

CHAPTER 475

THE WORKMEN'S COMPENSATION ACT

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 WORKMEN'S COMPENSATION

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1. This Act may be cited as the Workmen's **Short title.**
 Compensation Act.

2. (1) In this Act—

"adult" and "minor" mean respectively a person who is **Interpretation.**
 not and a person who is under the age of seven-
 teen years;

"court" means the appropriate magistrate's court
 determined in accordance with the provisions of
 section 36;

"dependants" means such of a workman's family as
 were wholly or mainly dependent upon 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; but a person is not deemed to be mainly dependent on the wages of another person unless he was dependent mainly on contributions from that other person for provisions of the ordinary necessities of life suitable for persons in his class and position;

“employer” includes Her Majesty in Her Government of Antigua and Barbuda and any person or body of persons corporate or unincorporate and the legal personal representative 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 for the purposes of this Act, save as is provided in subsection (1) of section 22, be deemed to continue to be the employer of the workman whilst he is working for that other person.

In relation to a person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement) the person from whom the use of the vehicle or vessel is so obtained shall be deemed to be the employer.

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;

"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;

"medical practitioner" means a person registered to practise medicine and surgery under the Medical Act;

"medical referee" means a medical practitioner appointed under section 46 as a medical referee for the purposes of this Act;

"member of the family" means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister and shall include any child or children, not specifically mentioned, living with the deceased at the time of his death and wholly or mainly dependent on his earnings; and such other person as was at the time of the injury living in the household of the worker and was wholly or mainly dependent on his earnings;

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

Provided that every injury specified in the Schedule shall be deemed to result in permanent partial incapacity;

"ship", "vessel" and "seaman" shall have the same meaning as in the Antigua and Barbuda Merchant Shipping Act;

"total incapacity" means such incapacity whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such incapacity:

Provided that permanent total incapacity shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in the Schedule where the aggregate percentage of the loss of earning capacity, as specified in the Schedule against these injuries, amounts to one hundred per centum;

"wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession, or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment, or remuneration for overtime not habitually performed or remunerated at a special rate;

"workman", subject to the exceptions hereinafter mentioned, means any 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, and whether the contract is expressed or implied, is oral or in writing and whether the remuneration is calculated by time or by work done:

Provided that the following persons shall be excepted from the definition of workman, that is to say—

(a) any person employed otherwise than by way of manual labour whose earnings exceed twenty-five thousand dollars a year or such sum as may from time to time by order be fixed by the Cabinet:

(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;

(c) an outworker, that is to say, 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 own home or on other premises not under the control or management of the person who gave out the articles or materials;

(d) a member of the employer's Family dwelling in his house;

(e) members of the Police Force, including special and additional constables;

(f) a person in the civil employment of Her Majesty otherwise than in Her Government of Antigua and Barbuda, who has been engaged in a place outside Antigua and Barbuda;

(g) a person in the naval, military or air service of the Crown.

(2) Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

(3) If on any proceedings for the recovery of compensation under this Act it appears to the court by whom 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 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.

COMPENSATION

3. (1) If in any employment a workman suffers personal injury by accident arising out of and in the course of such employment his employer shall be liable to pay compensation in accordance with the provisions of this Act: **Employers' liabilities for compensation.**

Provided that the employer shall not be so liable under this Act for such compensation should—

(a) the injury not result in the total or partial incapacity of the workman for a period exceeding three days;

(b) the accident be proved to be attributable to the workman's own serious and wilful misconduct which shall include—

- (i) his being under the influence of drugs or intoxicating drink; or
 - (ii) a contravention of any law, regulation or order, whether statutory or otherwise, expressly made for the purpose of ensuring the safety or health of workmen, or of preventing accidents to workmen, if the contravention was committed deliberately or with a reckless disregard of the terms of such law, regulation or order; or
 - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen; or
 - (iv) any other act or omission which the court may, having regard to all the circumstances of an accident, declare to be serious and wilful misconduct;
- (c) it be proved that the accident would not have occurred, or in so far as the incapacity or death would not have been caused, but for a pre-existing diseased or injured condition of the workman;
- (d) death or incapacity resulting from personal injury if the workman has at any time represented to the employer that he was not suffering from that or a similar injury, knowing that the representation was false.

(2) An accident resulting in the death or total and permanent incapacity of a workman shall be deemed to arise out of and in the course of his employment and the employer shall be liable to pay compensation notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connection with his employer's trade or business.

4. An accident happening to a workman in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business, shall be deemed to arise out of and in the course of his employment and the employer shall be liable to pay compensation, if the accident happens while he is taking steps on an actual or supposed emergency at these premises, to rescue, succour or protect persons who are, or are thought to be or may possibly be, injured or imperilled, or to avert or minimise serious damage to property.

Accidents happening while meeting emergency.

5. Notwithstanding anything in this Act, no compensation shall be payable under this Act in respect of any injury directly or indirectly sustained as a result of war, invasion, act of foreign enemies, hostilities or warlike operations (whether war is declared or not) civil war, mutiny, insurrection, rebellion, revolution, conspiracy or military or usurped power.

Employers not liable in certain cases.

6. (1) In every case where injury arising out of and in the course of his employment has been sustained by a workman the employer shall irrespective of whether the workman is disqualified for compensation under the provisions of paragraph (a) of subsection (1) of section 3 be liable to pay to the workman or to any other person advancing the same, the reasonable expenses of conveying, where necessary, the injured workman from the place of the accident to the place of treatment and thence to his residence.

Liability of employer for expenses of conveyance to place of treatment and for other expenses of treatment.

(2) Where medical treatment or examination is immediately required as a result of bodily injury (including fatal injury) to a workman arising out of and in the course of his employment and the treatment or examination so required (in this section referred to as "emergency treatment") is effected by a medical practitioner, the employer shall irrespective of whether the workman is disqualified for compensation under the provisions of paragraph (a) of subsection (1) of section 3 be liable to pay to the practitioner—

(a) a fee prescribed by regulations made under this Act in respect of each workman in whose case the emergency treatment is effected by the practitioner, and

(b) a sum in respect of any distance which the practitioner must cover in order to proceed from the place whence he is summoned to the place where the emergency treatment is carried out by him and to return to the first mentioned place, equal to the travelling allowance paid by Government to officers in the employment of Government:

Provided that the minimum sum to which the medical practitioner shall be entitled shall not in any case be less than the amount to which the practitioner would be entitled had he travelled a distance of two miles.

(3) The employer shall, irrespective of whether the workman is disqualified for compensation under the provisions of paragraph (a) of subsection (1) of section 3, be liable to pay to the workman or to any other person providing the same the reasonable cost, charges and expenses (which shall include travelling expenses necessary as a result of periodic medical treatment prescribed by a medical practitioner and also expenses incurred by the workman in establishing his claim to compensation, provided he does so successfully) in respect of any medical treatment given to the workman in consequence of any personal injury sustained by him and arising out of and in the course of the workman's employment by that employer, such cost, charges and expenses being adjusted to the workman's station in life and his actual physical condition occasioned by the injury and not exceeding in respect of medical treatment as an outpatient one thousand dollars.

**To whom
compensation
payable.**

7. (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.

**Amount of
compensation.**

8. (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely—

(a) where death results from the injury the actual cost of the burial of the deceased workman and in addition—

- (i) if the workman leaves a dependant or dependants wholly dependent upon his earnings, a sum equal to forty-two months' wages or fifty thousand dollars whichever is the less;
- (ii) if the workman does not leave a dependant or dependants wholly dependent upon his earnings but leaves a dependant or dependants mainly so dependent, such sum not exceeding the amount of compensation payable under the preceding sub-paragraph as may be agreed upon, or in default of agreement as may be awarded by the court to be reasonable and proportionate to the injury to the said dependant or dependants;

(b) where permanent total incapacity result from the injury—

- (i) in the case of an adult, a sum equal to fifty-four months' wages or sixty thousand dollars whichever is the less;
- (ii) in the case of a minor, a sum equal to one hundred and eight months' wages or sixty thousand dollars whichever is the less;

(c) where permanent partial incapacity results from the injury—

- (i) in the case of an injury specified in the Schedule such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and **Schedule.**
- (ii) in the case of an injury not specified in the Schedule, such percentage of the compensation payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury:

Provided that such compensation may be increased by such an amount as may be agreed upon or in default of agreement as may be awarded by the court, having regard to the nature of the injury sustained in relation to the type of work and other circumstances of the workman.

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

(d) where temporary incapacity, whether total or partial, results from the injury—

- (i) in the case of a weekly paid adult a sum equal to seventy-five per centum, and in the case of a weekly paid minor a sum equal to eighty per centum, of the weekly wages of such adult or minor, as the case may be, payable on the eighth day from the date of the incapacity and thereafter weekly during the incapacity or during a period of five years, whichever period is shorter;
- (ii) in the case of a monthly paid adult a sum equal to thirty-seven and a half per centum, and in the case of a monthly paid minor a sum equal to forty per centum, of the monthly wages of such adult or minor, as the case may be, payable on the sixteenth day from the date of the incapacity and thereafter half-monthly during the incapacity or during a period of five years, whichever period is shorter.

(2) The period of incapacity shall be deemed to commence on the day of the accident.

(3) In the event of permanent total or permanent partial incapacity following temporary incapacity no deduction shall be made from any lump sum payable in respect of such permanent total or permanent partial incapacity by reason

of weekly or half-monthly payments having been made during temporary incapacity.

(4) On the ceasing of the incapacity before the date on which any weekly or half-monthly payment falls due, there shall be payable in respect of that period a sum proportionate to the duration of the incapacity in that period.

9. (1) Where in the opinion of a medical practitioner a workman's temporary incapacity, whether total or partial, is such that he requires the constant assistance of another person during his incapacity, additional compensation shall be paid to the workman during such incapacity at a rate being not more than fifty per centum of the rate prescribed in section 8.

Additional compensation to injured workman to defray cost of assistance during temporary incapacity.

(2) Before any person is employed to assist a workman under subsection (1) the opinion of a medical practitioner shall be sought as to the nature of the assistance required and the probable duration thereof.

10. (1) An employer shall be liable to supply artificial eyes and dental appliances to a workman whenever the necessity for such artificial eyes or dental appliances is the result of an accident arising out of and in the course of the employment of the workman by that employer.

Artificial limbs and apparatus.

(2) Where an accident arising out of and in the course of his employment has caused the loss of a limb or other mutilation and the supply of artificial member or members and apparatus will improve the earning capacity of an injured workman, such artificial member or members and apparatus shall be provided at the expense of the employer and the rate of compensation payable shall be reduced in proportion to the improvement in earning capacity resulting from the use of the artificial member or members and apparatus.

(3) The court may order an employer to pay for the replacement or repair of artificial member or members and apparatus damaged as a result of an accident, arising out of and in the course of a workman's employment by that employer.

Method of
calculating wages.

11. (1) For the purposes of section 8 the wages of a workman shall be calculated as follows, namely—

(a) in the case of a weekly paid workman—

- (i) where the workman has during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the weekly wages of the workman shall be one fifty-second of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
- (ii) in other cases, the weekly wages shall be seven times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period;

(b) in the case of monthly paid workman—

- (i) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
- (ii) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation divided by the number of days comprising such period:

Provided that—

- (i) where by reason of the shortness of the time during which the workman has been in the employment of an 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 a rate of remuneration which would be representative of the workman's average weekly or monthly earnings, regard may be had to the average weekly or monthly amount which, during the twelve months previous to the accident, was earned by a person of average diligence or ability in the same category employed at the same work by the same employer, or, if there is no such person who was so employed, by such a person in the same category employed in the same class of employment and in the same district;

- (ii) where in any case it seems more equitable compensation may be awarded, having regard to the earnings of the workman at the time of the accident.

(2) A period of service shall, for the purpose of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

12. (1) Any weekly or half-monthly payment payable under this Act either under an agreement between the parties or under an order of a court may be reviewed by a court on the application either of the employer or of the workman if—

**Review of
payments**

(a) where the review takes place more than six months after the accident, it is claimed and 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 or monthly earnings during the twelve months immediately preceding the review would, as a result of fluctuations in rates of remuneration, have been greater or less by more than twenty per cent than his average weekly or monthly earnings during the twelve months previous to the accident (or if the weekly or half-monthly payment has been previously varied on

a review during the twelve months previous to that review or the last of such reviews), the weekly or half-monthly payment shall be varied so as to make it such as it would have been if the rates of remuneration obtained during the twelve months previous to the review had obtained during the twelve months previous to the accident;

(b) there has been a change in the condition of the workman, in which case the application shall be accompanied by the certificate of a medical practitioner, or subject to regulations made under this Act, an application made without such certificate.

(2) Any weekly or half-monthly payment may, on review under this section, subject to the other provisions of this Act, be continued, increased, decreased or ended, or if the incapacity is found to have resulted in permanent incapacity, be converted to the lump sum to which the workman is entitled.

Cases in which employer may alter weekly or half-monthly payment.

13. An employer shall not be entitled otherwise than in pursuance of an agreement to end or diminish a weekly or half-monthly payment except in the following cases—

(1) where a workman in receipt of a weekly or half-monthly payment in respect of total incapacity has actually returned to work;

(2) where the medical practitioner who has examined the workman under section 18 or, in his absence, any other medical practitioner has certified that the workman has wholly or partially recovered, or that the incapacity is no longer due in whole or in part to the accident, and a copy of the certificate (which shall set out the grounds of the opinion of the medical practitioner) together with notice of the intention of the employer from the date of the service of the notice to end the weekly or half-monthly payment, or to diminish it by such amount as is stated in the notice, has been served by the employer upon the workman:

Provided that—

(a) in the last mentioned case, if before the expiration of ten clear days from the date of the service of

the notice, the workman sends to the employer the report of another medical practitioner (which report shall set out the ground of his opinion) disagreeing with the certificate so served by the employer, the weekly or half-monthly payment shall not be ended or diminished except in accordance with such report, or if and so far as the employer disputes such report except in accordance with the certificate given by a medical referee in pursuance of section 47; and

(l²) where an application has been made in pursuance of the said section 47 to refer the dispute to a medical referee it shall be lawful for the employer, pending the settlement of the dispute to pay into court—

- (i) where the notice was a notice to end the weekly or half-monthly payment, the whole of each weekly or half-monthly payment becoming payable in the meantime;
- (ii) where the notice was a notice to diminish the weekly or half-monthly payment, so much of each weekly or half-monthly payment so payable as is in dispute; and the sum so paid into court shall, on the settlement of the dispute, be paid to the employer or to the workman, according to the effect of the certificate of the medical referee, or, if the effect of that certificate is disputed as in default of agreement, may be determined by the court or, on appeal by a Judge of the High Court;

(c) nothing in this section shall be construed as authorizing an employer to end or diminish a weekly or half-monthly payment in any case in which, or to an extent to which, apart from this section he would not be entitled to do so.

14. (1) Compensation payable where the death of a workman has resulted from an injury shall be paid into court, and any sum so paid in shall be apportioned among the dependants of the deceased workman or any of them in such proportion as the court thinks fit, or may, in the discretion of the court be allotted to any one such dependant, and the sum so allotted to any dependant shall be paid to

Distribution of compensation on death.

him or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

(2) Compensation payable where permanent incapacity has resulted from an injury shall be paid into court and any sum so paid shall be paid to the person entitled thereto or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

(3) Any other compensation payable under this Act may be paid into court and, when so paid in, shall be paid by the court to the person entitled thereto.

(4) The receipt of the clerk of the court shall be sufficient discharge in respect of any amount paid in under the provisions of this Act.

(5) On the payment in of any money under subsection (1) the court may deduct therefrom the actual cost of the burial of the deceased workman, and pay the same to the person by whom such expenses were incurred, and shall, if it thinks necessary, cause notice to be published, or to be served on each dependant in such manner as it thinks fit calling upon the dependants to appear before it on such date as it may fix for determining the distribution of the compensation. If the court is satisfied, after any inquiry which it may deem necessary, that no dependant exists, the court shall repay the balance of the money after deduction of hospital and other medical expenses incurred to the employer by whom it was paid. The court shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(6) Where a weekly or half-monthly payment is payable under this Act to a workman under any legal disability, the court may, of its own motion or on application made to it in this behalf, order that such weekly or half-monthly payment be paid during the disability to any dependant of the workman or to any other person whom it thinks best fitted to provide for the welfare of the workman.

(7) Where, on application made to the court in this behalf or otherwise, the court is satisfied that, on account of neglect of children on the part of a parent, or on account of

the variation of the circumstances of any dependant, or for any other sufficient cause, an order of the court as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order as it thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(8) The solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of such claim or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by a court, subject to regulations made under this Act, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of the costs to be paid to the solicitor or agent.

15. Save as provided by this Act, no lump sum or weekly or half-monthly payment payable under this Act shall be capable of being assigned, charged or attached or shall pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Compensation not to be assigned, attached, or charged.

CONDITIONS OF COMPENSATION

16. (1) Proceedings for the recovery under this Act of compensation for any injury shall not be maintainable unless—

Requirements as to notice of accident and claim for compensation.

(a) written or oral notice of the accident has been given as soon as practicable after the happening thereof;

(b) written or oral notice of the accident has been given before the workman has voluntarily left the employment in which he was injured;

(c) the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury;

(d) in the case of death the claim for compensation has been made within six months after the date of death or within six months after the date of the accident;

(e) in the case of death occurring more than six months after the accident causing injury, a claim for compensation has been made by the workman within six months of the accident:

Provided that—

- (i) any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if an amended notice were then given and the hearing postponed, be prejudiced in his defence by the defect or inaccuracy or that such defect or inaccuracy was occasioned by mistake, absence from Antigua and Barbuda or other reasonable cause;
- (ii) the failure to make a claim within the period specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by absence from Antigua and Barbuda or other reasonable cause;
- (iii) the failure to give such notice or make a claim within the period specified shall not be a bar to the maintenance of such proceedings if there be an acknowledgement in writing, signed by the employer or his authorized agent, that he waives compliance with the provisions of this section and the said provisions shall be deemed to be waived to the extent set out in such acknowledgement;
- (iv) if the employer or his authorized agent admits liability to pay compensation, it shall not be necessary for the workman to give any

such notice, and the claim for compensation may be made within three months alter the date of the admission of liability;

- (v) the want of a notice shall not be a bar to the maintenance of 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.

(2) Notice in respect of an injury under this Act may be given to the employer (or if there is more than one employer to one of such employers) or to any foreman or other official under whose supervision the workman is employed, or to any person designated for the purpose by the employer, and shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened.

(3) The notice, if in writing, may be given by delivering the same at or sending it by the 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, corporate or unincorporate, the notice, if in writing, may also be given by delivering it or by sending it by post in a registered letter addressed to the employer, at the office, or if there be more than one office, any one of the offices of such 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.

(6) Any person making a false declaration, knowing it to be false, for the purpose of obtaining compensation shall be guilty of an offence against this Act and shall be liable on summary conviction to a penalty not exceeding one thousand dollars.

17. If a workman receiving a weekly or half-monthly payment ceases to reside in Antigua and Barbuda, such weekly or half-monthly payments shall thereupon be redeemed by a lump sum to be determined by agreement

Payments to cease on workman ceasing to reside in Antigua and Barbuda.

between the parties and if the parties cannot agree, as may be determined by a court on the application of either party.

Medical examination after notice of accident.

18. (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 the time and place notified to the workman by the employer, provided such time and place is reasonable.

(3) In the event of the workman being, in the opinion of any medical practitioner whatever, unable or not in a fit state to attend on the medical practitioner named by the employer, that fact shall be notified to the employer, and the medical practitioner so named shall fix a time and place for a personal examination of the workman and shall send him notice accordingly.

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

(5) The workman shall be entitled to have his own medical practitioner present at such examination, but at his own expense.

(6) Where the workman is not attended by a medical practitioner he shall, if so required by the employer, submit himself for medical treatment by a medical practitioner selected by the employer without expense to the workman.

(7) If the workman has refused to submit himself to treatment by a medical practitioner when so required under the provisions of subsection (6), or having submitted himself

to such treatment has disregarded the instructions of the medical practitioner, then if it is thereafter proved that the refusal or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had submitted himself to treatment by, and duly carried out the instructions of the medical practitioner, and compensation, if any, shall be payable accordingly.

(8) Where a claim for compensation is made in respect of the death of a workman, then if the workman had refused or wilfully neglected to submit himself to examination by a medical practitioner when so required under the provisions of this section, or had wilfully obstructed or unnecessarily delayed the examination or had refused to submit himself to treatment by a medical practitioner when so required under the provisions of this section or, having submitted himself to treatment, had disregarded the instructions of the medical practitioner, and if it is thereafter proved, that the refusal, neglect, obstruction, delay or disregard was unreasonable in the circumstances of the case and that death of the workman was caused thereby, the death shall not be deemed to have resulted from the injury and no compensation shall be payable.

19. Any workman receiving weekly or half-monthly 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 the provisions of section 18 shall apply to any such examination.

Medical examination of workman receiving payments.

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

No compensation payable for period of suspension of right.

21. (1) The employer and the workman may, after the injury in respect of which the claim to compensation has arisen, agree in writing to—

Agreements for payment of compensation.

(a) the amount to be paid by the employer as compensation in respect of the incapacity of the workman resulting from that injury;

(b) any other matter under this Act, and such agreement shall be forwarded to the court which may within three months cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances may be thought just if it is of the opinion that—

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

(2) Any such agreement may on application to the magistrate be made a judgment of the court under this Act.

(3) Where it is desired to have an agreement made a judgment of the court, a memorandum thereof shall be sent by any interested party to the clerk of the court who shall, subject to the provisions hereinafter contained, on being satisfied as to its genuineness, record such memorandum in a special register, and thereupon the memorandum shall for all purposes be enforceable as a judgment of the court:

Provided that—

(a) no such memorandum shall be recorded before fourteen days after the despatch by the clerk by registered post, of notice to the parties interested; and

(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 wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the court under the circumstances may think just.

22. (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 (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, provided the notice of the accident required under section 16 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 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 workman under the employer by whom he is immediately employed:

Sub-contracting

Provided that, where the contract relates to threshing, ploughing, or other agricultural work and the contractor provides and uses machinery driven by mechanical power for the purposes of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

(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 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. (1) If a workman contracts any disease to which this section applies, and the disease is due to the nature of the employment, and the incapacity or death of the workman

Compensation for occupational diseases.

results from that disease, compensation shall be payable as if the disease was a personal injury by accident arising out of and in the course of that employment, and all the provisions of this Act shall apply accordingly, subject however to the provisions of this section.

(2) For the purposes of calculating the earnings of the workman in a claim for compensation under this section, the commencement of the incapacity of the workman, or the date of his death if there has been no previous period of incapacity, shall be treated as the date of the happening of the accident, if he is then employed in any employment to the nature of which the disease is due, by the employer from whom the compensation is claimed, and if he is not then so employed, the last day on which he was so employed shall for this purpose be treated as the date of the happening of the accident.

(3) For all other purposes of this Act, the commencement of the incapacity of the workman, or the date of his death if there has been no previous period of incapacity, shall be treated as the date of the happening of the accident.

(4) If the disease has been contracted by a gradual process, so that two or more employers are severally liable to pay compensation in respect thereof under this section, the aggregate amount of compensation recoverable shall not exceed the amount that would have been recoverable if those employers had been a single employer, and in any such case those employers shall, in default of agreement, be entitled as between themselves to such rights of contribution as the magistrate thinks just, having regard to the circumstances of the case, in any action brought or application made by any of them for this purpose.

(5) The diseases to which this section applies shall be prescribed by order from time to time by the Cabinet.

(6) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is contracted as a result of an injury in respect of which he is entitled to compensation under the other provisions of this Act.

INSURANCE

24. (1) Subject to the provisions of this Act, it shall not be lawful for any person to employ another person as a workman, unless there is in force in relation to the employment of that workman a policy of insurance or other contract of indemnity in respect of the liability of the employer in case of the death of or bodily injury to the workman arising out of and in the course of such employment:

Compulsory insurance against workmen's compensation claims.

Provided that this subsection shall apply only to the employments set out in subsection (3) unless the Cabinet by order published in the *Gazette* declares that it shall apply to any other employment mentioned in that order, and the Cabinet may at any time and from time to time make a new order applying this subsection to other employments and may alter, amend or revoke any such order:

Provided further that this subsection shall not apply where the workman is employed by or on behalf of the Crown or the Government.

(2) The Labour Commissioner or any person authorized by him in that behalf may call for and inspect any policy of insurance taken out under the provisions of this section.

(3) The employments to which subsection (1) applies are—

(a) any employment connected with building construction and structural work in connection with buildings, if more than three workmen are engaged thereupon;

(b) any employment connected with any wood-working machinery or sawmill, sugar factory, foundry, docks, wharves or quays and the loading and unloading of ships, thereat;

(c) any employment connected with mining or forestry; and

(d) any employment connected with any dangerous operation.

(4) The Cabinet may, if satisfied that a bond in such sum of money as they may fix entered into by an employer

with sufficient sureties offers as good a security for the payment of compensation agreed upon or adjudged to be paid under this Act, direct that such bond be given and that it shall stand in lieu of the insurance required under subsection (1) and every such bond shall be made in favour of the Accountant-General and be deposited with the Registrar of the High Court.

(5) The Accountant-General shall, upon any employer failing to pay any sum of money agreed upon or adjudged by the court to be paid as compensation under this Act for the benefit of a workman or his dependants, enforce the bond in relation to that workman and the bond, if given to secure the payment of compensation in respect of other workmen shall remain in force as regards the other workmen notwithstanding such enforcement.

(6) Every person who acts in contravention of subsection (1) shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine not exceeding fifteen hundred dollars or to imprisonment for a term not exceeding three months.

(7) Notwithstanding anything contained in any law prescribing the time within which proceedings may be brought under the Magistrate's Code of Procedure Act, proceedings for an offence under this section may be brought within a period of six months from the date on which it first came to the knowledge of the prosecutor that the offence had been committed.

(8) In subsection (3), "dangerous operation" means an operation connected with any manufacture, machinery, plant, process or description of manual labour in factories, workshops or elsewhere which the Cabinet may, by notice published in the *Gazette*, declare to be dangerous to life or limb for the purposes of workmen's compensation.

Cap. 255.

Conditions under which liability for payment by insurer arises.

25. (1) If, after insurance has been effected or other contract of indemnity entered into or a bond securing the payment of compensation given pursuant to section 24, an employer becomes liable to pay compensation to a workman or his dependants, then notwithstanding anything to

the contrary in any policy of insurance contract or indemnity or bond contained, the insurer or person liable to indemnify the employer or to secure the payment of compensation under a bond shall pay the compensation agreed upon or adjudged to be paid, including any sum payable in respect of costs, in the manner prescribed in section 14.

(2) No sum shall be payable by an insurer, or person liable under a contract of indemnity or a bond given to secure payment of compensation under the provisions of this section—

(a) unless, in the case of compensation agreed upon between an employer and a workman or his dependants, such insurer or other person liable as aforesaid consented to pay the sum agreed upon as compensation to the workman or his dependants; or

(b) unless, in the case of compensation adjudged by the court to be paid to a workman or his dependants, the insurer or person liable as aforesaid had notice of the application to determine the compensation in time to enable him to apply to be added as a co-defendant, if he is so minded; or in respect of any judgment to pay compensation, so long as execution thereon is stayed by the court or pending appeal; or in respect of a policy of insurance, if before the happening of the event which was the cause of the death or personal injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein.

(3) If notice of the application to determine any compensation is given to an insurer, or other person liable under a contract of indemnity or bond to secure the payment of compensation, in time to enable him to apply to the court to be added as co-defendant, the court shall add the insurer or other such person as a co-defendant and he shall have the same right to defend the proceedings as if he were the employer.

(4) Where any sum paid by the insurer or person liable to indemnify the employer or to secure the payment of

compensation under a bond is covered by the policy of insurance contract of indemnity or bond (as the case may be) by virtue only of this section, such sum shall be recoverable by the insurer or other person as aforesaid from the employer.

Registration of employers.

26. (1) Every employer to whom section 24 applies shall—

(a) within thirty days after the commencement of this Act in the case of an employer already in business; or

(b) within thirty days after commencing business, make application for registration to the Labour Commissioner on the prescribed form.

(2) The Labour Commissioner shall, upon the receipt by him of an application under subsection (1) containing the particulars specified in the prescribed form and on being satisfied that the particulars are correct forthwith register the employer and the particulars thereof to which the application relates and he shall issue to the applicant a certificate of registration on the prescribed form.

(3) Where any change takes place in any of the particulars registered under subsection (2), the employer shall within thirty days after the date upon which the change takes place, make application to the Labour Commissioner for the registration of the change and the Labour Commissioner shall amend the register accordingly and issue to the applicant a certificate of registration of the change as aforesaid.

(4) The Labour Commissioner may take such steps as he may consider necessary to ascertain whether the particulars supplied by the employers who apply for registration are correct.

(5) Any person who fails to comply with the requirements of this section, or who wilfully delays or obstructs the Labour Commissioner or any officer appointed by him in the exercise of any power, duty or function under this section shall be guilty of an offence against this Act and shall be

liable on summary conviction to a penalty not exceeding two hundred and fifty dollars.

ALTERNATIVE REMEDIES

27. (1) When the 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, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may at his option claim compensation under this Act, or take proceedings independently of this Act, but the employer shall not be liable to pay compensation under this Act and damages. Acceptance of compensation under this Act shall not operate as a bar to proceedings independently of this Act.

Alternative remedies.

(2) If, within the time limited in this Act for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by an accident, and it is determined in such action or on appeal that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried, or, if the determination is the determination on an appeal (by either party) by an appellate tribunal, that tribunal, shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation 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:

Provided that the said court or appellate tribunal may, instead of itself assessing such compensation, remit the case to the magistrate 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 such costs as aforesaid.

(3) In any proceedings under subsection (2), when the court or appellate tribunal assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction of costs, and such certificate shall have the force and effect of and shall be registered as an agreement under this Act.

Remedies against employer and stranger.

28. Where the 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 thereof —

(u) 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) if 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 22 (relating to liability in case of workmen employed by contractors), shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by the court.

INSOLVENCY OR BANKRUPTCY OF EMPLOYER

Provisions as to cases of insolvency or bankruptcy of employer.

29. (1) Where the employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming insolvent or 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, 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 enactments relating to insolvency or bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

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

(3) There shall be included among the debts which—

(a) under section 37 of the Bankruptcy Act are, in **Cap. 41** the distribution of the property or assets of a bankrupt, to be paid in priority to all other debts; and

(b) under the Companies Act are in the winding **Cap. 94.** up of a company to be paid in priority to all other debts,

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

- (i) in the first case the date of the receiving order; and
- (ii) in the second case the date of the commencement of the winding up of the company.

For the purposes of this provision where the compensation is a weekly or half-monthly payment, the amount due in respect thereof shall, failing agreement between the two parties, be a lump sum to be fixed by the court.

(4) The provisions of this section with respect to preferences and priorities shall not apply where the insolvent or bankrupt or the company has entered into such a contract with insurers as aforesaid.

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

30. (1) If the employer becomes insolvent and is ordered to pay compensation under this Act, he shall, if requested, disclose whether he is insured against personal injury to or death of the workman employed by him and, if so insured, the name and address of the insurer and the amount for which he is insured. **Employer liable for compensation to disclose insurer.**

(2) When the 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 upon those proceedings in the same manner and to the same extent as the employer and the insurer shall indemnify the employer accordingly:

Provided that the liability of the insurer shall be limited by the terms and conditions of the policy of insurance subsisting between him and the employer.

APPLICATION TO SPECIAL CLASSES OF PERSONS

Application to workmen in the employment of the Crown.

31. (1) The provisions of this Act shall apply to a workman in the employment of the Crown where in consequence of injury received by any such workman in the discharge of his duties a pension or gratuity is payable to him or in case of death to his dependants and such pension or gratuity is less than the compensation payable under this Act.

(2) In this section the references to pension or gratuity shall be construed as meaning a pension or gratuity which is payable under any law relating to pensions in a case of injury received or death occurring in the discharge of duty in the service of the Government as defined in such law and which would not be payable if the injury were received or the death occurred otherwise.

Application to workmen in the employment of a local authority.

32. (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 law, or by-law or regulation shall be regarded as the trade, business or undertaking of that authority.

(2) The provisions of the last preceding section shall, *mutatis mutandis*, apply in respect of a workman in the employment of any local authority where provision exists by law or by-law or regulation for the grant of a pension or gratuity to such 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 that injury.

33. (1) This Act shall apply to masters, seamen, and apprentices to the sea service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in Antigua and Barbuda, or of any other Commonwealth ship or vessel 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 Antigua and Barbuda, subject to the following modifications—

Application to persons employed on ships.

(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 six months after news of the death has been received by the claimant;

(c) where the injured master, seaman or apprentice is discharged or left behind in a Commonwealth country or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any Judge or Magistrate in the Commonwealth country, and by the principle representative of Antigua and Barbuda or any British consular officer in the foreign country and if so taken shall be transmitted by the person by whom they were taken to the Minister, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided in sections 287 and 288 of the Antigua and Barbuda Merchant Shipping Act and those sections shall apply accordingly; Cap. 28.

(d) in the case of the death of a master, seaman or apprentice leaving no dependants, no compensation shall be payable, if the owner of the ship is under the Antigua and Barbuda Merchant Shipping Act, liable to pay expenses of burial;

(e) the weekly or half-monthly 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 Antigua and Barbuda relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman or apprentice;

(f) any sum payable by way of compensation by the owner of the ship under this Act shall be paid in full notwithstanding anything in section 310 of the Antigua and Barbuda Merchant Shipping Act (which relates to the limitations of shipowner's liability in certain cases of loss of life, injury or damage), but the limitation of the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under section 28 (relating to remedies both against employer and stranger) as if the indemnity were damages for loss of life or personal injury;

(g) subsections (2) and (3) of section 174 of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the application is made within 18 months of the date at which the ship is deemed to have been lost with all hands.

(2) This Act shall also 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 workman within the meaning of this Act.

34. (1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port of Antigua and Barbuda, or within the territorial limits thereof, a Judge of the High Court may, upon its being shown to him by any person applying in accordance with the rules of court that the owners are probably liable as such to pay such compensation,

57 & 58 Vict.
c. 60.

Detention of
ships.

and that none of the owners reside in Antigua and Barbuda, issue an order directed to any officer of customs or other officer named by the Judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the Judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the Judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Where a complaint is made to the Minister that before an application can be made under this section the ship in respect of which the application is to be made will have departed from the limits within which she can be arrested, the ship shall, if the Minister so directs, be detained for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention, if made in accordance with the directions of the Minister.

(4) Section 277 of the Antigua and Barbuda Merchant Shipping Act shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in Antigua and Barbuda if it has an office in Antigua and Barbuda at which service of writs can be effected.

(5) Where a ship has been demised to charterers, the provisions of this section shall apply to claims against the charterers of the ship as they apply to claims against the owners of a ship with the substitution of charterers for owners:

Provided that no ship shall be detained on a claim against the charterers of the ship after the expiration of the term for which the ship is demised to them.

PROCEDURE

Workman's right to apply for compensation if no amount agreed in four weeks.

35. If an employer on whom notice of the accident has been served as aforesaid does not within four 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 such application as in this Act is provided for enforcing his claim to compensation.

All claims to be determined by magistrate.

36. (1) All claims for compensation under this Act and any matter arising out of the proceedings thereunder shall be determined by the magistrate's court of the district in which there occurred the accident in respect of which the claim for compensation arose whatever may be the amount involved. All such questions shall be determined upon application made to such magistrate in manner provided by this Act:

Provided that —

(a) a claim may be had and taken in a magistrate's court of a district on which both parties mutually agree;

(b) the Cabinet from time to time may, for the convenience of parties and the saving of expense, by order, direct in what magistrate's court proceedings for compensation may be taken in respect of accidents occurring in any area specified in the order.

(2) (i) The court may, subject to regulations made under this Act, submit to a medical referee for report any matter of a medical character which seems material to any question arising in the course of the proceedings before the court;

(ii) when the court has decided to refer a matter to a medical referee by virtue of the provisions of paragraph (i), the court shall fix the time within which the parties may come to an agreement as to the choice of a medical referee, and failing such agreement, the court shall refer the matter to a medical referee chosen by the court;

- (iii) a medical referee to whom any such reference is made shall, in accordance with regulations made under this Act, give a certificate of his findings and such certificate shall be conclusive evidence as to the matters so certified;
- (iv) regulations may be made by the Cabinet for prescribing the duties of the medical referee in cases of reference made under this subsection and the forms to be used.

(3) No application for the settlement of any matter by the court shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

37. (1) A workman or an employer (hereinafter called "the applicant") who desires the determination of any question arising out of an accident in which compensation is or might be claimed shall lodge with the clerk of the magistrate's court a written application in the prescribed form accompanied by particulars containing—

Application for compensation to be lodged with clerk of court accompanied by particulars.

(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;

(6) the full name and address of the applicant and of his attorney or agent and the name and address of the respondent.

(2) If the application be made by an employer it shall be accompanied by a statement whether he admits his liability to pay compensation, or denies such liability and whether the admission or denial is total or partial, and if he admits or denies liability partially, a statement of the extent to which he admits or denies liability. In the case of a denial of liability the grounds shall be stated.

(3) If the clerk of the court be 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 on the prescribed form.

Copy of application and particulars to be served on respondent.

38. (1) As soon as an application together with the accompanying particulars and statement herein prescribed, has been lodged the clerk of the court shall forthwith cause a copy thereof to be served upon the respondent together with a notice requiring the respondent to lodge with the clerk of the court such answer as is prescribed in subsection (2) within the period therein prescribed and that in default of his complying with that or of his appearing at a time and place fixed in the notice, such order may be made under this Act as the magistrate thinks just and expedient. Except with the written consent of the respondent communicated to the clerk of the court, not less than fourteen clear days shall elapse between the date of the service of the notice upon the respondent and the date fixed for hearing the application.

(2) If the respondent intends to oppose an application he shall, within seven days after service of 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 grounds of his opposition.

(3) The magistrate may, at any time before the determination of the question in dispute and upon such terms as to adjournment or as to costs as he deems just allow an application, or any particulars or statement accompanying the same, or any answer thereto to be amended. Any such amendment shall be lodged with the clerk of the court who shall forthwith cause it to be served upon the opposite party.

Magistrate to have power and jurisdiction of magistrate's court.

39. Save as is specially provided in this Act a magistrate's court shall, upon or in connection with any question to be determined thereunder have all the powers and jurisdictions 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 such court and the law, rules and practice in such civil actions shall *mutatis mutandis* apply; and any order made by a magistrate under this Act may be enforced as if it were a judgment or order of the court.

40. (1) If the workman at the hearing of an application be incapacitated by reason of the injury in respect of which the application is made and if further it be 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, adjourn the hearing for a period or periods not exceeding twelve months in all, reckoned from the date of the accident causing the injury and may make an interim order that the employer shall, in the meantime, pay such compensation to the workman as is provided by this Act in the case of temporary incapacity for work or permanent partial incapacity for work, as the case may be.

Magistrate may adjourn hearing for twelve months where there is doubt as to degree of incapacity.

(2) If the workman at the hearing of an application be 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 twelve 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.

41. The magistrate may, in his discretion, on the application of either party to any proceedings before him, or of his own motion without any application, submit any question of law in the form of a special case for the decision of the Court of Appeal and if he does so, he shall decide the question in conformity with such decision.

Power of magistrate to submit questions of law.

42. (1) An appeal shall lie to the Court of Appeal from any order of a magistrate where—

Appeals to Court of Appeal.

(a) a question of law is involved;

(b) the decision was one which the magistrate viewing the evidence reasonably could not properly make:

Provided that from the following orders of a magistrate, namely—

(a) an order awarding as compensation a lump sum, or disallowing a claim in full or in part for a lump sum;

(b) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such a dependant;

(c) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of subsection (2) of section 22; or

(d) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions,

no appeal shall lie against any such order unless the amount in dispute in the appeal is more than fifteen hundred dollars.

(2) Notwithstanding anything herein contained, no appeal shall lie in any case in which the parties have agreed to abide by the decision of the magistrate, or in which the order of the magistrate gives effect to an agreement come to by the parties.

Provisions of Magistrate's Code of Procedure Act to apply to special cases and appeals.

Cap. 255.

43. Save as provided in section 44 the provisions of the Magistrate's Code of Procedure Act for the time being in force relating to special cases and to appeals in civil proceedings from a magistrate to the Court of Appeal shall apply to and govern any special case submitted to the Court of Appeal under section 41, and, subject to the provisions of subsections (1) and (2) of section 42, any appeal to the Court of Appeal under this Act.

Decisions of Court of Appeal in special cases and appeals to be final.

44. The decision of the Court of Appeal in any special case submitted to it or in any appeal under this Act shall be final.

MISCELLANEOUS

No right to contract out of Act.

45. Any provision in a contract of employment existing at the commencement of this Act, or thereafter entered into, whereby a workman or his dependants relinquish any right to compensation under this Act or to damages

independently of this Act whether for the workman or for any dependants shall be null and void.

46. (1) The Minister may appoint any medical practitioner to be a medical referee for the purposes of this Act and may revoke any such appointment at any time.

Appointment and remuneration of medical referee.

(2) Any appointment made under the preceding subsection, or any revocation of any such appointment, shall take effect on the date of its publication in the *Gazette*.

(3) The remuneration of, and other expenses incurred by medical referees under this Act shall, subject to regulations made under this Act and except so far as they are defrayed by fees received from the parties under this Act, be paid out of moneys provided by the Legislature.

(4) 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 insurers interested, he shall not act as medical referee in that case.

(5) The number of medical referees appointed by the Minister shall be at least three at any time:

Provided that the reduction, below three, of the number of medical referees shall not invalidate any reference to, or any certificate given by, a medical referee.

47. (1) Where a workman has submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, a magistrate, on application being made to him by one or both parties, may refer the matter to a medical referee.

Application for reference to medical referee.

(2) In the case of an application made by both parties under the provisions of the preceding subsection, the magistrate shall refer the matter to a medical referee chosen

by both parties, but, if such parties cannot agree on the choice of a medical referee within such time as may be fixed by the magistrate, the magistrate shall refer the matter to a medical referee chosen by him.

(3) The medical referee to whom the matter is so referred shall, in accordance with regulations made under this Act, 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.

(4) Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this section shall, subject to any regulations made under this Act, apply as if the question were a question as to the condition of the workman.

(5) If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, 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 or half-monthly payment under this Act, his right to that weekly or half-monthly payment shall be suspended until such examination has taken place.

**Employers to
make returns of
injuries.**

48. Every employer in any industry to which the Minister may direct that this section shall apply and every insurance company shall, on or before such day in every year as the Minister may direct, send to the Labour Commissioner a correct return specifying the number of injuries in respect of which compensation has been paid by such employer or insurance company, as the case may be, under this Act during the previous year, and the amount of such compensation together with such other particulars as to the compensation as the Minister may direct and in default of complying with this section any such employer or insurance company shall be guilty of an offence against this

Act and shall be liable on summary conviction to a penalty not exceeding five hundred dollars.

49. (1) There shall be displayed at or near every mine, quarry, factory or workshop a notice containing such abstract of this Act and the regulations made thereunder as may be prescribed by the Labour Commissioner. **Display of notice.**

(2) Any person who fails to comply with the requirements of subsection (1) shall be guilty of an offence against this Act and shall be liable on summary conviction to a penalty not exceeding one hundred dollars.

50. The Cabinet shall have power to make regulations for— **Regulations.**

(a) prescribing the procedure and forms in respect of matters to be done under this Act;

(b) matters which are specifically mentioned in this Act as being matters which may be prescribed by regulation; and

(c) generally for carrying out the objects and provisions of this Act.

51. The Labour Commissioner may institute or cause to be instituted any prosecution for the purpose of enforcing any of the provisions of sections 26, 48 and 49 and any officer of the Labour Department may appear as prosecutor for and on behalf of the Labour Commissioner. **Enforcement.**

SCHEDULE	S.8(1)(c) (i)
Injury	Degree of Disablement per centum
Loss of two limbs	} 100
Loss of both hands or of all fingers and thumbs	
Total loss of sight	
Total paralysis	
Injuries resulting in being bedridden permanently	
Any other injury causing permanent total disablement	
Loss of remaining eye by one-eyed workman	
Loss of remaining arm by one-armed workman	
Loss of remaining leg by one-legged workman	
Loss of arm at shoulder	80
Loss of arm above elbow	70
Loss of arm below elbow	60
Loss of hand at wrist	60
Loss of four fingers and thumb on one hand	60
Loss of four fingers	45
Loss of thumb—both phalanges	35
one phalanx	15
Loss of index finger—three phalanges	15
two phalanges	10
one phalanx	8
Loss of middle finger—three phalanges	8
two phalanges	4
one phalanx	2
Loss of ring finger—three phalanges	8
two phalanges	4
one phalanx	2
Loss of little finger—three phalanges	5
two phalanges	3
one phalanx	2
Loss of metacarpals—first or second (additional)	5
third, fourth or fifth (do.)	5
Loss of leg—at hip joint	75
above knee	70
at knee	70

Injury	Degree of Disablement per centum
Loss of leg—below knee	60
at ankle	40
Loss of foot—at ankle	40
above the junction of the foot with toes	35
Loss of toes—all	35
great, both phalanges	15
great, one phalanx	15
other than great, if more than one toe lost, each.....	3
Loss of eye—eye out	40
sight of	40
lens of	30
sight of, except perception of light	40
Loss of hearing — both ears	70
one ear	20

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 25 to 100 per cent. of the incapacity for loss of the use of that member, according to whether the joint is ankylosed in a favourable or unfavourable position.

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

A one-eyed workman who on entering employment has failed to disclose that Fact to his employer shall, if he loses his remaining eye, be entitled to compensation in respect of a degree of disablement of forty per centum only.

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