employer shall within a period of seven days immediately succeeding the receipt of the notice, give notice thereof to a labour officer and such notice shall state the circumstances of the death of the workman if they are known to the employer.

(2) On receipt of a notice under subsection (1) of this section, the officer who receives the notice shall make such inquiries as he may think fit, and if it appears to him that a claim for compensation may lie under this Act, he shall-

- (a) ascertain from the employer or such other sources as he may determine whether there are any dependants of the deceased workman; and
- (b) inform such dependants, if any, of the reported cause and circumstances of the death of the workman, and ascertain whether such dependants wish to make a claim for compensation and, if necessary, explain how the claim should be made.

(3) Any employer who fails to comply with the provisions of subsection (1) of this section, shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding ₦500.

(4) Nothing contained in this section, shall prevent any person from making a claim for compensation under this Act.

#### **15. Medical examination and treatment**

(1) Where a workman has given notice of an accident, the employer shall, as soon as reasonably possible after the date on which notice has been given, arrange to have him medically examined, free of charge to the workman, either by a medical practitioner named by the employer or by a medical practitioner named by the workman with the employer's approval, and such approval shall not be unreasonably withheld; and any workman who is in receipt of any payments under section 9 of this Act, shall submit himself for such medical examination from time to time, as may be required by the employer.

(2) When the examination is carried out by a medical practitioner named by the employer, the workman shall, when required, attend upon that medical practitioner at the time and place notified to the workman by the employer or that medical practitioner, provided such time and place are reasonable.

(3) In the event of the workman being unable or not in a fit state to attend on the medical practitioner named by the employer, he shall notify his employer who shall thereupon arrange with the medical practitioner so named to fix a reasonable time and place for a personal examination of the workman and shall send him notice accordingly.

(4) If the workman fails to submit himself for examination under this section, his right to compensation shall be suspended until such examination has taken place; and if such failure extends for a period of fifteen days from the date when the workman was required to submit himself for examination under subsection (2) or (3) of this section, as the case may be, no compensation shall be payable, unless the court is satisfied that there was reasonable cause for such failure.

(5) The workman shall be entitled, at his own expense, to have his own medical practitioner present at an examination conducted by a medical practitioner named or approved by the employer.

(6) During the period of temporary total incapacity, the employer shall arrange to submit the workman for normal medical treatment by either the employer's medical practitioner or the workman's medical practitioner approved by the employer, at the expense of the employer, and such normal medical treatment shall include any specialist

treatment which the employer may require the workman to undergo.

(7) If the workman has failed to submit himself for treatment by a medical practitioner as required under the provisions of subsection (6) of this section, or having submitted himself for such treatment had disregarded the instructions of such medical practitioner, then if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the injury had been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had submitted himself for treatment by, and duly carried out the instructions of, such medical practitioner, and compensation, if any, shall be payable accordingly.

(8) Where under this section a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

(9) Notwithstanding the provisions of this section, where a claim for compensation is made in respect of the death of a workman, then-

- (a) if the workman failed to submit himself to examination by a medical practitioner when so required under the provisions of this section, or failed to submit himself for treatment by a medical practitioner when so required under the provisions of this section or, having submitted himself for such treatment, disregarded the instructions of such medical practitioner; and
- (b) if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the death of the workman was caused thereby,

the death shall not be deemed to have resulted from the injury, and no compensation shall be payable in respect of the injury.

## **16. Agreement as to compensation**

(1) The employer and workman may, after the injury in respect of which a claim to compensation has arisen, agree in writing as to the compensation to be paid by the employer and such agreement shall be in triplicate, one of which shall be kept by the employer, another copy by the workman and the third copy sent to the nearest authorised labour officer; but-

- (a) the compensation agreed upon shall not be less than the amount payable under the provisions of this Act; and
- (b) where the workman is unable to read and understand the language in which the agreement is expressed, the agreement shall not be binding against him unless it is endorsed by a certificate of an authorised labour officer to the effect that he read over and explained to the workman the terms thereof and they were, if necessary, interpreted to him in a language which he understood and that the workman appeared fully to understand and approved of the agreement.

(2) Any agreement made under subsection (1) of this section, may on application to the court be made an order of the court.

(3) Where compensation has been agreed, the court may, notwithstanding that the agreement has been made an order of the court under subsection (2) of this section, on application by any party within three months after the date of the agreement, cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances the court may think just, if it is proved-

- (a) that the sum paid or to be paid was or is not in accordance with the provisions of subsection (1) of this section; or
- (b) that the agreement was entered into in ignorance or undue a mistake as to the true nature of the injury; or
- (c) that the agreement was obtained by fraud, under influence, misrepresentation or other improper means as would, in law, be sufficient ground for avoiding it.

(4) Where a dispute arises as to the percentage or degree of the injured workman's disability or the amount of compensation payable, the Minister shall refer the dispute to a medical board to be constituted by him under the provisions of this Act.

## **17. Determination of claims**

(1) If an employer on whom notice of the accident has been served under section 13 of this Act does not within 21 days after the receipt of the notice agree in writing with the workman as to the amount of compensation to be paid, the workman may, in the pre-

scribed form and manner, make an application for enforcing his claim to compensation to the court having jurisdiction in the area in which the accident giving rise to the claim occurred.

(2) All claims for compensation under this Act, unless determined by agreement, and any matter arising out of proceedings thereunder, shall be determined by the court, whatever may be the amount involved, and the court may, for the purpose, call upon any public officer or any intending medical practitioner to give evidence, if the court is of opinion that such officer or practitioner is, by virtue of his expert knowledge, able to assist the court.

## **18. Review**

(1) Any payment payable under this Act, either under agreement between the parties or under an order of the court, may be reviewed by the court on the application either of the employer or of the workman, but where the application for review is based on a change in the condition of the workman, any such application shall be supported by a certificate of a medical practitioner, if the services of a medical practitioner are available.

(2) Any payment may, on review under this section, subject to the provisions of this Act, be continued, increased, diminished, converted to a lump sum, or ended.

(3) If the accident is found to have resulted in permanent incapacity, the payment shall be converted to the lump sum to which the workman is entitled under the provisions of section 5 or 7 of this Act; and such lump sum shall be dealt with in accordance with the provisions of subsection (3) of section 12 of this Act.

(4) Where application is made by an employer under this section for any payment to be ended or diminished, and the application is supported by the certificate of a medical practitioner, the employer may pay into court the payment or so much thereof as is equal to the amount by which he contends that the payment should be diminished, and shall undertake to abide with the decision of the court made on a review under this section.

(5) In making a review under this section, the court shall have regard only to the capacity for work of the workman as affected by the accident.

## **19. Limitation of power of employer to end or decrease payments**

Subject to the provisions of sections 9 (3), 15 (4) and 18 (4) of this Act, an employer shall not be entitled, otherwise than in pursuance of any agreement or an order of the court-

(a) to end payment except-

(i) where a workman resumes work and his earnings are not less than the earnings which he was obtaining before the accident; or

(ii) where a workman dies;

(b) to diminish any payment except-

(i) where a workman in receipt of any payments in respect of total incapacity has actually returned to work; or

(ii) where the earnings of a workman in receipt or any payments in respect of partial incapacity have actually been increased.

## **20. Jurisdiction of the court**

(1) Save as is provided in this Act and any rules made thereunder, the court shall, upon or in connection with any question to be investigated or determined thereunder, have all the powers and jurisdiction exercisable by a High Court in or in connection with civil actions in such court and the law, rules and practice relating to such civil actions and to the enforcement of judgments and orders as the court shall *mutatis mutandis* apply.

(2) Where in any proceedings under this Act on a claim for compensation in respect of the death of a workman, the court is satisfied that sufficient evidence as to the dependency on the deceased workman of a person claiming to be a defendant who is residing

outside the local government area in which the proceedings are being taken, or as to the degree of such dependency, cannot be procured, or cannot be procured without undue hardship to the claimant or other party to the proceedings, a statement as to the dependency and as to the degree of dependency of the claimant signed by the chairman of the local government council in the area in which the claimant resides, shall be *prima facie* proof of the facts stated therein.

(3) The signature of the chairman under subsection (2) of this section shall be admitted without proof unless the court shall have reason to doubt the genuineness thereof.

(4) If in any proceedings under this Act any evidence is adduced which in the opinion of the court traverses the facts set out in a statement under subsection (2) of this section, or if for any other reason the court thinks fit, the court may request a magistrate's court having jurisdiction in the local government area in which a person claiming to be a dependent resides, to investigate the fact of the dependency and degree of the dependency of such person.

(5) The record of any investigation under subsection (4) of this section, including the findings of the magistrate's court thereon, shall be receivable as evidence in the proceedings, and a certificate signed by a magistrate or an officer of the magistrate's court which has conducted the investigation, shall be sufficient proof of such record and such signature shall be admitted without proof unless the court shall see reason to doubt the genuineness thereof.

(6) Where a request is received by a magistrate's court from a court in another local government area for an investigation of any matter arising out of proceedings for compensation instituted in such other court under this Act, the magistrate's court shall have jurisdiction to conduct such investigation, and shall transmit to such other court the record of such investigation, including its findings thereon, duly certified by the magistrate or by an officer of the magistrate's court.

## **21. Power of the court to submit questions of law**

The court may, if it thinks fit, submit any question of law for the decision of the Court of Appeal; and such submission shall be in the form of a special case in accordance with rules of court made under this Act.

## **22. Appeals**

(1) Subject to the provisions of this section and of section 14 of this Act, an appeal shall lie from any order of the court to the Court of Appeal.

(2) Except with the leave of the court or of the Court of Appeal (which shall not be granted unless in the opinion of such court some substantial question of law is involved in the appeal), no appeal shall lie if the amount in dispute is less than eighty naira.

(3) No appeal shall lie in any case in which the parties have agreed to abide by the decision of the court, or in which the order of the court gives effect to an agreement made by the parties.

(4) No appeal shall lie after the expiration of thirty days from the date of the order of the court: Provided that the Court of Appeal may, if it thinks fit, extend the time for appealing under this section notwithstanding that the time for appealing has lapsed.

## **23. Liability in case of workman employed by contractors**

(1) Where any person (in this section referred to as "the principal") in the course of or for the purposes of his trade or business, contracts with any other person (which other person is in this section referred to as "the contractor") for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed for or proceedings are taken against the principal, then, in the application of this Act references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.

(3) Where a claim or application for compensation is made under this section against a principal, the principal shall give notice thereof to the contractor who shall thereupon be entitled to intervene in any application made against the principal.

(4) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

(5) This action shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the

work or which are otherwise under his control or management.

#### **24. Remedies against both employer and stranger**

Where the injury in respect of which compensation is payable under this Act was caused in circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof-

- (a) the workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and
- (b) if the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the provisions of section 23 of this Act relating to liability in case of workmen employed by contractors, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay damages as aforesaid, and any question as to the right to and amount of any such indemnity shall, in default of agreement, be settled by civil suit, or, by consent of the parties or by arbitration under the Arbitration and Conciliation Act.

#### **25. Proceedings independently of the Act**

(1) Where the injury was caused by the personal negligence or wilful act of the employer or of some other person for whose act or default the employer is responsible, nothing in this Act shall prevent proceedings to recover damages being instituted against the employer in a civil court independently of this Act:

Provided that-

- (a) a judgment in such proceedings, whether for or against the employer, shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury under this Act;
- (b) a judgment in proceedings under this Act, whether for or against the employer, shall be a bar to proceedings at the suit of any person whom, or on whose behalf, such proceedings were taken, in respect of the same injury independently of this Act;
- (c) an agreement made by the employer and the workman under the provisions of subsection (1) of section 16 of this Act shall be a bar to proceedings by the workman in respect of the same injury independently of this Act.

(2) If in any proceedings independently of this Act, an action is brought to recover damages for injury caused by an accident, and it is determined in such action or on appeal that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under this Act, the action shall be dismissed; but-

- (a) the court in which the action is tried; or
- (b) if the determination is the determination on an appeal by either party by an appellate tribunal, that tribunal,

may assess the amount of compensation so payable but may deduct from such compensation all or part of the costs, which, in its judgement, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

(3) In any proceedings under this subsection, where the court or appellate tribunal assesses the compensation, it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction of costs, and such certificate shall have the force and effect of an award under this Act.

(4) An appellate tribunal may, instead of itself assessing compensation as provided in subsection (2) of this section, remit the case to the court of first instance for assessment of the compensation, and in such case may order the court of first instance to deduct from the amount of compensation assessed by it all or part of such costs as aforesaid.

#### **26. Provision in the event of a company going into liquidation**

Where an employer, being a company within the meaning of the Companies and Allied Matters Act, has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the company having commenced to be wound up or a receiver or manager of the company's business or undertaking having

been duly appointed, or possession having been taken, by or on behalf of the holders of debentures secured by a floating charge, of any property comprised in or subject to the

charge, the rights of the company against the insurers as respects that liability shall, notwithstanding anything in the Companies and Allied Matters Act, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the company, so however that-

[Cap. C20.]

- (a) the insurers shall not be under any greater liability to the workman than they would have been to the company;
- (b) if the liability of the insurers to the workman is less than the liability of the company to the workman, the workman may claim for the balance in the liquidation, or, as the case may be, he may recover the balance from the receiver or manager.

## **27. Contracting out**

(1) Any contract or agreement, whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from an employer for injury arising out of and in the course of his employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

(2) Notwithstanding anything to the contrary in this Act, where the Minister is satisfied that by reason of any previous injury, old age or serious physical defect or infirmity, a person, if employed as a workman, is specially liable to meet with an accident, or that if he meets with an accident, he is specially liable to sustain injury, he may, after consultation with such persons as he may determine, by order, make regulations providing for the employment of such workman elsewhere.

## **28. Compensation not to be assigned, charged or attached**

Compensation payable under this Act shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against such compensation.

## **29. Medical expenses**

(1) The employer shall defray any reasonable expenses incurred by a workman within Nigeria or, with the approval of the Federal or State Chief Medical Officer (however designated) outside Nigeria, as a result of an accident arising out of and in the course of his employment in respect of-

- (a) medical, surgical and hospital treatment, skilled nursing services and supply of medicines and surgical dressings;
- (b) the supply, maintenance, repair and renewal of non-articulated artificial limbs and apparatus; and
- (c) travelling expenses incurred in the course of receiving medical treatment.

(2) The court may, when determining any dispute in respect of compensation or upon application of any interested person, order the payment of any of the expenses referred to in subsection (1) of this section to the persons entitled to receive it.

## **30. Decisions of court in regard to treatment and medical reports**

(1) All disputes as to the necessity for, or the character or sufficiency of, any medical aid provided under this Act shall be determined by the court.

(2) Any decision of the court given under subsection (1) of this section shall be final.

## **31. Fees for medical aid to be prescribed**

The fees and charges for medical aid to workmen within Nigeria with respect to injuries arising out of and in the course of employment shall be in accordance with such scale as may be prescribed, and no claim for an amount in excess of a fee or charge in accordance with that scale shall lie against any workman or his employer in respect of any such medical aid.

## **32. Occupational diseases**

The Minister may by order extend the provisions of this Act to incapacity or death caused by any disease specified in such order, and compensation shall be payable as if any disease so specified was a personal injury by accident arising out of and in the course of employment:

Provided that-

- (a) the disease is due to the nature of the employment as certified by the appropriate medical board;
- (b) the Minister may specify in any order made under this section any disease, which unless otherwise certified by a medical practitioner or the employer can prove to the contrary, shall be deemed to be due to the nature of his employment, if the workman who contracts any such disease was at the date of disablement aforesaid employed in any occupation specified in the order in relation to that disease;
- (c) for the purposes of calculating a workman's earnings, where the workman was, at the date of his incapacity or death, employed in employment to the nature of which the disease is due, the date of commencement of the incapacity, or the date of his death if there was no previous incapacity, shall be treated as the date of the happening of the accident, and where the workman was not so employed at the date of his incapacity or death, the last day upon which he was so employed shall be treated as the date of the happening of the accident; and for all other purposes of this Act, the commencement of the incapacity of the workman, or the date of his death if there was no previous incapacity, shall be treated as the date of the happening of the accident;
- (d) if the disease has been contracted by a gradual process so that two or more employers are severally liable to pay compensation in respect thereof under this section, the aggregate amount of compensation recoverable from those employers shall not exceed the amount that would have been recoverable if those employers had been a single employer, and in any such case those employers shall, in default of agreement, be entitled as between themselves to such rights of contribution as the court thinks just, having regard to the circumstances of the case, any action brought or application made by any of them for this purpose.

### **33. Power to require existence of occupational disease to be certified by medical board**

An order under section 32 of this Act may provide that in relation to any particular disease specified in any such order, that section shall have effect subject to the modification that for the words "where a medical practitioner grants a certificate that a workman is suffering from any disease so specified" there shall be substituted the words "where a medical board appointed under section 35 of this Act determines that a workman is suffering from any disease so specified and grants a certificate to that effect."

### **34. Special provisions as regards byssinosis**

An order made under section 32 of this Act in relation to byssinosis, may include provision for securing that no compensation shall be payable under this Act in respect of incapacity or death of a workman caused by byssinosis unless (whether immediately or not) before the date of his disablement he has been employed in any occupation specified in the order in relation to byssinosis for a length of time (whether continuous or not) so specified.

### **35. Medical boards**

(1) Medical boards, for the purposes of section 32 of this Act where it has effect subject to the modification specified in section 34 of this Act, and for the purposes of any provision in any order under section 32 of this Act, whereby any matter is authorised or required to be certified by a medical board, shall be appointed by the Minister on the recommendation of the Minister responsible for matters relating to health, and shall consist of two or more qualified medical practitioners of whom one shall be appointed as chairman.

(2) A medical board shall not determine the question whether or not a workman is suffering from a disease specified in an order under section 32 of this Act, or any other medical question-

- (a) if any member of the board is unable to be present at the consideration of that

question; or

- (b) in the case of a board consisting of two members; if the board is unable to reach a unanimous decision on that question.

(3) In any case in which, by reason of subsection (2) of this section, a medical board is unable to determine any medical question, that question shall as soon as possible be referred to another medical board appointed under this section:

Provided that, in a case falling under subsection (2) (b) of this section, that other medical board shall be a board consisting of three members whose decision, if not unanimous, shall be that of the majority of the members.

(4) The Minister may pay to the members of medical boards appointed under this section such fees or other remuneration and such travelling and other allowances as may be approved by the Minister responsible for finance.

### **36. Returns by employer and insurer**

(1) The Minister may make regulations prescribing such returns as he shall think fit to be made by employers and by insurers carrying on in Nigeria the business of insuring employers against their liabilities under this Act.

(2) Any person required to make a return under this Act who fails to make the return within the time within which he is required to make the return, or who makes or causes to be made a return which is false in any material particular, or on being so required fails to give any information or explanation respecting the return which it is in his power to give, shall be guilty of an offence under this Act and on conviction shall be liable to a fine of ten naira for every day during which the default continues.

### **37. Offences by bodies corporate and unincorporated**

Where an offence under this Act is committed by a body corporate or firm or other association of individuals-

- (a) every director, manager, secretary or other similar officer of the body corporate; or
- (b) every partner or officer of the firm; or
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person purporting to act in any such capacity as aforesaid,

shall severally be guilty of that offence and liable to be prosecuted and punished for the offence in like manner as if he had himself committed the offence in an individual capacity, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

### **38. Power to make rules of court and regulations**

(1) The Chief Justice of Nigeria may make rules of court for regulating proceedings under the provisions of this Act before a High Court.

(2) Without prejudice to the provisions of subsection (1) of this section, rules made under this section may prescribe the procedure, forms and fees payable in respect of proceedings under this Act.

(3) The Minister may make regulations not inconsistent with the provisions of this Act or rules made under subsections (1) and (2) of this section, generally for the purposes of giving effect to this Act.

### **39. Rules as to transfer of funds**

Where reciprocal arrangement has been made between Nigeria and any country whereby any sums awarded under the law relating to workmen's compensation in Nigeria to beneficiaries resident or becoming resident in that other country, and sums awarded under the law relating to workmen's compensation in that country aforesaid to beneficiaries resident or becoming resident in Nigeria, may, at the request of the authority by which the award is made, be transferred and administered by a competent authority in the country aforesaid, the Minister may make rules-

- (a) for the transfer, in such manner as may be provided by the arrangement, to the

- country aforesaid, of any money in the possession of the court, applicable for the benefit of any person resident in or about to reside in the said country; and
- (b) for the receipt and administration by an officer appointed by the Minister for the purposes of any money which under such arrangement has been transmitted from the country aforesaid as money applicable for the benefit of any person resident or about to reside in Nigeria.

#### 40. Compulsory insurance

(1) Every employer to whom this section is made applicable shall as from the commencement of any regulations made under subsection (2) of this section, insure every workman employed by him against injury or death arising out of or in the course of his employment.

(2) The Minister may, after consultation with such persons as he may determine, make regulations prescribing anything falling to be prescribed for the due enforcement of this section, including the categories of employers to whom this section is to apply.

(3) Any employer who fails, omits or neglects to comply with the provisions of subsection (1) of this section or any regulations made under subsection (2) of this section, shall be guilty of an offence and liable-

- (a) on conviction for a first offence to a fine equivalent to the premium payable for the year in question in respect of the number of workmen under his employment; and
- (b) on conviction for a second or subsequent offence to a fine equivalent to double the premium payable for the year in question in respect of the number of workmen employed by him or the sum of N2,000, whichever is the greater.

#### 41. Interpretation

(I) In this Act, unless the context otherwise requires-

**"authorised labour officer"** has the meaning assigned thereto in the Labour Act;  
[Cap. L1.]

**"compensation"** means compensation as provided by this Act;

**"court"** means, in any case where a cause of action under this Act is within its competence or jurisdiction, a High Court sitting in respect of any matter arising out of this Act;

**"dependants"** includes-

- (a) those members of the family of a workman who were wholly or in part dependent upon his earnings at the time of his death, or would but for the incapacity due to the accident have been so dependent; and
- (b) where the workman, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, he shall include such illegitimate child or parent or grandparent respectively, but a person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position;

**"earnings"** includes-

- (a) wages paid to the workman by the employer and the value of any food, fuel or quarters supplied to the workman by the employer if as a result of the accident the workman is deprived of such food, fuel or quarters; and
- (b) any overtime payments or other special remuneration for work done, whether by way of bonus or otherwise, if of constant character or for work habitually performed,

but shall not include remuneration for intermittent overtime, or casual payments of a non-recurrent nature, or any *ex gratia* payment, whether given by the employer or other person, or the value of a travelling allowance, or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund, or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

**"employer"** includes-

- (a) the Government of the Federation of Nigeria and of any State;

- (b) any body of persons corporate or unincorporated and the legal personal representative of a deceased employer; and
- (c) where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person; and
- (d) in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee of the club, shall, for the purposes of this Act, be deemed to be the employer;

**"insurer"** includes any insurance society, association, company or underwriter;

**"medical practitioner"** means a medical practitioner registered under the Medical and Dental Practitioners Act;

[Cap. M8.]

**"member of the family"** means-

- (a) when used in relation to a Nigerian, anyone of those persons mentioned in one of the columns in the First Schedule to this Act according as the family is based on the paternal or maternal system;  
[First Schedule.]
- (b) when used in relation to any person not being a Nigerian, wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister;

**"Minister"** means the Minister charged with responsibility for matters relating to labour;

**"outworker"** means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

**"partial incapacity"** means-

- (a) where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the incapacity; and
- (b) where the incapacity is of a permanent nature, such incapacity as reduced his earning capacity in every employment which he was capable of undertaking at that time,

but every injury specified in the Second Schedule to this Act, except such injury or combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries amounts to one hundred per cent or more, shall be deemed to result in permanent partial incapacity;

[Second Schedule.]

**"prescribed"** means prescribed by rules;

**"total incapacity"** means such incapacity, whether of a temporary or permanent nature, as incapacitates a workman for any employment which he was capable of undertaking at the time of the accident resulting in such incapacity:

Provided that permanent total incapacity shall be deemed to result from an injury or from any combination of injuries specified in the Second Schedule to this Act, where the percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries, amounts to one hundred per cent or more;

**"tributer"** has the meaning assigned thereto by section 259 of the Minerals and Mining Act.

[Cap. MI2.]

(2) The exercise and performance of the powers and duties of any government body or authority, other than the powers and duties of the Government of the Federation or of a State shall, for the purposes of this Act, be treated as the trade or business of such authority.

This Act may be cited as the Workmen's Compensation Act.

FIRST SCHEDULE  
[Section 41.]

PATERNAL SYSTEM

Mother, father, wife, son, daughter, brother, sister, father's father, father's brother.

MATERNAL SYSTEM

Mother, father, wife, son, daughter, brother, sister, mother's mother, mother's brother, mother's sister, sister's son, sister's daughter, mother's sister's son, mother's sister's daughter.

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SECOND SCHEDULE  
[Section 7, 8 and 41.]

INJURY

PERCENTAGE OF DISABILITY

Loss of two limbs .....	100
Loss of both hands or of all fingers and thumbs .....	100
Loss of both feet .....	100
Total loss of sight .....	100
Total paralysis .....	100
Injuries resulting in being permanently bedridden .....	100
Any other injury causing permanent total disablement ..	100
Loss of arm at shoulder .....	80
Loss of arm between elbow and shoulder .....	70
Loss of arm at elbow .....	70
Loss of arm between wrist and elbow .....	70
Loss of hand at wrist .....	70
Loss of four fingers	50
Loss of thumb-	
both phalanges .....	35
one phalange .....	10
Loss of index finger-	
three phalanges .....	15
two phalanges .....	10
one phalange .....	6
Loss of middle finger-	
three phalanges .....	10
two phalanges .....	6
one phalange .....	4

INJURY	PERCENTAGE OF DISABILITY
Loss of ring finger-	
three phalanges .....	6
two phalanges .....	5
one phalange .....	3
Loss of little finger-	
three phalanges .....	5
two phalanges .....	4
one phalange .....	3
Loss of metacarpals-	3
1 <sup>st</sup> or 2 <sup>nd</sup> (additional) 3 <sup>rd</sup>	
.....•.....•.....•.....•.....•.	4
4th or 5 <sup>th</sup> (additional) .....	3
Loss of leg-at or above knee .....	75
Loss of leg-at or below knee .....	60
Loss of foot .....	40
Loss of toes-	
all of one foot	20
great-	
both phalanges .....	10
one phalange .....	3
other than great, if more than one toe lost, each	2
.	
Loss of sight of one eye .....	30
Loss of hearing-one ear .....	10
Total loss of hearing .....	100
Loss of remaining eye by one-eyed workman .....	100
Loss of remaining arm by one-armed workman .....	100
Loss of remaining leg by one-legged workman .....	100
(1) Total permanent loss of the use of a member shall be treated as loss of such member.	
(2) In the case of a right-handed workman, an injury to the left arm or hand and in the case of a left-handed workman, to the right arm or hand, shall be rated at ninety per cent of the above percentages.	
(3) Where there is loss of two or more parts of the hand, the percentage of incapacity shall not be more than for loss of the whole hand, and any necessary lesser percentage shall be applied accordingly.	

#### **SUBSIDIARY LEGISLATION**

*No Subsidiary Legislation*

