

# **WORKMEN'S COMPENSATION ACT**

1987 (PNDCL 187)

## **Section 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.

## **Section 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 employment.

(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.

### **Section 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 month's 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.

### **Section 4-Employer to pay medical expenses**

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

### **Section 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.

### **Section 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 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.

### **Section 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 such 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 amount 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 employee shall not exceed the lump sum which would be payable in respect of the same degree of incapacity under the 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.

## **Section 8-Compensation for desfiguring 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.

## **Section 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 employee 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.

## **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 that dependant had died before the employee.

## **Section 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.*

## **Section 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.

## **Section 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 the subsection (1) without reasonable cause commits an offence and is liable to a fine not exceeding two thousand five hundred penalty units.

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

## **Section 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.

## **Section 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) Any 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 may think just, if it is proved

(a) that the sum of money paid or to be paid was or is not in accordance with the provisions of 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, misrepresentation or any other means that would in law, be sufficient ground for avoiding it.

## **Section 16-Determination of claims**

(1) If 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 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 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.

## **Section 17-Review**

(1) A periodical payment under this Act under 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 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 of the employee as affected by the accident.

### **Section 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.

## **Section 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 shall have 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 received 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.

## **Section 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.

## **Section 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.

## **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 the 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.

### **Section 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 be 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 the provisions of 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).

### **Section 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 the 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.

## **Section 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.

### **Section 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.

### **Section 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.

### **Section 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 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.

### **Section 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 provided or to be provided under this Act shall be determined by the Court.

(2) *Omitted.*

### **Section 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.

### **Section 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.

(5) For the purpose 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 he was so employed shall be treated as the date of the happening of the accident;

and for all other purposes of this Act, the commencement of the incapacity of the 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 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.

### **Section 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.

### **Section 33-Regulations and rules.**

(1) The Minister may, by legislative instrument, make Regulations prescribing 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.

### **Section 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 employee'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.

### **Section 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 the receipt by the employer of the notification given to him 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" shall include periodical payments.

## **Section 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 earning 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.

## **Section 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 be guilty of 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.

## **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" include 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 purpose 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 underwriter;

"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, 1972 (NRCD 91) as amended;

"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;

"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 such injury or injuries, amounts to one hundred per centum 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 purposes 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 all the circumstances of the case it thinks proper so to do, deal with the matter as if the injured person had at the 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.

### **Section 39-Repeal and saving**

(1) The following enactments are hereby repealed

the Workmen's Compensation Act, 1963 (Act 174);

the Workmen's Compensation Act, 1963 (Amendment) Decree, 1966 (NLCD 86);

the Workmen's Compensation Act, 1963 (Amendment) Decree, 1968 (NLCD 238);

the Workmen's Compensation Act, 1963 (Amendment) Decree, 1968 (NLCD 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.

## SCHEDULES

### FIRST SCHEDULE

(Section 8)

#### Percentage

(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 purpose of this Schedule, where there is any dispute as to whether there has been any 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.

### SECOND SCHEDULE

(Section 38)

*Paternal System*

*Maternal System*



mother, father

mother, father

wife, son, daughter

wife, son, daughter

brother, sister

brother, sister

father's father

mother's mother

father's brother

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 38)

Injury	Percentage of Incapacity
Loss of two limbs	100
Loss of both hands or of all fingers and thumbs	100
Loss of both feet	100
Total paralysis	100
Injuries resulting in being permanently bed-ridden .. ..	100
Any other injury causing permanently total disablement ..	100
Loss of arm at shoulder .. . . . .	80
Loss of arm between elbow and shoulder .. ..	70

Loss of arm at elbow .. . . .	70
Loss of arm between wrist and elbow .. . .	70
Loss of arm at wrist .. . . .	70
Loss of four fingers and thumb of one hand .. .	50
Loss of four fingers of one hand .. . . .	50
Loss of thumb—both phalanges .. . . .	35
Loss of thumb—one 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
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 one ear .. . . . . .	15
Loss of remaining eye by one-eyed workman .. .	100
Total loss of hearing .. . . . . .	100
Loss of remaining arm by one-armed workman .. .	100
Loss of remaining leg by one-legged workman .. .	100
Loss of mental capacity .. . . . . .	100
Loss of upper or lower central incisor .. . . .	3
Loss of upper or lower lateral 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, any internal organs such as the spleen, kidney, and others and the spine, not resulting in total incapacity, a Medical Board appointed by the Secretary responsible for Labour shall determine the extent of the disability and incapacity and the rate of compensation payable which, in any case, 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 such member.

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

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

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.

Made this 12th day of August, 1987.

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