

Tanzania

Workers' Compensation Act Chapter 263

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Tanzania

Workers' Compensation Act Chapter 263

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[Ords Nos. 43 of 1948; 41 of 1949; 25 of 1953; 28 of 1954; Acts Nos. 60 of 1966; 43 of 1967; 41 of 1969; 5 of 1971; 17 of 1983; 13 of 1991]

An Act to provide for compensation to workers for injuries suffered in the course of their employment.

Part I – Preliminary provisions (ss. 1-4)

1. Short title and application

This Act may be cited as the Workers' Compensation Act and, subject to the proviso to subsection (1) of section 2, shall apply to any employment, or to any employment in any specified area of Tanzania as the Minister may by notice published in the *Gazette* direct.

2. Meaning of "worker"

- (1) In this Act, unless the context otherwise requires, the expression "worker", subject to section 4 and the proviso to this subsection, means any person who has, either before or after the commencement of this Act, entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, or otherwise, whether the contract is express or implied, is oral or in writing, whether the remuneration is calculated by time or by work done, and whether by the day, week, month or for any longer period:

Provided that the following persons are excepted from the definition of "worker"—

- (a) any person who is covered by any other compensation arrangement by virtue of this employment:

Provided that such person or his beneficiary may opt either for compensation arrangements under this Act or for that other arrangement, but not both;

- (b) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or
- (c) an outworker; or
- (d) a tributer; or
- (e) a member of the employer's family dwelling in the employer's house or the curtilage thereof; or
- (f) any class of person who the Minister may by order declare not to be a worker for the purposes of this Act.

- (2) If in any proceeding 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.
- (3) Any reference to a worker who has been injured shall, unless the context otherwise requires, where the worker is dead, include a reference to his legal personal representative, or to his dependants or any of them or to the Attorney-General or such other officer as the Minister may appoint to act on behalf of the dependants of the worker.

3. Interpretation

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

"**compensation**" means compensation as provided for by this Act;

"**Court**" means a court of the Resident Magistrate:

Provided that the Minister may by order declare that in any area of Tanzania or for any case or class of cases proceedings under this Act may be brought in any other court;

"**dependants**" means those members of the family of a worker 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 worker, 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 necessities of life suitable for person in his class and position;

"**earnings**" include wages and any allowance in respect of increased cost of living paid to the worker by the employer and the value of any food, fuel or quarters supplied to the worker 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, or 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 worker towards any pension or provident fund, or a sum paid to a worker to cover any special expenses entailed on him by the nature of his employment;

"**East African Countries**" means Kenya, Tanzania and Uganda;

"**employer**" includes the Government and any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker 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 worker whilst he is working for that other person; and in relation to a person employed for the purposes of any game or recreation and engaged or paid through 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;

"**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 President 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 Tanzania or, with the approval of the Director of Medical Services,

outside Tanzania, and the supply, maintenance, repair and renewal of any artificial appliances or apparatus;

"**medical practitioner**" in this Act other than in Part IV means a medical practitioner registered or licensed under the provisions of the Medical Practitioners and Dentists Act ¹, and in Part IV thereof, means a medical practitioner registered under the said Act;

"**member of the family**" means the wife or where the marriage was a polygamous marriage each of the wives, husband, father, mother, grandfather, grandmother, step father, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, half sister and includes an infant child whom the worker has accepted as a member of his family and every other person who would on the death of the worker be entitled to succeed to his (otherwise than under a will) in accordance with the law of succession to the estate of the worker; and a person is deemed to be the father or mother or son or daughter of the worker notwithstanding that he or she is or was related to him illegitimately or in consequence of adoption according to the law;

"**Minister**" means the Minister responsible for labour matters;

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

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

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

"**policy of insurance**" includes a cover note;

"**scheduled disease**" means any disease specified in the Third Schedule to this Act;

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

Provided that permanent total incapacity shall be deemed to result from an injury or from any combination of injuries specified in the Second Schedule to this Act where the percentage or aggregate percentage of the loss of earning capacity as specified in that Schedule against such injury or injuries, amounts to one hundred *per centum* or more;

"**tributer**" means a person who is granted permission to win minerals, receiving a proportion of the minerals won by him or the value thereof.

- (2) The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this Act, be deemed to be the trade or business of such local or other public authority.

¹

4. Application to workers employed under the Government

This Act shall subject to the provisions of section 25, apply to workers employed by or under the Government in the same way and to the same extent as if the employer were a private person, except in the case of—

- (a) members of the Defence Forces in their employment as such; and
- (b) persons in civil employment other than in the Government of Tanzania or who have been engaged in a place outside the Country:

Provided that this Act shall not apply in the case of a worker in, or selected for appointment to, the Service of the Government of Tanzania before the date upon which this Act comes into operation where, in consequence of injury received by any such worker in the discharge of his duties, a pension or gratuity which would not be payable if such injury were received otherwise, is paid to him or, in the case of his death, to any of his dependants as defined in the Act, under any Act or regulation providing for the grant of such pension or gratuity.

Part II – Compensation for injury (ss. 5-36)

5. Employer's liability for compensation for death or incapacity resulting from accident

- (1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall be liable to pay compensation in accordance with the provisions of this Act:

Provided that—

- (a) the employer shall not be liable under this Act in respect of any injury, other than an injury resulting in permanent partial incapacity, which does not incapacitate the worker for a period of at least 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 worker is attributable to the serious and wilful misconduct of that worker, 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.

- (2) For the purposes of this Act an accident shall be deemed to arise out of and in the course of a worker employment—
- (a) where death or serious and permanent incapacity of the worker results from such accident, notwithstanding that the worker 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, or that he was acting without instruction from his employer, if such act was done by the worker for the purposes of and in connection with his employer's trade or business; or
 - (b) where the accident happened in or about any premises at which the worker was for the time being employed for the purposes of his employer's trade or business, if it happened while the worker was taking steps, in an actual or supposed emergency in or about those premises, to rescue, succour or protect persons who were, or were thought to be or likely to be, injured or imperilled, or to avert or minimise damage to any property owned by the employer or for which the employer was answerable to the owner.
- (3) No compensation shall be payable under this Act in respect of any incapacity or death resulting from a deliberate self-injury.

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

6. Compensation in fatal cases

Where death results from the injury—

- (a) if the worker leaves any dependants wholly dependent on his earnings, the amount of compensation shall be a sum equal to forty-one months' earnings or eighty-three thousand shillings, whichever is less; but where in respect of the same accident compensation has been paid under the provisions of section 7 or 8 there shall be deducted from the sum payable under this paragraph any sums so paid as compensation;
- (b) if the worker does not leave any dependants wholly dependent on his earnings, but leaves any dependants in part so dependent the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a) of this section, as may be determined by the Court to be reasonable and proportionate to the injury to such dependants;
- (c) if the worker leaves no dependants, the reasonable expenses of the burial of the deceased worker, not exceeding the sum of five hundred shillings, shall be paid by the employer.

7. Compensation in the case of permanent total incapacity

- (1) Where permanent total incapacity results from the injury, the amount of compensation shall be a sum equal to fifty-four months' earnings:

Provided that in no case shall the amount of compensation in respect of permanent total incapacity be greater than one hundred and eight thousand shillings but not less than two thousand shillings.

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

8. Compensation in the case of permanent partial incapacity

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

- (a) in the case of an injury specified in the Second Schedule to this Act, such percentage of fifty-four months' earnings as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and
- (b) in the case of an injury not specified in the Second Schedule to this Act, such percentage of forty-eight months' earnings as is proportionate to the loss of earning capacity permanently caused by the injury:

Provided that in no case shall the amount of compensation in respect of permanent partial incapacity be greater than one hundred and eight thousand shillings but not less than such percentage of two thousand shillings as represents the loss of earning capacity arrived at in accordance with paragraph (a) or paragraph (b) of this subsection.

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

9. Compensation in the case of temporary incapacity

- (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 probable duration, and probable changes in the degree, of the incapacity and such periodical payments shall be a monthly payment of half the difference between the monthly earnings which the worker 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:

Provided that—

- (a) *[Repealed by Ord. No. 60 of 1966 s. 9]*
- (b) neither the aggregate of the periodical payments nor the lump sum payable under the provisions of this subsection shall exceed the lump sum which would be payable in respect of the same degree of incapacity under the provision of subsection (1) of section 7 or section 8, as the case may be, if the incapacity were permanent;
- (c) the period covered by hospitalisation or absence from duty certified necessary by a medical practitioner shall be regarded as a period of temporary total incapacity irrespective of the outcome of the injury and 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;
- (d) in the event of death or permanent incapacity following after temporary incapacity, no deduction shall be made from the lump sum payable under section 6, 7 or 8 by reason of periodical payments or a lump sum payment having been made under this section.
- (2) In fixing the lump sum or periodical payments payable under subsection (1) of this section the court may deduct the value of any payment, allowance or benefit including the value of any food, fuel or quarters, which the worker may receive from the employer during the period of incapacity:

Provided that the amount payable after such deduction shall not, if a periodical payment, be less than a monthly payment of half the difference between the basic wage which the worker was earning at the time of the accident and the basic wage he is earning or is capable of earning in some suitable employment or business after the accident, or shall not, if a lump sum, be less than a sum calculated accordingly having regard to the probable duration and probable changes in the degree of the incapacity.

- (3) For the purposes of subsection (2) "basic wage" means the worker's monthly earnings calculated in accordance with the provisions of section 10 less the value of any food, fuel or quarters received by the worker from the employer at the date of the accident or cash received in lieu thereof.
- (4) Upon 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.
- (5) Where a worker 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 worker for the redemption of such periodical payments by a lump sum, or for the continuance of such periodical payments and if the employer and the worker 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 payments:

Provided that any lump sum so ordered to be paid together with the periodical payments already made to the worker shall not exceed the lump sum which would be payable in respect of the same

degree of incapacity under the provisions of subsection (1) of section 7 or section 8, as the case may be, if the incapacity were permanent.

- (6) If a worker 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 subsection (5) of this section, 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 subsection (5) of this section, he shall not be entitled to any benefits under the provisions of this Act during or in respect of the period of his absence and if the period of such absence exceeds six months, the worker shall cease to be entitled to any benefits under the provisions of this Act.

10. Method of calculating earnings

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

Provided that—

- (a) where by reason of the shortness of the time during which the worker 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 aforementioned, 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
 - (b) for the purposes of assessing compensation payable in the case of permanent incapacity—
 - (i) where the worker 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 would 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 worker; and
 - (ii) where the worker 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.
- (2) For the purposes of subsection (1) of this section employment by the same employer shall be taken to mean employment by the same employer in the grade in which the worker was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.
 - (3) Where the worker 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 worker 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 worker is incapacitated from performing the concurrent contract.
 - (4) Upon request of the worker to the employer liable to pay compensation, that employer shall furnish in writing a list of the earnings which have been earned by that worker upon which the amount of the monthly earnings may be calculated for the purposes of this section.

11. Persons entitled to compensation

- (1) The compensation shall be payable to or for the benefit of the worker, 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 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 worker.

12. Distribution of compensation

- (1) Compensation payable where the death of a worker has resulted from an injury shall be paid into court, and the court may order any sum so paid in to be apportioned among the dependants of the deceased worker or any of them in such proportion 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.
- (2) Where, on 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 subsection (1) ought to be varied, the court may make such order for the variation of the former order as in the circumstances of the case the court may think just.
- (3) Compensation payable under the provisions of section 7 or 8 and lump sums payable under the provisions of section 9 shall be paid into court, and the court may order any sum so paid in to be paid to the person entitled or to be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.
- (4) Nothing in this section shall prevent an employer from making any payment to a worker 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.
- (5) Any other compensation payable under this Act may be paid to the worker or into court and when so paid it shall be paid by the court to the person entitled.
- (6) 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.
- (7) Any order or directions of the Court under this section shall be final.

13. Requirements as to notice of accident and claim for compensation

Proceedings for the recovery under this Act of compensation for an injury shall not be maintained unless notice of the accident in the prescribed form has been given by or on behalf of the worker as soon as practicable after the happening thereof and before the worker has voluntarily left the employment in which he was injured, and unless the claim 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—

- (a) 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;

- (b) the failure to make a claim for compensation within the period specified under this section shall not be a bar to the maintenance of such proceedings—
- (i) in the case of a worker whose earnings do not exceed six hundred shillings per month; or
 - (ii) in the case of any other worker, if it is found that the failure was occasioned by mistake or other reasonable cause,

so, however, that no proceedings for the recovery of compensation shall be maintained unless the claim for compensation is made within a period of three years from the date of the accident.

14. Medical examination and treatment

- (1) Where a worker 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 by a medical practitioner; and any worker who is in receipt of periodical payments under section 9, shall submit himself for such medical examination from time to time, as may be required by the employer.
- (2) The worker shall, when required, attend upon the medical practitioner at the time and place notified by the employer or the medical practitioner, provided such time and place are reasonable.
- (3) In the event of the worker being, in the opinion of any medical practitioner, unable or not in a fit state to attend to the medical practitioner for examination, that fact shall be notified to the employer, and the medical practitioner conducting the examination as required by subsection (1) of this section shall fix a reasonable time and place for a personal examination and shall send him notice accordingly.
- (4) If the worker 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 worker was required to submit himself for examination under the provisions of subsections (2) or (3) of this section, as the case may be, no compensation shall be payable, unless the Court is satisfied that there was reasonable cause for such failure.
- (5) A worker shall be entitled to have his own medical practitioner present at such examination at his own expense.
- (6) During a period of temporary total incapacity, the employer shall arrange to submit the worker for normal medical treatment by either the employer's medical practitioner or the worker's medical practitioner approved by the employer, at the expense of the employer and such normal medical treatment shall include any special treatment which the medical practitioner may advise the worker to undergo.
- (7) If the worker has failed to submit himself for treatment by a medical practitioner when so required under the provisions of subsection (6) of this section, or having submitted himself for such treatment has disregarded the instructions of such medical practitioner, then if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the worker had submitted himself for treatment by, and duly carried out the instructions of, such medical practitioner, and compensation, if any, shall be payable accordingly.
- (8) Where under the provisions of this section a right of compensation is suspended, no compensation shall be payable in respect of the period of suspension.
- (9) Notwithstanding other provisions under this section, where a claim for compensation is made in respect of the death of a worker, then if the worker 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 worker was caused thereby, of death shall not be deemed to have resulted from the injury, and no compensation shall be payable in respect of the injury.

15. Agreement as to compensation

- (1) The employer and worker may, with the approval of the Labour 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 and such agreement shall be in duplicate, one copy to be kept by the employer and another copy to be kept by the worker:
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 worker is unable to read and understand the 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 or a labour officer or a person appointed by the Labour Commissioner in writing in that behalf to the effect that he read over and explained to the worker the terms and that the worker appeared fully to understand and approve of the agreement.
- (2) Any agreement made under the provisions of subsection (1) of this section may on application to the court be made an order of the court.
- (3) Where compensation has been agreed the court may, notwithstanding that the agreement has been made an order of the court under of subsection (2) of this section, 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 subsection (1) of this section; 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.
- (4) No stamp duty shall be leviable or payable on any agreement under this section.

16. Determination of claims

- (1) If an employer on whom notice of the accident has been served under the provisions of section 13 does not within twenty-one days after the receipt of the notice agree in writing with the worker as to the amount of compensation to be paid, the worker may, in such form and manner as may be provided by Rules of Court made under section 51, make an application for enforcing his claim to compensation to the court having jurisdiction in the district in which the accident giving rise to the claim occurred.
- (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.

17. Review of periodical payments

- (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 worker:

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

- (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 and if the accident is found to have resulted in permanent incapacity, the periodical payment shall be converted to the lump sum to which the worker is entitled under the provisions of section 7 or 8, as the case may be, and such lump sum shall be dealt with in accordance with the provisions of subsection (2) of section 12.
- (3) Where an 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 with the decision of the court made on review under this section.
- (4) In making a review under the provisions of this section the court shall have regard only to the capacity for work of the worker as affected by the accident.

18. Limitation of power of employer to end or decrease periodical payments

Subject to the provision of subsection (5) of section 9, subsection (4) of section 14 and subsection (3) of section 17, 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 worker resumes work and his earnings are not less than the earnings which he was obtaining before the accident; or
 - (ii) where a worker dies;
- (b) to diminish periodical payments except that where the earnings of a worker in receipt of periodical payments, together with such payments, exceed the amount of his earnings at the date of the accident the employer may diminish the payments to such worker by an amount equal to such excess.

19. Jurisdiction of the court

- (1) Except as is provided in this Act and any regulations made thereunder, the court shall, upon or in connection with any question to be investigated or determined thereunder, have all the powers and jurisdiction exercisable by a subordinate court in or in connection with civil actions in such court and the law, rules and practice relating to such civil actions and to the enforcement of judgments and orders of such court shall *mutatis mutandis* apply.
- (2) Where in any proceedings under the provisions of this Act on a claim for compensation in respect of the death of a worker, the Court is satisfied that other or sufficient evidence as to the dependency on the deceased worker of a person claiming to be a dependant, residing outside the district in which the proceedings are being taken, or as to the degree of such dependency, cannot be procured, or cannot be procured without undue hardship to the claimant or other party to the proceedings, a statement as to the dependency and as to the degree of dependency of the claimant signed by the District Commissioner of the district in which the claimant resides whether within the country or within any other country 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.

- (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 degree of the dependency of such person and the record of any such investigation including the finds of such 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.
- (4) Where a request is received by a Court from a court in another district within the country or within any other country 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 country, under a law relating to workers' compensation, 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.
- (5) In any proceedings under this Act relating to any employee killed or injured in connection with mining or prospecting operations, any deposition taken in the presence of the parties or their representative and in respect of the same occurrence by an officer holding an inquiry under the Mining Act ², for the purpose of such inquiry and attested by him may be read as evidence, although the deponent is not called as a witness:

Provided that the Court may, if it thinks fit, summon and examine such deponent as to the subject matter of his deposition.

20. Power of the court to submit questions of law

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

21. Appeals

- (1) Subject to the provisions of this section and of sections 12 and 38 an appeal shall lie to the High Court from any order of the Court.
- (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.
- (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.
- (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.

22. Liability in case of workers employed by contractors

- (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 worker 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 worker 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 reference to the earnings of the worker under the employer by whom he is immediately employed.

- (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 worker independently of this section.
- (3) Where a claim or application for compensation is made under the provisions of this section against a principal, the principal shall give notice to the contractor who shall be entitled to intervene in any application made against the principal.
- (4) Nothing in this section shall be construed as preventing a worker from receiving 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.

23. Remedies against both employer and stranger

- (1) 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, the worker may take proceedings both against that person to recover such damages and against any person liable to pay compensation under the provisions of this Act to recover such compensation, but shall not, save in the circumstances described in subsection (2), be entitled to recover both such damages and compensation.
- (2) Notwithstanding anything contained in subsection (1)—
 - (a) where a worker has recovered from any person other than his employer damages in respect of an injury for which compensation is payable under the provisions of this Act and the amount of such damages is less than the amount of the compensation so recoverable, the worker shall be entitled to recover from the person by whom such compensation is payable the difference between such two amounts; and
 - (b) where a worker has recovered compensation under the provisions of this Act in respect of any injury caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof and the amount of such compensation is less than the amount of the damages so recoverable from such person, the worker shall be entitled to recover from such person the difference between such two amounts.
- (3) If a worker has recovered compensation under the provisions of this Act in respect of an injury caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the person by whom the compensation was paid, and any person who has been called on to indemnify another person under the provisions of section 22 relating to liability in case of a worker 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 to the extent of the amount of the damages for which such person is liable, and any question of any such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, or by arbitration under the Arbitration Act ³.

24. Proceedings independently of this Act

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

Provided that—

- (a) a judgment 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 judgment 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 between the employer and the worker under the provisions of subsection (1) of section 15 shall be a bar to proceedings by the worker in respect of the same injury independently of this Act;
 - (d) where compensation for an injury has been paid by an employer to any person entitled to the same under the provisions of this Act without such compensation having been claimed in any proceedings under this Act and otherwise than pursuant to an agreement come to between the employer and the worker under the provisions of subsection (1) of section 15, the court shall, in any proceedings for recovery of damages for the same injury, take into account the amount of such compensation so paid in assessing the damages recoverable in such proceedings.
- (2) If in any 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 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.

25. Employer to insure against liability under the Act

- (1) Subject to the provisions of subsections (3) and (4), every employer shall insure and keep himself insured, with such insurer as may be approved by the Labour Commissioner, in respect of any liability which he may incur under the provisions of this Act to any worker employed by him.
- (2) Any employer who fails to insure or keep himself insured as required by subsection (1) commits an offence and is liable upon conviction to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding twelve months or to both such fine and imprisonment.
- (3) Nothing in this section shall apply to—
 - (a) the Government of the United Republic;
 - (b) any city, municipal, town or district council; or
 - (c) any limited liability company carrying on business in Tanzania and having a paid up share capital of not less than five hundred thousand shillings, which provides and maintains by way of security an undertaking by a surety approved by the Labour Commissioner to make good, subject to any conditions specified in such undertaking and up to an amount approved by the Labour Commissioner, any failure by the company to discharge any liability which it may incur under the provisions of this Act to any worker employed by it:

Provided that any such company shall remain so exempt from the provisions of this section for so long only as such security continues in force.

- (4) The Minister may by order in the *Gazette* exempt any employer or class of employers from the provisions of this section.

26. Certificate of insurance

When an employer insures himself pursuant to the obligation imposed on him by section 25, the insurer shall, at the time of the acceptance of the risk, issue and deliver to the employer a certificate of insurance in the prescribed form.

[s. 25A]

27. Certain conditions in policies to be of no effect

Where a policy of insurance is issued to an employer in respect of any liability required to be covered by insurance under the provisions of section 25 any condition in such policy providing that no liability shall arise under the policy, or that any liability so arising shall cease in the event of some specified things being done or omitted to be done after the happening of the event giving rise to a claim under the policy, shall, as respects such liabilities as are required to be covered by such policy, be of no effect:

Provided that nothing in this section shall be taken to render void any provision in such policy requiring the employer insured to pay to the insured any sums which the latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of a workers employed by the employer.

[s. 25B]

28. Duty to surrender certificate of insurance on cancellation of policy

- (1) Where a certificate of insurance has been issued under the provisions of section 26 to an employer and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the employer to whom the certificate of insurance was issued shall, within seven days from the taking of effect of the cancellation, surrender the certificate of insurance to the insurer or, if it has been lost or destroyed, make a statutory declaration to that effect and deliver the statutory to the insurer.
- (2) An employer who contravenes any of the provisions of this section commits an offence and is liable upon conviction to a fine not exceeding one thousand shillings.

[s. 25C]

29. Duty of insurers to satisfy judgment against employers

- (1) If an employer to whom the provisions of section 25 apply is duly insured as required by that section and judgment in respect of any liability as is required to be covered by such insurance is obtained by a worker against the employer, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy of insurance, the insurer shall, subject to the provisions of this section, pay to the worker entitled to the benefit of the judgment any sum payable thereunder in respect of the liability including any amount payable in respect of costs and any sum payable as interest on that sum by virtue of any law for the time being in force in Tanzania relating to interest on judgments.
- (2) No sum shall be payable by an insurer under the provisions of subsection (1)—
 - (a) in respect of any judgment, unless before or within twenty-one days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
 - (b) in respect of any judgment so long as execution thereon is stayed pending an appeal; or

- (c) in connection with any liability, if before the happening of the accident which was the cause of the injury giving rise to the liability, the policy of insurance was cancelled by mutual consent or by virtue of any provisions contained therein, and either before the happening of such accident or after the happening of such accident, but before the expiration of fourteen days from the taking effect of the cancellation of the policy—
- (i) the certificate of insurance was surrendered to the insurer; or
 - (ii) the employer to whom the certificate of insurance was issued made a statutory declaration stating that the certificate of insurance had been lost or destroyed; or
 - (iii) the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate of insurance; or
- (d) if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, the insurer has obtained a declaration from the Court that apart from any provision contained in the policy of insurance, he is entitled to avoid it on the ground that the employer obtained the insurance by the non-disclosure of a material fact or a representation of fact which was false in some material particular, or, if the insurer has avoided the contract of insurance on that ground, that he was entitled so to do apart from any provision of such contract:

Provided that an insurer who has obtained such a declaration in an action shall not be entitled to the benefit of this paragraph as respects any judgment obtained before the commencement of that action unless before or within fourteen days after the commencement of any such action for declaration he has given notice to the worker who is the claimant in the proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such action is so given shall be entitled, if he thinks fit, to be made a party thereto.

- (3) If the amount which the insurer becomes liable under this section to pay in respect of a liability of an employer insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy of insurance in respect of that liability, he shall be entitled to recover the excess from that employer.
- (4) For the avoidance of doubt it is hereby declared that for the purposes of this section—
- "judgment" includes an order of the court made under the provisions of subsection (2) of section 15 and an order made under section 17; and
- "proceedings" includes an application for an order making an agreement between an employer and a worker, an order of the court under the provisions of subsection (2) of section 15 and an application for review made under section 17.
- (5) Where pursuant to the provisions of this section, an insurer becomes liable to satisfy a judgment against an employer, the insurer may—
- (a) where the judgment is an order of the court made under the provisions of subsection (2) of section 15, make an application to the court under the provisions of subsection (3) of section 15; and
 - (b) where the judgment is an order for a periodical payment, make an application for review under the provisions of section 17,

as if he were the employer.

[s. 25D]

30. Penalty for false statements and wilful avoidance of policy

If any employer, for the purpose of obtaining a policy of insurance as required by section 25 of this Act, makes any false statement in consequence whereof the policy is liable to be avoided, or wilfully does any

act which disentitles him to claim under the policy, commits an offence and is liable upon conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

[s. 25E]

31. Employers against whom claims are made to give information as to insurance

- (1) An employer against whom a claim is made in respect of any such liability as is required to be covered by insurance under section 25 shall, on demand being made by the Labour Commissioner or any person authorised by him in that behalf, or by or on behalf of the worker making the claim, state whether he was insured in respect of that liability, give such particulars respecting the policy of insurance as the person making the demand may require and produce for inspection by such person the certificate of insurance.
- (2) If, without reasonable excuse, any employer fails to comply with the provisions of this section, or wilfully makes any false statement in reply to such demand made under subsection (1) commits an offence and is liable upon conviction to a fine not exceeding one thousand shillings.

[s. 25F]

32. Provision as to cases of bankruptcy of employer

- (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any worker, then, 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 duly appointed, the rights of the employer against the insurers as respects the liability shall, notwithstanding anything contained in any laws relating to bankruptcy and the winding-up of companies for the time being in force, be transferred to and vested in the worker, 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 worker than they would have been under the employer.

- (2) If the liability of the insurers to the worker is less than the liability of the employer to the worker, the worker 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) There shall be included amongst the debts which—
 - (a) under the provisions of section 35 of the Bankruptcy Act ⁴, are in the distribution of the property or assets of a bankrupt, to be paid in priority to all other debts; and
 - (b) under the provisions of section 259 of the Companies Act ⁵, are in the winding up of a company to be paid in priority to all debts,

the amount due in respect of any compensation or liability for compensation accrued before the following dates, that is to say—

- (i) in the first case the date of the receiving order; and

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- (ii) in the second case the date of commencement of the winding up of the company.

Where the compensation is a periodical payment, the amount due in respect thereof shall, for the purposes of this provision, 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.

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

[s. 26]

33. Application to persons employed on ships

- (1) This Act shall apply to masters, seamen and apprentices to the sea service, provided that such persons are workers within the meaning of this Act, and are members of the crew of any Tanzanian ship of which the owner, or (if there is more than one owner) the managing owner or manager resides or has his principal place of business in Tanzania, subject to the following modifications—
 - (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 three months after news of the death has been received by the claimant;
 - (c) whenever in the course of any legal proceedings under this Act the testimony of any witness is required in relation to the subject matter of the proceeding, then, upon due proof that the witness cannot be found in Tanzania, any deposition which the witness may have previously made on oath in relation to the same subject matter before any justice or magistrate or consular officer elsewhere and which, if the proceeding had been under the Merchant Shipping Act ⁶ would have been admissible in such proceeding by virtue of sections 299 and 304 of that Act, shall be admissible in evidence subject to similar conditions as are laid down in the said sections 299 and 304;
 - (d) *[Repealed by Act No. 31 of 1966 Sch.]*
 - (e) the periodical payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in Tanzania relating to merchant shipping, liable to defray the expenses of maintenance of the injured master, seaman or apprentice.
- (2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated wholly or mainly by shares in the profits or the gross earnings of the working of such vessel, except in such case and subject to such modifications as the President may by order provide.
- (3) This Act shall apply to any person not being a master, seaman or apprentice to the sea service, employed on board any such ship as is mentioned in this section, if he is so employed for the purposes of the ship or of any passengers or cargo or mails carried by the ship, and if he is otherwise a worker within the meaning of this Act.
- (4) In this section, unless the context otherwise requires—

"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;

"sea service" includes service on the lakes Victoria, Tanganyika and Nyasa;

"ship", "vessel", "master", "seaman" and "port" shall have the same meaning as in the Merchant Shipping Act ⁷.

[s. 27]

34. Procedure where worker's earnings do not exceed a prescribed amount per month

- (1) Notwithstanding anything contained in this Act where the worker's earnings do not exceed such amount per month as may be prescribed, the following provisions shall, 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 worker—
 - (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 worker entitled to receive it and in the case of the death of the worker to any dependant or dependants deemed by the officer to be dependent upon such worker; where there is more than one dependant 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) hereof shall be in the discretion of the officer subject to any general or special directions of the Labour Commissioner;
 - (c) a notice required under the provisions of this Act to be served by a worker may be served by an officer;
 - (d) in the case of the death of the worker any agreement made in pursuance of subsection (1) of section 15 of this Act shall be between the employer and any dependant or dependants deemed by an officer to be dependent upon such worker, and where there is more than one dependant the officer shall determine the degree of dependency.
- (2) In this section "officer" means the Labour Commissioner, the Labour Officer of the area in which the accident occurs, or, where no Labour Officer has been appointed for the area, the District Commissioner of the district in which the accident occurs and such other person as the Labour Commissioner may appoint, in writing, to be an officer for the purposes of this section.

[s. 28]

35. Contracting out

Any contract or agreement whether made before or after the commencement of this Act, whereby a worker relinquishes any right or 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.

[s. 29]

36. Compensation not to be assigned, charged or attached

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.

[s. 30]

Part III – Medical aid (ss. 37-39)**37. Medical expenses**

- (1) The employer shall pay all reasonable expenses incurred by a worker within the United Republic or, with the approval of the Director of Medical Services, outside the United Republic, as the result of any accident which would entitle the workers to compensation under the provisions of this Act:

Provided that where an employer is proved to be financially incapable to pay all the said expenses, he shall defray such expenses to the extent of his proved capabilities and where such payments are in respect of surgical and hospital treatment, nursing treatment, supply of medicine and supply, maintenance and repair of artificial appliances and reasonable transport charges.

- (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 subsection (1) of this section, the Court may apportion the amount available in such manner as the Court may deem expedient.

[s. 31]

38. Decisions of court in regard to treatment and medical reports

- (1) All disputes as to the necessity for, or the character or 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 subsection (1) of this section shall be final.

[s. 32]

39. Fees for medical aid to be prescribed

The fees and charges for medical aid to workers within Tanzania 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 worker or his employer in respect of any such medical aid.

[s. 33]

Part IV – Occupational diseases (ss. 40-46)**40. Compensation in respect of scheduled diseases**

- (1) Where a medical practitioner grants a certificate—
 - (a) that a worker is suffering from a scheduled disease causing disablement or that the death of a worker was caused by any scheduled disease; and

- (b) that such disease was due to the nature of the worker's employment and was contracted within the twenty-four months previous to the date of such disablement or death,

the worker or, if he is dead, his dependants shall be entitled to claim compensation under this Act as if such disablement or death had been caused by an accident, and the provisions of this Act shall, subject to the provisions of this Part apply, *mutatis mutandis*, unless at the time of entering into the employment the worker 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 worker or his dependants be entitled to compensation in respect of any causation or aggravation of the disease which was due to employment outside Tanzania except in respect of a Tanzanian worker employed outside Tanzania by his employer within Tanzania.

- (2) If on the hearing of an application for compensation in terms of subsection (1) of this section the court is satisfied on the evidence that the allegations in the certificate are correct, the worker 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 worker's employment.

[s. 34]

41. Liability to pay compensation

- (1) Compensation shall be payable by the employer who last employed the worker during the period of twenty-four months referred to in section 40 unless that employer proves that the disease was not contracted while the worker was in such employment.
- (2) The worker 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 twenty-four months employed the worker in the occupation to the nature of which the disease is due.
- (3) If the employer alleges that the disease was in fact contracted while the worker 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 51, and, if the allegation is proved, that other employer shall be the employer from whom the compensation is to be recoverable.
- (4) If the disease is of such a nature as to be contracted by a gradual process, any other employer who during the twenty-four months employed the worker 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, by consent of the parties, or by arbitration under the Arbitration Act ⁸.

[s. 35]

42. Fixing a date from which time is to run, indicating requirements as to the giving of notice and defining earnings

- (1) In the application of the provisions of this Act to disablement or death caused by a scheduled 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 40; and
- (b) in the case of death from a disease, the date of the death of the worker.

- (2) The provisions of section 13 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.
- (3) Compensation under this Part shall be calculated with reference to the earnings of the worker under the employer from whom the compensation is recoverable and the monthly earnings of the worker shall be computed in such manner as is best calculated to give the rate per month at which the worker was being remunerated at the date of the grant of the certificate referred to in section 40:

Provided that—

- (a) if the worker 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 worker 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 worker 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 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 worker 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 worker; and
 - (ii) where the worker 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, had he not contracted the disease, he would probably have received upon the completion of his apprenticeship, improvership or learnership.

[s. 36]

43. Presumption as to cause of disease

If a worker who becomes disabled by or dies of any disease mentioned in the Third Schedule to this Act was within the period of twenty-four months immediately preceding the disablement or death employed in any occupation mentioned in the second column opposite such disease, in such schedule it shall be presumed, unless or until the contrary is proved, that the disease was due to the nature of such employment.

[s. 37]

44. Saving right of a worker to proceed against previous employer

Nothing in this Part shall be construed as preventing compensation being recovered from any employer who employed the worker during the twenty-four months referred to in section 40, if the employer who last employed the worker during that period proves that the disease was not contracted while the worker was in his employment, in which case the provisions of subsection (3) of section 41 shall apply.

[s. 38]

45. Compensation to include medical aid

For the purposes of this Act compensation shall include medical aid within the meaning of Part III thereof.

[s. 39]

46. Power of Minister to add to or delete from Third Schedule

The Minister may by notice in the *Gazette* delete any disease from the Third Schedule to this Act and may, in like manner, insert any disease in the said Schedule:

Provided that the intention to issue any such notice shall be published in the *Gazette* at least one month before the issue thereof, and any person wishing to do so may make his objections in writing to the Minister, who shall notify that person of any such objections before any such notice is issued.

[s. 40]

Part V – Miscellaneous provisions (ss. 47-52)

47. Regulations

- (1) The Minister may make regulations for the purpose of giving better effect to the provisions of this Act—
 - (a) making provisions for procedure, forms and fees;
 - (b) prescribing anything which is to be or may be prescribed under this Act;
 - (c) requiring employers and insurers carrying on in Tanzania the business 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.
- (2) Any person required to make a return by virtue of any Regulation made under subsection (1) of this section who—
 - (a) fails to make such return within the time within which he is required to make it, or
 - (b) on being so required fails to give any information or explanation respecting the return which it is in his power to give,

commits an offence and is liable upon conviction 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 committing a further offence and shall be liable to a fine not exceeding one hundred shillings for each day on which the contravention continues.

[s. 41]

48. Offences

Any person required to make a return by virtue of any regulation made under subsection (1) of section 47 who makes or causes to be made any such return which he knows or has reasonable cause to believe to be false in any material particular commits an offence and is liable upon conviction to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

[s. 42]

49. Failure to comply with a compensation order is an offence

- (1) Any employer who fails to comply with any compensation order under this Act without any reasonable cause commits an offence and is liable upon conviction to a fine not exceeding forty thousand shillings.
- (2) Any Labour Officer of or above the rank of Labour Officer Grade III, may institute proceedings against any employer who contravenes the provisions of this section.

[s. 42A]

50. Offences by companies

Where a person convicted of an offence under section 47 or section 48 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.

[s. 43]

51. Rules of Court

The High Court may make Rules of Court for regulating proceedings before the Court or before the High Court under the provisions of this Act, and for the fees payable in respect thereof and may in any such Rules provide that in any such proceedings of a civil nature a worker may be represented in the court or the High Court by the Commissioner for Labour or by any officer authorised in writing by the Commissioner, and where any such provision is made it shall be lawful for the Commissioner or for any person authorised by him in that behalf to represent a worker in any such proceedings notwithstanding any other written law to the contrary.

[s. 44]

52. Payments to worker or beneficiaries abroad subject to Foreign Exchange Act

In the event an award under this Act is made to any worker or beneficiaries resident or becoming resident outside the United Republic the sums shall be payable in local currency and if the said worker or his beneficiaries wish to convert the sums into another currency the transaction shall be subject to the Foreign Exchange Act ⁹.

[s. 45]

First Schedule (Section 3)

Paternal system	Maternal system
Mother, father, wife, husband, son, daughter, brother, sister, father's father, father's brother.	Mother, father, wife, husband, son, daughter, brother, sister, mother's mother, mother's brother, mother's sister, sister's son, sister's daughter, mother's sister's son, mother's sister's daughter.

Second Schedule (Section 3)

		Percent
Loss of two limbs)	
Loss of both hands or of all fingers and both thumbs)	100
Total loss of sight)	
Total paralysis)	
Injuries resulting in being bedridden permanently)	100
Any other injury causing permanent total disablement)	
Loss of remaining eye by one-eyed worker)	
Loss of remaining arm by one-armed worker)	
Loss of remaining leg by one-legged worker)	
Loss of arm at shoulder		70
Loss of arm between elbow and shoulder		68
Loss of arm at elbow		67
Loss of arm between wrist and elbow		60/65
Loss of hand at wrist		60
Loss of four fingers and thumb of one hand		60
Loss of four fingers		35
Loss of thumb—		
both phalanges		35

		Percent
	one phalanx	10
Loss of little finger—		
	three phalanges	4
	two phalanges	3
	one phalanx	2
Loss of index finger—		
	three phalanges	10
	two phalanges	8
	one phalanx	4
Loss of middle finger—		
	three phalanges	6
	two phalanges	4
	one phalanx	2
Loss of ring finger—		
	three phalanges	5
	two phalanges	4
	one phalanx	2
Loss of metacarpals—		
	first or second (additional)	3
	third, fourth or fifth (additional)	2

		Percent
Loss of leg at or above knee		70
Loss of leg below knee		40
Loss of foot		40
Loss of toes—		
	all	15
	great, both phalanges	5
	great, one phalanx	2
	other than great, if more than one toe lost	each 1
Loss of eye—		
	eye out	30
	sight of	30
	lens of	30
	sight of, except perception of light	30
Loss of hearing—		
	both ears	50
	one ear	7

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

The percentage of incapacity for ankylosis of any joint shall be reckoned as from twenty-five to one hundred *per centum* of the incapacity for loss of the part at that joint, according to whether the joint is ankylosed in a favourable or unfavourable position.

In the cases of a right-handed worker, an injury to the left arm or hand and, in the case of a left-handed worker, to the right arm or hand shall be rated at ninety *per centum* of the above percentages.

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

Where there are two or more injuries, the sum of the percentages for such injuries may be increased, and, where such injuries are to the hand, the following basis of computing the increase shall be adopted, namely—

- (a) where two digits have been injured, the sum total of the percentages shall be increased by forty *per centum* of such sum total.
- (b) where three digits have been injured, the sum total of the percentages shall be increased by thirty *per centum* of such sum total.
- (c) where four digits have been injured, the sum total of the percentages shall be increased by twenty *per centum* of such sum total.

A one-eyed worker who on entering employment has failed to disclose the fact that he is one-eyed to his employer shall, if he loses his remaining eye, be entitled to compensation in respect of a degree of disablement of thirty *per centum* only.

For the purposes of this Schedule, a one-eyed worker means a worker who has lost the sight of one eye.

Third Schedule (Section 3)

Occupational diseases

	Description of disease	Nature of occupation
1.	Pneumoconiosis caused by sclerogenic mineral dust (silicosis, anthracosilicosis), provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2.	Bronchopulmonary diseases caused by hard-metal dust.	All work involving exposure to the risk concerned.
3.	Bronchopulmonary diseases caused by cotton dust (byssinosis), or flax, hemp or sisal dust.	All work involving exposure to the risk concerned.
4.	Occupational asthma caused by sensitizing agents or irritants both recognised in this regard and inherent in the work process.	All work involving exposure to the risk concerned.
5.	Extrinsic allergic alveolitis and its sequels caused by the inhalation of organic dusts, as prescribed by the law in force.	All work involving exposure to the risk concerned.
6.	Diseases caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
7.	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned.
8.	Diseases caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.

	Description of disease	Nature of occupation
9.	Disease caused by chromium or its toxic compounds.	All work involving exposure to the risk concerned.
10.	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk concerned.
11.	Diseases caused by arsenic or its toxic compounds.	All work involving exposure to the risk concerned.
12.	Diseases caused by mercury or its toxic compounds.	All work involving exposure to the risk concerned.
13.	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
14.	Diseases caused by fulcrine or its toxic compounds.	All work involving exposure to the risk concerned.
15.	Diseases caused by carbon disulphide.	All work involving exposure to the risk concerned.
16.	Diseases caused by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons.	All work involving exposure to the risk concerned.
17.	Diseases caused by benzene or its toxic haemologues.	All work involving exposure to the risk concerned.
18.	Diseases caused by toxic nitro- and amino-derivatives of benzene or its homologues.	All work involving exposure to the risk concerned.
19.	Diseases caused by nitroglycerine or other nitric acids and esters.	All work involving exposure to the risk concerned.
20.	Diseases caused by alcohols, glycols or ketones.	All work involving exposure to the risk concerned.
21.	Diseases caused by asphyxiants, carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide.	All work involving exposure to the risk concerned.
22.	Hearing impairment caused by noise.	All work involving exposure to the risk concerned.

Description of disease		Nature of occupation
23.	Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves).	All work involving exposure to the risk concerned.
24.	Disease caused by work in compressed air.	All work involving exposure to the risk concerned.
25.	Diseases caused by ionising radiations.	All work involving exposure to the action of ionising radiations.
26.	Skin diseases caused by physical, chemical or biological agents not included under other items.	All work involving exposure to the risk concerned.
27.	Prisces epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risk concerned.
28.	Lung cancer or mesotheliomas caused by asbestos.	All work involving exposure to the risk concerned.
29.	Infections or parasitic diseases contracted in an occupation where there is a particular risk of contamination.	<ul style="list-style-type: none"> (a) Health or laboratory work. (b) Veterinary work. (c) Work of handling animals, animal carcasses, parts of such carcasses, or merchandise which may have been contaminated by animals, animal carcasses, or parts of such carcasses. (d) Other work carrying a particular risk of contamination.
30.	Diseases caused by halogens chlorine, bromide, iodine or their toxic compounds.	All work involving exposure to the risk concerned.
31.	Diseases caused by nickel or its toxic compounds.	All work involving exposure to the risk concerned.
32.	Diseases caused by pesticides.	All work involving exposure to the risk concerned.
33.	Diseases and injuries caused by non-ionising radiation (microwaves infra-red or ultra-violet rays).	All work involving exposure to the risk concerned.

	Description of disease	Nature of occupation
34.	Cancer of the bladder caused by long contact with aromatic amines (aniline, benzidine, and naphthylamine).	All work involving exposure to the risk concerned. All work involving exposure to the risk concerned.
35.	Damage to meniscus of the knees and inter-vertebral diseases as a result of strained position of the body during work.	All work involving exposure to the risk concerned.