

THE WORKMEN'S COMPENSATION ACT

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SCHEDULE

## THE WORKMEN'S COMPENSATION ACT

[30th July, 1938.]

Cap. 418.  
Laws  
57 of 1954,  
24 of 1960.  
Acts  
42 of 1969  
3rd Sch.,  
36 of 1976  
Sch.,  
38 of 2013  
Sch.

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

PART I. *Preliminary*

2.—(1) In this Act—

Interpreta-  
tion.

“adult” and “minor” mean respectively a person who is not and a person who is under the age of seventeen years;

“agriculture” includes horticulture and the cultivation of the ground for any purpose, sowing seeds, planting, removing crops, animal husbandry and forestry;

“agricultural holding” means agricultural land which is occupied or farmed or managed as a single unit; and includes two or more parcels of such land contiguous one to another; 57/1954  
S. 2 (a).

“dependents” means—

24/1960  
S. 2 (1).  
36/1976  
Sch.

(a) such of the members of a workman's family as were wholly or in part dependent upon the wages of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent;

(b) such of the following persons as were wholly or in part dependent upon the wages of the workman at the time of his death, or would but for the incapacity due to the accident have been so

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dependent, that is to say any minor not being a member of the workman's family;

- (c) any other person who satisfies the tribunal that immediately before the occurrence of the accident his relationship with the workman was such as to render him wholly dependent upon the wages of the workman and that either—
- (i) there are no such dependents as are referred to in paragraphs (a) and (b); or
  - (ii) special circumstances exist which justify that person's being treated as a dependent within the meaning of paragraph (a):

Provided that a person shall not be deemed to be a partial dependent of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position;

“employer” includes Her Majesty in Her Government of this Island and any person or body of persons corporate or unincorporate horticulture and the heirs of a deceased employer, and where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall for the purposes of this Act, save as is provided in subsection (1) of section 18, be deemed to continue to be the employer of the workman whilst he is working for that other person. In relation to a person, employed for the purposes of any game or recreation and engaged or paid by a club, the manager or members of the managing committee of the club shall, for the purposes of this Act, be deemed to be the employer;

“manager” in relation to a ship means the ship’s husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

“member of the family” means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister;

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

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

“ship” “vessel” “seaman” and “port” shall have the same meaning as in the United Kingdom Merchant Shipping Act 1894;

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

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

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

“workman” means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, or otherwise, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done; so, however, that any such person whose remuneration exceeds fifteen hundred dollars a year shall not be regarded as a workman unless his contract of service or apprenticeship so provides :

24/1960  
S. 2 (2).

Provided that the following persons shall not be regarded for the purposes of this Act as workmen—

24/1960  
S. 2 (3).

- (a) persons employed to perform work of a casual nature not connected with the employer's trade or business not being persons employed for the purposes of any game or recreation and engaged and paid by a club; or
- (b) outworkers, that is to say, persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired or adapted for sale in their own homes or on other premises not under the control or management of the person who gave out the articles or materials; or
- (c) a member of the employer's family dwelling in his house; or

- (d) persons employed in agriculture, unless employed on agricultural holdings of twenty-five acres or more, or such employment be in connection with any engine driven or machine worked by mechanical power; or 57/1954  
S. 2 (b).
- (e) domestic servants except— 24/1960  
S. 2 (4).
- (i) those employed in a hotel, guest-house, boarding-house, residential club, or other establishment of a like nature; and
- (ii) those who, in the performance of their duties as domestic servants, are engaged in driving any motor vehicle; or
- (f) persons who contract or sub-contract for the carrying out of work and themselves engage other persons, independently of the employer, to perform such work; or
- (g) persons in the civil employment of Her Majesty otherwise than in Her Government of this Island; or
- (h) persons in the naval or military or air service of the Crown.

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

(3) If on any proceedings for the recovery of compensation under this Act it appears to the Court by which the claim for compensation is to be settled that the contract of service or apprenticeship under which the injured person was working at the time when the accident causing the injury happened was illegal, the Court may, if having regard to all the circumstances of the case it thinks proper so to do, deal with the matter as if the injured person had at the



time aforesaid been a person working under a valid contract of service or apprenticeship.

### PART II. *Compensation*

Employers'  
liability for  
compensa-  
tion.

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

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

- (a) the injury incapacitate the workman whether totally or partially in the case of a daily paid workman for a period of less than five consecutive calendar days and in the case of a workman other than a daily paid workman for a period of less than seven consecutive calendar days;
- (b) the accident be proved to be attributable to the workman's own serious and wilful misconduct which shall include—
  - (i) his being in any degree under the influence of drugs or intoxicating drink; or
  - (ii) a contravention of any law, regulation or order, whether statutory or otherwise, expressly made for the purpose of ensuring the safety or health of workmen, or of preventing accidents to workmen, if the contravention was committed deliberately or with a reckless disregard of the terms of such law, regulation or order; or
  - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen; or

- (iv) any other act or omission which the Court may, having regard to all the circumstances of an accident, declare to be serious and wilful misconduct;
- (c) it be proved that the accident would not have occurred or in so far as the incapacity or death would not have been caused, but for a pre-existing diseased condition of the workman;
- (d) death or incapacity result from personal injury if the workman has at any time represented to the employer that he was not suffering or had not previously suffered from that or a similar injury, knowing that the representation was false;
- (e) any workman who has met with an accident, as the result of which there is materially increased risk of a further accident happening to him or of an aggravation of an injury caused by such accident and has thereby become permanently incapacitated from work and received compensation in respect thereof, subsequently resume work similar to that at which he was employed at the time of such accident, whether with the same or another employer, and meet with a further accident which is in any way attributable to the said permanent incapacity, even although such further accident is caused by a subsequent happening.

4.—(1) The compensation shall be payable to or for the benefit of the workman, or, where death results from the injury, to or for the benefit of his dependents, as provided by this Act. To whom compensation payable.

(2) Where there are both total and partial dependents nothing in this Act shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependents.

Amount of  
compensa-  
tion.

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

(a) where death results from the injury and—

(i) the workman leaves a dependent or dependents wholly dependent upon his earnings, a sum equal to thirty-six months' wages or fifteen hundred dollars, whichever is less;

(ii) the workman does not leave a dependent or dependents wholly dependent upon his earnings, but leaves a dependent or dependents in part so dependent, such sum not exceeding the amount of compensation payable under the preceding sub-paragraph as may be agreed upon, or in default of agreement as may be awarded by the Court to be reasonable and proportionate to the injury to the said dependent or dependents;

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

(i) in the case of an adult, a sum equal to forty-eight months' wages or two thousand dollars, whichever is less; and,

(ii) in the case of a minor, a sum equal to ninety-six months' wages or two thousand dollars, whichever is less:

Provided that the amount of compensation payable under sub-paragraph (i) or (ii) shall in no case be less than one thousand dollars;

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

(i) in the case of an injury specified in the Schedule, such percentage of the compensation which would have been payable in

24/1960  
S. 3 (a).

24/1960  
S. 3 (b).

24/1960  
S. 3 (c).

Schedule.

the case of permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

- (ii) in the case of an injury not specified in the Schedule, such percentage of the compensation payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury, Schedule.

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

- (d) where temporary incapacity, whether total or partial, results from the injury, a half-monthly payment payable in the case of a daily paid workman on the sixteenth day from the date of the incapacity and in the case of a workman other than a daily paid workman on the sixteenth day from the day in respect of which he has last been paid wages by his employer or the twenty-third day from the date of the incapacity, whichever is the earlier, and thereafter half-monthly during the incapacity or during the period of five years, whichever period is shorter—

- (i) in the case of an adult of a sum equal to one-third of his monthly wages; 24/1960  
S. 3 (d).
- (ii) in the case of a minor of a sum equal to one-third of his monthly wages or, after he has attained the age of seventeen years, to one-half of his monthly wages.

(2) In fixing the amount of any compensation the Court shall have regard to any payment, allowance or benefit which the workman may have received from the employer after the date of the accident, and no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages as he is earning or is able to earn in some suitable employment or business after the accident.

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

Method of  
calculating  
wages.

6.—(1) For the purposes of section 5 the monthly wages of a workman shall be calculated as follows—

- (a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
- (b) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period;
- (c) where the nature of the employment is casual, or where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the absence of proper records of the workman's earnings, or the terms of employ-

24/1960  
S. 4 (a).

ment, it is impracticable at the time of the accident to apply the method of computation set out in paragraph (b), the monthly wages of the workman shall be deemed to be—

- (i) the average monthly amount, which, during the twelve months immediately preceding the accident, was being earned by a workman in the same grade employed at the same work by the same employer, or, if there is no such workman so employed, by a person in the same grade employed in the same class of employment and in the same district; and in any event

- (ii) not less than twelve dollars per month:

Provided that if the amount of the monthly wages arrived at by a calculation under paragraph (a), paragraph (b) or paragraph (c) is more than eighty dollars such monthly wages shall be assumed to be eighty dollars.

24/1960  
S. 4 (b).

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

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

Review of  
half-monthly  
payment.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or, if the accident is

found to have resulted in permanent incapacity, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments :

24/1960  
S. 5.

Provided that no deduction shall be made from such lump sum of any amounts received by the workman in respect of the first six half-monthly payments.

Payment of  
lump sum in  
lieu of half-  
monthly  
payment.

8. Any liability for half-monthly payments may, by agreement between the parties, or, if the parties cannot agree and the payments have been continued for not less than twelve months, on the application of either party to the Court, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Court, as the case may be :

Provided that a half-monthly payment may by agreement be redeemed by a lump sum at any time.

Cases in  
which  
employer  
may alter  
half-  
monthly  
payment.

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

- (a) where the workman, to the prejudice and without the knowledge and consent of the employer, absents himself in such a manner that any notice under this Act cannot be served on him; or
- (b) where the workman resumes work at the rate of wages which he was earning before the accident; or
- (c) where a workman in receipt of a half-monthly payment in respect of total incapacity has actually returned to work; or

- (d) where the monthly wages of a workman in receipt of a half-monthly payment in respect of partial incapacity have actually been increased; or
- (e) where the workman dies.

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

Distribution  
of compen-  
sation.

(2) Compensation payable where permanent incapacity has resulted from an injury and lump sums payable under the provisions of section 8 where temporary incapacity has resulted from an injury shall be paid into Court, and any sum so paid shall be paid to the person entitled thereto or be invested, applied or otherwise dealt with for his benefit and in such manner as the Court thinks fit.

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

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

(5) On the payment in of any money under subsection (1) the Court may deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding twenty-four dollars, and pay the same to the person by whom such expenses were incurred, and shall, if it thinks necessary, cause notice to be published or to be served on each dependent in such manner as it thinks fit calling upon

24/1960  
S. 6.



the dependents to appear before it on such date as it may fix for determining the distribution of the compensation. If the Court is satisfied, after any enquiry which it may deem necessary, that no dependent exists, the Court shall repay the balance of the money to the employer by whom it was paid. The Court shall, on application by the employer furnish a statement showing in detail all disbursements made.

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

(7) Where, on application made to the Court in this behalf or otherwise, the Court is satisfied that, on account of neglect of children on the part of the parent, or on account of the variation of the circumstances of any dependent or, for any other sufficient cause, an order of the Court as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with, ought to be varied, the Court may make such order for the variation of a former order as it thinks just in the circumstances of the case:

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

(8) The attorney-at-law or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of such claim or to claim a

lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by a Court, subject to regulations made under this Act, on an application made either by the person claiming compensation, or by his attorney-at-law or agent, to determine the amount of the costs to be paid to the attorney-at-law or agent.

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

Compensation not to be assigned, attached or charged.

### PART III. *Conditions of Compensation*

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

Requirements as to notice of accidents and claim for compensation.

- (a) written or oral notice of the accident has been given as soon as practicable after the happening thereof;
- (b) written or oral notice of the accident has been given before the workman has voluntarily left the employment in which he was injured;
- (c) the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury;
- (d) in the case of the death the claim for compensation has been made within six months after the date of death or within six months after the date of the accident;
- (e) in the case of death occurring more than six months after the accident causing injury, a claim

for compensation has been made by the workman within six months of the accident:

Provided that—

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

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

(3) The notice, if in writing, may be given by delivering the same at or sending it by post in a registered letter addressed to the residence or place of business of the person to whom it is to be given.

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

(5) The workman shall, if required by his employer, supply to him such further particulars of the accident and of the injury as the employer may reasonably require.

13.—(1) If a workman receiving a half-monthly payment ceases to reside in this Island, he shall thereupon cease to be entitled to receive any half-monthly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature.

Half-monthly payments to cease on workman ceasing to reside in Island.

(2) If the medical referee so certifies, and the injury is likely to result in a diminished earning capacity then the half-monthly payments shall be redeemed by a lump sum which shall be subject to the provisions of this Act and which, in default of agreement, shall be settled by the Court.

24/1960  
S. 7.

(3) Notwithstanding the provisions of subsection (1) if the medical referee certifies that a workman is, by reason of injury, unfit for work for a period specified in the certificate and such workman ceases to reside in the Island during that period, any half-monthly payments, or balance of such payments, that may be due or may become due to him in respect of such period shall be redeemed by a lump sum.

Medical  
examination  
after notice  
of accident.

14.—(1) Where a workman has given notice of an accident or where an accident has occurred in respect of which the necessity of giving notice under this Act is dispensed with, he shall if so required by the employer submit himself for examination by a medical practitioner provided and paid by the employer.

(2) The workman shall, when required, attend upon that medical practitioner at the time and place notified to the workman by the employer, provided such time and place is reasonable.

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

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

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

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

(7) If the workman has refused to submit himself for treatment by a medical practitioner when so required under the provision of subsection (6), or having submitted himself for such treatment has disregarded the instructions of the medical practitioner, then if it is thereafter proved that the refusal or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting incapacity shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had submitted himself for treatment by, and duly carried out the instructions of the medical practitioner, and compensation, if any, shall be payable accordingly.

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

Medical examination of workman receiving payments.

**15.** Any workman receiving half-monthly payments under this Act shall, if so required by the employer, from time to time but at reasonable intervals, submit himself for examination by a medical practitioner provided and paid by the employer and the provisions of section 14 shall apply to any such examination.

Suspension of right.

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

Agreements for payment of compensation.

**17.—(1)** The employer and the workman may, after the injury in respect of which the claim to compensation has arisen, agree in writing as to the amount to be paid by the employer as compensation in respect of the permanent partial incapacity or permanent total incapacity of the workman resulting from the injury.

(2) Where any amount of compensation has been agreed under subsection (1), or where the amounts of any half-monthly payment have been agreed or have been varied, suspended, or ended, or where any other matter under this Act has been determined by agreement, the Court, may, if application be made by any person interested within three months after the date of the agreement, cancel it and may make such order (including an order as to any sum already paid under the agreement) as in the circumstances may be thought just, if it is proved—

- (a) that the sum paid or to be paid was or is grossly inadequate or excessive; or
- (b) that the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means, as would in law be sufficient ground for avoiding the agreement; or

- (c) that the agreement was entered into in ignorance of or under a mistake as to the true nature of the injury.

(3) Any such agreement may on application to the Court be made a judgment of the Court under this Act.

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

Provided that—

- (a) no such memorandum shall be recorded before twenty-one days after the despatch, by registered post, by the Clerk of notice to the parties interested; and 24/1960  
S. 8.
- (b) where a workman seeks to record a memorandum of agreement between his employer and himself for a payment of compensation under this Act and the employer proves by affidavit that the workman has in fact returned to work and is earning wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded if at all, on such terms as the Resident Magistrate under the circumstances may think just.

**18.—**(1) Where any person (in this section referred to as the principal) in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any Sub-  
contracting.



*WORKMEN'S COMPENSATION*

work undertaken by the principal, the principal shall, provided the notice of the accident required under section 12 is given to him, be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then in the application of this Act references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

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

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

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

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

PART IV. *Alternative Remedies*

19.—(1) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may at his option claim compensation under this Act, or take proceedings independently of this Act, but the employer shall not be liable to pay compensation under this Act and damages.

Election by workman of remedy against employer.

(2) The workman may elect whether he will institute proceedings for damages against his employer or will institute proceedings for compensation under this Act, and if he institute proceedings for damages he shall be debarred from instituting proceedings under this Act in respect of the same accident or if he institute proceedings under this Act he shall be debarred from instituting proceedings for damages against his employer in respect of the same accident. Any written application lodged by the workman with the Clerk of Courts in pursuance of section 28 shall be deemed to be an institution of proceedings under this Act, and if the workman and the employer agree in writing as to the amount of compensation to be paid under this Act, he shall be deemed to have elected to take proceedings and to recover compensation under this Act, and the workman and his dependents shall be bound by the election.

20. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

Remedies against employer and stranger.

- (a) the workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act but shall not be entitled to recover both damages and compensation; and

- (b) if the workman has recovered compensation under this Act, the person by whom the compensation is paid, and any person who has been called on to pay an indemnity under section 18 (relating to liability in case of workmen employed by contractors), shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement be settled by the Court.

PART V. *Insolvency or Bankruptcy of Employer*

Provisions  
as to cases of  
insolvency  
or  
bankruptcy  
of employer.

38/2013  
Sch.

21.—(1) Where the employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming insolvent or bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up or a receiver or manager of the company's business or undertaking having been duly appointed, or possession having been taken by or on behalf of the holders of a security interest registered under the Security Interests in Personal Property Act, of any property comprised in or subject to the security interest, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to insolvency or bankruptcy and the winding-up of companies, be transferred to and vest in the workman and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency

or bankruptcy or liquidation, or, as the case may be, he may recover the balance from the receiver or manager.

(3) The amount due in respect of any compensation or liability for compensation under this Act shall—

- (i) be deemed a preferential debt within the meaning of section 140 of the Bankruptcy Act;
- (ii) where either a receiver is appointed on behalf of the holders of a registered security interest arising under a floating charge, or possession is taken of any property subject to the security interest by or on behalf of such holders, then, if the company is not at the time in course of being wound up, be paid in priority to any claim for principal or interest in respect of the debentures:

38/2013  
Sch.

Provided that such amount due accrued before the following date, that is to say—

- (a) in case (i) the date of the provisional order or absolute order when made on a debtor's own petition;
- (b) in case (ii) the date of the appointment of the receiver or of possession being taken as mentioned.

Where the compensation is a half-monthly payment the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum to which the half-monthly payment could, if redeemable, be redeemed if the employer made an application for that purpose under this Act, and a certificate of the Court as to the amount of such sum shall be conclusive proof thereof.

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

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

Employer  
liable for  
compensa-  
tion to dis-  
close insurer.

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

(2) When the insurer indemnifies an employer against liability to pay compensation and has used or uses that employer's name or has acted on his behalf in any proceedings under this Act, that insurer shall be bound by the decision given upon those proceedings in the same manner and to the same extent as the employer, and the insurer shall indemnify the employer accordingly:

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

#### PART VI. *Application to Special Classes of Persons*

Act not to  
apply to  
workman  
appointed to  
the service  
of the  
Island.

23. This Act shall not apply in the case of a workman in the service of this Island where, in consequence of injury received by any such workman in the discharge of his duties, a pension or gratuity which would not be payable if such injury were received otherwise, is paid to him or, in the case of his death, to any of his dependents as defined

in this Act, under any enactment or regulation providing for the grant of such pension or gratuity.

24. In the application of this Act to workmen in the employment of a local authority, the exercise and performance by it of its powers and duties conferred and imposed by law, or by by-law or rule or regulation, shall be regarded as the trade, business or undertaking of that authority.

Application to workman employed by local authority.  
24/1960  
S. 9.

25.—(1) This Act shall apply to masters, seamen, and apprentices to the sea service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in this Island, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in this Island, subject to the following modifications—

Application to persons employed on ships.

- (a) the notice of accident and the claim for compensation may, except where the person injured is the master, be given to the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident;
- (b) in the case of the death of the master, seaman or apprentice, the application for compensation shall be made within three months after news of the death has been received by the claimant;
- (c) where the injured master, seaman or apprentice is discharged or left behind in a Commonwealth or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the Commonwealth country, and by any British Consular

Officer in the foreign country, and if so taken shall be transmitted by the person by whom they were taken to the Minister, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided in sections 691 and 695 of the United Kingdom Merchant Shipping Act 1894 and those sections shall apply accordingly;

- (d) in case of the death of a master, seaman or apprentice leaving no dependents, no compensation shall be payable, if the owner of the ship is under the United Kingdom Merchant Shipping Act 1894 liable to pay expenses of burial;
- (e) the half-monthly payment shall not be payable in respect of the period during which the owner of the ship is, under any enactment in force for the time being in this Island relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman or apprentice;
- (f) any sum payable by way of compensation by the owner of the ship under this Act shall be paid in full notwithstanding anything in section 503 of the United Kingdom Merchant Shipping Act 1894 (which relates to the limitation of shipowner's liability in certain cases of loss of life, injury or damage), but the limitation of the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under section 20 (relating to remedies both against employer and stranger) as if the indemnity were damages for loss of life or personal injury;
- (g) subsections (2) and (3) of section 174 of the United Kingdom Merchant Shipping Act 1894 (which relate to the recovery of wages of seamen lost with

their ship), shall apply as respects proceedings for the recovery of compensation by dependents of masters, seamen and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the application is made within six months of the date at which the ship is deemed to have been lost with all hands.

(2) This Act shall also apply to any person not being a master, seaman or apprentice to the sea service, employed on board any such ship as is mentioned in this section, if he is so employed for the purposes of the ship or of any passengers or cargo or mails carried by the ship, and if he is otherwise a workman within the meaning of this Act.

(3) Every claim or any matter arising out of proceedings thereunder in respect of an accident to any person specified in this section which occurred outside the territorial waters of Jamaica shall be determined by the Court of the Resident Magistrate for the parish of Kingston, and the provisions of sections 28 and 29 in relation to the procedure for making and dealing with applications shall apply.

24/1960  
S. 10.

#### PART VII. *Procedure*

26. If an employer on whom notice of the accident has been served as aforesaid do not within four weeks after the receipt of the notice agree in writing with the workman as to the amount of compensation to be paid, the workman may make such application as in this Act is provided for enforcing his claim to compensation :

Workman's  
right to  
apply for  
compensa-  
tion if no  
amount  
agreed in  
four weeks.

Provided that the Resident Magistrate for the parish in which the accident occurred may grant leave to the work-

24/1960  
S. 11.



man to make such application before the expiration of the period of four weeks specified in this section if the Resident Magistrate is satisfied that the workman is likely to suffer hardship in establishing his claim for compensation after the expiration of the said period by reason of the fact that the employer is about to leave this Island or to do some other act prejudicial to the claim of the workman.

Application  
to be made  
to Board.  
24/1960  
S. 12.

27.—(1) Where a Workmen's Compensation Board is appointed in any parish all applications for the determination of claims for compensation under this Act arising out of accidents occurring in that parish or for the determination of any matter arising out of proceedings thereunder shall be made to such Board.

(2) Where any application is made to a Workmen's Compensation Board the workman or the employer may, at any time after the making of such application and before commencement of the hearing thereof, apply to such Board for transfer of the application to the Resident Magistrate's Court for that parish and the Board shall thereupon transfer the application to the Resident Magistrate's Court and the claim or matter, as the case may be, shall be heard and determined by the Resident Magistrate.

(3) Until a Workmen's Compensation Board is appointed in any parish all applications for the determination of claims for compensation under this Act arising out of accidents occurring in that parish or for determination of any matter arising out of proceedings thereunder shall be made to the Resident Magistrate's Court for that parish and the provisions of sections 28 and 29 in relation to the procedure for making and dealing with applications before the Resident Magistrate's Court shall apply.

**28.—(1)** A workman or an employer (hereinafter called the applicant) who desires the determination of any question arising out of an accident in which compensation is or might be claimed shall lodge with the Clerk of the Courts of the Resident Magistrate's Court having jurisdiction, a written application in the prescribed form accompanied by particulars containing—

Application for compensation to be lodged with the Clerk of the Courts.

- (a) a concise statement of the circumstances under which the application is made and the relief or order which the applicant claims, or the question which he desires to have determined;
- (b) the full name and address of the applicant and of his solicitor or agent and the name and address of the respondent.

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

(3) If the Clerk of the Courts be satisfied that the applicant is, owing to illiteracy, blindness or any other physical cause, unable to furnish the information required, he shall himself fill in the application and particulars on the prescribed form.

**29.—(1)** As soon as an application, together with the accompanying particulars and statement herein prescribed, has been lodged, the Clerk of the Courts shall forthwith cause a copy thereof to be served upon the respondent in manner prescribed by regulation, together with a notice requiring the respondent to lodge with the Clerk of the Courts such answer as is prescribed in subsection (2) within

Copy of application and particulars to be served on respondent.

the period therein prescribed and that in default of his complying with that or of his appearing at a time and place fixed in the notice, such order may be made under this Act as the Resident Magistrate thinks just and expedient. Except with the written consent of the respondent communicated to the Clerk of the Courts, not less than twenty-one clear days shall elapse between the date of the service of the notice upon the respondent and the date fixed for hearing the application.

24/1960  
S. 13 (a).

(2) If the respondent intends to oppose an application he shall, within fourteen days after service of notice or within such extended period as the Resident Magistrate may upon special request allow, lodge with the Clerk a written answer containing a concise statement of the extent and grounds of his opposition.

24/1960  
S. 13 (b).

(3) The Resident Magistrate may, at any time before the determination of the question in dispute and upon such terms as to adjournment or as to costs as he deems just, allow an application, or any particular or statement accompanying the same, or any answer thereto, to be amended. Any such amendment shall be lodged with the Clerk of the Courts who shall forthwith cause it to be served upon the opposite party in manner prescribed by regulation.

Resident  
Magistrate  
to have  
power and  
jurisdiction  
of Resident  
Magistrate's  
Court.

**30.** Save as is specially provided in this Act a Resident Magistrate's Court shall, upon or in connection with any question to be determined thereunder, have all the powers and jurisdictions exercisable and be subject to all the duties and obligations to be performed by a Resident Magistrate's Court for the parish in, or in connection with, civil actions in such Court and the law, rules and practice in such civil action shall *mutatis mutandis* apply; and any order made by a Resident Magistrate under this Act may be enforced as if it were a judgment or order of such Court.

**31.—(1)** If the workman at a hearing of an application be incapacitated by reason of the injury in respect of which the application is made and if further it be uncertain whether the incapacity is temporary or permanent, or if permanent, whether it is partial or total, the Resident Magistrate may, if he is satisfied that the workman is entitled to compensation in the event of the incapacity being permanent, adjourn the hearing for a period or periods not exceeding twelve months in all, reckoned from the date of the accident causing the injury and may make an interim order that the employer shall, in the meantime, pay such compensation to the workman as is provided by the Schedule in case of temporary incapacity for work or permanent partial incapacity for work, as the case may be.

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

Schedule.

**(2)** If the workman at a hearing of an application be not incapacitated but there is reason to believe that the injury sustained by him may ultimately result in his permanent or total incapacity for work or in his death, the Resident Magistrate may adjourn the hearing for a period or periods not exceeding twelve months in all, reckoned from the date of the accident causing the injury, so that the workman may retain his right to recover compensation in the case of permanent incapacity, partial or total, resulting ultimately from the injury, or the dependents retain their right to recover compensation in the event of the workman's death.

**32.—(1)** Subject to rules of court, an appeal shall lie to the Court of Appeal from any order of a Resident Magistrate where a question of law is involved in the appeal:

Appeals to the Court of Appeal.

Provided that from the following orders of a Resident Magistrate, namely—

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly

payment or otherwise or disallowing a claim in full or in part for a lump sum;

- (b) an order providing for the distribution of compensation among the dependents of the deceased workman, or disallowing any claim of a person alleging himself to be such a dependent;
- (c) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of subsection (2) of section 18; or
- (d) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions,

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

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

### PART VIII. *Miscellaneous*

A person physically infirm may agree with employer to accept less than the prescribed compensation.

33. Notwithstanding anything to the contrary in this Act contained a person in respect of whom a medical practitioner has certified that, by reason of old age or serious physical infirmity or any previous injury he is specially liable to meet with an accident or to sustain a serious injury if employed as a workman at any work may, in entering into a contract of employment with an employer, lawfully agree with the employer that the employer shall pay less than the amount payable under this Act in respect of the injury or death of that person: But no such agreement shall be valid and effectual, unless the amount agreed to be paid in respect of the injury or death is at least one-half the

amount that would otherwise be payable as compensation under this Act.

34. Save as is specially provided in section 33 in respect of agreements, any provision in a contract of employment whereby a workman or his dependents relinquish any right to compensation under this Act or to damages independently of this Act, whether for the workman or for any dependent, shall be null and void.

No right to contract out of Act.

35.—(1) The Minister may appoint a Workmen's Compensation Board for each parish to hear and determine claims for compensation under this Act and matters arising out of proceedings thereunder.

Appointment of Workmen's Compensation Boards. 24/1960 S. 14.

(2) The constitution, appointment, powers and duties of a Workmen's Compensation Board, the procedure for making and dealing with applications for compensation before such Board and the right to appeal from the decisions thereof shall be prescribed by regulations.

36.—(1) The Minister may appoint such medical practitioners to be medical referees for the purposes of this Act as he may determine.

Medical referees.

(2) Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as a medical referee in that case.

37. Every employer in every industry to which the Minister may direct that this section shall apply shall, on or before such day in every year as the Minister may direct, send to the Minister a correct return specifying the number of injuries in respect of which compensation has been paid

Employers to make returns of injuries.

by him under this Act during the previous year, and the amount of such compensation together with such other particulars as to the compensation as the Minister may direct, and in default of complying with this section shall be liable on summary conviction before a Resident Magistrate to a penalty not exceeding twenty dollars.

Regulations.

**38.**—(1) The Minister may make regulations for—

- (a) prescribing the procedure and forms in respect of matters to be done under this Act;
- (b) matters which are specifically mentioned in this Act as being matters which may be prescribed by regulation; and
- (c) generally for carrying out the objects and provisions of this Act.

(2) All such regulations shall be laid before the Senate and House of Representatives within ten days after the making thereof if the Senate and House are then sitting, or if not then sitting, then within ten days from the then next assembly of the Senate and House.

Workmen's compensation not to be payable in respect of war injuries.

**39.**—(1) Notwithstanding anything in this Act, no compensation shall be payable under this Act in respect of any war injury sustained during the period of the present emergency.

(2) In this section—

“period of the present emergency” means the period beginning with the commencement of the Emergency Powers (Defence) Act, 1939, and ending with such date as Her Majesty may by Order in Council declare to be the date on which the emergency that was the occasion of the passing of that Act came to an end;

**“war injury” means any physical injury—**

**(a) caused by—**

**(i) the discharge of any missile (including liquids and gas); or**

**(ii) the use of any weapon, explosive or other noxious thing; or**

**(iii) the doing of any other injurious act, either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or**

**(b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by, any person on behalf of or for the benefit of, Her Majesty or any allied power, or any part of, or anything dropped from, any such aircraft.**

**40.—(1) A workman shall be entitled to compensation under this Act where he becomes incapacitated by reason of any disease prescribed by regulations made under this Act as being a disease due to the nature of his employment and developed after the 12th May, 1960.**

**Industrial  
diseases.  
24/1960  
S. 15.**

**(2) A disease may be prescribed for the purpose of this Act in relation to any workman if the Minister is satisfied that—**

**(a) it ought to be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of his occupation and not as a risk common to all persons; and**

**(b) it is such that, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.**

**(3) Regulations prescribing any disease for the purposes of this Act may provide that a workman who**



developed the disease on or at any time after a date specified in the regulations (being a date before the regulations came into force but not before the 12th May, 1960) shall be treated for the purposes of this Act, subject to any modifications prescribed in such regulations as if the regulations had been in force at the time when he developed the disease.

(4) Regulations prescribing any disease for the purposes of this Act may provide for determining the time at which a workman is to be treated for the purposes of this Act as having developed such disease, and the circumstances in which such disease is, where the workman in question has previously suffered therefrom, to be treated as having recrudesced or as having been contracted afresh.

(5) Nothing in this section shall affect the right of any workman to benefit in respect of a disease which is a personal injury by accident within the meaning and intent of this Act, except that a workman shall not be entitled to benefit in respect of a disease as being an injury by accident arising out of and in the course of his employment if at the time of the accident the disease is in relation to him a prescribed disease by virtue of the occupation in which he is engaged in his employment.

Application  
to prescribed  
diseases of  
provisions as  
to benefit  
and claims.  
24/1960  
S. 15.

41. The benefit payable under section 40 in respect of a prescribed disease, the conditions for receipt of such benefit and the provisions for making, hearing, and determination of applications for compensation therefor, shall be the same as in respect of personal injury by accident arising out of and in the course of the workman's employment.

SCHEDULE

(Section 2)

*List of injuries deemed to result in a permanent partial incapacity* 24/1960  
S. 16.

<u>Injury</u>	<u>Percentage of Loss of earning capacity</u>
Loss of either arm at or above elbow ... ..	70
Loss of either arm between the wrist and the elbow	65
Loss of either hand at wrist or of four fingers and thumb of either hand ... ..	60
Loss of both phalanges of the thumb of either hand	35
Loss of one phalanx of the thumb of either hand	25
Loss of four fingers of either hand ... ..	35
Loss of three fingers of either hand ... ..	30
Loss of two fingers of either hand ... ..	25
Loss of whole of the index finger of either hand ...	10
Loss of two phalanges of the index finger ...	8
Loss of one phalanx of the index finger ...	4
Loss of whole of the middle finger of either hand ...	8
Loss of two phalanges of the middle finger of either hand ... ..	6
Loss of one phalanx of the middle finger ...	4
Loss of whole of the ring or little finger of either hand ... ..	5
Loss of two phalanges of the ring or little finger of either hand ... ..	4
Loss of one phalanx of the ring or little finger of either hand ... ..	2
Loss of either leg at or above the knee ... ..	70
Loss of either leg below the knee ... ..	50
Loss of either foot ... ..	50
Loss of all toes of either foot ... ..	20
Loss of both phalanges of the great toe of either foot ... ..	10
Loss of one phalanx of the great toe of either foot	2
Loss of any toe other than the great toe ...	2
Loss of one eye without complications, the other being normal ... ..	30

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[The inclusion of this page is authorized by L.N. 480/1973]

**WORKMEN'S COMPENSATION**

<u>Injury</u>	<u>Percentage of Loss of earning capacity</u>
Loss of sight to such an extent as to render the workman unable to perform any work for which eyesight is essential ... ..	100
Loss of hearing in both ears ... ..	50

Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be the equivalent of the loss of that limb or member. The percentage of incapacity for ankylosis of any joint shall be reckoned as from 25% to 100% of the incapacity for loss of the part of that joint, according to the degree of unfavourableness of the ankylosis of such joint.

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