

P.N.D.C.L. 187

WORKMEN'S COMPENSATION ACT, 1987

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## P.N.D.C.L. 187

**WORKMEN'S COMPENSATION ACT, 1987<sup>1</sup>**

**AN ACT to provide for the payment of compensation to employees and for related matters.**

*Compensation***1. Application to employees employed by the Republic**

This Act applies to employees employed by the Republic as well as private persons, except in the case of persons in the Armed Forces.

**2. Employer's liability for compensation**

(1) Where an employee sustains personal injury by accident arising out of, and in the course of employment, the employer is liable, subject to this Act, to pay compensation in accordance with this Act.

(2) An injured employee shall not suffer a diminution in earnings while the employee undergoes treatment for injuries sustained through an accident arising out of, and in the course of, employment.

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1. This Act was issued as the Workmen's Compensation Law, 1987 (P.N.D.C.L. 187) made on 12th August, 1987, and notified in the *Gazette* on 21st August, 1987. The memorandum to the Law is reproduced after the text of the Act.

(3) Where an attending medical officer assesses an incapacity in respect of an injured employee, the employer shall pay the injured employee compensation commensurate with the incapacity so assessed.

(4) Subject to sections 3 and 4, where the injury results in death or serious and permanent incapacity, the Court on consideration of the circumstances, may award the appropriate compensation under this Act.

(5) The employer is not liable to pay compensation in respect of an injury to an employee resulting from an accident which is attributable to the employee having been under the influence of drink or drugs at the time of the accident.

(6) For the purposes of this Act, an accident resulting in the death or serious and permanent incapacity of an employee arises out of and in the course of employment,

- (a) although the employee was at the time when the accident happened acting in contravention of a statutory or any other regulation applicable to the employment, or was acting without instructions from the employer;
- (b) if the act was done by the employee for the purposes of and in connection with the employer's trade or business.

(7) Compensation is not payable under this Act in respect of incapacity or a death resulting from a deliberate self-injury.

(8) Compensation is not payable under this Act in respect of an incapacity or a death resulting from personal injury, if the employee has at any time represented to the employer that the employee was not suffering or had not previously suffered from that or similar injury, knowing that the representation was false.

### **3. Compensation in fatal cases**

(1) Where death results from the injury,

- (a) if the employee leaves dependants, the amount of compensation shall be a sum of money equal to sixty months earnings; but where in respect of the same accident compensation has been paid under section 5, 6 or 7, there shall be deducted from the sum payable under this paragraph the sums so paid as compensation;
- (b) whether the employee had dependants or not, the employer shall pay the medical expenses;
- (c) if the employee did not leave dependants, the employer shall bear the expenses of the burial as required by custom;
- (d) if the employee left dependants, the employer shall bear the expenses of the burial to the sum of five million cedis or as stipulated in the relevant Collective Agreement, whichever is the higher.

(2) Where an employee survives an injury, whether the employee has dependants or not, the employer shall pay the medical expenses in respect of the injury.

**4. Employer to pay medical expenses**

In an injury under this Act, the employer shall pay the medical expenses in respect of the injury.

**5. Compensation for permanent total incapacity**

Where permanent total incapacity results from the injury the amount of compensation shall be a sum of money equal to ninety-six months' earnings.

**6. Compensation for 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 Third Schedule, a percentage of the compensation which would have been payable in the case of permanent total incapacity specified in the Third Schedule as being the percentage of the loss of earning capacity caused by that injury; and
- (b) in the case of an injury not specified in the Third Schedule, a percentage of the compensation which would have been payable in the case of permanent total incapacity and proportionate to the loss of earning capacity permanently caused by the injury.

(2) Where more injuries than one are caused by the same accident, the amount of compensation payable under this section shall be aggregated, but shall not exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

**7. Compensation for temporary incapacity**

(1) Where a temporary incapacity, whether total or partial, results from the injury, the compensation shall be the periodical payments or a lump sum of money calculated accordingly, having regard to the probable duration, and probable changes in the degrees, of the incapacity.

(2) The periodical payment shall be the difference between the monthly earnings the employee was earning at the time of the accident and the monthly earnings which the employee is earning or is capable of earning in any other suitable employment or business after the accident; but

- (a) the aggregate of the periodical payments or the lump sum of money payable under this subsection shall not exceed the lump sum of money which would be payable in respect of the same degree of incapacity under section 5 or section 6, if the incapacity were permanent;
- (b) a period of absence from duty certified necessary by a medical practitioner shall be regarded as a period of temporary total incapacity irrespective of the outcome of the injury and a period subsequent to the first period but preceding the final assessment of disability shall be regarded as a period of temporary incapacity;

- (c) the maximum duration of periodical payments under this section shall not exceed twenty-four months except where the chief labour officer directs the continuance of periodical payments during the continuance of a disability for a further period not exceeding six months;
- (d) a lump sum of money payable under section 5 or 6 shall not be disturbed by reason of periodical payments having been made under this section in the event of permanent incapacity following or after temporary total incapacity or temporary partial incapacity.
- (3) In fixing the amount of the periodical payment the Court may consider a payment, an allowance or a benefit which the employee may receive from the employer during the incapacity.
- (4) On the ceasing of the incapacity before the date on which a periodical payment falls due, a sum of money proportionate to the duration of the incapacity in that period is payable in respect of that period.
- (5) Where an employee in receipt of periodical payments under this section intends to leave the neighbourhood in which the employee was employed, for the purpose of residing elsewhere, the employee shall give notice of that intention to the employer who may agree with the employee for the redemption of the periodical payments by a lump sum of money or for the continuance of the periodical payments.
- (6) Where the employer and the employee are unable to agree, either party may apply to the Court which may order a redemption and may determine the amounts to be paid or may order the continuance of the periodical payments.
- (7) A lump sum of money so ordered to be paid together with the periodical payments already made to the employer shall not exceed the lump sum which would be payable in respect of the same degree of incapacity under section 4 or 5, if the incapacity were permanent.
- (8) Where an employee in receipt of periodical payments under this section leaves the neighbourhood in which the employee was employed, for the purpose of residing elsewhere,
- (a) without giving notice as provided in subsection (5), or
  - (b) having given the notice leaves the neighbourhood without having come to an agreement with the employer for the redemption or continuance of the periodical payments, or
  - (c) without having made an application to the Court under subsection (6),
- the employee is not entitled to the benefits under this Act during or in respect of the period of absence.
- (9) Where the employee's absence from the neighbourhood exceeds six months without justifiable cause, the employee shall cease to be entitled to the benefits under this Act.

## **8. Compensation for disfiguring injuries**

(1) Where in an employment personal injury of the description specified in an entry in the first column of the First Schedule by accident arising out of and in the course of the employment, is caused to an employee, the employer shall pay as compensation an amount of money for the injury determined by a medical practitioner recognised by the Government, not exceeding the percentage of the compensation payable in the case of permanent total incapacity that is specified in the corresponding entry in the second column of that Schedule.

(2) The compensation payable under subsection (1) is irrespective of whether or not a compensation is payable under any other provision of this Act; but a mutilation in respect of which compensation is provided under the Third Schedule shall not rank as disfigurement under the First Schedule.

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

## **9. Method of calculating earnings**

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

(2) Where by reason of the shortness of the time during which the employee has been in the employment of the 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, consideration may be given 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 same employer, or, if there is a person who is not so employed, by a person of similar earning capacity in the same grade employed in the same class of employment and in the same district.

(3) For the purposes of subsection (1), employment by the same employer means employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(4) Where the employee had entered into concurrent contracts of service with two or more employers under which the employee worked at one time for one employer and at another time for another employer, the monthly earnings shall be computed as if the earnings under those contracts were earnings in the employment of the employer for whom the employee was working at the time of the accident.

(5) The earnings of the employee under the concurrent contract shall be disclosed to any other employee at the time of engagement with the latter and shall be taken into account only so far as the worker is incapacitated from performing the concurrent contract.

(6) On the request of the employee to the employer liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that employee on which the amount of the monthly earnings may be calculated for the purposes of this section.

#### **10. Persons entitled to compensation**

(1) Compensation is payable to or for the benefit of the employee, or where death results from the injury, to or for the benefit of the employee's dependant as provided by this Act.

(2) 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 is made, the legal personal representative of the dependants do not have a right to payment of compensation, and the claim for compensation shall be dealt with as if the dependant had died before the employee.

#### **11. Distribution of compensation**

(1) Compensation payable where the death of an employee resulted from an injury shall be paid to the Court, and the Court may order the sum of money so paid

- (a) to be apportioned among the dependants of the deceased employee or any of them in the proportion determined by the Court, or
- (b) in the discretion of the Court to be allotted to any one dependant, and the sum of money so allotted to a dependant shall be paid to the dependant or be invested, applied or otherwise dealt with for the dependant's benefit in the manner determined by the Court.

(2) Where, on an application made in accordance with the Rules, it appears to the Court that, on account of the differences of the circumstances of the various dependants, or for any other sufficient cause, an order made under subsection (1) ought to be varied, the Court may make an order for the variation of the former order appropriate in the circumstances of the case.

(3) Compensation payable under section 5 or section 6 and lump sums of money payable under section 7 shall be paid to the Court, and a sum of money so paid shall be paid to the person entitled to that sum of money or be invested, applied or otherwise dealt with for the benefit of that person in the manner determined by the Court.

(4) This section does not prevent an employer from making a payment to an employee pending the settlement or determination of the claim, and the Court may order that the whole or a part of the payment shall be deducted from the amount of compensation payable under this section.

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

(6) The receipt of the Registrar of the Court is a discharge in respect of an amount paid to the Court under this Act.

(7) *Omitted.*<sup>2</sup>

### *Applications and Claims*

#### **12. Requirements as to notice of accident and application for compensation**

(1) Proceedings for the recovery under this Act of compensation for an injury is not maintainable

- (a) unless notice of the accident has been given by, or on behalf of, the employee within six months after the happening of the injury and before the employee has voluntarily left the employment in which the employee was injured, and
- (b) unless the application for the compensation with respect to the accident has been made within six months or, in the case of death, within six months from the time of death.

(2) For the purposes of subsection (1),

- (a) the want of, or a defect or an inaccuracy in, the notice is not a bar to the maintenance of the proceedings,
  - (i) 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
  - (ii) if it is found in the proceedings for settling the claim that the defence of the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced by the want, defect or inaccuracy, or
  - (iii) that the want, defect or inaccuracy was occasioned by mistake or any other reasonable cause;
- (b) the failure to make an application within the period specified is not a bar to the maintenance of the proceedings if it is found that the failure was occasioned by mistake or any other reasonable cause.

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

#### **13. Employer to report the death of an employee**

(1) When the death of an employee from a cause is brought to the notice of or comes to the knowledge of the employer, the employer shall, within three months after the occurrence of the death, give notice of the death to the nearest labour officer.

(2) The notice shall state the circumstances of the death of the employee if they are known to the employer.

(3) An employer who fails to comply with subsection (1) without reasonable cause commits an offence and is liable to a fine not exceeding two thousand five hundred penalty units.

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2. As inconsistent with the hierarchy of appeals under Chapter Eleven of the Constitution. The subsection provided that, "Any order or decision of the Court under the section shall be final". The Supreme Court is the court of finality under the Constitution.



(4) This section shall not prevent a person from making a claim for compensation under this Act.

#### 14. Medical examination and treatment

(1) Where an employee has given notice of an accident, the employer shall, as soon as reasonably possible arrange to have the employee medically examined free of charge to the employee, by a medical practitioner named by the employer or by a medical practitioner named by the employee with the employer's approval, and an employee who is in receipt of periodical payments under section 6 shall submit to the medical examination as from time to time required by the medical practitioner.

(2) When the examination is carried out by a medical practitioner named by the employer, the employee shall, when required, attend on that medical practitioner at the time and place notified to the employee by the employer or that medical practitioner, where the time or place is reasonable or convenient.

(3) Where the employee, in the opinion of a medical practitioner, is unable or not in a fit state to attend on the medical practitioner named by the employer, that fact shall be notified to the employer, and that medical practitioner shall fix a reasonable time and a convenient place for a personal examination of the employee and shall accordingly notify the employee.

(4) Where the employee refuses to submit to the examination, the right to compensation shall be suspended until the examination has taken place, and if the refusal extends for a period of fifteen days from the date when the employee was required to submit to the examination under subsection (2) or subsection (3), compensation is not payable unless the Court is satisfied that there was reasonable cause for the refusal.

(5) At the employee's expense, the employee is entitled to choose a medical practitioner to be 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 employee for normal medical treatment by the employer's medical practitioner or the employee's medical practitioner approved by the employer, at the expense of the employer.

(7) The normal medical treatment includes a specialist treatment which the medical practitioner may require the employee to undergo.

(8) Where the employee fails to submit to the treatment by a medical practitioner when so required under subsection (6), or having submitted for treatment has disregarded the instructions of the medical practitioner, then if it is proved

- (a) that the failure or disregard was unreasonable in the circumstances of the case, and
- (b) that the injury has been aggravated by that failure,

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 employee had submitted to the treatment by, and duly carried out the instructions of, the medical practitioner, and compensation shall be payable accordingly.

(9) Where under this section a right to compensation is suspended, compensation is not payable in respect of the period of suspension.

(10) Despite anything else in this section, where a claim for compensation is made in respect of the death of an employee, then if the employee

- (a) failed to submit to the examination by a medical practitioner when so required under this section, or
- (b) failed to submit to the treatment by a medical practitioner when so required under this section, or
- (c) having submitted to the treatment, disregarded the instructions of the medical practitioner,

and if it is proved that the failure or disregard was unreasonable in the circumstances of the case and that the death of the employee was caused by that failure, the death shall not be deemed from the injury, and compensation is not payable in respect of the injury.

### **15. Agreement as to compensation**

(1) The employer and the employee may, after the injury in respect of which the claim to compensation has arisen, agree in writing as to the compensation to be paid by the employer.

(2) The agreement referred to in subsection (1) shall be in duplicate, one copy to be kept by the employer and the other copy to be kept by the employee.

(3) The compensation agreed on shall not be less than the amount payable under this Act.

(4) Where the employee is an illiterate or is unable to read and understand the writing in the language in which the agreement is expressed,

- (a) the agreement is not binding against the employee unless it is endorsed by a certificate of a labour officer to the effect that the officer read over and explained to the employee the terms of the agreement and that the employee appeared fully to understand and approve of the agreement; and
- (b) the agreement shall not operate to preclude the employee from instituting proceedings independently of this Act to recover damages in respect of the injury to which the agreement relates unless the certificate of the labour officer contains a statement to the effect that the labour officer explained to the employee that the making of the agreement would preclude the employee from instituting those proceedings and that the employee appeared fully to understand and accept the legal position in that regard.

(5) An agreement made under subsection (1) may, on an application to the Court, be made an order of the Court.

(6) Where compensation is agreed on the Court may, although the agreement has been made an order of the Court under subsection (5), on an application by a party within three months after the date of the agreement, cancel it and make an order including an order as to a sum of money already paid under the agreement that in the circumstances the Court thinks just, if it is proved

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

#### **16. Determination of claims**

(1) Where an employer on whom notice of the accident has been served under section 12 does not within twenty-one days after the receipt of the notice agree in writing with the employee as to the amount of compensation to be paid, the employee may, in the prescribed form and manner, make an application for enforcing the claim to compensation to the Court having jurisdiction in the district in which the accident occurred which gave rise to the claim.

(2) The claims for compensation under this Act, unless determined by agreement, and a matter arising out of the proceedings shall be determined by the Court, irrespective of the amount of money involved, and the Court may, for that purpose, call on a public officer or an independent medical practitioner to give evidence if the Court is of the opinion that the officer or practitioner is, by virtue of expert knowledge, able to assist the Court.

#### **17. Review**

(1) A periodical payment under this Act under an agreement between the parties or under an order of the Court, may be reviewed by the Court on the application of the employer or of the employee.

(2) Where the application for review is based on a change in the condition of the employee, the application shall be supported by a certificate of a medical practitioner if the services of a medical practitioner are available.

(3) A periodical payment may, on review under this section and subject to this Act, be continued, increased, diminished, converted to a lump sum of money, or ended.

(4) Where the accident is found to have resulted in permanent incapacity, the periodical payment shall be converted to the lump sum of money to which the employee is entitled under section 5 or 6, and the lump sum shall be dealt with in accordance with subsection (2) of section 11.

(5) Where an application is made by an employer under this section for a periodical 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 periodical payment, or so much of the payment as is equal to the amount by which the employer contends that the periodical payment should be diminished, to abide the decision of the Court made on a review under this section.

(6) In a review under this section the Court shall consider the capacity to work only of the employee as affected by the accident.

### **18. Limitation on employer to end or decrease periodical payments**

Subject to subsection (6) of section 7, subsection (4) of section 14, and subsection (4) of section 17, an employer is not entitled, otherwise than in pursuance of an agreement or an order of the Court

- (a) to end periodical payments except
  - (i) where an employee resumes work and the earnings are not less than the earnings which the employee was obtaining before the accident, or
  - (ii) where an employee dies;
- (b) to diminish periodical payments except
  - (i) where an employee in receipt of periodical payments in respect of total incapacity has actually returned to work, or
  - (ii) where the earnings of the employee in receipt of periodical payments in respect of partial incapacity have actually been increased.

### *Legal Proceedings*

### **19. Jurisdiction of the Court**

(1) Except as is provided in this Act and the Rules, the Court may, on or in connection with a question to be investigated or determined exercise the powers and jurisdiction exercisable by a District Court in or in connection with civil actions in the District Court and the law, rules and practice relating to civil actions and to the enforcement of judgments and orders of the District Court shall apply with the modifications that are necessary.

(2) Where in proceedings under this Act on a claim for compensation in respect of the death of an employee, the Court is satisfied

- (a) that other or sufficient evidence as to the dependency on the deceased employee of a person claiming to be a dependant, residing outside the District in which the proceedings are being taken, or
- (b) as to the degree of that dependency,

cannot be procured or cannot be procured without undue hardship to the claimant or any other party to the proceedings, a statement as to the dependency and as to the degree of dependency of the claimant signed by a labour officer shall be prima facie proof of the facts stated.

(3) The signature of the labour officer shall be admitted without proof unless the Court has reason to doubt the genuineness of the signature.

(4) Where evidence in the proceedings is adduced, which traverses the facts set out in the statement, or for any other sufficient reason, the Court may request a Court having jurisdiction in the district in which a person claiming to be a dependant resides, to investigate the fact and the degree of that dependency.

(5) The record of the investigation including the finding of the Court is receivable as evidence in the proceedings, and a certificate signed by a District Magistrate or an officer of the Court which has conducted the investigation is sufficient proof of the record and the signature shall be admitted without proof unless the Court has reason to doubt the genuineness of the signature.

(6) Where a request is receivable by a Court from a Court in another district for an investigation of a matter arising out of proceedings for compensation instituted in the other Court under this Act, the Court may conduct an investigation, and shall transmit to the other Court the record of the investigation, including its findings, duly certified by the District Magistrate or by an officer of the Court.

## **20. Submission of questions of law**

(1) The Court may submit a question of law for the decision of a Justice of the High Court.

(2) The submission shall be in the form of a special case in accordance with the Rules.

## **21. Appeals**

(1) Subject to this section and subsection (7) of section 11, an appeal lies to the High Court from an order of the Court.

(2) An appeal does not lie where the parties have agreed to abide by the decision of the Court, or where the order of the Court gives effect to an agreement between the parties.

(3) An appeal does not lie after the expiration of thirty days from the date of the order of the Court.

(4) The High Court may extend the time for appealing under this section.

## **22. Liability where employee employed by contractors**

(1) Where a principal, in the course of or for the purposes of the principal's trade or business, contracts with a contractor otherwise than as a tribute for the execution by or under the contractor of the whole or a part of a work undertaken by the principal, the principal is liable to pay an employee employed in the execution of the work the compensation under this Act which the principal would have been liable to pay if that employee had been immediately employed by the principal.

(2) Where compensation is claimed from 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 employee under the employer by whom the employee is immediately employed.

(3) A principal liable to pay compensation under this section, is entitled to pay compensation to the employee independently of this section.

(4) Where a claim or an application for compensation is made under this section against a principal, the principal shall give notice of the claim or application to the contractor who shall then be entitled to intervene in an application made against the principal.

(5) This section shall not be construed as preventing an employee recovering compensation under this Act from the contractor instead of the principal.

(6) This section does not apply 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 the principal's control or management.

(7) This section does not apply where a contract is made by an employer with a person who is granted permission to win minerals, receiving a proportion of the minerals won by that person or the value of the minerals.

### **23. Remedies against employer and stranger**

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

- (a) the employee may take proceedings against that person to recover damages and against a person liable to pay compensation, but is not entitled to recover both damages and compensation; and
- (b) if the employee has recovered compensation under this Act,
  - (i) the person by whom the compensation was paid, and
  - (ii) a person who has been called on to pay an indemnity under section 21 relating to liability where the employee employed by contractors,

is entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay the damages, and a question as to the right to and amount of the indemnity shall, in default of agreement, be settled by civil suit or by consent of the parties by arbitration under the Arbitration Act, 1961 (Act 38).

### **24. Proceedings independently of this Act**

(1) Where the injury was caused by the personal negligence or wilful act of the employer or of any other person for whose act or default the employer is responsible, this Act shall not prevent proceedings to recover damages being instituted against the employer in a civil court independently of this Act.

(2) A judgment obtained under subsection (1) whether for or against the employer is a bar to proceedings at the suit of a person by whom, or on whose behalf, the proceedings were taken, in respect of the same injury under this Act.

(3) A judgment obtained under this Act whether for or against the employer is a bar to proceedings at the suit of a person by whom, or on whose behalf, the proceedings were taken, in respect of the same injury independently of this Act.

(4) An agreement between the employer and employee in accordance with section 14 is a bar to proceedings by the employee in respect of the same injury independently of this Act.

(5) Where in proceedings independently of this Act or on appeal, it is determined that the employer is not liable, the Court in which the proceedings are taken or the appellate tribunal may proceed to determine whether compensation under this Act is liable to be paid to the plaintiff and may assess the amount of compensation so payable, but may deduct from the compensation the extra costs which in the opinion of the Court or appellate tribunal have been incurred by the employer by reason of the proceedings having been taken independently of this Act.

(6) Where in proceedings independently of this Act it is determined that

(a) damages are recoverable independently of this Act, or

(b) the employer would have been liable to pay compensation under this Act,

subsection (5) shall apply as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with subsection (5), damages shall not be recoverable in that action.

(7) Where an employee or the employee's personal representative or dependant has recovered compensation under this Act from a third party in respect of an injury caused under circumstances which would give a right to recover reduced compensation in respect of the injury because the employee had been at fault, the right conferred by section 23 on the person by whom the compensation was paid, or on a person called on to pay an indemnity under section 22, to be indemnified by the third party shall be limited to a right to be indemnified in respect of that part only of the sum of money paid or payable by that person as bears to the total sum of money so paid or payable the same proportion as the reduced damages bear to the total damages which would have been recoverable if the employee had not been at fault.

## **25. Company going into liquidation**

(1) Where an employer which is a company incorporated under the Companies Act, 1963 (Act 179) has entered into a contract with an insurer in respect of a liability under this Act to an employee, then

(a) in the event of the company having commenced to be wound up, or

(b) a receiver or manager of the company, business or undertaking having been duly appointed, or

- (c) possession having been taken, by or on behalf of the holders of debentures secured by a floating charge, of a property comprised in or subject to the charge, the rights of the company against the insurers as respects that liability shall, despite anything in the Companies Act, 1963 (Act 179), be transferred to and vested in the employee, and on the transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the company, but the insurers shall not be under a greater liability to the employee than they would have been under to the company.

(2) Where the liability of the insurers to the employee is less than the liability of the company to the employee, the employer may prove for the balance in the liquidation, or the employee may recover the balance from the receiver or manager.

## **26. Contracting out**

(1) A contract or an agreement whether made before or after the commencement of this Act, by which an employee relinquishes a right to compensation from an employer for an injury arising out of and in the course of employment, is void in so far as the contract purports to remove or reduce the liability of a person to pay a compensation under this Act.

(2) An employee who has obtained compensation in respect of permanent partial or permanent total incapacity may enter into a contract reducing or giving up the right to compensation under this Act in respect of a further personal injury by accident if the contract is certified to be fair and reasonable by a labour officer.

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

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

### *Miscellaneous*

## **28. Medical expenses**

(1) The employer shall defray the reasonable expenses incurred by an employee within the Republic or, with the approval of the Minister responsible for Health outside the Republic, as a result of an accident arising out of and in the course of employment,

- (a) in respect of medical, surgical and hospital treatment, skilled nursing services and the supply of medicines, and
- (b) in respect of the supply, maintenance, repair and renewal of non-articulated artificial limbs and apparatus, dentures, spectacles, hearing aids, artificial eyes or apparatus as may be medically or surgically indicated in the case of the employee.

(2) The Court may, when determining a dispute in respect of compensation, or on the application of an interested person,

- (a) order the payment of the compensation to any of the persons entitled to receive it; and



- (b) if for the services referred to in paragraph (a) of subsection (1), the expenses exceed five hundred cedis, the Court may apportion that amount among the persons providing the services in the manner that the Court considers expedient.

### 29. Decision of Court in regard to medical aid

(1) The disputes as to the necessity for, or the character or sufficiency of, a medical aid provide or to be provided under this Act shall be determined by the Court.

(2) *Omitted.*<sup>3</sup>

### 30. Fees for medical aid

The fees and charges for medical aid to employees within the Republic shall be in accordance with the prescribed scale, and a claim for an amount in excess of a fee or charge in accordance with that scale does not lie against an employee or the employer in respect of medical aid.

### 31. Occupational diseases

(1) The Minister may, by legislative instrument, extend this Act to incapacity or death certified as caused by a disease specified in the instrument, and compensation is payable subject to this section, as if a disease so specified, were a personal injury by accident arising out of and in the course of employment.

(2) Subsection (1) applies only if a disease so specified, is due to the nature of the employment and contracted within a period of twelve months previous to the date of the employee's incapacity.

(3) The Minister may specify in the instrument that a disease, for the purposes of this Act, is due to the nature of the employment, unless otherwise certified by a medical practitioner or unless the employer can prove to the contrary, if the employee who contracts the disease was within a period of twelve months previous to the date of disablement by the disease employed in the process or processes specified in the instrument in relation to that disease.

(4) Compensation is not payable under this section in respect of incapacity or death of an employee if the incapacity begins or the death happens more than twelve months after the employee has ceased to be employed by the employer from whom the compensation is claimed, but if the incubation period of the disease is more than twelve months, that period shall be taken into account, except where the death of an employee has been preceded by a period of incapacity due to the disease causing the death in respect of which the employer is liable under this Act.

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3. As inconsistent with the hierarchy of appeals under Chapter Eleven of the Constitution. The subsection provided that

"Any decision of the Court given under subsection (1) of this section shall be final. The Supreme Court is the Court of finality under the Constitution."

- (5) For the purposes of calculating an employee's earnings,
- (a) where the employee was, at the date of the 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 the death if there was no previous incapacity, shall be treated as the date of the happening of the accident, and
  - (b) where the employee was not so employed at the date of the incapacity or death, the last day on which the employee was so employed shall be treated as the date of the happening of the accident,

and for the purposes of this Act, the commencement of the incapacity of the employee or the date of death, if there was no previous incapacity, shall be treated as the date of the happening of the accident.

(6) Where the disease has been contracted by a gradual process so that two or more employers are severally liable to pay compensation in respect of the disease under this section, the aggregate amount of the compensation recoverable from those employers shall not exceed the amount that would have been recoverable if those employers had been a single employer, and those employers are, in default of agreement, entitled as between themselves to the rights of contribution determined by the Court, having regard to the circumstances of the case, in an action brought or application made by any of them for this purpose.

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

(1) The Minister may, by legislative instrument, make Regulations prescribing the returns to be made by employers and by insurers carrying on in the Republic the business of insuring employers against their liabilities under this Act.

(2) A person required to make a return under this Act who fails to make the return within the specified time or who makes or causes to be made a return which is false in a material particular, or on being so required fails to give an information or explanation in respect of the return which it is in the power of that person to give, commits an offence and is liable to a fine not exceeding twenty-five penalty units for every day during which the default continues.

(3) Where a person convicted of an offence against this Act is a company, the chairman or every director of the company who is resident in the Republic is guilty of that offence unless it is proved that the act or omission constituting the offence took place without the knowledge or consent of the chairman or the directors.

(4) Where a person convicted of an offence against this Act is a partnership, every partner of that firm who is resident in the Republic is guilty of that offence unless it is proved that the act or omission constituting the offence took place without the knowledge or consent of that partner.

### **33. Regulations and Rules**

(1) The Minister may, by legislative instrument, make Regulations prescribing the procedure, forms and fees, and generally for the purpose of giving effect to this Act.

(2) The Rules of Court Committee after consultation with the Minister, may make Rules of Court for regulating proceedings before the Court under this Act and for the fees payable in respect of the proceedings.

### **34. Transfer of funds**

(1) Where an arrangement has been made by which sums of money awarded under this Act to beneficiaries resident outside the Republic, and sums of money awarded under the law relating to workmen's compensation in another country to beneficiaries resident or becoming resident in the Republic, those sums of money may, at the request of the authority by which the award is made, be transferred to and administered by a competent authority in that country or in the Republic.

(2) Regulations made under section 33 may provide

- (a) for the transfer, in the manner provided by the arrangement, to the country with which the arrangement is made of money in the disposition of the Court, applicable for the benefit of a person resident in or about to reside in that country;
- (b) for the receipt and administration by an officer appointed by the Minister for this purpose of the money which under that arrangement has been transmitted from the country with which the arrangement has been made as money applicable for the benefit of a person resident or about to reside in the Republic.

### **35. Payment of compensation within specified period**

(1) Where an employee becomes entitled under this Act to the payment of compensation by the employer, the chief labour officer or any other labour officer authorised in that behalf by the chief labour officer shall, forthwith, notify the employer of the amount of the compensation payable by the employer to that employee, and where the amount of the compensation has been altered under section 15, the amount of the compensation so altered.

(2) Unless the compensation is payable to the Court under this Act, the compensation shall be paid to the employee or the dependants of the employee within three months of receipt by the employer of the notification given under subsection (1).

(3) Where the Court has been called on to review or determine the amount of the compensation, the employer shall pay the compensation awarded by the Court within five weeks of the Court's award, and, if there has been an appeal to the High Court, within one month of the determination of the appeal by the High Court.

(4) In this section "compensation" includes periodical payments.

### **36. Calculation of compensation**

(1) Compensation to an injured employee shall be calculated only on the first twenty-five thousand cedis of an employee's earnings for a year, that is to say, an employee's earnings up to twenty-five thousand cedis a year shall be paid as compensation on the full salary.

(2) An employee earning above twenty-five thousand cedis a year shall not be paid compensation in excess of the twenty-five thousand cedis.

(3) The Minister may, by legislative instrument, make Regulations to revise the ceiling of twenty-five thousand cedis in accordance with changes in earnings.

### 37. Offence and penalty

(1) An employer who contravenes a provision of this Act commits an offence and is liable on summary conviction, to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and to the imprisonment.

(2) Where an offence is committed by a body of persons,

(a) in the case of a body corporate, other than a partnership, every director or officer of that body corporate shall be deemed to have committed that offence, and

(b) in the case of a partnership, every partner of that firm shall be deemed to have committed that offence.

(3) A person shall not be convicted under subsection (2) if it is proved that the offence was committed without the knowledge of that person or that due diligence was exercised to prevent the commission of the offence.

(4) Civil proceedings under this Act shall not relieve an employer from liability in respect of the commission of an offence under this section.

### 38. Interpretation

(1) In this Act, unless the context otherwise requires,

**“compensation”** means compensation as provided by this Act;

**“Court”** means a District or Circuit Court or any other Court declared by the Chief Justice to be the Court to which in an area or for a case or class of cases proceedings under this Act may be brought;

**“dependants”** includes

(a) the members of the family of an employee, and

(b) any other persons whom the employee was by reason of adoption under the Adoption Act, 1962 (Act 104) or otherwise obliged to maintain and who were dependent on the earnings of the employee at the time of the death of the employee or would but for the incapacity due to the accident have been so dependent;

**“earnings”** includes wages paid to the employee by the employer and the value of food, fuel, or quarters supplied to the employee by the employer if as a result of the accident the employee is deprived of the food, fuel, or quarters; and overtime payments or any other special remuneration for work done, whether by way of bonus or otherwise, if of constant character or for work habitually performed; but does not include remuneration for intermittent overtime, or casual payments of a non-current nature, or an *ex gratia* payment whether given by the employer or any other person, or the value of a travelling concession or a contribution paid by the employer of an employee towards a pension or provident fund, or a sum of money paid to an employee to cover special expenses entailed on the employee by the nature of the employment;

**“employee”**, subject to section 1 and subsection (2) of this section, means a person who has entered into or is working under a contract of service or apprenticeship with an employer, whether skilled or unskilled, and whether the contract is expressed or implied, oral or in writing;

**“employer”**, includes the Government and a body of persons corporate or unincorporated and the legal personal representative of a deceased employer, and, where the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, the latter, for the purposes of this Act, continues to be the employer of the employee whilst the employee is working for that other person; and in relation to a person employed for the purposes of a game or recreation and engaged or paid through a club, the manager, or members of the managing committee of the club are, for the purposes of this Act, the employer;

**“insurer”** includes an insurance society, association, company or under writer;

**“labour officer”** means a person who is a labour officer for the purposes of the Labour Act, 2003 (Act 651);

**“medical practitioner”** means a medical practitioner registered under the Medical and Dental Act;<sup>4</sup>

**“member of the family”** means

- (a) when used in relation to a citizen anyone of those persons mentioned in the Second Schedule according as the family is based on the paternal or the maternal system;
- (b) when used in relation to a person who is not a citizen, the wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, or half sister;

**“Minister”** means the Minister responsible for Labour matters;

**“outworker”** means a person to whom articles or materials are given out to be made up, cleansed, washed, altered, ornamented, finished, or repaired, or adapted for sale in that person's home or on other premises not under the control or management of the person who gave out the materials or articles;

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4. N.R.C.D. 91.

**“partial incapacity”** means,

- (a) where the incapacity is of a temporary nature, an incapacity which reduces the earning capacity of an employee in an employment in which the employee was engaged at the time of the accident resulting in the incapacity, and
- (b) where the incapacity is of a permanent nature, an incapacity which reduces the earning capacity of the employee in an employment which the employee was capable of undertaking at that time; but an injury specified in the Third Schedule, except an injury or a combination of injuries in respect of which the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against that injury or injuries amounts to one hundred *per centum* or more shall be deemed to result in permanent partial incapacity;

**“Rules”** means the Rules of Court made under this Act by the Rules of Court Committee established under article 157 of the Constitution;

**“total incapacity”** means an incapacity whether of a temporary or permanent nature, which incapacitates an employee for an employment which the employee was capable of undertaking at the time of the accident resulting in the incapacity; but a permanent total incapacity shall be deemed to result from an injury or from a combination of injuries specified in the Third Schedule where the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against the injury or injuries, amounts to one hundred percent or more;

**“tributer”** means a person who is granted permission to win minerals, receiving a proportion of the minerals won by that person or the value of the minerals.

(2) The following persons are exempted from the definition of “employee”:

- (a) a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business, who is not a person employed for the purposes of a game or recreation and engaged or paid through a club, or
- (b) an outworker, or
- (c) a tributer, or
- (d) a member of the employer's family dwelling in the employee's house or compound, or
- (e) a person employed in agricultural or handicraft work by an employer who normally employs less than five employees, or
- (f) a class of persons declared by the Regulations not to be an employee for the purposes of this Act.

(3) Where in 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 the circumstances of the case it thinks proper so to do, deal with the matter as if the injured person had at that time been a person working under a valid contract of service or apprenticeship.

(4) Except for the purposes of section 15, a reference to an employee who has been injured shall, unless the context otherwise requires, where the employee is dead, include a reference to the legal personal representatives, or to the dependants of the employee or any of them or the Attorney-General or any other officer appointed by the Minister to act on behalf of the dependants of the employee.

(5) The performance of the functions of a local or any other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority; but this subsection shall not be deemed to apply to the Government, or to a department of the Government.

### 39. Repeal and saving

*Spent.*<sup>5</sup>

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## SCHEDULES

### FIRST SCHEDULE

[Section 8]

#### *Disfiguring Injuries*

	<i>Percentage</i>
(1) Mutilation or amputation of one ear	15
(2) Deformity of the hand through the loss of all the three phalanges of a finger and the metacarpals of the hand	20
(3) Mutilation or amputation of nose	30
(4) Conspicuous deformity of face generally	50
(5) Conspicuous deformity of external appearance generally, other than face	40
(6) Functional loss of genital organs	85

For the purposes of this Schedule, where there is a dispute as to whether there has been a conspicuous deformity, or functional loss of genital organs, the doubt shall be resolved by a medical board appointed by the chief labour officer. The medical board shall consist of a medical practitioner as chairman nominated by the Minister, a medical practitioner nominated by the employer and, if the employee wishes, a medical practitioner nominated by the employee.

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5. The section provided that,

- "(1) The following enactments repealed the Workmen's Compensation Act, 1963 (Act 174):  
the Workmen's Compensation Act, 1963 (Amendment) Decree, 1966 (N.L.C.D. 86);  
the Workmen's Compensation Act, 1963 (Amendment) Decree, 1968 (N.L.C.D. 238);  
the Workmen's Compensation Act, 1963 (Amendment) Decree, 1968 (N.L.C.D. 306).
- (2) Notwithstanding the repeal of the enactments mentioned in subsection (1), any statutory instrument made thereunder shall continue in force and shall be deemed to have been made under the provisions of this Law to the extent that they are not inconsistent with the provisions of this Law until amended, varied or revoked in accordance with the provisions of this Law."

## SECOND SCHEUDLE

[Section 38]

*Members of Family**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

## THIRD SCHEDULE

[Section 6]

*Incapacity*

<i>Injury</i>	<i>Percentage of Incapacity</i>
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 bed-ridden	100
Any other injury causing permanent total disablement	100
Loss of arm at shoulder	100
Loss of arm between elbow and shoulder	80
Loss of arm at elbow	70
Loss of arm between wrist and elbow	70
Loss of four fingers and thumb of one hand	70
Loss of four fingers of one hand	50
Loss of thumb — both phalanges	35
Loss of thumb — phalanx	10
Loss of index finger — three phalanges	15
Loss of index finger — two phalanges	10
Loss of index finger — one phalanx	6
Loss of middle finger — three phalanges	10
Loss of middle finger — two phalanges	6



THIRD SCHEDULE—*continued*

<i>Injury</i>	<i>Percentage of Incapacity</i>
Loss of middle finger — one phalanx	4
Loss of ring finger — three phalanges	6
Loss of ring finger — two phalanges	5
Loss of ring finger — one phalanx	3
Loss of little finger — three phalanges	5
Loss of little finger — two phalanges	4
Loss of little finger — one phalanx	3
Loss of metacarpals — first or second (additional)	4
Loss of metacarpals — third, fourth or fifth (additional)	3
Loss of leg — at or above knee	75
Loss of leg — below knee	60
Loss of foot	40
Loss of toes — all on one foot	20
Loss of toe — great, both phalanges	10
Loss of toe — great, one phalanx	3
Loss of toe — other than great	2
Loss of sight — of one eye	40
Loss of hearing of one ear	15
Loss of remaining eye by one — eyed employee	100
Total loss of hearing	100
Loss of remaining arm by one — armed employee	100
Loss of remaining leg by one — legged employee	100
Loss of mental capacity	100
Loss of upper or lower central incisor	3
Loss of upper or lower incisor	2
Loss of upper or lower canine	2
Loss of any one posterior tooth, that is to say, premolar or molar	1
Fracture of upper or lower jaw	25

Where there is loss of, or injury to, an internal organ such as the spleen, kidney, and others and the spine, not resulting in total incapacity, a medical board appointed by the Minister and the rate of compensation payable shall not exceed the compensation payable in respect of partial incapacity.

Total permanent loss of the use of a member shall be treated as loss of the member.

Where there is permanent partial loss of the use of a member the percentage of incapacity shall be rated at fifty percent of the percentages for total permanent loss of the member.

In the case of a right-handed employee, an injury to the left arm or hand and in the case of a left-handed employee, to the right arm or hand, shall be rated at ninety percent of above percentage.

THIRD SCHEDULE—*continued*

Where there is loss of two or more parts of the hand, the percentage of incapacity shall not be more than for the loss of the whole hand.

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## WORKMEN'S COMPENSATION ACT, 1987

## MEMORANDUM

This is an Act to consolidate with amendments, the law relating to compensation to workmen for personal injuries caused by accidents arising out and in the course of their employment. It is presented so as to bring together the law on compensation to workmen.

The principle of the compulsory payment by an employer of compensation in respect of the death or disablement of a workman as a result of an accident occurring in the course of his employment — independently of negligence on the part of employer or fellow worker — was first introduced into the Statute Law towards the end of the nineteenth century. That principle still survives and is basic in the Act now presented.

*The Common Law*

Prior to the introduction of the principle just mentioned, the common law had restricted the employer's liability to cases in which the injuries suffered by the workman in the course of his employment were attributable to the negligence of the employer. The employer, however, had been liable only for his personal negligence, and not for that of an injured workman's fellow-worker. This was the famous defence of "common employment", based upon a supposed bargain by a worker on entering employment accepting, as a risk to his employment, the carelessness of his fellow-workers. The accident for which an employer was not liable fell into two classes: (a) those not attributable in any way to negligence, and (b) those attributable to the negligence of the injured workman's fellow-worker. With regards to class (a) the common law, in principle, gave no remedy, as the common law was concerned with negligence only, and not with accidents as such. With regards to class (b) the common law had a good deal to say in the course of time, although it was of but little help to the injured workman. This, at least however, must be said for the common law that, having erected the notion of "common employment" into a legal rule, it held it in leash by the adoption of two specific limitations to its application: first, there had to be a common employer as well as a common undertaking and, second, the undertaking had to be one, in substance and in fact, that is common to the workers concerned in the accident causing the injury.

A number of Statutes relating to employer's liability, factories, and fatal accidents, in due course, modified the common law rules. But with the ever-increasing complexity of the then master and servant relationship the master was brought less and less into contact with his servants and the question of his personal negligence became correspondingly less and less a practicable basis for his liability. In the case of the incorporated companies, personal negligence had gradually disappeared altogether as the company was only a legal and not a natural person. And the idea that the chairman, directors and officers of a company were all equally liable for the negligence of the corporate body, unless the contrary was shown, had not yet developed into the formal doctrine which it ultimately became. This doctrine is embodied in section 32 of the Act relating to the returns to be made by employers and insurers.

MEMORANDUM—*continued*

Two other defences were open under the common law to an employer even where the workman's claim for damages was not successfully met by the defence of "common employment". The first was that the workman had contributed to his injury by his own negligence. This was known as the defence of contributory negligence. It was successful only where it could be shown that the workman could, by the exercise of such care and skill as he was bound to exercise, have avoided the consequence of the negligence of his employer. The law relating to contributory negligence has been amended in this country by the Civil Liability Act, 1963 (Act 176) which replaces contributory negligence as an absolute defence by the more equitable rule of an apportionment of the liability for damages (or compensation) where contributory negligence is successfully pleaded.

The second defence open to the employer under the common law was the dictum: *Volenti non fit injuria*. This dictum has been paraphrased as follows: "One who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong". But a clear distinction was drawn between *knowledge and assent*. Where an employee was subjected to a risk owing to a breach of duty on the part of his employer the mere fact that he continued to work, even though he knew of this risk, and did not remonstrate, did not preclude his recovering in respect of the breach of duty on the part of his employer by reason only of the dictum: *Volenti non fit injuria*. The dictum was not applicable unless there was, in addition to *knowledge* on the workman's part of the risk he was running, an actual *assent* to undertake it. And *assent* was held to be a question of fact and not of law.

The defence of "common employment" has been abolished from the law of Ghana by a general Statute on civil liabilities as part of the programme of law reform.

*Industrial Accidents*

Nothing is more characteristic of modern industry including agriculture, than the risks to which it exposes those engaged in it. A large share of the burden of supporting workers injured at their work has been placed on the shoulders of employers who have, therefore, a direct pecuniary interest, apart from their humanitarian feelings, in keeping down the number of serious accidents. The Insurance Companies, by whose agency the burden of responsibility for accidents is rateably distributed over the whole body of insuring employers are keen to detect slackness on the part of employers and wilful misconduct and malingering on the part of workmen. Governments, with their special inquiries, reports from inspectors and certifying surgeons, and the special rules for dangerous occupations are always seeking to reduce the avoidable causes of accidents. In spite of this, accidents continue to occur, and it can only be concluded that a large proportion of accidents are not preventable as a result of the complications of modern machinery and processes, occasional mechanical defects, the incidence of involuntary inattention, unexpected illness and the recurrent human frailty of fatigue. All of which indicate again the wisdom of basing the statutory claim for compensation upon the accident as such and not primarily upon any attendant actionable wrong. This principle would, it is hoped, best become the relevant chapter in any comprehensive code of national social insurance.

*The Number of Industrial Accidents in Ghana*

The number of accidents in major industrial occupations which took place in Ghana in the year 1974 - 1975 (the last for which official figures are available) dealt with by the Ministry of Labour and Social Welfare was 6064, of which 174 were fatal. These occurred in occupations in (a) agriculture, forestry and fishing (754); (b) mining and quarrying (687); (c) manufacturing (1661); (d) construction (1108); (e) electricity, gas, water and sanitary services (217);

MEMORANDUM—*continued*

(f) commerce (503); (g) transport, storage and communications (913); and (h) services (221). They were spread all over the country. A total of 4414 have been finalised and the sum of ø673,775.34 was paid in compensation.

In 1973-1974 the comparable figures were 4306 cases dealt with, and the sum of ø882,974.94 was paid in compensation.

*Historical Note*

The following is a brief note on the history of workmen's compensation legislation in our own country. The first Ordinance on the subject was the Workmen's Compensation Ordinance, 1940 (No. 52) which came into force on the 1st July, 1942 as the Workmen's Compensation Ordinance (Cap. 94). It was limited in scope and in the benefits it provided for injured workmen. It did not, for example, apply to persons whose earnings exceeded ø600 a year, as it was expected that persons earning more than that sum at that time should be capable of instituting legal action to obtain damages for the injuries suffered. Where the injury prevented a workman from ever being employed again (called permanent total incapacity) the compensation payable under the Ordinance was a sum equivalent to the total of forty-two months of his earnings or ø1,500, whichever sum was the less. In the case of a fatal injury, an indemnity was paid to the dependants of the deceased workmen in an amount equivalent to the total of thirty months of the earnings of the deceased, or ø1,200 whichever sum was the less.

These limited provisions remained in force until the year 1954 when the Workmen's Compensation (Amendment) Ordinance of that year became law. That Ordinance sought to reflect the salaries structure of the time and introduced a number of new features. It brought within the scope of the system workmen whose earnings exceed ø600 a year but did not exceed ø1,200 a year. It provided for the payment of medical expenses by the employer and for the supply of artificial limbs. The maximum compensation for a fatal injury was increased to ø2,000 and for permanent total incapacity to ø1,500. It also introduced the principle of the payment by the employer of the cost and expenses of a servant attendant on an injured worker where, owing to the nature of the injury, such attendance was continuously required.

One very important provision of the Ordinance of 1954 was that which gave the Minister responsible for Labour power to extend the scope of the Ordinance to occupational diseases.

The Workmen's Compensation (Amendment) Act, 1961 (Act 53) extended the scope of our workmen's compensation legislation still further. It provided for compensation for disfiguring and other social injuries to workmen, e.g. the functional loss of genital organs.

In 1963 the National Advisory Committee on Labour reviewed the entire scope of the law on this subject in order to bring it into line with the social policy of the Government. The main features of the Committee's recommendations which were embodied in the Workmen's Compensation Act, 1963 (Act 174) were as follows:

- (1) To remove all ceiling figures in respect of workmen's earnings in the calculation of the amount of workmen's compensation to be paid in a given case and to provide that the compensation should be determined by the actual earnings of the workman at the time of the accident and the extent of the injury.
- (2) To review the formulae for calculating the compensation payable in order to provide more appropriate compensation for the injuries sustained.
- (3) To deal more specifically with the growing problem of occupational diseases.

MEMORANDUM—*continued*

Following the decisions in the case of *Alli Chana v. Konongo Gold Mines Ltd.* (Unreported judgment of the High Court, Kumasi, 13th May, 1963), section 15 of the Act was amended by the Workmen's Compensation (Amendment) Act, 1965 (Act 295). The purpose of the amendment was to make it clear that in all cases where a workman was illiterate or unable to read and understand writing in the language in which the agreement was expressed, the agreement (a) would not be binding against him unless it was certified by a Labour Officer who had read over and explained it to him and that he understood and approved of its terms, and (b) would not preclude the workman from instituting proceedings independently of the Act unless it was certified by the Labour Officer who had explained the position to him and that the workman fully understood and accepted the fact that the making of the agreement would preclude him from instituting such proceedings.

In 1966, the Act was further amended by the Workmen's Compensation Act, 1963 (Amendment) Decree, 1966 (N.L.C.D. 86) by substituting a new section 15 for section 15 so as to clarify the effect of the amendments carried out by the Workmen's Compensation (Amendment) Act, 1965 (Act 295). This Decree consequently repealed Act 295.

The Act was further amended by the Workmen's Compensation Act (Amendment) Decree, 1968 (N.L.C.D. 238). The object of the amendment was to ensure that employers who default in the payment of compensation to injured workmen are punished under the law. In the same year the Act was again amended by the Workmen's Compensation Act, 1963 (Amendment) Decree, 1968 to include in section 28, provision for the supply of spectacles, hearing aids and other surgical apparatus such as artificial eyes, by employers where a workman, in the course of his employment, injures himself as a result of an accident.

The Workmen's Compensation Act, 1963 (Act 174) as amended, has become inoperable and obsolete in some parts due to changes that have taken place in the economy and the structure of industry in the country. These deficiencies were exacerbated by the general wage increase in 1977 and 1980 when the new levels of wages removed from the ambit of the Act most wage earners.

*General Interpretation of the Act*

The Workmen's Compensation Act now presented is expressed and should be construed not in a technical but popular sense. That is to say, the words are to be read in their common and ordinary meaning and are not to be strained to bring in or to exclude any particular case. It is so clearly a compendium of remedial measures that the Courts will, it is hoped, be slow to cut down the remedy given, either by reference to the amount of the compensation to be awarded or by adopting interpretations other than those broadly intended. The Act will apply, notwithstanding any contract to the contrary made between employer and workman, whether before or after its commencement.

*Employers' Liability for Workmen's Compensation*

[Section 1 to 11]

The first ten sections of the Act deal with the liability of employers for the payment of compensation to workmen (as defined in the Act) in respect of injuries resulting from accident, the amount of the compensation to be paid in the various cases which can arise, the method of calculating the workmen's earnings for the purpose of determining the compensation payable, and the person to whom it is to be paid. Exceptions from these provisions are made in the following cases, namely, where the injury is due to the workman having been under the influence of intoxicating liquor or drugs at the time of the accident or where the injury was deliberately self-inflicted or where the workman knowingly misrepresented to the

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employer that he was not suffering or had not previously suffered from that or a similar injury. In these cases the employer is under no liability whatever to pay compensation. However, in all cases of injury the employer will be liable to pay medical expenses.

Under section 2 (2) of the Workmen's Compensation Act, 1963 (Act 174), no compensation was payable where the injury of a workman did not incapacitate him for at least five consecutive days. This subsection has been replaced by a new subsection (2) of section 9 which makes it possible for a workman to enjoy his earnings while he is undergoing treatment for injuries he has sustained through an accident arising out of, and in the course of his employment.

Section 2 (3) of the Workmen's Compensation Act, 1963 (Act 174) entitled the employer not to pay compensation in a situation where it is proved that a workman's injury is attributable to the serious and wilful misconduct of the workman. This has been deleted from the new Act.

The division of dependants into those wholly or partially dependent on the earnings of a workman has been abolished in the Act as the word "dependants" is defined in the Act and secondly the expressions "wholly" and "partially dependent" do not lend themselves to clear and indisputable interpretations. The rate of compensation payable to dependants has been raised from forty-two months earnings to sixty months' earnings of a workman who dies leaving dependants as a result of injuries he has sustained in an accident. Where, however in respect of the same accident compensation had been paid for permanent total incapacity, or permanent partial incapacity or for temporary incapacity, any sums so paid shall be deducted from the amount payable on the death of the workman resulting from the injury. It will be observed that apart from the increased compensation payable in fatal cases as proposed by the Act, all medical expenses are now to be paid by the employer. The employer is also to bear burial costs up to two thousand cedis or as stipulated in the Collective Agreement, whichever is the higher.

In the case of permanent total incapacity (not resulting in death) the amount of the compensation payable shall be a sum equivalent to ninety-six months' earnings. This is a considerable improvement on the provision in Act 174 which was fifty-four months earnings.

In the case of permanent partial incapacity, the amount of the compensation payable to an injured worker will be a percentage of that payable in respect of permanent total incapacity. This percentage will represent the percentage of the loss of earning capacity of the worker caused by the injury. And where more injuries than one are caused by the same accident, the compensation payable shall be aggregated but it shall in no case exceed the amount which would have been payable if permanent total incapacity had resulted from the multiple injuries.

Section 7 lays down the compensation payable in the case of temporary incapacity. Where the incapacity, whether total or partial, is temporary, the compensation shall be paid in periodical sums or in a lump sum having regard to the probable duration and probable changes in the degree of the incapacity.

Section 8—Compensation for disfiguring injuries are to be calculated by a medical practitioner recognised by the Government. The types of such injuries are set out in the First Schedule to the Act. The compensation fixed by the medical practitioner in each such case shall be determined by him so as not to exceed such percentage of the compensation for total incapacity as is specified in that Schedule. The compensation payable for a disfiguring injury shall be irrespective of whether or not compensation is payable under any provision of the Act other than those relating to disfiguring injuries. Any mutilation for which compensation is provided under the Third Schedule shall not rank as disfigurement under the First Schedule.

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Where more injuries than one are caused by the same accident the amount of compensation for disfiguring injuries shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

Section 9 lays down rules as to the method of calculating a worker's monthly earnings taking, for example, as the standard, the period of twelve months prior to the date of the accident if the worker had been so long employed by the same employer; and, if he was not so long employed, then any less period of such employment.

Section 10 sets out the persons to or for the benefit of whom compensation is payable namely the injured workman or, where his death had resulted from the injury, to or for the benefit of his dependants. The legal personal representative of a dependant who has died before a claim has been made in respect of the death of an injured workman, or before an order for the payment of compensation is made, shall have no right to the payment of compensation, and in that case, the claim for compensation shall be dealt with as if that dependant had died before the workman.

*Distribution of Compensation*

Section 11 provides for the payment into Court of compensation payable where the death of a workman resulted from the injury and for the distribution amongst the dependants of the sum so paid. Throughout the Act the word "**Court**" means a District or Circuit Court or any other Court designated by the Chief Justice for any area or any case or class of proceedings. The Court may, in its discretion, order the allotment of the sum to the dependant either to be paid to him or to be invested, applied or otherwise dealt with for his benefit in such manner as the Court may think fit. The Court may vary any such order in the event of a variation in the circumstances of the dependants. Compensation payable in cases of permanent total incapacity and lump sums payable in cases of temporary incapacity shall be paid into Court, and any sum so paid shall, as the Court considers fit, be paid to the person entitled thereto or be invested, applied or otherwise dealt with for the benefit of that person. Any payment to a workman by his employer pending the settlement or determination of the workman's claim may be deducted, in whole or in part, as the Court may order, from the amount of compensation payable to the workman. The receipt of the Registrar of the Court shall be a discharge in respect of any sum paid into Court. Orders and discretions of the Court under section 11 are final.

*Notices of Accidents, Report of Death and Medical Examination*

[Sections 12, 13 and 14]

Section 12 contains the requirements as to the notice to be given of an accident and the time within an application for compensation must be made.

Section 13 provides for the making of a report by an employer of the death of a workman, to a Labour Officer, as soon as practicable after the occurrence of death.

Section 14 requires an employer to arrange for the medical examination of an injured workman free of charge by a medical practitioner named by the employer or by a medical practitioner named by a workman with the employer's approval. A workman in receipt of periodical payments shall submit himself for such medical examination from time to time as may be required by the medical practitioner instead of the employer as was the provision in Act 174. The rationale here is that it is the medical practitioner and not the employer who should determine the frequency of the medical examinations. The section contains a number of other provisions regarding medical examinations.

MEMORANDUM—*continued**Agreements as to Compensation*

Section 15 contains detailed provisions relating to agreements in writing, concluded after the injury has taken place, between the employer and the workman concerned as to the amount of the compensation to be paid by the employer. The compensation agreed must not be less than the amount payable under the Act. No such agreement shall be binding upon a workman who is unable to read and understand writing in the language in which it is expressed unless it is endorsed by a certificate of a Labour Officer to the effect that he read over and explained to the worker the terms thereof and that the worker appeared fully to understand and approve of the agreement. Such an agreement may be made an order of Court. The Court may, on the application of either party made within three months after the date of the agreement, cancel it or make such order (including an order as to the sum already paid under the agreement) as in the circumstances the Court may think fit if it is proved

- (a) that the sum paid or to be paid under the agreement was not in accordance with the provisions of subsection (1) of section 15;
- (b) that the agreement was entered into in ignorance of, or under a mistake as to the cause of the injury; or
- (c) that the agreement was obtained by such fraud, undue influence, misrepresentation or other means as would, in law, be sufficient grounds for rendering it null and void.

*Determination of Claims*

Section 16—Under this section an employer may, within twenty-one days after receiving notice of an accident, agree in writing with the injured workman as to the amount of the compensation to be paid. If no such agreement is made, the workman may apply to the Court having jurisdiction in the district where the accident occurred for the enforcement of his claim for compensation. All claims for compensation under the Act, unless settled by agreement shall be determined by the Court, and the Court may call upon any public officer or any independent medical practitioner to assist it by his expert knowledge in its deliberations.

Sections 17 and 18—Section 17 provides for a review of periodical payments by the Court on the application of either the employer or the workman.

Section 18 provides for the limitation of the power of an employer to end or decrease periodical payments except by agreement or in pursuance of an order of the Court. Under an earlier provision of the Act (section 6) the employer is enabled to end or decrease such payments where the workman leaves the neighbourhood in which he was employed without notice, or without having come to an agreement with the employer, or applied to the Court for the redemption or continuance of the payments. Under section 18 periodical payments may not be ended except by agreement or by an order of the Court (a) where a workman has resumed work and his earnings are not less than those which he was obtaining before the accident, or (b) where a workman has died. Similarly, periodical payments may not be diminished except by agreement or by an order of the Court (a) where a workman in receipt of such payments in respect of total incapacity has returned to work, or (b) where the earnings of a workman in receipt of such payments in respect of partial incapacity have actually been increased.

Sections 19, 20 and 21—These sections contain provisions relating to the jurisdiction of the Court, its power to submit questions of law to the High Court and appeals generally to the High Court. Section 22 deals with the liability for workmen's compensation in the case of workmen immediately employed by contractors. The substance of the provisions of this section is as follows. The employer of any workman may in the course of his trade or business contract with any other person (the contractor) for the execution by or under the contractor of



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any work undertaken by the employer. In that case, the workman passes into the immediate employment of the contractor. The employer, however, remains liable to pay to the workman any compensation under the Act for which he would have been liable if the workman had continued to have been immediately employed by him. But the amount of the compensation shall be calculated with reference to the earnings of the workman under the contractor. Where the employer pays the compensation he shall be entitled to be indemnified by any other person who would have been liable independently of the section. The section, moreover, safeguards the right of the workman to recover, in the alternatives, from the contractor if he so desires.

Section 22 does not apply to a contract made by an employer with a person who is granted permission to win minerals receiving a proportion of the minerals won by him or the value thereof.

*Remedies against both Employer and Stranger*

Section 23 provides that where the injury in respect of which compensation is payable under the Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may take proceedings against the employer for compensation under the Act and also against the other person for damages. The workman, however, shall not be entitled to recover both compensation and damages. The section also provides that where an employer has paid compensation and any person has paid an indemnity under section 22, both the employer and such person shall be entitled to be indemnified as regards the amount of compensation paid (including costs) by the person so liable to damages as aforesaid. Any question as to the right to and the amount of such indemnity shall, in default, of agreement, be settled by civil suit or, by consent of the parties by arbitration under the Arbitration Act, 1961 (Act 38).

Section 24—This section contains a saving for an action by a workman against an employer in certain cases to recover damages against him in any Civil Court independently of the Act, e.g. at common law. These are cases in which the injury to the workman 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.

A judgment in such an action, whether for or against the employer, shall be a bar to any further proceedings in respect of the same injury at the suit of the person by whom, or on whose behalf the action was brought.

An agreement in writing made between an employer and a workman after an injury to the workman as to the amount of the compensation to be paid (section 15) shall be a bar to proceedings independently of the Act by the workman in respect of the same injury.

Where proceedings are brought against an employer independently of the Act and the Court determines that the employer is not liable under those proceedings the Court in which the proceedings are brought may determine whether compensation under the Act is payable to the plaintiff and assess the amount of the compensation so payable. In that case the Court may deduct from the compensation any extra costs which, in the opinion of the Court, have been incurred by the employer by reason of the fact that proceedings independently of the Act were brought against him by the plaintiff. These provisions apply also to proceedings brought on appeal.

MEMORANDUM—*continued**Position in the Event of Company going into Liquidation*

Section 25—This section provides that where an employer, being a company, has contracted with any insurers in respect of its liability under the Act to any workman, then, in the event of the company being in the process of being wound up, the rights of the company against the insurers in respect of that liability shall be transferred to the workman. In that case the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the company. But the insurers shall be under no greater liability to the workman than they would have been to the company. If the liability of the insurers to the workman is less than that of the company to the workman he may prove for the balance in the liquidation of the company or recover it from the receiver or manager.

*Contracting Out*

Section 26—A contract or agreement made at any time whereby a workman relinquishes any right to compensation from any 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 the Act.

A workman, however, who has obtained compensation in respect of permanent partial incapacity or permanent total incapacity may enter into a contract reducing or giving up his right to compensation under the Act in respect of any further personal injury by accident if the contract is certified to be fair and reasonable by a Labour Officer.

*Compensation not to be Assigned, Charged or Attached*

Section 27—This section provides that compensation payable under the Act shall not be assigned, charged or attached and shall not pass to any other person by operation of law, and no claim shall be set off against it.

*Medical Expenses and Medical Aid*

Section 28—Section 28 provides that an employer shall pay all reasonable expenses incurred by a workman within Ghana or outside Ghana if approved by the Chief Medical Officer. In case of dispute, the Court may order the payment of the medical expenses to the person entitled to receive it.

Section 29—This section empowers the Court to determine the necessity for or the character or sufficiency of any medical aid provided by or to be provided by an employer under the Act.

Section 30—This section provides for the prescription of fees and charges for medical aid to workmen.

*Occupational Diseases*

Section 31—The provision with regard to occupational diseases is dealt with by legislative instrument under this section. Thirteen such diseases are listed in the Third Schedule to the Workmen's Compensation Regulations, 1967 (L.I. 546) for workmen's compensation purposes. The list contains a description of each disease, how it is acquired, for example by exposure to poisonous substances, and the occupation in which it is likely to occur. The Secretary responsible for Labour is empowered to extend the provisions of the Act to incapacity or death certified as caused by any disease specified in an instrument made under the section. Compensation shall, subject to the provisions of the section be payable as if the disease were a

MEMORANDUM—*continued*

personal injury caused by an accident arising out of and in the course of employment. It must be shown that the disease is due to the nature of the employment, and contracted within a period of twelve months previous to the date of the workman's incapacity. The instrument will provide adequate safeguards for the interests of both employers and workmen, the calculation of a workman's earnings, and the contraction of the diseases by a gradual process involving the liability of two or more employers.

*Returns by Employers and Insurers*

Section 32—The returns to be made by employers, and by insurers carrying on in Ghana the business of insuring employers against their liabilities under the Act are to be prescribed by regulations. Persons required to make returns who fail to do so or who make false returns, or fail to give any information or explanation required in respect of any particular return are guilty of offences under this section and punishable by a fine of fifty cedis in respect of every day during which the default continues. (In Act 174, the fine was five pounds.) There is the usual provision that where the person convicted is a company the chairman or every director or officer thereof resident in Ghana or in the case of partnership every partner thereof resident in Ghana is guilty of a like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Section 33—Under this section, the Secretary responsible for Labour may make regulations prescribing procedure, forms and fees by legislative instrument. The Chief Justice too may make rules of court for regulating proceedings before the Court under the Act.

*Transfer of Funds as Between Ghana and Other Countries*

Section 34—This section provides for the transfer to other countries of sums awarded as workmen's compensation in Ghana, and the transfer to Ghana of sums so awarded in other countries. This can be arranged by agreements between the countries concerned where the beneficiary of sums awarded within the jurisdiction of one of the parties to the agreement is resident or about to reside within the jurisdiction of the other party. The sums would, as provided for in the agreement be administered by a competent authority in the country to which they are transferred. Regulations will provide for the transfer of any moneys at the disposition of the Court in Ghana, and for the receipt and administration by any officer appointed by the Secretary responsible for Labour of moneys transferred to Ghana.

Section 35—This section lays down the time limit within which an employer must pay a workman's compensation, unless compensation is payable to the Court under the Act.

Section 36—This is a new section which provides that the basis for calculating the compensation payable to an injured workman is twenty-five thousand cedis. A workman earning more than twenty-five thousand cedis per annum will not be paid compensation in excess of the twenty-five thousand cedis. There is provision, however, for the Secretary responsible for Labour to increase the basis in accordance with changes in workmen's earnings.

Section 37—This section creates offences and penalties under the Act.

*Schedules*

The First and Third Schedules to the Act have also been amended by increasing the percentage of incapacity in certain cases and adding new cases of injury.

