

WORKMEN'S COMPENSATION

Ordinances
Nos: 19 of 1934,

AN ORDINANCE TO PROVIDE FOR THE PAYMENT OF COMPENSATION TO WORKMEN WHO ARE INJURED IN THE COURSE OF THEIR EMPLOYMENT.

Acts
Nos: 31 of 1957,
22 of 1959,
4 of 1966,
15 of 1990,
10 of 2005.

[1st August, 1935.]

PART I

Short title.

1. This Ordinance may be cited as the Workmen's Compensation Ordinance.

Interpretation.

2 (1) In this Ordinance, unless the context otherwise requires -

[§ 2, 15 of 1990.]

“Commissioner” means any person appointed under section 26 to be or to act as Commissioner or as a Deputy Commissioner for Workmen's Compensation, and includes any person appointed under section 27 to be or to act as an Assistant Commissioner for Workmen's Compensation;

“compensation” means compensation as provided for in this Ordinance;

“dependant” means any of the following relatives of a deceased workman, namely:-

(a) a wife, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother; and

(b) if wholly or in part dependent on the earnings of the workman at the time of his death, a husband, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in law, a minor child of a deceased son or deceased daughter or, where no parent of the workman is alive, a paternal grandparent;

[§ 2,15 of 1990.]

“employer” includes the Republic of Sri Lanka and any body of persons whether corporate or unincorporate and any managing agent of an employer and the heirs, executors or administrators of a deceased employer, and, when 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, means such other person while the workman is working for him;

[§ 2 15 of 1990.]

“local authority” includes a Municipal Council, an Urban Council and a Pradeshiya Sabha;

“managing agent” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

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

Provided that every injury specified in Schedule 1 shall be deemed to result in permanent partial disablement;

“prescribed” means prescribed by this Ordinance or by any regulation made thereunder;

“registered medical practitioner” means a person registered as a medical practitioner under the Medical Ordinance, or under any enactment amending that Ordinance;

“registered ship” means any sea-going ship or boat of any description which is registered or required to be registered in Sri Lanka as a Sri Lanka ship;

“regulation” means a regulation made under this Ordinance:

“seaman” means any person forming part of the crew of any registered ship, but does not include the master of any such ship;

“total disablement” means such disablement, 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 disablement:

[§ 2,15 of 1990.]

Provided that permanent total disablement shall be deemed to result from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred *per centum*;

“wages” includes the monetary value of 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;

“workman” means any person who has entered into or works under a contract with an employer for the purposes of his trade or business in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship or a contract personally to execute any work or labour and whether the remuneration payable thereunder is calculated by time, or by work done or otherwise, and whether such contract was made before or after the coming into force of this definition, but does not include -

(a) a person working in the capacity of a member of the Armed Forces of Sri Lanka other than a person employed in a civilian capacity in any of those forces;

(b) a member of the police force of Sri Lanka; and

(2) A reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

[§ 2, 15 of 1990.]

(3) The exercise and performance of the powers and duties of any department of the Government, Provincial Council or any local authority shall, for the purposes of this Ordinance, unless a contrary intention appears, be deemed to be the trade or business of that department, Council or local authority.

PART II LIABILITY TO PAY COMPENSATION

Employer's liability to pay compensation for injury suffered by a workman.

3. If personal injury is caused to a workman by accident arising out of and in the course of his employment his employer shall be liable to pay compensation in accordance with the provisions of this Ordinance:

Provided that the employer shall not be so liable-

[§ 3,15 of 1990.]

- (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;
- (b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to -
 - (i) the workman having been at the time thereof under the influence of drink or drugs, or
 - (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, 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.

Employer's liability to pay compensation for certain diseases contracted by a workman. [§ 3,31 of 1957.]

4. (1) If a workman -

- (a) contracts an occupational disease described in the first column of Part A of Schedule III whilst he is employed in any process described in the corresponding entry in the second column of that Part, or
- (b) contracts an occupational disease described in the first column of Part B of the aforesaid Schedule whilst he is in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any process described in the corresponding entry in the second column of that Part,

the contracting of the disease shall be deemed to be an injury by accident within the meaning of section 3, and unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

(2) For the purposes of this section a period of service shall be deemed to be continuous which has not included a period of service under any other employer.

Circumstances in which compensation is payable in respect of any disease. [§ 4,15 of 1990.]

5. Save as provided by section 4, no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment or the disease is reasonably attributable to the nature of his employment.

PART III AMOUNT OF COMPENSATION

Amount of compensation.

6. (1) Subject to the provisions of this Ordinance, the amount of compensation shall be as follows, namely:-

[§ 5, 15 of 1990.]

(A) Where death results from the injury and the deceased was a workman in receipt of monthly wages falling within limits shown in the first column of Schedule IV - the amount shown against such limits in the second column thereof:

[§ 5, 15 of 1990.]

(B) Where permanent total disablement results from the injury, and the disabled workman was in receipt of monthly wages falling within limits shown in the first column of Schedule IV - the amount shown against such limits in the third column thereof; and

[§ 5, 15 of 1990.]

(C) Where permanent partial disablement results from the injury -

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

Provided that in a case 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 permanent total disablement had resulted from the injuries.

[§ 5, 15 of 1990.]

(D) Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day from the date of the disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter, in the case of a workman in receipt of monthly wages falling within limits shown in the first column of Schedule IV - of the sum shown against such limits in the fourth column thereof:

[§ 2, 10 of 2005.]

Provided that -

- (a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be, and
- (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

In a case where for the whole or any part of the period of disablement referred to in paragraph (a) of this proviso, a workman occupies any premises belonging to or provided by his employer and pays no rent to him for such occupation, the amount fixed by agreement between the workman and his employer or, failing such agreement, the amount determined by the Commissioner as a fair rental of the premises for the period of such occupation shall be deemed to have been received by the workman as an allowance by way of compensation from his employer for the purpose of computing the deduction to be made from any lump sum or half-monthly payments to which the workman is entitled.

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(3) The use in this section of the expression "monthly wages" shall not exclude any workman from the right to compensation under this Ordinance by reason only of the fact that he is not paid at a monthly rate or that his remuneration is calculated by time or by work done or at a daily rate.

Method of calculating wages.

7 (1) For the purposes of this Ordinance the monthly wages of a workman shall be calculated as follows, namely:-

- (a) 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;

(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality;

(c) 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.

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

Review of
half monthly
payments.

8. (1) Any half-monthly payment payable under this Ordinance, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner on the application, either of the employer or of the workman accompanied by the certificate of a registered medical practitioner that there has been a change in the condition of the workman, or, subject to regulations made under this Ordinance, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Ordinance, be continued, increased, decreased or ended, or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

Computation of
half-monthly
payments.

9. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of lump sum of such amounts as may be agreed to by the parties or determined by the Commissioner, as the case may be.

PART IV

PAYMENT, DISTRIBUTION AND RECOVERY OF COMPENSATION

Persons entitled
to compensation.

10. (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 Ordinance.

(2) Where a dependant dies before a claim under this Ordinance is made, or, if a claim has been made, before an agreement or award has been arrived at or made, the heirs, executors, or administrators of that deceased dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the workman.

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

Deposit of compensation with Commissioner in certain cases.

11 (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

[§ 4,31 of 1957.]
[§ 6, 15 of 1990.]
[§ 3, 10 of 2005.]

Provided that, in the case of a deceased workman, an employer may make to one or more of the dependants advances on account of compensation not exceeding an aggregate of ten thousand rupees, and so much of such aggregate as does not exceed the compensation payable to the dependant or dependants shall be deducted by the Commissioner from such compensation and repaid to the employer.

[§ 4,31 of 1957.]
[§ 6, 15 of 1990.]
[§ 3, 10 of 2005.]

(2) Any other sum amounting to not less than one thousand rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(5) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

Distribution of compensation.
[§ 7, 15 of 1990.]
[§ 4, 10 of 2005.]

12 (1) On the deposit of any money under section 11 as compensation in respect of a deceased workman the Commissioner shall deduct therefrom the actual cost of the workman's funeral expenses to -

- (i) an amount not exceeding ten thousand rupees, where the compensation does not exceed two hundred thousand rupees;
- (ii) an amount not exceeding fifteen thousand rupees, where the compensation does not exceed three hundred thousand rupees;
- (iii) an amount not exceeding twenty thousand rupees, where the compensation does not exceed five hundred thousand rupees,

and pay the same to the person by whom such expenses were incurred. and shall, if he thinks necessary, cause notice to be published or to be served on each dependant resident in Sri Lanka in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied, after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid; but no such repayment shall be made until after the expiry of a period of twelve months reckoned from the date on which the money was deposited under section 11. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(2) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under subsection (1), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

Payment of compensation.

13. (1) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may in other cases, pay the money to the person entitled thereto.

(2) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in that behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

Variation of Commissioner's order of distribution. & c.

14. (1) Where, on application made to him in this behalf or otherwise, the Commissioner 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 Commissioner 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 Commissioner may make such orders for the variation of the former order as he 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.

(2) Where the Commissioner varies any order under subsection (1) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 41.

Workman leaving Sri Lanka to reside elsewhere.

15. (1) If a workman receiving or entitled to receive a half-monthly payment intends to leave Sri Lanka in order to reside permanently in another country, he shall give the Commissioner ten days' previous notice of such intention; and the Commissioner shall forthwith inform the other party, who may agree with the workman to continue the payments in the country in which the workman intends to reside. If the parties cannot agree, either party may apply to the Commissioner for the redemption of such half-monthly payments and the Commissioner shall thereupon determine the amount of the lump sum which shall be payable in lieu of such payments.

(2) If a workman receiving or entitled to receive a half-monthly payment leaves Sri Lanka for the purpose of residing in another country without giving such notice as is required by the provisions of subsection (1), he shall, if the Commissioner after inquiry certifies in writing that he has left Sri Lanka for such purpose and without giving due notice, cease to be entitled to any benefits under this Ordinance during his absence from Sri Lanka; but he shall for the purpose of section 6(1) (d), be deemed to have received half-monthly payments during such absence:

Provided that the Commissioner may revoke his certificate if he is satisfied that the workman had reasonable grounds for not giving such notice.

(3) A notice or application under this section may be given or made on behalf of any workman by the Commissioner.

Procedure for recovery of compensation. Notice and claim. [§ 5, 31 of 1957.] (§ 8, 15 of 1990.)

16. (1) No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been instituted within two years of the occurrence of the accident or, in the case of death, within two years from the date of death:

[§ 8, 15 of 1990.]

Provided that, where the accident is the contracting of a disease in respect of which the provisions of section 4 or section 5 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the maintenance of proceedings -

- (a) if the claim is made in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or
- (b) 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 irregularity, or that such want, defect or irregularity was occasioned by mistake, absence from Sri Lanka, or other reasonable cause.

(2) The Commissioner may admit and decide any claim to compensation in any case notwithstanding that the notice required by subsection (1) has not been given, or that the claim has not been instituted in due time as required by that subsection, if he is satisfied that the failure so to give notice or to institute a claim, as the case may be, was due to sufficient cause.

Form of notice.

17. A notice under section 16 may be given either in writing or orally 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 occurred.

Notice book.

18 (1) The Minister may by regulation require any specified class of employers to maintain at their premises at which workmen are employed a notice-book in the prescribed form which shall be readily accessible at all reasonable times to any workman who is injured while employed on the premises and to any person acting bona fide on his behalf.

(2) Any employer who acts in contravention of any regulation made by the Minister under subsection (1) shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees.

[§ 9, 15 of 1990.]

Service of notice.

19. A notice under section 16 may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

Power of Commissioner to require statements from employers regarding fatal accidents.

20. (1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or not liable to deposit compensation on account of the death.

[§ 6, 31 of 1957.]

(2) Where an employer is served with a notice under subsection (1), he shall, unless he disclaims liability to deposit compensation on any ground other than the ground that there are no dependants of the deceased workman, make the deposit within thirty days after the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other or further information as he may think fit.

Medical examination.

21 (1) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a registered medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Ordinance shall, if so required, submit himself for such examination from time to time:

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with regulations made under this Ordinance, or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under subsection (1) or by the Commissioner at any time, refuses to submit himself for examination by a registered medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under subsection (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed or the place in which he was resident at the time of the accident his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under subsection (2) or subsection (3), dies without having submitted himself for medical examination as required by either of those subsections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(5) Where under subsection (2) or subsection (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (d) of subsection (1) of section 6, the waiting period shall be increased by the period during which the suspension continues.

[§ 7, 31 of 1957.]

(6) Where the employer of an injured workman offers to him the services of a registered medical practitioner free of charge and -

- (a) the workman accepts such offer but deliberately disregards the instruction of the registered medical practitioner, or
- (b) the workman refuses to accept such offer and thereafter either fails to take treatment regularly from a registered medical practitioner or whilst being regularly attended by a registered medical practitioner deliberately disregards the instructions of such practitioner,

then, if the disregard referred to in paragraph (a) or the refusal and failure or disregard referred to in paragraph (b) is or are unreasonable in the circumstances of the case and the injury is aggravated thereby, the injury and the resulting disablement shall be deemed to be of the same nature and duration as they might reasonably be expected to be if the workman had been regularly attended by a registered medical practitioner and had not deliberately disregarded the instructions of such practitioner; and compensation, if any, shall be payable accordingly.

Right of workman to recover compensation from principal or contractor under whom he is employed.

22. (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purpose of his trade or business contracts with any other person (hereinafter 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 which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Ordinance shall apply as if reference to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation; and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

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

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

Remedies of employer against third parties.

23. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 22 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Imposition of surcharge on employers for failure to pay compensations on due date. [§ 10, 15 of 1990.] Insolvency of employer.

23A. Where the amount payable in terms of an award for the payment of compensation is not paid within a period of thirty days from the date of the award, the employer shall be liable to pay in addition to such compensation, a surcharge of a sum equivalent to ten *per centum* of the amount of such compensation.

24. (1) Where any employer has entered into a contract with any insurer in respect of any liability under this Ordinance to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or 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 proceedings or liquidation.

(3) Where in any case such as is referred to in subsection (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that subsection shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman:

Provided that the provisions of this subsection shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings and that the employer was insured and with whom.

- (4) There shall be deemed to be included among the debts which-
- (a) under section 96 of the Insolvency Ordinance are to be paid out of the estate and effects of an insolvent before any other debts, and
 - (b) under section 253(1)(c) and (d) of the Companies Ordinance* are, in the distribution of the assets of any company being wound up, to be paid in priority to other 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 adjudication of insolvency;
- (ii) in the second case, the date of the commencement of the winding up of the company;

and the provisions of the two Ordinances mentioned in this subsection shall apply accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 9, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of subsection (4) shall apply in the case of any amount for which as insurer is entitled to prove under subsection (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in subsection (1).

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

PART V MASTERS AND SEAMEN

Special provisions
relating to
masters and seamen.

25. This Ordinance shall apply in the case of workmen who are masters of registered ships or seamen subject to the following modifications, namely:-

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

(b) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost.

* Repealed by the Companies Act, No.17 of 1982. Act, No. 17 of 1982 repealed by Act, No. 7 of 2007.

(c) Where an injured master or seaman is discharged or left behind in a foreign country, any depositions taken by any consular officer in the foreign country and transmitted by him shall, in any proceedings for enforcing the claim, be admissible in evidence -

- (i) if the depositions is authenticated by the signature of the consular officer before whom it is made;
- (ii) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and
- (iii) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(d) In the case of the death of a master or seaman leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being in Sri Lanka relating to merchant shipping liable to pay the expenses of burial of the master or seaman, return to the employer the full amount of the compensation deposited under section 11 without making the deduction referred to in section 12.

(e) No half-monthly payment shall 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 Sri Lanka relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

PART VI

APPOINTMENT OF COMMISSIONER AND OTHER OFFICERS

Appointment of
Commissioner
and Deputy
Commissioners.
[§ 2,22 of 1959.]

26. There may be appointed, by name or by office, a Commissioner for Workmen's Compensation for Sri Lanka and such number of Deputy Commissioners for Workmen's Compensation for the Island as may be necessary.

Appointment of
Assistant
Commissioners.

27. There may be appointed such number of Assistant Commissioners for Workmen's Compensation as may be necessary, for such local areas as may be specified in the respective notifications relating to their appointments.

All officers
deemed to be
public servants.

28. Any officer appointed under section 26 or section 27 shall be deemed to be a public servant within the meaning of the Penal Code.

Protection of
public servants.

29. No action shall be maintained against any public servant for anything by him done or omitted to be done in good faith under this Ordinance.

PART VII

PROCEEDINGS BEFORE COMMISSIONERS

Disputes to be settled by Commissioner.

30. If any question arises in any proceeding under this Ordinance as to the liability of any person to any compensation (including any question as to whether a person injured is or is not a workman), or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), or as to the age of any workman or dependant, the question shall, in default of agreement, be settled and determined by a Commissioner.

Each Commissioner to deal with matters relating to accidents in his local area.

31. Where any matter is under this Ordinance required to be done by or before a Commissioner, the same shall, subject to the provisions of this Ordinance and to any regulations made thereunder, be done by or before a Commissioner entitled to function as such in the local area in which the accident took place which resulted in the injury:

Provided that, where the workman is the master of a registered ship or a seaman, any such matter may be done by or before a Commissioner entitled to function as such in the local area in which the owner or agent of the ship resides or carries on business.

Commissioner entitled to assistance of experts.

32. Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Ordinance, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry, to assist him in holding the inquiry.

Transfer of case from one Commissioner to another.

33. (1) If a Commissioner is satisfied by any party to any proceedings under this Ordinance pending before him that such matter can be more conveniently dealt with by any other Commissioner, whether in the same province or not, he may, subject to regulations made under this Ordinance, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings.

(2) The Commissioner to whom any matter is so transferred shall, subject to regulations made under this Ordinance, inquire thereinto, and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(3) On receipt of a report from a Commissioner to whom any matter has been transferred for report under subsection (1), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

Form of application to Commissioner for settlement of question in dispute.

34. (1) No application for the settlement of any matter by a Commissioner, other than an application by a dependant or dependants for compensation, 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.

(2) An application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely:-

- (a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;
- (b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;
- (c) the names and addresses of the parties; and

(d) except in the case of an application by dependants for compensation, a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

Powers of
Commissioner.

35. A Commissioner shall have all the powers of a civil court under the Civil Procedure Code, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects; and a Commissioner shall be deemed to be a civil court for all the purposes of section 135 and Chapter XXXII of the Code of Criminal Procedure Act.

Appearance of
parties.

36. Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by a representative authorized in writing by such person and approved by the Commissioner.

Method of
recording
evidence.

37. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be signed by the Commissioner and shall form part of the record:

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided, further, that the evidence of any medical witness shall be taken down as nearly as may be word for word.

Costs.

38. All costs incidental to any proceedings before a Commissioner shall, subject to regulations made under this Ordinance, be in the discretion of the Commissioner.

Submission of
question of law
for opinion of
Court of Appeal.

39. A Commissioner may, if he thinks fit, submit any question of law for the opinion of the Court of Appeal, and, if he does so, he shall decide that question in conformity with such opinion.

Civil court has no
jurisdiction over
matters required
to be dealt with
by Commissioner.
[§ 8,31 of 1957.]

40. No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Ordinance required to be settled, decided or dealt with by a Commissioner or, except as provided in section 41(2), to enforce any liability incurred under this Ordinance.

Recovery of
amounts due.
[§ 11, 15 of 1990.]

41. (1) The Commissioner may recover any sum or amount due from or payable by any person under this Ordinance whether under an agreement or in terms of an award for the payment of compensation or otherwise, (including any sum payable by way of costs or surcharge imposed under section 23A) as if it were a fine imposed by a Magistrate upon such person, and for the purposes of such recovery shall have all the powers conferred upon a Magistrate for the recovery of fines imposed by him.

[§ 9, 31 of 1957.]

(2) If any sum referred to in subsection (1) cannot be recovered in the manner specified in that subsection within six months from the date on which such sum becomes due from the person liable to pay it, the Commissioner may make application, where such sum exceeds one thousand five hundred rupees, to the District Court or, where such sum does not exceed one thousand five hundred rupees, to the Primary Court, within whose jurisdiction such person resides, for the recovery of such sum by the seizure and sale of the immovable property of such person, and, upon such application being made, the court shall issue to the Fiscal a writ for the recovery of such sum by the seizure and

sale of such immovable property. The provisions of the Civil Procedure Code relating to the seizure and sale of immovable property by the Fiscal in execution of a writ issued by a court and to the making and adjudication of claims in respect of immovable property seized by the Fiscal shall apply to the seizure and sale of immovable property for the recovery of the sum specified in the Commissioner's application and to the making and adjudication of claims in respect of immovable property seized for the recovery of such sum. For the purpose of the application of such provisions the sum so specified shall be deemed to be due on a decree entered by the court and the Commissioner shall be deemed to be the judgement-creditor and the person liable to pay such sum shall be deemed to be the judgement-debtor.

PART VIII

REGISTRATION OF AGREEMENTS

Memorandum of agreement to be sent to Commissioner.

42. Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under legal disability, a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that -

- (a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;
- (b) the Commissioner may at any time rectify the register;
- (c) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

Effect of failure to send memorandum of agreement to Commissioner.
[§ 10,31 of 1957.]

43. Where a memorandum of any agreement, the registration of which is required by section 42, is not sent to the Commissioner as required by that section, the employer shall be guilty of an offence and shall, on conviction after summary trial by a Magistrate, be liable to pay a fine not exceeding one thousand rupees, and shall also be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Ordinance, and notwithstanding anything contained in the proviso to subsection (1) of section 6, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

Cancellation of registration of memorandum.

44. The Commissioner may, within six months after the registration of any memorandum of agreement referred to in section 42, order that the registration shall be cancelled if it is proved to his satisfaction that the agreement has been obtained by fraud or undue influence or other improper means, and may make such order, including an order as to any sum or amount already paid under the agreement and an order for the registration of a new agreement, as he thinks just in the circumstances.

PART IX

INSURANCE

Licence to undertake insurance for the purposes of the Ordinance.

45. (1) It shall be lawful for the Commissioner on payment to him of the prescribed fees, to issue a licence to any person to undertake insurance against liabilities to workmen which may be incurred by employers under this Ordinance, if it is shown to his satisfaction, after such inquiry as he may think fit to make, that such person is financially able to under take such insurance.

(2) Every person who undertakes any such insurance without being licensed for that purpose under subsection (1), and every employer who insures against any such liability with a person who has not been licensed under that subsection, shall be guilty of an offence and shall, on conviction after summary trial by a Magistrate, be liable to a fine not exceeding one thousand rupees.

(3) In this section, "person" includes the agent of a person who undertakes to insure an employer against his liability to pay compensation under this Ordinance.

(4) No prosecution shall be entered against any person for a breach of the provisions of this section except on the complaint of the Commissioner or with his written sanction.

Commissioner empowered to inspect accounts of licensee.

46. Every person licensed under section 45 shall produce for the inspection of the Commissioner at such times as the Commissioner may require, all the accounts of the insurance business which he undertakes for the purposes of this Ordinance, and in default of so doing shall be guilty of an offence and shall, on conviction after summary trial by a Magistrate, be liable for each offence to a fine not exceeding one hundred rupees.

Suspension or cancellation of licence.

47. (1) It shall be lawful for the Commissioner to suspend or cancel any licence issued to any person under section 45 -

(a) if he is satisfied that such person is no longer financially able to undertake insurance against liabilities which may be incurred by employers under this Ordinance; or

(b) if such person has been guilty of fraud, or has made undue delay in the payment or non-payment of claims arising out of such insurance; or

(c) if such person has been convicted under section 46.

[§ 12,15 of 1990.]

(2) An order made under subsection (1) for the suspension or cancellation of a licence shall be subject to an appeal to the High Court established under Article 154 P of the Constitution in the manner hereinafter provided.

PART X

APPEALS

Appeals

[§ 13, 15 of 1990.]

48. (1) An appeal on a point of law shall lie to the High Court established under article 154P of the Constitution within whose jurisdiction the aggrieved party resides against any order made by the Commissioner.

(2) No person shall appeal against an order made by the Commissioner unless such person is a party aggrieved by the order against which he appeals.

[§ 13, 15 of 1990.]

(3) For the purpose of disposing of any appeal on a point of law, the High Court established under article 154 P of the Constitution within whose jurisdiction the aggrieved party resides may vary, modify or reverse the finding of the Commissioner on any question of fact.

(4) An employer shall not be entitled to appeal on a point of law against an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or against an order disallowing a claim in full or in part for a lump sum unless the petition of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(5) No appeal shall lie in any case in which the parties have agreed in writing to abide by the decision of the Commissioner or in which the order of the Commissioner gives effect to an agreement so made by the parties.

[§ 11, 31 of 1957.]
[§ 13, 15 of 1990.]

(6) Every petition of appeal shall be accompanied by a duplicate thereof, and the Registrar of the High Court established under Article 154P of the Constitution within whose jurisdiction the aggrieved party resides shall transmit such duplicate the Commissioner.

[§ 13, 15 of 1990.]

(7) The Commissioner shall cause the amount deposited with him under subsection (4) to be deposited in an account, bearing interest, in the National Savings Bank established by the National Savings Bank Act, No.30 of 1971.

Time limit for
appeals.
[§ 14, 15 of 1990.]

49. (1) Every petition of appeal shall bear uncanceled stamps to the value of hundred rupees and shall be filed in the High Court established under Article 154P of the Constitution within a period of thirty days reckoned from the date of the order against which the appeal is preferred.

(2) In computing the time within which an appeal must be preferred the day on which the order appealed against was made shall be included, but all public holidays shall be excluded.

Costs of
appeals.
[§ 15, 15 of 1990.]

50. A High Court established under Article 154P of the Constitution shall have power in all appeals under this Part to award such costs to be paid by or to the parties thereto as the court may consider just:

Provided that in no case shall an order for costs be made against the Commissioner.

Procedure in appeal.

51. Subject to the provisions of this Part, the provisions of Chapter XXVIII of the Code of Criminal Procedure Act, relating to appeals from Magistrates' Courts, shall apply *mutatis mutandis*, in regard to all matters connected with the hearing and disposal of an appeal preferred under section 48 and, for such purpose, the order of the Commissioner shall be deemed to be the order of a court.

Hearing of
submission on
question of law.

52. The Court of Appeal may hear the Commissioner or any party concerned, in person or by counsel, when any question of law is submitted for opinion under section 39.

Withholding of
certain payments
pending decision
of appeal.

53. Where an employer prefers an appeal on a point of law against an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or against an order disallowing a claim in full or in part for a lump sum, the Commissioner may, and if so directed by the Court of Appeal shall, pending the decision of the appeal, withhold payment of any sum deposited with him:

[§ 16, 15 of 1990.]

Provided that the Commissioner may distribute, in such manner as he may think fit, out of any sum in deposit with him, a sum not exceeding one-tenth of the sum payable under his order, or two thousand five hundred rupees, whichever is less, among persons entitled under his order to receive compensation who, in his opinion, are unable to support themselves, and in the event of the appeal being successful any sum so paid by the Commissioner to any person shall be deemed to be a debt due from that person to the employer and may be sued for and recovered by the employer in a civil court of competent jurisdiction.

Appeal to Supreme Court from High Court and powers of Supreme Court on appeal.
[§ 17, 15 of 1990.]

53A. (1) Any workman, or employer who is aggrieved by any final order, of a High Court established under Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by subsection (1) of section 48, may appeal therefrom to the Supreme Court with the leave of that Court first had and obtained.

(2) The Supreme Court shall have sole and exclusive cognizance by way of appeal from any order made by such High Court, in the exercise of the jurisdiction vested in such High Court by subsection (1) of section 48 and it may affirm, reverse or vary any such order of such High Court and may issue such directions to the Commissioner or order a new trial or further hearing in any proceedings as the justice of the case may require and may also call for and admit fresh or additional evidence if the interest of justice so demands and may in such event, direct that such evidence be recorded by such High Court or the Commissioner.

Payment of amount deposited along with interest on final determination of the appeal.
[§ 17, 15 of 1990.]

53B. Where a High Court established by Article 154P of the Constitution, on an appeal preferred to it under section 48 or the Supreme Court on an appeal made to it from an order or such High Court:-

- (a) affirms the order of the Commissioner from which the appeal is preferred, the Commissioner shall cause the amount deposited under section 48 (4) together with the accumulated interest thereon less the sum distributed under the proviso to section 53 to be paid to the workman;
- (b) reverse the order of the Commissioner from which the appeal is preferred, the Commissioner shall cause the amount deposited under section 48(4) together with the accumulated interest thereon, to be returned to the appellant;
- (c) varies the order of the Commissioner from which the appeal is preferred, the Commissioner shall cause the sum required to satisfy the order of the High Court or the Supreme Court, as the case may be together with interest on that sum less the sum distributed under the proviso to section 53 to be paid to the workman out of the amount deposited under section 48 (4), and shall cause the balance, if any, of such amount and interest thereon, to be returned to the appellant.

PART XI

REGULATIONS

Regulations.

54. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of all or any of the following matters, namely:-

- (a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 8 when not accompanied by a medical certificate;
- (b) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for medical examination under subsection (1) of section 21;
- (c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Ordinance and by the parties in such cases;
- (d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;

- (e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of moneys so invested from one Commissioner to another;
- (f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;
- (g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered;
- (h) for the withholding by Commissioners, whether in whole or in part, of half-monthly payments pending decision on applications for review of the same;
- (i) for regulating the scales of costs which may be allowed in proceedings and appeals under this Ordinance;
- (j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Ordinance;
- (k) for the maintenance by Commissioners of registers and records of proceedings before them;
- (l) for prescribing the classes of employers who shall maintain notice-books and the form of such notice-books;
- (m) for prescribing the form of statement to be submitted by employers under section 20;
- (n) all matters stated or required in this Ordinance to be prescribed; and
- (o) generally for all matters incidental to or connected with the matters or subjects specifically mentioned in this subsection.

Amendment of Schedules by regulation.

55. (1) The Minister may, by regulation, modify, add to, alter or rescind any Schedule or part of any Schedule and may substitute a new Schedule for any Schedule herein enacted:

Provided that the provisions of Schedules II and III shall not be so modified, added to, altered or rescinded nor shall any new Schedule be substituted for either of those Schedules except after notification published in the *Gazette* declaring the intention of the Minister so to effect such modification, addition, alteration, rescission or substitution, as the case may be, at a date not earlier than three months from the date of the first publication of such notification in the *Gazette*.

(2) For the purpose of the application of the provisions of any Schedule at any particular time, a reference in this Ordinance to any Schedule shall be construed as a reference to the provisions of that Schedule which are in force at that time.

Approval of regulations.

56. (1) No regulations shall have effect unless it has been approved by Parliament. Notification of such approval shall be published in the *Gazette*.

(2) Every regulation shall, upon the publication of the approval of that regulation as provided for in subsection (1), be as valid and effectual as if it were herein enacted.

PART XII

MISCELLANEOUS

Employer to report to Commissioner accidents to workmen in certain cases, and to send annual returns.

57. (1) Where a workman has been injured as a result of an accident occurring on the business premises of his employer or arising out of and in the course of his employment, and either dies within a period of seven consecutive days next succeeding that on which the accident occurred or absents himself from work for that period, his employer shall report the occurrence and the particulars of such accident to the Commissioner in the prescribed form within a period of fourteen days reckoned from the date on which the accident occurred.

(2) Every employer shall before the prescribed date in every year send to the Commissioner a correct return in the prescribed form specifying -

- (a) the injuries in respect of which compensation has been paid by him or by any insurer with whom he has entered into a contract in respect of any liability under this Ordinance during the year preceding that in which the return is made; and
- (b) the amount of such compensation; and
- (c) such other particulars in respect of such compensation as the Commissioner may require:

Provided that any further particulars required by the Commissioner under paragraph (c) of this subsection may be furnished after the prescribed date and within such period as the Commissioner may appoint.

(3) Every employer who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and shall, on conviction after summary trial by a Magistrate, be liable to a fine not exceeding five hundred rupees;

[§ 18, 15 of 1990.]

Provided that no employer shall be guilty of a breach of subsection (1) if he proves that he had no knowledge of the accident within the period of fourteen days mentioned in that subsection.

Compensation not to be assigned, attached or charged.

58. Save as provided by this Ordinance, no lump or half-monthly payment payable under this Ordinance shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same

Contracting out.

59. Any contract or agreement whether made before or after the commencement of this Ordinance whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the 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 this Ordinance.

Injured workman must elect between common law and statutory remedy.

60. Nothing in this Ordinance contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil court an action for damages in respect of the injury against the employer or any other person; and no action for damages shall be maintainable by a workman in any court of law in respect of any injury -

- (a) if he has instituted a claim to compensation in respect of the injury before Commissioner; or
- (b) if he has agreed with his employer to accept compensation in respect of the injury in accordance with the provisions of this Ordinance.

Payment from noncontributory insurance or compensation scheme.
[§ 19, 15 of 1990.]

60A. Where any workman is entitled to any payment, from any non-contributory insurance or compensation scheme provided by the employer, for any injury caused to him by an accident arising out of or in the course of his employment, the amount of such payment shall be deducted from the amount of the compensation payable to him by the employer under this Ordinance, in respect of that injury.

SCHEDULE 1

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT/PARTIAL DISABLEMENT

<u>Injury</u>				<u>Percentage of loss of earning capacity</u>
Permanent and incurable paralysis of the limbs or injuries resulting in being permanently bedridden				100
Permanent incurable loss of mental capacity resulting in fatal incapacity to work or any other injury causing fatal incapacity to work	..	..		100
Eye Injuries				
(i) Total loss of sight in both eyes	..	..		100
(ii) Total loss of sight in one eye	..	..		50
Hearing Injuries				
(i) Total loss of hearing	..	..		60
(ii) Total loss of hearing in one ear	..	..		30
Loss of Speech				
(i) Total loss of speech	..	..	..	75
Sensory Loss				
(i) Total loss of senses of smell & taste			..	50
(ii) Total loss of sense of smell	..	..	..	25
(iii) Total loss of sense of taste	..	..	..	25
Arm Injuries				
(i) Loss of arm at or above elbow	..	..	..	75
(ii) Loss of arm at or below elbow	..	..	..	65
Hand Injuries				
(i) Loss of both hands		..	..	100
(ii) Loss of hand or loss of thumb & 4 fingers		..	..	65
(iii) Loss of thumb (both phalanges)	..	..	..	35
(iv) Loss of thumb (one phalanx)	..	..	..	20
(v) Loss of four fingers	..	..	..	60
Loss of Index finger				
(i) Three phalanges	..	..	..	30
(ii) Two phalanges	..	..	..	20
(iii) One phalanx	..	..	..	10
Loss of middle, ring and little fingers				
(i) Three phalanges	..	..	..	20
(ii) Two phalanges	..	..	..	10
(iii) One phalanx	..	..	..	05
Loss of Leg				
(i) at or above knee	..	..	..	75
(ii) at or below knee	..	..	..	65
Foot Injuries				

WORKMEN'S COMPENSATION

(i)	Loss of both feet	..	..	..	100
(ii)	Loss of one foot	..	..	..	75
Loss of Toes					
(i)	Great toe-both phalanges	..	..	..	20
(ii)	Great toe-one phalanx	..	..	..	10
(iii)	Other than great toe, if more than one lost, each				10
Miscellaneous					
(i)	Total loss of genitals	..	..	..	75
(ii)	Partial loss of genital	..	..	..	40
(iii)	Severe facial scarring or disfigurement		..	..	75
(iv)	Severe bodily disfigurement, other than facial scarring or disfigurement to a maximum of ..		..		50
(v)	Loss of single tooth	..	..	..	05
(vi)	Loss of any member or part there of not mentioned above (e.g. nose, breast, ear etc.) to be assessed by a medical officer up to a maximum of ..	..	..		50

Note: Assessment not to exceed 100% in any one accident

[Section 4]
[§13,31 of 1957]

***SCHEDULE III**

OCCUPATIONAL DISEASES

PART A

Description of Occupational Disease	Description of Process
Anthrax infection	Any employment involving - (a) work in connexion with animals infected with anthrax; (b) handling of animal carcasses or parts thereof, including hides, hoofs and horns; and (c) loading an un-loading or transport of merchandise.
Compressed air illness or its sequelae	Any process carried on in compressed air.
Poisoning by lead tetra-ethyl	Any process involving the use of lead tetra-ethyl.
Poisoning by nitrous fumes	Any process involving exposure to nitrous fumes.

* Schedule II repealed by section 21 of Act, No. 15 of 1990.

PART B

Description of Occupational Disease	Description of Process
Arsenical poisoning or its sequelae	Any process involving the production, liberation or utilization of arsenic or its compounds
Chrome ulceration or its sequelae	Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium or their preparations.
Poisoning by lead, its compounds and their sequelae	<p>Handling of ore containing lead, including fine shot alloys or in zinc factories.</p> <p>Casting of old zinc and lead in ingots.</p> <p>Manufacture of articles made of cast lead or of lead alloys.</p> <p>Employment in the polygraphic industries.</p> <p>Manufacture of lead compounds.</p> <p>Manufacture and repair of electric accumulators.</p> <p>Preparation and use of enamels containing lead.</p> <p>Polishing by means of lead files or putty powder with a lead content. All painting operations involving the preparation and manipulation of coating substances, cement or colouring substances containing lead pigments.</p>
Poisoning by mercury its amalgams and compounds and their sequelae	<p>Handling of mercury ore.</p> <p>Manufacture of mercury compounds.</p> <p>Manufacture of measuring and laboratory apparatus.</p> <p>Preparation of raw material for the hat-making industry.</p> <p>Hot gilding.</p> <p>Use of mercury pumps in the manufacture of incandescent lamps.</p> <p>Manufacture of fulminate of mercury primers.</p>
Pathological Manifestations due to-	
(a) Radium and other radio active substances;	Any process involving exposure to the action of radium, radio-active substances, or X-rays.
(b) X-rays	
Phosphorus poisoning or its sequelae	Any process involving the use of phosphorus or its preparations or compounds.
Poisoning by benzene and its homologues, or the sequelae of such poisoning	Handling benzene or any of its homologues and any process in the manufacture or involving the use of benzene or any of its homologues.
Poisoning by nitro or amido derivatives of benzene and its homologues or the	Handling any nitro or amido derivatives of benzene or any of its homologues, or any process in the manufacture or involving the use thereof.
Poisoning by the halogen derivatives of hydro-carbons of the aliphatic series.	Any process involving the production, liberation or utilization of halogen derivatives of hydro-carbons of the aliphatic series.
Primary epitheliomatous cancer of the skin.	Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances.
Pneumoconiosis caused by	Any process involving exposure to, or the use of sclerogenic

[§ 22, 15 of 1990.]	<p>selerogenic mineral dust (silicosis, anthracosilicosis, asbestosis) and silicotuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death.</p>	<p>mineral dust.</p>
	<p>Bronchopulmonary diseases caused by hard-metal dust.</p>	<p>Any process involving exposure to hard metal dust.</p>
	<p>Bronchopulmonary diseases caused by cotton dust (byssionosis), of flax, hemp or sisal dust.</p>	<p>Any process involving exposure to any such dust.</p>
	<p>Occupational asthma caused by sensitising agents or irritants both recognized in this regard and inherent in the work process.</p>	<p>Any process involving the use of or exposure to, such agents or irritants.</p>
	<p>Extrinsic allergic alveolitis and its sequelae caused by the inhalation of organic dusts, as prescribed.</p>	<p>Any process involving exposure to any such dust.</p>
	<p>Diseases caused by beryllium or its toxic compounds.</p>	<p>Any process involving the use of beryllium and its toxic compounds.</p>
	<p>Diseases caused by cadmium or its toxic compounds.</p>	<p>Any process involving the use of cadmium or its toxic compounds.</p>
	<p>Diseases caused by chromium or its toxic compounds.</p>	<p>Any process involving the use of chromium or its toxic compounds.</p>
	<p>Diseases caused by manganese or its toxic compounds.</p>	<p>Any process involving the use of manganese or its toxic compounds.</p>
	<p>Diseases caused by flourine or its toxic compounds.</p>	<p>Any process involving the use of fluorine or its toxic compounds.</p>
	<p>Diseases caused by carbon disulfide.</p>	<p>Any process involving exposure to carbon disulfide.</p>
	<p>Deceases caused by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons.</p>	<p>Any process involving exposure to the same.</p>
	<p>Diseases caused by nitroglycerin or other nitric acid esters.</p>	<p>Any process involving the use of nitro- glycerin.</p>
	<p>Diseases caused by alcohols or ketones</p>	<p>Any process involving the use of alcohols glycols or ketones</p>
	<p>Diseases caused by asphyxiants,</p>	<p>Any process involving exposure to asphyxiants,</p>

carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulfide.	carbon monoxide, hydrogen cyanide or its toxic derivatives.
Hearing impairment caused by noise.	Any process involving exposure to noise.
Diseases caused by vibration (disorders of muscles, tendons, bones, joints peripheral blood vessels or peripheral nerves.	Any process involving exposure to vibration.
Diseases caused by work in compressed air.	Any process involving exposure to the risk concerned.
Diseases caused by ionising radiations	Any process involving exposure to the action of ionising radiations
Skin diseases caused by physical, chemical or biological agents not included under other items.	Any process involving exposure to the risk concerned.
Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	-do-
Lung cancer or mesotheliomas caused by asbestos.	-do-
Infectious or parasitic disease contracted in an occupation where there is particular risk of contamination.	(a) Health or laboratory work; (b) Veterinary work; (c) Work 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) Any other work carrying a particular risk of contamination.
Diseases caused by carbon bisulphide	Any process involving exposure to, or the use of fumes of carbon bisulphide, compound of carbon bisulphide or substance containing carbon bisulphide.
Diseases caused by organic phosphates	The handling of organic phosphates for destruction of pest or vermin.
Diseases caused by carbon dioxide gas	Blasting, manufacture of mineral waters, any process involving fermentation in breweries and the formation of lime in lime kilns.
Occupational cataract due to	Any process involving frequent or prolonged exposure to

WORKMEN'S COMPENSATION

exposure to glare of molten glass or red hot metal of infra red radiations.	the glare of or rays from molten glass or red hot metal or infra red radiations.
Diseases caused by carbon disulphide	<p>(a) Manufacture of Carbon disulphide;</p> <p>(b) Manufacture of artificial silk by viscose process;</p> <p>(c) Rubber industry; or</p> <p>(d) Any other industry involving the production or use of products containing carbon disulphide or exposure to emanations from carbon disulphide.</p>
Silicosis	Any process involving exposure to the inhalation of dust containing silica.
Asbestosis	The production of (i) fibre cement materials or asbestos mill board (ii) the processing of ores containing asbestos.

[Section 6]
[§ 23,15 of 1990.]
[§ 5,10 of 2005.]

SCHEDULE IV
COMPENSATION PAYABLE IN CERTAIN CASES
AMOUNT OF COMPENSATION

<i>Monthly wages of the workman injured</i>	<i>Death of workman</i>	<i>Permanent total disablement of workman</i>	<i>Half-monthly compensation for temporary disablement of Workman</i>
(1)	(2)	(3)	(4)
Rs. Rs.	Rs.	Rs.	Rs.
0 - 2,500	181,665.00	196,083.80	1,320.00
2,501 - 5,000	258,640.80	295,075.00	1,804.00
5,001 - 7,500	330,968.00	351,461.00	2,186.80
7,501 - 10,000	407,427.90	444,494.60	2,733.50
10,001 - 12,500	478,495.60	519,593.80	3,231.80
12,501 - 15,000	522,495.60	550,000.00	3,561.80
15,001 - 17,500	549,631.50	550,000.00	3,890.70
17,501 - 20,000	550,000.00	550,000.00	4,221.80
20,001 -and above	550,000.00	550,000.00	5,500.00