

# WORKMEN'S COMPENSATION\* ACT

Cap 220 – 25 July 1931

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### **WORKMEN'S COMPENSATION ACT**

#### **PART I – COMPENSATION**

##### **1. Short title**

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

##### **2. Liability of employers for injuries**

(1) Subject to subsection (2), where in any employment a workman suffers personal injury by accident which arises out of and in the course of the employment, his employer shall, subject to this Act, be liable to pay compensation in accordance with the First Schedule.

(2) (a) Where it is proved that the injury to a workman is attributed to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or disablement entailing 20 per cent permanent incapacity or more, be disallowed.

(b) A workman who, in the course of employment, suffers personal injury as a result of his taking action in an emergency to rescue a person or protect property, or avert or minimise damage shall be entitled to compensation notwithstanding that he has in taking such action acted in contravention of any safety rules or recklessly.

(3) In this Act—

- (a) an accident arising in the course of a workman's employment shall be deemed, in the absence of evidence to the contrary, to have arisen out of that employment;
- (b) an accident resulting in the death or disablement entailing 30 per cent permanent incapacity or more 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 the accident happened acting in contravention of an enactment applicable to his employment, or of any orders given by or on behalf of his

employer or that he was acting without instructions from his employer, where the act was done by the workman for the purpose of and in connection with his employer's trade or business.

(4) Any compensation payable under this Act shall, in addition to any amount prescribed in the First Schedule, include reasonable expenses not exceeding 600 rupees incurred by the injured workman in respect of essential hospital and medical treatment.

### **3. Persons entitled to compensation**

(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.

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

(3) Where a dependant dies before an application under this Act is made, or where an application has been made, before an agreement or award has been arrived at or made, the heirs of that dependant, unless they were in any way dependent upon the wages of the deceased workman, shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the workman.

#### **3A. Dismissal of workman**

(1) An employer shall not dismiss a workman while the workman is off work on account of injury.

(2) Any employer who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 3 months.

#### **3B. Permanent incapacity and temporary incapacity**

In this Act—

“permanent incapacity” means a permanent inability to perform the work at which the workman was employed at the time of the accident, or to earn in any other trade or form of employment, for which he may be suited, wages at a rate at least equal to his average weekly wages before the accident, and includes serious disfigurement;

“temporary incapacity” means a temporary inability to perform the work at which the workman was employed at the time of the accident.

### **4. Interpretation**

(1) In this Act—

“Minister” means the Minister to whom responsibility for the subject of labour is assigned;

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

“workman”—

(a) means, subject to subsection (2), a person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, whether the contract is expressed or implied, is oral or in writing, and whether the remuneration is

calculated by time or by work done; and

(b) does not include—

- (i) a person, not being employed to perform manual labour, whose earnings are at a rate in excess of 72,000 rupees a year;
- (ii) a person employed to perform work of a casual nature not connected with the employer's trade or business, not being a person employed for the purposes of any game or recreation, and engaged and paid by a club;
- (iii) an outworker;
- (iv) a member of the employer's family dwelling in his house;
- (v) a member of the Police Force;
- (vi) a person who contracts or sub-contracts for the carrying out of work and himself engages other persons, independently of the employer, to perform the work;
- (vii) a person engaged in plying for hire with a vehicle or vessel, the use of which is obtained from the owner under a contract of deposit, agency, loan or hire, in consideration of the payment of a fixed sum or a share in the earnings or otherwise; and
- (viii) a member of the Armed Forces of the State.

(2) Where, in any proceedings for the recovery of compensation under this Act, it appears to the Court by which the claim to compensation is to be settled 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 to do so, deal with the matter as if the injured person had at the time been a person working under a valid contract of service or apprenticeship.

[S. 4 amended by Act 10 of 1994.]

## **5. Dependants entitled to compensation**

(1) A reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants, or to his heirs or other persons to whom, or for whose benefit, compensation may be payable under this Act.

(2) The dependants of a workman entitled to claim compensation under this Act, where the injury results in death, are such of the members of the workman's family as were wholly or partly dependent on the wages of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and such other persons as were at the time of the injury, living in the household of the workman, and were wholly or partly dependent on his earnings, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his wages or, being an illegitimate child, leaves a parent or grandparent so dependent upon his wages, includes that illegitimate child and parent or grandparent, respectively.

(3) A person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position.

(4) In this Act, "member of a family", in relation to a workman, means, his spouse, parent, grandparent, stepparent, child, grandchild, stepfather, stepmother, brother, sister, half-brother and half-sister.

## **6. Interpretation of "employer"**

(1) In this Act, “employer” includes any person or body of persons corporate or unincorporate and the heirs of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, subject to section 7 (1), be deemed to continue to be the employer of the workman whilst he is working for that other person.

(2) In relation to a person employed for the purposes of any game or recreation and engaged or paid by a club, the manager or members of the managing committee of the club shall, for the purposes of this Act, be deemed to be the employer.

## **7. Workmen employed by contractors**

(1) (a) Where a person, in this section referred to as “the principal”, in the course of and in connection with his trade or business, contracts with any other person for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall, provided the notice of the accident required under section 14 is given to him, be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman has been immediately employed by him.

(b) Where compensation is claimed from or proceedings are taken against the principal under paragraph (a)—

- (i) references in this Act to the principal shall be substituted for references to the employer; and
- (ii) the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he was immediately employed.

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

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

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

## **8. Bankruptcy of employer**

(1) (a) Subject to paragraph (b), where an employer has entered into a contract with an insurer in respect of any liability under this Act to a workman, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up or a receiver, or manager of the company’s business or undertaking having been appointed, or possession having been taken, by or on behalf of the holders of debentures secured by a floating charge, of any property comprised in or subject to the charge, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactment relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and on that transfer the insurer shall have the same rights and remedies, and be subject to the same liabilities, as if he were the employer.

(b) The insurer shall not be under any greater liability to the workman than he would have been to the employer.

(2) Where the liability of the insurer to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation, or, as the case may be, he may recover the balance from the receiver or

manager.

(3) Where the compensation is a weekly payment, the amount due shall, for the purposes of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under this Act.

(4) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

## **9. Employers and insurers**

(1) Where the employer becomes insolvent, or is ordered to pay compensation under this Act, he shall, if requested, disclose—

- (a) whether he is insured against personal injury to or death of the workman employed by him; and
- (b) if so insured, the name and address of the insurer and the amount for which he is insured.

(2) When an insurer indemnifies an employer against liability to pay compensation, and has used or uses that employer's name or has acted on his behalf in any proceedings under this Act, that insurer shall be bound by the decision given on those proceedings in the same manner and to the same extent as the employer, and the insurer shall, subject to the terms and conditions of the policy of insurance subsisting between him and the employer, indemnify the employer accordingly.

## **9A. Privilege of compensation**

Where under an enactment a privilege is provided for in respect of the payment to a workman of his wages in priority to other claims, the same privilege shall be granted to the workman in respect of the payment of any compensation to which he may be entitled under this Act.

## **10. Rules for determining wages**

(1) In this Act—

“average weekly wages” shall be computed in the manner best calculated to give the rate per week at which the workman was being remunerated, but shall not include—

- (a) remuneration for overtime not habitually performed or for casual overtime remunerated at a special rate; or
- (b) any sums paid by the employer to the workman to cover any special expense entailed on the workman by the nature of his work;

“wages” means the average weekly wages of the workman before the accident, whether the wages are paid at a rate per hour, per day, per month or per year;

“year's wages” means the sum which the workman would have earned in wages in the 12 months after the accident, had he continued to be employed at the same work and on the same terms of remuneration as before the accident.

(2) Where a workman's wages are fixed at a rate calculated on work done, his wages shall be the average of his weekly earnings at similar employment on the same terms of remuneration for as long a period as possible before the accident but not exceeding 12 months.

(3) (a) Where by reason of the shortness of the time which the workman has been in the employment of the employer, or the casual nature of the employment, or the terms of the employment, it is impracticable, at the date of the accident, to compute the average

weekly wages of the workman, the average weekly wages shall be computed if possible, by having regard to the earnings during the 12 months before the accident—

- (i) of the workman at similar employment at the same terms of remuneration with another employer;
- (ii) of other workmen with the employer at similar employment on the same terms of remuneration; or
- (iii) of a person in similar employment on the same terms of remuneration in the same districts.

(b) For the purposes of paragraph (a), regard shall be had to persons whose employment has been uninterrupted by absence from work due to illness or any other unavoidable cause.

(4) Where a workman has entered into concurrent contracts of service with 2 or more employers under which he worked at one time for one employer and at another time for another employer, his average weekly wages shall be computed as if his earnings under all the contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

(5) On request of the workman to the employer liable to pay compensation, that employer shall furnish in writing a list of the earnings of the workman on which the amount of the average weekly wages may be calculated for the purpose of determining the amount of any compensation payable under this Act.

## **11. Reviews of weekly payments**

(1) Any weekly payment may be reviewed at the request of the employer or of the workman and, on such review, may be ended, diminished or increased, subject to the limitation specified in the First Schedule, and the amount of payment shall, in default of agreement, be settled by the Court subject to this Act.

(2) Where a workman was at the date of the accident under the age of 21, and the review takes place more than 6 months after the accident, and the application for the review is made before or within 6 months after the workman attains the age of 21, the amount of the weekly payment may be increased to the amount that would have been awarded if the workman had at the time of the accident been earning the weekly wage which he would probably have been earning at the date of the review had he remained uninjured.

(3) Where the review takes place more than 6 months after the accident, and it is proved that, had the workman remained uninjured and continued in the same class of employment as that in which he was employed at the date of the accident, his average weekly wages during the 12 months immediately preceding the review would, as a result of fluctuations in rates of remuneration, have been greater or less by more than 20 per cent than his average weekly wages during the 12 months before the accident (or where the weekly payment has been previously varied on a review during the 12 months before that review or the last of such reviews), the weekly payment shall be varied so as to make it such as it would have been if the rates of remuneration obtaining during the 12 months before the review had obtained during the 12 months before the accident.

## **12. Variation of weekly payments**

An employer shall not be entitled otherwise than under an agreement or a judgment of the Court to end or diminish a weekly payment except—

- (a) where a workman, to the prejudice and without the knowledge and consent of the employer, absents himself in such a manner that any notice under this Act cannot be served upon him;
- (b) where a workman resumes work at the rate of wages which he was earning

before the accident;

- (c) where a workman in receipt of a weekly payment in respect of total incapacity has actually returned to work;
- (d) where the weekly wages of a workman in receipt of a weekly payment in respect of partial incapacity have actually been increased; or
- (e) where a workman dies.

### **13. Redemption of weekly payments**

(1) Where a weekly payment has been continued for not less than 12 months, the liability for it may, on application by or on behalf of either the employer or the workman, be redeemed by the payment of a lump sum of such an amount as may be settled by the Court, subject to the limitations specified in the First Schedule.

(2) Nothing in this section shall be construed as preventing agreements being made for redemption of a weekly payment by a lump sum at any time.

## **PART II – CONDITIONS OF COMPENSATION**

### **14. Notice of accident and application**

(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless written notice of the accident has been given by or on behalf of the workman as soon as practicable after the happening of the accident, and before the workman has voluntarily left the employment in which he was injured, and unless the application for compensation with respect to the accident has been made within 6 months from the accident causing the injury, or, in case of death, within 6 months from the time of death.

(1A) (a) The want of, or any defect or inaccuracy in, a notice under subsection (1) shall not be a bar to the maintenance of the proceedings where—

- (i) the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident; or
- (ii) it is found in the proceedings for setting 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, absence from Mauritius or other reasonable cause.

(b) The failure to make an application within the time specified in subsection (1) shall not be a bar to the maintenance of the proceedings where it is found that the failure was occasioned by mistake, absence from Mauritius or other cause.

(c) The failure to give notice or make application within the time specified in subsection (1) shall not be a bar to the maintenance of the proceedings where there is an acknowledgement in writing signed by the employer or his authorised agent that he waives compliance with this section, and this section shall be waived to the extent set out in the acknowledgement.

(d) Where the employer or his authorised agent admits liability to pay compensation, it shall not be necessary for the workman to give notice under subsection (1) and the application for compensation may be made within 6 months after the date of the admission of liability.

(2) A notice in respect of an injury under this Act—

- (a) may be given—
  - (i) to the employer;

- (ii) where there is more than one employer, to one of the employers;
  - (iii) to a foreman or other official under whose supervision the workman is employed; or
  - (iv) to a person designated for the purpose by the employer;
- (b) shall give the name and address of the person injured; and
- (c) shall state in ordinary language the cause of the injury and the date on which the accident happened.

(3) The notice may be given by delivering it at, or sending it by post in a registered letter addressed to, the residence or place of business of the person to whom it is to be given.

(4) Where the employer is a body of persons, the notice may also be given by delivering it, or sending it by post in a registered letter addressed to the employer, at the office, or, where there is more than one office, at any of the offices of the body.

(5) The workman shall, if required by his employer, supply to him such further particulars of the accident and of the injury as the employer may reasonably require.

#### **14A. Employer to keep books**

(1) Every employer shall keep a book in which he shall enter the prescribed particulars of accidents happening to workmen in his employment.

(2) Every employer shall, at his own cost, cause to be medically examined any workman in his employment who, having suffered personal injury by accident which arises out of and in the course of the employment, has been absent from his work for more than one day on account of the injury.

(3) Every employer shall, within 3 days of the occurrence of an accident, resulting in the death of, or injury to, a workman in his employment, give notice to the Permanent Secretary of the Ministry, of the particulars entered in the book under subsection (1).

(4) An employer who fails to comply with this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees, unless he proves that he had no knowledge of the accident from any source.

#### **15. Conditions as to residence**

(1) Where a workman receiving a weekly payment ceases to reside in Mauritius, he shall cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature.

(2) Where the medical referee so certifies, and the injury is likely to result in a diminished earning capacity, the weekly payments shall be redeemed by a lump sum which shall be subject to the limitation specified in the First Schedule, and which, in default of agreement, shall be settled by the Court.

#### **16. Medical examination in first instance**

(1) Where a workman has given notice of an accident, or where an accident has occurred in respect of which the necessity of giving notice under this Act is dispensed with, he shall, if so required by the employer, submit himself for examination by a medical practitioner provided and paid by the employer.

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

(3) Where the workman is, in the opinion of a 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 by the workman, and the employer shall fix a time and place for

the medical practitioner named to attend on the workman and shall send notice accordingly to the workman.

(4) Where the workman refuses or wilfully neglects, to submit himself to the examination, or in any way wilfully obstructs or unnecessarily delays the examination, his right to compensation, and to take or prosecute any proceedings under this Act in relation to compensation, shall be suspended until the examination has taken place.

(5) The workman may, at his own expense, have his own medical practitioner present at an examination under this section.

## **17. Periodic medical examination**

A workman receiving weekly payments under this Act shall, if so required by the employer, from time to time but at reasonable intervals, submit himself for examination by a medical practitioner provided and paid by the employer, and section 16 shall apply to any such examination.

### **17A. Referral to medical referee**

(1) (a) Where a workman has submitted himself for examination by a medical practitioner under section 16 or 17, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within 6 days of the examination furnished the other with a copy of the report of that practitioner as to the workman's condition, in the event of no agreement between the employer and the workman as to the workman's condition or fitness for employment, the Magistrate of the Industrial Court, on application made to the Court by both parties, or subject to appeal to the Supreme Court, by one of the parties, may refer the matter to a medical referee.

(b) Where the application under paragraph (a) is made by one of the parties, the Magistrate of the Industrial Court, or on appeal the Supreme Court, if of opinion that, owing to the exceptional difficulty of the case or for any other sufficient reason, the matter ought to be settled in default of agreement by the Magistrate of the Industrial Court, shall refuse to allow the reference.

(2) The medical referee to whom the matter is referred under subsection (1) shall, in accordance with regulations made by the President, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

(3) Where there is no agreement between the employer and the workman as to whether, or to what extent, the incapacity of the workman is due to the accident, this section shall, subject to any regulations made by the President, apply as if the question were a question as to the condition of the workman.

(4) Where a workman, on being required to do so, refuses to submit himself for examination by a medical referee to whom the matter has been referred under this section, or in any way obstructs the medical referee, his right to compensation, and to take or prosecute any proceeding under this Act, in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until the examination has taken place.

(5) The Judges may make rules prescribing the manner in which documents are to be furnished or served, and applications made, under this section, and the forms to be used for those purposes.

[S. 17A amended by Act 48 of 1991.]

### **17B. False certificate by medical practitioner**

Any medical practitioner who, in any certificate or report delivered as a result of a medical examination made under this Act, makes a statement as to the nature of an injury

or the consequences of an accident knowing it to be false or not believing it to be true, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

### **18. Suspension of right to compensation**

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

### **19. Agreement as to compensation**

(1) An employer and a workman may, after an injury in respect of which a claim to compensation has arisen, agree in writing as to an amount to be paid by the employer as compensation in respect of the permanent partial incapacity or permanent total incapacity of the workman resulting from that injury.

(2) Subject to subsection (2A), where an amount of compensation has been agreed under subsection (1), or where the amounts of any weekly payment have been agreed or have been varied, suspended, or ended, or where any other matter under this Act has been determined by agreement, the Court may, where application is made by any person interested within 3 months after the date of the agreement, cancel it and may make such order (including an order to any sum already paid under the agreement) as in the circumstances may be thought just.

(2A) The Court may act under subsection (2) only where it is proved that—

- (a) the sum paid or to be paid was or is grossly inadequate or excessive;
- (b) the agreement was obtained by fraud, undue influence, misrepresentation or other improper means sufficient at law for avoiding an agreement; or
- (c) the agreement was entered into in ignorance of, or under a mistake as to the true nature of the injury.

(3) An agreement under this section may, on application to the Court, be made a judgment of the Court under this Act.

(4) Where it is desired to have an agreement made a judgment of the Court, a memorandum of the agreement shall be sent by any interested party to the Magistrate of the Industrial Court who shall, subject to subsection (5), on being satisfied as to its genuineness, record the memorandum in a special register, and the memorandum shall for all purposes be enforceable as a judgment of the Court.

(5) (a) No memorandum shall be recorded before 7 days after the despatch, by registered post, by the clerk of the Court of notice to the parties interested.

(b) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer proves by affidavit that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of the memorandum, the memorandum shall only be recorded, if at all, on such terms as the Magistrate under the circumstances, thinks just.

### **20. Payment of compensation into Court**

(1) (a) Subject to paragraph (b), the compensation payable in the case of death shall, unless otherwise ordered, be paid into the Court, and the receipt of the Court shall be a sufficient discharge in respect of the amount paid.

(b) Where a workman leaves no dependants, the payment under paragraph (a) may be made to his heirs, or, where he has no heirs, to the person to whom the expenses of medical attendance and burial are due.

(c) The aggregate amount of expenses of medical attendance and burial allowed

under paragraph (b) shall be 200 rupees.

(2) Where a weekly payment is payable under this Act to a person under a legal disability, the Court may, on an *ex parte* application, order that the weekly payment be paid during the disability into Court.

## **21. Compensation to be privileged**

The amount due in respect of any compensation under this Act shall be secured—

- (a) on movables, by a privilege ranking next after the privileges enumerated in article 2148 of the Code Civil Mauricien;
- (b) on immovables, by a privilege ranking next after the mortgages inscribed before the date of the accident.

## **PART III – ALTERNATIVE REMEDIES**

### **22. Remedies against employer**

(1) Where an injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible—

- (a) nothing in this Act shall affect any civil liability of the employer;
- (b) a claim for compensation may be made under this Act or proceedings under the Code Civil Mauricien may be taken against the employer; and
- (c) the employer shall not be liable to pay in respect of the same incapacity or death, both compensation under this Act and damages under the Code Civil Mauricien.

(2) Where, within the time limited for taking proceedings under this Act, an action is brought to recover damages under the Code Civil Mauricien for injury caused by an accident, and it is determined in that action or on appeal that the injury is one for which the employer is not liable in that action, but that he would have been liable to pay compensation under this Act, the action shall be dismissed.

(3) Where an action is dismissed under subsection (2) the Court in which the action is tried, or, if the determination is the determination on an appeal, the Supreme Court shall, notwithstanding the Industrial Court Act, where the plaintiff chooses, proceed to assess the compensation, but may deduct from it all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

(4) In any proceedings under subsections (1) to (3), where the Court assesses the compensation, it shall give a certificate of the compensation it has awarded and the directions it has been given as to the deduction of costs, and that certificate shall have the force and effect of, and shall be registered as, an agreement under this Act.

(5) The Supreme Court may, instead of itself assessing the compensation, remit the case to the Magistrate of the Industrial Court for the assessment of the compensation, and in such case may order the Magistrate to deduct from the amount of compensation assessed by him all or part of the costs which have been caused by the plaintiff bringing the action instead of proceeding under this Act.

(6) (a) No private agreement as to the amount of compensation to be paid or any sum received out of Court by way of compensation under this Act shall prevent a workman from proceeding under the Code Civil Mauricien and any workman who has instituted proceedings under this Act may, at any time before judgment, withdraw his action and proceed under the Code Civil Mauricien.

(b) Costs of the previous action, and any amount received as compensation, shall be deducted from any sum assessed by the Court either as damages under the Code Civil Mauricien or as compensation under this Act.

### **23. Remedies against employer and third party**

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

- (a) the workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act, but shall not be entitled to recover both damages and compensation; and
- (b) where the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under section 7, shall be entitled to be indemnified by the person so liable to pay damages, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by the Court.

### **24. Workmen employed by State**

(1) This Act shall apply to workmen employed by, or under, the State in the same way and to the same extent as if the employer were a private person, except in the case of members of the Armed Forces of the State.

(2) In the application of this Act to a workman to whom this section applies, where provision exists by enactment for the grant of a pension, gratuity or award to the workman in the case of injury received by him in the discharge of his duties or to any person who, in the event of the death of the workman resulting from the injury, would be entitled as a dependant to compensation under this Act, in the assessment of compensation under this Act in respect of an injury arising out of and in the course of the employment of the workman, the amount contributed out of public funds towards the pension, gratuity or award under that enactment shall be taken into consideration, and corresponding reductions shall be made in the amount which the workman or dependant would otherwise have been awarded as compensation under this Act.

### **25. Local authorities**

(1) In the application of this Act to workmen in the employment of a local authority, the exercise and performance by it of its powers and duties conferred and imposed by enactment, shall be regarded as the trade, business, or undertaking of that authority.

(2) Section 24 shall apply in the same way as it applies to the State in respect of a workman in the employment of a local authority, where provision exists by enactment for the grant of a pension or gratuity to the workman in the case of an injury received by him in the discharge of his duties, or to any other person in the event of the workman's death resulting from the injury.

(3) In this section, "local authority" has the same meaning as in the Local Government Act.

[S. 25 amended by Act 48 of 1991; s. 165 (24) of Act 36 of 2011 w.e.f. 15 December 2011.]

### **26. Persons employed on ships**

(1) Subject to subsection (2), this Act shall apply to masters, seamen and apprentices to the sea service, where they are workmen and are members of the crew of a ship registered in Mauritius, or a Commonwealth ship or vessel of which the owner, or where there is more than one owner, the managing owner or manager resides or has his principal place of business in Mauritius.

(2) (a) The notice of accident and the claim for compensation may, except where the person injured is the master, be given to the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship, it shall not be necessary to give any notice of the accident.

(b) In the case of the death of the master, seaman or apprentice, the application for compensation shall be made within 6 months after news of the death has been received by the claimant.

(c) Where an injured master, seaman or apprentice is discharged or left behind outside Mauritius, depositions about the circumstances and nature of the injury may be taken by a Judge or Magistrate in a Commonwealth country, and by any Mauritius consular officer in a foreign country, and where so taken shall be transmitted by the person by whom they are taken to the President, and the depositions or certified copies of them shall in any proceedings for enforcing the claim be admissible in evidence.

(d) In case of the death of a master, seaman or apprentice, who leaves no dependants, no compensation shall be payable, if the owner of the ship is liable to pay the expenses of burial.

(e) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under any enactment relating to merchant shipping, liable to defray the expenses of maintenance of the injured master, seaman or apprentice.

(f) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full, but any limitation on the owner's liability shall apply to the amount recoverable by way of indemnity under section 23 of this Act as if the indemnity were damages for loss of life or personal injury.

(g) —

(3) This Act shall also apply to a person who is not a master, seaman or apprentice to the sea service, employed on board any ship specified in this section where he is employed for the purpose of the ship or of any passengers or cargo or mails carried by the ship, and if he is otherwise a workman.

(4) In this Act—

“manager”, in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

“seaman”, “ship” and “vessel” have the same meaning as in the Merchant Shipping Act.

[S. 26 amended by Act 48 of 1991.]

## **27. Special terms in contract of employment**

(1) Notwithstanding this Act, a person in respect of whom a medical practitioner has certified that, by reason of old age or serious physical infirmity or any previous injury, he is specially liable to meet with an accident or to sustain a serious injury if employed as a workman at any work may, in entering into a contract of employment with an employer, agree with the employer that the employer shall pay less than the amount payable under this Act in respect of the injury or death of that person.

(2) No agreement under subsection (1) shall be valid and effectual, unless it has been approved by the Permanent Secretary of the Ministry responsible for the subject of labour, and unless the amount agreed to be paid in respect of the injury or death is at least one half the amount that would otherwise be payable as compensation under this Act.

## **28. Contracting out prohibited**

Subject to section 27, any provision in a contract of employment by which a workman or his dependants relinquish any right to compensation under this Act, or to damages under the Code Civil Mauricien, whether for the workman or for any dependant, shall be null and void.

## **PART IV – PROCEDURE – MEDICAL ASSISTANCE**

## **29. Proceedings in default of agreement**

Where an employer on whom notice of the accident has been served under this Act does not, within 2 weeks after the receipt of the notice, agree in writing with the workman as to the amount of compensation to be paid, the workman may make application under this Act for enforcing his claim to compensation.

## **30. Dispute to be determined by Magistrate**

All claims for compensation under this Act and any matter arising out of the proceedings shall be determined by the Magistrate of the Industrial Court, whatever be the amount claimed.

## **31. Mode and form of application**

(1) A workman or an employer, who desires the determination of a question arising out of an accident in which compensation is or might be claimed, shall lodge with the clerk of the Industrial Court a written application in the prescribed form accompanied by particulars containing—

- (a) a concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims, or the question which he desires to have determined;
- (b) the full name and address of the applicant and of his attorney or agent; and
- (c) the name and address of the respondent.

(2) Where the application is made by an employer, it shall be accompanied by—

- (a) a statement as to whether he admits his liability to pay compensation or denies liability, and whether the admission or denial is total or partial;
- (b) where he admits or denies liability partially, a statement of the extent to which he admits or denies liability; and
- (c) in the case of a denial of liability, the ground of denial.

(3) Where the clerk of the Court is satisfied that the applicant is, owing to illiteracy, blindness or any other physical cause, unable to furnish the information required, he shall himself fill in the application and particulars of the prescribed form.

## **32. Service on respondent**

(1) (a) As soon as an application, together with the accompanying particulars and statement prescribed, has been lodged, the clerk of the Court shall forthwith cause a copy of it to be served on the respondent in the manner prescribed, together with a notice informing the respondent that he must lodge with the clerk of the Court an answer as prescribed in subsection (2) within the period prescribed therein, and that in default of his complying with subsection (2) or of his appearing at the time and place fixed in the notice, such order may be made under this Act as the Magistrate thinks just and expedient.

(b) Except with the written consent of the respondent communicated to the clerk of the Court, not less than 14 clear days shall elapse between the date of the service of the notice on the respondent and the date fixed for hearing the application.

(2) Where the respondent intends to oppose an application, he shall, within 7 days after service of the notice, or within such extended period as the Magistrate may upon special request allow, lodge with the clerk of the Court a written answer containing a concise statement of the extent and ground of his opposition.

(3) (a) The Magistrate may, at any time before the determination of the question in dispute and on such terms as to adjournment or as to costs as he thinks just, allow an application, or any particulars or statement accompanying an application, or any answer

to an application, to be amended.

(b) Any amendment shall be lodged with the clerk of the Court, who shall cause it to be served on the opposite party in the manner prescribed.

### **33. Onus of proof**

Where a workman is incapacitated for more than 12 months after the date of the accident, the burden shall be on the employer to show that the incapacity is not permanent.

### **34. Jurisdiction of Magistrate**

(1) Unless otherwise expressly provided in this Act, the Magistrate shall, in connection with any question to be determined under this Act, have all the powers and jurisdiction exercisable, and be subject to all the duties and obligations to be performed, by a Magistrate's Court of the district in or in connection with civil actions in that Court, and the law, rules and practice in civil actions shall apply with any necessary modification.

(2) An order made by a Magistrate under this Act may be enforced as if it were a judgment or order of the Magistrate's Court of the district.

### **35. Adjournment of hearing**

(1) Where a workman at the hearing of an application is incapacitated by reason of the injury in respect of which the application is made, and it is uncertain whether the incapacity is temporary or permanent, or if permanent, whether it is partial or total, the Magistrate may, if he is satisfied that the workman is entitled to compensation in the event of the incapacity being permanent—

- (a) adjourn the hearing for a period or periods, not exceeding 12 months in all, reckoned from the date of the accident causing the injury; and
- (b) make an interim order that the employer shall, in the meantime, pay such compensation to the workman as is provided by the First Schedule in the case of temporary incapacity for work or permanent partial incapacity for work, as the case may be.

(2) Where a workman at the hearing of an application is not incapacitated, but there is reason to believe that the injury sustained by him may ultimately result in his permanent or total incapacity for work or in his death, the Magistrate may adjourn the hearing for a period or periods, not exceeding 12 months in all, reckoned from the date of the accident causing the injury, so that the workman may retain his right to recover compensation in the case of permanent incapacity, partial or total, resulting ultimately from the injury, or the dependants retain their right to recover compensation in the event of the workman's death.

#### **35A. Attorney's fees**

A person who acts as attorney for a workman in any proceedings under this Act shall be entitled to such fees as may be awarded by the Court, but subject to this Act, no attorney shall claim, or receive, as fees, from a workman any money or other reward for any act done or services rendered in any such proceedings.

#### **35B. Medical assistance**

(1) (a) Every employer shall furnish such appliances and maintain such services, for the rendering of first aid to his workmen in case of accident, as may be prescribed in respect of the class of business, trade or calling in which he is engaged.

(b) Any employer who contravenes this section shall commit an offence and shall,

on conviction, be liable to a fine not exceeding 100 rupees.

(2) (a) Where a workman has suffered an injury necessitating his removal to his residence or to a hospital, the employer shall provide at his own expense the necessary means of conveyance for the removal of the workman.

(b) Any employer who fails to comply with this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100 rupees and shall, in addition be liable to pay to the workman the reasonable expenses incurred on the occasion of the removal, as determined by the Court.

## **PART V – OCCUPATIONAL DISEASES**

### **36. Permanent Secretary may institute proceedings**

(1) The Permanent Secretary of the Ministry responsible for the subject of labour, or any person authorised by him in writing in that behalf, may institute any proceedings in his own name on behalf of a workman in respect of an application for compensation under this Act.

(2) Any costs awarded against the Permanent Secretary in any such proceedings shall be paid out of the Consolidated Fund.

### **36A. Interpretation**

In sections 37 to 38A, “certifying surgeon” means a medical practitioner or dentist appointed by the President for the purposes of this Act.

[S. 36A amended by Act 48 of 1991.]

### **37. Compensation for occupational disease**

(1) Subject to subsection (2), where—

- (a) a certifying surgeon certifies that a workman is suffering from a disease mentioned in the Second Schedule, and is disabled by it from earning full wages at the work at which he was employed; or
- (b) the death of a workman is caused by a disease specified in subsection (2) and the disease is due to the nature of any employment in which the workman was employed at any time within the 12 months before the disablement or death, whether under one or more employers,

he or his dependants shall be entitled to compensation under this Act as if the disease, disablement or death, were a personal injury by accident arising out of, and in the course of that employment.

(2) (a) The disablement or death shall be treated as the happening of the accident.

(b) Where it is proved that a workman at the time of entering the employment, wilfully and falsely represented himself as not having previously suffered from the disease, compensation shall not be payable.

(c) Subject to subsection (2A), the compensation shall be recovered from the employer who last employed the workman during the specified 12 months in the employment to the nature of which the disease was due.

(d) The amount of compensation shall be calculated with reference to the earnings of the workman under the employer from whom compensation is recoverable in the manner specified in the First Schedule.

(e) The employer in whose service the workman was last engaged during the specified period of 12 months, and to whose employment the disease was due, shall be the person to whom the notice of death or disablement shall be given, notwithstanding

that the workman has voluntarily left his employment.

(f) (i) Where an employer or a workman is dissatisfied with the grant or refusal of a certificate of disablement by the certifying surgeon, the matter shall be referred to a medical referee appointed by the Minister.

(ii) The decision of the medical referee shall be final.

(2A) (a) Where a workman or his dependants are required by the last employer against whom compensation is sought to furnish the names and addresses of any person besides him who employed the workman at any time during the 12 months before the disablement or death, the workman or his dependants shall furnish the information he or they may possess concerning those names and addresses to the last employer.

(b) Where under paragraph (a) information is not tendered, or the information tendered is incomplete or insufficient to enable the last employer to take proceedings under paragraph (c) the last employer, on proving that the disease was not contracted while the workman was in his employment, shall not be liable to pay compensation.

(c) (i) Where the last employer alleges that the disease was in fact contracted while the workman was employed by some other person, he may join that other person as a party to the proceedings taken under this Act governing cases where an agreement between the parties cannot be reached, and where the fact alleged is proved, compensation shall be recoverable from that other party and not from the last employer.

(ii) Where the disease is proved to have been contracted through a gradual process, any other person in the service of whom the workman may have been employed during the specified period of 12 months shall be liable to make contributions to the last employer from whom compensation is recoverable.

(iii) The amount of contributions under subparagraph (ii) may be determined in proceedings taken under this Act governing cases where the amount of compensation cannot be settled by agreement.

(3) (a) Subject to paragraphs (b) and (c), for the purposes of this section, the date of disablement shall be the date the certifying surgeon attests as being the date on which the disablement commenced or, where he is unable to do so, the date on which the certificate is given.

(b) Where a medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine.

(c) Where a workman dies without having obtained a certificate of disablement, or is not in receipt of a weekly payment on account of disablement at the time of death, the date of death shall be reckoned as the date on which the disablement commenced.

(4) The Minister may make regulations for extending this Act to diseases and processes not specified in the Second Schedule, and to injuries due to the nature of any employment specified in the regulations, not being injuries by accident, either without modification or subject to such modifications as may be contained in the regulations.

(5) Nothing in sections 36 to 38A shall affect the right of a workman to recover compensation in respect of a disease to which sections 36 to 38A do not apply, if the disease is a personal injury by accident within the meaning of this Act.

### **38. Presumption**

(1) Where a workman at, or immediately before, the date of disablement, was employed in a process specified in the Second Schedule, and the disease contracted corresponds to the process in the Second Schedule, the disease, except where the certifying surgeon attests that it was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(2) (a) Where a workman claims to be suffering from, and disabled by, a disease to which sections 36 and 37 apply, the employer may agree with the workman that he is liable to pay compensation, without requiring the workman to obtain the certificate of the certifying surgeon mentioned in those sections, and the workman shall be entitled to compensation as for injury by accident from the date of the agreement, or from such other date as may be agreed.

(b) An agreement under paragraph (a) may be recorded under section 19, and shall be enforceable against the employer in the same manner and subject to the same provisions as an agreement to pay compensation in case of an injury by accident.

### **38A. Notification of occupational disease**

(1) An employer shall, within 3 days of the receipt of a certificate duly signed by a certifying surgeon to the effect that a workman employed by him suffers from a disease—

- (a) specified in the Second Schedule; or
- (b) which, in the opinion of the certifying surgeon who issued the certificate, is due to the nature of the employment of the workman,

forward, to the Permanent Secretary of the Ministry, a copy of the medical certificate together with a statement showing the nature of the work on which the workman was employed for the period of 12 months before the date on which the certificate was issued by the certifying surgeon.

(2) Any employer who fails to comply with this section shall, on conviction, be liable to a fine not exceeding 500 rupees.

## **PART VI – MISCELLANEOUS**

### **39. Minister may appoint medical referees**

(1) The Minister may appoint qualified medical practitioners to be medical referees for the purposes of this Act, and the remuneration of, and other expenses incurred by, medical referees under this Act, shall, subject to regulations made by the Minister, and except so far as they are defrayed by fees received from the parties under this Act, be defrayed from the Consolidated Fund.

(2) Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurer interested, he shall not act as medical referee in that case.

### **40. Charging or assigning weekly payments**

A weekly payment payable under this Act, or a sum paid by way of redemption, 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 it.

### **41. Returns as to compensation**

(1) Every employer in any industry to which the President may direct that this section shall apply, and every insurer who carries on the business of insuring employers in respect of any liability to a workman under this Act, shall, on or before such day in every year as the President may direct, send to the President a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Act during the previous year, and the amount of the compensation, together with such other particulars as to the compensation as the President may direct.

(2) Any employer who fails to comply with this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100 rupees.

[S. 41 amended by Act 48 of 1991.]

## 42. Regulations

The Minister may make such regulations as he thinks fit for the purposes of this Act.

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### First Schedule

[Sections 2, 11, 13, 35 and 37]

1. (a) Subject to subparagraph (aa), the amount of compensation under this Act for temporary incapacity for work shall be—

- (i) where the incapacity is total, the payment weekly during the incapacity of an amount not exceeding 80 per cent of the workman's average weekly wages from the employer before the accident; and
- (ii) where the incapacity is partial, the payment weekly during the incapacity of an amount not exceeding one half the difference between the workman's average weekly wages from the employer before the accident and the average weekly wages which he is earning or is able to earn in some suitable form of employment or business after the accident.

(aa) (i) The weekly payment under subparagraph (a) shall in no case—

- (A) exceed 100 rupees; and
- (B) be made for a period exceeding 36 months after the date of the accident.

(ii) Where a workman, who has so far recovered from the injury as to be fit for employment of a certain kind, proves to the satisfaction of the Court that he has taken all reasonable steps to obtain, and has failed to obtain, such employment and that his failure to obtain such employment is a consequence wholly or mainly, of the injury, the Court may order that his incapacity shall, for the purposes of this Act, continue to be treated as temporary total incapacity for such period, and subject to such conditions, as may be provided by the order, without prejudice to the right of review conferred by this Act.

(b) Subject to subparagraph (bb), the amount of compensation under this Act for permanent incapacity for work shall be—

- (i) where the incapacity is total, an amount not exceeding 8 years' wages at the rate of the workman's average weekly wages before the accident;
- (ii) where the incapacity is partial—
  - (A) in the case of an injury specified in paragraph 5, such percentage of the compensation that would have been payable in the case of permanent total incapacity as is specified as being the percentage of the loss of earning capacity caused by that injury; and
  - (B) in any other case, such percentage of the compensation that would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury, but so that the amount of compensation does not exceed 70 percent of 8 years' wages.

(bb) Where under subparagraph (b) the workman was at the date of the accident under the age of 21 and it appears that but for the injury his earning capacity would probably have increased during the 8 years after the accident, any amount under 3,000 rupees payable in respect of permanent partial incapacity may be increased to a sum not exceeding 3,000 rupees and any amount under 4,000 rupees payable in respect of permanent total incapacity may be increased to an amount not exceeding 4,000 rupees.

(c) Subject to subparagraph (d) where the workman dies from the injury caused by the accident, the amount of compensation under this Act shall be—

- (i) if he leaves dependants wholly dependent upon his wages, an amount not exceeding 6 years' wages at the rate of the workman's average weekly wages before the accident;
- (ii) if he does not leave any such dependants wholly dependent, but leaves any dependants in part dependent on his wages, an amount not exceeding 6 times the sum or value of the benefits received by such dependants from the workman during the 12 months immediately preceding the accident or which would but for the death or incapacity caused by the accident, have been reasonably expected to be received by such dependants from the workman out of his wages, during the 12 months immediately after the accident, whichever can be best calculated to give the amount or value of the

benefits; and

- (iii) if he leaves no dependants, the reasonable expenses of the medical attendance upon him during his last illness caused by the accident and the expenses of his burial, not exceeding 500 rupees.

(d) The employer shall not be liable to pay in all as compensation for the death of a workman, more than 6 years' wages at the rate of the deceased workman's average weekly wages before the accident.

2. In fixing the amount of any compensation the Court may have regard to any payment, allowance or benefit which the workman may have received from the employer after the date of the accident, not being a sum payable to the workman under paragraph 1.

3. Where the workman has already received, or is entitled to receive, under an order or agreement, an amount in satisfaction or otherwise of his claim for incapacity, but subsequently dies from the injury which incapacitated him—

(a) the dependents of the workman shall be entitled to recover the difference, if any, between the amount paid or due under this Act to the workman in respect of the incapacity and the amount payable under this Act to the dependants in respect of the workman's death;

(b) the employer shall not be liable to pay in the aggregate to the dependants in respect of the death of the workman an amount greater than the difference specified in subparagraph (a).

4. Where a workman receives compensation on the ground of permanent incapacity for work and that compensation is based on a diminished capacity to earn wages, in the event of a further accident causing incapacity, or death, happening to the workman, he shall not in any claim for compensation (unless he was at the time of the previous accident under the age of 21) be deemed to be earning wages in excess of the diminished capacity to earn wages which was taken as a basis in arriving at the amount of compensation payable in respect of the previous accident.

5. The percentage of loss of earning capacity shall be in accordance with the following table—

| <i>Injury</i>   | <i>Percentage Incapacity</i> |
|---|------------------------------|
| Loss of 2 limbs                                       | 100                          |
| Loss of both hands, or of all fingers and both thumbs | 100                          |
| Total loss of sight                                   | 100                          |
| Total paralysis                                       | 100                          |
| Injuries resulting in being permanently bedridden     | 100                          |
| Any other injury causing permanent total disablement  | 100                          |
| Loss of arm at shoulder                               | 60                           |
| Loss of arm between elbow and shoulder                | 50                           |
| Loss of arm at elbow                                  | 47½                          |
| Loss of arm between wrist and elbow                   | 45                           |
| Loss of hand at wrist                                 | 42½                          |
| Loss of 4 fingers and thumb of one hand               | 42½                          |
| Loss of 4 fingers                                     | 35                           |
| Loss of thumb—  |                              |
| both phalanges  | 25                           |
| one phalanx   | 10                           |
| Loss of index fingers—                                |                              |
| 3 phalanges   | 10                           |
| 2 phalanges   | 8                            |
| one phalanx   | 4                            |
| Loss of middle finger—                                |                              |
| 3 phalanges   | 6                            |
| 2 phalanges   | 4                            |
| one phalanx   | 2                            |
| Loss of ring finger—                                  |                              |
| 3 phalanges   | 5                            |

|   |           |
|---|-----------|
| 2 phalanges                                       | 4         |
| one phalanx                                       | 2         |
| Loss of little finger—                            |           |
| 3 phalanges                                       | 4         |
| 2 phalanges                                       | 3         |
| one phalanx                                       | 2         |
| Loss of metacarpals—                              |           |
| first or second (additional)                      | 3         |
| third, fourth or fifth (additional)               | 2         |
| Loss of leg at hip                                | 70        |
| Loss of leg between knee and hip                  | 40 to 70  |
| Loss of leg below knee                            | 30 to 42½ |
| Loss of toes—                                     |           |
| all   | 15        |
| great, both phalanges                             | 5         |
| great, one phalanx                                | 2         |
| other than great, if more than one toe lost, each | 1         |
| Eye: loss of—                                     |           |
| whole   | 30        |
| sight of  | 30        |
| sight of – except perception of light             | 30        |
| lens of   | 20        |
| Loss of hearing—                                  |           |
| both ears   | 50        |
| one ear   | 7         |

The total permanent loss of use of member shall be treated as loss of member.

In the case of a right-handed workman an injury to the left arm or hand and in the case of a left-handed workman, to the right arm or hand, may in the discretion of the Magistrate be rated at 90 per cent of the percentage in respect of injury to an arm or hand.

## Second Schedule

[Sections 37, 38 and 38A]

| <i>List and Description of Diseases and Toxic Substances</i>                                    | <i>List and Description of Corresponding Trades, Industries or Processes</i>  |
|---|---|
| Anthrax infection   | Work in connection with animals infected with anthrax. Handling of animal carcasses or parts of such carcasses including hides, hoofs and horns. Loading and unloading or transport of merchandise. |
| Cataract caused by exposure to rays from molten or red-hot metal                                | Any process in the manufacture of iron or steel normally involving exposure to rays from molten or red metal.   |
| Pathological manifestations due to<br>(a) radium and other radioactive substances<br>(b) X-rays | Any process involving exposure to the action of radium, radioactive substances, or X-rays.  |
| Poisoning by arsenic or its compounds and its sequelae  | Any process involving the production, liberation or utilisation of arsenic or its compounds.  |
| Poisoning by benzene or its homologues, their nitro- and amido-derivatives, and its sequelae    | Any process involving the production, liberation or utilisation of benzene or its   |

|   |  |
|---|--|
|   | homologues, of their nitro- and amido derivatives.   |
| Poisoning by halogen derivatives of hydrocarbons of the aliphatic series  | Any process involving the production, liberation or utilisation of halogen derivatives of hydrocarbons of the aliphatic series.  |
| Poisoning by lead, its alloys or compounds and their sequelae   | <p>Handling of ore containing lead, including fine shot in zinc factories.</p> <p>Casting of old zinc and lead in ingots.</p> <p>Manufacture of articles made of cast lead or of lead alloys.</p> <p>Employment in the polygraphic industries. Manufacture of lead compounds. Manufacture and repair of electric accumulators. Preparation and use of enamel containing lead. Polishing by means of lead files or putty powder with a lead content.</p> <p>All painting operations involving the preparation and manipulation of coating substances, cements or colouring substances containing lead pigments.</p> |
| Poisoning by mercury, its amalgams and compounds and their sequelae   | <p>Handling of mercury ore. Manufacture of mercury compounds. Manufacture of measuring and laboratory apparatus. Preparation of raw materials for the hatmaking industry. Hot gilding. Using of mercury pumps in the manufacture of incandescent lamps. Manufacture of fulminate of mercury primers.</p>   |
| Poisoning by phosphorous or its compounds and its sequelae  | Any process involving the production, liberation or utilisation of phosphorous or its compounds.   |
| Primary epitheliomatous cancer of the skin  | Any process involving the handling or use of tar, pitch or bitumen, mineral oil, paraffin or the compounds, products or residues of these substances.  |
| Silicosis with or without pulmonary tuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death | Industries or processes involving exposure to the risk of silicosis.   |
| Telegraphist's cramp  | Use of telegraphic instruments.  |
| Writer's cramp  |  |

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