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Strides in Reforms of Workmen's Compensation Law in Nigeria*

Introduction

The rapid industrialization of most countries in the past two centuries has informed nation states of the need to take concerted measures calculated at preventing ill-health and promoting the safety and welfare of workers. These measures have, in greater measure, found expressions in statutory language imposing duties on employers to take such action as the nature of the work and the circumstances of the employee may demand.

For example, in *sections 14 to 22 of the Factories Act, 1987*, [1] in Nigeria, the occupier or owner of a factory has been saddled with the duty to ensure *inter alia* that the premises, equipments and tools are properly maintained and that every dangerous part of specified machinery is securely fenced.

Also, by *section 23* of the same Act, the owner or occupier of a factory has a duty to ensure that persons employed at any machine or process liable to cause bodily injury have received sufficient training or are under adequate supervision by persons who have thorough knowledge and experience of the machine or process.

There is also the duty of the occupier or owner of a factory to provide conducive working environment in the form of available drinkable water, washing facilities, accommodation for clothing, First Aid and protective clothing and appliances in designated work places. [2]

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1. Cap. F1, Laws of the Federation of Nigeria, 2004.
2. See, generally, *Parts IV and V, sections 40, 41, 42, 43 and 47 of the Factories Act, 1987, supra.*

However, in case of unavoidable accident and the workman is injured, the law has also provided for payment of compensation to the injured workman.

It is, primarily, intended in this paper to examine *the Workmen's Compensation Act, 1987* in Nigeria, with a view to securing enduring universally-competitive reforms to that Act.

The industrial revolution in the developed countries which had started in Great Britain about 1750 and the subsequent industrial revolutions in other countries had brought new risks to the lives and limbs of industrial workers, in the form of accidents, poisoning and diseases which had resulted in death and physical disablement and in the creation of states of dependency which could not be adequately addressed through programmes of poor relief hitherto existing in the respective countries. [3]

"The working class" has been socially sandwiched between aristocracy and the middle-class. It is, however, more accurate for purposes of this paper to refer to "workmen" as the preferable synonym of "the working class". Also, for our purposes, the original and conservative [4] meanings of "workmen" concern those who work, especially, manually, such as skilful artificers or craftsmen. By the regime and system of "workmen's compensation", compensation is paid to the injured workmen by employers, in a restricted number of trades. [5] Workmen's "right" of compensation, notionally, comprises accidents or prescribed diseases arising out of and in the course of the employment causing personal injury to them.

The connecting factors amongst the various governmental policies and programmes which have been spread over several eras, especially, within the last century, such as workmen's compensation, the welfare state, social insurance and social security concern, the conspicuously fragile means and resources of the workman and the ensuing quest of the State, in most communities, to consistently alleviate or eradicate the perceived poverty by promoting *inter alia* a minimum standard of living. These connecting factors have prompted the International Labour Organization (ILO) to recognize workmen's compensation scheme as one of the major branches of social security schemes and the ILO has, accordingly, recognized the right of workmen who have been injured at work, to compensation in the ILO's *Social Security (Minimum Standards) Convention, 1952*, [6] and the ILO's *Employment Injury*

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3. Titmuss, R.M., *Social Policy: An Introduction*, Brian-Abel, Smith and Titmuss, K. (eds.) (George Allen & Unwin Limited, London, 1974), 78.
4. See, for instance, *the Workmen's Compensation (Employment) Order in Council, 1941*, No. 31 and section 2(a), *Workmen's Compensation Ordinance, 1942*, Cap. 222 , Laws of the Federation and Lagos, 1958.
5. See, for instance, *sections 1 and 2, Workmen's Compensation Act, 1987*, Cap. W6, Laws of the Federation of Nigeria, 2004.
6. No. 102.

Benefits Convention, 1964.[7] The contingencies covered in an employment injury by *Article 32* and *Article 6* respectively of these Conventions include: (a) a morbid condition; (b) incapacity for work resulting from such a condition and involving suspension of earnings, as defined by national legislation; (c) total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty; and (d) loss of support suffered by the widow or child as consequence of the death of the breadwinner. In the case of a widow, the right to benefit may be made conditional on her being presumed, in accordance with national laws or regulations, to be incapable of self-support.

The first workers' compensation programme was introduced in Germany by *Otto Von Bismarck* [8] in *the Accident Law, 1884*. This was, substantially, in response to the socialist movement which gained enormous strength at that time on account of the social and economic risks associated with the industrial revolution of the time. By means of a system of social insurance, *the Accident Law, 1884* offered protection to wage earners from the economic risks of modern industrial life, in the event of an accidental injury. *The Sickness Insurance Law, 1883*; *the Accident Law, 1884*; *the Old Age Pension Insurance Law, 1889*; and *the Unemployment Insurance Law, 1927* are now, generally, regarded as the cornerstones of social security in Germany.[9]

Increasingly, during the next half-century, the German social insurance laws of the 1880s influenced the course of welfare legislation in several other countries and gradually pushed the older forms of poor relief programmes into a subordinate position. Thus, it was from Germany that the concept of "sozialpolitic", a concept linked to the idea of social insurance spread throughout Europe a little more than a century ago.[10] Indeed, social insurance programmes in most of the industrialized countries first started with workmen's compensation laws and they have served as fore-runners of social security schemes in these countries.[11]

Over the years, two basic types of workmen's compensation programmes have evolved. The first is the social insurance system that uses a public fund and the second

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7. No. C 121.
8. Otto Von Bismarck was German Chancellor.
9. *Comparative Review of Workers Compensation Systems in Select Jurisdictions*; www.qp.gov.bc.ca/rcwc/research/perrin.thorau-germany,pdf. 2, accessed on 6 August, 2005; see also, Gordon, M., *The Economics of Welfare Policies* (Columbia University Press, New York & London, 1966), 2; and Romer, K. (ed.), *Facts about Germany*, (Federal Republic of Germany, Lexicon-Institut Berteshman, 1979), 240.
10. Olsson, S. E., *"Models and Countries - the Swedish Social Policy Model in Perspectives"*, Stockholm, Norstedts and Tryckeri, A. B. (eds.), *Social Security in Sweden and Other European Countries*, 17.
11. Social Security Office of Research, Evaluation and Statistics, *Social Security Programs in the United States* (Washington D.C., 1997), 1.

is the private or semi-private arrangements, which, legally, require all employers of labour to insure their employees against the risk of employment injury. In other instances, however, workmen's compensation laws simply impose on employers, a liability to pay direct compensation to injured workers or their survivors. Employers covered under such laws may then simply pay benefits from their own funds as injuries occur or may voluntarily purchase a private or mutual insurance contract to protect themselves against risk. [12]

The intention of workmen's compensation laws, wherever they may be found, is to compensate the injured workman for an economic loss resulting from the physical incapacity for work and not from the state of the labour market. [13] Thus, the nature of compensation under the laws of most countries is, usually, in form of cash benefits and medical benefits to the injured workman. However, most programmes, in addition, provide benefits to survivors of an injured workman who, subsequently, loses his life.[14]

However, the English workmen's compensation laws which had served as a model to the Nigerian workmen's compensation law had "originated" from common law principles governing compensation for tortuous liabilities as same have been qualified by the doctrines of common employment and the rule of *volenti non fit injuria.* The progress of workmen's compensation arrangement at common law was, understandable, very slow and the quality of such compensation was extremely modest whilst the prospect for reforms at common law was also, understandable, very bleak. The gross inadequacies of the quantum of workmen's compensation available at common law had, justifiably, provoked several statutory interventions at regular intervals for an enhanced and economically realistic workmen's compensation system which has, ultimately, aimed at dramatic statutory reforms which would give rise to workman's right to compensation devoid of the perplexities, even in the current *Nigerian Workmen's Compensation Act, 1987.*

We may now, examine, briefly, the *ad hoc* and tangential impact of common law principles governing workmen's compensation as an indispensable prelude to a concise exposition of the current statue law on workmen's compensation in Nigeria.

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12. Social Security Administration & International Social Security Association, *Social Security Programs Throughout the World: Europe* (Washington D.C., 2004), 10.
13. . Mills, C.P., *Workers Compensation (*Butterworths, New South Wales, 2nd ed., 1979). 16.
14. See, for instance, *Social Security (Contributions and Benefits) Act, 1992 (U.K.), Chap. VI and Schedule 4, Compensation for Occupational Injuries and Diseases Act, 1993*, No. 130 (South Africa), and workmen's compensation laws of such countries as Sweden, Germany, Finland, Australia, Algeria and of the various states in the United States of America.

Workmen's Compensation at Common Law

At common law, the duty of an employer to his workers was only limited to taking reasonable care for their safety. The workman could only obtain compensation for injuries sustained by him at work by successfully bringing a common-law action against his employer. Even then, the employer could only be made liable if the injured workman could successfully prove personal negligence on the part of the employer. [15]

Thus, injuries occasioned by the inherent risk of the job which did not involve negligence on the part of the employer would not give rise to any liability on the part of the employer. In this circumstance, where another worker employed by the employer caused the injury, the employer was absolved from liability under the doctrine of "common employment", which for a long time, provided a leeway for the employers. This was further compounded by the defence of *"volenti non fit injuria"*, which meant that the injured workman was said to have known the risks of his employment and to have accepted them - whether in the mines, factories, shipyards or elsewhere. Indeed, by the middle of the nineteenth century, the common law of England had been so whittled away that, in practice, it afforded little or no protection to the injured workman. [16]

In Nigeria, the common-law doctrine of "common employment" was applicable by *section 45, Miscellaneous Provisions Act, 1945*, which received into Nigeria, the Common Law of England, the Doctrines of Equity and the Statutes of General Application in force in England as at 1st January, 1900. [17] Although the first *Workmen's Compensation Act* in Nigeria was passed in 1941, [18] it did not displace the doctrine of common employment. The doctrine was still frequently invoked by employers to escape liability to pay compensation under the Act. However, by some other statutory interventions, the doctrine of "common employment" was abolished in the Western Region in 1959, by *the Western Nigeria Torts Law, 1959*; [19] in Lagos, by *the Law Reform (Torts) Act, 1961*; in the Eastern Region, by *the Eastern Nigeria Torts*

15. Titmuss, R.M., *Social Policy: An Introduction*, Brian-Abel, Smith and Titmuss, K. (eds.), *supra*, 75.
16. *Supra*.
17. *Section 45, Miscellaneous Provisions Act, 1945* was re-enactment of *section 4, Courts Ordinance No. 4, 1876*. In *Hans Schenkel v. A.O. Nigeria Limited and Another* (Unreported), High Court, Jos. Suit No. JD/117/1963, of May 7, 1965, the doctrine of common employment, as amended by *the Employers' Liability Act, 1880*, was held to apply in Northern Nigeria, by virtue of *section 28 of the High Court Law, 1955*.
18. Workmen's Compensation Ordinance was passed in 1941 but became effective in 1942. It was, subsequently, re-enacted as *Workmen's Compensation Act*, Cap. 222, Laws of the Federation and Lagos, 1958. For a critique of the Act; see, Adeogun, A.A., *"Thirty Years of Workmen's Compensation Act in Nigeria"* (1971) Vol. 5 *Nigerian Law Journal*, 57.
19. See, *section 13 of Torts Law, 1959* (Western Region of Nigeria).

Law, 1962, [20] and eventually in the rest of the country in 1988, by *section 12(1) of the Labour Act, 1971,* [21] which provides that:

> 12(1) - It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him, that that person was, at the time the injuries were caused, in common employment with the person injured."

Section 12(2) of the Act further renders void and of no effect any provision contained in any contract of service or apprenticeship, or in any agreement collateral thereto which purports to exclude or limit any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him. All these statutory measures were followed to a logical conclusion with the enactment of the *Workmen's Compensation Act, 1987*,[22] which, specifically, imposes a strict liability on the employer to pay compensation to any workman who has been injured at work.

Overview of Workmen's Compensation Act, 1987

The Nigerian *Workmen's Compensation Act, 1987,* is a significant *albeit* inadequate reform of the hitherto pre-existing common law governing workmen's compensation in Nigeria. The 1987 Act, essentially, regulates payment of compensation to a worker who has suffered injury in the course of his employment or to the dependants of such worker, in the event of his demise from the injury.

The Act is aimed at creating a generalized liability on the employer to pay the required compensation for injuries sustained by his workman in line with the universally-accepted principle that the cost of work accident is part of production cost. Under the Act, compensation is not payable for the injury as it were, but for the loss of power to earn caused by the injury as a matter of state policy. Thus, in order to successfully establish a claim for compensation, the affected worker must show incapacity resulting from an injury either through accident or disease contracted from the nature of his work. The question to be determined is whether the injury has left the worker in such a position that in the open labour market, his earning capacity in the future is less than it was before the injury. [23] The sole purpose is to ensure that an injured workman is not thrown into destitution following an accident at work.

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20. No. 7 of 1962.
21. Cap L1, Laws of the Federation of Nigeria, 2004.
22. Cap. W6, Laws of the Federation of Nigeria, 2004. This Act repealed and replaced *the Workmen's Compensation Ordinance, 1942*, Cap. 222, Laws of the Federation and Lagos, 1958.
23. See; Per Starke, J. , *Williams v. Metropolitan Coal Company Limited* (1948) 76 C.L.R. 431, 444.

By *section 1 (1) of the Workmen's Compensation Act, 1987,* a "workman" in Nigeria has been defined as follows:

> "1(1) ...a person shall be deemed to be a workman if either before or after the commencement of this Act he has entered into a contract of service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing."

However, the Act in its *section 1(2)* has exempted some categories of workers from its operation. These include any person employed under a contract of service or collective agreement approved for exemption by the Minister charged with responsibility for matters relating to labour; or any person employed otherwise than for the purposes of his employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or an outworker; or a member of the employer's family dwelling in his house; or a person employed in agricultural or handicraft work by an employer who normally employs less than ten workmen; or any class of persons whom the Minister may by Order published in the Federal Gazette declare not to be workmen for the purpose of the Act.

Also excluded from the provisions of the Act in, its *section 2(2)*, are members of the Nigerian Navy or the Nigerian Air Force other than a person employed in a civilian capacity and any person employed in the public service of the Federation who has been first engaged in a place outside Nigeria and is not a Nigerian citizen. These exemptions, no doubt, have support in considerations of policy and practical convenience. However, unlike the earlier *Workmen's Compensation Act, 1958*, which excluded quite a large number of workers by its provisions, [24] the 1987 Act has extended coverage to more workmen in the formal sector. In the candid language of the 1987 Act, its *section 2(1)* provides:

> "2(1) Subject to the provisions of this section, this Act shall apply to a workman employed -
> (a) in the public service of the Federation or of any State thereof; and
> (b)in the Nigeria Police Force,
> in the same way and to the same extent as if the employer were a private person".

By these provisions, coverage has been extended to workers in virtually all the sectors of the economy, both public and private; and whether engaged in manual and

24 . *Section 2(2), Workmen's Compensation Act, 1958 inter alia* excluded from the provisions of the Act, any person employed, otherwise, than by way of labour, whose earnings exceeded eight hundred pounds a year. By this provision, many officers, especially, those occupying clerical positions were excluded.

clerical work or otherwise and the limitation to non-manual workers earning below eight hundred pounds (one thousand six hundred Naira) per annum contained in *the Workmen's Compensation Act, 1958* has, also, been abandoned. With this statutory reform, coverage of workmen under the Act meets with the minimum standard prescribed by *Article 33 of the Social Security (Minimum Standards) Convention 1952*, [25] which provides that:

> "The persons protected shall comprise -
> (a) prescribed classes of employees, constituting not less than 50 per cent of all employees, and, for benefit in respect of death of the breadwinner, also their wives and children."

By *section 3(1)*, there is a *strict liability* on an employer to pay compensation to a workman who has suffered personal injury by accident *"arising out of and in the course of his employment"*. Payment, here, is to compensate for total loss or diminution of earning power by reason of the injury. The expression "*arising out of the employment"* was defined in *Davidson (Charles R) and Company v. M'Robb or Officer* [26] as "arising out of the work which the man is employed to do and what is incident to it - in other words, out of his service". In *R. v. Deputy Industrial Commissioner, Ex Parte A.E.U.*, [27] it was held that, in determining whether an employee was acting in the course of his employment or not, the dominant factor is whether or not what he was doing when the accident occurred, was something incidental to his contract of service, although he might have no duty to do it. Also, in the Nigerian case of *U.A.C. (Nigeria) Limited v. Orekyen,* [28] *De Lestang, C.J.* held that, for an accident to arise out of the employment, there must be some causal relation between the accident and the employment other than the mere coincidence of the accident with the currency of the employment.

Thus, in *Mitchinson v. Day Brothers,* [29] the deceased was a carter in charge of a horse and van belonging to his employers. A drunken man, having stopped near the horse's head, the deceased, who was standing near the horse, warned him to come away lest the horse should hurt him; whereupon, he struck the deceased two bellows on the head, causing injuries from which he died. It was held that the risk of assault was not incidental to, and the accident did not arise out of the deceased's employment and that compensation was not payable under *the Workmen's Compensation Act*.

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25. No. 102.
26. (1918) A. C. 304.
27. (1966) 1 All E.R. 705.
28. (1961) All N.L.R. (Pt. 4) 719.
29. (1913) 1 K.B. 603.

Also, in *Scandinavian Shipping Agencies v. Garuba Ejide,* [30] the deceased was employed by the Appellants who were the owners of a launch called "Mahogany", which the Appellants provided to take their employees from Apapa to Lagos after each day's work. The deceased had fallen off the "Mahogany" and drowned when he was being ferried across the lagoon from Apapa to Lagos, at the close of work. It was contended for the Respondents that the accident occurred out of and in the course of the deceased's employment. The court, however, held that it was not shown that the ferry was the only means by which the deceased could get home, nor even, that it was the only reasonable way for him to get from Apapa to Lagos. For this reason, therefore, the accident which caused the death of the deceased did not arise "out of and in the course" of his employment.

Furthermore, in *Hannah Ngangkam v. Strabag (Nigeria) Limited,* [31] the Federal Supreme Court held that the death of a workman caused as a result of the lorry hired by the Respondents to convey workmen to their workplace falling into a stream, while carrying the deceased and other workmen home, after their day's work, did not occur in the course of his employment.

However, in *Bewac Limited v. Alimi Akanbi,* [32] the Respondent's employer sent the Respondent on an errand to drive a "motor tractor" from Lagos to Benin City and was to find his way back to Lagos where he worked. The Respondent had sustained injuries from an accident which occurred while returning to Lagos. It was held that the Respondent was acting in the course of his employment when he sustained the injury. The court distinguished the case from *Ngangkam's case* on the basis that in *Bewac's case* the Applicant workman was sent on an errand by his employers and that "it is to be read into the terms of the contract that where a means was not provided whereby he was to return, the workman was entitled to return by a reasonable means, provided he did not embark on some frolic of his own. In so doing, if any accident was caused to him, it must be one which arose out of and in the course of his employment."

However, the judicial *expose* by the Federal Supreme Court in *Smith v. Elder Dempster Lines Limited* [33] *is* a perfect and lucid guide to the Nigerian courts when deciding on issues pertaining to accident occurring while commuting to and from work. In this case, *Brook, C.J.* declared:

> "...The general rule is that a man's employment does not begin until he has reached the place where he has to work....As a rule,

30. (1965) L.H.C.R. 247.
31. (Unreported) Suit No. F.S.C.130/1960 of 17/11/60.
32. (1972) 2 U.I.L.R. Part III. 297.
33. 17 N.L.R. 145.

it does not continue after he has left his place of employment but it does not necessarily end when the employee leaves the actual place where he is working, and there may be some reasonable extension where he travels from his work by some form of transport provided by his employer."

In *U.A.C. (Nigeria) Limited v. Joseph Orekyen* [34] in which the respondent, an employee of the appellants lost the sight of one of his eyes while trying to intervene in a fight between a co-worker and a stranger, the Court held that where an employee was put in charge of an office by his employer, it was the duty of the employee to maintain order in that office and to protect his subordinate co-employees; and an injury sustained by the employee in the exercise of that duty was an injury arising out of his employment.

With due respect, the decision of the court in *U.A.C. (Nigeria) Limited v. Joseph Orekyen*[35] has been actuated by a passion to advance the interest of justice and promote industrial stability. The position taken by the court in that case represents a commendable exercise of judicial construction of the controversial statutory condition that the workmen's injuries must be such which had occurred by "accident arising out and in the course of the employment" in order to qualify for compensation from the employer.

Although no minimum period of emplcyment is required to qualify for compensation in accordance with prescribed international standards,[36] the employer may be absolved from liability to pay compensation to an injured workman where the injury was not attributable to an "accident", such as where the injury was caused by fighting. Compensation is also not payable under *section 3(2)(a) of the Act*, where the injury does not incapacitate the workman for a period of at least three (3) consecutive days from earning full wages at the work at which he was employed. The waiting period of three days was reduced from the five days required under *section 5(1) of the 1958 Act* to make it consistent with the prescribed minimum international standards. [37] Also, by *section 3(2)(b) of the Act*, where the injury to the workman is attributable to the serious and willful misconduct of that workman, or self-inflicted, the employer is absolved from liability.

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34. *Supra.*
35. *Supra.*
36. See, *Article 9 (2), Employment Injury and Benefits Convention, No. 121.*
37. See, *Article 38, Social Security (Minimum Standards) ILO Convention, 1952,* No. 102 and *Article* 9(3), *Employment Injury Benefits ILO Convention, 1964*, No. 121.

Thus, apart from all the above-mentioned instances, the employer is duty- bound under the Act to pay compensation to the injured workman or his dependants (as the case may be).

However, by the provisions of *section 3(3) of the Act,* where death or serious and permanent incapacity results from the injury, the employer is liable to pay the prescribed compensation, notwithstanding the fact that the workman was, at the time when the accident happened, acting in contravention of any statutory or other regulation applicable to his employment; or of any orders given by or on behalf of his employer; or that he was acting without instructions from his employer, if such act was done by the workman, for the purpose of and in connection with, his employer's trade or business.

It would appear that the liability imposed on the employer to pay compensation in these circumstances is, purely, a matter of state policy. However, an employer may still escape liability where incapacity or death is caused by a deliberate self-injury or where the workman, has at any time, represented to the employer, that he was not suffering or had not, previously, suffered from that or similar injury, knowing that the representation was false. [38]

A workman's right to compensation is not limited to "accident", as *section 32 of the Act* also empowers the Minister of Labour and Productivity to extend the provisions of the Act to incapacity or death caused by any disease specified in an Order made by the Minister. [39] In this circumstance, compensation is payable to the workman as if any disease so specified was a personal injury by accident arising out of and in the course of employment. By *the proviso to section 32 of the Act,* before the employer could be held liable to pay compensation to the workman for contracting the disease, it must be shown that the disease is due to the nature of the employment or occupation as certified by the appropriate medical board.

The Minister may, however, also specify in any Order made that any disease, which unless otherwise certified by a medical practitioner or the employer can prove to the contrary, shall be deemed to be due to the nature of the workman's employment, if the workman who contracts any such disease was, at the date of the disablement, aforesaid, employed in any occupation specified in the Order in relation to that disease. [40]

In the exercise of the power conferred on the Minister by this section, thirty-three diseases, including poisoning by a number of harmful chemical substances,

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38. See, *section 3 (4) and (5), Workmen's Compensation Act, 1987,* which cover these exceptional cases.
39. See also, *Article 8, Employment Injury Benefits Convention, 1964, supra.*
40. The provisions of *section 34, Workmen's Compensation Act, 1958,* which made it a pre-condition for claiming compensation for occupational diseases that the disease must have been contracted within a period of twelve months prior to the date of the workman's disablement has been abandoned under *the 1987 Act.*

anthrax, glanders, chrome alceration, subcutaneous cellulites, tuberculosis, byssinosis, bagassosis, tabacosis and pneumoconiosis and the occupations to which they are attributable, have, so far, been specified in the *Workmen's Compensation (Specified Diseases) Order, 1966*.

Thus, by *Article 3 of this Order,* where a workman has contracted any specified disease, apart from byssinosis and inflammation or ulceration of the skin, that disease shall, unless a qualified medical practitioner specifies or the employer proves the contrary, be deemed to be due to the nature of his employment, if the workman was at, or at any time within one month immediately preceding the date of his disablement, employed in any occupation specified in relation to that disease.

The *Workmen's Compensation Act, 1987*, basically, provides for four types of compensation and their rates. The first type is compensation payable where death of a workman results from the injury. By *section 4 of the Act*, compensation in this case is payable to the dependants of the deceased worker. Where the surviving dependant is wholly dependent on the deceased workman, a sum equal to forty-two months earnings of the deceased is payable to such surviving dependants. However, where the surviving dependant is only partially dependent on him, an amount, not exceeding 42 months' earnings, as the court may determine to be reasonable and proportionate to the injury, is payable while only reasonable funeral expenses commensurate with the last position held by the workman are payable in the event that he left no dependant.

The second type of compensation is that payable under *section 5 of the Act,* where the injury to the workman results in permanent total incapacity such as loss of two limbs, loss of both hands or of all fingers and thumbs, loss of both feet, total loss of sight, among others.[41] In this instance, the injured workman is entitled to a sum equal to fifty-four months earning and an additional sum, amounting to one-quarter of that amount, is payable, where the incapacity is of such a nature necessitating the constant help of another person.[42]

While interpreting a similar phrase "permanent and total disablement" in which a commissioner was called upon to decide whether the worker had been permanently and totally disabled, the court, in *Wicks v. Union Steamship Company of New*

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4. See, *Second Schedule to the Workmen's Compensation Act, 1987.* "Total incapacity" has been defined in *section 41 of the Act* to mean 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. The percentage of the loss of earning capacity must also amount to one hundred per cent, otherwise, the injury shall be deemed to have resulted in permanent partial incapacity.
42. See, *section 6, Workmen's Compensation Act.*

Zealand Limited[43] held that the phrase "permanent and total disablement" means "physically incapacitated from ever earning by work any part of his livelihood. This condition is satisfied when capacity for earning has gone except for the chance of obtaining special employment of an unusual kind." The test to be applied in this situation is in reference, not to the fact of the Appellant's ability, physically, in all respects, to do the work, which he did before, but rather, to the fact of his capacity to earn his living as he did before the accident. [44]

The third type of compensation payable under the Act is provided for in *section 7 of the Act* where the workman suffers permanent partial incapacity from the injury. A workman suffers from partial incapacity for work when the injury he has sustained makes his labour saleable for less than it would otherwise fetch. [45] For this type of injury, compensation payable is a percentage of 54 months' earnings, according to the degree of incapacitation in relation to total incapacity.

In *Obasuyi and Sons Limited v. Erumawho*, [46] the Respondent brought an application under *the Workmen's Compensation Act* averring that on 11 November, 1995 duty in the employ of the appellant, he sustained injuries in which three of his fingers were totally severed and the fourth finger was permanently damaged. He sustained the said injuries while operating the cross saw in the course machine of his employer, the Appellant. In his application, the Respondent claimed *inter alia* the sum of N67, 327.00 representing 50 per cent of his monthly earnings for 54 months. On the other hand, the Appellant, in its answer to the claim of the Respondent, averred *inter alia* that the injuries were sustained by the Respondent due to his own negligence. It went further to join issues with the Respondent as to whether the Respondent was entitled to claim under *the Workmen's Compensation Act*. At the conclusion of the case, the trial court found for the Respondent and awarded him the sum of N62, 060.00. Dissatisfied with the decision of the trial court, the Appellant appealed to the Court of Appeal, contending *inter alia* that the trial court was wrong in not giving due weight to the medical evidence tendered by the Appellant which placed the Respondent's disability at 29 per cent instead of 50 per cent on which the trial court based its assessment. Unanimously dismissing the appeal, the Court of

43. (1933) 50 C.L.R. 328, 338; see also, *Thompson v. Armstrong and Royse Property Limited (1950)* 81 C.L.R. 585; *Williams v. Metropolitan Coal Company. Limited (1948)* 76 C.L.R. 434 at 444.
44. See, *Ruocco v. Surrey County Council (1947)* 177 L..T. 613, 616.
45. See, Per Earl Loreburn, L.C. in *Ball v. William Hunt and Sons Limited* (1912) A.C. 496, 499. See also, *section 41 of the Workmen's Compensation Act, 1987*, which defines "partial incapacity" that is of a temporary nature as 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. If it is of a permanent nature, it is such incapacity as reduces his earning capacity in every employment which he was capable of undertaking at that time.
46. (1999) 12 N.W.L.R. (Pt. 630), 227.

Appeal held *inter alia* that the injuries sustained by the Respondent came within the category of "permanent partial incapacity" provided for in *section 7(1) of the Workmen's Compensation Act.* Therefore, the medical report became inconsequential in determining the quantum of compensation payable with respect thereto.

The Court of Appeal further held that there was incontrovertible evidence on record that the Respondent lost the use of four fingers, which brought his case under *Item 13 of the Second Schedule to the Act*. Since the quantum of compensation in the case of loss of four (4) fingers is based on facts, it is within the province of a trial court to arrive at any conclusion, which it deems necessary.

To facilitate the exercise of computing the percentage of disability to Applicants whose cases come under it, injuries are listed in *the Second Schedule to the Act* with specification of the proportionate percentages of incapacitation, which they bear to total incapacity. The listing is by no means exhaustive as the court may increase the percentage in any particular case if it deems it equitable so to do. The proof of the first thirteen Items in the Schedule is factual or what can be seen with little or no medical aid.

However, for injuries that are not covered in the Second Schedule, the court, in the exercise of its equitable jurisdiction, is given discretionary powers under *section 8(2) of the Act* to summon to its assistance from the list of medical assessors prepared by the Minister, medical practitioners to act as medical assessors in an advisory capacity in the hearing of any application for such compensation. However, such an assessor must not be employees of or associated in any pecuniary way with the employer by whom the workman is employed.

In *Obasuyi and Sons v. Erumiawho* [47] the Supreme Court held that there was abundant documentary evidence tendered by the Appellant which showed that it retained the company which prepared the medical report tendered by it as the medical outfit for its staff. Therefore, the medical report became of little probative value notwithstanding the fact that it was admitted as an exhibit.

The fourth type of compensation payable under *section 9 of the Act* is for temporary incapacity. Temporary incapacity is that which 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. Where injury to the workman results in temporary incapacity, whether total or partial, payment of full basic pay is to continue for the first six months and thereafter, if the incapacity continues, half basic pay for the next three months.

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47. *Supra*

If, however, the incapacity of the workman continues after the expiration of the total period of the nine months and compensation due to him has not yet been determined, the workman is entitled to one quarter of basic pay of his monthly salary for the succeeding fifteen months, but all such payments are deductible from any compensation payable, thereafter, to the injured workman. The employer is not entitled to discontinue these payments during this period unless the workman leaves the neighbourhood to reside, elsewhere, without giving the required notice to the employer.

Where such absence exceeds six months, the workman shall no longer be entitled to any benefits by virtue of *section 9(3) of the Act.* However, where notice of such relocation is given to the employer, the periodic payment may be converted into a lump sum where an agreement to that effect has been reached between the employer and the workman or an order to that effect has been given by the court where both of them are unable to agree on the amount to be paid. Such lump sum shall, however, not exceed the lump sum which would be payable in respect of the same degree of incapacity for permanent total incapacity under *section 5* or for permanent partial incapacity under *section 7 of the Act*.

Generally, payments of compensation to the injured workman who suffers temporary incapacity are not subject to any arbitrary termination by the employer, by virtue of *section 19 of the Act*, except where the workman dies or resumes work and his earnings are not less than the earnings which he was obtaining before the accident. Also, by virtue of that same section, the employer is not entitled to diminish any payment to a workman in respect of total incapacity unless he has actually returned to work or where the earnings of a workman in receipt of any payments in respect of partial incapacity have actually been increased. Notwithstanding the occurrence of any of the above-mentioned instances, the employer is still required by law to end or decrease such payments in agreement with the affected workman or pursuant to an order of the court to that effect.

In the same vein, the right of a dependant to compensation under *section 4 of the Act*, where injury or disease results in the death of a workman, is derived, directly, from the statute. Thus, nothing done by the workman during his lifetime destroys the legitimate claim of a dependant, because his
title to compensation does not arise by derivation from the workman.[48] Account would, however, be taken of such sums that may have been paid to the deceased in respect of the same accident either as compensation for permanent total incapacity under *section 5 of the Act,* or for permanent partial incapacity under *section 7 of the Act* or for temporary incapacity under *section 9 of the Act* in the computation of

48. Adeogun, A.A., *supra*, 59.

the amount of compensation payable to the dependants since the workman is the primary target of the Act. Thus, where the injured workman has been paid compensation for permanent total incapacity for fifty-four months earnings under *section 5 of the Act*, for example, there can be no further claim to compensation by the dependants where the injured workman eventually dies from the injury. [49]

Whilst grappling with the meaning of the identical phrase "incapacity for work" as used in *sections 3,5,6,7, and 9 of the Workmen's Compensation Act, 1987* in the counterpart Act in England, the House of Lords had, in 1912, in *Ball v. William Hunt and Sons Limited*, [50] explicitly, defined "incapacity for work" in the following language:

> "In the ordinary and popular meaning ..."there is incapacity for work" when a man has a physical defect which makes his labour unsaleable in any market reasonably accessible to him, and there is partial incapacity for work when such a defect makes his labour saleable for less than it would otherwise fetch".

About two decades later, in 1931, the same House of Lords, in *Brich Bros Limited v. Brown* [51] had recounted that:

> "It is now accepted that by incapacity for work is meant incapacity to earn wages by working. The personal injury sustained by the workman may incapacitate him from earning wages either by rendering him physically unfit to work or by preventing him from getting work by reason of some handicap which his injury has imposed upon him in the labour market notwithstanding that he is physically fit for his work as he was before the accident."

In the Nigerian case of *Bewac Limited v. Alimi Akanbi*, [52] the Applicant was a motor driver under the Appellant company before the accident and up to the time of the claim, the evidence was that he was still so employed and at a higher salary since the issue of the claim. The Applicant himself gave evidence that he still suffered from pains in the back even though he was still able to drive for the Appellant company. The Appellant's disability was placed at 30% by a medical practitioner. The Court

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49. Oguniyi, O., *Nigerian Labour and Employment Law in Perspective* (2nd ed., Folio Publishers Limited, 2004),162.
50. (1912) A.C. 496, 499; see also, Arnotts Snack Products Property Limited v. Yacob (1985) 155 C.L.R. 171, 177, where the phrase "incapacity for work" was defined to mean "a physical incapacity for actually doing work...and that...compensation is awarded for that incapacity where it reduces the employee's ability to sell his labour in the open market". See also *Wicks v. Union Steamship Company of New Zealand Limited, supra*, 328, 338.
51. (1931) A.C. 605, 625 - 627.
52. *Supra*.

held *inter alia* that once permanent partial incapacity had been proved, the court should proceed to assess compensation regardless of whether the workman was earning the same or higher salary than he was earning before he sustained the injury. In the considered opinion of *Taylor, C.J.*, "the employers could easily evade the provisions of the Act by paying a partially incapacitated workman a higher salary than he was earning before the injury only to dismiss him or reduce the salary long after the statutory period has elapsed." The court is also of the opinion that it may well be that he is able to perform his duties as a driver, but if and when the occasion ever arose, in which he had to take up an employment involving more strenuous on his injured back, his partial incapacity would become more evident.

Similarly, in *Brian Munro Limited v. Oji*, [53] it was held that, for an injured workman to recover compensation under the Act, it must be proved that the workman's earning capacity is reduced and that this is as a result of incapacity caused by the accident. Also, the fact that the injured workman now earns less than what he was earning before the accident is not conclusive, for, the loss of income could be due to one of several causes. The court further held that compensation is paid for the loss of earnings due to the physical or mental disablement of the workman and not to loss of earning occasioned by the state of the labour market and that it is against the economic and not the physiological results of employment injury that the Act makes provision for compensation.

Thus, in *Metal Containers (West Africa) Limited v. Iyomifokhai*, [54] where the trial magistrate awarded £50 as compensation to the workman who lost two teeth in the upper jaw as a result of accident he met in the course of his employment, on the ground that the extraction of the two teeth resulted in permanent disability, the High Court allowed the employer's appeal and held that was no incapacity entitling the workman to an award of compensation.

Thus, it may safely be concluded, from a review of these cases, that compensation under the Act would be awarded, only, for the actual or potential reduction of the earning capacity of the injured workman as a result of the accident with less emphasis paid to the actual earning of the workman as at the date of making his claim for compensation.

In line with the provisions of *Article 9, Employment Injury Benefits Convention 1964*, [55] which provides that:

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53. (1968) N.C.L.R. 419.
54. (1959) L.L.R. 130.
55. No. C. 121, *supra*; see fn.7.

"Article 9 (1) - Each member shall secure to the persons protected, subject to prescribed conditions, the provisions of the following benefits:
(a) medical care and allied benefits in respect of a morbid condition".

Section 15, Workmen's Compensation Act has made provision for medical care services including any special treatment to the injured workman at the expense of the employer. The employer is also under obligation, by the provisions of *section 29 of the Act*, to defray any reasonable expenses incurred by a workman within Nigeria, or, with the approval of the Federal or State Chief Medical Officer outside Nigeria, as a result of an accident arising out of and in the course of his employment and in respect of medical, surgical and hospital treatment, skilled nursing services and supply of medicines and surgical dressings; the supply, maintenance, repair and renewal of non-articulated artificial limbs and apparatus; and traveling expenses incurred in the course of receiving medical treatment.

The Workmen's Compensation Scheme is administered, largely, by the court, as would be seen from the several provisions of the Act; such as, for example, *sections 12, 16, 17, 18, 19, 20, 21, 22, 25, 29 and 30*. The Chief Justice of Nigeria is empowered, by *section 38(1) of the Act*, to make Rules of Procedure of Court for the purpose of regulating proceedings before a High Court under the provisions of the Act. [56]

The Ministry of Labour and Productivity, however, exercises general supervision over the operation of the Scheme and is also empowered, by *section 38(3) of the Act*, to make regulations, generally, for the purposes of giving effect to the provisions of the Act.

Section 13 of the Act, generally, lays down the procedure to be followed for the payment of compensation under the Act. By this section, notice of an accident is required to be given to the employer, followed by an application for compensation made by or on behalf of the worker, within six months of the occurrence of the accident causing the injury or in the case of death, within six months from the time of death.

It would appear from the provisions of this section that the fulfillment of the statutory notice is a condition precedent to the right of the workman to initiate proceedings in court in order to enforce his claim. In this respect, it has been held in *Obi Osu v. Cappa and D'Alberto Limited* [57] that the requirement of the provisions

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56. *Section 3, Workmen's Compensation Ordinance, 1942*, Cap. 222, Laws of the Federation of Nigeria, 1958, vested jurisdiction in the Magistrate Court to hear causes and matters arising there-from.
57. (1964) L.L.R. 138.

of *section 15, Workmen's Compensation Act, 1958*, [58] as to notice within six months, was not intended for the institution of proceedings but was meant for purposes of making application for compensation to the employer. Thus, when an injured workman has complied with the statutory requirement by giving the application for compensation to the employer within six months of the accident, proceedings to recover compensation may be brought at any time thereafter.

However, by *section 13 (2) of the Act,* the want of, or any defect or inaccuracy in, any such notice, shall not be a bar to the maintenance of such proceedings, if the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident, or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy; or, that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause.

Also, by virtue of *section 33(3) of the Act,* failure to make the required application within the period specified shall not be a bar to the maintenance of such proceedings, if it is found that the failure was occasioned by mistake or other reasonable cause. The effect of these provisions, on the part of the injured workman or his dependants, is to ensure that they are not deprived of their legitimate entitlements and that justice is not sacrificed on the altar of technicality. In *Bewac Limited v. Alimi Akande,* [59] it was held that failure of the Respondent to institute action in time was caused by the Appellant's admission of liability and its declared intention to pay compensation; as such, the Respondent had a "reasonable cause" for not bringing action within the statutory period. On the part of the employer, the effect of making a claim on him is to enable him, if he wishes, avail himself of the procedure provided in *section 16 of the Act.*

Where the employer accepts liability, the employer and the worker, may by agreement made pursuant to *section 16 of the Act*, settle the amount payable under the Act which may, on application to the court, be made an
Order of the court. In default of the agreement, the court, on the application of either party, shall determine the amount payable. Certain conditions must, however, be fulfilled before such agreement becomes binding on both parties.

By the provisions of *section 16(1)*, such agreement must be in writing and in triplicate: one shall be kept by the employer; one by the workman; and the third shall be sent to the nearest authorized labour officer. The compensation agreed upon must not be less than the amount payable under the Act and where the workman is unable

58. Now, *section 13, Workmen's Compensation Act, 1987.*
59. *Supra.*

to read and understand the language in which the agreement is expressed, the agreement shall not be binding on him unless it is endorsed by a certificate of an authorized labour officer to the effect that he read over and explained to the workman the terms thereof and, that they were, if necessary, interpreted to him in a language which he understood and that the workman appeared, fully, to understand and approve of the agreement. Also, all compensation payable is reviewable by the court which may, on the application of either party and subject to the provisions of the Act, maintain, increase, diminish or terminate them, by virtue of *section 18 of the Act.*

However, where the employer does not accept liability after the service of the two notices, (that is, of the accident and claim for compensation) or where an agreement cannot be reached pursuant to *section 16* as to the amount of compensation to be paid, *section 17 of the Act* gives the injured workman the right to make an application[60] to the court having jurisdiction in the area in which the accident that gave rise to the claim occurred for enforcing his claim.

For an injury in respect of which damages are recoverable under the common law and under the statute, *section 25 of the Act* gives the injured worker the right to institute proceedings to recover damages from the employer and at the same time claim for compensation under the Act. However, a judgement in such proceedings for damages given for or against the employer constitutes a bar to proceedings under the Act. Likewise, a judgement in proceedings under the Act is a bar to proceedings taken independently of the Act. Also, any agreement made pursuant to the provisions of *section 16(1)*, constitutes a bar to proceedings initiated by the workman in respect of the same injury, independently of the Act. In *Western Nigeria Trading Company Limited v. Busari Ajao*, [61] The Plaintiff/Respondent who was an employee of the Defendant/Appellant had lost the sight of one of his eyes when a splinster of steel escaped and flew into his eyes when a fellow workman was cutting steel with a sledge hammer in the Defendant/Appellant's workshop. The Plaintiff/Respondent sued the Defendant/Appellant, claiming special and general damages for the injury and the loss of the eye which had occurred because of the breach of their common law duty to him. An agreement under which the employee was alleged to have received some money from the employer was said to have been made between the employer and the injured illiterate workman pursuant to *section 18, Workmen's Compensation Act, 1958*. The court held that for an agreement under *section 18, Workmen's Compensation Act, 1958*, [62] which provided *inter alia* that where the workman is unable to read and understand writing in the language in which the agreement is

60. In the prescribed form.
61. (1965) N.M.L.R. 178.
62. Now, *section 16 (1), Workmen's Compensation Act, 1987.*

expressed, the agreement shall not be binding against him, unless, it is endorsed by a certificate of a labour officer, to the effect that he read over and explained to the workman, the terms thereof, that they were, if necessary, interpreted to him in a language which he understood, and that the workman appeared, fully, to understand and approve of the agreement.

In the instant case, no copy of the said agreement was tendered in court, except, a receipt for the sum of Two Hundred and Eighteen Pounds and Fourteen Shillings, allegedly, signed by the employee by affixing his thumb impression. The Appellant contended *inter alia* that the receipt, by the Respondent, of the compensation paid by the Appellant, as evidenced by the receipt, operated as a bar to any subsequent proceedings against the Appellant. The court, however, held that it was doubtful whether the Respondent, being illiterate, was in a position to read and understand the contents of the receipt, and that the receipt, on the face of it, could not and did not constitute the sort of agreement contemplated under *section 18, Workmen's Compensation Act, 1958.* [63]

The court further held that for the compensation which the Respondent received to be a bar to further proceedings under *section 27 (1)(c) of the 1958 Act*,[64] the provisions of *section 18(1) of the 1958 Act* must be strictly complied with and since the so-called agreement was not produced for the scrutiny of the court, it could not be regarded as binding agreement under *section 18 of the 1958 Act* and could not, therefore constitute a bar to the Respondent's claim for damages under *section 27(1) (c) of the 1958 Act*. [65] In the court's opinion, the provisions of *section 18(1) of the 1958 Act* was "intended to protect an illiterate employee from the machinations of a ruthless employer".

Also, in *Famuyiwa v. Folawiyo*, [66] it was held that the acceptance of compensation is a bar to a claim, only, when the workman can be shown to have known or is deemed to have known that, by accepting compensation, he is waiving his right to damages. Barring of proceedings, either way, by the provisions of this section, ensures that the employer does not suffer double jeopardy in respect of the same injury. Thus in *Segun v. West African Airway Corporation Limited*, [67] where the Plaintiff had obtained compensation as a dependant from the deceased's employer as a result of action taken under the Workmen's Compensation Act in the Magistrate's Court and later, as personal representative, sued the employer again at Common Law alleging negligence, it was held that a judgement one way or the other under one process was a bar to proceedings in the other and the action was dismissed.

63. Now, *section 16 (1), Workmen's Compensation Act, 1987, supra.*
64. Now, *section 25(1) (c) of the 1987 Act).*
65. Now, *section 25(1) (c) of the 1987 Act), supra.*
66. (1972) 5 S.C. 112.
67. (1957) W.R.N.L.R. 29.

However, if in an action for damages, the employer is found to be liable, not for damages, but for compensation under the Act, the court shall assess the compensation in accordance with the provisions of the Act in order not to defeat the just expectation of the injured workman. It has been suggested in some quarters that giving discretion to the court to award compensation in such circumstances is not good enough, but that the workman should as of right be entitled to it. [68] Similarly, in circumstances where injury to the workman is caused in situations which create a legal liability in some other person other than the employer, the injured workman is given a right, under *section 24 of the Act*, to take proceedings both against that person to recover damages and against any person liable to pay compensation under the Act, but shall not be entitled to recover both damages and compensation.

To facilitate prompt payment of the compensation and also to forestall any sharp practices on the part of the employer, *section 12 of the Act* requires that all compensation payable under *sections 5, 7 and 9 of the Act,* whether settled by agreement or determined by the court, must be paid into court, from where it would be paid out to the worker or be invested, applied or otherwise dealt with, for his benefit, as the court thinks fit, and in the case of death benefit, its distribution or apportionment among the dependants is again to be directed by the court.

Moreover, the Act has put in place protective measures to ensure that the injured workman takes the full benefit of the compensation payable to him and to guard against any form of intimidation by the employer. Thus, *section 27 of the Act* has made a worker's right to compensation non-renunciable, and any agreement purporting to contract the employer out of his liability to pay it or to reduce its amount is to be declared null and void by the court. Also, by virtue of *section 28 of the Act,* such compensation is neither assignable nor attachable and can neither pass by operation of law nor be seized by way of set-off. Furthermore, by virtue of *section 26 of the Act,* where an employer, being an incorporated company and who has insured its liability under the Act goes into liquidation or a Receiver/Manager of its business is appointed, then its rights against the insurers shall be transferred to and vest in any worker or workers to whom he has become liable to pay compensation, subject to such rights and remedies as would have been available to the company against the worker.

Also, if the liability of the insurers to the worker is less than that of the company to him, he may claim for the balance in the liquidation or recover it from the Receiver/ Manager. Also, to guarantee prompt payment of compensation to an injured workman or dependants of a dead workman and also to guard against inability of an employer

68. See, Adeogun, A.A.,*supra*, 71.

to pay compensation, which might be due to insolvency of such employer, *section 40 of the Act* makes it mandatory for every employer belonging to a specified category in the regulation to be made by the Minister of Labour and Productivity to insure himself against liability for compensation under the Act. For other categories of employers not mentioned in the Regulation, it appears that such insurance against liability is discretionary.

Defects In The Current Law In Nigeria

Undoubtedly, *the Workmen's Compensation Act, 1987* has offered copious protection against possible vagaries of poverty and hardship to an injured workman or the dependants of a dead workman. In particular, it has mitigated the hardship of the common law rule of "common employment" and has also made some notable improvements on the earlier law by extending coverage to workmen earning more than N1, 600 yearly and also to Federal and State Government employees. [69] However, the Act is not without some fundamental inadequacies, which have militated against its value to an injured workman, and also in meeting the galloping demands of modern industrial needs.

In the first instance, coverage under the Act is still not wide enough in view of the combined provisions of *sections 1 and 2 of the Act* which have, largely, excluded from the provisions of the Act, a large majority of workmen, especially, those who are in self-employment and are, daily, exposed to accidents on their job. While administrative considerations such as relatively great expense and inconvenience may justify the exemptions of persons such as domestic servants and a member of the employer's family dwelling in his house, the categories of workers exempted from the provisions of the Act are, however, too many.

Secondly, the *Workmen's Compensation Act, 1987* is, basically, an "employer-liability system" with an option given to employers to insure the risk of their liability with a private insurance company. An arrangement such as this is fraught with the inherent risk of resistance or delay by the employer in compensating the injured workman. There is also the risk of the employer becoming insolvent and thereby unable to pay any compensation. Thus, an injured workman might discover that his right of recovery from the employer was worthless if there is no insurance.

Section 40 of the Act imposes liability on the employer to whom the section applies, as from the commencement of any Regulations made thereunder, to insure every workman employed by him against injury or death arising out of and in the course of his employment. Unfortunately, however, there is, as yet, no such Regulations made by the Minister of Labour and Productivity in more than twenty years of the

69. See, generally, *sections 1 and 2, Workmen's Compensation Act, 1987.*

commencement of the Act prescribing categories of employers for whom insurance is compulsory. The untold setback this inexplicable neglect had inflicted on the force and effect of the living workmen's compensation law may be better imagined than substantiated further in this paper. It is also implicit in the provisions of this section that the duty to insure is not even applicable to every employer but, only, to those listed by the Minister. Thus, a hard-hearted employer may not even take up any insurance policy for the purposes of the Act which could further reduce the chances of an injured workman recovering compensation from such employer for classified work injuries.

Furthermore, the provisions of *section 3(1) of the Act* which have, unduly, restricted the right of the injured workman to "accident arising out of and in the course of employment" is another major limitation in the Act. An accident which arises out of the employment but not in the course of employment would not give any entitlement to the injured workman as would, readily, be observed in such cases as *Scandinavian Shipping Agencies, Apapa v. Garuba Ejide* [70] and *Hannah Ngangkam v. Strabag (Nigeria) Limited*, [71] where accidents occurring while commuting to and from work were held not to be covered under the Act. It is also implicit in the provisions of this section that injury must have been attributable to only accident and not to any other cause such as fighting between co-workers.

It is glaring that under *the Workmen's Compensation Act, 1987*, the workmen's former hardship at common law has only been methodically replaced with a new type of speciously-guarded hardship which has strictly and conservatively premised the employer's liability to pay compensation to injured workmen on injuries which must "be related and referable to the actual job" of the workmen or, in the candid language of *section 3, Workmen's Compensation Act, 1987*, it must be such injuries which had occurred "by accident arising out of and in the course of employment". It is respectfully submitted that the present policy in the statute law has been based on wrong principles and an unjust test that has focused attention, too soon, on the workmen's job instead of the workmen's workplace. Consequently, the workmen's compensation for injuries sustained at work and the employers' liabilities, therefore, is a function of the relative safety at the workplace and the work environment which cannot, logically, be of static geographical boundary. But the employers' liabilities for the workmen's injuries, when subjected to the test of sound legal principles fit for a discerning modern statute, cannot, possibly, be seen as a function of enquiries into causation of the workmen's injuries.

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70. *Supra.*
71. *Supra.*

It is also submitted that such enquiries as to whether the workmen's injuries arose within or outside the pale of their employment are superficial, absurd and socially retrogressive. It is also submitted that such enquiries as to whether the workmen under *the Workmen's Compensation Act* ought to be akin to the theory of occupiers' liability at common law, wherein the fact that the employer has brought into and kept in his premises, workers, who have suffered injuries either *en route* or at the employer's premises or workplace ought to be sufficient to make the employer answerable for compensating the injured workmen accordingly.

Therefore, what is required is a form of a statutory occupiers' liability theory comparable to the approach in England of enacting an Occupiers' Liability Act, 1957. The proposed statutory assimilation of the occupiers' liability theory would rest a theory of the employers' liability to pay compensation to injured workmen on the mere fact that the employer has brought the workmen to his premises but not a wholesale assimilation of the common law version of occupiers' liability. It would appear that this was the very essence of developing the workmen's compensation arrangement as a post-industrial revolution concept meant to cater for and address, decisively, the unprecedented ubiquitous risks of injuries which had accompanied the advent of the industrial revolution.

Again, it would appear that this was the essence of the insurance scheme [72] for workmen's compensation liabilities and payments in *section 40, Workmen's Compensation Act, 1987* which ought to serve as a sure mitigation of the prospect of the compensation burden on the employers becoming either heavy or unbearable.

Another defect in the law concerns the provision for lump-sum compensation to dependants of a deceased worker in *section 4 of the Act;* to an injured workman for permanent total incapacity in *sections 5 and 6*; and for permanent partial incapacity in *section 7 of the Act*. The Act has provided for periodic payment, only, in *section 9 of the Act* where the injured workman suffers temporary incapacity. These lump-sum compensations do not meet with prescribed minimum international standards which require periodical payment except where the degree of incapacity is slight or where the competent authority is satisfied that the lump-sum will be properly utilized. Thus, payment of lump-sum compensation under minimum international standards is an exception rather than the rule. Thus, *Article 36, Social Security (Minimum Standards) Convention, 1952* [73] provides that:

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72. Whether mandatory under the Act or voluntary by the employer's free choice.
73. No. 102.

" In respect of incapacity for work, total loss of earning capacity likely to be permanent or corresponding loss of faculty, or the death of the breadwinner, the benefit shall be a periodical payment calculated in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66.

2. In case of partial loss of earning capacity likely to be permanent, or corresponding loss of faculty; the benefit, where payable shall be a periodical payment representing a suitable proportion of that specified for total loss of earning capacity or corresponding loss of faculty.

3. The periodical payment may be commuted for a lump sum-
(a) where the degree of incapacity is slight; or
(b) where the competent authority is satisfied that the lump sum will be properly utilized." [74]

Apart from the fact that the lump-sum compensation does not meet with minimum international standards, it will also not serve the purpose for which it is meant, which is income maintenance. The lump-sum payments are susceptible to inflation and are often spent within a few months or years. This definitely cannot be a good substitute to lost wages and does not necessarily guarantee long-term security since the injured workman may be tempted to spend the whole money on present needs thereby leaving him unprotected for the future. [75] Also, lump-sum compensation may, in some cases, provide inadequate protection to the injured workman, especially where lump-sum payments prevent payment of future benefits especially for medical care when the same disabling condition recurs. [76] Although the court has power under *section 12 of the Act* to order that compensation payable under the Act be invested, this power is however to be exercised only where there are compelling reasons to do so and only in exceptional circumstances.

Furthermore, the rates of compensation payable under the Act do not meet with minimum international standards. The lump-sum compensation, which is equal to 42

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74. Emphasis supplied; see also, *Articles 13, 14 and 15, Employment Injury Benefits Convention 1964*, No C121, *supra*.
75. See, Darkwa, O.K., *"Retirement Policies and Economic Security for Older People in Africa"* (1997) Vol. 6, No. 2, *South African Journal of Gerontology*, 33.
76. See, for instance, *section 48(2)(a) and (b), Compensation for Occupational Injuries and Diseases Act, 1993 (South Africa)*, which empowers the Compensation Commissioner, after the expiry of the initial compensation, to, again, award compensation for temporary total or partial disablement, if the disablement of the employee concerned recurs or deteriorates or the employee receives further medical aid necessitating further absence from his service; provided that such aid will, in the opinion of the Commissioner, reduce his disablement.

months earning in case of death, or 50 months earning, in case of permanent total incapacity or permanent partial incapacity, assumes a life expectancy that is clearly too short if calculated at the rate of 50 per cent of previous earnings required to be paid periodically to an injured worker or 40 per cent of previous earnings to survivors in case of death. [77]

Also, the primary concern of *the Workmen's Compensation Act, 1987* is to provide monetary compensation to an injured workman. There is no machinery in place to ensure that the injured workman is properly rehabilitated and re-instated to his work. In *sections 15 and 29, the Act* has, merely, provided for medical treatment to the injured workman, at the expense of the employer, and this is not adequate enough. Thus, the Act has failed to bring about the physical, social and psychological rehabilitation f the injured workman.

The shortcomings of *the Workmen's Compensation Act, 1987* highlighted above which have reduced the effectiveness of the law in providing adequate social and economic security to the injured workman can, however, be rectified by taking advantage of some reform measures which other jurisdictions have courageously taken to strengthen their workmen's compensation laws. A study of the pressing and overdue reform measures should now be our focus and to this we now turn.

Exploring More Progressive Ideas from Abroad

A study of the workmen's compensation laws of most developed and some developing countries has revealed a comprehensive and more viable scheme of compensation for work-related injuries and diseases with the lofty aim of giving a new hope, succor and adequate economic security to
the injured workman and his dependants. One of the measures that have been taken by most countries to strengthen their work-injury laws has been the conversion of their schemes from "employer-liability systems" to *"social insurance schemes"* that use public funds. This has, in turn, allowed for the spreading of risks among the employers and other categories of workers covered by the schemes.

For instance, in the United Kingdom, compensation for injuries at work has been integrated into the "National Social Security Scheme" by virtue of *the Social Security (Contributions and Benefits) Act, 1992.* [78] In Sweden also, compensation for injuries at work is based on the "social insurance principle" and is also combined with other parts of the "social security scheme". [79]

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77. See, *Schedule to Part XI, Social Security (Minimum Standards) Convention 1952, No. 102, supra.*
78. The United Kingdom's Workmen's Compensation Act 1897, which was an employer-liability system, was first converted into a Social Insurance Scheme in the National Insurance (Industrial Injuries) Act, 1946.
79. See, *Social Security in Sweden, Swedish Monograph to the 27th General Assembly of the ISSA,* Stockholm held on 9 - 15 September, 2001, 20, www.issaint/pdf/GA2001/2monographs/pdf, accessed on 8 July, 2005.

Also, in Africa alone, about twenty-nine countries including Algeria, Benin, Burkina Faso, Burundi, Cameroon, Egypt, Equatorial Guinea, Gabon, Guinea, Mali, Niger, Rwanda, Senegal, Sudan, Togo and Tunisia now base their work injury programmes on the "social insurance system".[80] As it has been rightly observed, the "social insurance system" has an advantage over the "employer-liability system" in that it "guarantees to workers that the law would be better applied in practice by speeding-up compensation procedure, reducing sources of dispute and thereby doing away with many causes of unjustified loss of right to benefit. Experience has shown that the number of accidents for which compensation is paid rises, considerably, when a scheme is taken over and run at national level".[81] On the employer's side, apart from assisting to improve industrial relations, collective financing "does away - in return for the regular payment of a relatively low contribution - with the danger constantly threatening every employer of having suddenly to face very heavy expenses".[82]

Furthermore, coverage under the Work injury programmes of most countries both in the developing and developed nations now extend to practically all employees and some special categories of persons such as persons undergoing medical or vocational rehabilitation, students and certain prisoners.

In the United Kingdom, for example, benefit for industrial injuries is payable under *section 94(1), Social Security (Contributions and Benefits) Act, 1992* to any employed earner who suffers personal injury by accident arising out of and in the course of his employment. In Germany, coverage for work-injury compensation extends to all private wage-earners and apprentices, including workers in the agricultural and horticultural sectors and marine industries, family helpers and students including children in Kindergarten. There is also a special programme for civil servants and public employees.[83]

Also, in several other African countries, such as Libya Arab Jamahiriyya, Tunisia and Cote d'Ivoire, coverage under their work-injury programmes extends to all employed persons, self-employed persons, apprentices and students at technical schools. In Algeria, wards of juvenile courts, persons undergoing medical or vocational rehabilitation as well as certain prisoners are also covered for work-injury benefits. Indeed, in Tunisia, coverage has also been extended to domestic servants.[84]

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80. Social Security Administration and ISSA, *Social Security Programs Throughout the World: Africa 2003, passim.*
81. International Labour Organisation, *Report of the Fifth African Regional Conference on "Improvement and Harmonization of Social Security Systems in Africa"* held in Abidjan, Sept. - Oct., 1977 (Geneva, ILO, 1977), 34.
82. *Supra.*
83. *"Comparative Review of Workers 'Compensation in Select Jurisdictions"*; www.qp.gov.bc.ca/rcwc/research/perrin.thorau-germanypdf .3, accessed on 6 August, 2005.
84. Social Security Administration and ISSA, *Social Security Programs Throughout the World, Africa* (2003), *passim.*

The problem of the undue restriction of the right of an injured workman to "accidents arising out of and in the course of employment" has also been overcome in most countries, thereby, removing the difficulty associated with the construction of that phrase. For instance, in the United Kingdom, the restriction has been removed by the provisions of *section 94(3), Social Security (Contributions and Benefits) Act, 1992* which provides that:

> "94(3) - For the purposes of industrial injuries benefit an accident arising in the course of an employed earner's employment shall be taken, in the absence of evidence to the contrary, also to have arising out of that employment".

Also, the concept of work-connected injury has, gradually, been liberalized in most countries such as United Kingdom, Germany, and Finland, to, specifically, cover injuries occurring while commuting to and from work.[85] In Finland, for example, workers' compensation scheme covers accidents at work, on the journey between home and work and when
attending to the employer's business. Self-employed farmers are also compensated for accidents in agricultural work or in circumstances due to such work.[86]

Another laudable idea from other jurisdictions, which is worthy of emulation in Nigeria, is the method of compensation for work-related injuries and diseases. Benefits under the work-injury programmes of most developed and developing countries, even in Africa, are in form of periodic payments, in line with recommended international standards, as opposed to the lump sum payment still pervading the Nigerian law. These periodic payments, which are usually in form of pension, especially, where a worker suffers permanent, total disability, or to his dependants, in case of death, ensure a minimum subsistence standard for the affected worker or his dependants (as the case may be). Indeed, in the United States of America, where the work-injury programmes of the various States are also based on the "employer-liability system", compensation is yet in form of periodic cash payments, in addition to medical services to the worker during a period of disablement. For permanent total disability benefits, the majority of the programmes provide for the payment of weekly benefits for life or the entire period of disability while about thirty-five programmes, including those covering Federal employees and long shore and harbor

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85. See, for instance, *section 99, Social Security (Contributions and Benefits) Act, 1992 (U.K.), Comparative Review of Workers' Compensation in Select Jurisdictions, supra, 3*and *Social Security Programs Throughout the World: Europe* (2004), *passim.*
86. Niemela, H. and Salminen, K., *Social Security in Finland* (Helsinki, Finland: Kela, Tela Finnish Centre for Pensions (2003); 193.209.217.5/in/Internet/liite.nsf/NET/1905041457/OOEK/&File/social%20security in Finland.pdf , accessed on 3 June, 2005.

workers, provide weekly or monthly death payments to the spouse for life or until remarriage and to children until age 18 or later if they are incapacitated or are students.[87]

Also, in the United Kingdom, by *section 103, Social Security (Contributions and Benefits) Act, 1992*, an employed earner who is insured under the Act is entitled to disablement pension if he suffers as the result of the relevant accident from loss of physical or mental faculty. Temporary disability benefit is payable at a flat rate, in the first, instance for 52 weeks, after a 3-day waiting period. However, starting from the 53rd week of incapacity, the benefit is increased with supplement if the disability began before age 45.

Similarly, in many other African countries, such as for example, South Africa, Togo, Cameroon, Algeria and Benin, benefits for permanent total disability are also in form of pension while temporary disability benefits are payable, in most instances, from the day after the onset of disability until full recovery or certification of permanent disability.[88] For instance, in South Africa, by virtue of *section 49, Compensation for Occupational Injuries and Diseases Act, 1993*,[89] permanent total disability attracts a pension to the injured workman and in case of death, survivor pension is also payable to a widow or to a disabled widower and to each orphan under 18 except if disabled. In case of permanent partial disability, where the assessed degree of disability is greater than 30 per cent, the benefit is also paid as a monthly pension otherwise; the benefit is paid as a lump sum of 15 times the monthly earnings of the injured worker.[90]

One other major reform idea of work-injury schemes of most countries is the provision for rehabilitation of the injured workman. In Germany, for instance, medical care benefit, under the Workers' Compensation Scheme, includes vocational support which covers vocational training and rehabilitation for regaining the capacity to earn a living and periods of re-integration into employment. Rehabilitation benefits also include home help and rehabilitative sports, as well as cost of travel for receipt of medical aid or rehabilitation.[91] Indeed, as part of rehabilitation incentives, disabled employees are further paid trial work benefits, which are continued benefit entitlements, while participating in a rehabilitation programme; and with this rehabilitation

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87. Social Security Administration, *Social Security Programs in the United States,* (Washington D.C., SSA, Office of Research, Evaluation and Statistics, 1997), 39 - 40.
88. Social Security Administration and ISSA, *Social Security Programs Throughout the World: Africa* (2003), *passim.*
89. No. 130.
90. See, *Schedule 4 to the Compensation for Occupational Injuries and Diseases Act, 1993*, No.130.
91. See *Comparative Review of Workers' Compensation in Select Jurisdictions, supra*, 8; see also, Romer, K. (ed.), *Facts about Germany,* Institute, Berteshman, (1979), 244.

programme, Germany has been able to record about 90 per cent return-to-work rate for injured workers, using vocational re-training and upgraded vocational qualifications as key strategies.[92]

In Finland, work-injury benefits also include a programme of rehabilitation, based on estimated appropriations, in the form of vocational rehabilitation for people with diminished working capacity and medical rehabilitation for the severely disabled. The purpose of rehabilitation, such as in Germany, is to promote the ability of persons with disabilities or diminished working capacity to cope with their work and to support their re-integration into work, social functions and independence.[93]

Similar programmes such as this also exist in the United States of America, under the various states' workers' compensation laws for re-training, education, job placement and guidance to help injured workers find suitable work. The rehabilitation services in many of the states are also coupled with maintenance allowances for food, lodging and travel to facilitate the vocational rehabilitation. In addition to any special rehabilitation benefits and services under state laws, an injured worker may also be eligible for the services provided by the Federal-State programme of vocational rehabilitation. This programme is operated by the states' divisions of vocational rehabilitation and applies to disabled persons, whether or not the disability is work-connected.[94]

Undoubtedly, the fore-going discussion of compensation laws in some other progressive jurisdictions would have, readily, presented to Nigerian policy-makers reform ideas which are socially edifying and are equally worthy of emulation in our quest for the reform of the Nigerian *Workmen's Compensation Act.* The specific areas of the Nigerian law that call for urgent reform should now be addressed.

Conclusion

The imperatives of modern industrial needs, coupled with the trend in the work injury laws of most developed and developing countries which have, largely, conformed with the minimum international standards prescribed, especially under the *Social Security (Minimum Standards) Convention 1952*,[95] and *the Employment Injury Benefits Convention, 1964*, [96] have, clearly, revealed the lacunae in the Nigerian *Workmen's Compensation Act, 1987* in meeting the much-desired needs of alleviating the pains and sufferings which a workman experiences when injured in the

92. *Comparative Review of Workers' Compensation in Select Jurisdictions, supra*, 8.
93. See, Niemela, H. and Salminen, K, 2002, *supra*, 38.
94. Social Security Administration, *Social Security Programs in the United States,* Washington D.C., SSA, Office of Research, Evaluation and Statistics (1997), 43.
95. No. 102.
96. No. C121.

course of his duty. There is, therefore, a dire need for the Nigerian policy makers to urgently take necessary reform measures in the light of the specific defects and gaps already identified in this paper to strengthen the Nigerian workmen's compensation law to meet with the acceptable minimum international standards and also to conform with best practices in the world.

To start with, the "employer-liability system" of the *Workmen's Compensation Act, 1987* ought to be converted into a "social insurance scheme" based on contributions according to the assessed degree of risk from employers, in line with the best practices. A social insurance scheme of this nature would cover every employer as opposed to the selective coverage implied by the provisions of *section 40, Workmen's Compensation Act, 1987* thereby giving adequate and surer protection to an injured worker, and at the same time, spreading the insured risk among the employers. In
order to facilitate the requisite transformation, it is hereby proposed that the work-injury scheme should be integrated into the National social security programme envisaged under *section 71, Nigerian Pension Reform Act, 2004.*

Also, coverage under the Nigerian work-injury programme ought, also, to be extended to all employees and the self-employed in line with the best practices, globally, and the recommended international standard in *Article 4* of *the Employment Injury Benefits Convention, 1964,*[97] which provides that:

> "4(1) - National legislation concerning employment injury benefits shall protect all employees, including apprentices, in the public and private sectors, including co-operatives, and, in respect of the breadwinner, prescribed categories of beneficiaries".

Exceptions may, however, be made, on grounds of practical convenience, for some categories of workers, such as persons whose employment is of a casual nature and those who are employed, otherwise, than for the purpose of the employer's trade or business, out-workers and members of the employer's family living in his house and in respect of their work for him.

Further, the implicit exclusion of accidents arising while commuting to and from work, by the provisions of *section 3(1), Workmen's Compensation Act, 1987,* which provides to the effect that compensation is payable, only, in respect of personal injury by "accident arising out of and in the course of employment" as exemplified in such cases as *Scandinavian Shipping Agencies Apapa v. Garuba Ejide* [98] and

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97. No. C121.
98. *Supra.*

Hannah Ngangkam v. Strabag (Nigeria) Limited [99] ought, also, to be reviewed, by making explicit provisions in the law to make compensation recoverable for accidents occurring while commuting to and from work. This would also be in line with the current best practices, globally, whereby a workman injured while commuting to and from work has the right to compensation from work injury programmes. The provisions of this section could be further liberalized following a similar provision in *the United Kingdom's Social Security (Contributions and Benefits) Act, 1992.*[100]

Also, there is the pressing need for a fundamental reform of the *Workmen's Compensation Act, 1987* in which the Nigerian policy-makers should, expeditiously, replace the current workmen's-job-related theory as the basis of the liability and duty of the employers to pay and of the right of the workmen to obtain compensation under the Act with a new theory of special statutory occupiers' liability which would be rested on the assumption that the workmen's safety at the workplace is paramount unless the defence of *violenti non fit injuria* or some other defence may be, validly, raised against a workman. In 1957, a special statutory occupiers' liability such as this had to be enacted in England to modify and reinforce the pre-existing common law occupiers' liability. The common law occupiers' liability would, therefore, be assimilated accordingly as a reform measure *mutatis mutandis* in the interest of justice and of sound governmental policy. Therefore, the opportunity to exclude or enlarge in the proposed reforms of *the Workmen's Compensation Act, 1987* provisions which had worked hardship or had inflicted injustice or which would, otherwise, promote the cause of justice, respectively, ought to be seized, forthwith, by the Nigerian policy-makers, without prevarication or any hesitancy

Moreover, the lump-sum compensation for permanent total incapacity under *section 5;* for permanent partial incapacity under *section 7;* and for death under *section 4 of the Act* should also be converted into periodical payments, in line with best practices, globally, and recommended international standards.[101] Moreover, the current rates of compensation ought, also, to be reviewed, upwards, to meet with the prescribed periodical payment at the rate of 50 per cent or, in the case of death, 40 per cent of previous earnings.[102]

Also, the focus of the work-injury compensation should not be limited, only, to indemnifying the injured worker, but should, also, be built around the concept of restoring the injured worker to employment. Thus, greater emphasis should be placed

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99. *Supra.*
100. See, *section 94(3), Social Security (Contributions and Benefits) Act, 1992.*
101. See, *Articles 13, 14 and 18, Employment Injury Benefits Convention, 1964*, No. C121.
102. See, *Articles 36, 65 and 66 and Schedule to Part XI of the Social Security (Minimum Standards) Convention, 1952*, No. 102.

on physical as well as social and psychological rehabilitation of the injured workman as an integral part of the range of compensating benefits. Vocational retraining and rehabilitation should be made the guiding principle, in addition to the payment of the recommended pension.

Furthermore, every agreement made pursuant to the provisions of *section 16* of the Act should be made to contain an express clause alerting the workman about the possibility of an alternative remedy against the employer at common law. This is necessary to give notice to the workman at the time of concluding the agreement, of his independent right of action against his employer, which would enable him make an informed decision

Lastly, it is recommended that Nigeria ought to ratify and domesticate *the International Labour Organization's Conventions* on work injury, that is, the *Social Security (Minimum Standards) Convention, 1952,* No. 102 and *the Employment Injury Benefits Convention 1964*, No. C121 as some other African countries have already done, such as Libyan Arab Jamahiriya, Niger and Senegal. This need is especially pressing because of the specific pronouncement by the Supreme Court in the *Registered Trustees of National Association of Community Health Practitioners of Nigeria v. Medical and Health Workers Union*[103] that:

> "By virtue of section 12(1) of the 1999 Constitution, no treaty between the Federation and any country has the force of law except to the extent to which the National Assembly has enacted any such treaty into law. Thus, an International treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. In the instant case, in so far as the ILO Conventions have not been enacted into law by the National Assembly, they have no force of law in Nigeria and they cannot possibly apply."

The implementation of these reform measures would, no doubt, place Nigeria among the comity of nations providing adequate work-injury benefits that meet with prescribed international standards, in the interest of all.

103. (2008) 2 N.W.L.R. (Pt. 1072), 575.