

LAWS OF FIJI

CHAPTER 94

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WORKMEN'S COMPENSATION

*Ordinances No. 17 of 1964, 7 of 1966, 37 of 1966,
Act No. 27 of 1975*

AN ACT TO PROVIDE FOR COMPENSATION TO WORKMEN FOR INJURIES SUFFERED IN THE COURSE OF THEIR EMPLOYMENT

[1st April 1965]

PART I-PRELIMINARY

Short title

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

Meaning of "Workman" and application of Act.

- 2.-(1) In this Act, unless the context otherwise requires, the expression "workman", subject to the provisions of section 4 and the proviso to this subsection, means any person

who has, either before or after the commencement of this Act, entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, or otherwise, whether the contract is expressed or implied, is oral or in writing, whether the remuneration is calculated by time or by work done, and whether by the day, week, month or any longer period:

Provided that the following persons are excepted from the definition of "workman":-

- (a) 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;
- (b) an outworker;
- (c) a member of the employer's family dwelling in the employer's house or the curtilage thereof; or
- (d) any class of persons whom the Minister may, by order, declare not to be workmen for the purposes of this Act.

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

(3) Except for the purposes of section 16, any reference to a workman who has been injured shall, unless the context otherwise requires, where the workman is dead, include a reference to his personal representative, or to his dependants or any of them.

(4) The Permanent Secretary and any labour officer or any labour inspector authorised by the Permanent Secretary in writing may institute or appear or both institute and appear on behalf of any workman or where the workman is dead on behalf of his dependants in any civil proceedings by the workman or any dependants of his, as the case may be, in respect of any matter or thing or course of action arising out of or in the course of employment of such workman under any of the provisions of this Act.

(Inserted by 27 of 1975 s.2).

Interpretation

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

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

"court" means a court of a resident magistrate;

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

"dependants" means those members of the family of a workman who were wholly or in part dependent upon his earnings at the time of his death, or would but for the incapacity due to the accident have been so dependent, and, where the workman, being the parent or grandparent of an illegitimate child, leaves such child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child or parent or grandparent respectively: Provided that a person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position; "earnings" include gross wages and any allowance in respect of increased cost of living paid to the workman by the employer and the value of any food, fuel or quarters supplied to the workman by the employer; and any overtime payments or other special remuneration for work done, whether by way of bonus or otherwise, if of constant character or for work habitually performed; but shall not include remuneration for intermittent overtime, or casual payments of a non-recurrent nature, any *ex gratia* payment whether given by the employer or other person, or the value of a travelling allowance, or the value of any travelling concession or a contribution paid by the employer of a workman towards any 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; "employer" includes the Government and any body of persons corporate or unincorporate and the 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, be deemed to continue to be the employer of the workman whilst he is working for that other person; and in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee of the club shall, for the purposes of this Act, be deemed to be the employer;

"Government" means the Government of Fiji and for the purpose of avoiding doubt the Minister by notice may include or exclude any person from this definition;

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

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

"medical aid" means medical, surgical and hospital treatment, skilled nursing services, and the supply of medicines within Fiji or with the approval of the Permanent Secretary for Health, outside Fiji, and the supply, maintenance, repair and renewal of any artificial appliances or apparatus;

"medical practitioner" means a medical practitioner registered under the Medical and Dental Practitioners Act; (*Cap. 255.*)

(*Substituted by 14 of 1975 s. 21*)

"member of the family" means when used in relation to any person, the wife, husband, father, mother, grandfather, grandmother, step-father, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of such person;

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

"partial incapacity" means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a 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 any employment which he was capable of undertaking at that time:

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

"Permanent Secretary" means the Permanent Secretary for Labour;

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

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

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

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

Application to workmen employed under the Crown

4. This Act, shall apply to workmen employed by the Government or under the Crown in the same way and to the same extent as if the employer were a private person, except in the case of-

(a) members of Her Majesty's Naval, Military or Air Forces; and

(b) persons in the civil employment of Her Majesty, otherwise than in the Government.

PART II-COMPENSATION FOR INJURY

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

5.-(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter provided, be liable to pay compensation in accordance with the provisions of this Act and, for the purposes of this Act, an accident resulting in the death or serious and permanent incapacity of a workman shall be deemed to arise out of and in the course of

his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instruction from his employer, if such act was done by the workman for the purposes of and in connexion with his employer's trade or business:

Provided that-

(a) the employer shall not be liable under this Act in respect of any injury which does not incapacitate the workman for a period of at least three consecutive days from earning full wages at the work at which he was employed;

(b) if it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed:

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

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

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

Compensation in fatal cases

6. Where death results from the injury-

(a) if the workman leaves any dependants wholly dependent on his earnings, the amount of compensation shall be a sum equal to two hundred and eight weeks' earnings:

Provided that in any case the compensation shall not be less than four thousand five hundred dollars not more than twelve thousand dollars; but where in respect of the same accident compensation has been paid under the provisions of section 7 or 8 there shall be deducted from the sum payable under this paragraph any sum so paid as compensation;
(Substituted by 27 of 1975, s. 4)

(b) if the workman does not leave any dependants wholly dependent on his earnings, but leaves any dependants in part so dependent, the amount of compensation shall be such sum, not exceeding in any case the amount payable under paragraph (a), as may be determined by the court to be reasonable and proportionate to the injury to such dependants;

(c) if the workman leaves no dependants an amount of two hundred and ten dollars shall be paid by the employer to the person by whom the funeral expenses of the deceased

workman are incurred.

(Substituted by 27 of 1975, s. 4)

Compensation in the case of permanent total incapacity

7.-(1) Where permanent total incapacity results from the injury, the amount of compensation shall be a sum equal to two hundred and sixty weeks' earnings:

Provided that in no case shall the amount of compensation in respect of permanent total incapacity be greater than sixteen thousand dollars nor less than three thousand dollars.

(Amended by 27 of 1975, s. 5)

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

Compensation in the case of permanent partial incapacity

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

(a) in the case of an injury specified in the Schedule, such percentage of two hundred and sixty weeks' earnings as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(b) in the case of an injury not specified in the Schedule, such percentage of two hundred and sixty weeks' earnings as is proportionate to the loss of earning capacity permanently caused by the injury:

Provided that in no case shall the amount of compensation in respect of permanent partial incapacity be greater than twelve thousand dollars nor less than such percentage of one thousand five hundred dollars as represents the loss of earning capacity arrived at in accordance with paragraph (a) or paragraph (b).

(Amended by 27 of 1975, s. 6)

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

Compensation in the case of temporary incapacity

9.-(1) Where temporary incapacity, whether total or partial, results from the injury, the compensation shall be the periodical payments hereinafter mentioned, payable at such

intervals as may be agreed upon or as the court may order, or a lump sum calculated accordingly having regard to the probable duration and probable changes in the degree of the incapacity. Such periodical payments shall be a weekly payment of two thirds of the weekly earnings which the workman was earning at the time of the accident or is capable of earning in some employment or business after the accident:

Provided that-

(a) neither the aggregate of the periodical payments nor the lump sum payable under the provisions of this subsection shall exceed the lump sum which would be payable in respect of the same degree of incapacity under the provisions of sections 7 or 8 as the case may be, if the incapacity were permanent;

(b) the period covered by hospitalization or absence from duty certified necessary by a medical practitioner shall be regarded as a period of temporary total incapacity irrespective of the outcome of the injury and any period subsequent thereto but preceding final assessment of disability shall be regarded as a period of temporary partial incapacity both periods being continuous with each other, variations in payments notwithstanding, and the maximum duration of periodical payments under this section shall not exceed two hundred and sixty weeks;

(c) in the event of either death, permanent partial incapacity or permanent total incapacity, following after temporary incapacity, no deduction shall be made from the lump sum payable under the provisions of sections 6, 7 or 8 by reason of periodical payments or a lump sum payment having been made under this section.

(Substituted by 27 of 1975, s. 7.)

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

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

(Proviso substituted by 27 of 1975, s. 7.)

(b) For the purposes of this subsection "basic wage" means the workman's weekly earnings less the value of any food, fuel or quarters received by the workman from the employer or cash received in lieu thereof.

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

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

with the workman for the redemption of such periodical payments by a lump sum, or for the continuance of such periodical payments. If the employer and workman are unable to agree, either party may apply to the court which shall have jurisdiction to order such redemption and to determine the amount to be paid or to order the continuance of the periodical payments:

Provided that any lump sum so ordered to be paid together with the periodical payments already made to the workman shall not exceed the lump sum which would be payable in respect of the same degree of incapacity under the provisions of sections 7 or 8, as the case may be, if the incapacity were permanent.

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

Method of calculating earnings

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

Provided that-

(a) where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of the employment, or the terms of his employment, it is impracticable to compute the rate of remuneration in the manner aforementioned, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person of similar earning capacity in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person of similar earning capacity in the same grade employed in the same class of employment in the same Division;

(b) for the purposes of assessing compensation payable in the case of permanent incapacity or death-

(i) where the workman was, at the date of the accident, under the apparent age of twenty-one years his earnings shall be deemed to be such amount as, had he not met with the accident, he would probably have received upon attaining the age of twenty-one years, or at the end of a period of five years after the accident, whichever calculation is more favourable to the workman;

(ii) where the workman was, at the date of the accident, employed under a contract of apprenticeship or learnership, his earnings shall be deemed to be such amount as, had he

not met with the accident, he would probably have received upon the completion of such apprenticeship or learnership; and

(iii) for the purposes of computing the weekly earnings of a casual worker employed as a stevedoring labourer, such worker shall be deemed to have been employed for not less than four full working shifts per week at the usual rate of pay for the work upon which he was employed at the time of the accident.

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

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

Provided that if the workman does not disclose to each of his employers at the time of each new engagement his other earnings under any concurrent contract his compensation shall be computed only on the earnings he was receiving from the employer for whom he was working at the time of the accident.

(Section amended by 27 of 1975, s. 8)

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

Persons entitled to compensation

11.-(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 compensation being allotted partly to the total and partly to the partial dependants.

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

Distribution of compensation

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

(2) Where, on application being made to a court, it appears thereto that on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order made under this subsection ought to be varied, such court may make such order for the variation of the former order as in the circumstances of the case it may think just.

(3) Compensation payable under the provisions of section 7 or 8 and lump sums payable under the provisions of section 9 shall be paid into court, and the court may order any sum so paid in to be paid to the person entitled thereto or to be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

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

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

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

(7) Any order or directions of the court made under the provisions of this section shall be final.

Requirements as to notice of accident and application for compensation

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

Provided that-

(a) the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if it is proved that the employer had personal

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

(b) the failure to make a claim for compensation within the period above specified shall not be a bar to the maintenance of such proceedings if it is proved that-

(i) the failure was occasioned by mistake or other good cause; or

(ii) the employer failed to comply with the provisions of subsection (1) or (2) of section 14,

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

(Amended by 27 of 1975, s. 9)

Employer to report the injury to, or death of, a workman and method of notification

14.-(1) Notice of an accident, causing injury to a workman of such a nature as would entitle him to compensation under the provisions of this Act shall be given in the prescribed form to the Permanent Secretary by the employer of such workman as soon as practicable, but in any event not later than fourteen days, after the happening thereof.

(Amended by 27 of 1975, s. 10)

(2) When the death of a workman from any cause whatsoever is brought to the notice of, or comes to the knowledge of his employer, the employer shall, within one week thereafter, give notice thereof in the prescribed form to the Permanent Secretary. Such notice shall state the circumstances of the death of the workman if they are known to the employer.

(3) Any employer who, without reasonable cause, fails to comply with the provisions of subsections (1) and (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred dollars.

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

Medical examination and treatment

15.-(1) Where a workman has given notice of an accident, the employer shall, as soon as reasonably possible after the date on which notice has been given, arrange to have him medically examined free of charge to the workman, by a medical practitioner named by the employer and any workman who is in receipt of periodical payments under section 9, shall submit himself for such medical examination from time to time, as may be required by the employer.

(2) The workman shall, when required, attend upon such medical practitioner at the time

and place notified to the workman by the employer or such medical practitioner, provided such time and place are reasonable.

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

(4) If the workman fails to submit himself for such examination, his right to compensation shall be suspended until such examination has taken place; and if such failure extends for a period of fifteen days from the date when the workman was required to submit himself for examination under the provisions of subsections (2) or (3), as the case may be, no compensation shall be payable, unless the court is satisfied that there was reasonable cause for such failure.

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

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

(7) If the workman has failed to submit himself for treatment by a medical practitioner when so required under the provisions of this section, or having submitted himself for such treatment has disregarded the instructions of such medical practitioner then, if it is proved that such failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had submitted himself for treatment by, and duly carried out the instructions of, such medical practitioner, and compensation, if any, shall be payable accordingly.

(8) Where under the provisions of subsection (4) a right of compensation is suspended, no compensation shall be payable in respect of the period of suspension.

(9) Notwithstanding the previous provisions of this section, where a claim for compensation is made in respect of the death of a workman, then if the workman failed to submit himself to examination by a medical practitioner when so required under the provisions of this section or failed to submit himself for treatment by a medical practitioner when so required under the provisions of this section or having submitted himself for such treatment disregarded the instructions of such medical practitioner, and if it is proved that such failure or disregard was unreasonable in the circumstances of the case, and that the death of the workman was caused thereby, the death shall not be

deemed to have resulted from the injury, and no compensation shall be payable in respect of the injury.

Agreement as to compensation

16.-(1) The employer and workman may, with the approval of the Permanent Secretary or a person appointed by him, in writing, in that behalf, after the injury in respect of which the claim to compensation has arisen, agree, in writing, as to the compensation to be paid by the employer. Such agreement shall be in triplicate, one copy to be kept by the employer, one copy to be kept by the workman, and one copy to be retained by the Permanent Secretary:

Provided that-

(a) the compensation agreed upon shall not be less than the amount payable under the provisions of this Act; and
(b) where the workman is unable to read and understand writing in the language in which the agreement is expressed the agreement shall not be binding against him unless it is endorsed by a certificate of a district officer or a person appointed by the district officer or Permanent Secretary, in writing, in that behalf, to the effect that he read over and explained to the workman the terms thereof and that the workman appeared fully to understand and approve of the agreement.

(2) Any agreement made under the provisions of subsection (1) may, on application to the court, be made an order of the court.

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

(a) that the sum paid or to be paid was or is not in accordance with the provisions of subsection (1);
(b) that the agreement was entered into in ignorance of, or under a mistake as to, the true nature of the injury; or
(c) that the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means as would, in law, be sufficient ground for avoiding it.

(4) All agreements made under this section shall be exempt from the payment of stamp duty.

Determination of claims

17.-(1) Subject to the provisions of section 13, if an employer to whom notice of the accident has been given under the provisions of that section does not-

(a) within twenty-one days after the receipt of the notice agree in writing with the workman as to the amount of compensation to be paid in respect of temporary incapacity; or

(b) within twenty-one days after the receipt of a claim from the workman for the payment of compensation in respect of permanent incapacity, agree in writing with the workman as to the amount of such compensation; or

(c) within twenty-one days after the receipt of a claim on behalf of a dependant of a deceased workman for payment of compensation in respect of death, agree in writing with the claimant as to the amount of such compensation,

(Inserted by 27 of 1975, s. 11)

the workman may, in the prescribed form and manner, make an application for enforcing his claim to compensation to the court having jurisdiction in the Division in which the accident giving rise to the claim occurred.

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

Review

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

(2) Any periodical payment may, on review under this section, subject to the provisions of this Act, be continued, increased, diminished, converted to a lump sum or ended. If the accident is found to have resulted in permanent incapacity, the periodical payment shall be converted to the lump sum to which the workman is entitled under the provisions of section 7 or 8, as the case may be, and such lump sum shall be dealt with in accordance with the provisions of subsection (2) of section 12.

(3) Where application is made by an employer under the provisions of this section for any periodical payment to be ended or diminished, and the application is supported by the certificate of a medical practitioner, the employer may pay into court the periodical payment, or so much thereof as is equal to the amount by which he contends that the periodical payment should be diminished, to abide the decision of the court made on review under this section.

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

Limitation of power of employer to end or decrease periodical payments

19. Subject to the provisions of subsection (5) of section **9**, subsection (4) of section **15** and subsection (3) of section **18**, an employer shall not be entitled, otherwise than in pursuance of an agreement or an order of the court-

(a) to end periodical payments except-

(i) where a workman resumes work and his earnings are not less than the earnings which he was obtaining before the accident; or

(ii) where the medical practitioner who examined the workman under the provisions of section 15 has certified the workman as being wholly recovered; or

(iii) where a workman dies;

(b) to diminish periodical payments except that where the earnings of a workman in receipt of periodical payments, together with such payments, exceed the amount of his earnings at the date of the accident, the employer may diminish the payments to such workman by an amount equal to such excess.

Jurisdiction of the court

20.-(1) Save as is provided in this Act the court shall, upon or in connexion with any question to be investigated or determined thereunder, have all the powers and jurisdiction exercisable by a court of a resident magistrate in or in connexion with civil actions in such court and the law, rules and practice relating to such civil actions and to the enforcement of judgments and orders of the court shall *mutatis mutandis* apply.

(2) Where in any proceedings under the provisions of this Act on a claim for compensation in respect of the death of a workman, the court is satisfied that other or sufficient evidence as to the dependency on the deceased workman of a person claiming to be a dependant residing outside the Division in which the proceedings are being taken, or as to the degree of such dependency, cannot be procured, or cannot be procured without undue hardship to the claimant or other party to the proceedings, a statement as to the dependency and as to the degree of dependency of the claimant, signed by a district officer assigned to the Division in which the claimant resides, whether within Fiji or within any other territory, shall be prima facie proof of the facts stated therein, and the signature of such district officer shall be admitted without proof unless the court has reason to doubt the genuineness thereof.

(3) If in such proceedings any evidence is adduced which in the opinion of the court traverses the facts set out in such a statement, or if for any other reason the court thinks fit, the court may request a court having jurisdiction in the Division in which a person claiming to be a dependant resides, to investigate the fact of the dependency and the degree of the dependency of such person. The record of any such investigation including the finding of the court thereon shall be receivable as evidence in the proceedings, and a

certificate signed by a magistrate or an officer of the court which has conducted the investigation shall be sufficient proof of such record and such signature shall be admitted without proof unless the court has reason to doubt the genuineness thereof.

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

(5) For the purposes of this section the expression "territory" means any British colony or British protectorate or any territory in respect of which a trusteeship agreement has been entered into by Her Majesty.

Power of the court to submit questions of law

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

Appeals

22.-(1) Subject to the provisions of this section, or of section **12**, or of subsection (2) of section **33**, an appeal shall lie to the Supreme Court from any order of the court.

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

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

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

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

Liability in case of workmen employed by contractors

23.-(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person otherwise than as a tributer (which other person is in this section referred to as the contractor) for the

execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under the provisions of this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

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

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

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

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

Remedies against both employer and stranger

24.-(1) Where the injury in respect of which compensation is payable under the provisions of this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under the provisions of this Act for such compensation:

Provided that-

(a) on being awarded such damages as aforesaid, the person against whom such damages

are awarded, or the workman, may be ordered by any court to pay to the employer-

(i) where such damages do not exceed the amount of compensation, including costs, ordered to be paid by the employer to the workman, the amount of such damages; or

(ii) where the amount of damages awarded against such person exceeds the amount of such compensation, the amount of such compensation;

(b) if the workman has recovered compensation under the provisions of this Act the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the provisions of section 23 relating to liability in the case of workmen employed by contractors, may be ordered to be indemnified as regards the

amount of compensation, including costs, by the person so liable to pay damages as aforesaid.

(2) A court on the application of any person specified in subsection (1) or any court awarding compensation or damages, with or without the application of any such person, may make such order as to it seems just to ensure that the workman does not receive both compensation and damages in respect of the same accident and to implement the provisions of subsection (1).

Proceedings independently of this Act

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

Provided that-

- (a) a judgment in such proceedings whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury under this Act;
- (b) a judgment in proceedings under this Act whether for or against the employer shall be a bar to proceedings at the suit of any person by whom, or on whose behalf, such proceedings were taken, in respect of the same injury independently of this Act;
- (c) an agreement come to between the employer and the workman under the provisions of subsection (1) of section 16 shall be a bar to proceedings by the workman in respect of the same injury independently of this Act.

(2) If in proceedings independently of this Act or on appeal it is determined that the employer is not liable under such proceedings, the court in which such proceedings are taken or the appellate tribunal shall, if the plaintiff so chooses, proceed to determine whether compensation under this Act is liable to be paid to the plaintiff and shall assess the amount of compensation so payable, but may deduct from such compensation any extra costs which in the opinion of the court or appellate tribunal have been incurred by the employer by reason of the proceedings have been taken independently of this Act.

Minister may by order require employers to insure

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

(2) Where the Minister has made any order under the provisions of subsection (1) he may exempt any employer to whom such order applies from the provisions thereof who

provides and maintains in force a security which complies with the requirements of subsection (3) and any exemption so granted shall continue in force only so long as such security continues in force.

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

(4) Any employer who acts in contravention of any order made under the provisions of subsection (1) shall be liable on conviction therefor to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment, and, if the contravention in respect of which he was so convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding ten dollars for each day on which the contravention continues.

Provision as to cases of bankruptcy of employer

27.-(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act, to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up or a receiver or manager of the company's business or undertaking having been duly appointed, the rights of the employer against the insurers as respects the liability shall, notwithstanding anything contained in any laws relating to bankruptcy and the winding-up of companies for the time being in force, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer:

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

(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 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 the provisions of section 35 of the Bankruptcy Act are in the distribution of the property or assets of a bankrupt, to be paid in priority to all other debts; and

(Cap. 48.)

(b) under the provisions of section 260 of the Companies are in the winding-up of a company, to be paid in priority to all debts,

(Cap. 247.)

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

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

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

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

Application to persons employed on ships

28.-(1) This Act shall apply to masters, seamen and apprentices to the sea service, provided that such persons are workmen within the meaning and are members of the crew of any ship registered in Fiji or of any other British 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 Fiji, subject to the following modifications:-

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

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

(c) whenever in the course of any legal proceeding under this Act the testimony of any witness is required in relation to the subject matter of the proceeding, then, upon due proof that the witness cannot be found in Fiji, any deposition which the witness may have previously made on oath in relation to the same subject matter before any justice or magistrate in any country or territory of the Commonwealth or in any place where Her Majesty exercises jurisdiction or before any British consular officer or proconsul elsewhere and which, if the proceeding had been under the Merchant Shipping Act, 1894 of the United Kingdom, would have been admissible in such proceeding by virtue of sections **691** and **695** of that Act, shall be admissible in evidence subject to similar conditions as are laid down in the said sections **691** and **695**;

(Amended by 37 of 1966, s. 101)

(d) in 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 Merchant Shipping Act, 1894 of the United Kingdom liable to pay expenses of burial;

(e) the periodical payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in Fiji relating to merchant shipping, liable to defray the expenses of maintenance of the injured master, seaman or apprentice.

(2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated wholly or mainly by shares in the profits or the gross earnings of the working of such vessel, except in such cases and subject to such modifications as the Minister may by order provide.

(3) 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.

(4) In this section unless the context otherwise requires-

"ship", "vessel", "master", "seaman" and "port" shall have the same meaning as in the Merchant Shipping Act, 1894 of the United Kingdom;

"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.

Procedure where workmen's earnings do not exceed a prescribed amount per week

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

(a) any compensation shall be paid by the employer to an officer and the officer shall pay any such sum, in the case of disablement, to the workman entitled to receive it and in the case of the death of the workman the provisions of subsection (1) of section 12 shall apply;

(Amended by 7 of 1966, s. 37)

(b) the form and manner in which payments shall be made by an officer under the provisions of paragraph (a) shall be in the discretion of the officer subject to any general or special directions of the Permanent Secretary;

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

(d) the receipt of an officer shall be a sufficient discharge in respect of any amount paid to him under the provisions of this Act.

(2) In this section "officer" means the Permanent Secretary, the labour officer of the Division in which the accident occurs, or, where there is no such officer, a district officer

assigned to such Division in which the accident occurs or such other person as the Permanent Secretary may appoint in writing, to be an officer for the purposes of this section.

Contracting out

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

Compensation not to be assigned, charged or attached

31. Compensation payable under the provisions of this Act shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law nor shall any claim be set off against such compensation.

PART III-MEDICAL AID

Medical expenses

32.-(1) The employer shall defray the reasonable expenses incurred by a workman within Fiji, or, with the approval of the Permanent Secretary for Health, outside Fiji, as the result of an accident which would entitle the workman to compensation under the provisions of this Act-

(a) in respect of medical, surgical and hospital treatment, skilled nursing services and the supply of medicines to an amount not exceeding twelve hundred dollars in all; and

(b) in respect of the supply, and subject to the approval of a medical practitioner, the maintenance, repairs and renewal of any artificial appliances or apparatus for a period of up to five years dating from the time of the accident to an amount not exceeding six hundred dollars in all; and

(c) in respect of reasonable transport charges, not exceeding in all the sum of five hundred dollars, incurred in the transfer of a workman to and from a place where the necessary treatment is available, so, however, that such transfer shall be certified to be necessary by the medical practitioner in charge of the case.

(Amended by 27 of 1975, s. 12)

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

Decisions of court in regard to treatment and medical reports

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

(2) Any decision of the court given under subsection (1) shall be final.

Fees for medical aid to be prescribed

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

PART IV-OCCUPATIONAL DISEASES

Compensation in respect of diseases

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

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

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

the workman or, if he is deceased, his dependants shall be entitled to claim compensation under this Act as if such disablement or death had been caused by an accident, and the provisions of this Act shall, subject to the provisions of this Part, *mutatis mutandis*, apply unless at the time of entering into the employment the workman wilfully and falsely represented, in writing, to the employer in reply to a specific question that he had not previously suffered from the disease:

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

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

Liability to pay compensation

36.-(1) Compensation shall be payable by the employer who last employed the workman during the period of twenty-four months referred to in section **35** unless that employer

proves that the disease was not contracted while the workman was in such employment.

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

(3) If the employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer and not while in his employment, he may join such other employer as a party to the proceedings and, if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable.

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

(Cap. 38.)

(Amended by 37 of 1966, s. 101)

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

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

(a) in the case of a disease causing disablement, the date of the certificate referred to in section **35**; and

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

(2) The provisions of sections 13 and **17** shall apply in respect of the recovery of compensation under this Part as they apply in respect of the recovery of compensation for an injury resulting from an accident.

(3) Compensation under this Part shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable and the weekly earnings of the workman shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated at the date of the grant of the certificate referred to in section **35**:

Provided that-

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

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

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

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

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

(Amended by 27 of 1975, s. 13)

Presumption as to cause of disease

38. If a workman who becomes disabled by or dies of any prescribed disease, was within the period of twenty-four months immediately preceding such disablement or death employed in any prescribed employment, it shall be presumed, unless or until the contrary is proved, that the disease was due to the nature of such employment.

Saving right of workman to proceed against previous employer

39. Nothing in this Part shall be construed as preventing compensation being recovered from any employer who employed the workman during the twenty-four months referred to in section 35, if the employer who last employed the workman during that period proves that the disease was not contracted while the workman was in his employment, in which case the provisions of subsection (3) of section 36 shall apply.

Compensation to include medical aid

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

Diseases and occupations may be prescribed

41. The Minister may, for the purposes of this Part prescribe by regulation any disease or occupation:

Provided that the intention to make any such regulation, specifying the contents thereof, shall be published in the Gazette at least one month before the making and any person wishing to do so, may make his objection in writing to the Minister within one month of such publication.

PART V-GENERAL

Regulations

42.-(1) The Minister may make regulations for the purpose of giving better effect to the purposes and provisions of this Act, and without prejudice to the generality of the foregoing power may make regulations-

(a) prescribing procedure, forms and fees;
(b) prescribing anything which is to be or may be prescribed under this Act; and
(c) requiring employers and insurers carrying on in Fiji the business of insuring employers against their liabilities under this Act to make periodic or other returns as to such matters as he may think fit, and prescribing a time limit for the making of such returns.

(2) Any person required to make a return by virtue of any regulation made under subsection (1) who-

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

shall be guilty of an offence and shall be liable, on conviction therefor, to a fine not exceeding fifty dollars, and, if the contravention in respect of which he was so convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding ten dollars for each day on which the contravention continues.

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

Regulations as to transfer of funds

43.-(1) Where an arrangement has been made, whereby sums awarded under the law relating to workmen's compensation in Fiji to beneficiaries resident or becoming resident in Great Britain or in any country or territory of the Commonwealth and sums awarded under the law relating to workmen's compensation in Great Britain or in such country or territory of the Commonwealth to beneficiaries resident or becoming resident in Fiji may, at the request of the authority by which the award is made, be transferred to and administered by a competent authority in Great Britain or in such other country or territory of the Commonwealth or in Fiji, as the case may be, the Minister may make regulations-

(a) for the transfer, in such manner as may be provided by the arrangement, to Great Britain or that country or territory of the Commonwealth with which the arrangement is made, of any money in the disposition of the court, applicable for the benefit of any person resident in or about to reside in Great Britain or such country or territory of the Commonwealth; and

(b) for the receipt and administration, by an officer appointed by the Minister for such purpose, of any money which under any such arrangement has been transmitted from Great Britain or the country or territory of the Commonwealth with which the arrangement has been made as money applicable for the benefit of any person resident or about to reside in Fiji.

(2) For the purposes of this section "country or territory of the Commonwealth" includes British protectorates and protected states and territories in respect of which a trusteeship agreement has been entered into by Her Majesty.

(Section amended by 37 of 1966, s. 101)

SCHEDULE

(Section 8)

(Substituted by 27 of 1975, s. 14)

Percentage of Incapacity

Loss of two limbs)
Loss of both feet)
Loss of both hands or of all fingers and thumbs)
Total loss of sight)
Total paralysis.....)
Injuries resulting in being bedridden permanently) 100
Any other injury causing permanent total disablement)
Loss of remaining eye by one-eyed workman)
Loss of remaining arm by one-armed workman)
Loss of remaining leg by one-legged workman)
Very severe facial disfigurement.....)
Loss of arm at shoulder	90
Loss of arm between elbow and shoulder	80
Loss of arm at elbow.....	70

Loss of arm between wrist and elbow.....	65
Loss of hand at wrist	60
Loss of four fingers and thumb or one hand	60
Loss of four fingers	35
Loss of thumb-	
both phalanges	35
one phalanx.....	12
the pulp of the thumb	6
Loss of index finger-	
three phalanges.....	10
two phalanges	8
one phalanx.....	4
pulp of an index finger	2
Loss of middle finger-	
three phalanges.....	10
two phalanges	8
one phalanx.....	4
pulp of a little finger	2
Loss of ring finger-	
three phalanges.....	10
two phalanges	8
one phalanx.....	4
pulp of a ring finger.....	2
Loss of little finger-	
three phalanges.....	10
two phalanges	8
one phalanx.....	4
pulp of a little finger	2
Loss of metacarpals-	
first or second (additional).....	3
third, fourth or fifth (additional).....	2
Loss of leg above knee resulting in a stump less than 6 inches long	90
Loss of leg above knee resulting in a stump more than 6 inches long ...	70
Loss of leg below knee	45
Loss of foot	40
Loss of toes-	
all of one foot.....	15
great, both phalanges	8
great, one phalanx	4
other than great, each part with some loss of bone	1
Loss of eye-	
eye out.....	40
Loss of sight of eye	40
Loss of lens of eye	30
Loss of sight of, except perception of light	40
Loss of hearing-	

both ears.....	70
one ear	30
Total loss of natural Permanent Teeth-	
(1) Anterior Teeth-	
Loss of 1, 2 or 3 teeth	4
Loss of 4, 5 or 6 teeth	5
Loss of 7 to 12 teeth	6
(2) Paterior Teeth-	
Loss of 1 tooth	1
Loss of 2 to 5 teeth	2
Loss of 6 to 16 teeth	4

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

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

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

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

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

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

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

Controlled by Ministry for Labour Industrial Relations and Immigration

SUBSIDIARY LEGISLATION

**CHAPTER 94
WORKMEN'S COMPENSATION**

**SECTION 41-WORKMEN'S COMPENSATION (OCCUPATIONAL
DISEASES) REGULATIONS**

*Regulations 23rd Nov., 1964
[in force 1st April, 1965]*

Made by the Governor in Council

Short title

1. These Regulations may be cited as the Workmen's Compensation (Occupational Diseases) Regulations.

Prescribed diseases and occupations

2. The diseases and occupations set out opposite each other in the Schedule shall be prescribed diseases and occupations for the purposes of Part IV of the Act.

SCHEDULE

Description of Disease or Nature of Occupation
Injury Any occupation involving-

1. Poisoning by lead The use or handling of, or exposure to the fumes, dust or vapour of, lead or a compound of lead, or a substance containing lead.
2. Poisoning by manganese The use or handling of, or exposure to the fumes, dust or vapour of, manganese of a compound of manganese, or a substance containing manganese.
3. Poisoning by phosphorus The use or handling of, or exposure to the fumes, dust or vapour of, phosphorus or a compound of phosphorus, or a substance containing phosphorus
4. Poisoning by arsenic The use or handling of, or exposure to the fumes, dust or vapour of, arsenic or a compound of arsenic, or a substance containing arsenic.
5. Poisoning by mercury The use or handling of, or exposure to the fumes, dust or vapour of, mercury or a compound of mercury, or a substance containing

mercury.

6. Poisoning by carbon bisulphide The use or handling of, or exposure to the fumes, or vapour of, carbon bisulphide, or a compound of carbon bisulphide, or a substance containing carbon bisulphide.
7. Poisoning by benzene or a homologue The use or handling of, or exposure to the fumes of, or vapour containing benzene, or any of its homologues.
8. Poisoning by a nitro-derivative of benzene, homologue of benzene The use or handling of, or exposure to the or of a fumes of, or vapour containing, a nitro-oro-amido-derivative of benzene, or of a homologue of benzene.
9. Poisoning by dinitrophenol or a homologue The use or handling of, or exposure to the fumes of, or vapour containing, di-nitrophenol, or any of its homologues.
10. Poisoning by tetrachlorethane The use or handling of, or exposure to the fumes of, or vapour containing tetrachlorethane.
11. Poisoning by tri-cresyl phosphate The use or handling of, or exposure to the fumes of, or vapour containing tri-cresyl phosphate.
12. Poisoning by tri-phenylphosphate The use or handling of, or exposure to the fumes of, or vapour containing, tri-phenylphosphate.
13. Poisoning by diethylene dioxide(dioxan) The use or handling of, or exposure to the fumes of, or vapour containing, diethylene dioxide (dioxan).
14. Poisoning by methyl bromide The use or handling of, or exposure to the fumes of, or vapour containing, methyl-bromide.
15. Poisoning by chlorinated naphthalene (excluding the condition known as chloracne) The use or handling of, or exposure to the fumes of, or vapour or dust containing chlorinated naphthalene.
16. Poisoning by nickel carbonyl Exposure to nickel carbonyl gas.
17. Poisoning by nitrous fumes The use or handling of nitric acid or exposure to nitrous fumes.
18. Poisoning by Gonioma kamassi (African box-wood) The manipulation of Gonioma kamassi or any process in or incidental to the manufacture of articles therefrom.
19. Anthrax The handling of wool, hair, bristles, hides or skins or other animal products or residues, or contact with animals infected with anthrax.

20. Glanders Contact with equine animals or their carcasses

21. Infection by leptospiraictero - haemorrhagiae - Work in rat-infested places.

22. (a) Ulceration of the corneal surface of the eye.

(b) Localized new growth of the skin, pailomatous or keratotic.

(c) Epitheliomatous cancer or ulceration of the skin, due in any case to tar, pitch, bitumen, mineral oil (including paraffin), soot or any compound, product, or residue of any of these substances.

The use or handling of, or exposure to, tar, pitch, bitumen, mineral oil (including paraffin), soot or any compound, product or residue of any of these substances.

23. (a) Chrome ulceration

(b) Inflammation or ulceration of the skin or of the mucous membrane of the upper respiratory passages or mouth produced by dust, liquid or vapour (including the condition known as chloracne but excluding chrome ulceration)

The use or handling of chromic acid, chromate or bichromate of ammonium, potassium, sodium, or zinc, or any preparation or solution containing any of these substances. Exposure to dust, liquid or vapour.

24. Inflammation, ulceration or malignant disease of skin or subcutaneous tissues or of the bones, or leukaemia, or anaemia of the aplastic type, due to X-rays, ionizing particles, radium or other radio-active substance; or inflammation of the skin due to other forms of radiant energy

25. Cataract produced by exposure to the glare of, or rays from, molten glass or molten or red-hot metal.

Any occupation involving-

Exposure to X-rays, ionizing particles, radium or other radio-active substance or other forms of radiant energy.

Frequent or prolonged exposure to the glare of, or rays from molten glass or molten or red-hot metal

26. Compressed air illness Subjection to compressed air

27. Subcutaneous cellulitis hand (Beat hand) Manual labour causing severe or prolonged friction or pressure on the hand.

28. Subcutaneous cellulitis or acute bursitis arising at or about the knee (Beat knee)
 Manual labour causing severe or prolonged friction or pressure at or about the knee.
29. Subcutaneous cellulitis or acute bursitis arising at or about the elbow (Beat elbow)
 Manual labour causing severe or prolonged friction or pressure at or about the elbow.
30. Inflammation of the synovial lining of the wrist joint and tendon sheaths
 Manual labour, or frequent or repeated movement of the hand or wrist.
31. Miner's nystagmus Work in or about a mine.
32. Poisoning by beryllium The use or handling of, or exposure to the fumes, dust or vapour of, beryllium or a substance containing beryllium.
33. (a) Carcinoma of the mucous membrane of the nose or associated air sinus
 (b) Primary carcinoma of a bronchus or of a lung

Any occupation in a factory where nickel is produced by decomposition of a gaseous nickel compound which involves work in or about a building or buildings where that process or any other industrial process ancillary or incidental thereto is carried out.

34. Tuberculosis Any occupation involving close and frequent contact with a source or sources of tuberculosis infection by reason of employment-
- (a) in the medical treatment or nursing of a person or persons suffering from tuberculosis or in a service ancillary to such treatment or nursing;
 (b) in attendance upon a person or persons suffering from tuberculosis, where the need for such attendance arises by reason of physical or mental infirmity;
 (c) as a research worker engaged in research in connection with tuberculosis;
 (d) as a laboratory worker, pathologist or post-mortem worker, where the occupation involves working with material which is a source of tuberculosis infection or in any occupation ancillary to such employment.

35. Primary neoplasm of the epithelial lining of the urinary bladder (Papilloma of the bladder)
- (a) work in a building in which any one of the following substances is produced for commercial purposes:-
 (i) alpha-naphthylamine, beta naphthylamine or benzidine or any of their salts;
 (ii) auramine or magenta;

(b) the use or handling of any of the substances mentioned in (i) above, or work in a process in which any such substance is used or handled or liberated;
(c) the maintenance or cleaning of any plant or machinery used in any such process in paragraph (b) or the cleaning of clothing used in any such building as is mentioned in paragraph (a) if such clothing is cleaned within the works of which the building forms a part or in a laundry maintained and used solely in connection with such works.

36. Poisoning by cadmium Any occupation involving exposure to cadmium fumes.

SECTION 42-WORKMEN'S COMPENSATION REGULATIONS

*Regulations 31 August 1964 [in force 1 April 1965].
Legal Notices Nos. 34 of 1968, 77 of 1973, 108 of 1976, 62 of 1982.*

Short title

1. These Regulations may be cited as the Workmen's Compensation

Regulations.

Fees and charges

2. The fees and charges payable for the forms of medical aid described in the second column of the First Schedule to workmen in Fiji required to be prescribed under the provisions of section 34 of the Act, shall be-

(a) where any such aid is rendered by any officer in the service of the Government, the fees shall be those prescribed under the Public Hospitals and Dispensaries Regulations;
(b) where any such aid is rendered by a private practitioner, the fees and charges specified in relation to such aid in the third column of the First Schedule:

Provided that where, in the case of any form of such aid, a fee or charge is specified in the First Schedule as a maximum fee or charge, such a fee or charge as is reasonable in the circumstances of the case shall be payable, not exceeding the specified maximum fee or charge.

Notice of accident

3. The notice of an accident causing injury to, or the death of, a workman required by section 14 of the Act to be given by an employer shall be in the form set out in the Second Schedule.

Claim for compensation

4. Where a workman has suffered an accident as a result whereof he has been injured or has died and thereby he or his dependants becomes or become entitled to claim compensation under the provisions of the Act, he or his dependants (as the case may be), or some person on his or their behalf, shall make any such claim in accordance with the form set out in the Third Schedule.

Prescribed amount

5. The prescribed amount for the purposes of subsection (1) of section 29 of the Act shall be \$150 per week.

(Amended by Legal Notices 34 of 1968, 77 of 1973, 62 of 1982.)

**FIRST SCHEDULE
SCALE OF FEES AND CHARGES FOR MEDICAL AID**

- 1 Visit of patient to doctor 1-00
- 2 Visit of doctor to patient 2-00
The fees for items 1 and 2 shall not be additional to the fees prescribed in item 3 in so far as the doctor consulted is concerned.
- 3 Consultation between doctors 4-00
The fees prescribed for item 3 shall be payable only to the doctor consulted, the consulting doctor being paid as for a visit.
- 4 Treatment of simple wounds (not requiring suture of tendons or nerves or ligation of large vessels) and simple burns..... 1-50
per attendance with a maximum charge of4-00
5. Treatment of abscess-
- (a) Superficial 2-00
(b) Deep 12-00
- 6 Treatment of infections of the hand-
- (a) Pulp infection..... 4-00
(b) Suppuration in tendon sheath 16-00
(c) Suppuration (Primary or Secondary) of the mid-palmar or forearm space 20-00

(d) Deep forearm suppuration following (a), (b) or
(c) above 40-00

When any two or more of the conditions mentioned in
this item result, the fee for the final condition only shall be
payable.

7 Removal of foreign bodies (other than from the eye)-

(a) Superficial foreign bodies not requiring incision.....
(b) Superficial foreign bodies requiring incision

8 Treatment of fractures-
Simple-

(a) Bones of the hand and foot except of cali
(b) Rib or ribs.....
(c) Clavicle.....

9 Treatment of dislocations-
Simple-

(a) Phalanges..... 10-00
(b) Metacarpal or Metatarsal 15-00
(c) Shoulder..... 15-00
(d) Clavicle (either end) 21-00

10 Treatment of joint injuries (other than dislocations)-
Aspiration of joint 4-00

11 Amputations-
Finger or toe..... 8-00

12 Paracentesis of chest 4-00

13 Eye-

(a) Examination per visit, including ordinary treatment 2-00
(b) Removal of superficial foreign body 2-00

14 Ear, Nose and Throat-

- (a) Examination, per visit, including ordinary treatment - As for items 1 and 2
- (b) Paracentesis of ear-
 - (i) One ear 12-00
 - (ii) Two ears 16-00
- (c) Maxillary antrum: Proof puncture..... 8-00

15 Drugs and dressings-

Where drugs or dressings are necessarily and actually supplied by the attending practitioner, 10 per cent may be added where the total fee payable in respect of services rendered or visits made to a workman exceeds \$4 except in the case of fracture, where 20 per cent may be added.

16 Vaccine and Sera-

Where, in the course of the treatment of any injury or scheduled disease, it is necessary to administer vaccines or sera, the net cost thereof may be added to any fees payable under this Schedule.

17 Travelling-

A fee of 20c for each mile travelled shall be allowed to a medical practitioner called upon to travel to a place more than three miles from his surgery. No fee shall be payable where the place visited is not more than three miles from the surgery.

18 Attention subsequent to item for which fee is prescribed-

The cost of all necessary attentions subsequent to any operation, in respect of which a fee has been prescribed in this Schedule of a period of six weeks after the operation shall be regarded as being included in such fee.

19 Where a fee for any service is prescribed herein, the medical practitioner shall not be entitled to payment calculated on a basis of visits or examinations made where such calculation would result in the prescribed fee being exceeded.

SECOND SCHEDULE

WORKMEN'S COMPENSATION ACT
(Substituted by Regulations 6th August, 1976)

**NOTICE BY EMPLOYER OF ACCIDENT CAUSING INJURY/DEATH
TO A WORKMAN OR DEATH OF A WORKMAN FROM ANY
CAUSE WHATSOEVER**

(SECTION 14-REGULATION 3)

PART I

1. EMPLOYER-

- (i) Name
- (ii) Address.....
- (iii) Industry or Business.....
- (iv) Name and address of Insurance Company, if insured against accident to workmen

2. WORKMAN-

- (i) Name s/o.
- (ii) Sex.....
- (iii) Age.....
- (iv) Occupation (avoid the term "labourer" where possible)
- (v) Residential Address

3. ACCIDENT/DEATH FROM ANY CAUSE WHATSOEVER-

- (i) Date and hour
- (ii) Place.....
- (iii) Description of accident/death including a clear statement of exactly what the workman was doing at the time of the accident/death

4. AGENCY OF ACCIDENT-

(Put X against appropriate Agency)

- | | |
|--|--|
| <input type="checkbox"/> Electricity | <input type="checkbox"/> Person falling |
| <input type="checkbox"/> Fire, Hot Substances | <input type="checkbox"/> Handling material |
| <input type="checkbox"/> Power-driven Machinery | <input type="checkbox"/> Hand tools in use |
| <input type="checkbox"/> Flying Pieces | <input type="checkbox"/> Vehicles in motion |
| <input type="checkbox"/> Stepping on or striking against objects | <input type="checkbox"/> Animals |
| <input type="checkbox"/> Objects falling | <input type="checkbox"/> Other causes (state what below) |

5 INJURY-

(i) Nature of injury (Put X against appropriate classification)

- | | |
|---|---|
| <input type="checkbox"/> Fractured or crushed limbs | <input type="checkbox"/> Concussion |
| <input type="checkbox"/> Bruises, abrasions, contusions | <input type="checkbox"/> Traumatic amputation |
| <input type="checkbox"/> Cuts, lacerations | <input type="checkbox"/> Asphyxiation, gassing |
| <input type="checkbox"/> Punctures | <input type="checkbox"/> Poisoning |
| <input type="checkbox"/> Sprains, strains | <input type="checkbox"/> Sepsis |
| <input type="checkbox"/> Dislocations | <input type="checkbox"/> Dermatitis |
| <input type="checkbox"/> Foreign bodies | <input type="checkbox"/> Not otherwise classified |
| <input type="checkbox"/> Burns, scalds (state nature) | |

Name of hospital or medical practitioner treating the injured workman

(ii) Action taken

(iii) Location of injury (Put X against appropriate location of injury)

- | | | | | |
|-------------------------------|--------------------------------|----------------------------------|-------------------------------|------------------------------------|
| <input type="checkbox"/> Head | <input type="checkbox"/> Trunk | <input type="checkbox"/> Hand | <input type="checkbox"/> Leg | <input type="checkbox"/> Toe |
| <input type="checkbox"/> Eye | <input type="checkbox"/> Arm | <input type="checkbox"/> Fingers | <input type="checkbox"/> Foot | <input type="checkbox"/> Elsewhere |

6. GROSS WEEKLY EARNINGS AT THE DATE OF THE ACCIDENT-

Gross cash wage
Value of rations.....
Value of housing.....
Value of fuel.....

Overtime payment or other special remuneration for work done, whether by way of bonus or otherwise, if of constant character, and for work habitually performed.....

Total gross earnings per week

Date

Signature of Employer.

*** Notes-(1) In the case of injury to a workman involving incapacity for work for three or more consecutive days, it is requested that the employer complete Part I in quadruplicate and then despatch it immediately as under:-

Original-To the Permanent Secretary for Labour, Suva.
Duplicate, Triplicate, and Quadruplicate-To the medical practitioner attending or examining the injured workman.

(2) In the case of an accident causing the death of a workman or death resulting from any cause whatsoever, Part I should be completed in quadruplicate and then despatched as in (1) above.

The submission of this notice does not itself constitute a liability to pay compensation.

PART II

(For use by the medical practitioner' attending or examining
the injured workman)

Date admitted to hospital

In-patient No.....

Attendance as out-patient from

Out-patient No.....

Nature of Injury

Discharged to

* Permanent incapacity per cent.

* Temporary incapacity-Likely duration of absence from work (from date of
accident)..... days/weeks/months.

Is a further examination required before final assessment of permanent incapacity
can be given?

If so, when.....

Date.....

Medical Practitioner.

Note-It is requested that this part be completed by the medical practitioner in triplicate,
the form then being despatched as under:-

One copy to the employer

One copy to the Permanent Secretary for Labour, Suva

One copy to be retained by the Medical Practitioner

PART III

(For use of Permanent Secretary for Labour)

Compensation *is/is not being claimed on behalf of the *workman/dependants of the
deceased workman.

District and Accident Register No.

Station

Date.....

Secretary for Labour.

* Delete as necessary

L.D. FORM/C/2

THIRD SCHEDULE

WORKMEN'S COMPENSATION ACT

NOTICE OF CLAIM BY OR ON BEHALF OF A WORKMAN

To

Address

NOTICE IS HEREBY GIVEN that (2)

of.....

on the Q day of....., 19....,

at(*)..... met with an accident

causing his injury/death and that the

cause of the injury/death was (.....

AND NOTICE IS ALSO GIVEN that in consequence thereof compensation is claimed from you under the Workmen's Compensation Act.

Dated this day of..... 19....,

.....

Insert at-

() Name and address of employer.

() Full name, address and identity particulars of workman.

() Date of accident.

() Place of accident.

() Whether disablement or death.

() State in plain and ordinary terms the cause of the injury or death.

() Signature and address of person giving notice.

SECTION 42-WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

*Regulations 7th Dec., 1964
[in force 1st April, 1965.], 6th Aug., 1976.*

Made by the Governor in Council

Short title

1. These Regulations may be cited as the Workmen's Compensation (Rules of Court) Regulations.

Interpretation

2. In these Regulations-

"the Act" means the Workmen's Compensation Act.

Forms

3. The forms contained in the First Schedule shall, where applicable be used in matters or proceedings under the Act, with such variations and modifications as the circumstances may require.

Court to assist parties

4. The court shall, upon request-

- (a) give information as to matters of form or procedure to any party to any proceedings under the Act and supply to any such party, who is not legally represented, any form required by these Regulations for use in matters or proceedings before a court;
- (b) fill in and make copies of any necessary forms whenever a party, who is not legally represented, is unable to do so owing to illiteracy, blindness, or other physical cause;
- (c) issue all necessary process.

Address for service

5.-(1) The first document, lodged by a party with the court, shall bear such party's full name and such address as will enable service of notices and documents to be effected on him either by delivery or through the post.

(2) Any change of address shall forthwith be notified by the party making such change, to

the court and to the other party or parties to the proceedings.

(3) Any address lodged by a party, in pursuance of paragraph (1), shall remain an address for service of such party from the date of lodging until forty-eight hours after any change thereof has been notified as prescribed in paragraph (2).

Marking of documents

6. The court shall mark, with a number, the first document lodged with the court by an applicant, and any document lodged subsequently by any party in relation to that application shall first be marked with the same number by the party lodging it and, unless so marked, may be refused by the court.

Records to be kept separate

7. The court shall file under their respective numbers and keep separate the records of all applications made under the Act.

Application Record Book

8. The court shall keep a book, to be called the "Application Record Book", which shall be in the form and contain the particulars set out in the Form No. 12 in the First Schedule.

Return of determination

9. The court shall, within two weeks after the end of March, June, September and December in each year, furnish to the Permanent Secretary a return of all determinations made by the court during the preceding three months, and shall state in such return the nature of each application, the names of the applicant and the respondent, and the order made.

Service of documents

10. Service of applications, answers, orders, notices and other documents which, by the Act or the regulations made thereunder, are required to be served on any person who resides in Fiji, or who has an address for service in Fiji or who has authorised a person resident in Fiji to accept service on his behalf shall be effected in accordance with the rules relating to service in proceedings in magistrates' courts.

Application for determination

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

(a) a concise statement of the circumstances under which the application is made and the relief or order which the applicant claims, or the question which he desires to have determined; and

(b) the full name and address of the applicant, and the name to have determined; and

(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.

Service of copy application and notice

12. As soon as an application, together with the accompanying particulars and statements herein prescribed, has been lodged, the court shall cause a copy thereof to be served upon the respondent, together with a notice informing the respondent that he must lodge with the court such an answer as is prescribed in regulation 13, within the period therein prescribed, and that in default of his complying with such notice or in default of his appearing at a time and place fixed in the notice, such order may be made as the court deems just. Save where liability is wholly admitted with the written consent of the respondent communicated to 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.

Answer

13.-(1) If the respondent intends to oppose an application he shall, within seven days after service of the notice, or within such extended period as the court may upon special request allow, lodge with the court a written answer containing a concise statement of the extent and grounds of his opposition and the court shall cause a copy of such answer to be served upon the applicant.

(2) Without prejudice to the provisions of paragraph (1), every written answer lodged with the court by the respondent shall deny all such material allegations in the application as the respondent intends to deny at the hearing. Every allegation of fact, if not denied specifically or by necessary implication or stated to be not admitted, shall be taken as established at the hearing.

(Inserted by Regulations 6th August, 1976)

Amendment

14. The court may, at any time before the determination of the question in dispute and upon such terms as to adjournment or as to costs as may be deemed just, allow an application, or any answer thereto, or any particulars or statement accompanying the

same, to be amended. Any such amendment shall be lodged with the court who shall forthwith cause it to be served upon the opposite party.

Request for further particulars

15.-(1) The respondent may not later than seven days after he has received notice of application, or within such extended period as the court may upon special request allow, serve on the applicant a request in writing for further particulars of the grounds upon which the application is made, specifying in such request the questions as to which he desires to have information; and the applicant may, not later than seven days after he has received the answer to the application serve on the respondent a request in writing for similar particulars of the grounds upon which the application is opposed.

(2) A copy of any such request shall forthwith be lodged with the court by the party making the request, and a copy of any reply thereto shall forthwith be lodged with the court by the party making the reply.

(3) If the party so requested to furnish particulars fails to do so within seven days from the date of service of the request aforesaid and in consequence of such failure it is necessary to adjourn the hearing of the application, the court may order that the costs occasioned by such adjournment shall be paid by the party so in default. The court may disallow, with costs, any request for particulars which appears to the court to be unnecessary or vexatious. The court may award, against the party making a request for particulars, the costs of the replies thereto.

Payment of compensation into court

16.-(1) Any party, from whom compensation is claimed, may pay into court a sum which is considered by him to be sufficient to cover his liability. The court shall thereupon cause notice of such payment to be served upon the opposite party.

(2) If no greater compensation be awarded than the sum of money which the respondent has paid into court, the court may order that any costs incurred by such party, after payment by him into court of the said sum of money, shall be paid by the applicant.

Parties to lodge copies with court

17. Every party shall lodge with the court such copies of documents as are required to be served, by the court, on the other party to the application or to be sent to him.

Intervention by contractor

18.-(1) Where a principal has given notice to a contractor of a claim or application for compensation made against the principal, and the contractor desires to intervene, he shall within seven days of the service of such notice upon him, lodge with the court a notice that he so intervenes and shall forthwith serve copies of such notice of intervention upon

the applicant and principal. The contractor shall thereupon be entitled to make copies of the application and of any other document then lodged with the court in connexion with the application.

(2) A contractor, who has so lodged with the court notice that he intervenes, shall lodge an answer to the application containing a concise statement of the extent and grounds of his opposition, within seven days after lodging with the court of the said notice of intervention or within such further time as the court may on application allow.

Contractor not disputing liability, deemed to admit validity of order

19. If any person served with a notice as a contractor desires to dispute the claim of the applicant or his own liability to the principal, he shall appear before the court, and in default of his so doing shall be deemed to admit the validity of an order made against the principal, whether such order is made by consent or otherwise, and his own liability to indemnify the principal to the extent claimed in the notice served on him by the principal.

Court may order interested person to be joined

20. The court may, at any stage of the proceedings, upon request made to it in writing or of its own motion, order that any person appearing to be interested be joined in the proceedings and either as an applicant or respondent as the court may direct.

Application where workman deceased

21. An application to determine what sum is payable in respect of medical aid to or funeral expenses of a deceased workman who leaves no dependants, shall be made by the personal representative, if any, of the deceased workman, or, if there be no such personal representative, or he fails to make such application, by any person to whom any such expenses are due. In the latter case any other person known to the applicant to be a person to whom any such expenses are due shall be joined in the application either as applicant or as respondent.

Submission of case to judge

22.-(1) When a court submits any question of law for the decision of a judge of the Supreme Court, the case shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and refer to such documents as may be necessary to enable the judge to decide the question of law raised thereby.

(2) The case shall be signed and sent to the Chief Registrar of the Supreme Court, who shall forthwith transmit the same to a judge, who shall appoint a day, hour and place for hearing the case.

(3) The Chief Registrar shall forthwith cause due notice of the day, the hour and place appointed for hearing the case to be given to the parties; such notice shall not be less than

fourteen clear days before the date of the hearing, unless the judge shall, with the consent of all parties, fix an earlier day.

(4) Any party shall be entitled, on payment of the prescribed fees, to obtain from the Chief Registrar a copy of the case.

(5) After deciding the question submitted to him, the judge shall remit the case with a memorandum of his decision to the court.

(6) The judge may remit the case to the court for restatement or further statement.

(7) The costs of the hearing of a case shall be in the discretion of the court and shall form part of the proceedings before the court.

Infant applicant or respondent

23. A magistrate may for the purposes of these Regulations, at any time, direct that an infant or any person appearing to the court to be an infant shall appear as an applicant or respondent and shall be bound by the proceedings in the same manner as if he were of full age.

Fees

24. The fees payable to the court in respect of proceedings under the provisions of these Regulations shall be those set out in the Second Schedule.

Appeals

25. Appeals under the provisions of section 22 of the Act shall be made in accordance with the rules relating to appeals from magistrates in civil matters and the fees chargeable shall be the same:

Provided that no fees shall be payable under the provisions of this regulation by any workman.

Exemption from payment of costs by workman

26. Notwithstanding anything contained in these Regulations or in any rules of /T court no costs shall be paid by a workman in any proceedings in which such workman's weekly earnings do not exceed twenty-four dollars:

(Amended by Regulations 6th August, 1976.)

Provided that the court may, if it considers any application made by a workman is frivolous or vexatious, award costs against such workman.

FORM No. 1

**FIRST SCHEDULE
WORKMEN'S COMPENSATION ACT**

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

**APPLICATION BY INJURED WORKMAN WITH RESPECT TO THE
COMPENSATION PAYABLE TO HIM**

In the.....Magistrates' Court at

Case No.....

In the matter of an Application between-

....., Applicant,

....., Respondent.

1. On the..... day of..... 19.....
personal injury by accident arising out of and in the course of his employment was
caused to..... a workman
employed by..... (or by.....
.....a contractor with.....
for the execution of work undertaken by him).

2. A question has (or questions have) arisen, (here state the questions,
specifying only those which have arisen, e.g.):-

(a) whether the said..... is a workman
to whom the Act applied;

(b) as to the liability of the said..... to pay com-
pensation under the Act in respect of the said injury;

(c) as to the amount of the compensation payable by the said
.....to the said..... under
the Act in respect of the said injury (or as the case may be);

(d) (such other questions as may have arisen).

3. An application under the Act is hereby made by the said
..... for the determination of the said question (or questions) and for
the following relief or order (state shortly the relief or order which the applicant claims).

4. Particulars are hereto appended (or annexed):-

PARTICULARS

1. Name and address of applicant

2. Name, place of business, and nature of business of respondent

3. Nature of employment of applicant at time of accident and whether employed under respondent or under a contractor with him. (If employed under a contractor who is not a respondent, name and place of business of contractor also to be stated)
4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident and cause of injury
5. Nature of injury to deceased and date of death
6. Particulars of incapacity for work, whether temporary or permanent, and if permanent, whether total or partial, and if temporary, estimated duration of incapacity.....
7. Average weekly earnings of the workman with the employer at the time of the accident causing incapacity or death, or if, by reason of the shortness of the time during which the workman has been in the employment of the employer, it is impracticable to compute the average weekly earnings, then the amount which the workman claims should be taken as his average earnings and the ground upon which the amount is claimed.....
8. Average weekly amount which the applicant is earning or is able to earn in some possible employment after the accident.....
9. Payment, allowance or benefit received from employer during the period of incapacity
10. Amount claimed as compensation.....
11. Date of giving of notice of accident to respondent. (A copy of any notice in writing, if available, to be annexed)
12. If notice not given, reason for omission to give such notice .

The names and address(es) of the applicant (and his barrister and solicitor) are:-

Of the applicant:.....

Of the barrister and solicitor:

The name and address of the respondent to be served with the application are:.....

Applicant (or his Barrister and Solicitor)

FORM No. 2

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

APPLICATION ON BEHALF OF DEPENDANTS OF DECEASED WORKMAN, WITH RESPECT TO THE COMPENSATION PAYABLE TO SUCH DEPENDANTS WHERE DEATH HAS RESULTED FROM THE INJURY TO THE WORKMAN

In the..... Magistrates' Court at

Case No.....

In the matter of an Application between-

....., Applicant,

and

....., Respondent.

1. On the day of 19..... personal injury by accident arising out of and in the course of his employment was caused to..... late of..... deceased, a workman employed by..... (or by a contractor with for the execution of work undertaken by him), and on the..... day of..... 19..... the death of the said..... resulted from the injury.

2. A question has (or questions have) arisen (here state the questions, specifying only those which have arisen, e.g.):-

- (a) whether the said..... was a workman to whom the Act applied;
- (b) as to the liability of the said to pay compensation under the Act to the dependants of the said;
- (c) as to the amount of compensation payable by the said under the Act in respect of the loss caused to them by the death of the said;
- (d) (such other questions as may have arisen).

3. An application under the Act is hereby made by....., the representative of the said deceased, acting on behalf of the dependants of the said..... against the said for the determination of the said question (or questions), and for the following relief or order (state shortly the relief or order which the applicant claims).

4. Particulars are hereto appended (or annexed):-

PARTICULARS

1. Name and late address of deceased workman
2. Name, place of business, and nature of business of respondent from whom compensation is claimed.....
3. Nature of employment of deceased at the time of accident and whether employed under respondent or under a contractor with him. (If employed under a contractor who is not a respondent, name and place of business of contractor also to be stated)
4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury
5. Nature of injury to deceased and date of death
6. Average weekly earnings of the workman with the employer at the time of the accident causing disablement or death, or if, by reason of the shortness of the time during which the workman has been in the employment of the employer, it is impracticable to compute the average weekly earnings then the amount which it is claimed should be taken as his average, earnings and the ground upon which the amount is claimed.....
7. Amount of weekly payments (if any) made to the deceased under the Act.....
8. Name and address of applicant
9. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased and, if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death
10. Amount claimed as-
 - (a) compensation.....
 - (b) funeral expenses.....
 - (c) expenses of medical aid.....
11. Date of giving of notice of accident to respondent from whom compensation is claimed. (A copy of the notice, if available, to be annexed)
12. If notice not given, reason for omission to give same

The names and addresses of the applicant and his barrister and solicitor are:

Of the applicant:

The name and address of the respondent to be served with this application

are:.....

Dated this. day of..... ,19....

Applicant for his Barrister and Solicitor.

FORM NO. 3

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

GENERAL APPLICATION

In the..... Magistrates' Court at

Case No.....

In the matter of an Application between-

....., Applicant,

and

....., Respondent.

Application is hereby made by (1)

against (2)

The circumstances under which the application is made are shortly as follows:

The relief or order which the applicant claims is shortly as follows: (*)

The full names and addresses of the applicant and his barrister and solicitor are:-

Of the applicant:

Of his barrister and solicitor:

The name and address of the respondent to be served with this application are:

.....

Dated this. day of..... 19....

Applicant (or his Barrister and Solicitor)

Note.-Where the application is made by an employer, and any question of his liability to pay compensation is involved, it must 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.

- (1) Name and address of applicant.
- (1) Name and address of respondent.
- (1) State concisely in numbered paragraphs in chronological order the circumstances under which the application is made.
- (*) State concisely the relief or order which the applicant claims.

FORM NO. 4

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

NOTICE TO RESPONDENT AS TO APPLICATION

In the Magistrates' Court at
Case No.....

In the matter of an Application between-

....., Applicant,

and

....., Respondent.

To
of

Take notice that, if you intend to oppose the application, of which a copy is served upon you herewith, you must lodge with me, within seven days after the service of the notice upon you, a written answer thereto containing a concise statement of the extent and grounds of your opposition.

And further take notice that the said application has been set down for hearing at..... on the..... day of.....
19...., at..... o'clock in the..... noon.

And that in default of your lodging with me within the time aforesaid a written answer as herein required, or of your appearing at the said time and place fixed for the hearing of the application, such order may be made as the court deems just.

Dated this.day of..... 19....

Magistrate

FORM 5

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

RESPONDENT'S ANSWER TO NOTICE

In the..... Magistrates' Court at
Case No.....

In the matter of an Application between-

To the Court,

....., Applicant,

and

....., Respondent.

The respondent intends to oppose the above application.

The following is a concise statement of the extent and grounds of his opposition:-

Date.....

Place.....

Respondent (or his Barrister and Solicitor)

FORM No. 6

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

REQUEST FOR PARTICULARS

In the..... Magistrates' Court at
Case No.....

In the matter of an Application between-

....., Applicant,

and

....., Respondent.

To

Take notice that you are hereby requested to furnish me with answers in writing to the following questions:-

.....

Dated this day of..... 19.....

.....

- (1) Name and address of workman, applicant, or respondent to whom request is made.
- (2) State shortly and clearly under consecutive numbers the questions to which answers are requested.
- (3) Signature and address of person making the request.

FORM No. 7

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

ORDER FOR PERIODICAL PAYMENTS

In the..... Magistrates' Court at
Case No.....

In the matter of an Application between-

....., Applicant,

and

....., Respondent.

Before
on the day of19.....

Upon hearing the evidence given by.....
and for the applicant and
.....for the respondent

It is ordered that (1)

do forthwith pay to (2)
at (3) the costs of an
application heard on the..... day of....., 19.....,
and the sum of \$....., being the amount now due
from the said (*).
to the said (2)
in respect of a liability established at the rate of.....
per week from the..... day of..... 19.....,
being the date of the injury, to the date of this order; and do further pay at the same
place on every day from the
date of this order until otherwise ordered, the sum of.....

Dated this. day of 19....

Magistrate

- (1) Employer's name and address.
- (2) Workman's name and address.
- (3) Place where payment is to be made.

FORM No. 8

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

APPLICATION FOR THE REVIEW OF A PERIODICAL PAYMENT

In the Magistrates' Court at
Case No.

In the matter of an Application between-

....., Applicant,

and

....., Respondent.

An application is hereby made by.....
againstfor the review
of the order made by the court on the day
of....., 19..... (or the agreement arrived at
between the said parties on the day of
19.....), and for the termination (or increase, decrease or conversion to a lump
sum as the case may be) of the periodical payment payable to the said
under the said order (or agreement) in respect of personal injury which arose out of
and in the course of his employment,

Particulars are hereto appended (or annexed):-

PARTICULARS

1. Name and address of injured workman
2. Name and place of business of employer by whom compensation is payable.....
3. Date and nature of accident, and injury
4. Date of order or agreement fixing periodical payment, amount of such payment, and date from which it commenced.....
5. Relief sought by applicant (whether termination, suspension, increase, diminution or conversion).....
6. Grounds on which (termination, suspension, increase, diminution or conversion) is claimed
7. State whether a certificate of a medical practitioner is attached

The names and addresses of the applicant and his barrister and solicitor are:-

Of the applicant:

Of his barrister and solicitor:

The name and address of the respondent to be served with the application

Dated this..... day of....., 19...

Applicant (or his Barrister and Solicitor)

FORM No. 9

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

ORDER ON REVIEW OF ORDER/AGREEMENT FOR PERIODICAL PAYMENTS

In the..... Magistrates' Court at.....

Case No.....

In the matter of an Application between-

..... Applicant,

and
..... Respondent.

Before.....
on. day, the..... day of..... 19.....

Upon review of the order for periodical payment made
on the..... day of 19.....
(or the agreement arrived at between the said parties on the day
of..... 19.....), and upon hearing the evidence given
by..... and
..... for the applicant
and for the respondent.

It is hereby ordered that the said order/agreement be varied in the following
manner:-

and that the costs of the said
of and incidental to this application and order be paid by the said
to the said

Dated this..... day of..... 19.....

Magistrate

FORM No. 10

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

NOTICE BY PRINCIPAL TO CONTRACTOR

In the Magistrates' Court at
Case No.....

In the matter of an Application between-

....., Applicant,

and

....., Respondent.

Take notice that an application/a claim for compensation is made against

.....
by (3) who
alleges that the said (*) is
liable to pay him compensation in respect of an accident which occurred at (')
on the..... day of..... 19..... and that the

said (2).....
..... claims to be indemnified
by you with respect to his liability (if any) under the Workmen's Compensation
Act.

And further take notice that the said application/claim has been set down for
hearing on the..... day of.....
19..... at..... o'clock in the..... noon.

Dated this..... day of..... 19.....

..... (')

- (') Name and address of the contractor.
- (') Name and address of principal.
- (') Name and address of workman.
- (') Name of principal.
- (') Place of accident.
- (') Signature and address of person giving the notice.

FORM No. 11

WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION (RULES OF COURT) REGULATIONS

NOTICE OF INTERVENTION BY CONTRACTOR

In the Magistrates' Court at
Case No.....

In the matter of an Application between-

....., Applicant,

and

....., Respondent.

To the Court
and to the [applicant] and the [principal].

Notice is hereby given by (') that he intervenes in this application
for compensation made by (') against (')
.....

The said (').....intends to oppose the said application.

The following is a concise statement of the extent and grounds of his opposition:-

.....

Dated this..... day of,19.

- () Name and address of the contractor.
- () Name of workman.
- () Name of principal.
- () Name of the contractor.
- () Signature and address of the person giving the notice.