

**AN APPRAISAL OF EMPLOYEES' COMPENSATION
UNDER NIGERIAN LAW**

BY

**Daniel PETER
LLM/LAW/12995/2010 – 2011**

JULY, 2014

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**Being a Thesis Submitted to the Faculty of Law, Ahmadu Bello University,
Zaria in Partial Fulfilment of the Requirements for the Award of Master of
Laws Degree --LLM.**

JULY, 2014

DECLARATION

I hereby declare that this work is original and same has not been presented or published anywhere, anytime by anybody, institution or organisation. All published and unpublished works therein have been acknowledged.

Daniel PETER

Date

CERTIFICATION

This thesis, entitled "An Appraisal of Employees' Compensation under Nigerian Law" by Daniel PETER meets the regulations governing the award of the Degree of Master of Laws of the Ahmadu Bello University and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is dedicated to the Almighty God for His mercies and kindness.

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A.C	-	Appeal Cases	-	-	-	-	1, 58
BC	-	Before Christ	-	-	-	-	20
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ABSTRACT

Over the years, laws have generally evolved ways and grounds of compensating employees for job-related disabilities and risks, because, in man's search for food and other necessities in life, he is constantly exposed to hazards. What provoked this research was the need for an appraisal of the employees' compensation under Nigerian law. Employees' Compensation Act 2010 is the present Act governing compensation for job-related risks in Nigeria. This research adopted a doctrinal method and empirical method. The empirical method adopted is the interview method conducted at the headquarters of the Nigeria Social Insurance Trust Management Board. The doctrinal method explored relevant Acts, case laws, textbooks, journals, literature etc for a good understanding of the provisions of the Employees' Compensation Act, 2010. There is an attempt by the Act to simplify the procedure and requirements for claim of compensation but some inherent problems exist;. Findings in the research revealed that the Board has not made the Rules which the Act empowers it to make in respect of some cases of compensation whose scales are not contained in the Act. Also, the research also revealed some likely enforcement problems within the informal sector. Findings revealed that job-related 'mental stress' has for the first time been introduced as a ground for compensation of employees in Nigeria but there are still some inadequacies in the provisions; for example, 'mental stress' is not compensable if it results from an injury for which the affected employee is otherwise entitled to compensation. Findings among others also reveal that there exist too much discretionary powers bestowed on the Board (Nigeria Social Insurance Trust Fund Management Board) the body that the Act empowers to manage the Fund established in the Act. Health care benefits are discretionary and are only mandatory in cases of occupational diseases. There should be compensation for 'mental stress', irrespective of whether or not it results from an injury for which the affected employee is entitled to compensation. Payment for health care services and disability supports should be made a right in all established cases. The Board should hasten up to make the required Rules which shall provide the scales of compensation not captured in the Act or the Act be amended to capture all the scales of compensation in its provisions. The Board should partner with all village and district heads in enforcing the scheme at the informal sector.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

This chapter explains the background structure of the research. It lays out the statement of the research problem, the objectives, the scope, the research methodology, literature review and the organisational structure amongst other things.

In man's search for food and other necessities in life, he is constantly exposed to hazards.¹ A person who is constantly searching for means of livelihood, may lose life, limb, eye, ear, teeth etc and others may become totally disabled. Teachers, medical doctors, lawyers, pilots, menial workers etc face job-related risks daily.² A worker's ability to work is his security, but when confronted with injuries or death, it affects his ability to earn a living and to provide for his dependants. The employer would always want to be exonerated from liability for job-related risks and the laws over the years have evolved ways of compensating injured employees or their dependants in situations

¹ Yusuf, I.A. "The Perils of Nigerian Workers" – <http://thenationonline.net/web2/articles/7367/1/> - March 21, 2012 – 5:35pm

² See *Trim Joint District School Board of Management v. Kelly* (1914) AC 667 where a school teacher was attacked to death by some of his school boys, *UAC v. Orekyan* (1961) L.L.R 144 where an employee of a shop lost an eye as a result of an attack by a customer, *Metal Containers (W.A) Ltd v. Momodu Iyomifokhia* (1959) L.L.R 130, where an employee lost his teeth as a result of accident in his place of work, *Thompson v. Sinclair* (1917) A.C. 127 where a woman was injured by the collapse of a wall out of and in the course of her employment etc.

involving death, injuries and disabilities.³ There is need to hold someone accountable to provide compensation to employees out of or in the course of employment and that is why the present Compensation Act⁴ is relevant

Man should not fold his arms and stay indoors for fear of street risks or outdoor hazards. It is riskier not to take the risk of going out in search of the basic needs of life. This is because, failing to take the risk of going out in search of necessities, he opts for the risks of poverty, hunger, starvation, sleeping in the open field, in the rain and in the sun. The Employees' Compensation Act⁵ is aimed at inducing and compelling employers to think more in terms of human value so as to provide compensation on humanitarian ground.⁶

The 2010 Act establishes contributory Pension Fund called "the Fund" into which shall be credited all monies, funds or contributions by employers for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in the course of employment. The Fund established is managed by the Nigeria Social Insurance Trust Fund Management Board called 'the Board'. The Fund

³ Guyton, G.P., "A Brief History of Workers' Compensation," *The IOWA Orthopaedic Journal* (1999) Vol. 19, P. 106

⁴ No. 13, 2010

⁵ *Ibid*

⁶ Guyton G.P, *op cit*

here consists of take-off grant from the Federal Government, contributions by employers pursuant to the Act, fees and assessments charged on employers, the proceeds of investments of the funds, gifts or grants from any national or international organisations, and other monies that may accrue to the Fund from any other source.⁷ Employees are prohibited from contributing to the Fund as the Act imposes sanction against employers who attempt to deduct assessments that are payable to the Fund from the remuneration of employees.⁸

The Act prohibits waiver of the benefits or rights of employees or dependants to compensation through any agreement made between the employer and employee. Agreements that are made with the aim to waive the employees' right to compensation are rendered void and unenforceable.

The Employees' Compensation scheme now recognises new categories of workplace injuries such as mental stress resulting from exceptional circumstances in the course of employment.⁹ This is only if the mental stress is an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employees' employment or diagnosed by an accredited medical practitioner as a mental or physical

⁷ Sections 31 & 33 *ibid*

⁸ Section 14 *ibid*

⁹ Section 8 *ibid*

condition amounting to mental stress arising out of the nature of work or the occurrence of any event in the course of the employees' employment.¹⁰ Where the mental stress is caused as a result of the decision of the employer to change the work, the working condition of work organisation in such a way as to unfairly exceed the work ability and capacity of the employee thereby leading to mental stress, such situation shall be liable to compensation to the degree as may be determined under any regulation made by the Board. ¹¹

Payment of compensation under the Act does not affect the employees' retirement benefits payable under the Pension Reform Act.¹² The scheme has the effect of easing the burden on employers who will not be required to contribute further to the welfare of an injured employee in the event of an accident or injury, no matter the amount of liability involved.

As a general rule, an employee or his dependant is entitled to apply to the Board for compensation within one year after the date of the death or injury or disease or disability arising from any accident or occupational disease. Where special circumstances exist, an application for compensation may be made within three years of the occurrence of

¹⁰ *Ibid*

¹¹ *Ibid*

¹² No. 2, 2005

the accident or injury, or injury, or disease for which a claim is being made.¹³ Anybody that is dissatisfied with the decision of the Board on compensation may appeal to the Board for a review of such decision and it is only upon further dissatisfaction with the review that one can approach the National Industrial Court.

1.2 Statement of the Research Problem

The realization of the policy objectives of Employees' Compensation Act in Nigeria will be difficult if not impossible without a comprehensive literature on the provisions of the Act, hence the need to find out the new innovations introduced by the present Act. Available scattered literature on employees' compensation in Nigeria, have not in a holistic and comprehensive way discussed the provisions of the Act. Employers, employees and the insurer (the Board) who are all stakeholders in the scheme will grapple with the provisions of the Act relating to their rights, duties and obligations, if no comprehensive research on the Act exists.

Awareness is key to the success or otherwise of any new policy. Where there is laxity in getting people to know so much about any new policy, it is time to worry. This research finds out the level of awareness of the present employees' compensation scheme in Nigeria as it relates to the mode of awareness campaign and the strategies adopted by the Board.

¹³ Section 6 of Employees' Compensation Act *op cit*

The available scattered few commentaries on employees compensation Act in Nigeria merely extol new policy on employees' compensation but this research seeks to find out to what extent the law has been implemented in relation to the benefits it confers.

1.3. Research Questions

In order to achieve the aim and objectives of this research, the following research questions are framed.

1. What are the new innovations introduced by the present employees' compensation under Nigerian law?
2. To what extent are people aware of the present employees' compensation under Nigerian law?
3. Are there lacunae or inadequacies in the present Employees' Compensation Act in Nigeria?
4. What are the challenges of implementation inherent in the present employees' compensation under Nigerian law?

1.4 Aim and Objectives of the Research

1.4.1 Aim of the Research

The aim of this research is to carry out a comprehensive and holistic appraisal of employees' compensation under Nigerian law.

1.4.2 Objectives of the Research.

1.4.2.1 To Carry Out a Comprehensive and a Holistic Appraisal of the Employees' Compensation Act¹⁴

One of the fundamental objectives of this research was to carry out a careful, comprehensive and holistic appraisal of this Act ¹⁵which repeals the Workmen's Compensation Act¹⁶ with the view to unveiling the innovations introduced by the new scheme.

1.4.2.2 To Discover and Discuss Certain Lacunae or Inadequacies in the New Act (Employees' Compensation Act) With a View to Proffer Solutions.

The research seeks to discover and discuss certain lacunae or inadequacies and challenges which may be inherent in the provisions of the new Act and its implementation with the view to proffering solutions to the problems.

1.4.2.3 To Ascertain the Level of Awareness Strategies Adopted by the Board.

It is one of the objectives of this research to ascertain the level of awareness strategies adopted by the Board to get employers and employees know about the existence of the compensation scheme so as to proffer solutions if any problems exist.

¹⁴ *ibid*

¹⁵ *Ibid*

¹⁶ *Op cit*

1.5 Justification of the Research

The research is very important because it addresses certain important issues. It envisages better understanding of the law on compensation for injuries and death under the Employees' Compensation Act 2010. It also discusses certain inadequacies in the law which writers have not addressed, with the view to proffering solutions to the problems. Therefore, law teachers, law students, Nigerian employees, judges, scholars and the general public will benefit immensely from the fruits of this research.

1.6 Scope of the Research

The scope of the research is only the Employees' Compensation Act¹⁷ in Nigeria. References are however made to some jurisdictions outside Nigeria in order trace the history of compensation for job-related risks and disabilities.

1.7 Research Methodology

The research methodology used is doctrinal and empirical. Doctrinal method of research means the type of research that theorizes with the aid of books, statutes and cases and thereafter makes findings and

¹⁷ *Ibid*

recommendations.¹⁸ This is based on relevant statutes, case laws, textbooks, newspapers, internet sources etc for good understanding of the scheme being appraised. Empirical method of this research on the other hand, involves the collection of facts and data through interviews¹⁹. The research uses interview for the purpose of extracting certain information about the present employees' compensation scheme in Nigeria from the Board

1.8 Literature Review

In understanding the research on this topic, review of books, articles and other materials are resorted to, with the aim of enriching the work.

There are many textbooks written on Workmen's Compensation Act²⁰ but not on the Nigerian Employees' Compensation Act²¹ to the best of the researcher's knowledge. This is because the latter Act was passed in November, 2010. However, the contributions made by such literature are relevant to this area of research. To the best of the researcher's knowledge, only Agomo in her book "Nigerian Employment and Labour Relations Law and Practice"²² has made an attempt to discuss some

¹⁸ Aboki, Y. Introduction to Legal Research Methodology, 2nd Edition, Tamaza Publishing Co. Ltd, Zaria, (2009) p.3

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ *Op. cit*

²² Agomo CK Nigerian Employment and Labour Relations law and Practice , Concept publications Limited, Lagos (2012)

aspects of the present employees' compensation under Nigerian law. The author among other things discussed the objectives of the present Employees' Compensation Act in Nigeria, the Scope and Application of the Act, Right of Appeal and the National industrial Court. However, the work did not address the issues of challenges faced by the present employees' compensation scheme in Nigeria. Also, some lacunae in the present Employees' Compensation Act in Nigeria were not discussed in her work. These aspects lacking in her work are part of what this research addresses. They serve to throw light on the concept of employees' compensation and the shortcomings of the repealed Act.

A notable Nigerian author, Akintunde, in his book Nigerian Labour Law, said: "Compensation within the context of Labour Law is a monetary payment for a worker's injury as agreed between employer and worker and/or as approved by the court."²³ Under the present law, this definition of compensation will no longer be tenable, because, compensation is now not only monetary but may involve rehabilitation and counselling which this work addresses in chapters two and three. Also, compensation under the present Act is not "as agreed between employer and worker" but it is statutorily spelt out and administered by the Nigeria Social Insurance Trust Fund Management Board which is

²³ Akintunde, E. Nigerian Labour Law, Ibadan University Press, Ibadan (1979) p.108

also studied in this Thesis. One only goes to court by way of further appeal.²⁴

Another author, Ogunniyi also defined compensation as: "Monetary payment made to on injured workman in respect of injury which he has sustained in the course of the employment. Such compensation may be as agreed by the employer and the workman or as may be approved by the court."²⁵ The definition given by this learned author is similar to the one proffered by Emiola and agrees only partly with the present law. Therefore, an understanding of the concept of employees' compensation under the present legal regime is imperative.

A Nigerian scholar, Uvieghara, in his book Labour Law in Nigeria²⁶ explains the concept of compensation payable to employees under the Workmen's Compensation Act and not as it is under Employees' Compensation Act, because the latter had not yet repealed the former at the time. The concept of compensation in the author's work reflects principally, the position of the former law.

²⁴ See sections 73, 32(d), and 55 of Employees' Compensation Act *op cit*

²⁵ Ogunniyi, O. Nigerian Labour Law and Employment Law in Perspective, *op cit*

²⁶ Uvieghara, E.E. Labour Law in Nigeria, *op cit*

Samuel in his book Industrial Law²⁷ discussed injuries at work and especially, claims at common law. The author did not also include in his work, mental stress introduced by the current law in Nigeria. This research explores this area of the law.

Some attributes of the nature of Workers' Compensation in Australia were given by Sykes in his book The Employer, Employee and the Law²⁸ and some of these attributes are shared by our present Nigerian scheme. The author said:

... here the object is to insure the workman against injuries, showing a certain connection with his employment. The action is not one for unliquidated damage in tort but consists of a claim for a certain amount of weekly wage or for a fixed sum determined by the statute. No negligence on the part of the employer or any other person has to be proved, nor the contributory negligence of the workman operates as a bar or affects the matter in any way, unless he has been guilty of wilful misconduct. In most states, the "injury" or "personal injury by accident (which may include results attributable to disease or in some cases the contracting of disease itself) in order to be compensable may arise either "in the course of the employment" or "out of the employment ... It is also usual to provide for the coverage of injury or accident occurring on the journey to and from work the employer is under an obligation to ensure against the liability ...

²⁷ Samuel, H. Industrial Law 7th Edition, Sir Isaac Pitman & Sons Ltd, London (1967) pp. 117 – 142

²⁸ Sykes, E.I. The Employer, the Employee and the Law 3rd Edition, the Law Book Company Ltd, Sydney, (1973) p.108

The above position though similar to the position in Nigeria, was on Australian jurisdiction hence the need to carry out a comprehensive appraisal of the Act governing the position in Nigeria.

Murray while discussing workers' compensation in the U.S also said some things which may be similar to the Nigerian scheme as thus:

Workers' compensation is insurance paid by companies to provide benefits to employees who become ill or injured on the job. By this programme, workers are provided with benefits and medical care and employers have the assurance that they will not be sued by the employee. The cost of workers' compensation benefits is based on the gross payroll and the number and severity of illness and injuries that type of employee experiences ...²⁹

Under the Nigerian law the body in charge of payment is Nigerian Social Insurance Trust Fund Management Board under section 32 of the Act.³⁰

Murray's discourse was on the US jurisdiction while this research is on the Act applicable in Nigeria.

Selwyn³¹ discussed health and safety at work, in his book. The author's work as regard injury to employees only covers health and safety at work. This present research has a wider scope as it covers even injuries outside the place of work provided it is job-related. For example injuries

²⁹ Murray, J. "Workers Compensation" biztaxlawabout.com/od/glossaryw/g/workerscomp.htm-3/3/2012

³⁰ Employees' Compensation Act *Op cit*

³¹ Selwyn, N.M. Law of Employment, 2nd Edition, Butterworth Guilford, London (1978) pp. 21, 266 - 284

which may occur while on the way between the place of work to the place where the employee usually receive remuneration or to the employees' primary or secondary residence, are compensable.³² Selwyn's work reveals also the flexible nature of the meaning of an employee when he said an employee though easy to define is not easy to describe and that it is possible that a person can be an employee for one purpose but not an employee for another. The statement is true when it comes to defining who is an employee under the Act presently being appraised because when an injury is not related or connected to work, the injured employee will not be treated as an employee for the purpose of compensation.

Closely related to Selwyn's work is that of Slade titled Tolley's Employment Handbook³³ which discusses health and safety at work. Therefore, it is needless to say that this present research is on Employees' Compensation Act in Nigeria, being the legislation devoted to compensation for work-related injuries.

Cooper and Wood in their book Outlines of Industrial Law³⁴ discussed National Insurance Industrial Injuries Act 1965 in Britain. The authors'

³² See section 7 of the Employees' Compensation Act *op cit*

³³ Slade, E. Tolley's Employment Handbook, 17th Edition, Clays Ltd, England (2003) p. 305

³⁴ Cooper, W.M. and Wood, J.C. Outlines of Industrial Law, 5th Edition, Butterworth & Co. (Publishers) Ltd, London (1966) pp. 365 – 403

position is that under the said Act, particularly in section 3, an employer's liability is in the first instance, to pay contribution of himself and employee's and it is an offence for the employer to deduct or attempt to deduct any part of his contribution from the employee's remuneration. This position is similar to the one in section 14 of Employee's Compensation Act. However, needless to say that the authors discussed National Insurance Industrial Injuries Act 1965 in Britain and not the Nigerian employees' compensation Act 2010. An appraisal of the latter Act is therefore imperative.

Comande in his published article, "Towards a Global Model for Adjudicating Personal Injury Damages: Bridging Europe and the United States"³⁵ tried to discuss the common techniques for adjudicating personal injury damages in Europe and America. The author posited that non-pecuniary damages for personal injury lie at the very centre of contemporary legal debates primarily because of the alleged constant increase in award but also because of the difficulties that stem from the inherent subjectivity of their assessment. The author said specifically, an alleged constant increase in awards and the difficulties linked to the subjectivity of their assessment and the selection of the institution that is best suited to award damages and how it should do so are but a few

³⁵ Comande, G. "Towards a Global Model for Adjudicating Personal Injury Damages: Bridging Europe and the United States," *Temp. Intl & Comp. L.J.* (2005) 19 pp. 241 – 349

problems that are addressed by contemporary scholarship. The author however, stationed his own discourse on litigation which is only an aspect of the research at hand that is, on employees' compensation under Nigerian law. Also, while Comande dwelt on America and Europe, this research dwells on Nigeria as a country.

Koskoff in his published article "The Nature of Pain and Suffering"³⁶ devoted his energy to discussing "pain and suffering" and attempted to distinguish "pain" from "suffering" by saying that 'pain' remains inherently a physical sensation due to a corporal harm (bodily experience) while 'suffering' is mainly an emotional experience reacting to the physical pain. Pain and suffering as discussed by the author is similar to the ground of compensation known as 'mental stress' in Employees Compensation Act, although there is a significant difference when it comes to application under the Act. The author gave only the medical explanations of 'pain and suffering' while this research deals on its sister phrase "mental stress" and its legal application under the employees' compensation in Nigeria.

Closely connected to Koskoff's article on 'pain and suffering', is that of Cramer on "Loss of Enjoyment of Life as Separate Element of

³⁶ Koskoff, Y.D. "The Nature of Pain and Suffering" TRIAL (1977) 13, pp. 21, 22

Damages.”³⁷ Cramer dwelt on the danger of common law, awarded through litigation. Cramer’s work is however different from the research at hand because this research deals with statutory remedies under Employees Compensation Act 2010, in Nigeria. Secondly, “loss of enjoyment of life” is not a ground of compensation under the Act being studied. It may at best be an element under some of the grounds under the Act.

Guyton, in his published article “A Brief History of Workers Compensation”³⁸ traced the history of compensation for bodily injury to period shortly after the advent of written history. The author gave a lucid account of compensation in antiquity to modern times and posited that the law on compensation for bodily injury has evolved over time. The author discussed some modern features of American modern scheme of compensation similar to the present day Employees’ Compensation Act in Nigeria. He said workers’ compensation law remains one of the relative success stories of American legislation. According to the author, its three critical benefits remain. “First, the employer gets tort relief. Second, the employee gets a relatively quick, equitable and predicible no-fault compensation scheme. Finally, the system carries an intrinsic incentive toward rehabilitation of the injured

³⁷ Cramer, C.R. “Loss of Enjoyment as a Separate Element of Damages” PAC L.J. (1981) 12 pp. 965 – 972

³⁸ Guyton , G.P. *op cit*

worker.” Guyton’s discourse was not on the Nigerian scheme hence the need to appraise the employees’ compensation under the present legislation on compensation for work related injuries and death in Nigeria.

1.9 Organisational Structure of the Research

This research titled “An Appraisal of Employees’ Compensation under Nigerian Law” is divided into five chapters.

Chapter one introduces the work segmented into background of the study, problem of the research, aims and objectives of the research, the scope of the research, literature review in the area of the research and justification for the research.

The second chapter deals with the analysis of the history, nature and scope of the employees’ compensation in Nigeria. The items considered here are the overview of the evolution of employees’ compensation, the meaning and nature of employees’ compensation under the Nigerian law, the scope and application of the Act.

Chapter three, deals with the analysis of the legal framework for employees’ compensation in Nigeria. The items considered are the grounds and scales of compensation and also the concept of vocational rehabilitation. The grounds here are mental stress, injury, hearing impairment, occupational disease and death. The scales for compensation are the scale of compensation for temporary partial disability, the scale of compensation for temporary total disability, the

scale of compensation for permanent partial disability or disfigurement, scale of compensation for permanent total disability, scale of compensation relating to enemy warlike actions and scale of compensation in fatal cases. The procedures for claim of employees' compensation are also considered here.

The processes are employees' notification of injury, employers' obligation to report death, injury or disease, application for compensation, limitation of action, subrogation, indemnity, and right of appeal.

The fourth chapter is on the challenges of employees' compensation in Nigeria. The data gotten by way of interview from the Board are presented and analysed with a view to drawing conclusions. The chapter also discusses some practical challenges relating to awareness and implementation in the Nigeria.

The fifth chapter concludes the research with summary, findings and recommendations. The elements here are drawn from the general appreciation of the employees' compensation scheme in Nigeria.

CHAPTER TWO

Conceptual clarifications, the History, Nature and Scope Employees' Compensation in Nigeria

2.1 Introduction

This chapter explains the history, nature and scope of employees' compensation in Nigeria. The items considered here are the overview of the evolution of employees' compensation scheme, the objectives, scope and application of employees' compensation in Nigeria including the meanings of some concepts/terms namely, compensation, employer and employee under the Act.

2.2 The Overview of the Evolution of Employees' Compensation

The history of compensation for injury is in phases. The first phase dates back to antiquity.¹ The history of compensation for bodily injury began shortly after the advent of written history itself.² The *Nappur* Tablet No. 3191 from ancient| *Sumeria* in the fertile crescent, outlines the law of *Ur-Nammu*, king of the city state of *Ur*.³ It dates to approximately 2050 BC.⁴ The law of *Ur* provided compensation for specific injury to workers' body parts, including fracture. The code of *Hammurabi* from 1750 BC provided a similar set of rewards for specific injuries and their implied permanent impairments.⁵ Workers' compensation laws have been recognised for

¹ Kramer, S.N. History Begins at Sumer. Thames and Hudson, London (1958) p. 93

² *Ibid*

³ *Ibid*

⁴ *Ibid*

⁵ Guyton, G.P, *op cit*

thousands of years.⁶ For example, ancient Greek, Roman, Arab and Chinese laws provided sets of compensation schedules, with precise payments for loss of specific body part. For example, under ancient Arab law, loss of a joint of the thumb was worth (one-half the value of a finger, the loss of penis was compensated by the amount of length lost, and the value of an ear was based on its surface area.⁷ The compensation schedules of antiquity were gradually replaced as feudalism of the Middle Ages gradually became the primary structure of government. The often arbitrary benevolence of the feudal lord determined, what, if any, injuries garnered recompense⁸. The concept of compensation for the worker was bound up in the doctrine of *noblesse oblige*, meaning that an honourable lord will care for his injured serf.⁹ Under feudalism, compensation for work-related injuries was at the discretion of the feudal lord.¹⁰

The next phase of the evolution of the law on compensation for injuries at work place was the period of the development of the English Common Law and the early Industrial Revolution.¹¹ This period was in the late middle ages and renaissance and it provided the legal framework that continued up to the early industrial revolution across Europe and America.¹² Injured employees at work only had the option of seeking for remedy by suing

⁶ Jie, W. 'The History of Workers' Compensation Laws' [_http://www.echow.com/about_5zg6716_ March 24, 2012_](http://www.echow.com/about_5zg6716_March 24, 2012_)

⁷ Geerts, A. *et al*, Compensation for Bodily Harm, Fernand Nathan, Brussels, (1977) pp. 7 – 211

⁸ See Guyton, G.P. *op. cit*

⁹ *Ibid*

¹⁰ See Jie, W. *op cit*

¹¹ *Ibid*

¹² Guyton, G.P. *op cit*

their employers and to succeed, they had to prove negligence on the part of their employers.¹³ The employers in turn, had the defences of 'common employment,' 'contributory negligence,' and 'voluntary assumption of risk.'¹⁴ These defences rendered the result of any such action, extremely uncertain.¹⁵ These principles were so restrictive that they became known as "unholy trinity of defences."¹⁶ The doctrine of "assumption of risk" was exceptionally far-reaching. It held simply that employees know of the hazards of any particular job when they signed their contracts and that to which man consents cannot be considered to be an injury (*volenti non fit injuria*). Therefore, by agreeing in a position, they assume any inherent risk it carries. Assumption of risk was often formalised at the beginning of the employee's tenure; many industries required contracts in which workers abdicated their right to sue for injury. These became known as the "worker's right to die" or "death contracts."¹⁷ The doctrine of "common employment" on the other hand is known as 'fellow servant rule.' Under the rule, employers were not held liable for the workers' injuries resulting in any part from the action or negligence of a fellow employee.¹⁸ As to the doctrine of contributory negligence, if the worker was in any way responsible for his injury, the employer was not at fault.¹⁹

¹³ Uvieghara, E.E. Labour Law in Nigeria, Malthouse Press Ltd, Ikeja, Lagos (2001) p. 250

¹⁴ *Ibid*

¹⁵ *Ibid*

□ Haller, J.S. "Industrial Accidents – Workers' Compensation Laws and the Medical Response," *Western Journal of Medicine* (1988) Vol. 148, pp. 341 – 348.

□ Guyton, G.P. *op cit*

□ *Ibid*

□ *Ibid*

The dissatisfaction of employees and even employers with the common law on worker's compensation for injury at work ushered in another era known as the era of the then modern workers' compensation law which was on humanitarian ground and this is believed to have occurred on the setting of Prussia under the leadership of its Chancellor Otto Von Bismarck who was the force behind *Realpolitik*; the school of political pragmatism.²⁰ Germany at that time had a very active Marxist and socialist movement, when social protection for workers was at the top of their agenda.²¹ Bismarck also pushed through workers accident insurance in 1884 creating the first modern system of workers compensation.²² It started with Employers' Liability Law of 1871 providing limited social protection to workers in certain factories, mines, quarries and railroads.²³ There was also public pension insurance providing some amount of money for workers who were incapacitated as a result of some diseases not related to their jobs.²⁴ For those who were not able to work due to disability, there was Public Aid for them. Greater benefits went to employees injured at work and medical care and rehabilitation were covered.²⁵ This served as a model for social insurance programme of many countries including states.²⁶

□ *Ibid*
²¹ *Ibid*
²² *Ibid*
²³ *Ibid*
²⁴ *Ibid*
²⁵ *Ibid*
²⁶ *Ibid*

In 1880, Employee's Liability Act was passed in England through a significant effort of William Gladstone the then Prime Minister. However, it had little effect because the defence of negligence was still there and also the "right to die" contract was still legal.²⁷ Also in 1897 Workers' Compensation Act was passed in England which established a "no fault" doctrine of compensation similar to the 1884 Prussian law. The difference however, was that for England, it was not administered by the state but by "friendly societies which had organised various forms of private disability insurance for workers."²⁸ So many authors then championed the course of social insurance for workers through their persuasive literature. For example, Upton Sinclair, a socialist authored a literary work titled *The Jungle*, detailing the horrors experienced by immigrants working in the Chicago slaughterhouses.²⁹ More laws were passed in Germany to take care of injured workers and to soften the hardship of common law. The U.S. seeing the benefit of these laws passed its first Workers' Compensation Law in 1908.³⁰ It was the Employer's Liability Act of 1908 which was meant to cover only workers' injuries and death at the federal level. This was objected to as people needed a uniform set of guidelines for compensation in all the states. The first comprehensive workers compensation law was finally passed shortly thereafter in Wisconsin in

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ Jie, W. *op cit*

1911.³¹ Nine other states passed regulations that year, followed by thirty-six others before the decade was out. The final state to Pass Workers' Compensation legislation in the U.S was Mississippi in 1948.³²

The wind of this evolution concerning the law governing compensation for injury at work also blew across the world and to Nigeria. The first statute in Nigeria on workmen's compensation was enacted in 1942 following the English statute of 1925.³³ This first Act in Nigeria was repealed by Workmen's Compensation Act 1987.³⁴ This was because the first Act in Nigeria suffered many criticisms. One of the major criticisms of the first Act was that it restricted the categories of workmen to those whose earnings do not exceed N1,600 per annum.³⁵ Therefore, a non-manual worker earning more than N1,600 per annum was unable to claim compensation under the first Act.³⁶ The Act was under severe criticisms on account that it was outdated and irrelevant to modern industrial needs.³⁷ The 1987 Act which came to correct some of the deficiencies of the old law, also suffered so many criticisms on account of inadequacies. The 1987 was faulty in several respects.³⁸ For example it was considered too narrow that it covered only employees engaged in manual labour or clerical work or

³¹ *Ibid*

³² Guyton, G.P. *op cit*

³³ Emiola, A. Nigerian Labour Law, 4th Edition, Emiola (Publishers) Ltd, Ogbomosho, Nigeria (2008) p. 302

³⁴ Cap W6 laws of the Federation of Nigeria 2004

³⁵ Oguniyi, O. Labour and Employment Law in Perspective, Folio, Publishers Ltd, Ikeja, Lagos (1991) p. 126

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ Oladele, K. "Reforming the Nigerian Workmen's Compensation and Factory Act" <http://www.nigeria.villagesquare.com/articles21/03/2012-5:33pm>

otherwise and had been repeatedly interpreted to exclude professionals.³⁹

It lioid compensable injuries to injuries that had been the result of accident at the work place leaving other injuries non compensable.⁴⁰ Also, the heads of compensation under workmen's compensation Act were limited to compensation in fatal cases, permanent total incapacity, permanent partial incapacity and temporary incapacity⁴¹

The 2010 Act makes provision for payment of compensation to employees who suffer occupational diseases or sustain injuries arising from accident at workplace or in the course of employment. However, members of the armed forces, except those employed in civilian capacity are excluded in terms of coverage.⁴² There are basically five grounds of compensation under the Act viz mental stress, occupational disease, injury, hearing impairment and death.⁴³ The Act uses some scales in order to measure the amount of compensation. These scales are scales of compensation for temporary partial disability, temporary total disability, permanent partial disability or disfigurement, permanent total disability, fatal cases and enemy war-like actions.⁴⁴ The Act also provides for vocational rehabilitation as a form of compensation in order to bring injured employees back to work by providing any medical treatment or other care

³⁹ Olaniwun, A.L.P. "Employer and Employee Relations: The Employee's Compensation Act 2011"
<http://www.olaniwunajayi.net/clientalert/employees'compensationactnewsletter> accessed May 22, 2012

⁴⁰ *Ibid*

⁴¹ *ibid*

⁴² See Sections 1 and 3 of Employees' Compensation Act *op cit*

⁴³ Sections 7,8,9, and 10 of Employees' Compensation Act, No.13, 2010

⁴⁴ Sections 25, 24, 22,21,17 and 18 *ibid*

that are necessary to alleviate or relieve the injured employee from the effect of the injury.⁴⁵

The 2010 Act establishes contributory Pension Fund called "the Fund" into which shall be credited all monies, funds or contributions by employers for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in the course of employment. The Fund established is managed by the Nigeria Social Insurance Trust Fund Management Board called 'the Board'. The Fund here consists of take-off grant from the Federal Government, contributions by employers pursuant to the Act, fees and assessments charged on employers, the proceeds of investments of the funds, gifts or grants from any national or international organisations, and other monies that may accrue to the Fund from any other source.⁴⁶ It is hoped that the Fund established by the present Employees' Compensation Act will be managed properly and without fraud. The reason why the author is alarmed is that there are many instances of such related fraud in the world and even UK and USA are not excluded. For example, one of the most celebrated pension scams in the UK was perpetrated by Robert Maxwell, a Czechoslovakian-born British media mogul and Member of Parliament (MP) who died mysteriously in 1991, in circumstances many believed was a suicide and

⁴⁵ Sections 16 and 26(1)(8)(9) *ibid*

⁴⁶ Sections 31 & 33 *ibid*

linked to his financial crises and pension scams.⁴⁷ Maxwell, who rose from poverty to build an extensive publishing enterprise, was known to have misappropriated more than \$1 billion from his company's pension funds to finance corporate expansion of his more than 400 corporate entities. When the companies failed, the funds were gone and pensioners were left in the cold.⁴⁸ Even in America, fraud is common. According to the Association of Certified Fraud Examiners (ACFE), U.S organisations lose an estimated 7 percent of annual revenues to fraud based on the projected U.S Gross Domestic Product for 2008, this percentage indicates a staggering estimate of losses of approximately \$994 billion among organisations.⁴⁹ In Nigeria, instances of fraud are even more common. For example, the Senate, on June 21, adopted the report of its Joint Committee on Establishment and Intergovernmental Affairs and States and Local Governments and recommended, among other things the prosecution of Chairman of Pension Task Force Team, (PTFT), Abdulrasheed Maina, and other members of the team (including Mr. John Yusuf and B.G. kaigama) for a litany of corruption-related offences,. The Senate specifically listed the "Charges" to include fraud, embezzlement, misappropriation, misapplication, outright stealing of pension fund.⁵⁰ The Senate President,

⁴⁷ Akele S. Pension Scams: Is the Contributory Pension Scheme Immune? www.dailyindependencenigeria.com-may 2005

⁴⁸ *Ibid*

⁴⁹ Dinapoly TP, Preventing Fraud and Abuse of Public Funds: Local Governments Need to do Better- www.osc.state.ny.us/localgovt/pubs/preventingfraud-August2010

□ www.nigeriaintel.com-the-nigerian-pension-scam-how-they-looted-the-funds-July,2012

David Mark aptly described this as a 'monumental fraud' and 'national disgrace and embarrassment'⁵¹.

Employees are prohibited from contributing to the Fund as the Act imposes sanction against employers who attempt to deduct assessments that are payable to the Fund from the remuneration of employees.⁵²

The Act prohibits waiver of the benefits or rights of employees or dependants to compensation through any agreement made between the employer and employee. Agreements that are made with the aim to waive the employees' right to compensation are rendered void and unenforceable.

The Employees' Compensation scheme now recognises new categories of workplace injuries such as mental stress resulting from exceptional circumstances in the course of employment.⁵³ This is only if the mental stress is an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employees' employment or diagnosed by an accredited medical practitioner as a mental or physical condition amounting to mental stress arising out of the nature of work or the occurrence of any event in the course of the employees' employment.⁵⁴ Where the mental stress is caused as a result of the decision of the employer to change the work, the working condition of work organisation in such a way as to unfairly exceed the work ability and capacity of the

Ibid
 Section 14 ibid
 Section 8 ibid
 Ibid

employee thereby leading to mental stress, such situation shall be liable to compensation to the degree as may be determined under any regulation made by the Board.⁵⁵

Payment of compensation under the Act does not affect the employees' retirement benefits payable under the Pension Reform Act.⁵⁶ The scheme has the effect of easing the burden on employers who will not be required to contribute further to the welfare of an injured employee in the event of an accident or injury, no matter the amount of liability involved.

As a general rule, an employee or his dependant is entitled to apply to the Board for compensation within one year after the date of the death or injury or disease or disability arising from a occupational accident or disease. Where special circumstances exist, an application for compensation may be made within three years of the occurrence of the accident or injury, or injury, or disease for which a claim is being made.⁵⁷ Anybody that is dissatisfied with the decision of the Board on compensation may appeal to the Board for a review of such decision and it is only upon further dissatisfaction with the review that one can approach the National Industrial Court.

Ibid
 No. 2, 2005
 Section 6 of Employees' Compensation Act op cit

2.3 The Meaning and Nature of Employees' Compensation under the Act

The concept of compensation for the purpose of the Act is defined as "any amount payable or service provided under the Act in respect of a disabled employee and includes rehabilitation."⁵⁸ The services referred to in this Act include health care services to a disabled employee. It also includes disability support. Section 26(1) of the Act reads:

In addition to the other compensation provided by this Act, the Board may provide for the injured employee any medical, surgical, hospital, nursing and other care or treatment, transport, medicines, crutches and apparatus, including artificial members, that it may consider reasonably necessary at the time of the injury, and thereafter during the disability to cure and relieve from the effects of the injury or alleviate those effects, the Board may adopt rules and regulations with respect to furnishing health care to injured employees entitled to it and for the payment of it.

This is also supported by section 16 of the Act which provides that the Board i.e. Nigeria Social Insurance Trust Fund Management Board, may in getting an injured employee back to work or in assisting to lessen or remove a resulting disability, take any measure and make the expenditures from the Fund that it considers necessary or expedient.

While the percentages for monetary compensation are clearly defined in the Act and are obligatory on the Board when they are proved, other health care benefits except in cases of occupational diseases, are at the

⁵⁸ Section 73 of Employees' Compensation Act, No. 13, 2010

discretion of the Board.⁵⁹ For example an employee can only legally sue for health care benefits in respect of occupational disease. It is the view of the researcher that health care services or disability supports ought not to be discretionary remedies but obligatory on the Board in the event of any disability to employees out of or in the course of employment.

Also, compensation payable under the Act is only restricted to personal injury and does not include injury to the employees' property.⁶⁰ This means that where there is any damage or loss to an employee's property out of or in the course of employment, there is no remedy for such an employee under the Act.

Compensation due to any employee is not assignable or liable to attachment⁶¹. It cannot also pass by operation of law to another party except to a personal representative.⁶² No claim can also set off against any compensation due to any employee.⁶³ However, when money is advanced to the employee by way of financial or social welfare assistance by the Federal, State, Local Government or the Board, a claim by any of the mentioned bodies can be set off against any amount of compensation due to the employee.⁶⁴

⁵⁹ The word "may" used in sections 26 and 16 of the Act suggests discretion. See however, section 9(i)(a)(c)(d) *ibid* which says 'Health care benefits shall be paid in any case of occupational disease. See also, section 17 of the Act which provides for various scales for monetary compensation and the said section uses the phrase "shall be paid." This denotes legal obligation.

⁶⁰ See sections 73, 32(d) of Employees' Compensation Act *op cit*

⁶¹ Section 15 *ibid*

⁶² *Ibid*

⁶³ *Ibid*

⁶⁴ *Ibid*

The Act prohibits any agreement between employee and employer to waive compensation which the employee or the dependants are or may be entitled.⁶⁵ Any of such agreement is void and unenforceable.⁶⁶

By the provisions of the Act, employers are to make contributions for the purpose of compensation. Nigeria Social Insurance Trust Fund Management Board (the Board) has the power to implement the Act and to manage the Fund established under the Act.⁶⁷ The "Fund" here means employees' compensation fund or contributions by employers for adequate compensation to employees or their dependants, arising out of, or in the course of employment.⁶⁸

In order to safely advise the Board on the investment of any money standing to the credit of the Fund and to monitor its activities over the Fund, the Act establishes a body called Independent Investment Committee which shall consist of a representative each of Central Bank, National Pension Commission, Nigeria Investment Promotion Commission, Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture, three representatives of most represented employers' organisations and three representatives of the most represented

⁶⁵ Section 13 *ibid*

⁶⁶ *Ibid*

⁶⁷ Section 2(2) 57 *ibid*

⁶⁸ Section 56(1) *ibid*. See other sources of the Fund in subsection (2) which include take off grant from Federal Government, gifts from other bodies, fees and assessments charged or pursuant to the Act

employees' organisation.⁶⁹ The reason for this is to ensure that monies pulled for the purpose of compensation are profitably invested for the benefit of employers and employees.

Every employer shall within the first two years of the commencement of the Act make a minimum monthly contribution of 1.0 percent of the total monthly payroll into the Fund. The Board from time to time shall make rules to vary contributions of employers in tandem with the risk factors in the place of work.⁷⁰ The flat percent in the first two years of the commencement of this Act may be to enable the Board take its time to categorise and rate all the places of work based on the probable degree of risk and to make rules that will vary their contributions based on the risk factors obtainable in the places of work by creating classes of industries in line with risk tendency. For the purposes of assessment and contributions, employers are mandated to within thirty days of commencement or recommencement of business provide to the Board statement of total payroll for the year.⁷¹ The prescribed form for the employer's actual schedule of payment is called Form ECS.RE04.⁷² Also the Board may adopt a system of merit rating and may by order, establish a minimum assessment.⁷³ By system of merit rating the Board uses its judgement to rate employers based on what is seen in the industry and to place it in a

⁶⁹ See section 62 *ibid*

⁷⁰ See section 33 and 38 *ibid*

⁷¹ Section 50 and 51 *ibid*

⁷² See sample in appendix 6

⁷³ Section 34 and 43 of Employees' Compensation Act *op cit*

particular class for the purpose of contribution to the Fund. By section 35 of the Act, assessments are payable on the 1st day of January in the year for which it relates. The Board may in its discretion as seen to be practicable make assessments payable on some other dates determined by it. In this case the Board may make provision for payment by instalment of any amount of assessment. In computing the amount of the payroll for the purpose of assessment, regard shall be had only to that portion of the payroll that represents workers and employment within the scope of the Act. Employees not covered by the Act will not be reckoned with when calculating the amount of assessment payable by employers.⁷⁴ This is in a situation where in the same place of employment, there are some who are not covered by the Act.

Assessment and compensation, every employer shall not later than the last day of February in each year, or as may be determined by the Board, provide to the Board, a statement estimating the earnings that will be paid to its employees in that year or any part of the year, a statement of total amount of all earnings paid to its employees in the preceding year and they may also be required to supply any additional information to the Board.⁷⁵ The prescribed form for estimate of total payroll is called Form ECS.RE03.⁷⁶ Separate statements for each industry may be required if the business of the employer is carried on in more than one industry.

⁷⁴ Section 39(3) *ibid*

⁷⁵ Section 40(1) *ibid*

⁷⁶ See the sample in appendix 5

Employers are expected to give true statements otherwise the Board may reassess the employers for each year any statement is incorrectly made and may charge interest at any rate determined by the Board on any unpaid assessment.⁷⁷

Employers are expected to provide estimate of payrolls kept at their known addresses and shall cause to be furnished to the Board the date the employer became an employer in accordance with the Act.⁷⁸ Sometimes, the Board may also require an estimate of the probable amount of the payroll of each of the employer in accordance with the Act. The Board may also require an estimate of the probable amount of the payroll of each of the employers' industries and any further information from any employer to be furnished.

The employers are required to provide to the Board signed copies of the payrolls not later than 31st December in each year or any time as may be determined and required by the Board and where any employer fails to comply with the requirements as to estimate of payrolls and related matters here, such employer is liable to pay a penalty for the default, a percentage of the assessment prescribed by regulations or determined by the Board.⁷⁹ The Board may also make its own estimate of the payrolls, assess and levy on that estimate and the employer is bound to pay the

⁷⁷ See section 40 of Employees' Compensation Act *op cit*

⁷⁸ See section 39 *ibid*

⁷⁹ *Ibid*

said amount of levy and assessment.⁸⁰The Act criminalises non compliance as regards the provisions for employer to provide estimate of payrolls. Also, if any statement by an employer is not true and accurate, it is an offence. For every statement defaulted, an individual defaulter is liable to imprisonment for a term not exceeding one year or minimum fine of N100,000 or both. Where the defaulter is a corporate body, minimum fine of N1,000,000 and in addition, each director, or manager or officer of the body corporate shall be deemed to have committed the offence and upon conviction, will be liable to pay a fine of N100,000, or imprisonment for a maximum term of one year or both.⁸¹ It seems that this provision for punishment in respect of officers of the body corporate may work hardship. The law should not mete out such punishment for merely being an officer of such defaulting corporate body. For any officer of the defaulting corporate body to be punished under the Act, it must be proved that it was the officer's responsibility to supply the information and he failed or that he knowingly supplied the required information wrongly. This presumption of guilt seems harsh.

The Board can make provisional assessment where an employer fails to comply within time in providing estimate of payroll, or where the information is provided but in the opinion of the Board, the estimate does not reflect the probable amount of the payroll of the employer or does not

⁸⁰ *Ibid*

⁸¹ Sec generally sec 39 *ibid*

describe correctly the nature of the work carried on⁸². Assessment is provisional and the difference will be paid by the Board to the employer if it is later discovered that the provisional assessment was higher than what the employer ought to have paid. If on the other hand it is discovered that the provisional assessment (was not up to what the employer ought to have paid, the employer will pay the difference to the Board.⁸³

Super assessment is another form of assessment the Board does. If in any year or other period determined by the Board, the claims cost charged to the experience account of an employer are above 105% of the ordinary assessment of that employer for the same year, the Board has up to four years if it wishes to assess and levy the employer in that year a super assessment of an amount directed by the Board but this amount should not be more than 133% of the employer's ordinary assessment for the year.⁸⁴ In doing this, the Board will have regard to the amount of the excess and the amount previously charged against that employer's experience account.⁸⁵ For example where the ordinary assessment of the employer for the year is N1000,000 (one million naira only), and the claims cost charged to the experience account of the employer is above N1050,000 (one million fifty thousand naira) being the 105% of N1000,000 (one million naira) in a year, a super-assessment not above N1330,000 (one million three hundred and thirty thousand naira only) being 133% of

⁸² See section 48 *ibid*

⁸³ *Ibid*

⁸⁴ See section 42 *ibid*

⁸⁵ *Ibid*

N1000,000 (one million naira only) being the employees ordinary assessment. It seems that that the ceiling for the super-assessment is high and should be brought low to at most 110% of the employer's ordinary assessment, if not the Board will always use its discretion to explore the benchmark of 133% to its maximum.

The Board shall maintain experience accounts for each employer indicating cost of all claims chargeable in respect of the employer and also the assessment levied.⁸⁶ The Board may charge a particular claim to the experience account of an employer who is not the employer of the disabled employee where the employee's disability is partly or wholly due to his negligence.⁸⁷ Where the employer is in a separate class or subclass from the disabled employees' employer, the Board may charge the cost of the claim to the class or sub-class in which that employer is included in proportion to the degree of negligence attributed to that employer or that employer's employee.⁸⁸ Where a particular disability of an employee is caused by an employer who is not the employer of the employee or the employee of that employer, the disabled employees' employer has 24 months maximum period to report to the Board that the cost of the claim should be charged to the negligent employers.⁸⁹ If for example, driver of Dangote Sugar Company who is on company errand from Kano to Port Harcourt, negligently kills a lecturer who is an employee of Ahmadu Bello

⁸⁶ See section 4 *Ibid*

⁸⁷ *Ibid*

⁸⁸ *Ibid*

⁸⁹ *Ibid*

University, Zaria on his way home the claim cost in respect of the death of the Ahmadu Bello University lecturer, will be charged to the experience account of Dangote Sugar Company and not that of Ahmadu Bello University, Zaria. However, for this claim cost to be chargeable to the experience account of Dangote Sugar Company, Ahmadu Bello University, must notify the Board of the facts and circumstances of the death, within 24 months of its occurrence in order to enable the Board take proper decision in this regard. It therefore means that unless the employer of the affected employee notifies the Board within time the fact of the negligence of another employer, the claim cost in respect of the affected employee will be chargeable to the experience account of the employer of the affected employee. Notice may be served on an employer by the Board to provide a security in an amount and form deemed appropriate for the payment of assessment that are or might be levied against an employer. The Board will usually serve notice to the employer in this regard and the employer shall within 30 days after being served with a notice provide the security required by the Board. The Board where it considers that the security already provided is not enough, may require further security as it deems appropriate.⁹⁰ Where an assessment is not paid or security provided by any employer, the Board may assess a penalty of 10% of the unpaid assessment a value of the security.⁹¹ Aside the penalty of 10% of the

⁹⁰ See section 46 *ibid*

⁹¹ *Ibid*

unpaid, the Act criminalises refusal to pay security or any amount required.⁹²

The Board may require an employer who engages in any industry within the scope of the Act and has not been assessed in respect of it to provide security for the payment to the Fund, provided that the Board considers that the industry is to carry on business temporarily. This is if the sum is sufficient to pay the assessment for which the employer may be liable if the industry had been in existence when the last preceding assessment was made. It is an offence if any employer refuses to comply with the Board in providing security.⁹³ An employer that does not comply commits an offence and is liable on first conviction to a fine of N20,000 or imprisonment not exceeding one year. For second and subsequent convictions, the defaulting employer is liable to N100,000 fine or as term of imprisonment not exceeding one year or both imprisonment and fine.⁹⁴ Where such offence is committed by a body corporate, the director, manager, secretary or other officers of the body corporate, partner, or officers of the firm or any person purporting to act in such capacity shall be deemed to have committed the offence unless he proves that the offence took place without his knowledge, consent, connivance or neglect or he took reasonable step to prevent the commission of the offence.⁹⁵

⁹² See section 47 *ibid*

⁹³ See section 49 *ibid*

⁹⁴ See section 71 *ibid*

⁹⁵ *Ibid*

In a situation where an employer employs the services of independent contractors or subcontractors both the employers or organisation and independent contractors or subcontractors shall be jointly liable for assessment. The money due to an independent contractor from a principal or due to a subcontractor from independent contractor can be paid to the Board by the said principal or independent contractor and the payment shall be the payments representing their assessment and the payment shall be deemed to be payment under the contract that binds the principal and the contractor or contractor and subcontractor.⁹⁶ The contractor shall be indebted to the principal or subcontractor to the contract if the principal or contractor does not withhold any money to pay to the Board in respect of the assessment that the contractor or subcontractor are in the circumstance liable. In this regard the principal or contractor as the case may be, can sue for recovery of such debt. However, there may be a term in the contract, to the contrary.⁹⁷ It is safer and neater for the Board to assess the principal, independent contractors and sub-contractors independently and get such amount on assessment from them individually. This will avoid a situation of conflict between the principal and the independent contractor on the one hand and the independent contractor and the subcontractor on the other hand.

⁹⁶ See section 44 *ibid*

⁹⁷ *Ibid*

2.4 The Scope and Application of the Act

Employees' Compensation Act applies to both employees and employers within public and private sectors of the Federal Republic of Nigeria.⁹⁸

However, the Act does not apply to members of the Armed Forces of the Federal Republic of Nigeria except a person employed in a civilian capacity.⁹⁹ The reason for the exclusion of members of the Armed Forces of the Federal Republic of Nigeria is that, the Armed Forces Act¹⁰⁰ and the Armed Forces Pension Act¹⁰¹ have provisions for members of the Armed Forces who in actual discharge of their duties and without their own fault are killed, wounded, injured, or suffer illness or mental incapacity.¹⁰² Those employed in civilian capacities are not covered by the Armed Forces Provisions.¹⁰³ For example, a Professor in Nigerian Defence Academy is employed in civilian capacity and cannot be covered by the provisions of the Armed Forces but by the provisions of Employees' Compensation Act.

Employees' Compensation Act defines an employee as;

A person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local

⁹⁸ Section 2 *ibid*

⁹⁹ Section 3 *ibid*

¹⁰⁰ Cap A20, Laws of the Federation of Nigeria, 2004

¹⁰¹ Cap A23 *ibid*

¹⁰² See section 41 of the Armed Forces Act *Op.cit* and Sections 7, 8, 9 of Armed Forces Pensions Act *Ibid*. The second schedule to the Armed Forces Pensions Act *Ibid* categorizes injuries and disabilities into different classes for the purpose of benefits

¹⁰³ See section 291 of the Armed Forces Act *op cit* which defines "member of the Armed Forces" to mean "an officer, soldier, rating or aircraftman as the case may be"

Government and any of the government agencies and in the formal and informal sectors of the economy.¹⁰⁴

The following can be deduced from the foregoing:

- a- members of the Armed Forces of the Federal Republic of Nigeria are excluded from the provision of the Act. However, those employed in civilian capacities with the Armed Forces are covered by the Act.
- b- domestic servants who are members of the family of the employer are not covered by the Act
- c- members of the family of employers employed in other capacities as spelt out in the Act other than in domestic service, are covered by the Act
- d- an employment contract for the purpose of the Act , could either be in writing or made orally
- e- employment for the purpose of the Act could be on continuous, part-time, temporary, apprenticeship or casual basis
- f- the employees covered by the Act could be in the service of the Federal, State, Local Government and any of the government agencies
- g- The employees covered by the Act could be in the formal or informal sector of the economy.

¹⁰⁴ Section 73 of Employees' Compensation Act of *op cit*

h- The employees' compensation scheme covers both employees and employers within the public and private sectors of the Federal Republic of Nigeria.

As to who is a member of the family of the employer, the Act has failed to provide any definition. The meaning of the phrase "members of the family of employer" has to be provided by the Act so as to save the court the unnecessary headache of interpretation which may even defeat the course of justice. "Members of the family of employers" could mean the employer's spouse or spouses and their biological or adopted children. This is because the extended family system in Africa makes it difficult to say who is not a "member of the family." Where for example a person employs a distant relative as a domestic servant, probably for security reasons, the Act should cover such an employee.

The next issue is the definition of an 'employer', under the Act. The definition proffered is that, an employer: "Includes any individual, body corporate, Federal, State or Local Government or any government agencies who has entered into a contract of employment to employ any other person as an employee or as an apprentice."¹⁰⁵ This definition is in-exhaustive. This is because the word "includes" suggests that the definition is not restricted to only the classes of people mentioned. It is therefore good to have recourse to section 91 of Labour

¹⁰⁵ *Ibid*

Act¹⁰⁶ which defines employer as 'any person who has entered into a contract of employment to any other person and includes the agent, manager or factor of that first mentioned person or personal representatives of the deceased employer.' These two definitions clearly delineate who is an employer for the purpose of the Act. The reason why recourse is had to Labour Act is that the Employees' Compensation Act allows for it by using the word "includes" in its definition of an employee, otherwise one will be left with no option than to accept the definition as conclusive in scope. Therefore any employer not covered by either or both provisions, is not under any obligation under the Act. Also, the categories of employees expressly excluded by the Act cannot claim any benefit under the Act. Uvieghara had cause to make a statement in relation to this as thus:

... although statutory regulation also applies within the common law relation of employer and employee, it does not follow that a particular labour statute applies to every employee at common law. Each statute determines those employees to whom it may apply. An employee who does not fall within a given definition in a statute or who is expressly excluded by a statute cannot claim a benefit under the statute nor can be made liable under it ...¹⁰⁷

However, an employer could be under an obligation in respect to some employees only. For example, the Nigerian Army will be liable under the Act in respect of its employees who are in civilian capacities but not those in military capacity.¹⁰⁸ Except as expressly excluded by the Act, its provisions apply to all

¹⁰⁶ Cap L1 Laws of the Federation of Nigeria, 2004

¹⁰⁷ Uvieghara, E.E., Labour Law in Nigeria, Malthouse, Press Ltd, Ikeja, Lagos (2001) p. 11

¹⁰⁸ See section 3 *op cit*

employees and employers within the public and private sectors of the economy.¹⁰⁹

The objectives of the Act are to:

- 2 provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability arising out of or in the course of employment¹¹⁰
- 3 provide rehabilitation to employees with work related disabilities as provided in the Act¹¹¹
- 4 establish and maintain a solvent compensation fund, managed in the interest of employees and employer¹¹²
- 5 provide for fair and adequate assessments for employers ¹¹³
- 6 provide an appeal procedure that is simple, fair and accessible, with minimal delays;¹¹⁴ and
- 7 combine efforts and resources of relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards.¹¹⁵

The Act must be guided by the spirit and letters of the above provision otherwise it can be challenged, by any person whose interest is at stake.¹¹⁶

¹⁰⁹ Section 2 *ibid*

¹¹⁰ Section 1 *ibid*

¹¹¹ *Ibid*

¹¹² *Ibid*

¹¹³ *ibid*

¹¹⁴ *ibid*

¹¹⁵ *ibid*

The Act provides enormous powers for Nigeria Social Insurance Fund Management Board referred to in the Act as "the Board."¹¹⁷ These statutory powers constitute the fulcrum upon which the Board relies on to carry out the objectives of the Act.

In the first place, the Board has the power of implementing the provisions of the Act and the power to implement the Fund established under the Act.¹¹⁸ The Fund here means employees' compensation fund into which it shall be credited all moneys, funds or contributions by the employers for adequate compensation to employees or their dependants for any death, injury disability or disease arising out of or in the course of employment.¹¹⁹ The Board is thus empowered to manage the contributions called 'the Fund.'¹²⁰

Also, the Board is empowered by the Act to formulate policies for the administration of the Fund.¹²¹ The Board can make policies that will bring about good administration of the Fund. Here, trust exists for the benefit of employees.¹²²

¹¹⁶ See *A.G Ondo v. A.G Federation* (2002) 9 NWLR(Pt 772) 241 where the Supreme Court said '...the court should adopt such construction as will promote general legislative purpose...'

¹¹⁷ Section 2 (2) of Employees' Compensation Act *op cit*

¹¹⁸ *Ibid*

¹¹⁹ Section 56 *ibid*

¹²⁰ Section 57 *ibid*

¹²¹ Section 31(a) *ibid*

¹²² See Bone, S. et al Osborn's Concise Law Dictionary, Ninth Edition, Sweet and Maxwell, London (2001) p. 387 where trust is explained as being for the benefit of the beneficiaries

Where there is need to invest any money in the Fund, it is the Board that has the power to approve such amount needed for investment.¹²³ It therefore means that the Board can approve any amount for the purpose of investment.

The Board has powers to fix the terms and conditions of service including remuneration of employees of the Fund.¹²⁴ A careful look at the Act reveals that employees of 'the Fund' here are employees of the Board.¹²⁵ If this is the case, it is therefore alarming that the Act gives the Board, the latitude of fixing remuneration for its employees from the trust money of which it is the trustee. It will create a situation where the interest of the "trustee" will conflict with the interest of the beneficiary.

It is the responsibility of the Board to formulate policies and strategies for assessment of compensation. This also includes rehabilitation and welfare of injured employees or those employees who contract occupational diseases at the workplace or in the course of employment.¹²⁶ The Board can here, make expenditures that it considers necessary in getting an injured person back to work or try to lessen or remove any disability.¹²⁷

For the purposes of carrying out official duties under the Act, and under any regulation or any enactment, an officer of the Board has the power to enter in

¹²³ See section 31(b) *op. cit*

¹²⁴ Section 31(C) *ibid*

¹²⁵ See sections 56 and 57 *ibid* which empower the Board to Manage the Fund

¹²⁶ Section 31(d) *ibid*

¹²⁷ Section 16 *ibid*

any workplace at any time with or without warrant or notice.¹²⁸ It is the view of the researcher that the phrase “anytime” in such provision is likely to be abused. It means that the Board can enter in the midnight and require the security officer of any organisation to surrender the keys to where some sensitive documents of any organisation is, for the purpose of inspection? This is too great a power and much likely to be abused by the Board.

Also, the Board also has the power to require any employer not to disturb any records for a reasonable time for the purpose of carrying out any investigation or enquiry.¹²⁹ The phrase, ‘reasonable time’ is not defined by the Act. It is important that reasonable time be defined to avoid confusion and arbitrariness in the discharge of the duties of the Board. There is no idea about what ‘reasonable time’ means in the Act.¹³⁰

Another power of the Board in terms of enforcement is that it can require the production of any license, document, record or report from any employer or employee so as to inspect or examine same.¹³¹ The law requires that any inspection, examination to be carried out by the Board must be assisted by a police officer or other persons having special expert or professional knowledge of the matter.¹³² The report of such inspection shall be the property of the

¹²⁸ Section 54 (a) *ibid*

¹²⁹ Section 54(f) *ibid*

¹³⁰ See for example, section 35 (5) of the Constitution of the Federal Republic of Nigeria 1999 as (amended) which defines what reasonable time means, when it has to do with detention of any suspect and charging same to a court of competent jurisdiction

¹³¹ Section 54 (b) *op cit*

¹³² Section 54 (d) *ibid*

Board and the Board must keep it in confidence.¹³³ It is the view of the researcher that any report emanating from any inspection of the Board should be made known to the affected employee or employer. To simply say that “It shall be the property of the Board and shall be held in confidence” suggests that even the affected employer may not be informed of the report of any enquiry or inspection that concerns the said employer. This may not encourage transparency. It will be better if report concerning an individual is communicated to the affected person so as to afford the person the opportunity of challenging such report in time when pieces of evidence are available and not lost.

For the purpose of making copies or extract of any document record or report, the Board has the power to remove any of such records, provided it is promptly returned.¹³⁴ By this provision, the employers or employees do not have any information to hide as regards records needed by the Board in implementing the provisions of the Act. Enquiries can also be made by the Board, of any person who is or was in a workplace rather separate or in the presence of any other person who may be relevant to the inspection, examination or enquiry.¹³⁵

A good appreciation of the nature and scope of employees’ compensation discussed this chapter is very important .This is because, it is the threshold upon which a good understanding of the remaining chapters rests.

¹³³ Section 54(g) *ibid*

¹³⁴ Section 54 (C) *ibid*

¹³⁵ Section 54 (e) *ibid*

CHAPTER THREE

Analysis of the Legal Framework for Employees' Compensation in Nigeria

3.1 Introduction

This chapter discusses the legal framework for employees' compensation in Nigeria. Although there are different sources of law in Nigeria, employees' compensation in Nigeria is governed by only statutes and case law. As it has already been pointed out in the preceding chapters, Employees' Compensation Act¹³⁶ is the principal Act governing compensation for work-related injuries and disabilities for all employees working in civil capacities in Nigeria. For an employee to be entitled to compensation under the Act, the employee's claim must come under any of the grounds recognised by the Act. Also, there are different scales of compensation under the Act, depending on the nature or degree of the ground of compensation. In certain circumstances, the Act offers rehabilitation and other related services to injured employees or dependants of deceased employees. This chapter also considers the various steps and stages in the claim for compensation.

3.2 Grounds for Compensation

There are basically five grounds for compensation under the Act. These grounds are:

¹³⁶ No. 13, 2010

- mental stress¹³⁷
- occupational diseases¹³⁸
- injury¹³⁹
- hearing impairment¹⁴⁰ and
- death.¹⁴¹

These grounds are considered as follows.

3.2.1 Mental Stress

Work-related mental stress is very common amongst employees. For example, it was reported in February 12, 2012 that many lecturers of Obafemi Awolowo University were suffering from mental stress because the school authority denied them leave.¹⁴² Some of the lecturers were reported dead because of stress.¹⁴³

An employee is entitled to compensation for mental stress, where the mental stress is not as a result of an injury for which such employee is otherwise entitled to compensation.¹⁴⁴ The definition of the phrase "mental stress" is not provided in the Act. It is however the view of the writer that mental stress here, will have the meaning given to it in the field of medicine. In medical terms, mental stress is described as a physical or

¹³⁷ Section 8 of Employees Compensation Act, *op cit*

¹³⁸ Section 9 *ibid*

¹³⁹ Section 7 *ibid*

¹⁴⁰ Section 10 *ibid*

¹⁴¹ Section 17 *ibid*

¹⁴² Dike, G. *Crisis Brews at O.A.U as Lecturers Battle Varsity Management*, Column 2, Daily Sun, Tuesday, February 12, 2012 p.7

¹⁴³ *Ibid*

¹⁴⁴ Section 8(1) of Employees' Compensation Act *op cit*

psychological stimulus that can produce mental tension or physiological reactions that may lead to illness.¹⁴⁵ When one is under stress, his adrenal gland releases *corticosteroids* which are converted to *cortisol* leading to immune suppression in the body.¹⁴⁶ This stimulus can be triggered by additional responsibilities in one's place of work.¹⁴⁷ Mental stress can also be caused when facing large changes in one's working environment such as a big move, travel or retirement.¹⁴⁸ Other causes of mental stress are health condition of an employee, the death of a loved one, and bad relationship with others.¹⁴⁹ When the mental stress is caused as a result of the employee to change the work, the working conditions of a work organisation in such a way as to unfairly exceed the work ability and capacity of the employee, such situation shall be liable to compensation to the degree as may be determined under any regulation by the Board.¹⁵⁰

Whatever may be the reason for the mental stress, the following requirements must be fulfilled, for it to be compensable:

- i. Mental stress must either be an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of employment or that such an employee is diagnosed by an accredited medical practitioner as suffering from mental stress or physical condition amounting to mental stress arising out of the nature of

^{145??} <http://www.fatfreekitchen.com/stress-> April 2, 2012 -7:20pm

¹⁴⁶ *Ibid*

¹⁴⁷ *Ibid*

¹⁴⁸ <http://www.livestrong.com/article/155766-five-commoncausesof-sress-> April 2, 2012 -7:35pm

¹⁴⁹ *Ibid*

¹⁵⁰ Section 8(2) of Employees' Compensation Act *op cit*

work or the occurrence of any event in the course of the employee's employment.¹⁵¹

- ii. The mental stress should not result from any injury for which the employee is otherwise entitled to compensation.¹⁵² It means, the employee cannot be compensated for mental stress where the mental stress was caused by an injury for which the employee is entitled to compensation.¹⁵³ For the purpose of ascertaining whether or not an employee has met the conditions above, and entitled to compensation, the Board may appoint a Medical Board of Inquiry consisting of relevant specialists, to review the situation.¹⁵⁴

An accredited medical practitioner or a specialist accredited by the Board for the purpose of the Act is the one qualified for diagnosis.¹⁵⁵

The requirement of the law to the effect that mental stress for it to be compensated, should not result from any injury for which the employee is entitled to compensation, is alarming. There is an additional harm suffered if any compensable injury leads to mental stress and in the circumstance, justice will only seem to be done if there is additional compensation. Secondly, it will be very difficult to in all cases know exactly, the cause of mental stress, especially when there are many stress inducing factors from the history of the patient. For instance, where an unfairly overworked

¹⁵¹ Section 8(1) (a)(b) *ibid*

¹⁵² *Ibid*

¹⁵³ Section 8(3) *ibid*

¹⁵⁴ Section 8(1)(a)(b) *ibid*

¹⁵⁵ Section 73 *ibid*

employee suddenly sustains a compensable physical injury and shortly diagnosed with mental stress, it will be very difficult to know whether the mental stress set in as result of the unfair job responsibility or as a result of the injury. While the issue of diagnosing mental stress may entirely be a laboratory work, its cause may simply be an inference by the medical practitioner drawn from the history of the patient. If the medical practitioner is confronted with two stress-inducing factors, he may simply resort to a guess, as to which of the factors actually led to the stress in issue or attribute it to all the stated factors in order to save him the difficulty of discovering the exact cause. To avoid all these uncertainties, it is better to treat mental stress separately, that is, to be compensated independent of any compensable injury that might have induced the said stress.

3.2.2 Injury

Any employee, whether or not in a workplace who suffers any disabling injury, arising out of or in the course of his employment shall be entitled to compensation.¹⁵⁶ The Act does not have an exhaustive definition of injury. It provides that "injury includes bodily injury or disease resulting from an accident or exposure to critical agents and conditions in a workplace."¹⁵⁷ An important thing to know about the provision of section 7 of the Act is that, the injury meant is personal hence the phrase "an employee whether

¹⁵⁶ Section 7(1) *ibid*
¹⁵⁷ Section 73 *ibid*

or not in a workplace who suffers any disabling injury ...”¹⁵⁸ Damage to personal property is not compensated. (Another implication is that a nursing mother cannot claim compensation under the Act for injury to her baby, where the injury arises out of or in the course of her employment. It is the view of the researcher that the scheme should cover babies within nursing age whose mothers will obviously need to take them to places of work. To further strengthen this position, section 54(d) of Labour Act¹⁵⁹ allows nursing mothers to carry their babies to their places of work to the extent of allowing the nursing mothers half an hour twice a day during their working hour, to attend to their babies. Risk may flow from any place of work affecting any baby and it is necessary that the Act takes care of this kind of situation.

For any injury to be compensated, it must arise out of or in the course of employment.¹⁶⁰ This is one significant departure from the provision of workmen’s compensation Act¹⁶¹ which used the phrase “out of and in the course of employment,” giving it a conjunctive meaning by leaving the employee with the task of fulfilling both conditions, to be entitled to compensation.¹⁶² Now, the phrase “out of or in the course of employment” as used in the Act carries a disjunctive meaning. This is because of the

¹⁵⁸ *Ibid*

¹⁵⁹ Cap L1, Laws of the Federation of Nigeria, 2004

¹⁶⁰ Section 7(1) of Employees’ Compensation Act *op cit*

¹⁶¹ Cap W6, Laws of the Federation of Nigeria, 2004

¹⁶² See *Fitzgerald v. WG Clark & Son* (1908) 2KB 796,799 where Buckley, L.J. said the words “out of and in the course of employment” are used conjunctively and not disjunctively and the Workman must satisfy both the one and the other.

word "or" as opposed to "and." The implication of the difference is that it is easier now for an employee to establish a case of compensation because, all he has to do is to prove that it either occurred "out of employment or in the course of employment." The phrase "out of employment" means there must be some causal relations between the accident and the employment other than the mere coincidence of its accident with the currency of the employment.¹⁶³ Here, there is required to be shown something in the nature of causal relation between the accident and an order, express or implied, given by the employer.¹⁶⁴ It is well established that employment is not to be confined to the actual work for which an employee is employed. Thus, the expression "arising out of employment" is not confined to the mere "nature of the employment."¹⁶⁵ The expression applies to the employment as such to its nature, its conditions, its obligations and to its incidents.¹⁶⁶ It obviously means arising out of work which the man is employed to do and what is incidental to it.¹⁶⁷ An attack on an assistant teacher by school boys was held to be an accident which arose out of his employment.¹⁶⁸ Also, a cashier was travelling in a train with a large sum of money for his employer's

¹⁶³ See *UAC v. Orekyan* (1961) L.L.R 144

¹⁶⁴ See *Davidson v. Cov M. Robb* (1918) AC 304,317 where Lord Haldane said there has to be something in the nature of causal relation between the accident and the employment

¹⁶⁵ See *Thom v. Sinclair* (1917) AC 127

¹⁶⁶ *Ibid*

¹⁶⁷ *Ibid*

¹⁶⁸ *Trim Joint District School Board of Management v. Kelly* (1914) AC 667

employees. He was attacked by armed robbers and killed. The court held that the incident arose out of the cashier's employment.¹⁶⁹

On the other hand, the phrase "in the course of employment" means that an injured employee is engaged to do certain things at certain times and in certain place.¹⁷⁰ If injury befalls him, the first inquiry is; was he doing any of the things which he might reasonable do while so employed?¹⁷¹ The next question is, did the accident occur at a place where he would reasonably be, while in the employment?¹⁷² Thus, an injury befalls a man "in the course of his employment" if it occurs while he is doing what a man so employed may reasonably do within a time during which he is employed and at a place where he may reasonable be during that time to do a thing.¹⁷³

Also, where an employee is already in his employer's premises but he has not reached his actual place of work, he may yet be held to be in the course of his employment.¹⁷⁴ Similarly, employee who gets to the employer's premises earlier than the time of commencement of work may be in the course of his employment.¹⁷⁵ An employee arrived his place of work twenty minutes earlier. When he arrived work early in the morning, he fell into an excavation and suffered an injury as he was going to a

¹⁶⁹ *Nisbet v. Bayne & Burne* (1910) 2KB 689

¹⁷⁰ *Moor v. Manchester Liners Ltd* (1910) AC 498

¹⁷¹ *Ibid*

¹⁷² *Ibid*

¹⁷³ *Ibid*

¹⁷⁴ *Sharp v. Johnson & Co. Ltd* (1905) 2KB 139

¹⁷⁵ *Ibid*

refreshment place provided by the employer for that purpose. The court held that the accident arose in the course of employment.¹⁷⁶

Another important area is that, section 7(2) of the Act, provides thus;

- (2) An employee is entitled to payment of compensation with respect to any accident sustained while on the way between the place of work and (a) the employees' principal or secondary residence (b) the place where the employee usually takes meal (c) the place where he usually receives remuneration, provided that the employer has prior notification of such place.

The phrase "principal residence" is not defined by the Act. Also, there is no definition proffered by the Act for "secondary residence." But principal, residence under the Act may mean the house where the employee, spouse and children stay most times, while primary residence under the Act may mean the house where the employee, spouse, children stay at times especially when they are away from their primary place of residence. Another issue is whether a hotel or a guesthouse would constitute secondary residence. It seems in some instances a hotel or guesthouse, or any temporary place of stay will constitute a secondary residence. This is because, section 11 of the Act says compensation can be paid where the employee is working outside the normal workplace provided the nature of the employment warrants so, or the nature of the business of the employer extends beyond the usual workplace or the employee has the

¹⁷⁶ *Ibid*

authority or permission of the employer to work outside normal place of work. It therefore follows that where the employee has a temporary accommodation either in a hotel, guesthouse etc. for the purpose of the said work, it will constitute secondary residence if he has accident while on the way between the place of work and the said hotel room, guesthouse etc. Also, where for example an employee in preparation to get a new accommodation, parks into a hotel room or guesthouse pending when he gets a good house to rent, the hotel room or guesthouse should constitute his 'secondary place of residence' for the purposes of section 7(2) of the compensation.

On the issue of "where the employee usually takes meals,"¹⁷⁷ the law should have been "any place the employee decides to go for his meal, provided that, it is within the time allowed for meal" so as not to create a kind of compulsion on one particular place to eat. If not, what is the fate of an employee who upon getting to his usual place of meal does not get the meal of his choice? Will he not be covered by the provision if such employee goes to a place of meal which is not usual to him in search of the diet of his choice? Also, one can get to a usual place of meal only to know that the restaurant is shut down. On the issue of where the employee usually receives remuneration,¹⁷⁸ the idea of electronic transaction waters down the provision. This is because one can use

¹⁷⁷ Section 7(2) (b) of Employees' Compensation Act *op cit*

¹⁷⁸ Section 72 (c) *ibid*

Automated Teller Machines (ATM) belonging to any bank or any branch to withdraw money which is one's remuneration. It is therefore practically archaic to insist on where the employee usually receives remuneration.

Secondly, it is the view of the researcher that the second arm of the section which says "provided the employer has prior notification of such place¹⁷⁹ will mean that the employee in any case should tell the employer at any time where he is going to withdraw any amount being the employee's remuneration, otherwise such employee cannot be heard to complain that he had accident between the place of work and where he went to receive his remuneration. It may also mean that the employer should have prior notice of the fact that the employee goes to take meal. Also, the employees should also notify their employers about their primary and secondary places of residence if they wish to be covered by this section of the Act.

Who is an employer for the purposes of such notification? Employer under the Act includes the agent, manager, factor of the employer or personal representative of a deceased employer.¹⁸⁰ It is okay if for example, in a university system the Head of Department has prior notification of such fact. This is because, he is an agent of the employer and so he is an employer in the circumstance. But then, this provision will work hardship if the qualification of prior notice is not removed. One wonders if a lecturer

¹⁷⁹ *Ibid*

¹⁸⁰ See section 91 of Labour Act, *op cit* which defines an employer to include the agent, manager or factor of the employer or personal representatives of the deceased employer

must notify the Head of Department if such lecturer wishes to withdraw money from any bank or any ATM which money is part of his remuneration, before he can be entitled to compensation for accident that occurs, between his place of work and the place of receiving such remuneration

The Act provides that where an injury disables an employee from earning full remuneration at the workplace, compensation shall be payable pursuant to the Act from the first working day following the day of the injury, except that only a health care benefit shall be payable in respect of the day of the injury.¹⁸¹This provision may be in respect of daily paid workers, since the amount of compensation in other cases are calculated based on the amount of monthly remuneration.

Also, section 7(4) of the Act says where the injury or disease is caused by an accident and the accident arose out of employment, unless the contrary is shown, it shall be presumed that the injury occurred in the course of employment. This presumption is not necessary because it gives the wrong impression that the two conditions must be met before one earns compensation. Section 7(1) which enumerates the objectives of the Act uses the phrase ... "injury arising out of or in the course of employment." The two conditions are interpreted disjunctively and not conjunctively. The section does not use the word "and" but "or." Therefore, where the injury

¹⁸¹ Section 7(3) *ibid*

arises out of employment, it is compensated for and where it occurs in the course of employment, it is also compensated for.

Where an employee suffers any existing disability and the injury or disease is superimposed on it, the compensation is calculated based on the amount of the difference between the two disabilities.¹⁸² This is probably because, the Board can only compensate for disabilities which indeed happened out of or in the course of employment.

3.2.3 Hearing Impairment

Section 10(1) of the Act provides that where an employee suffers from hearing impairment of non-traumatic origin, but arising out of or in the course of employment, the employee shall be entitled to compensation. Oayre hearing impairment has to be of non-traumatic origin because where it is of traumatic origin, it will belong to the class of mental stress .As for the meaning of hearing impairment ,there is no definition for 'hearing impairment' in the Act. Medically, hearing impairment is a generic term including both deaf and hard of hearing which refers to persons with any type of degree of hearing loss that causes difficulty working in a traditional way.¹⁸³ The term "deaf" is used to describe people with profound hearing loss such that they cannot benefit from amplification, while hard of hearing is used for those with mild to severe hearing loss but who can benefit from amplification.¹⁸⁴

¹⁸² Section 7(5) *ibid*

¹⁸³ <http://www.apr.gc.ca/wat/wb14200e.asp?did=5>-April 3,2012 7:51pm

¹⁸⁴ *Ibid*

Where the hearing impairment amounts to deafness but with no loss of earnings resulting from such impairment, compensation is calculated as may be provided by regulations made by the Board under the Act in consultation with the National Council for Occupational Safety and Health in respect of the ranges of hearing impairment, the percentage of disability, the methods or frequencies to be used to measure hearing impairment and any other matter relating to hearing impairment.¹⁸⁵ It is better for compensation here to be prescribed under the Act than under any regulations. Also, the phrase "as may be provided by regulations made by the Board" suggests that the Board is not under any obligation to provide such regulation. If compensation on the scale for a total or partial disability as established under the Act is payable in a case where loss or reduction of earning results from hearing impairment,¹⁸⁶ then it may sound evasive to say where it amounts to deafness and there is no loss of earning resulting, from the hearing impairment, compensation shall be calculated "as may be provided by regulation made by the Board," thereby making it discretionary. There is no deafness that does not affect one's earning. It is only hard of hearing that may not suffer earning loss. This is because, hard of hearing can benefit from amplification.

In a situation where hearing impairment is superimposed on an already existing hearing impairment, compensation shall be the difference between

¹⁸⁵ Section 10(2) of Employees' Compensation Act *op cit*

¹⁸⁶ Section 10(3) *ibid*

the employee's impairment before and impairment after the occurrence of the last exposure.¹⁸⁷ This is done by calculating the proportion of the impairment following the hearing impairment that may reasonable be attributed to the exposure in two or more classes or subclasses of industry in a workplace.¹⁸⁸ For example, Mr Dada a bread baker was employed in company "A" for five years and later resigned his appointment with company "A" for a more lucrative offer in company "B" .As a result of the sound of the baking machines in company "A," Mr Dada, suffered hearing impairment but not to the degree of deafness. In company "B," he was the chief baker and was actively involved in the baking process. The sound of the baking machines in company "B" worsened his previous condition, such that he became deaf. When it comes to compensation, the Board will calculate compensation based on the difference between the impairment in company "A" and the one in company "B." Where an employee suffers from hearing impairment caused by exposure to two or more classes or subclasses of industry in a workplace, the Board may apportion the cost of compensation among the funds provided by those classes or subclasses on the basis of the duration or severity of the exposure in each.¹⁸⁹ This is a good provision except that the issue of discretion given to the Board as to whether or not to apportion the cost among the funds provided by these classes or subclasses of industry is likely to be abused. The law should be that once, it is ascertained that the hearing impairment is caused by

¹⁸⁷ Section 10(5) *ibid*

¹⁸⁸ *Ibid*

¹⁸⁹ Section 10(6) *Ibid*

exposure to causes of hearing impairment in two or more classes or subclasses of industry the Board shall apportion the cost of the compensation among the funds provided by those classes or subclasses of industry on the basis of duration or severity of the exposure.

3.2.4 Occupational Disease

Where an employee suffers from occupational disease and is disabled from earning full remuneration at workplace or the disease is shown to be due to the nature of any employment in which the employee was employed, whether in one or more employments, or an employee suffers from any of the occupational diseases listed in the First Schedule to the Act, compensation and health care benefits shall be paid.¹⁹⁰ The schedule to the Act lists so many occupational diseases that are compensable. For the purpose of compensation, the disease need not fall under the list provided in the First Schedule to the Act, . It is enough if it is shown that the disease is due to the nature of any employment in which the employee was employed.¹⁹¹ What then is an occupational disease? The Act defines occupational disease to mean a disease contracted, arising out of or in the course of exposure to risk factors at work.¹⁹² Where one suffers disability from any disease or any disease complicated by another disease such an employee shall be entitled to compensation for total or partial disability or

¹⁹⁰ Section 9(1)(a)(c)(d) *ibid*

¹⁹¹ *Ibid*

¹⁹² Section 73 *ibid*

as shall be determined by the Act, or regulation made by the Board.¹⁹³The date of disability here is treated as the date of the occurrence of the disability.¹⁹⁴

The Board may appoint Medical Board of Inquiry consisting of relevant specialists to ascertain whether the employee who claims compensation for occupational disease actually suffers from one and to know its cause.¹⁹⁵

Also, section 9(5) of the Act provides that where an employee has been exposed to the agent causing the disease in two or more classes or subclasses of the industry in the workplace, the Board may apportion the cost of the compensation among the funds provided by those classes or subclasses on the basis of duration and severity of the exposure of each. The word "may" used in the circumstances suggests that it is not obligatory on the Board and this is appropriate because it will not make any difference in some cases if there are exposures in different classes or subclasses of industry. For instance, where an employee contractw(xepatitis "B" in industry "A" and without treatment, contracted same in industry "C", the issue of apportionment of cost will not arise. The issue of apportionment of cost will only arise where the second exposure is capable of complication or indeed complicated the situation of the employee.

¹⁹³ Section 9(3) (7) *ibid*

¹⁹⁴ Section 9(2) *ibid*

¹⁹⁵ Section 9(8) *ibid*

3.2.5 Death

Where death results from the injury of an employee, compensation shall be paid to the dependants.¹⁹⁶ Injury includes disease resulting from an accident or exposure to critical agents and conditions in a workplace.¹⁹⁷ What then is death? There is no definition proffered in the Act, for the term "death." Medically, death is the cessation of all vital functions of the body, including the heartbeat, brain activity (including brain stem) and breathing.¹⁹⁸ Death comes in many forms.¹⁹⁹ Whether it be expected after a diagnosis of a terminal illness or an unexpected accident or medical condition.²⁰⁰ When a terminal illness is diagnosed, a person, family, friends and physicians are able to prepare for the impending death.²⁰¹

The Act does not have an exhaustive definition of the word "dependant." It merely says dependants include those members of the family including adoptive and foster family of the deceased or disabled employee wholly dependent on his earnings at the time of his death or would but for the disability due to the occupational accident or disease, have been so dependent.²⁰² The classes of dependants are not closed hence the word "include." The deciding factor here is whether the persons are wholly

¹⁹⁶ Section 17(1) *ibid*

¹⁹⁷ Sections 73 and 9(1)(b) *ibid*

¹⁹⁸ <http://medical-dictionary.thefreedictionary.com/death-April7,2012-6:36pm>

¹⁹⁹ *Ibid*

²⁰⁰ *Ibid*

²⁰¹ *Ibid*

²⁰² See section 73 of Employees' Compensation Act *op cit*

dependent on the deceased employee. There must be evidence of actual support and reliance.²⁰³ Whether a person is dependent on the earnings of a deceased employee, is a question of fact in each case.²⁰⁴ A husband and wife lived apart for over 20 years during which period, the husband did not contribute a kobo of his earnings to the support or maintenance on |the wife. It was held that the wife was not a dependant. To establish partial dependency is not enough to show pecuniary loss as a result of the death of the employee?(yt must be shown that there was reliance on his contribution in order for the person to provide himself with the ordinary necessities of life suitable to his class and position. These necessities include, foods, clothing and shelter and the necessities concomitant thereto.²⁰⁵ In *Simmons v. White Brothers* the English Court of Appeal held that to be partially dependent, it is not sufficient that the person merely derives benefit from the earnings of the deceased but that "he must be to some extent dependent on him for the ordinary necessities of life, having regard to his class and position."²⁰⁶ However, the Board shall still make monthly payment of an amount to be determined by the Board to the spouse, children, or parents of the deceased where they do not depend on the remuneration at the time of his death, but this is only if they show that

²⁰³ *New Monchhton Collieries Ltd v. Keeling* 1911

²⁰⁴ *Ibid*

²⁰⁵ *Welsh Navigation Steam and Co Ltd v. Evans* (1927) AC 834,842-843

²⁰⁶ *Ibid*

they had reasonable expectation of pecuniary benefit from the continuation of the life of the employee.²⁰⁷

Where death results from any disability the dependants will not be entitled to compensation unless the deceased employee has been in the employment in a workplace associated with exposure to an agent or agents leading to that condition. In addition, the employee must be free from such disease before being exposed to the agent causing the disease he contracted in his place of work. Where a deceased employee was at the date of death, under the age of 70 years and suffering from an occupational disease of a type that impairs the capacity of the vital organs of non-traumatic origin, it shall be presumed that the death resulted from the occupational disease. This presumption is in favour of the dependants of the employee as they will not need to prove that the deceased employee died of occupational disease, provided all the requirements are met.

3.3 Scale of Compensation

The Act uses some scales for measuring the amount of compensation to employees or dependants of employees with compensable cases. These scales are,

- Scale of Compensation for Temporary Partial Disability²⁰⁸
- Scale of Compensation for Temporary Total Disability²⁰⁹

²⁰⁷ See section 17(1)(f)(ii) of Employees' Compensation Act *op cit*

²⁰⁸ Section 25 *ibid*

- Scale of Compensation for Permanent Partial Disability or Disfigurement²¹⁰
- Scale of Compensation for Permanent Total Disability²¹¹
- Scale of Compensation in Fatal Cases²¹²
- Scale of Compensation Relating to Enemy War-like Actions²¹³

3.3.1 Scale of Compensation for Temporary Partial Disability

Section 25 of the Act provides;

1. Subject to section 28(4) of this Act, if a temporary partial disability results from an employee's injury, the Board may pay the employee of a lump sum in accordance with the Second Schedule to this Act or regulation made under section 22(3) of this Act.
2. The payment referred to in sub-section (1) of this section shall not be in respect of any disability that lasts for a period of more than 12 months.

The Act fails to define what "temporary partial disability" means. It however provides a definition for "permanent partial disability" and the definition of the latter gives an idea of what the former means, under the Act. It defines "permanent partial disability" as

the physical function or conditions, mental capacity or physiological health arising from and in the course of employment that cause a deviation for more than 12 months from the condition typical for the respective age

²⁰⁹ Section 24 *ibid*

²¹⁰ Section 22 *ibid*

²¹¹ Section 21 *ibid*

²¹² Section 17 *ibid*

²¹³ Section 18 *ibid*

which restrict participation in the life of society and includes disfigurement.²¹⁴

It suffices to say that "temporary partial disability" means a disability that does not last for a period of more than 12 months. This is because, while section 25(2) of the Act provides that payment in respect of temporary partial disability shall not be in respect of disability that lasts for more than 12 months, section 73 of the Act is to the effect that 'permanent partial disability' is a disability that lasts for more than 12 months.

The use of the phrase "the Board may pay the employee..."²¹⁵ in the Act suggests discretion on the part of the Board to pay or not to pay. The Board may refuse to pay compensation for any reason. Once there is a case of temporary partial disability which is compensable under the Act, the Board should be made compulsory under the Act to pay compensation for such case.

Another important point is that the Act merely says lump sum is payable, in accordance with the Second Schedule to the Act or regulations made under section 22(3) of the Act,²¹⁶ without giving any idea as to how much money will be paid. It is the researcher's view that the monthly amount the disabled employee receives as remuneration and the medical expenses incurred should be the reference points in determining how much is given to such employee as a lump sum for such temporary partial disability. The

²¹⁴ Section 73 *ibid*

²¹⁵ Section 25(1) *ibids*

²¹⁶ *Ibid*

Second Schedule does not give any idea of how much will be paid as compensation but only states some forms of disability and their corresponding degrees of severity. The Act also gives the Board, the discretion to revise or amend the Second Schedule to the Act through regulations published in the Federal Gazette.²¹⁷

Where the employee is less than 55 years at the date of the injury, compensation may be paid until he reaches 55 years of age or the Board is satisfied that the employee will retire after reaching 55 years of age or will be determined by the Board.²¹⁸ Where however, the employee is 55 years of age or older on the date of the injury, compensation may be paid until 2 years after the date of injury or the date the employee would retire as may be determined by the Act.²¹⁹ It is the view of the writer that the period for payment of compensation should not be at the discretion of the Board. The Act uses "may be paid" making it discretionary on the part of the Board to keep to it. It is neater if the word 'shall,' replaces "may" so as to make it an obligation on the Board to keep to the statutory period.

An employee may apply to the Board for an amount not less than 1 percent and not greater than 7.5 percent of the compensation to be remitted to the retirement savings account pursuant to Pension Reform Act.²²⁰ This is at the discretion of the employee.

²¹⁷ Section 231(b) *ibid*

²¹⁸ Section 23(1)(a) *ibid*

²¹⁹ Section 23 (1)(b) *ibid*

²²⁰ Sections 28(4) and 25(1) *ibid*

3.3.2 Scale of Compensation for Temporary Total Disability

Temporary total disability and temporary partial disability are of the same family. This is because they have similar provisions for compensation.²²¹

Temporary total disability is principally governed by section 24 of the Act which provides that;

- 8 Subject to section 28(4) of this Act, if a temporary total disability results from an employee's injury, the Board may pay the employee compensation of a lump sum in accordance with the Second Schedule to this Act or any regulation made pursuant to section 22(3) of this Act.
- 9 The payment referred to in sub-section 1 of this section shall not be in respect of any disability that last for a period of more than 12 months.

The difference between temporary total disability and temporary partial disability is that, in temporary partial disability, the disability is not complete, while in temporary total disability, the disability is complete.²²²

For example, an eye that is completely closed for a period of 12 months or less than, will amount to temporary total disability while an eye that is not completely closed i.e. one can still see through it amounts to a temporary partial disability. In both cases the disability should not exceed 12 months, for it to amount to either temporary partial disability or temporary total disability.²²³ A lump sum is payable in the two cases and at the discretion of the Board.²²⁴ It seems that the amount of compensation in respect of temporary total disability will be more than compensation in respect of

²²¹ Sections 25 and 24 *ibid*

²²² Summers, D. Longman Dictionary of Contemporary English, Fourth Edition, Pearson Education Limited, England (2003) pp. 1754, 1199

²²³ Sections 25 and 24 of Employees' Compensation Act *op cit*

²²⁴ Section 25 and 24 *ibid*

temporary partial disability, since the degree of inconvenience is higher in the former. It seems also, that where the disability affects earning capacity the loss of earning capacity will be used in determining the amount of compensation to be paid.²²⁵

The Act has failed to prescribe with some precision, the amount of compensation payable. It merely says the compensation will be payable in accordance with the Second Schedule while the Second Schedule only states some disability and their corresponding ratings in terms of degree of disability, without attaching any monetary percentages to the disabilities either with reference to the amount of remuneration received by the employee or medical expenses incurred.²²⁶ The Act also empowers the Board to revise or amend the Second Schedule through any regulations published in the Federal Gazette.²²⁷

Where the employee is less than 55 years of age on the date of the injury, compensation for temporary total disability may be paid until he reaches 55 years of age or any date the employee will retire and this will be determined by the Board.²²⁸ Where however, the employee is 55 years of age or more on the date of the injury, compensation for temporary total disability may be paid by the Board until 2 years after the year of injury or

²²⁵ See *Thompson v. Armstrong & Royse Proprietary Ltd* (1950) 81 CLR 585 where one of the Judges said *inter alia* "... the test is whether he was physically able to earn wages. It is not whether he received wages."

²²⁶ See section 24(1) of Employees' Compensation Act *op cit* and also the Second Schedule to the Act

²²⁷ Section 22(3) *ibid*

²²⁸ Section 23 (1)(a) *ibid*

the date the employee will retire.²²⁹ The phrase “may be paid” used in the Act gives the impression that the Board is at liberty to deny the compensation based on this statutory provision. The implication of the word used in the provision gives lee-way for denying compensation to the affected employee. It is appropriate that the word “shall,” should replace “may,” as used in the provision.

An employee may apply to the Board for an amount not less than 1 percent and not greater than 7.5 percent of the compensation to be remitted to his retirement saving account pursuant to Pension Reform Act.²³⁰ This is at the discretion of the affected employee.

3.3.3 Scale of Compensation for Permanent Partial Disability or Disfigurement

If permanent partial disability results from the injury of the employee, the Board shall pay compensation.²³¹ The Act defines permanent partial disability as thus:

Permanent partial disability means the physical functions or conditions, mental capacity or physiological health arising from and in the course of employment that cause a deviation for more than 12 months from the conditions typical for the respective age which restricts participation in the life of society and includes disfigurement.²³²

²²⁹ Section 23 (1)(b) *ibid*

²³⁰ See Section 28(4) and 25(1) *ibid*

²³¹ Section 22 *ibid*

²³² Section 73 *ibid*

It is safe to say that in order to amount to permanent partial disability, such deviation must be for more than 12 months. A careful look at the definition above reveals a contradictory phrase which is not in accordance with the objectives of the Act. The phrase "arising from and in the course of employment" deviates from its other phrase "out of or in the course of employment" contained in the objectives of the Act, and the long title to the Act²³³ It is however, the view of the researcher that the Board and the courts will not give any interpretation that runs counter to the object and purpose of the Act.²³⁴

Where a permanent partial disability results from the injury to the employee, the Board shall estimate the earning capacity from the nature and degree of the injury and pay the employee compensation that is a periodic payment equal to 90 percent of an estimate of the loss of remuneration resulting from the impairment: If a permanent partial disability results from the injury of the employee, the Board shall estimate the earning capacity from the nature and degree of the injury and pay the employee compensation that is a periodic payment equal to 90 percent of an estimate of the loss of remuneration resulting from the impairment.²³⁵

For example, an employee who before the disability was earning N100,000 could be estimated to have lost 60 percent (N60,000) of his remuneration

²³³ See sections 1(a), 7(1), 8(1), 10(1), *ibid*. See also the Long Title to the Act which reads "An Act to repeal the *Workmen's Compensation Act* Cap W6LFN, 2004 and to make provisions for compensation for any death, injury disease or disability arising out of or in the course of employment and for related matters."

²³⁴ See *A.G Ondo v. A.G. Federation* (2002) 9NWLR (Pt 772) 241 where the Supreme Court said "... the court should adopt such a construction as will promote the general legislative purpose ..."

²³⁵ Section 22(1)(a)(b) of Employees' Compensation Act *op cit*

resulting from the injury. The amount to be given periodically will therefore be 90 percent of the 60 percent i.e. (N60,000) which is estimated to be his lost remuneration resulting from the impairment, and this will be calculated as thus:

$$60,000 \times 90 = 5,400,000$$

$$\frac{5,400,000}{100} = 54,000$$

Therefore, the periodic compensation due to the disabled employee will amount to N54,000

In order to arrive at a just estimate, the Board is mandated to have recourse to the Second Schedule to the Act²³⁶. The schedules may be revised or amended by the Board through a regulation published in the Federal Gazette.²³⁷

The estimate of the loss of remuneration does not mean actual reduction in one's remuneration.²³⁸ One may still be collecting the saou(salary he was collecting before the disability but the injury has in fact reduced his earning capacity.²³⁹ Where the Board makes a determination to the effect that the first estimation is inadequate, looking at the combined effect of the occupation of the employee at the time of the injury and the disability resulting from the injury, the Board may pay the employee 90 percent of the difference between the remuneration of the worker before the injury

²³⁶ Section 22 (2) *ibid*

²³⁷ Section 22(3) *ibid*

²³⁸ See *Thompson v. Armstrong & Royse Proprietary Ltd op cit* at note 94

²³⁹ *Ibid*

and the remuneration after the injury or what the Board estimates the employee is capable of earning in a suitable occupation after the injury.²⁴⁰

The Board in making this determination shall consider the ability of the employee to continue in his occupation at the time of the injury or adapt to another suitable occupation.²⁴¹

The periodic payment in respect of permanent partial disability is vague. Is it monthly periodic payment, or quarterly periodic payment? It is very important that such period is statutorily determined so as not to leave it at the discretion of the Board. Where as a result of the injury, the employee suffers serious and permanent disfigurement which the Board considers is capable of impairing the employees earning capacity, a lump sum in compensation may be paid, although the amount the employee was earning before the injury has not been diminished.²⁴² It is important that lump sum be prescribed at least by stating the minimum amount receivable as lump sum. Since the Act is not sacrosanct, the provision can be reviewed where the prescribed minimum amount significantly loses its present value.

Where an employee is less than 55 years of age, on the date of the injury, periodic compensation is payable until the date the employee reaches 55 years of age or the date the employee would retire.²⁴³ However, where the

²⁴⁰ Sections 22 (5) and 22 (4) (a) (b) of Employees' Compensation Act *op cit*

²⁴¹ Section 226 *ibid*

²⁴² Section 22(8) *ibid*

²⁴³ 23(a) *ibid*

employee is 55 years of age or above on the date of the injury, periodic compensation is payable until 2 years after the date of the injury if that is the date of his retirement or the date the employee would retire.²⁴⁴

The Board shall set aside at the time a periodic payment for permanent partial disability, is made to an employee, an amount equal to 7.5 percent of the said periodic payment or an amount set by Pension Reform Act²⁴⁵ and is in addition to the periodic payment and to be remitted to the retirement savings account of the employee. The employee may in addition to this, wish to apply to the Board to contribute an amount that is not less than 1 percent and not greater than 7.5 percent and the Board shall deduct same and remit it to the employees retirement savings account pursuant to Pension Reform Act and the employee may wish to apply that subsequent deductions be stopped. The Board shall provide a prescribed form in which an application for any deductions or stoppage of deduction or any matter related to deduction will be made and an employee who wishes to make any such application must do so in a prescribed form.

3.3.4 Scale of Compensation for Permanent Total Disability

Section 21 of the Act provides the scale of compensation in respect of permanent total disability. An employee who suffers permanent total disability out of or in the course of employment shall be given monthly

²⁴⁴ Section 23 (b) *ibid*

²⁴⁵ No. 2, 2004

periodic payment equal to 90 percent of his remuneration as compensation due to him.²⁴⁶ In the Act, permanent total disability has the same definition with permanent partial disability already discussed.²⁴⁷ It seems however that while permanent total disability is a complete disability, permanent partial disability is not complete. e.g. a completely blind eye is total while an eye that still sees to some extent despite the impairment, is partial. It will be better that the Act gives separate definitions for the two forms of disability.

For those who are less than 55 years old on the date of injury, monthly compensation in respect of permanent total disability is paid until the employee reaches 55 years of age if 55 years is his retirement age, or until he reaches his retirement age.²⁴⁸ If his retirement is beyond 55 years of age or older on the date of the injury, compensation is paid until two years after the date of injury if that is the date of his retirement or the date the employee will retire, and this may be determined by the Board.²⁴⁹

The amounts of compensation payable are illustrated below;

Mr Abdullahi Nnamdi Abiola at the age of 53 years had his two eyes damaged as a result of an industrial accident in the course of his duty. On the date of the injury, his monthly remuneration was N500,000. What will be his monthly amount of compensation?

²⁴⁶ See section of Employees' Compensation Act *op cit*

²⁴⁷ Section 73 *ibid*

²⁴⁸ Section 23(a) *ibid*

²⁴⁹ Section 23(b) *ibid*

His monthly amount is:

$$500000 \times 90 = 45,000,000$$

$$\frac{45,000,000}{100} = \text{N}450,000$$

Taking the above scenario, what is his total amount of compensation if he is to retire at the age of 55 years?

Since Mr. Abdullahi Nnamdi Abiola had the disability when he was 53 years of age, his monthly amount of compensation will be paid until he reaches 55 years of age. This will then be within the span of 2 years and it is calculated by multiplying the amount of compensation by the total number of months for the two years, i.e. 24 months as thus:

$$450,000 \times 24 = 10,800,000$$

$$\text{Total amount of compensation} = \text{N}10,800,000$$

Where however, he will not retire at the age of 55 years but beyond, then the monthly amount of compensation has to be multiplied by the number of months it will take him to retire, in order to arrive at the total amount of compensation. It is the view of the researcher that the period of compensation here is inadequate. An employee who suffers permanent total disability may need compensation for life and the period of payment should not be limited to when he retires or two years after retirement as it is contained in the Act. An employee who may ordinarily still have the strength to work after retirement, may not do so as a result of the

disability he suffered out of or in the course of his employment and in this instance, compensation is only adequate if he is paid for life. The Board shall set aside at the time a periodic payment in respect of permanent total disability is made to an employee, an amount equal to 7.5 percent of the said periodic payment or an amount set by Pension Reform Act be remitted to the retirement savings account of the employee. The employee may in addition to this, wish to apply to the Board to contribute an amount that is not less than 1 percent and not greater than 7.5 percent and the Board shall deduct same and remit it to the employee's retirement savings account pursuant to Pension Reform Act²⁵⁰ and the voluntary contribution can be stopped by an employee through an application to the Board.²⁵¹ All the applications relating to deductions are made in a prescribed form provided by the Board.²⁵²

3.3.5 Scale of Compensation in Fatal Cases

Fatal cases are cases involving death of an employee.²⁵³ In this case, dependants of the deceased employee who are wholly dependent on his earnings are entitled to compensation. Where the deceased employee leaves²⁵⁴ dependants wholly dependent on his earnings either a widow or widower with two or more children, they are entitled to a monthly payment of a sum equal to 90 percent of the total monthly remuneration

²⁵⁰ Pension Reform Act *op cit*

²⁵¹ Section 28(5)(6) of Employees' Compensation Act *op cit*

²⁵² Section 28(7) *ibid*

²⁵³ Section 17(1) *ibid*

²⁵⁴ *Ibid*

of the deceased employee as at the date of death.²⁵⁵ For example, if the deceased employee's monthly remuneration at the date of his death was N100,000 then 90 percent of N100,000 is calculated thus:

$$100,000 \times 90 = 9,000,000$$

$$\frac{9,000,000}{100} = 90,000$$

Therefore their monthly compensation is N90,000

Where the employee leaves a widow or widower with only one child, then they are entitled to monthly payment of a sum equal to 85 percent of the total monthly remuneration of the employee as at the date of his death.²⁵⁶

For example, professor Kukuyi of Jim Jim University died in a plane crash when the university sent him on a mission to University of Toronto. He died leaving a widow and a child. His monthly remuneration at the date of his death was N550,000. What will be the monthly compensation due to the dependants he left behind?(The monthly amount of compensation is 85 percent of N550000 being his monthly remuneration at the date of his death and this is calculated as thus:

$$550,000 \times 85 = 46,750,000$$

$$\frac{46,750,000}{100} = 467,500$$

Therefore their monthly amount of compensation is N467,500

²⁵⁵ *Ibid*

²⁵⁶ *Ibid*

If the deceased employee leaves a widow or a widower who without a child is 50 years or above, at the date of the death or is an invalid spouse, a sum equal to 60 percent of the total monthly remuneration of the deceased is paid to the widow or widower on monthly basis.²⁵⁷ For example, if the total monthly remuneration of the deceased employee at the time of death was N50,000, then the monthly amount of compensation will be 60 percent of N50,000

i.e. $50,000 \times 60 = 3,000,000$

$$\frac{3,000,000}{100} = 30,000$$

Therefore, the monthly amount of compensation due to the widow or widower is N30,000. An invalid spouse means a spouse incapable of earning income in any occupation by reason of some specific disease or bodily or mental disablement.²⁵⁸

Where there is no surviving spouse eligible for monthly payment and the dependant is a child, he is entitled to a monthly payment of a sum equal to 40 percent of the total monthly rate of compensation that would have been payable if the deceased employee had sustained a permanent total disability.²⁵⁹ Monthly compensation for permanent total disability is 90 percent of the remuneration of the employee.²⁶⁰ In order to arrive at the amount of compensation for a child here, one will have to calculate how

Ibid
 Section 73 ibid
 Section 17 (1)(b) ibid
 Section 21 ibid

much is due to an employee who suffers permanent total disability before getting 40 percent out of it, to be the amount due to the child. For example, Mallam Audu died in an industrial accident in his place of work leaving only one surviving child and his monthly amount of remuneration at the date of his death was N100,000. What will be the child's monthly compensation? The child's monthly compensation will be 40 percent of 90 percent of Mallam Audu's monthly remuneration. This calculated as thus:

$$100,000 \times 90 = 9,000,000$$

$$\frac{9,000,000}{100} = 90,000$$

$$90,000 \times 40 = 3,600,000$$

$$\frac{3,600,000}{100} = 36,000$$

Therefore Mallam Audu's only surviving child will be entitled to monthly compensation of N36,000

Where there is no surviving eligible spouse and the dependants are two children, compensation is a monthly payment of 60 percent of what is payable monthly for permanent total disability.²⁶¹ If the children are three or more, then they are entitled to 80 percent of monthly payment for permanent total disability.²⁶² A child under the Act means any person not more than 21 years old and who is receiving full-time education or any training and is not paid wages and include any step child and child

Section 17(1)(b) ibid
 Ibid

adopted in a manner recognised as lawful in Nigeria.²⁶³ Payment to a child is done until the child reaches 21 years of age or completes undergraduate studies.²⁶⁴ It is the view of the researcher that, 21 years is not a safe age to presume that a person will not be wholly dependent on his parents. A good number of the people in Nigeria complete undergraduate studies at the age of 25 years and above. Given our peculiar level of development, it is better to change the definition of a child for the purpose of this Act so as to address the area of age. Also the level of unemployment in the country calls for a rethink on the presumption of independence on ground of graduation. It is neater to consider the issue of employment of the child upon completion of undergraduate studies or upon attainment of 30 years of age whichever comes first rather than completion of undergraduate studies without more.

For a surviving child who is disabled, the Board shall determine the period of the monthly payment for such time as the Board believes that the disabled child would not have been dependent on the deceased employee.²⁶⁵ In this situation the child is not governed by the rule of "21 years of age or upon completion of undergraduate studies, whichever one comes first".

Where the deceased employee does not leave a "spouse or a child entitled to compensation under the Act, then other dependants or next of kins,

Section 73 ibid
 Section 17(1)(c) ibid
 Section 17 (1)(d) ibid

wholly dependent on the employee come in, but in this case, the sum given to them is the amount the Board thinks is reasonable and proportionate to the pecuniary loss suffered by the dependants.²⁶⁶ It is the view of the writer, that it is better to have a statutory percentage for this category of dependants than to leave it based on the judgements of the Board. This may give room for double standard and compensation may not be adequate in some instances.

In a situation where compensation is payable only to a spouse child or children, a parent or parents but the employee leaves any or all of them not dependent on the remuneration of the employee at the time of his death, the Board shall make monthly payment of an amount to be determined provided the beneficiaries, here have reasonable expectation of pecuniary benefit from the continuation of the life of the employee.²⁶⁷ This provision seems to be an exception to the requirement of whole dependence on the earnings of the deceased employees. The parents, children and spouses of the deceased can come under this provision and all they need to prove is that they have reasonable expectation of pecuniary benefit from continuation of life of the deceased person.

Payment of compensation can also be made to foster parents or administrators where the deceased died without leaving a widow or

²⁶⁶ Section 17 (1)(e) *ibid*

²⁶⁷ Section 17(1)(f) *ibid*

widower.²⁶⁸ This is if the Board considers it desirable to continue the existing household and suitable persons act in keeping up the household and taking care of and maintaining the children.²⁶⁹ The payment here is made to the foster parents or administrators and on behalf of the children as would have been payable to a widow or widower and children.²⁷⁰ Where the aforementioned conditions fail to exist, the Board will discontinue the payment.²⁷¹

Where there is a widow or widower who subsequently dies leaving children, the allowances of the children will be calculated as if the employee had died leaving no widow or widower.²⁷² Where a disabled spouse ceases to be disabled or the widow or widower no longer has children or there is a reduction in the number of dependent children, the widow or widower will have to be entitled to the same category of benefits as would have been payable if the death of the employee had occurred on the date the disabled spouse ceases to be disabled or the longer the children or the number of children has reduced.²⁷³ The Board also considers the impairment of work ability of the spouse and pays the spouse a proportion she would have been entitled to if the spouse had been disabled.²⁷⁴ Who is a spouse in accordance with the Act? A spouse

²⁶⁸ Section 17(1)(g) *ibid*

²⁶⁹ *Ibid*

²⁷⁰ *Ibid*

²⁷¹ *Ibid*

²⁷² Section 17(3) *ibid*

²⁷³ Section 17(2) *ibid*

²⁷⁴ Section 17(3) *ibid*

“means the person who at the date of the employees’ death cohabited with the employee, and to whom the employee is legally married or with whom the employee cohabited as a couple for at least 12 months immediately before the death of the employee”. It therefore means that a paramour can qualify as a spouse in accordance with the Act. It is the view of the researcher that in order to protect public morality, a paramour should not be entitled to compensation. The child or children of such relationship are properly covered because they are innocent and cannot be discriminated on the basis of the circumstance of their birth.²⁷⁵ A paramour should only be a custodian of the compensation for the benefit of the children if the relationship produces children but the paramour should not be entitled to any statutory amount of compensation.

If two employees in a workplace are married to each other and both are contributing to the support of a common household, each is deemed to be dependant of the other and their children who are resident therein are deemed to be their dependants.²⁷⁶ In this instance, the husband and wife are seen as dependants to each other for the purpose of compensation.

In a situation where there was a court order or separation agreement providing periodic payments for the support of the dependent spouse or children living with the spouse, the dependent spouse and children will be entitled to such amount and not the one statutorily provided except that

²⁷⁵ See section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which says no one shall be discriminated on the basis of the circumstance of their birth

²⁷⁶ Section 17(5)(6) of Employees’ Compensation Act *op cit*

the Board will not give any amount in excess of the statutory amount due to the dependants.²⁷⁷ Where there is no court order or separation agreement in force at the date of the employee's death, providing periodic payment, the Board shall make compensation in accordance with the provisions of the Act but the dependant must be living separate for a period less than three months preceding the death of the employee.²⁷⁸ Where they are separate for three months and above at the date of the death of the employee and there is no court order or separation agreement in force, the Board will give monthly payment it believes the spouse and the children would have been likely to receive from the employee if he had not died.²⁷⁹ In the exercise of its discretion, the Board shall not give an amount that exceeds the one statutorily prescribed.²⁸⁰

Where an employee lived with and contributed to the support and maintenance of a spouse and the employee and the spouse have no children for a period of three years or have children for the period of one year immediately preceding the death of the employee and when he/she does not leave a dependant widower, or widow, the Board may pay for the compensation to which the dependant widow or widower would have been entitled under the Act, to the spouse.²⁸¹ In a situation where an employee has lived with and contributed to the support and maintenance of the

²⁷⁷ Section 17(7)(a) and 8 *ibid*

²⁷⁸ Section 17(7)(b)(i) *ibid*

²⁷⁹ Section 17(7)(b)(ii) *ibid*

²⁸⁰ Section 17(8) *ibid*

²⁸¹ Section 17(9) *ibid*

spouse for periods mentioned above and where an employee also left surviving, a dependant, widow or widower whom at the date of the death of that deceased, was living separate and apart and there is a difference in the amount of compensation payable to the widower, widow, by reason of the separation and the amount of compensation that would have been payable to that spouse if the spouse and the employee had not been living separate and apart, the Board may pay compensation to the spouse up to the amount of the difference.²⁸²

There are situations where there is need to share the compensation due under the Act, amongst dependants and the Act has made provision for such a situation as regard the formula for apportionment of compensation amongst dependent spouses and children. Where there is a dependent spouse and child, the spouse takes two- third while the child takes one-third.²⁸³ Where there is a dependent spouse and more than one child, the spouse takes half and the children take half to be shared equally.²⁸⁴ Where there is no surviving spouse, the amount of compensation is shared amongst children equally.²⁸⁵ The Board may however have grounds for a different apportionment but unless and until that is the case the provisions here shall be the sharing formula.²⁸⁶ If a dependant is to receive a compensation for death of an employee and subsequent death of another

²⁸² Section 17(10) *ibid*

²⁸³ Section 17(11) (a) *ibid*

²⁸⁴ Section 17(11) (b) *ibid*

²⁸⁵ Section 17 (11)(c) *ibid*

²⁸⁶ Section 17(11)(d) *ibid*

employee, the total compensation payable shall be an amount that the Board has reasonable ground to believe is appropriate, provided that the compensation payable in respect of a dependant shall not be less than the highest of the amounts that would otherwise be payable in respect of the death of any of the employees and shall not be more than 90 percent of the average remuneration of an employee.²⁸⁷ It is the candid view of the researcher that the dependant should be entitled to the full statutory portions for the two deceased employees on whose resources he/she depends. Compensation for death should not only be seen in terms of loss of monetary assistance; it goes beyond that. It will not comfort any dependant to go home with what is due for the death of one employee when in fact he lost two employees. The Board is empowered to make rules and take decision in respect of cases and situations not covered by section 17 in respect of compensation for death.²⁸⁸

The Board shall make monthly payment as compensation for death, except where it is stated otherwise under the Act or as may be specified by the Board through regulation.²⁸⁹ For example, compensation to children of the deceased is not to be for life. Also the Board may from time to time

287??Section????? ??????ibid

288??Section????? ??????ibid

289??Section????????ibid

require proof of the existence and condition of dependence otherwise it may withhold further compensation.²⁹⁰

3.3.6 Scale of Compensation Relating to Enemy War-Like Action or Counteraction

Sometimes death, injury disability or disease of an employee may be as a result of counteraction or enemy war-like action. The Act says where employee who suffers any injury, death, disease or disability as a result any counteraction or enemy war-like action, and has been offered any compensation by the government, the affected employee or their dependent will no longer benefit from the compensation provided under the Act when the compensation provided by the government is more than or equivalent to what the employees or their dependants will be entitled to under the Act.²⁹¹ The employees or their dependants will however, be entitled to compensation under the Act where the compensation provided by the government is less than what they will be entitled to, under the Act.²⁹² In this case, the employee or their dependants will only be paid to the extent of the difference between what was paid by the government and what they are entitled to under the Act.²⁹³

²⁹⁰Section???

??ibid

²⁹¹Section?????????ibid

²⁹²ibid

²⁹³ibid

The Act explains what the phrase “enemy warlike action” means.²⁹⁴ Enemy warlike action includes civil insurrection, riots, commotion, conflicts, terrorists act and hostilities.²⁹⁵ Counteraction in the sense used here means an action to reduce or prevent the bad effect of enemy warlike action.²⁹⁶ For example if one by trying to be a good citizen makes attempt of saving the lives and property of victims of riots, commotion, civil insurrection, terrorism, hostilities etc, and in the process, he is also affected, he is also a victim of enemy warlike action as a result of his counteraction. The primary targets whose lives and property he was trying to save are victims of enemy warlike action. Another example is, if in the process of trying to protect the lives and property of that main target of enemy warlike action, a non-targeted innocent person is affected, such innocent person is a victim of counteraction.

3.4 Vocational Rehabilitation

Vocational rehabilitation is a form of compensation provided under the Act.²⁹⁷ Section 16 of the Act says:

- (1) The Board may, in getting an injured employee back to work or in assisting to lessen or remove resulting disability, take any measure and make the expenditures from the Fund that it considers necessary and expedient regardless of the date on which the employee first became entitled to compensation.

²⁹⁴Section 2(1)(a) *ibid*

²⁹⁵*Ibid*

²⁹⁶Summers D Longman Dictionary of Contemporary English cit

²⁹⁷ Section 16 *ibid*

It is clear that the measure the Board will take to lessen or remove any resulting disability is medical in nature. The Board may provide for the injured employee any medical, surgical, hospital and other care or treatment, transport, medicines, crutches and apparatus including artificial members that it may consider reasonably necessary at the time of the injury and thereafter during the disability, to care and relieve from the effects of the injury or alleviate those effects.²⁹⁸ In this instance, the Board can make rules and regulations with respect to furnishing health care to injured employee entitled to it and for the payment of the bills.²⁹⁹ Where there is a case of emergency, or for other justifiable cause, a physician or accredited medical practitioner other than the one provided by the Board is called to diagnose an injured employee and if the Board finds there was a justifiable cause and that the charge for the service is reasonable, the cost of the services shall be paid by the Board.³⁰⁰ The Board may authorize employer to provide health care and at the expense of the Board and daily allowance for the subsistence of the injured employee may be provided by the Board if it sees that where the injured employee is receiving treatment is not the place the employee resides but for the treatment.³⁰¹

The fees or remuneration for health care provided under section 26 of the Act shall not be more than the fees that will be proper and reasonably

²⁹⁸ Section 26(1)(8)(9) *ibid*

²⁹⁹ *Ibid*

³⁰⁰ Section 26(2) *ibid*

³⁰¹ Section 26(2)(4) *ibid*

charged if the employee were paying.³⁰² The Board shall permit health care to be administered by the physician or medical practitioner who may be employed by the injured employee but this does not affect the powers of the Board to supervise and provide health care in a way where it considers expedient.³⁰³

Every medical practitioner or accredited medical practitioner attending or consulted in a case of injury or alleged case of injury in a work place shall provide report to the Board within 7 days after the first date of his first attendance on the employee and this should state whether the injured employee is able to resume work, and if treatment is to be continued upon resumption to work, other adequate reports should be furnished.³⁰⁴ Where a specialist whose opinion is requested is engaged, he shall provide his first report to the Board upon completion.³⁰⁵ Failure to submit report is an offence and attracts penalties³⁰⁶ An accredited medical practitioner or other person authorized to render health care under the Act shall confine his or her treatment to injuries to the parts of the body he or she is authorized to treat under the Medical and Dental Practitioners Act which the medical practitioner is permitted to practice and any unauthorized treatment shall not be paid by the Board.³⁰⁷

³⁰² Section 26(6) *ibid*

³⁰³ Section 26(7) *ibid*

³⁰⁴ Section 27(1)(a)(b) *ibid*

³⁰⁵ Section 27 (1)(C) *ibid*

³⁰⁶ See Section 27 (5) *ibid*

³⁰⁷ Section 27(4) *ibid*

³⁰⁸ Sections 16 and 26 *ibid* which make health care services discretionary. See however section 9 *ibid* which says health care benefits 'shall be paid' in respect of occupational diseases

Health care services are not compulsory but at the discretions of the Board. It only in cases of occupational diseases, that, health benefits are compulsory.³⁰⁸ This is one striking difference between health care services and other monetary compensations. Where however, medical treatment is

³⁰⁹ Section 26 (4) *ibid*

³¹⁰ Section 16 *ibid*

³¹¹ See *Madukolu v. Nkemdilim* (1962) SCNLR 341 *Amadi v NNPC* (2000) 10 NWLR (pt 674) 76 *Umokoro & 8 Others v Nigeria Ports Authority & Anor* (1997) 4 NWLR (Pt 502) 656

³¹² *Shitta – Bey v. A.G. Federation & Anor* (1998)7 SCNJ 264 at 266, *Adeyemi Saliu Olaotan v Lagos State Government & Ors* (Unreported) Suit No. NIC/LA/41/2010

³¹³ Section 4(1) Employees’ Compensation Act, No. 13, 2010

³¹⁴ *Ibid*

³¹⁵ *Ibid*

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³⁰⁸ Sections 16 and 26 *ibid* which make health care services discretionary. See however section 9 *ibid* which says health care benefits ‘shall be paid’ in respect of occupational diseases

³⁰⁹ Section 26 (4) *ibid*

³¹⁰ Section 16 *ibid*

³¹¹ See *Madukolu v. Nkemdilim* (1962) SCNLR 341 *Amadi v NNPC* (2000) 10 NWLR (pt 674) 76 *Umokoro & 8 Others v Nigeria Ports Authority & Anor* (1997) 4 NWLR (Pt 502) 656

³¹² *Shitta – Bey v. A.G. Federation & Anor* (1998)7 SCNJ 264 at 266, *Adeyemi Saliu Olaotan v Lagos State Government & Ors* (Unreported) Suit No. NIC/LA/41/2010

³¹³ Section 4(1) Employees’ Compensation Act, No. 13, 2010

³¹⁴ *Ibid*

³¹⁵ *Ibid*

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

authorized by the Board, then payment of the bill will not be a discretion except where the amount of treatment is disputed.³⁰⁹

For dependants of the deceased employee, the Board may provide counselling services.³¹⁰ It is not clear what the counselling services is

³⁰⁹ Section 26 (4) *ibid*

³¹⁰ Section 16 *ibid*

³¹¹ See *Madukolu v. Nkemdilim* (1962) SCNLR 341 *Amadi v NNPC* (2000) 10 NWLR (pt 674) 76 *Umokoro & 8 Others v Nigeria Ports Authority & Anor* (1997) 4 NWLR (Pt 502) 656

³¹² *Shitta – Bey v. A.G. Federation & Anor* (1998)7 SCNJ 264 at 266, *Adeyemi Saliu Olaotan v Lagos State Government & Ors* (Unreported) Suit No. NIC/LA/41/2010

³¹³ Section 4(1) Employees' Compensation Act, No. 13, 2010

³¹⁴ *Ibid*

³¹⁵ *Ibid*

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³¹⁰ Section 16 *ibid*

³¹¹ See *Madukolu v. Nkemdilim* (1962) SCNLR 341 *Amadi v NNPC* (2000) 10 NWLR (pt 674) 76 *Umokoro & 8 Others v Nigeria Ports Authority & Anor* (1997) 4 NWLR (Pt 502) 656

³¹² *Shitta – Bey v. A.G. Federation & Anor* (1998)7 SCNJ 264 at 266, *Adeyemi Saliu Olaotan v Lagos State Government & Ors* (Unreported) Suit No. NIC/LA/41/2010

³¹³ Section 4(1) Employees' Compensation Act, No. 13, 2010

³¹⁴ *Ibid*

³¹⁵ *Ibid*

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

aimed at but it is reasonable to think that the counselling services aim at allaying the psychological effect of losing a dear one as a result of work-related injury.

It is very important that the Act should remove every discretion on the part of the Board as to whether or not to pay compensation in certain cases as discussed above, if a valid ground for compensation is established. Also, it is necessary that the Act should specifically provide for definite scales of compensation in all cases covered by the Act. It is only then that affected employees can be sure of their remedies in the event of any disadvantage or injury suffered out of or in the course of employment.

3.5 Procedures for Claim of Compensation

Anybody who wishes to lay any claim for compensation in respect of any job-related risk must adhere to these statutory steps, because, these steps have jurisdictional implications. A court is said to have jurisdiction where the case is instituted after fulfilment of conditions precedent, the case is instituted by due process of law, the subject matter is within its power to preside over and the court is properly constituted.³¹¹ Jurisdiction is the blood that gives life to an

³¹¹ See *Madukolu v. Nkemdilim* (1962) SCNLR 341 *Amadi v NNPC* (2000) 10 NWLR (pt 674) 76 *Umokoro & 8 Others v Nigeria Ports Authority & Anor* (1997) 4 NWLR (Pt 502) 656

³¹² *Shitta – Bey v. A.G. Federation & Anor* (1998)7 SCNJ 264 at 266, *Adeyemi Saliu Olaotan v Lagos State Government & Ors* (Unreported) Suit No. NIC/LA/41/2010

³¹³ Section 4(1) Employees' Compensation Act, No. 13, 2010

³¹⁴ *Ibid*

action in court and without jurisdiction, any decision arrived by the court amounts to a nullity, hence the court will not sit over a matter when it is convinced that it lacks jurisdiction to entertain same.³¹² The thresholds of this chapter are the procedures to be followed in order to be entitled to compensation and which court to proceed to when there is any dissatisfaction with the award of compensation by the Board. The items considered here are employees' notification of injury, application for compensation, limitation of action, indemnity, subrogation and right of appeal.

³¹⁵ *Ibid*

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³¹² *Shitta – Bey v. A.G. Federation & Anor* (1998)7 SCNJ 264 at 266, *Adeyemi Saliu Olaotan v Lagos State Government & Ors* (Unreported) Suit No. NIC/LA/41/2010

³¹³ Section 4(1) Employees' Compensation Act, No. 13, 2010

³¹⁴ *Ibid*

³¹⁵ *Ibid*

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

3.5.1 Employee's Notification of Injury

Injured or disabled employee is expected to report any such case within 14 days of its occurrence, to the employer, by giving notice to either the employer or the representatives.³¹³ When the employee dies as a result, the dependant shall report the fact within 14 days of its occurrence.³¹⁴ Manager, supervisor, first aid attendant, agent in charge of the work, will suffice as the representative of the employer.³¹⁵ The information required

³¹³ Section 4(1) Employees' Compensation Act, No. 13, 2010

³¹⁴ *Ibid*

³¹⁵ *Ibid*

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³¹⁴ *Ibid*

³¹⁵ *Ibid*

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³¹⁵ *Ibid*

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

are, the name of the employees, the nature and cause of the disease or injury, if known, the time and place of the occurrence.³¹⁶

The employees shall provide to the employer, particulars of the injury or occupational disease on a form prescribed by the Board.³¹⁷ These particulars are only provided by the employee if he or she is fit to do so and on request of the employer.³¹⁸

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³¹⁶ *Ibid*

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³¹⁷ Section 4(3) *Ibid*. See appendix 1, for the sample of the form

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³¹⁸ *Ibid*

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

It is a bar to a claim for compensation where the employee or his dependants fail to supply the name of the employees, the time and place of the occurrence of the incident, and the nature and cause of the disease or injury to the employer or his representative.³¹⁹ Where however, the employer has not been prejudiced and the Board considers it in the interest of justice, compensation can be allowed despite failure to supply the said information.³²⁰ Also, where the employer or the employer's representative had knowledge of the incident, compensation can be

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³¹⁹ Section 4(4) *Ibid*

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³²⁰ *Ibid*

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

allowed.³²¹ Where the information though imperfect in some respects, is sufficient to describe the disease or injury, compensation will be allowed by the Board.³²²

3.5.2 Application for Compensation

Every employer shall report any case of job-related injury or death to the Board and the nearest office of the National Council for Occupational Safety and Health in the state within seven days of its occurrence.³²³

Where such information is received by the employer as a result of report from the employee or his dependants, the employer shall further report

³²¹ *Ibid*

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³²² *Ibid*

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³²³ Section 5(1) *ibid*

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid*. See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

same to the Board within seven days of receiving such information.³²⁴This is done by filling some prescribed forms.³²⁵ Form ECS.BF01 is to be filled in the first instance for the purpose of notification and probably to process medical bill. Form ECS.BF02 is to enable the Board process compensation for injury which does not involve the death of the injured employee. Where death occurs, the employer is to immediately report the case to the Board.³²⁶ Any report of death or injury required from the employer shall be in a manner prescribed by the Board and shall state, the name and address of the employees and any other particulars required by the Board.³²⁷The report of death is done by filling Form ECS.BF02A. In all cases, the affected employee or dependants will be required to fill and submit a prescribed affidavit form called Form ECS.BF03. These reports are to be addressed to the nearest office of the Board.³²⁸

³²⁴ Section 5(2) *ibid*

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid.* See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³²⁵ See Appendices 1,2,3, and 4 for samples

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid.* See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³²⁶ Section 5(3) *ibid*

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid.* See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³²⁷ Section 5(4) *ibid*

³²⁸ *Ibid.* See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³²⁸ *Ibid.* See also www.nsitf.net where the Board has released a secular as empowered by the said section 5 of the Act disclosing that such reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

It is an offence for any employer not to report any case of death or injury of the employee to the Board, unless allowed by the Board on the ground that the report for some sufficient reasons could not have been made.³²⁹ The non-compliant employer here shall be liable on conviction to a fine of N20,000 for the first case of non-compliance or imprisonment for a term not exceeding one year or N100,000 for every subsequent case of non-compliance or to both such imprisonment and fine.³³⁰ Where the non-compliance is by a corporate body, every director, manager, secretary or other officers of the body corporate or partner or officer of the firm or any person purporting to act in the aforementioned capacity shall be deemed to have committed the offence unless he proves that the act or omission constituting the offence took place without his knowledge, consent, connivance or neglect or he took reasonable steps to prevent the commission of the offence.³³¹ The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes here and any appeal from the court shall lie to the Court of Appeal as of right.³³²

Where an employee or his or her dependants wish to be compensated, such request must be through the forms prescribed by the Board and shall

reports are to be addressed to the nearest office of the Board. There are now branch offices of the Board in almost all the states of the Federation.

³²⁹ Section 5(5) *ibid*

³³⁰ Section 71 *ibid*

³³¹ *Ibid*

³³² See Section 254C(5)(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended by the Third Alteration Act, No. 3, 2010)

be signed by the employee or deceased employees' dependant.³³³ Where an application is in respect of hearing impairment, an application for compensation must be accompanied or supported by a report of a medical practitioner who specialises in ailments of ear or hearing accredited by the Board, with an audiogram and a report by the employer, or other evidence of hearing impairment as the Board will determine from time to time.³³⁴

Every medical practitioner or accredited medical practitioner attending or consulted on a case of injury to an employee shall give all reasonable and necessary information, advice and assistance to the injured employee or dependant in making an application for compensation, to provide certificate and proofs without charge to the employee.³³⁵

Where an application is in respect of money spent on health care or medical services, unless the Board otherwise directs, such claim shall not be paid if it is submitted 90 days from the date that the last treatment was given or if it is submitted 90 days from the date that the accredited medical practitioner or other person providing medical service was first aware that the Board may be liable for his services, whichever first occurs.³³⁶ It is the view of the researcher that this position of the law may work injustice. It is better to increase the number of days within which one

³³³ Section 6(1) of Employees' Compensation Act *op cit*. See also appendices 1,2,3 and 4 for the samples of the prescribed forms.

³³⁴ Section 10(7) *ibid*

³³⁵ Section 27 (1)(d) *ibid*

³³⁶ Section 27 (3) *ibid*

can apply for compensation for medical expenses. This is because, the Board though has the discretion to direct that compensation be paid despite the limitation of time, the Board is unlikely to use this discretion in favour of injured employees. This is because there is no statutory obligation to this effect.

Where an application for compensation is in respect of death, injury or occupational disease, such application shall be within one year after the date of occurrence otherwise, no compensation shall be paid³³⁷. However, if the Board is satisfied that there existed special circumstance, which precluded the filing of an application within one year after the date of the occurrence, the Board may pay the compensation if the application is filed within three years after that date.³³⁸ The Board may pay compensation commencing on the date the Board receives application for compensation.³³⁹

The Board may pay compensation for an occupational disease where there was no sufficient medical or scientific evidence within three years after the date of its occurrence but this evidence becomes available at a later date and the application is re-filed.³⁴⁰ This provision will be better if the Act makes it mandatory for the Board to pay compensation upon receipt of sufficient medical or scientific evidence showing occupational disease. It is

³³⁷ Section 6 (2) *ibid*

³³⁸ Section 6 (3) *ibid*

³³⁹ Section 6 (4) *ibid*

³⁴⁰ Section 6 (5) (a) (b) *ibid*

an expensive discretion to say the "Board may pay" even where sufficient medical or scientific evidence is available.

The Board may waive any requirement for an illiterate person to provide written notice and may accept instead notice in any form the Board deems appropriate.³⁴¹ There is no definition for the term "illiterate" in the Act. It will be better if the Act provides such definition. It may suffice to say that an illiterate person is one who is unable to write or read or understand a particular document³⁴²

Where any order, notice or other document is to be served by the Board through registered mail, such is deemed to be served on the date that the post office receipt was signed by the employee.³⁴³ This also suggests that where notice is given by the employees or their employers, through registered mail, such notice is deemed to be served on the date that the post office receipt was signed by the Board.

3.5.3 Limitation of Action, Subrogation and Indemnity

The rights and privileges under the Act are in lieu of any right of action to which one would be entitled against the employer of the employee, or against any employer or against any employee in respect of any death, injury or disability which is job-related.³⁴⁴ This is only if the conduct of the

³⁴¹ Section 69 *ibid*

³⁴² See Gilbert Ezeigwe v. Awawa Awudu (2008)11 NWLR(pt.1097)158, Jiboso v. Obadina(1962)WRNLR 303,<http://www.legal.dictionary.thefreedictionary.com/illiterate> – Retrieved on the 19th day of May, 2012

³⁴³ Section 68 Employees' Compensation Act *op cit*

³⁴⁴ Section 12 (1) *ibid*

employers, the agent or servant of the employer or employee which caused the breach of duty, arose out of or in the course of employments.³⁴⁵ Here, the employee or his dependants will claim compensation under the Act.

Employees or dependants may decide to sue any person other than the employer or an employee that caused the job-related injury or death, but any such action is a bar to compensation under the Act.³⁴⁶ The employee or his dependants are to exercise this right of election within 6 months or any longer period as may from time to time be determined by the Board.³⁴⁷ It is a valid election if an application for compensation is filed by a parent or guardian of an employee who is under the age of 18 years.³⁴⁸ Where the Board is satisfied that due to physical or mental disability, an employee is unable to exercise his right of election, the Board may pay compensation until the employee is able to take decision and where he later takes decision not to take compensation, no further compensation may be paid, but the compensation so paid shall be a first charge against any sum recovered in exercise of his right of action.³⁴⁹

Where the employee or dependant makes an application for compensation or is paid compensation, the Board is subrogated to the right of the employee or dependant and in this regard may maintain an action in the

³⁴⁵ Section 12 (2) *ibid*

³⁴⁶ Section 12 (3) *ibid*

³⁴⁷ *Ibid*

³⁴⁸ Section 12(5) *ibid*

³⁴⁹ Section 12 (4) *ibid*

name of the employee or dependant in order to recover what the employee or dependant would recover if they had sued.³⁵⁰ If the Board recovers more than what the employee or dependant is entitled to under the Act, the excess will be given to the employee or dependant.³⁵¹ The Board will deduct any administrative expenses before the employee or dependant will be entitled to the remainder.³⁵² The Board here has the right to maintain such action or not at all.³⁵³

An employer of the injured or deceased person has the right to maintain an action upon contract or indemnity agreement against another employer or independent contractor in respect of the injury or death.³⁵⁴ The Board can also order that compensation be charged in whole or in part to the account of another employer or independent contractor if it is of the opinion that it is that employer or independent contractor that caused the injury or death.³⁵⁵

3.5.4 Right of Appeal

Anybody that is aggrieved by the decision of the Board in the first instance , may appeal to the Board for a review of such decision.³⁵⁶ If the aggrieved employee or dependant jumps this stage and proceeds to the court, the court will not have jurisdiction. It is the view of the researcher

³⁵⁰ Section 12(6) *ibid*

³⁵¹ *Ibid*

³⁵² *Ibid*

³⁵³ Section 12(7) *ibid*

³⁵⁴ Section 12 (8) *ibid*

³⁵⁵ Section 12(9) *ibid*

³⁵⁶ Section 55(1) *ibid*

that appealing to the same body against whose decision one is aggrieved, is improper. This is because, the Board knowing that any grievance from its first decision will still be brought before it, will be willing to be reckless with its first decision to the disadvantage of the applicants by not giving them the fair amounts of money that may be claimed as compensation. Where however, the law gives another different body this responsibility the Board will be very careful in arriving at its first decision for the simple reason that it will not want its faulty decisions to be scrutinised by a different body and found wanting.

It is the requirement of the law that such appeal must be in writing within 180 days of the date of the decision, otherwise the person shall lose his or her right to appeal against the decision.³⁵⁷ This appeal shall be disposed of in a manner determined by the Board within a period of 180 days.³⁵⁸ It is the humble view of the researcher that total foreclosure from appeal on the ground that it is not brought within 180 days may work hardship. The law should be that where one is not able to bring the appeal within 180 days but shows convincing and justifiable reasons why it is not so brought within time, his appeal should be heard.

The employee or his dependants having appealed to the Board may further appeal to the National Industrial Court.³⁵⁹ The Act does not state whether upon dissatisfaction with the decision of the National Industrial

³⁵⁷ Section 55(2)(3) *ibid*

³⁵⁸ *ibid*

³⁵⁹ Section 55(4) *ibid*.

Court, one can appeal to the Court of Appeal and up to the Supreme Court.

However, section 9 of National Industrial Court Act³⁶⁰ says:

- (1) Subject to the provisions of the Constitution of the Federal Republic of Nigeria 1999 and subsection (2) of this section, no appeal shall lie from the decisions of the Court to the Court of Appeal or any other court except as may be prescribed by this Act or any other Act of the National Assembly.
- (2) An appeal from the decision of the Court shall lie only as of right to the Court of Appeal on questions of fundamental rights as contained in chapter iv of the Constitution of the Federal Republic of Nigeria 1999.

Also, section 243 "(2) – (4)" of the Constitution³⁶¹ says

- (2) an appeal shall lie from the decision of National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in chapter iv of this constitution as it relates to matters upon which the National Industrial Court has jurisdiction.
- (3) An appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly provided that where an Act or law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such appeal shall be with the leave of the Court of Appeal.
- (4) Without prejudice to the provisions of section 254C(5)³⁶² of this Act, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial court shall be final.

From the above provisions, the following are deduced:

³⁶⁰ National Industrial Court Act, No. 1, 2006

³⁶¹ Constitution of the Federal Republic of Nigeria *op cit*

³⁶² Section 254C(5) of the Constitution of the Federal Republic of Nigeria *op cit* talks about criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on National Industrial Court

- Appeal shall only lie from the decisions of National Industrial Court on questions of fundamental rights as contained in chapter iv of the Constitution as it relates to matters upon on which the National Industrial Court has jurisdiction.
- That any Act of the National Assembly can provide for appeal on certain matters but where such provision is made, such appeal shall be with the leave of Court of Appeal.
- Any decision of the Court of Appeal arising from civil jurisdictions of the National Industrial Court shall be final but where it has to do with any criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on National Industrial Court, there shall be appeal against such decisions, up to the Supreme court.

Therefore, unless and until Employees' Compensation Act³⁶³ is amended, employees' compensation matters will terminate at the National Industrial Court. However decisions on fundamental right matters that stem from employees' compensation can be appealed against, to the Court of Appeal. It is important to reiterate that criminal matters related to employees' compensation can be appealed against, up to the Supreme Court.

³⁶³ *Op cit*

CHAPTER FOUR

Challenges of Employees' Compensation in Nigeria

4.1 Introduction

This chapter presents the information gotten through the interview granted by the office of the General Manager, Enforcements/Benefits, Nigeria Social Insurance Trust Fund Management Board, at the headquarters of the Board in FCT, Abuja on the 22nd day of January 2013 at about 2:00pm. The information gotten, give further insight on the present employees' compensation scheme in Nigeria. The chapter anchors with the analysis of the information gotten by way of interview and discusses certain related challenges in the implementation of the employees' compensation scheme in Nigeria.

4.2 Data Presentation

This section presents the summary of the questions and answers at the interview granted by the Board. Details of the interview are contained in appendix 7 to this thesis.

The interview granted by the Board revealed that publicity about the present employees' compensation scheme in Nigeria is poor. The Board at present uses basically print media for the purpose of awareness. The Board intends to partner with TUC, NECA, and NLC to ensure that employers register for the said scheme.

The interview further revealed that the Board has not made the Rules which the Act empowers it to make in order to take care of cases of compensation whose scales of compensation are not contained in the Act. The Board however could not tell why it is has not made available the Rules yet.

The Board disclosed that about One Thousand Four Hundred and Ninety (1, 490) employers from the private sector have registered for the present employees' compensation. It disclosed that nearly all Federal Government treasury funded agencies have registered and that the non treasury funded agencies are also trying. When asked if the Board could provide list of all registered employers for the purpose of compensation, the Boarded objected. The Board handles such information including the files of applications for compensation with utmost secrecy.¹ The Board also disclosed that it had received about Seven Hundred and Eighty (780) applications for compensation out of which about Four Hundred people have been paid. As to whether any employee or dependents have appealed in the first instance against the award of the Board, the Board revealed that nobody had appealed against its awards yet.

¹ Perhaps when employees or their dependants start appealing against the awards of the Board to the National Industrial Court, researchers can easily follow those cases in court.

The Board also confirmed that some injured employees of Cappa D' Alberto, a construction company was given a cheque of Five Hundred Thousand Naira Only(N500,000) .This amount of money was for their health care.

It was also revealed that the Federal Government has paid in bulk the year 2011 and 2012 contributions for all Federal Government owned tertiary institutions and Research Institutes in Nigeria and that this fact is not even known to the benefiting institutions. These institutions however only need to approach the Board so as to regularise their registration status with the Board. However as from and including 2013, these institutions will take care of their yearly contributions themselves as the Federal Government will no longer pay for them.

The Board disclosed that it has not yet started implementing the employees' compensation scheme at the State and Local Government levels even though covered by the Act. Also, the Board disclosed that it has not started implementing the scheme within the informal sector of the economy as it intends to study how it will work effectively.

4.3 Data Analysis

The data above gotten by way of interview reveal certain challenges. Some of the challenges are associated with

implementation while some are associated with awareness and publicity. Other related challenges are also discussed.

4.3.1 The Challenge of awareness

As it has already been pointed out, the interview revealed that there is poor publicity on the side of the Board. At present, the Board only uses print media for publicity. No radio or television jingles yet for the purpose of publicity. The Board has not written employers individually to get them know about this scheme. There are no billboards, posters, leaflets and pamphlets in places of work to enlighten employees and employers about the new scheme. There is also no door-to-door (places of work to places of work) enlightenment campaign to let employees and employers know about the new scheme in place. Publicity is very fundamental to the success or otherwise of any new scheme. The interview disclosed that the Federal Government has paid in bulk the 2011 and 2012 contributions for all Federal Government -owned tertiary institutions and Research Institutes and that these institutions are not even aware of such information. This demonstrates some sort of complacency on the side of the Board as regards awareness about the scheme. The print media publicity will not suffice in a country like Nigeria where there is high level of illiteracy and poor reading

culture.² The Board must make deliberate efforts to organise direct talks with employees and employers in their places of work. As to the informal sector of the economy, publicity will be better if the Board connects with village heads and district heads.

4.3.2 The Challenge of implementation

Also, while the Act empowers the Board to make Rules and Regulations to govern cases of compensation that the scales are not specifically provided for in the Act, the interview revealed that there is no such Rules and Regulations in place yet³. The implication is that victims of such cases cannot be sure of the scale of their compensation, even though the Act makes their cases compensable. Also the Act seems not to compel the Board to make the Rules that will cover such situations.⁴

Arising from the interview also, is the challenge of enforcing the scheme within the informal sector of the economy⁵. At a time,

² See Tunde, G 'Library Reading Culture and Students' Academic Performance in Secondary Schools in Oyo State' *Middle Belt Journal of Library and Information Science* (2007)pp.42-58 for an exposition on poor reading culture in Nigeria.

³ For example, section 10 of the act says where hearing impairment results to deafness and there is no earning loss, compensation shall be provided by Regulations made by the Board under the Act. See also section 8(2) of the Act which says compensation for mental stress is as may be determined under any Regulation made by the Board. The Act is replete with such examples.

⁴ For example, section 8(2) of the Act, *inter alia* states "...such situation shall be liable to compensation, to the degree as may be determined under any Regulation made by the Board'.

⁵ The difference between formal and informal sectors of the economy is a thing of regulation. The formal economy includes reported payroll items, income taxes and any other official economic factors. Informal sector is that sector mostly not organized and may not be effectively monitored by Government especially in less developed countries: it is diverse and includes street vendors, peasant farmers, roadside mechanics etc. whose activities and incomes may not be monitored by government. In Nigerian situation, enterprises not created by statutes or registered with C.A.C are informal and cannot be effectively monitored by Government

attention was not given to economic activities carried out outside the formal framework of the economy. Sociologists and anthropologists were the only ones who even seemed to consider the existence of such activities.⁶ It was in the Third World countries that the informal sector was initially observed and studied and the academic thinking about the informal sector was really advanced by research about less developed and transition countries where the influence of the informal sector is much more significant than in other countries.⁷ ILO has carried out research studies about the informal sector bringing new developments to the field and one of these developments was the recognition of the new aspect of the informal sector, which is its dynamism and potential for economic growth and employment.⁸ Bringing this to the Nigerian context, the informal sector of the economy is a catalyst for employment and sustenance for a great number of people in the country. All employees in the informal sector of the economy have been given equal protection and welfare under the Act but one basic challenge is that of enforcement of the scheme within the informal sector of the economy. Informal sector has a characteristic of avoiding Government regulations because of its faceless nature in most

⁶ Gerxhany, K T ‘Informal Sector in Developed and Less Developed Countries; A Literature Survey’ www.ifwea.org/@bin/217843/gerxhani retrieved on the 28th day of January, 2013

⁷ *Ibid*

⁸ *Ibid*

instances.⁹ The challenge of the Board in having effective transactions with the employers and employees at the informal sector of the economy is another big issue. For example, how will employers at the informal sector be traced, for the purpose of duties and obligations imposed by the Act? Also, where will the employers at the informal sector be traced for the purpose of sanctions imposed by the Act? De Soto¹⁰ in his reputable research said the legal status is the main element distinguishing the formal from the informal activities and the implication of this in Nigeria is that where a place of employment or business is not established by an Act/ Law or not registered with Corporate Affairs Commission for the purpose of regulation, it assumes a faceless status (informal status) thereby making the enforcement of Government laws and regulations within the informal sector, a difficult if not an impossible task. Employers at the informal sector of the economy are susceptible to migration and in most cases do not have offices. Even where offices exist, most may not keep records for the purpose of smooth transactions with the Board.

The informal places of work may not necessarily have payrolls which will serve as indicators for assessments by the Board. There may also be the problem of how to always locate those at the informal

⁹ The 1972 report of the International Labour Office on employment in Kenya revealed that avoidance of Government regulation is a characteristic of informal sector of the economy.

¹⁰ De Soto, H The other Path; The Invisible Revolution in the Third World, Harper and Row, New York (1989)

sector since they do not have registered offices for the purposes of transaction and are prone to frequent migration. Those at the informal sector are in most cases without any formal data and there is hardly any parameter to determine their income. Perhaps reference to the number of employees at the informal places of work may serve as indicators for assessment. Also, the risk factors in various places of informal sector may serve as indicator for assessment by the Board. The Board should adopt flat amount of money as assessment for employers at the informal sector and should vary same depending on the risk factors in places of work and the number of employees at each place of employment so that instead of reference being made to non-existent payrolls at the informal sector, reference is made to the number of employees and the risk factor in the place of work. The higher the risk, the higher the amount of assessment, while, the higher the number of employees, the higher the amount of assessment and vice versa. The International Labour Organisation gave a policy advice that if the productive potential of informal sector is to be unleashed and workers' protection guaranteed, an enabling and supportive legal and policy environment must exist.¹¹ Also, as part of the economic and social objectives of the Federal Republic of Nigeria enshrined in its Constitution, the Government is to protect the rights of every

¹¹ www.ilo.org/public/english/standards/relm/gb/.../esp-i-j retrieved on the 31st day of January, 2013 at 1:20pm

citizen to engage in any economic activities outside the major sector of the economy and Government is to direct its policy towards ensuring that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused.¹² This perhaps may be part of the reasons why the Act adopts a non-discriminatory approach in protecting employees even at the informal sector of the economy. Also, compensation for job-related risks is humanitarian issue hence the necessity of not exempting the informal sector from the scheme. The ability of employees to work is their surest security and where such ability is affected out of or in the course of employment such an employee deserves compensation or health care or both.

The scheme has done well in covering employees and employers within the informal sector of the economy but by its very nature, informality seems to rob employees at the informal sector of the economy of the benefits, protection and welfare ushered in by the present Employees' Compensation Act. Good economic development and low level of illiteracy in Nigeria may take the country to the desired level as it relates to the cover it seeks to afford employees at the informal sector. It is suggested that in order to lift the veil that in most cases covers the employers at the informal sector of

¹² See sections 16(1)(d) and 17(3)(C) of the Constitution of the Federal Republic of Nigeria 1999(as amended)

the economy, the Board should work in partnership with the various village and district heads in order to know more about the employers within the sector. This is however, not a panacea or a cure-all to the inherent problems posed by the level of the country's underdevelopment as it relates to effective enforcement of the scheme within the informal sector.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Summary

As it has already been discussed, the history of compensation for bodily injury dates back to antiquity and that over the years, laws have evolved ways of compensating employees who suffer job-related risks and disabilities. Laws generally have made attempts and indeed improved on the compensation schedules of antiquity and at present, compensation for work-related risks and disabilities is basically on humanitarian ground. The first statute in Nigeria on workmen's compensation was enacted in 1942 following the English statute of 1925.¹ This first Act in Nigeria was repealed by Workmen's Compensation Act 1987.² This was because, the first Act in Nigeria suffered many criticisms. One of the major criticisms of the first Act was that it restricted the categories of workmen to those whose earnings do not exceed N1,600 per annum. Therefore, a non-manual worker earning more than N1,600 per annum was unable to claim compensation under the first Act.³ The Act was under severe criticisms on account that it was outdated and irrelevant to modern industrial needs.⁴ The 1987 Act which came to correct some of the deficiencies of the old law, also suffered so many criticisms on account of inadequacies. The

¹ Emiola, A. Nigerian Labour Law, 4th Edition, Emiola (Publishers) Ltd, Ogbomosho, Nigeria (2008) p. 302

² Cap W> Iqws of the Federation of Nigeria 2004

³ Oguniyi, O. Labour and Employment Law in Perspective, Folio, Publishers Ltd, Ikeja, Lagos (1991) p. 126

⁴ *Ibid*

1987 was faulty in several respects.⁵ For example, it was considered too narrow that it covered only employees engaged in manual labour or clerical work or otherwise and had been repeatedly interpreted to exclude professionals.⁶ It limited compensable injuries to injuries that had been the result of accident at the workplace leaving other injuries with no compensation.⁷ Also, the heads of compensation under Workmen's Compensation Act were limited to compensation in fatal cases, compensation in the case of permanent total incapacity and case of temporary incapacity.⁸

The 2010 Act makes provision for payment of compensation to employees who suffer occupational diseases or sustain injuries arising from accident at workplace or in the course of employment. There are basically five grounds of compensation under the Act viz mental stress, occupational disease, injury, hearing impairment and death.⁹ The Act uses some scales in order to measure the amount of compensation. These scales are scales of compensation for temporary partial disability, temporary total disability, permanent partial disability or disfigurement, permanent total disability, fatal cases and enemy war-like actions.¹⁰ The Act also provides for vocational rehabilitation as a form of compensation in order to bring

⁵ Oladele, K 'Reforming the Nigerian Workmen's and Factory Act' <http://www.nigeriavillagesquare.com/articles/21/03/2012> at 5:33pm

⁶ Olaniwun, A.L.P 'Employer and Employee Relations: The Employees' Compensation Act 2010' [http://www.olaniwunajayi.net/clientalert/employees'compensationactnewsletter-](http://www.olaniwunajayi.net/clientalert/employees%27compensationactnewsletter-) Accessed May 22, 2012

⁷ *Ibid*

⁸ *Ibid*

⁹ Sections 7,8,9 and 10 of Employees' Compensation Act No.13,2010

¹⁰ Sections 25,24,22,21,17 and 18 *ibid*

injured employees back to work by providing any medical treatment or other care that are necessary to alleviate or relieve the injured employee from the effect of the injury. ¹¹However, members of the armed forces, except those employed in civilian capacity are excluded in terms of coverage.¹²

The 2010 Act establishes contributory Pension Fund called “the Fund” into which shall be credited all monies, funds or contributions by employers for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in the course of employment. The Fund established is managed by the Nigeria Social Insurance Trust Fund Management Board called ‘the Board’. The Fund here consists of take-off grant from the Federal Government, contributions by employers pursuant to the Act, fees and assessments charged on employers, the proceeds of investments of the funds, gifts or grants from any national or international organisations, and other monies that may accrue to the Fund from any other source.¹³ Employees are prohibited from contributing to the Fund as the Act imposes sanction against employers who attempt to deduct assessments that are payable to the Fund from the remuneration of employees.¹⁴

¹¹ Sections 16 and 26(1)(8)(9) *ibid*

¹² See Sections 1 and 3 *ibid*

¹³ Sections 31 & 33 *ibid*

¹⁴ Section 14 *ibid*

The Act prohibits waiver of the benefits or rights of employees or dependants to compensation through any agreement made between the employer and employee. Agreements that are made with the aim to waive the employees' right to compensation are rendered void and unenforceable.

The Employees' Compensation scheme now recognises new categories of workplace injuries such as mental stress resulting from exceptional circumstances in the course of employment.¹⁵ This is only if the mental stress is an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employees' employment or diagnosed by an accredited medical practitioner as a mental or physical condition amounting to mental stress arising out of the nature of work or the occurrence of any event in the course of the employees' employment.¹⁶ Where the mental stress is caused as a result of the decision of the employer to change the work, the working condition of work organisation in such a way as to unfairly exceed the work ability and capacity of the employee thereby leading to mental stress, such situation shall be liable to compensation to the degree as may be determined under any regulation made by the Board.¹⁷

¹⁵ Section 8 *ibid*

¹⁶ *Ibid*

¹⁷ *Ibid*

Payment of compensation under the Act does not affect the employees' retirement benefits payable under the Pension Reform Act.¹⁸ The scheme has the effect of easing the burden on employers who will not be required to contribute further to the welfare of an injured employee in the event of an accident or injury, no matter the amount of liability involved.

As a general rule, an employee or his dependant is entitled to apply to the Board for compensation within one year after the date of the death or injury or disease or disability arising from a occupational accident or disease. Where special circumstances exist, an application for compensation may be made within three years of the occurrence of the accident or injury, or injury, or disease for which a claim is being made.¹⁹ Anybody that is dissatisfied with the decision of the Board on compensation may appeal to the Board for a review of such decision and it is only upon further dissatisfaction with the review that one can approach the National Industrial Court.²⁰ Where anybody is dissatisfied with the first decision of the Board, he/she must appeal to the same Board for a review within 180 days otherwise, the person shall lose his or her right to appeal the decision.²¹ Except appeals on questions of fundamental rights as contained in chapter iv of the Constitution of the Federal Republic of Nigeria as it relates to matters upon which the National Industrial Court has jurisdiction, employees compensation matters terminate at the

¹⁸ No. 2, 2005

¹⁹ Section 6 of Employees' Compensation Act *op cit*

²⁰ Section 55(1) *ibid*

□ Section 55 (2)(3) *ibid*

National Industrial Court.²² Also except on criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on National Industrial Court, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.

Aside the doctrinal approach adopted by this research, empirical method by way of interview was adopted in order to unravel certain facts which form part of the statement of the research problem. The revelations here are captured in chapter four and also in the findings of this research.

5.2 Findings

From the foregoing, the following findings were made:

1. The findings in this research have revealed that enforcement of the scheme within the informal sector will be difficult because of the level of the country's level of development. The Board, in the interview granted, admitted this fact. The informal places of work may not necessarily have payrolls which will serve as indicators for assessments by the Board. There may also be the problem of how to always locate those at the informal sector since they do not have registered offices for the purposes of transaction and are prone to frequent migration. Informal sector has a characteristic of avoiding Government regulations because of its faceless nature in most

²² Sections 243 “(2) – (4),” 254 C(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), see also section 9 of the National Industrial Court Act, No. 1 2006

instances.²³ The challenge of the Board in having effective transactions with the employers and employees at the informal sector of the economy is another big issue. For example, how will employers at the informal sector be traced for the purpose of duties and obligations imposed by the Act? Also, where will the employers at the informal sector be traced for the purpose of sanctions imposed by the Act?

2. The Act says members of the family of employers who are employed as domestic servants are not employees and therefore not covered by the Act, and without defining who "members of the family of employers"²⁴ are. This *lacuna* will cause a great problem for interpretation.
3. The Act gives the Board power to fix the terms and conditions of service including remuneration of employees of the Fund. This may create conflict of interests because, the employees of the Fund are employees of the Board and since the Board is the trustee of the Fund, this position of the law will create a situation where the interest of the trustee will conflict with the interest of the beneficiaries who are the employees.²⁵ The National Assembly should

²³ The 1997 report of the International Labour Office on employment in Kenya revealed that avoidance of Government regulation is a characteristic of informal sector of the economy.

²⁴ See section 73 of the Act *op cit* which defines the term "employee" to include a domestic servant who is not a member of the family of the employer." No place in the Act defines the term "member of the family of employers."

²⁵ Section 31 (c), 56 and 57 *ibid* which empower the Board to manage the Fund.

fix the terms and conditions of service including the remuneration of the employees of the Fund.

4. The Act provides that compensation for temporary partial disability and temporary total disability are discretionary and does not state any specific amount or in any way give an idea as to the amount of money that will be paid in the circumstances but merely subjects this to regulations made by the Board or the Second Schedule to the Act²⁶. While the said Schedule lists various types of injuries with their corresponding degrees of rating, it does not give any idea of the amounts to be paid as compensation. Interview conducted has revealed that there is no Regulation made by the Board yet which will give any idea. Employees who may suffer any incapacity of this nature may not be certain of the amounts of money payable as compensation yet.
5. The Act defines a 'spouse of the deceased' to include any person with whom the employee cohabited as a couple for at least 12 months immediately before the death of the employee²⁷ thereby making a paramour qualify as heir of the employee for the purpose of compensation. This seems to be against public morality.
6. Payment for health care services and disability supports are generally discretionary. Only health care benefits in respect of occupational

²⁶ Sections 25, and 24 *ibid*

²⁷ Section 73 *ibid*

diseases are mandatory²⁸. This creates a situation where the Board may not be willing to provide these services for the simple reason that, they are discretionary.

7. 'Mental stress' is not compensable if it is caused by an injury for which the employee is otherwise entitled to compensation.²⁹ The requirement of the law to the effect that mental stress for it to be compensated, should not result from any injury for which the employee is entitled to compensation, is alarming. There is an additional harm suffered if any compensable injury leads to mental stress and in the circumstance, justice will only seem to be done if there is additional compensation. Secondly, it will be very difficult to in all cases know exactly, the cause of mental stress, especially when there are many stress inducing factors from the history of the patient. For instance, where an unfairly overworked employee suddenly sustains a compensable physical injury and shortly diagnosed with mental stress, it will be very difficult to know whether the mental stress set in as result of the unfair job responsibility or as a result of the injury. While the issue of diagnosing mental stress may entirely be a laboratory work, its cause may simply be an inference by the medical practitioner drawn from the history of the patient. If the medical practitioner is confronted with two stress-inducing factors, he may simply resort to

²⁸ Sections 16, 26 and 9(1)(a)(c)(d) of Employees' Compensation Act *op cit*.

²⁹ Section 8(1)(a)(b) *ibid*

a guess, as to which of the factors actually led to the stress in issue or attribute it to all the stated factors in order to save him the difficulty of discovering the exact cause. Also, the scale of compensation in respect of mental stress is not stated in the Act but the Act simply subjects this to Rules as may be made by the Board.³⁰The interview conducted revealed that there is no such Rule yet and the implication is that victims of mental stress cannot be sure of their remedies or the quantum of such remedies yet, unless and until such Rule is made by the Board.

8. For an injury to an employee which occurs between his place of work and the place of meal to be compensable, such place of meal must be his usual place of meal.³¹This seems to create some sort of servitude as to where to eat, if one is to be entitled to compensation for injuries connected thereto.
9. The interview revealed that there is poor publicity on the side of the Board. At present, the Board only uses print media for publicity. The interview disclosed that the Federal Government has paid in bulk the 2011 and 2012 contributions for all Federal Government -owned tertiary institutions and Research Institutes and that these institutions are not even aware of such information. The print media publicity will not suffice in a country like Nigeria where there is high

³⁰ See section 8(2) *ibid*

³¹ Section 7(2)(b) *ibid*

level of illiteracy and poor reading culture.³² The Board has not even bothered to formally communicate the administrators of these institutions, this fact.

10. The Act says anyone that is dissatisfied with the decision of the Board on compensation is to appeal to the same Board for a review of such decision and that it is on further dissatisfaction with the review that an appeal lies to the National Industrial Court.³³ This system which allows appeal to the same Board at the first instance may not encourage fairness. If it must lie to the same Board, at least the Act should provide that a different panel should be created for such purpose, in a fair and impartial manner. A better view however is that such appeal should lie to a body separate and independent of the Board.

5.3 Recommendations

In order to improve the Employees Compensation Act, it is recommended that the Act be amended to reflect the following.

1. It is recommended that reference to the number of employees at the informal places of work should serve as indicators for assessment. Also, the risk factors in various places of informal sector should serve as indicator for assessment by the Board. The Board should adopt flat amount of money as assessment for employers at the informal

³² See Tunde, G 'Library Reading Culture and Students' Academic Performance in Secondary Schools in Oyo State' *Middle Belt Journal of Library and Information Science* (2007)pp.42-58 for an exposition on poor reading culture in Nigeria.

³³ See section 55(1) of Employees' Compensation Act *op cit*

sector and should vary same depending on the risk factors in places of work and the number of employees at each place of employment so that instead of reference being made to non-existent payrolls at the informal sector, reference is made to the number of employees and the risk factors in the place of work. The higher the risk, the higher the amount of assessment, while, the higher the number of employees, the higher the amount of assessment and vice versa. It is also suggested that in order to lift the veil that in most cases covers the employers at the informal sector of the economy, the Board should work in partnership with the various village and district heads in order to know more about the employers within the sector.

2. Since section 73 of the Act excludes members of the family of employers employed as domestic servants from the compensation scheme, the said section should be amended to define those members of the family of employers whom the Act excludes. 'Members of the family of employers' in this sense should mean only the employer's children, spouse and those wholly dependent on them.
3. A different body should be responsible for fixing the terms and conditions of service, including remuneration of the Fund. The National Assembly or any independent body should be saddled with this responsibility. Section 31(c) of the Act which empowers the Board which is the trustee of the Fund to fix its own terms and

conditions of service including remuneration, may create conflict of interest which will always be to the disadvantage of the beneficiaries of the Fund (employees)

4. The payment of compensation for temporary partial disability and temporary total disability should be made compulsory if proved and that sections 24 and 25 of the Act should give an idea as to the amount of money that should be paid as compensation in the circumstance and not merely subjecting it to Regulations as may be made by the Board and which regulation is hitherto not in place.
5. The definition of "a spouse" for the purpose of compensation contained in section 73 of the Act should exclude anybody to whom the deceased employee was not lawfully married.
6. Sections 16 and 26 of the Act should be amended to reflect that, payment for health care services and disability supports should be mandatory in all cases of compensation.
7. Mental stress should be compensable, even if it results from an injury for which the affected employee is otherwise, entitled to compensation. Therefore, section 8(1) (a)(b) of the Act should be amended to reflect this. Also, the Board make available the Rules which the Act says it can make so that employees who suffer mental stress can be sure of their remedies. Failure to do this is akin to giving a dud cheque to employees who may suffer mental stress.

8. Section 7(2)(c) of the Act should be amended to reflect that injury to an employee which occurs between his place of work and place of remuneration should be compensated and need not necessarily be where he "usually receives remuneration".
9. The Board must make deliberate efforts to organise direct talks with employees and employers in their places of work. As to the informal sector of the economy, publicity will be better if the Board connects with village heads and district heads across the country through its branch offices. There should be radio or television jingles for the purpose of publicity. The Board should write employers individually to get them know about this scheme. The Board should erect billboards, and adopt the use of posters, leaflets and pamphlets in places of work to enlighten employees and employers about the new scheme. Also, door-to-door (places of work to places of work) enlightenment campaign about the new scheme will be of great help.
10. Section 55(1) of the Act should be amended to reflect that where one is dissatisfied with the first decision of the Board, a different panel within the Board should be created for such purpose in a fair and impartial manner. A better view however is that such appeal should lie to a body separate and independent of the Board.

5.4 Concluding Remarks

Employees' Compensation Act has introduced some novel provisions. It has for the first time introduced 'mental stress', as a separate ground for

employees' compensation in Nigeria. Also, employees are now free to process their claims without any fear of victimization by their employers as the affected employees are no longer expected to claim compensation directly from their employers. This has a way of discouraging hostile relationship that will be triggered if claims were to be made directly against employers. Another good thing is that the present employees' compensation scheme in Nigeria encourages even the employers to assist their employees in pursuing any compensation claim. This, no doubt is capable of encouraging smooth employer-employee relationship. Employees are expected to lay claim for compensation against Nigeria Social Insurance Trust Fund Management Board. Employers are however, expected to insure their employees against work-related risks and disabilities. There is an attempt by the Act to simplify the procedure for claim of compensation as against the former Workmen's Compensation Act where such claims were directly made against the employers and in most cases awards were only gotten through protracted litigations. The writer is of the opinion that employees in Nigeria will smile better if the recommendations made in this thesis are implemented.

BIBLIOGRAPHY

BOOKS

- Aboki, Y, Introduction to Legal Research Methodology, 2nd Edition, Tamaza Publishing Co., Zaria (2009)p.3
- Agomo, C.K, Nigerian Employment and Labour Relations Law and Practice, Concept Publications Limited,Lagos, (2012)
- Akintunde, E. Nigerian Labour Law, Ibadan University Press, Ibadan (1979) p. 108.
- Bone, S. *et al* Osborn's Concise Law Dictionary, Mnth Edition, Sweet and Maxwell, London (2001) p. 387.
- Cooper, W.M. and Wood, J.C. Outlines of Industrial Law, 5th Edition, Butterworth and Co. (Publishers) Ltd, London (1966) pp. 365 – 403.
- De Soto, H The other Path; The Invisible Revelation in the Third World,Harper and Row, New York (1989)
- Emiola, A. Nigeria Labour Law, 4th Edition, Emiola (Publishers) Ltd, Ogbomosho, Nigeria (2008) p. 302.
- Geerts, A *et al* .Compensation for Bodily Harm, Fernand Nathan, Brussels (1977) pp. 7 – 211.
- Kramer, S.N History Begins at Sumer, Thames and Hudson, London (1958) p. 93.
- Ogunniyi, O. Labour and Employment Law in Perspective, Folio, Publishers Ltd, Ikeja, Lagos (1971) p. 126.
- Samuel H. Industrial Law. 7th Edition Sir Isaac Pitman & Sons Ltd, London (1967) pp. 117 – 142.
- Selwyn, N.M. Law of Employment. 2nd Edition, Butterworth Guilford, London (1978) pp. 21, 266 – 284.
- Slade, E. Tolley's Employment Handbook. 17th Edition, Clays Ltd, England (2003) p. 305.
- Summers, D. Longman Dictionary of Contemporary English. Fourth Edition, Pearson Education Ltd, England (2003) pp. 1754, 1199.

Sykes, E.I. The Employer, the Employee and the Law. 3rd Edition, the Law Book Company Ltd, Sydney (1973) p. 108.

Uvieghara, E.E., Labour Law in Nigeria, Malthouse Press Ltd, Ikeja, Lagos, (2001) p. 250.

JOURNALS

Commande, G. "Towards a Global Model for Adjudicating Personal Injury Damages: Bridging Europe and the United States." *Temp. Intl & Comp. LJ* (2005) 19 pp. 241 – 349.

Crammer, C.R. "Loss of Enjoyment as a Separate Element of Damages" *PAC L.J.* (1981) 12 pp. 965 – 972.

Guyton G.P. "A Brief History of Workers' Compensation." *The IOWA Orthopaedic Journal* (1999) Vol. 19 p. 106.

Haller, J.S. "Industrial Accidents – Worker's Compensation Laws and the Medical Response" *Western Journal of Medicine* (1988) Vol. 148 pp. 341 – 348.

Koskoff, Y.D. "The Nature of Pain and Suffering" *TRIAL*(1977) 13, pp. 21, 22.

Tunde, G 'Library Reading Culture and Students' Academic Performance in Students in Oyo State' *Middle Belt Journal of Library and Information Science* (2007) pp.42-58

NEWSPAPERS

Anonymous. 'The Genesis of Employees' Compensation Act' .In: Social Security News; A Publication of Nigeria Social Insurance Trust Fund Management Board. (2011)Vol.3 No.21pp.4-6

Dike, G. Crisis Brews at OAU as Lecturers Battle Varsity Management, Column 2, Daily Sun, Tuesday, February 12, 2012 p. 7.

INTERNET SOURCES

<http://medical-dictionary.thefreedictionary.com/death-April 1,2012-6:36pm>

<http://www.ilo.org/public/english/standards/relm/gb/./esp-1-1> Retrieved on the 31st day of January, 2013 at 1:20pm

<http://www.legal.dictionary.thefreedictionary.com/illiterate>-Retrieved on the 19th day of May, 2012

<http://www.nigeriaintel.com-the-nigerian-pension-scam-how-they-looted-the-funds-july-2012>

<http://www.osc.state.ny.us/localgov/pubs/preventingfraud>

<http://www.fatfreekitchen.com/stress> April 2, 2012-7:20pm

<http://www.livestrong.com/article/155766-five-common-causes-of-stress> April 12, 2012-7:35pm

Akele, S. Pension Scams: Is Contributory Pension Scheme Immune? - www.dailyindependentnig.com-May, 2014

Gerxhany, K.T, Informal Sectors in Developed and Less Developed Countries: A Literature Survey- <http://www.ifwea.org/@bin/217843/gerxhani> Retrieved on the 28th day of January, 2013

Jie, W. 'The History of Workers' Compensation Laws' - http://www.echow.com/about_5zg6716_March_24_2012

Murray, J. "Workers' Compensation" biz.taxlawabout.com/d/glossaryw/g/workerscomp.htm -3/3/2012

Oladele, K. "Reforming the Nigerian Workmen's Compensation and Factory Act" <http://www.nigeria.villagesquare.com/articles21/03/2012.5:33pm>

Olaniwun, A.L.P. 'Employer and Employee Relations: the Employees' Compensation Act' 2010" <http://www.olaniwuajayi.net/clientalert/employees-compensation-act-newsletter>. Accessed May 22, 2012

www.nsif.net

Yusuf, I.A. 'The Perils of Nigerian Workers'-<http://thenationonline.net/web2/articles/7367/1/>-March 21, 2012-5:35pm