

CHAPTER 56:04

**INJURIES COMPENSATION**

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SCHEDULE

CHAPTER 56:04

**INJURIES COMPENSATION**

13 of 1990. **An Act to make provision for compensation to workmen for injuries suffered in the course of their employment and for matters connected therewith.**

[By Order]

- Short title. 1. This Act may be cited as the Injuries Compensation Act.
- Interpretation. 2. In this Act, unless the context otherwise requires—
- “Commissioner” means the Industrial Injuries Commissioner;
- “compensation” means compensation as provided by this Act;
- “contract of service” means a contract under which a person is bound habitually to work for another person to the exclusion, at the same time, of any other employer, in return for wages, and shall be distinguished from the contract under which a small businessman operates his business;
- Cap. 56:01 “court” means the Industrial Tribunal established under the Labour Act;
- “dependants” means those members of the family of a workman who were wholly or in part dependent upon his earnings at the time of his death, or would, but for the incapacity due to the accident, have been so dependent; and
- “employer” means any person, incorporated or unincorporated association or partnership which engages a workman under a contract of service and, without prejudice to the generality of the foregoing provision, includes—
- (a) the Government of The Gambia, save in respect of the Armed Forces of The Gambia, and all public and local authorities;
  - (b) the personal representative of a deceased employer other than a partner;
  - (c) where a workman is employed by an unincorporated association, the members of the management committee jointly and severally, or where there is no management committee, the person having the most senior responsibility for the management of the association;

- (d) where a workman is employed by a partnership, the partners jointly and severally, provided that a partner shall cease to be deemed to be an employer as soon as he retires from the partnership and the personal representatives of a deceased partner shall not be deemed to be the employer;
- (e) an employer who lends or hires the services of a workman temporarily to another and who shall be deemed to remain the employer of that workman, and this provision shall, in particular, apply to any organisation registered under Part II of the Labour Act, whose business is the hiring of labour. Cap. 56:01.

For the avoidance of doubt it is hereby declared that the hirer of a workman from an unregistered person purporting to carry on the business of hiring labour shall be deemed to be the employer of such workman in accordance with section 59(3) of the Labour Act; and Cap. 56:01.

- (f) where any person, incorporated or unincorporated association or partnership, is registered under Part II of the Labour Act and, wholly or in part carries on the business of hiring out workmen such persons, incorporated or unincorporated association or partnership who shall be deemed to be the employer of such workmen at all times when such workmen are so hired out or available for hire.

“industrial injury” means an injury arising out of and in the course of employment;

“Inspector” means an Inspector of Industrial Injuries appointed under section 23 of this Act;

“medical aid” means medical, surgical and hospital treatment, skilled nursing services, and the supply of medicines within The Gambia or, with the approval of the Director of Health Services, outside The Gambia, and the supply maintenance, repair and renewal of non-articulated artificial limbs and apparatus and of artificial eyes and hearing aids;

“medical practitioner” means a medical practitioner registered under the Medical and Dental Practitioners Act; Cap. 37.

“member of the family” means mother, father, wife, son, daughter, brother, sister, father’s father, or father’s brother;

“Minister” means the Minister for the time being responsible for the administration of this Act;

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

“partial incapacity” means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity as reduces his earning capacity in every employment which he was capable of undertaking at that time:

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

“prescribed” means prescribed by regulations made under this Act;

Schedule.

“Schedule” means the Schedule to this Act;

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

Provided that permanent total incapacity shall be deemed to result from an injury or from any combination of injuries specified in the Schedule where the percentage or aggregate percentage of the loss of earning capacity as specified in the Schedule against such injury or injuries, amount 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 him or the value thereof;

“war injuries” means when a state of war exists between the Republic of The Gambia and another State or when there exists within the territory of The Gambia a state of insurrection against the Government of The Gambia, physical injuries or mental disorders caused by—

- (a) (i) the discharge of any missile (including liquids and gas); or  
(ii) the use of any weapon, explosive or other noxious thing; or  
(iii) the doing of any other injurious act;  
either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or
- (b) the impact on any person or property, of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of or for the benefit of, any foreign Power, or any part of, or anything dropped from, any such aircraft.

“workman” means any person who has, either before or after the commencement of this Act, entered into or works under a contract of service or apprenticeship with an employer to whom this Act applies, whether the contract is express or implied, is oral or in writing:

Provided that the following categories shall be excepted from the definition of “workman” for the purposes of this Act:

- (i) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employers’ trade or business, not being a casual worker employed by the Government of the Gambia or any public or local authority;
- (ii) a domestic servant employed about a dwelling house or the curtilage thereof;
- (iii) an outworker;
- (iv) a member of the employer’s family dwelling in the employer’s house; and
- (v) a member of any class or persons who, the Minister may, by Order published in the *Gazette* declare not to be a workman for the purposes of this Act.

3. (1) Compensation in accordance with the provisions of this Act shall be paid to a workman suffering an industrial injury.

Payment of compensation.

(2) In this Act—

- (a) no compensation shall be paid in respect of an injury which does not incapacitate the workman for a period of at least five consecutive days from earning full wages from his employment;
- (b) any personal injury by accident arising whilst the employee is travelling to or from his place of work at a reasonable time and by any reasonable route and means of transport, including walking, for the purpose of his employment, shall be deemed to be an accident arising out of and in the course of employment and the Commissioner shall issue guide-lines for the use of Inspectors in determining whether travel to work is reasonable within this paragraph;
- (c) any accident arising in the course of employment shall rebuttably be presumed to arise out of employment;
- (d) any accident arising in the course of employment wholly or partly by reason of the neglect, wilful misconduct, skylarking or other default of another shall be deemed to arise out of employment unless contributed to a substantial degree by the neglect, wilful misconduct, skylarking or other default, outside the course of his employment, of the injured workman; and
- (e) any accident arising in the course of employment by reason of any natural phenomenon or the action of any living thing shall be deemed to arise out of employment.
- (3) For the purposes of this section "injury" shall mean personal, bodily or mental injury and shall include damage to an artificial limb, false teeth or spectacle or similar artificial aid.

Fatal  
accident  
compensa-  
tion.

**4. Where death results from the injury—**

- (a) if the workman leaves any dependants wholly dependent on his earnings, the amount of compensation shall be a sum equal to one hundred and twenty months' earnings, subject to maximum countable earnings of one thousand five hundred dalasis per month, or one hundred thousand dalasis, whichever is the greater;
- (b) if the workman does not leave any dependants wholly dependent on his earnings, but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a) of this section, as may be determined by the relevant

authority to be reasonable and proportionate to the dependency of such dependants;

(c) if the workman leaves no dependants, the reasonable expenses of the burial of the deceased workman, not exceeding one thousand dalasis and the reasonable expenses of normal medical attendance upon, and treatment of, that workman prior to death; and

(d) if the workman survives the accident for a time so as to receive a pension or a lump sum compensation such pension or lump sum shall not be deducted from the amount payable under paragraphs (a) to (c) (inclusive) of this section.

5. Where permanent total incapacity results from the injury, the workman shall be entitled to a pension equal to sixty *per centum* of his earnings calculated according to the provisions of section 10 of this Act, subject to maximum countable earnings of one thousand five hundred dalasis per month:

Permanent total incapacity.

Provided that the monthly amount of such pension shall not be less than one hundred dalasis.

6. Where permanent total incapacity results from the injury and is of such a nature that it is reasonable that the injured workman should be constantly attended by another person, a constant attendance allowance equal to twenty-five *per centum* of the payment specified in section 5 of this Act shall be paid in addition to the payment specified in that section.

Constant attendance allowance.

7. (1) Where permanent partial incapacity results from the injury, the amount of such compensation shall be—

Permanent partial incapacity. Schedule.

(a) in the case of an injury specified in Part I of the Schedule as causing incapacity of twenty *per centum* or more, compensation by periodical payment of an amount that is that proportion of compensation in the case of permanent total incapacity which that percentage bears to one hundred *per centum*;

(b) in the case of an injury specified in Part I of the Schedule, as causing incapacity of less than twenty *per centum*, a single payment equivalent to the sum that would be yielded over the period of one hundred and twenty months by the same percentage of compensation in the case of permanent total incapacity as the percentage of loss of earnings capacity caused by the injury; and

- (c) in case of an injury not specified in part I of the Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity being twenty *per centum* or more, or such single payment equivalent to the sum that would be yielded over a period of one hundred and twenty months by such percentage, being less than twenty *per centum* as being the assessed percentage of loss of earnings capacity caused by the injury:

Provided that where the injury has particular consequences, having regard to the special nature of the workman's occupation, the Commissioner may add to the pension or sum payable under paragraphs (a) to (c) (inclusive) of this section such additional pension or sum as shall appear to him just and equitable having regard to such particular consequences whether or not the workman has made application for such particular disability supplement, but not so as together with the pension or sum payable under paragraphs (a) to (c) (inclusive) of this section to exceed the amount that would have been payable for total permanent incapacity.

(2) Where more injuries than one are caused by the same accident, the amount of compensation payable under the provisions of this section shall be aggregated but not so as to exceed the amount that would have been payable for total permanent incapacity.

Review of permanent incapacity.

8. (1) The Commissioner may review any case of permanent incapacity for which a periodic payment of compensation is made in his discretion at any time, provided that the interval between each review shall not be less than six months during the first two years of such incapacity and one year thereafter.

(2) As a result of such review the Commissioner may, in accordance with the findings thereof, confirm, amend or discontinue the payments of periodical compensation.

(3) The Commissioner in the case of such review as is provided for in this section, shall refer any medical question relating to the case under review to the medical authority, and the opinion of the medical authority on such a question shall be final and binding on the Commissioner.

Temporary incapacity.

9. (1) Where temporary incapacity, total or partial, results from the injury, compensation shall be the periodical payments hereinafter specified and such compensation shall normally be paid at monthly intervals but the Commissioner may, in his discretion, alter these



intervals in any individual case so long as the period between one payment and the next does not exceed three months:

Provided—

- (a) that where temporary incapacity arising from the same injury has continued for six months, the case shall be reviewed by the Commissioner, and if, upon such review, it appears reasonably probable that the incapacity will continue for at least a further twelve months, the incapacity shall be deemed to be permanent;
  - (b) that where a temporary incapacity arising from the same injury has continued for twelve months, it shall be deemed to be permanent without further review.
- (2) The Commissioner shall in the course of such review as is mentioned in the proviso to subsection (1) of this section refer any medical question relating to the case under review to the medical authority; and the opinion of the medical authority shall be final and binding on the Commissioner.
  - (3) The compensation payable during any period of total temporary incapacity shall be a sum equivalent to sixty *per centum* of earnings calculated in accordance with section 10 of this Act, subject to maximum countable earnings of one thousand five hundred dalasis per month.
  - (4) The compensation payable during any period of partial incapacity shall be at the rate proportionate to sixty *per centum* of the difference between the wage of the workman at the time of the accident, calculated in accordance with section 10 of this Act, and the wage which the workman is earning, or which the Commissioner considers that he is reasonably capable of earning, in some suitable employment after the accident, whichever is the greater.
  - (5) Any period of absence from employment prior to final assessment of disability certified as necessary by a medical practitioner shall be deemed to be a period of total temporary incapacity irrespective of the outcome of the injury and any period subsequent to such absence, but prior to final assessment of disability shall be deemed to be a period of partial temporary incapacity, both periods being continuous with each other, variation in payments notwithstanding:

Provided that the maximum duration of periodical payments under this subsection shall not exceed six months.

(6) On the ceasing of incapacity before the date on which any periodical payment, whether provided under this section or any other provision of this Act falls due, there shall be payable in respect of that period a sum proportionate to the duration of the incapacity in that period.

Calculation  
of earnings.

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

Provided that where by reason of the shortness of time during which the workman has been in the employment of such employer, the casual nature of the employment, or the terms of the employment, it is not reasonably practicable at the date of the accident accurately to compute the remuneration of the worker, regard may be had to the average monthly amount which, during the twelve months previous to the accident, was being earned by a person of similar earning capacity in the same grade employed for the same work by the same employer, or, if there is no person so employed, by a person of similar earning capacity in the same grade, employed in the same class of employment, in the same district.

(2) Where the remuneration payable to the worker varies with the amount of work done or the time at which such work is done, the average monthly rate of all such remuneration shall be computed over the twelve months immediately preceding the accident and the like provisions as are contained in the proviso to subsection (1) of this section shall apply to employment for any period shorter than twelve months.

(3) Where the workman has entered into concurrent contracts of service with two or more employers, under which contracts he worked at one time for one such employer and at another time for another such employer, his monthly remuneration shall be computed as if his remuneration under all such contracts were remuneration in the employment of the employer for whom he was working at the time of the accident:

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

(4) Upon the request of the Commissioner, the employer shall in writing furnish a full statement of the remuneration payable to that injured workman or any other workman in so far as that information is necessary for the purpose of applying the provisions of this section.

(5) In this section "remuneration" includes all the monetary return which the workman is entitled to receive from the employer for his service, including the basic wage, bonus payments, payments in respect of overtime or shift allowance and any other monetary addition to such amounts before the deduction of income tax or deduction of the workman's part of any contribution to any social security scheme operated by the State.

(6) No remuneration in excess of one thousand three hundred dalasis per month shall be taken into account for the purposes of computation under this section.

11. (1) The compensation shall be payable to or for the benefit of the workman, or, where death results from the injury, to or for the benefit of his dependants as provided by this Act. Allotment of compensation.

(2) Where the death of a workman has resulted from the injury, compensation shall be apportioned by the Commissioner among the dependants, both total and partial, of the deceased workman, in such proportions and to such persons as the Commissioner shall consider appropriate bearing in mind their state of dependency, and the Commissioner may order any sum so apportioned to be invested or otherwise dealt with for the benefit of the dependant.

(3) Where a dependant dies before a claim in respect of the death of a workman is made under this Act, or, if made, before an order for payment of compensation has been made, the personal representative of the dependant shall have no right to payment of compensation and the claim for compensation shall be dealt with as if the dependant had died before the workman so that, in particular, any dependant of the deceased dependant who would, by reason of the death of deceased dependant, have become a dependant of the workman shall be considered to be a dependant of the workman.

(4) Where on application made in accordance with regulations made by the Commissioner it appears to the Commissioner that on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order made under this section ought to be varied, the Commissioner may make such variation of the former order as in the circumstances of the case

he may think just but not so as to deprive any dependant of the right to any sum already paid to such dependant.

(5) The Commissioner shall make arrangements for the payment of compensation under this Act so that the recipient or his representative is not required to travel more than twenty kilometres from the home of the recipient to collect such payment.

Notification  
of accident  
by workman  
to employer.

**12.** (1) Subject to the provisions of subsections (1) and (2) of this section—

(a) compensation shall not be payable under this Act unless notice of the accident has been given to the employer by or on behalf of the workman as soon as is reasonably practicable after the happening thereof and in any event not later than one month after the happening of the accident:

Provided that no such notice shall be required where it is shown that the employer was aware of the happening of the accident at or about the time it occurred;

(b) compensation shall not be payable under this Act unless a claim has been made by or on behalf of the workman or his dependant to the Commissioner within six months of the occurrence of the accident occasioning the injury.

(2) The Commissioner may dispense with the requirements of subsections (1) and (2) of this section in the case of any workman if he is satisfied that it is just and equitable so to do;

(3) The want of, or any defect or inaccuracy in, such notice as is required by subsections (1) and (2) of this section shall not be a bar to compensation if it is shown that such want, defect or inaccuracy has not prejudiced the ascertainment of the facts or been designed to conceal any material fact or that the want, defect or inaccuracy was occasioned by mistake or other reasonable cause.

(4) Notice in respect of an accident causing injury to which this Act is applicable shall be given as prescribed by rules issued by the Commissioner.

Notification  
of accident  
by employer  
to  
Com-  
missioner.

**13.** (1) Notice of injury to a workman by reason of an accident arising out of and in the course of employment, including an accident deemed or presumed so to arise in accordance with section 3 of this Act, shall be given to the Commissioner by the employer as soon as reasonably practicable after the happening of the accident and in any event not later than two weeks after the employer has

received notification of the accident by reason of section 12 of this Act or otherwise has actual knowledge of the accident.

(2) Where the death of a workman from any cause whatsoever is brought to the notice of, or comes to the knowledge of, his employer, the employer shall, as soon as reasonably practicable after the occurrence of the death give notice to the Commissioner stating the circumstances of the death if they are known to the employer.

(3) Any employer who fails to comply with the provisions of subsection (1) or subsection (2) of this section shall pay to the Injuries Compensation Fund the sum of two thousand dalasis and such payment shall be enforced by the Commissioner by an action for debt before the Magistrate of the district in which the employment occurred.

(4) The failure of the employer to satisfy any of the requirements of this section shall not affect the right of any person to make a claim and receive compensation under this Act.

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

Medical  
examination  
and  
treatment.

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

(3) In the event of the workman being, in the opinion of any medical practitioner, 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 the medical practitioner so named shall fix a reasonable time and place for a personal examination of the workman and shall send him notice accordingly.

(4) If the workman fails to submit himself for such examination, his right to compensation shall be suspended until such examination

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

(5) The workman shall be entitled, as an observer at his own expense to have his own medical practitioner or an official of a trade union of which he is a member present at an examination conducted by a medical practitioner named or approved by the employer.

(6) During any period of temporary total incapacity the employer shall arrange to provide normal medical treatment for the workman either by the employer's medical practitioner or by the workman's medical practitioner approved by the employer, at the expense of the employer. Such normal medical treatment shall include any specialist treatment which the employer may require the workman to undergo.

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

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

(9) Notwithstanding the preceding provisions of this section, where a claim for compensation is made in respect of the death of a workman, then if the workman failed to submit himself to examination by a medical practitioner when so required under the provisions of this section, or failed to submit himself for treatment by a medical practitioner when so required under the provisions of this section, or having submitted himself for such treatment disregarded the instructions of such medical practitioner, and if it is proved that such failure or disregard was unreasonable in the

circumstances of the case and that the death of the workman was caused thereby, the death shall not be deemed to have resulted from the injury, and no compensation shall be payable in respect of the injury.

15. (1) The fees and charges for medical aid to workmen within The Gambia in pursuance of the provisions of this Act shall be in accordance with the scale prescribed in Part II of the Schedule and no claim for an amount in excess thereof shall lie against the workman or the Injuries Compensation Fund or the employer. Medical charges.

(2) The employer shall defray the reasonable expenses incurred by a workman within the Gambia or with the approval of the Director of Health Services outside the Gambia as a result of injury caused by accident arising out of and in the course of his employment in respect of medical, surgical and hospital treatment, skilled nursing services, supply of medicines, supply, maintenance, repair and renewal of artificial limbs and apparatus, artificial eyes, glasses, hearing aids and any other artificial aid, and the provision of dental care, including the supply, repair and renewal of false teeth; but shall be entitled, provided the requirements of section 13 of this Act have been satisfied and upon the presentation of proper receipts for the expenditure, to recover seventy-five *per centum* or ten thousand dalasis, whichever is the less, of such expenditure from the Injuries Compensation Fund.

(3) The Commissioner may, when considering any matter of compensation in relation to the workman concerned or upon application of any interested person, order the payment of any of the expenses referred to in this section to the person entitled to receive such expenses and such order shall be enforceable as a debt before a Magistrate.

16. (1) Without prejudice to the provisions of section 8 of this Act concerning review of permanent incapacity, subsection (1) of section 9 of this Act concerning the obligation of the Commissioner to review temporary incapacity after twelve months, or the power of the Commissioner under subsection (4) of section 11 of the Act to vary the assessment of dependants, and subject to subsections (2) and (3) of this section, the Commissioner may review any periodical payment under this Act on the application of the workman. Review.

(2) No such review referred to under subsection (1) of this section shall be conducted within six months of any previous review made under any provision of this Act.

(3) Where the application for review under this section is based on changes in the condition of the workman, any such application shall be supported by a certificate of a medical practitioner, and upon any review being conducted in accordance with this section any periodical payment may be continued, increased, diminished, ended or ended subject to payment of a final lump sum in accordance with the provisions of this Act.

(4) In making a review under this section the Commissioner shall have regard only to any error in assessment of earnings at the time of the accident, or the capacity for work of the workman as affected by the accident, or of any improvement or deterioration therein.

Jurisdiction  
of court.

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

(2) Where in any proceedings under this Act on a claim for compensation in respect of the death of a workman, the court is satisfied that other or sufficient evidence as to the dependency on the deceased workman of a person claiming to be a dependant, residing outside the district in which the proceedings are being taken, or as to the degree of such dependency, cannot be procured or cannot be procured without undue hardship to the claimant or other party to the proceedings, a statement as to the dependency and as to the degree of dependency of the claimant signed by a Magistrate of the district in which the claimant resides, whether within The Gambia or elsewhere, shall be *prima facie* proof of the facts stated therein. The signature of the Magistrate shall be admitted without proof unless the court shall have reason to doubt the genuineness thereof.

(3) If in such proceedings any evidence is adduced, which in the opinion of the court traverses the facts set out in such a statement, or if for any other reason the court thinks fit, 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 of the dependance and the degree of the dependency of such persons.

(4) The record of any such investigation including the finding of the court thereon shall be certified by a Magistrate or an officer of the court, which certificate signed by the Magistrate or the officer



of the court which has conducted the investigation shall be sufficient proof of such record and such signature shall be admitted without proof unless the court shall see reason to doubt the genuineness thereof.

**18.** (1) When the injury in respect of which compensation is payable under this Act arises from an accident, the circumstances of which create a legal liability in the employer either directly or vicariously, or in some other person, such that the workman may recover damages in an action at law, such workman or some person authorised by law to bring proceedings on behalf of the workman, may notwithstanding this Act, bring such proceedings and recover damages.

Effect of receipt of damages.

(2) Recovery of damages in such proceedings as are mentioned in subsection (1) of this section shall be a bar to payment of compensation under this Act or to any further payment of compensation under this Act unless and until fifty *per centum* of the amount of such damages is paid by the court or by the workman or some person acting on behalf of the workman, to the Injuries Compensation Fund.

(3) Where a claim for damages in respect of an injury apparently caused by an accident arising out of and in the course of employment is received by any court, that court shall notify the Commissioner of the existence of such claim.

(4) Within fourteen days of receipt of such notification as is mentioned in subsection (3) of this section, the Commissioner shall, if satisfied that compensation under this Act is being paid to the claimant, notify the court of law mentioned in that subsection, of that fact.

(5) Where a court as mentioned in subsection (3) of this section is in receipt of notification by the Commissioner under subsection (4) of this section and subsequently makes an award of damages in respect of the claim to which such notification relates, the court shall order the person liable to pay such damages to pay fifty *per centum* of such damages to the claimant and fifty *per centum* of such damages to the Injuries Compensation Fund.

(6) If upon receipt of such notification as is mentioned in subsection (3) of this section, the claimant in such action has been awarded compensation under this Act, which compensation has not commenced to be paid, or is subsequently awarded compensation under this Act, the Commissioner shall withhold payment of all such compensation until either he is notified by the Injuries

Compensation Fund that it has received payment of fifty *per centum* of the damages awarded to the claimant or the claimant submits to the Commissioner or the Trustees of the Injuries Compensation Fund a written undertaking in a form specified by regulations issued by the Commissioner, to pay to the Injuries Compensation Fund fifty *per centum* of any damages awarded as a result of such claim as is mentioned in subsection (3) of this section.

(7) The Trustees of the Injuries Compensation Fund shall be entitled to enforce an order made by a court under subsection (5) of this section or an undertaking given under subsection (6) of this section regarding payment of any sum due under either of those provisions to the Fund as if it were a valid and enforceable contract between the person subject to the obligation to pay to the Fund and the Trustees of the said Fund.

(8) Wherever an Inspector appointed by the Commissioner or the Commissioner receives any claim for compensation under this Act, he shall supply to the claimant a written explanation of this section and shall read, or cause to be read, such explanation to the claimant in a language that the claimant may reasonably be expected to understand.

Assignment  
of compensa-  
tion.

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

Occupational  
diseases.

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

Provided that—

- (a) the disease is due to the nature of the employment and was contracted within a period of twelve months previous to the date of the workman's disablement;
- (b) no compensation shall be payable under this section in respect of incapacity or death of a workman if the incapacity begins or the death happens, as the case may be, more than twelve months after the workman has ceased to be employed by the employer from whom the compensation is claimed; except that this proviso shall not apply to the death of a workman

when the death has been preceded by any period of incapacity in respect of which the employer is liable under this Act;

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

21. (1) Every employer shall be required to pay to the Trustees of the Injuries Compensation Fund in such manner and at such times as shall be specified in regulations issued by the Commissioner, a sum equivalent to one *per centum* of all remuneration paid by such employer to workmen employed by him since the date of commencement of such employment or the date to which that employer has previously made payment under this section, whichever is later: Contributions.

Provided that—

- (a) no payment shall be required under this section in respect of the excess of any earnings by an employee over one thousand five hundred dalasis per month;
  - (b) no failure by an employer to comply with the requirements of this section shall affect the right of any workman or dependant of such workman to compensation under this Act.
- (2) Without derogating from any other power of delegation under this Act, the Trustees of the Injuries Compensation Fund or the Commissioner may appoint any appropriate authority, including any existing authority administering social security in The Gambia, to receive such payments as are required to be made by subsections (1) and (2) of this section and such authority shall hold all payments so received to the order of the Trustees of the Injuries Compensation Fund.

Trustees of  
the Injuries  
Compensa-  
tion Fund.

**22.** (1) The Minister shall appoint a Board of Trustees of the Injuries Compensation Fund.

(2) The Commissioner and the Commissioner of Labour shall be appointed Trustees of the Injuries Compensation Fund.

(3) The Minister shall appoint not less than two nor more than four other persons or organisations as Trustees of the Injuries Compensation Fund.

(4) The Minister may appoint as a Trustee of the Injuries Compensation Fund any appropriate agency of the Government of The Gambia.

(5) The Trustees of the Injuries Compensation Fund shall use their best endeavours to secure the payment of all the monies due such Fund under this Act.

(6) The Trustees of the Injuries Compensation Fund shall make available to the Commissioner, or to his order, from such Fund sufficient monies to pay compensation due under this Act and to administer this Act.

(7) The Trustees shall invest all monies received by the Injuries Compensation Fund as such monies are received in investments approved by the Minister of Finance.

(8) The Trustees of the Injuries Compensation Fund shall at the conclusion of each third financial year, review the fiscal state of the Fund, having regard in particular to any deficit incurred and

to projected future liability and may take actuarial advice and conduct an actuarial review of the scheme and shall recommend to the Minister such variation in rates of contribution and benefit as seem to them appropriate.

(9) The Trustees of the Injuries Compensation Fund may resolve to use any accumulated surplus of the Fund to that date over and above any provision for future liability for any matter connected with the furtherance of industrial safety, the improvement of medical facilities for workmen, or research into any matter connected with industrial injuries as shall seem to them appropriate.

23. (1) A claim for compensation under this Act may be made Claims. by an injured workman or any dependant of such injured workman to an Inspector of Industrial Injuries appointed by the Commissioner in accordance with rules issued by the Commissioner.

(2) Notwithstanding the provisions of subsection (1) of this section, the Commissioner or any Inspector appointed by him may enter a claim on behalf of an injured workman or any dependant of such injured workman.

(3) Where a claim is made under subsection (1) of this section, the person to whom the claim is made shall determine the right of the injured workman or any dependant of the injured workman arising from an accident and shall notify the injured workman and any dependant of the injured workman of his decision.

(4) Where a claim is entered under subsection (2) of this section, an Inspector other than the Inspector or Commissioner entering the claim shall determine the rights of the injured workman and any dependant of the injured workman arising from an accident and shall notify the injured workman and any dependant of the injured workman of his decision.

(5) The person considering the claim under subsection (1) or subsection (2) of this section shall refer any medical question to the medical authority and the decision of the medical authority upon such medical question shall be binding on any such person, subject to any appeal to a medical appeal board, the decision of which shall be final and binding as to such question.

24. (1) An injured workman or any dependant of such injured workman who is dissatisfied with a decision of a person acting under section 23 of this Act may appeal to the Commissioner on any question of law or fact affecting the claim. Appeal from decision of an Inspector.

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(2) The Commissioner shall decide the appeal and may revoke, confirm, or amend in any particular, the decision of the Inspector and shall notify the appellant of his decision.

Cap. 56:01. (3) There shall be an appeal from the decision of the Commissioner on any point of law to the Tribunal established under the Labour Act.

(4) When considering any appeal under this section the Commissioner or the Tribunal shall refer any medical question to the medical appeal tribunal whose decision on that question shall bind the Commissioner and the Tribunal subject to an appeal to a Medical Appeal Board the decision of which shall be final and binding as to such question.

Medical questions.

25. (1) Any medical question arising as a result of injury caused by an industrial accident shall be determined only by the medical authority whose decision shall be final and binding as to that question.

(2) A medical question shall be decided initially by a single medical practitioner appointed as a member of the medical authority.

(3) Any injured workman, dependant of such injured workman, Inspector or the Commissioner may appeal from a decision of the medical practitioner determining the medical question under subsection (2) of this section to a medical appeal board consisting of two medical practitioners appointed as members of the medical authority other than the medical practitioner initially deciding the question.

Appointment of authorities.

26. (1) The Minister shall appoint a Commissioner.

(2) The Commissioner shall appoint such number of Inspectors as are necessary to administer this Act.

(3) There shall be established a medical authority for the purposes of this Act.

(4) The Minister of Health shall appoint such number of qualified medical practitioners as members of the medical authority as he shall consider necessary.

(5) The Minister of Health shall have power to pay to any member of the medical authority any fee, retainer, or sum in respect of expenses as shall be designated by regulations made by the Minister of Health.

(6) The medical authority shall appoint a Council to regulate the carrying out of its powers and duties under this Act and, in particular, to appoint members to act in accordance with section 23 of this Act.

27. The Commissioner shall issue regulations governing the method of payment of all such amounts payable under this Act as are authorised to be paid by him under any provision of this Act. Payment of benefits.

28. (1) The Minister may make regulations— Regulations.

(a) under section 2 of this Act to amend the definition of those benefits which are to be counted as earnings for the purpose of this Act; and

(b) under section 20 of this Act in respect of occupational diseases.

(2) The Minister of Health may make regulations governing the payment of monies to members of the medical authority under subsection (5) of section 26 of this Act.

(3) The Rules Committee of the Supreme Court may make rules of court for regulating proceedings before the Court or any court of law in respect of any matter mentioned in this Act and for regulating the manner of notification required to be made by any court of law under this Act.

(4) The Commissioner may make rules—

(a) under section 12 of this Act in relation to notification of accidents by workmen to employers;

(b) under section 12 of this Act in relation to notification of accidents by employers;

(c) under section 15 of this Act in relation to the form of application for rebate of medical expenses;

(d) under section 18 of this Act in relation to the form of undertaking by the workman under subsection (6) of that section; and

(e) under section 21 of this Act as regards the manner and time of payment of contribution.

(5) The Commissioner may make regulations for the payment of amounts due under the provisions of section 27 of this Act.

(6) The Commissioner shall issue guidelines for the determination of the reasonableness of travel to work under paragraph (b) of subsection (2) of section 3 of this Act.

Delegation. **29.** Without prejudice to any other power granted by this Act, the Commissioner may delegate any of his functions under this Act with the exception of those functions specified in section 23 of this Act.

Review of benefits; amendments; and repeal. **30.** (1) The Minister shall conduct not less frequently than once in three years a review of the amounts of benefit payable under the provisions of this Act and may instruct the Commissioner to increase existing benefits by such amount as he shall consider appropriate.

(2) The Minister may, by regulation published in the *Gazette*, amend any reference to any period of time, sum of money or proportion of compensation or disability contained in any section of this Act or the Schedule, and in particular, but without prejudice to the generality hereof may amend contribution and benefit rates and the limits of remuneration by reference to which contributions and benefits are assessed.

(3) The Minister may by Order published in the *Gazette* declare any class of persons not to be workmen for the purposes of this Act.

(4) The Workmen's Compensation Act is hereby repealed.

Sections  
2, 7 and 30.

SCHEDULE

PART I

<i>Injury</i>	<i>Percentage of Incapacity</i>
Loss of two limbs .....	} 100
Loss of both hands or of all fingers and thumbs ..	
Loss of both feet .....	
Total loss of sight .....	
Total paralysis .....	
Injuries resulting in being permanently bedridden ...	
Any other injury causing permanent total disablement ]	
Loss of arm at shoulder .....	80
Loss of arm between elbow and shoulder .....	78