

WORKMEN'S COMPENSATION ACT, 1986

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I ASSENT,

*Idris Abdul Wakil*

IDRIS ABDUL WAKIL  
PRESIDENT OF ZANZIBAR  
AND  
CHAIRMAN OF THE REVOLUTIONARY  
COUNCIL.

*18<sup>th</sup> November* .....1986.

AN ACT TO REPEAL THE WORKMEN'S COMPENSATION  
DECREE AND TO PROVIDE FOR BETTER PROVISIONS  
FOR THE COMPENSATION TO WORKMEN FOR INJURIES  
SUFFERED IN THE COURSE OF THEIR EMPLOYMENT,  
TO MAKE PROVISIONS FOR PAYMENT OF COMPENSATION  
TO PEOPLE WHO FALL FOR OTHER MATTERS CONNECTED  
THEREWITH.

ENACTED by the House of Representatives  
of Zanzibar.

PART 1  
PRELIMINARY

Short title  
and  
commencement.

1. This Act may be cited as the Workmen's  
Compensation Act, 1986 and shall come into  
operation on such a date as the Minister may  
by notice in the Gazette appoint.

Application  
of the Act.

2. This Act shall not apply to:  
(a) the Special Department;  
(b) person employed in the Union Government;  
(c) tributer;  
(d) any class of persons whom the Minister  
may by order declare not to be workmen  
for the purposes of this Act.

Interpretation.

3. In this Act, unless the context otherwise  
requires:-

"compensation" means compensation as  
provided for by this 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, where the workman being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings shall include such an illegitimate child or parent or grandparent respectively:

Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provisions of the ordinary necessaries of life suitable for person in his class and position;

"earnings" includes wages and any allowance in respect of increased cost of living paid to the workman by the employer; and any overtime payments or other special remuneration for work done, whether by way of bonus or otherwise, if of constant character or for work habitually performed; but shall not include remuneration for intermittent overtime, or casual payments of a non-recurrent nature, any ex-gratia payment whether given by the employer or other person, or the value of a travelling allowance, or the value of any travelling concession or a contribution paid by the employer of a workman towards any provident fund, or a sum paid to workman to cover any special expenses entiled on him by the nature of his employment;

"employer" includes the Government and any Public, Private or joint enterprise and, where the services of workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person.

"Government" means the Revolutionary Government of Zanzibar and includes its parastatals;

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

"local or other public authority" means any local or public authority declared by order of the Minister to be a local or public authority for the purposes of this Act;

"medical aid" means medical surgical and hospital treatment, skilled nursing services, and the supply of medicines within Zanzibar or, with the approval of the Director of Medical Services, outside Zanzibar and the supply, maintenance, repair and renewal of artificial limbs, appliances or apparatus;

"medical practitioner" means a medical practitioner registered or licensed under the provisions of the Medical Practitioners and Dentists Decree;

"member of the family" means the wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, grand-daughter, stepson, stepdaughter, brother, sister, half-brother or half-sister;

"Minister" means the Minister responsible for labour in Zanzibar;



"permanent incapacity" means such incapacity of 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;

"Public Enterprises" means public Enterprises registered under Public Enterprises Decree;

"Partial incapacity" means such incapacity of partial in nature, as incapacitate workman partially for an employment and expressed in terms of percentage as it may be determined by a recognised medical practitioner

"temporary incapacity" means where the incapacity is of such nature, as incapacitate and reduces the earning capacity of a workman in any employment in which he was engaged at was capable of undertaking at the time of the accident resulting in the incapacity;

"Workmen" means any person employed by the Government, its parastatals, private enterprise or joint enterprises whether by way of manual labour or otherwise whether the contract is express or implied, is oral or in writing and whether the remuneration is calculated by the time or by work done.

PART II - LIABILITY OF EMPLOYER.

Principle of employer's liability.

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



Accident arising out of and in the course of employment.

Provided that -

- (a) the employer shall not be liable under this Act in respect of any injury which incapacitates the workman for a period of less than three consecutive days from earning full wages at the work at which he was employed; and
- (b) if it is proved that the injury to a workman is attributable to serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed:

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

Accident to workman acting illegally or disobediently.

(2) For the purposes of this Act, an accident resulting in the death or serious and permanent incapacity of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment or of any orders given by or on behalf of his employer, if such act was done by the workman for the purposes of and in connection with his employer's trade or business.

Self-injury.

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



False representation  
by workman.

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

Illegal  
contracts.

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

Civil suit  
independently of  
this Act.

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

Action in  
tort not  
prevented.

Provided that -

- (a) a judgement in such proceedings whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury under the provisions of this Act ;



(b) a judgement in proceedings under this Act whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury independently of this Act;

(c) an agreement come to between the employer and the workman under the provisions of sub-section (1) of section 26 shall be a bar to proceedings by the workman in respect of the same injury independently of this Act.

Failure of  
civil suit.  
Compensation  
may be payable  
under this Act.

(2) If in proceedings independently of this Act or on appeal, it is determined that the employer is not liable under such proceedings, the court in which such 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 such compensation any 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.

Remedies  
against both  
employer and  
stranger.

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



- (a) the workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under the provisions of this Act for such compensation, but shall not be entitled to recover both damages and compensation ; and
- (b) if the workman has recovered compensation under provisions of this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the provisions of section 7 relating to liability in case of workmen employed by contractors, shall be entitled to be indemnified as regards the amount of compensation, including costs, by the person so liable to pay damages as aforesaid, and any question as to the right to and amount of any such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, by arbitration under the Arbitration Decree.

Workman employed  
by contractors  
liability of  
principal.

7. (1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person otherwise than as a tributer (which other person is in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under the provisions of this Act which he would have been liable to pay if that workman had been immediately employed by him; and 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 references to the earnings of the workman under the employer by whom he is immediately employed,

Principal  
entitled to  
indemnity.

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

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

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

(5) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

Employers  
may be  
required to  
insure.  
Order by  
Minister.

8.(1) The Minister may, by order require any employer or class of employers to insure and keep himself or themselves insured, with such insurers as may be approved by the Minister, in respect of any liability which they may incur under the provisions of this Act, to any workman employed by him or them.



Penalty for  
contravention.

(2) Where the Minister has made any order under the provisions of sub-section (1) the Minister may exempt any employer to whom such order applies from the provisions thereof who provides and maintains in force a security which complies with the requirements of sub-section (3) and any exemption so granted shall continue in force only so long as such security continues in force.

(3) For the purposes of sub-section (2) a security shall consist of an undertaking by a surety approved by the Minister to make good, subject to any conditions specified therein and up to an amount approved by the Minister, any failure by the employer to discharge any liability which he may incur under the provisions of this Act to any workmen employed by him.

(4) Any employer who acts in contravention of any order made under the provisions of sub-section (1) shall be guilty of an offence and shall be liable to a fine of not less than ten thousand shillings but not exceeding fifty thousand shillings or to imprisonment for a term of six months but not exceeding one year or to both such fine and imprisonment, and, if the contravention in respect of which he was so convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding one thousand shillings for each day on which the contravention was so continued.

Insolvency of  
Employer.  
Right of  
employer  
against  
insurers  
vest in  
workman.

9.(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming insolvent, or making a composition or arrangement with his creditors, the rights of the employer against the insurers as respects the liability shall, notwithstanding anything contained in any laws relating to insolvency for the time being in force, be transferred to and vest in the workman, and upon any such

transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer:

Provided that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

Insurance  
inadequate  
to meet  
claim.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency.

Compensation  
to have  
priority  
over other  
debts.

(3) There shall be included amongst the debts which under the provisions of the Insolvency Decree, are in the distribution of the property or assets of an insolvent to be paid in priority to all other debts the amount due in respect of any compensation or liability for compensation accrued before the date of the receiving order.

Where the compensation is a periodical payment, the amount due in respect thereof shall, for the purposes of this provisions, be taken to be the amount of the lump sum for which the periodical payment could, if redeemable, be redeemed if the employer made an application for that purpose under the provisions of this Act.

Compensation  
not to have  
priority  
when employer  
insured  
against  
liability.

(4) Where the insolvent or a company in liquidation has entered into such a contract with insurers as is referred to in sub-section (1), the provisions of sub-section (3) shall not apply in respect of the liability of the employer to the workman or that part thereof, which is met by the insurers.



PART III - COMPENSATION FOR INJURY:

- Death.
- Dependants wholly dependent.
- Burial expenses.
- Representatives of dead workman.
- Permanent incapacity. Amount.
10. Where death results from the injury -
- (1) if the workman leaves any dependants wholly dependent on his earnings, the amount of compensation shall be a sum equal to thirty-six months' earnings or hundred and eight thousand shillings whichever is the less; but where in respect of the same accident compensation has been paid under the provisions of section 11 there shall be deducted from the sum payable under this paragraph any sums so paid as compensation.
- (2) The reasonable expenses of the burial of the deceased workman and the reasonable expenses of medical attendance on the deceased workman, not exceeding in all the sum of four thousand shillings shall be paid by the employer.
- (3) For the purpose of this section any reference to a workman who has been injured shall, unless the context otherwise requires, where the workman is dead, include a reference to his legal personal representative, or to his dependants or any of them or the Attorney-General or such other officer as the Minister may appoint to act on behalf of the dependants of the workman.
- 11.(1) Where permanent incapacity results from the injury the amount of compensation shall be a sum equal to forty-eight months' earnings or a hundred and sixty two thousand shillings whichever is the less.

Injured workman requiring constant help.

(2) Notwithstanding the provisions of sub-section (1) where an injury results in permanent incapacity of such a nature that the injured workman must have the constant help of another person, additional compensation shall be paid amounting to one-quarter of the amount which is otherwise payable under this section.

Permanent partial incapacity.

12. Where permanent partial incapacity results from the injury the amount of compensation shall be -

- (i) such percentage as specified by recognised medical practitioner of forty-eight month's earning as specified therein as being the percentage of the loss of earning capacity caused by that injury or ninety thousand shillings whichever is the less.

Temporary incapacity Amount.

13.(1) Where temporary incapacity whether total or partial results from the injury, the compensation shall be the periodical payments hereinafter mentioned payable at such intervals as may be agreed upon or as the Court may order, or a lump sum calculated accordingly having regard to the probably duration, and probable changes in the degree, of the incapacity. Such periodical payments shall be a monthly payment of half the difference between the monthly earnings which the workman was earning at the time of the accident and the monthly earnings which he is earning or is capable of earning in some suitable employment or business after the accident -

- (a) the period spent in hospital or of absence from duty certified necessary by a medical practitioner shall be regarded as a period of temporary incapacity irrespective of the outcome of the injury and any period subsequent



thereto but preceding final assessment of disability shall be regarded as a period of temporary partial incapacity, both periods being continuous with each other, variations in payments notwithstanding, and the maximum duration of periodical payments under this section shall not exceed ninety-six months ;

- (b) in the event of death of permanent incapacity following after temporary incapacity, deduction shall be made from the lump sum payable under section 10 and 11 by reason of periodical payments or lump sum payment having been made under this section.

Value of perquisites to be deducted.

(2) In fixing the lump sum or periodical payments payable under subsection (1) a deduction shall be made of the value of any payment, allowance or benefit, including the value of any food, fuel or quarters, which the workman may receive from the employer during the period of incapacity.

Incapacity ceasing before payment.

(3) On the ceasing of the incapacity before the date on which any periodical payment falls due, there shall be payable in respect of that period a sum proportionate to the duration of the incapacity in that period.

Change of residence.

(4) Where a workman in receipt of periodical payments under the provisions of this section intends to leave the neighbourhood in which he was employed, for the purpose of residing elsewhere, he shall give notice of such intention to the employer who may agree with the workman for the redemption of such periodical payments by a lump sum, or for the continuance of such periodical payments.

If the employer and workman are unable to agree, either party may apply to the Court, which shall have jurisdiction to order such redemption and to determine the amount to be paid or to order the continuance of the periodical :

Provided that any lump sum so ordered to be paid together with the periodical payments already made to the workman shall not exceed the lump sum which would be payable in respect of the same degree of incapacity under the provisions of sub-section(1) of section 11 as the case may be, if the incapacity were permanent.

Penalty for change of residence without notice.

(5) If a workman in receipt of periodical payments under the provisions of this section leaves the neighbourhood in which he was employed, for the purpose of residing elsewhere, without giving notice as provided in sub-section (4), or having given such notice leaves the neighbourhood as aforesaid without having come to an agreement with his employer for the redemption or continuance of such periodical payments, or without having made an application to the Court under the provisions of sub-section(4), he shall not be entitled to any benefits under the provisions of this Act during or in respect of the period of his absence. If the period of such absence shall exceed six months, the workman shall cease to be entitled to any benefits under the provisions of this Act.

Method of calculating earnings. Equivalent to monthly rate at date of accident.

14.(1) For the purposes of this Act the monthly earnings of a workman shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated at the date of the accident:



Provided that -

- (a) where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of the employment, or the terms of his employment, it is impracticable to compute the rate of remuneration in the manner afore-mentioned, regard may be had to the average monthly amount which, during the twelve months previous to the accident, was being earned by a person of similar earning capacity in the same grade employed at the same work by the 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 and in the same district; and
- (i) where the workman was, at the date of the accident, under the apparent age of eighteen years his earnings shall be deemed to be such amount as, had he not met with the accident, he should probably have received upon attaining the age of eighteen years, or at the end of a period of five years after the accident, whichever calculation is more favourable to the workman; and

- (ii) where the workman was, at the date of the accident, employed under a contract of apprenticeship, improvership or learnership, his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon the completion of his apprenticeship, improvership, or learnership.

Meaning of "employment by same employer".

(2) For the purposes of sub-section (1) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

Workman serving two or more employers.

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

Provided that the earnings of the workman under the concurrent contract shall be disclosed to any other employer at the time of his engagement with the latter and shall be taken into account only so far as the workman is incapacitated from performing the concurrent contract.



Employer to  
furnish list  
of earnings.

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

PART IV  
COMPENSATION FOR INJURY TO CLOVE PICKERS.

Interpre-  
tation.

15. In this Part, unless the context requires otherwise -

"clove picker" shall be construed to mean a worker drawing a minimum salary recognised by the Government;

"Employer" means the Government of Zanzibar.

Accident  
arising out  
of and in  
the course  
of picking  
cloves.

16. If, in the course of picking cloves a clove picker is injured by an accident arising out of and in the course of that exercises, his employer shall be liable to pay compensation in accordance with the provisions of this Act.

Exceptions.

17.(1) Compensation under section 16 shall not be paid if the workman is incapacitated for a period of less than three consecutive days.

(2) Compensation shall not be paid to a worker if it is proved that the injury is attributable to serious and wilful misconduct;

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

Self injury.

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

PART V

COMPENSATION FOR INJURY DURING IN THE COURSE OF SPORTING.

Compulsory insurance for sportsman.

19.(1) The employer shall enter into a contract with a reputable insurer in respect of any liability under this Act to any and all of his sportsman.

Rights of Employer against Insurer.

20.(1) The rights of the employer against the insurer as respects the liability shall notwithstanding anything contained in any laws relating to insolvency, be transferred to and vest to the sportsman.

(2) In such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer.

(3) The insurers shall not be under any greater liability to the workman than they would have been under to the employer.

Construction of Sec.19 and 20.

21. For the purpose of this Part, Sportsman shall be construed to mean a workman, but the Employer shall not include sports club.



PART VI  
CLAIMS FOR COMPENSATION.

Persons  
entitled to  
compensation.

22.(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.

Workman or  
dependants  
total and  
partial  
dependants.

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

Death of  
dependant.

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

Preliminary  
requirements.

23. Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless -

Notice of  
accidents.

(1) Notice of the accident in the prescribed form has been given by or on behalf of the workman as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured:

Provided that the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident, or if it is found in the proceedings for settling the claim that the employer is not or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause.

Application  
for  
compensation.

(2) The application for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury or, in the case of death, within six months from the time of death:

Provided that the failure to make an application within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake or other reasonable cause.

Employer to  
report  
accident.  
Injury to  
workman.

24.(1) Notice of an accident causing injury to a workman of such a nature as would entitle him compensation under the provisions of this Act shall be given in the prescribed form to the Director of Social Welfare or his deputy or any other person authorised by him as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured.

Provided that a notice of injury shall just be sent to the Police and hospital.



Death of  
workman.

(2) When the death of a workman from any cause whatever is brought to the notice of or comes to the knowledge of, his employer, the employer shall, as soon as practicable after the occurrence of the death, give notice thereof in the prescribed form to the District Commissioner of the district in which the workman was employed, Such notice shall state the circumstances of the death of the workman if they are known to the employer.

Penalty for  
failure.

(3) Any employer who fails to comply with the provisions of sub-section (1) or sub-section (2) without reasonable cause shall be guilty of an offence and shall be liable, on conviction therefor, to a fine of not less than two thousand shillings but not exceeding five thousand shillings.

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

Medical  
provisions.  
Employer to  
arrange  
medical  
examination  
of workman.

25.(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 by a medical practitioner and any workman who is in receipt of periodical payments under section 13 shall submit himself for such medical examination from time to time, as may be required by the employer.

Workman to  
attend for  
examination.

(2) The workman shall, when required, attend upon the medical practitioner at the time and place notified to the workman by the employer or the medical practitioner, provided such time and place are reasonable.

Workman  
unfit to  
attend.

(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 that fact shall be notified to the employer, and the medical practitioner shall fix a reasonable time and place for a personal examination of the workman and shall send him notice accordingly.

Failure to  
attend for  
examination.

(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 the provisions of sub-section (2) or sub-section (3) as the case may be, no compensation shall be payable, unless the Court is satisfied that there was reasonable cause for such failure.

Workman  
may have  
his own  
doctor  
present.

(5) The workman shall be entitled to have his own medical practitioner present at such examination, but at his own expense, and such medical practitioner need not be approved by the employer.

Medical  
treatment  
during  
temporary  
incapacity.

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



Failure to attend for treatment or to obey instructions of medical practitioners.

(7) If the workman has failed to submit himself for treatment by a medical practitioner when so required under the provisions of subsection (6), 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.

Suspension of rights of compensation.

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

Claim in respect of dead workman who had failed to attend for examination or treatment.

(9) Notwithstanding the previous 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 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.

Agreed  
compensation.  
Safeguards.

26.(1) The employer and workman may, with the approval of the Senior Commissioner or a person appointed by him, in writing, in that behalf, 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. Such agreement shall be in duplicate, one copy to be kept by the employer and one copy to be kept by the workman:

Provided that -

(a) the compensation agreed upon shall not be less than the amount payable under the provisions of this Act; and

(b) where the workman is unable to read and understand writing in the language in which the agreement is expressed the agreement shall not be binding against him unless it is endorsed by a certificate of a District Commissioner to the effect that he read over and explain to the workman the terms thereof and that the workman appeared fully to understand and approve of the agreement.

Ratification  
by Court.

(2) Any agreement made under the provision of sub-section (1) may on application to the Court be made an order of the Court.

Cancellation  
by Court.

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



- (a) that the sum paid or to be paid was or is not in accordance with the provisions of sub-section (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 such fraud, undue influence, misrepresentation or other improper means as would, in law, be sufficient ground for avoiding it.

Stamp duty not to be paid.

(4) No stamp duty shall be leviable or payable on any agreement under this section.

Determination of Claims. Application to Court.

27(1) If any employer on whom notice of the accident has been served under the provisions of section 23 does not within twenty-one days after the receipt of the notice agree in writing with the workman as to the amount of compensation to be paid, the workman may, in the district in which the accident giving rise to the claim accured.

Expert witnesses.

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

Distribution  
of compensation.  
Death of  
workman.

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

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

Incapacity.

(2) Compensation payable under the provisions of section 11 and lump sums payable under the provisions of section 13 shall be paid into Court, and the Court may order any sum so paid in to be paid to the person entitled thereto or to be invested, applied or otherwise dealt with for his benefit in such manner as the Court thinks fit.

Direct  
payments  
by  
employer.

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



Payments made  
by Court.

(4) Any other compensation payable under this Act may be paid to the workman or into Court and when so paid in shall be paid by the Court to the person entitled thereto.

(5) The receipt of the presiding magistrate shall be a sufficient discharge in respect of any amount paid to the Court under the provisions of this Act.

(6) Any order or directions of the Court under this section shall be final.

Lowly-paid  
workman,  
Special  
provisions.

29.(1) Notwithstanding anything contained in this Act where the workman's earnings do not exceed such amount per month as may be prescribed, the following provisions shall apply and, in the case of conflict or inconsistency, prevail over any other provisions of this Act but any such provisions as are not inconsistent shall also apply in relation to such workman :-

- (a) any compensation shall be paid by the employer to an officer and the officer shall pay any such sum, in the case of disablement, to the workman entitled to receive it and in the case deemed by the officer to be dependent upon such workman, where there is more than one dependent the officer shall determine the degree of dependency;
- (b) the form and manner in which payments shall be made by an officer under the provisions of paragraph (a) shall be in the discretion of the officer subject to any general or special discretions of the Senior Commissioner;

(c) any notices required under the provisions of this Act to be served by a workman may be served by an officer ;

(d) in the case of the death of the workman any agreement made in pursuance of sub-section (1) of section 26 shall be between the employer and any dependant or dependants deemed by an officer to be dependant upon such workman and where there is more than one dependant the officer shall determine the degree of dependency.

Meaning of "Officer".

(2) In this section "officer"; means the Regional Commissioner, the Labour Officer, the District Commissioner of the district in which the accident occurs and such other person as the Minister may appoint, in writing, to be an officer for the purpose of this section.

Review of periodical payments. Application to Court.

30.(1) Any periodical payment payable under the provisions of this Act, either under agreement between the parties or under an order of the Court, may be reviewed by the Court on the application either of the employer or of the workman.

Provided that, where the application for review is based on a change in the condition of the workman, any such application shall be supported by a certificate of a medical practitioner if the services of a medical practitioner are available.

Alterations.

(2) Any periodical payment may, on review under this section, subject to the provisions of this Act, be continued, increased, diminished, converted to a lump sum or ended. If the accident is found to have resulted in permanent incapacity, the periodical payment shall be converted to the lump sum to which the workman is entitled under



the provisions of section 11, as the case may be, and such lump sum shall be dealt with in accordance with the provisions of sub-section (2) of section 28.

Payment into Court.

(3) Where application is made by an employer under the provisions of this section for any 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 thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the Court made on review under this section.

Capacity for work.

(4) In making a review under the provisions of this section the Court shall have regard only to the capacity for work of the workman as effected by the accident.

Ending of decreasing periodical payments.

31. Subject to the provisions of sub-section (5) of section 13, sub-section (4) of section 25 and sub-section (3) of section 30 an employer shall not be entitled, otherwise than in pursuance of an agreement or an order of the Court -

- (a) to end periodical payments except -
  - (i) where a workman resumes work and his earnings are not less than the earnings which he was obtaining before the accident; or
  - (ii) where a workman dies ;
- (b) to diminish periodical payments except that where the earnings of a workman and receipt of periodical payments, together with sum payments exceed the amount of his earning at the date of the accident the employer may diminish the payments to such workman by an amount equal to such excess.

PART VII - JUDICIAL PROCEEDINGS.

Jurisdiction  
of the Court.  
Regional  
Magistrate  
Court.

32.(1) Save as is provided in this Act and any rules made thereunder, the Regional Magistrate Court shall, upon or in connection with any question to be investigated or determined thereunder, have all the powers and jurisdiction exercisable by a District Magistrate Court in connection with civil actions in such civil actions and the enforcement of judgements and orders of the Court shall mutatis mutandis apply.

Evidence as  
to dependency.

(2) Where, in any proceedings under the provisions of this Act on a claim for compensation in respect of the death of a workman, the Court is satisfied that either 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 proceeding are being taken, or as to the decree 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 decree of dependency of the claimant signed by the District Commissioner of the district in which the claimant resides whether within Zanzibar or within any other territory shall be prima facie proof of the facts stated therein, and the signature of the District Commissioner shall be admitted without proof unless the Court has reason to doubt the genuineness thereof.



Court may request other Courts to investigate.

(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 dependency and the decree of the dependency of such person. The record of any such investigation including the finding of the court thereon shall be receivable as evidence in the proceedings, and a certificate signed by a magistrate or an 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 has reason to doubt the genuineness thereof.

Request by other Courts for investigation.

(4) Where a request is received by a court in another district whether within Zanzibar or within any other territory for an investigation of any matter arising out of proceedings for compensation instituted in such other court under the provisions of this Act, or, if the other court is in another territory, under a law relating to workmen's compensation the court receiving the request shall have jurisdiction to conduct such investigation, and shall transmit to such other court the record of such investigation, including its findings thereon, duly certified by the magistrate or by an officer of the court.

Questions of Law.

33. The Court may, if it thinks fit, submit any question of law for the decision of a Judge. Such submission shall be in the form of a special case in accordance with rules made under the provisions of this Act.

Appeals.  
To High  
Court.

34.(1) Subject to the provisions of this section and of section 28 an appeal shall lie to the High Court from any order of the Court.

Minimum  
amount in  
dispute.

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

No appeal  
from  
agreement.

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

Time for  
appeal.

(4) No appeal shall lie after the expiration of thirty days from the date of the order of the Court:

Provided that the High Court may, if it thinks fit, extend the time for appealing under the provisions of this section notwithstanding that the time for appealing has elapsed.

Rules of  
Court.

35. The Chief Justice may make Rules of Court for regulating proceedings before the Court under the Provisions of this Act, and for the fees payable in respect thereof.

PART VIII - MEDICAL AID.

Medical  
expenses.

36.(1) The employer shall defray the reasonable expenses incurred by a workman within Zanzibar, or, with the approval of the Director of Medical Services, outside Zanzibar as the result of an accident arising out of and in the course of his employment -



- (a) in respect of medical, surgical and hospital treatment, skilled nursing services and the supply of medicines;
- (b) in respect of the supply, maintenance, repair and renewal of non-articulated artificial limbs and apparatus;
- (c) in respect of reasonable transport charges, not exceeding in all the sum of two thousand shillings, incurred in transfer of workman to and from a place where the necessary treatment is available so, however, that such transfer shall be certified to be necessary by the medical practitioner in charge of the case

Power to Court.

(2) The Court may, when determining any dispute in respect of compensation or upon the application of any interested person, order the payment of any of the expenses referred to in this section to the persons entitled to receive it, and if such expenses exceed the amount provided in paragraph (a) of sub-section (1), the Court may apportion the amount available in such manner as the Court may deem expedient.

Court to determine disputes.

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

(2) Any decision of the Court given under sub-section (1) shall be final.

Fees for medical aid.

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

PART IX - OCCUPATIONAL DISEASES.

Compensation  
for diseases.  
Certificate  
by doctor.

39. (1) Where a medical practitioner grants a certificate -

(a) that a workman is suffering from occupational disease causing disablement or that the death of a workman was caused by any occupational disease, and

(b) that such disease was due to the nature of the workman's employment and was contracted within the twenty-four months previous to the date of such disablement or death, the workman or, if he is deceased, his dependants shall be entitled to claim compensation under this Act as if such disablement or death has been caused by an accident, and the provisions of this Act shall, subject to the provisions of this Part, mutatis mutandis, apply unless at the time of entering into the employment the workman wilfully and falsely represented in writing to the employer in reply to a specific question that he had not previously suffered from the disease.

Provided that in no event shall the workman or his dependants be entitled to compensation in respect of any causation or aggravation of the disease which was due to employment outside Zanzibar except in respect of a workman belonging to Zanzibar employed outside Zanzibar by his employer within Zanzibar.

Entitlement  
on same basis  
as for an  
injury.

(2) If on the hearing of an application for compensation in terms of sub-section (1) the Court is satisfied on the evidence that the allegations in the certificate are correct, the workman or his dependants, as the case may be, shall be entitled to compensation under this Act as if the contracting of the disease were an injury by accident arising out of and in the course of the workman's employment.



Liability of  
employer.

- 40.(1) Compensation shall be payable by the employer who last employed the workman during the period of twenty-four months referred to in section 39 unless that employer proves that the disease was not contracted while the workman was in such employment.

Workman to  
give  
information.

(2) The workman or his dependants, if so required, shall furnish to the employer from whom compensation is claimed such information as he or they may possess as to the names and addresses of all other employers who during the said twenty-four months employed the workman in the occupation to the nature of which the disease is due.

Denial of  
liability.

(3) If the employer alleges that the diseased was in fact contracted while the workman was in the employment of some other employer and not while in his employment, he may join such other employer as a party to the proceedings in such manner as may be provided by Rules of Court made under section 35, and, if the allegation is proved, that other employer shall be the employer from whom the compensation is to be recoverable.

Gradual  
disease.

(4) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twenty-four months employed the workman in the occupation to the nature of which the disease is due shall be liable to make to the employer from whom compensation is recoverable such contributions as in default of agreement may be settled by civil suit, or, by consent of the parties, by arbitration under the Arbitration Decree,

Notice of  
disease and  
application  
for  
compensation.

41.(1) The provisions of section 23 shall apply in respect of the recovery of compensation under this Part as they apply in respect of the recovery of compensation for an injury resulting from an accident.

Date of  
occurrence.

(2) In the application of the provisions of this Act to disablement or death caused by a disease, references to the date of the occurrence of the accident shall be construed as meaning -

(a) in the case of a disease causing disablement, the date of the certificate referred to in section 39; and

(b) in the case of death from a disease, the date of the death of the workman.

Calculation of  
compensation.

42. Compensation under this Part shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable and the monthly earnings of the workman shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated at the date of the grant of the certificate referred to in section 39.

Provided that -

(a) if the workman was not then so employed, the earnings shall be computed in such manner as is best calculated to give the rate per month at which the workman was being remunerated when he was last employed by the employer from whom compensation is recoverable;



(b) where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of his employment, or the terms of his employment, it is impracticable to compute the rate of remuneration in the manner aforementioned, regard may be had to the average monthly amount which, during the last twelve months of his employment with such employer, 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 no person so employed, by a person of a similar earning capacity in the same grade employed in the same class of employment and in the same district; and

(c) for the purpose of assessing the compensation payable in cases of permanent incapacity -

(i) where the workman was, at the date of the grant of the certificate, under the apparent age of eighteen years, his earnings shall be deemed to be such amount as, had he not contracted the disease, he would probably have received upon attaining the age of eighteen years or at the end of a period of five years after the date of the grant of the certificate, whichever calculation is more favourable to the workman; and

- (ii) where the workman was, at the date of the grant of the certificate employed under a contract of apprenticeship, improvership or learnership, his earnings shall be deemed to be such amount as, he had not contracted the disease, he would probably have received upon the completion of his apprenticeship, improvership or learnership.

Presumption as to cause of disease.

43. If a workman who becomes disable by or dies of any disease mentioned in the Schedule was within the period of twenty-four months immediately proceeding the disablement or death employed in any occupation mentioned in such Schedule opposite such disease, it shall be presumed, unless or until the contrary is proved, that the disease was due to the nature of such employment.

Saving right of workman to proceed against previous employer.

44. Nothing in this Part shall be construed as preventing compensation being recovered from any employer who employed the workman during the twenty-four months referred to in section 39, if the employer who last employed the workman during the period proves that the disease was not contracted while the workman was in his employment, in which case the provisions of sub-section (3) of section 40 shall apply.

Compensation to include medical aid.

45. For the purposes of this Part compensation shall include medical aid within the meaning of Part VIII thereof.



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PART X - GENERAL.

Contracting  
out of  
this Act.

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

Compensation  
not to be  
assignable.

47. Compensation payable under the provisions of 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.

Regulations  
Power.

48. The Minister may make rules not inconsistent with this Act for the purpose of giving better effect to the provisions thereof; and without prejudice to the generality of the foregoing power he may -

- (a) make regulations prescribing procedure, forms and fees;
- (b) make regulations prescribing anything which is to be or may be prescribed under this Act;
- (c) require employers and insurers carrying on business in Zanzibar of insuring employers against their liabilities under this Act, to make periodic or other returns as to such matters as he may think fit, and prescribing a time limit for the making of such returns;
- (d) in consultation with the Minister of Health to specify percentage or aggregate percentage of loss of earning capacity in respect of injury or combination of injuries;

- (e) in consultation with the Minister of Health to specify percentage or aggregate percentages of loss of earning capacity in respect of injury or combination of injuries caused by occupational disease;
- (f) prescribing procedure for the transfer of compensation awarded under the law relating to Workmen's Compensation in Zanzibar to beneficiaries resident or becoming resident in any part other than Zanzibar.
- (g) prescribing the manner in which injured workman shall be required to follow before he is awarded his compensation;
- (h) in consultation with the Minister for Health appoint medical practitioner who shall be responsible for treating the injured workman and for filling up the forms required.

Offences.

49. (1) Any person required to make a return by virtue of any rule made under section 40 who -

- (a) fails to make such return within the time within he is required to make it, or
- (b) makes or causes to be made a return which he knows to be false in any material particular, or
- (c) on being so required fails to give an information or explanation respecting the return which it is in his power to give,



shall be guilty of an offence and shall be liable to a fine not exceeding five hundred shillings and if the contravention in respect of which he was so convicted is continued after the conviction he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding one hundred shillings for each day on which the contravention was so continued.

Offence by company.

(2) Where a person convicted of an offence under this section is a company, the chairman and every director and every officer of the company shall be guilty of a like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

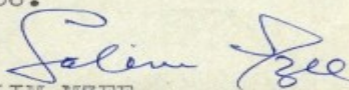
Repeal and savings.

50.(1) Workmen's Compensation, Chapter 65 of the Laws of Zanzibar is hereby repealed.

(2) Notwithstanding the repeal of the Workmen's Compensation Decree, Chapter 65 of the Laws of Zanzibar, anything done under the provision of that Decree shall be deemed to have been done under the corresponding provision of this Act.

(3) All cases pending immediately before the commencement of this Act shall be settled in accordance with the provisions of Chapter 65 of the Laws, and shall not in any way be treated under the provisions of this Act.

Passed in the House of Representatives on the 1st day of October, 1986.

  
SALIM MZEE  
ACTING CLERK TO THE HOUSE  
OF REPRESENTATIVES.