

# Workers' Compensation Act 1922

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**An Act to consolidate and amend the Law with respect to Compensation to Workers for Injuries suffered in the Course of their Employment.**

**BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—**

**1 Short Title.**

This Act may be cited as the Workers' Compensation Act, 1922, and shall come into operation on the first day of April, nineteen hundred and twenty-three.

**2 Interpretation.**

*1908, No. 248, sec. 2. 1911, No. 34, sec. 2. 1920, No. 52, sec. 2.*

In this Act, unless a different intention appears,—

“Compensation” means compensation under this Act:

“Court of Arbitration” means the Court of Arbitration established under the Industrial Conciliation and Arbitration Act, 1908:

“Dependant” means a total dependant or a partial dependant as hereinafter defined:

“Employer” includes any body of persons, corporate or unincorporate, and the representatives of a deceased employer:

“Factory” has the same meaning as in the Factories Act, 1908:

“Magistrate” means a Stipendiary Magistrate, and includes a Magistrate's Court:

“Order” means any judgment, direction, declaration, or order given or made by the Court in pursuance of this Act:

“Partial dependants” means such of the relatives of a worker as were domiciled or resident in New Zealand at the time of the accident which caused his death and were partially dependent upon his earnings at the time of that accident:

“Prescribed” means prescribed by this Act or by regulations made under the authority thereof:

“Regulations” means regulations made by the Governor-General by Order in Council:

“Relative” means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, illegitimate son, illegitimate daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister; and with respect to an illegitimate worker includes his mother, and his brothers and sisters, whether legitimate or illegitimate, by the same father and mother:

“Representative” means an executor to whom probate has been granted, or an administrator, or the Public Trustee lawfully administering the estate of a deceased person:

“Seaman” means any worker employed as a master, officer, seaman, apprentice, or in any other capacity whatever on board a ship by the owner or charterer thereof:

“Ship” means any ship, vessel, boat, or other craft:

“The Court” means the Court which by virtue of the provisions of this Act has jurisdiction in the matter referred to:

“Trade or business” includes any trade, business, or work carried on temporarily or permanently by or on behalf of an employer:

“Total dependants” means such of the relatives of a worker as were domiciled or resident in New Zealand at the time of the accident which caused his death and were wholly dependent upon his earnings at the time of that accident:

“Worker” 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, clerical work, or otherwise, and whether remunerated by wages, salary, or otherwise; but does not include any person employed otherwise than by way of manual labour whose remuneration exceeds four hundred pounds a year.

## Part I Compensation

### 3 Employer liable to pay compensation for accidents to worker.

*1908, No. 248, sec. 3.*

- (1.) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall be liable to pay compensation in accordance with the provisions of this Act.
- (2.) This Act applies only to the employment of a worker—
  - (a.) In and for the purposes of any trade or business carried on by the employer; or
  - (b.) In any occupation specified in the First Schedule hereto, whether carried on for the purposes of the employer's trade or business or not.
- (3.) For the purposes of this section an employer may have more than one trade or business.
- (4.) The exercise and performance of the powers, duties, or functions of any Corporation or of any local authority or other governing body of a Corporation shall, for the purposes of this Act, be deemed to be the trade or business of the Corporation.

#### 4 Amount of compensation.

*Ibid.*, sec. 4. 1911, No. 34, secs. 3, 4. 1913, No. 70, sec. 2. 1920, No. 52, sec. 3.

- (1.) Where the death of the worker results from the injury the amount of compensation payable shall be as follows:—
  - (a.) If the worker leaves any total dependants, the compensation shall be a sum equal to one hundred and fifty-six times his average weekly earnings, or the sum of two hundred pounds, whichever of those sums is the larger, but not exceeding in any case seven hundred and fifty pounds:
  - (b.) If the worker does not leave any total dependants but leaves any partial dependants, the compensation shall be such sum as is reasonable and proportionate to the injury to those dependants, but not exceeding in any case the amount payable under the foregoing provisions:
  - (c.) Whether the worker leaves dependants or not, there shall be payable, in addition to the compensation (if any) payable under the preceding paragraphs of this section, a sum equal to the reasonable expenses of his medical or surgical attendance, including first aid, and of his funeral, but not exceeding fifty pounds:
  - (d.) In every case the amount of any weekly payments made under this Act to the worker in respect of the accident which caused his death, and any lump sum paid in lieu thereof, shall be deducted from the amount of compensation payable in respect of his death.
- (2.) The wife of a deceased worker and his children under the age of sixteen years (whether legitimate or illegitimate) shall be conclusively presumed to have been dependent on the earnings of that worker at the time of the accident which caused his death, and their dependency shall be deemed to be total unless it is proved in fact to be partial only:

Provided that nothing in this subsection shall apply to a wife who at the time of the accident which caused her husband's death has deserted him without just cause.
- (3.) If any child is born to a worker after his death, that child shall be deemed to be a dependant of the worker in the same manner as if born in his father's lifetime.

#### 5 Compensation may be by lump sum or weekly payment.

*1908, No. 248, sec. 5. 1911, No. 34, sec. 5. 1920, No. 52, sec. 4.*

- (1.) Where the worker's total or partial incapacity for work results from the injury, the compensation payable shall, in default of agreement, be in the discretion of the Court either a lump sum or a weekly payment during the period of his incapacity.
- (2.) In exercising its jurisdiction to award a lump sum the Court shall take into consideration the ability of the employer to make compensation in this form.

- (3.) When a lump sum is awarded by way of compensation under this Act instead of a weekly payment, it shall be a sum equal to the present value at five per centum compound interest of the aggregate of the weekly payments which in the opinion of the Court would probably become payable to the worker during the period of his incapacity if compensation by way of a weekly payment were then awarded in lieu of a lump sum.
- (4.) If the incapacity lasts less than three days, compensation shall not be payable in respect thereof.
- (5.) During any period of total incapacity the weekly payment shall be an amount equal to fifty-eight per centum of the worker's average weekly earnings at the time of the accident, but not exceeding three pounds fifteen shillings a week; but where the worker's ordinary rate of pay for the work at which he was employed at the time of the accident was not less than thirty shillings a week, the weekly payment shall not be less than one pound.
- (6.) During any period of partial incapacity the weekly payment shall be an amount equal to fifty-eight per centum of the difference between the amount of the average weekly earnings before the accident and the average weekly amount which the worker is earning or able to earn in some suitable employment or business after the accident.
- (7.) Weekly payments shall in no case extend over a longer aggregate period than six years.
- (8.) The aggregate amount of weekly payments shall in no case exceed seven hundred and fifty pounds.
- (9.) In fixing the amount of the weekly payment regard shall be had to any payment, allowance, or benefit which the worker may receive from the employer during the period of his incapacity.
- (10.) In addition to the compensation payable under this section there shall be payable a sum equal to the reasonable expenses incurred in respect of the medical or surgical attendance (including first aid) on the worker in respect of his injury, but not exceeding one pound.

## **6 How average weekly earnings calculated.**

*1908. No. 248, sec. 6.*

- (1.) For the purposes of this Act the term "average weekly earnings" means the average weekly earnings received by a worker while at work during the twelve months preceding the accident if he has been so long employed by the same employer, and if not, then for any less period during which he has been in the employment of the same employer; but in calculating such average no account shall be taken of any periods during which the worker has been absent from work.
- (2.) Where by reason of the shortness of the time during which a worker has been in the employment of his employer, or of the casual nature of the employment,

or the terms of the employment, it is impracticable at the date of the accident to compute the rate of his remuneration in accordance with the foregoing provisions of this Act, his average weekly earnings shall be deemed to be the average weekly amount which during the twelve months previous to the accident was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no such person so employed, then by a person in the same grade employed in the same class of employment and in the same district.

- (3.) Where a worker has entered into concurrent contracts of service with two or more employers under which he works at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.
- (4.) In calculating average weekly earnings no account shall be taken of any sums that are paid to a worker to cover any special expenses entailed on him by the nature of his employment.

#### **7 Special provision for wharf labourers, &c.**

*Ibid.*, sec. 7. 1913, No. 70, sec. 3.

With respect to casual workers employed as stevedores, lumpers, or wharf labourers the following special provision shall apply:—

The worker's average weekly earnings shall be deemed to be not less than a full working-week's earnings at the ordinary (but not overtime) rate of pay for the work at which he was employed at the time of the accident, notwithstanding that he may not have actually worked or the employment may not have actually continued for the full week, and the compensation shall be computed and assessed accordingly; but in no case of total incapacity shall the weekly payment be less than one pound.

#### **8 Compensation for injuries mentioned in Second Schedule.**

*1908, No. 248, sec. 8.*

- (1.) Notwithstanding anything hereinbefore contained as to the rate of compensation, compensation for the injuries mentioned in the first column of the Second Schedule to this Act shall be assessed in the manner indicated in the second column of that Schedule.
- (2.) Nothing in the said Schedule shall limit the amount of compensation recoverable for any such injury during any period of total incapacity due to illness resulting from that injury, but any sum so received shall be taken into account in estimating the compensation payable in accordance with the said Schedule.

**9 Compensation for permanent incapacity when worker under twenty-one.**

*Ibid., sec. 9. 1913, No, 70, sec 4.*

- (1.) When a worker is at the time of the accident under the age of twenty-one years, or is an indentured apprentice, or an apprentice or improver under an award or industrial agreement, and his incapacity, whether total or partial, is permanent, his average weekly earnings at the time of the accident shall be deemed to be the weekly sum which he would probably have been able to earn if he had then attained the age of twenty-one years, or had completed his apprenticeship, or had ceased to be an improver, as the case may be, being in no case less than two pounds a week, and the reduction of his earning-power (if any) shall be deemed to be the difference between that sum and the weekly sum which he will probably be able to earn after attaining the age of twenty-one years, or on the completion of his apprenticeship, or on ceasing to be an improver, as aforesaid.
- (2.) Nothing in this section shall extend to the compensation payable on the death of a worker.

**10 Compensation for certain diseases arising out of employment.**

*1908, No. 248, sec. 10 1909, No. 25, sec. 2.*

- (1) If in any employment to which this Act applies a worker, within the twelve months previous to the date of the disablement, contracts any disease to which this section applies, and the disease is due to the nature of the said employment, and the incapacity or death of the worker results from that disease, compensation shall be payable as if the disease was a personal injury by accident arising out of and in the course of that employment, and all the provisions of this Act shall apply accordingly, subject, however, to the provisions of this section.
- (2.) No compensation shall be payable under this section in respect of the incapacity or death of a worker if that incapacity commences or that death happens, as the case may be, more than twelve months after the worker has ceased to be employed by the employer from whom the compensation is claimed in any employment to which this Act applies and to the nature of which the disease is due:

Provided that this subsection shall not apply to the death of a worker when his death has been preceded, whether immediately or not, by any period of incapacity in respect of which the employer is liable under this section.

- (3.) For the purpose of calculating the average weekly earnings of the worker in a claim for compensation under this section the commencement of the incapacity of the worker (or the date of his death if there has been no previous period of incapacity) shall be treated as the date of the happening of the accident, if he is then employed by the employer from whom the compensation is claimed in any employment to which this Act applies and to the nature of which the

disease is due; and if he is not then so employed, the last day on which he was so employed shall for this purpose be treated as the date of the happening of the accident.

- (4.) For all the other purposes of this Act the commencement of the incapacity of the worker, or the date of his death if there has been no previous period of incapacity, shall be treated as the date of the happening of the accident.
- (5.) If the disease has been contracted by a gradual process, so that two or more employers are severally liable to pay compensation in respect thereof under this section, the aggregate amount of compensation recoverable shall not exceed the amount that would have been recoverable if those employers had been a single employer, and in any such case those employers shall, in default of agreement, be entitled as between themselves to such rights of contribution as the Court of Arbitration thinks just, having regard to the circumstances of the case, in any action brought or application made by any of them for this purpose.
- (6.) The diseases to which this section applies are anthrax, lead poisoning, mercury poisoning, phosphorus poisoning, arsenic poisoning, and any other diseases which are declared by the Governor-General, by Order in Council gazetted, to be diseases within the operation of this Act.
- (7.) Nothing in this section shall affect the right of any person to recover compensation in respect of a disease to which this section does not apply if the disease is a personal injury by accident within the meaning of this Act.

**11 Act to apply only to accidents happening in New Zealand or on board New Zealand ships.**

*1908, No. 248, sec. 11 1911, No. 34, sec. 6. 1913, No. 70, sec. 5.*

- (1.) This Act applies to all accidents happening in New Zealand, but does not apply to accidents happening elsewhere than in New Zealand, except in the cases hereinafter in this section mentioned.
- (2.) This Act applies to accidents happening on board a New Zealand ship, as defined in this section, to any worker in an employment to which this Act applies, wherever that ship may be at the time of the accident.
- (3.) This Act applies to accidents which happen to a seaman employed on a New Zealand ship, as defined in this section, in any employment to which this Act applies, whether the accident happens in New Zealand or elsewhere, or on board the said ship or elsewhere.
- (4.) In this Act the term "New Zealand ship" means—
  - (a.) Any ship which is registered in New Zealand under the Shipping and Seamen Act, 1908:
  - (b.) Any ship which is owned by a body corporate established by the laws of New Zealand, or having its principal office or place of business in

New Zealand, or any ship which is in the possession of any such body corporate by virtue of a charter:

- (c.) Any ship which is owned by any person or body corporate whose chief office or place of business in respect of the management of that ship is in New Zealand, or any ship which is in the possession of any such person or body corporate by virtue of a charter:
  - (d.) Any ship which is owned by the Crown in respect of the Government of New Zealand or which is in the possession of the Crown in that respect by virtue of a charter.
- (5.) For the purposes of this Act an accident shall be deemed to happen in New Zealand if it happens within the outer boundary of the territorial waters of New Zealand, and shall be deemed to happen out of New Zealand if it happens elsewhere.
- (6.) Any sum payable by way of compensation under this Act by the owner of a ship shall be paid in full, notwithstanding anything contained in section two hundred and ninety-five of the Shipping and Seamen Act, 1908.
- (7.) Subsections two and three of section ninety-four of the Shipping and Seamen Act, 1908 (which relates to the recovery of wages of seamen and apprentices lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants 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 claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

## **12 With certain specified exceptions, Act to bind the Crown.**

*1908, No. 248, sec. 12 1913, No. 70, sec. 6.*

- (1.) Save as otherwise expressly provided, this Act shall bind the Crown in respect of the Government of New Zealand in the same manner as if the exercise by or on behalf of the Crown of any powers or functions in respect of the Government of New Zealand were the trade or business of the Crown within the meaning of this Act.
- (2.) Except in such cases as may be prescribed by regulations to be made under this Act by the Governor-General in Council, this Act does not apply to accidents happening to persons in the naval or military service of the Crown and arising out of their employment in that service, or to accidents happening to persons in the service of the Crown otherwise than in respect of the Government of New Zealand and arising out of their employment in that service.
- (3.) All proceedings against the Crown for or in respect of compensation under this Act shall be taken in accordance with the procedure set forth in the Crown Suits Act, 1908, with any modifications of that procedure rendered necessary by the provisions of this Act or prescribed by regulations made under this Act.

- (4.) Notwithstanding anything in the Crown Suits Act, 1908, all such proceedings shall be taken in the same Court as if the compensation were payable by a private person.
- (5.) Any sum payable by the Crown by way of compensation under this Act may be paid by the authority of any Minister of the Crown, and without further appropriation than this Act, out of moneys available for the contingent expenses of the Department in respect of which the claim arises; and, save as aforesaid, no such sum shall be payable except out of moneys appropriated by Parliament for that purpose.

**13 Principal and contractor both deemed employers for purposes of this Act.**

*1908, No. 248, sec. 13*

- (1.) In any case where any person (hereinafter referred to as the principal) contracts with any other person (hereinafter referred to as the contractor) for the execution of any work by or under the contractor, and the contractor employs any worker therein, both the principal and the contractor shall, for the purposes of this Act, be deemed to be employers of the worker so employed, and shall be jointly and severally liable to pay any compensation which the contractor if he were the sole employer would be liable to pay under this Act.
- (2.) The principal shall be entitled to be indemnified by the contractor against the principal's liability under this section.
- (3.) The principal shall not be liable under this section, except in cases where the accident happens on, in, or about some land, building, ship, or premises of which the principal has the occupation, possession, or control, or of which some other person is in occupation as the tenant or subtenant of the principal, or on or in which the principal has contracted to do the work in connection with which the accident happens.
- (4.) The principal shall not be liable under this section unless one of the following conditions is fulfilled:—
  - (a.) The work in which the worker is employed at the time of the accident is directly a part of or a process in the trade or business of the principal; or
  - (b.) The work in which the worker is employed at the time of the accident is one of the occupations mentioned in the First Schedule hereto, and the contract entered into by the principal is such as to involve a payment by him of not less than twenty pounds for the due and complete performance thereof.
- (5.) The Crown or a local authority having the control of any road or street shall not by reason of that control be liable under this section to pay compensation in respect of any accident arising out of the use of that road or street by any person for the purposes of a highway.
- (6.) When the principal and the contractor are jointly and severally liable under this section, judgment recovered against one of them shall not be any bar to an

action against the other, except to the extent to which that judgment has been actually satisfied.

- (7.) When 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 worker under the employer by whom he is immediately employed.
- (8.) In the case of subcontracts the expression "principal" shall include not only the original principal, but also each contractor who constitutes himself a principal with respect to a subcontractor by contracting with him for the execution by him of the whole or any part of the work; and the expression "contractor" shall include not only the original contractor, but also each subcontractor; and each principal's right of indemnity shall include a right against every contractor liable under this section and standing between him and the contractor by whom the worker was employed.
- (9.) For the purposes of paragraph (a) of subsection four of this section the expression "trade or business of the principal" shall, when the principal is the Crown or a local authority or body corporate, be read in its ordinary and natural sense, and not in the extended sense indicated in section three and section twelve of this Act.

**14 No abatement of compensation if claimant insured.**

*1908, No. 248, sec. 14*

- (1.) In assessing compensation, whether under this Act or independently hereof, there shall be no abatement of the amount for which the employer or his insurer is liable by reason of the fact that, in consequence of the accident in respect of which the claim has arisen, money has accrued due to the claimant in respect of any life or accident insurance policy effected by himself or by any person other than the employer.
- (2.) In determining the amount payable by an employer or his insurer pursuant to section four or section five of this Act in respect of medical, surgical, or funeral expenses no account shall be taken of any moneys payable by or to a friendly society or other organization in respect of any such expenses.

**15 No compensation where injury due to misconduct.**

*1908, No. 248, sec. 15 1911, No. 34, sec. 9.*

No compensation shall be payable in respect of any accident which is attributable to the serious and wilful misconduct of the worker injured unless the injury results in death or serious and permanent disablement.

**16 Effect on compensation of unreasonable refusal to submit to medical or surgical treatment.**

*1908, No. 248, sec. 16*

No compensation shall be payable in respect of the death or incapacity of a worker if his death is caused, or if and so far as his incapacity is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment the risk of which is, in the opinion of the Court, inconsiderable in view of the seriousness of the injury or disease.

**17 Worker may agree with employer that no compensation payable on account of disease or injury from which worker has suffered prior to employment.**

*Ibid., sec. 17.*

- (1.) No compensation shall be payable in respect of the incapacity or death of a worker which is due to disease or personal injury if the worker has at any time in writing signed by him represented to the employer in respect of whose employment the claim to compensation is made that the worker was not suffering or had not previously suffered from the said disease or injury, and if the said representation was false to the knowledge of the worker.
- (2.) Notwithstanding anything to the contrary in this Act, if any worker suffers from or has previously suffered from any disease or personal injury, it shall be lawful for him (whether he is or is not above the age of twenty-one years) to agree in writing with any employer or intended employer that no compensation shall be payable by that employer in respect of the incapacity or death of the worker if his incapacity or death is due to the said disease or injury or to any recurrence or repetition thereof.

*Agreement to be approved by Magistrate.*

- (3.) No such agreement shall be binding until and unless it has been approved in writing by a Magistrate. The Magistrate shall, before granting his approval, take such steps as he considers reasonable to ascertain whether the worker suffers or has suffered from the said disease or injury, and whether the agreement is for the benefit of the worker. The approval of the Magistrate shall, in the absence of fraud on the part of the employer or intended employer, be conclusive as to the validity of any such agreement.
- (4.) Every such agreement shall remain in force and shall operate with respect to any employment or employments then or at any time afterwards existing between the parties until the agreement is cancelled by the employer by writing signed by him or by some person duly authorized on his behalf.

**18 With certain specified exceptions, liability not affected by agreement.**

*1913, No. 70, sec. 12.*

- (1.) Save as otherwise expressly provided in this Act, and subject to section sixty-four hereof, no agreement between an employer and a worker, whether made before or after the coming into operation of this Act, shall be effective so as to exempt the employer in whole or in part from any liability to pay compensation for any injury to be suffered by the worker.
- (2.) Notwithstanding anything in this section, an agreement may be made between an employer and a worker, or between an employer and any representative or dependant of a deceased worker, or between any such dependants themselves, after the happening of an injury to the worker, for the settlement of any claim to compensation or of any question arising with respect to compensation:  
Provided that an agreement between an employer and a worker, or between an employer and any representative or dependant of a deceased worker, shall not be binding on such worker, representative, or dependant respectively unless before making the agreement he had competent and independent advice as to any legal and medical questions arising in connection with the claim for compensation, and understood the agreement; and in any case where such an agreement is challenged the onus shall lie on the employer of proving compliance with this subsection.
- (3.) Subject to the provisions of the last preceding subsection, any such agreement as is mentioned therein shall be binding on the parties, and any such agreement entered into by the representative of a deceased worker shall be binding on the dependants of that worker.
- (4.) Subject to the provisions of subsection two hereof, any such agreement as is mentioned therein shall be binding on a person under the age of twenty-one years if it is in writing and approved by a Magistrate; and, unless the Magistrate otherwise orders, any money payable to such person under the agreement may be paid to him, and his written receipt therefor shall be a sufficient discharge.
- (5.) Nothing in this section shall be so construed as to confer upon the representative of a deceased worker any power to determine the shares in which compensation is to be apportioned between the dependants of that worker.

## **Part II Procedure**

**19 Proceedings to be in Court of Arbitration.**

*1908, No. 248, sec. 19*

- (1.) Subject to the provisions of the next succeeding section hereof, all proceedings for the recovery of compensation, or for the determination of any question as to the distribution of such compensation among dependants, or for obtaining

any order which by this Act a Court is authorized to make with respect to compensation, shall be taken in the Court of Arbitration, and not elsewhere.

- (2.) Any agreement as to the payment of compensation or otherwise relating to compensation may be enforced in the Court of Arbitration.
- (3.) Any right of indemnity conferred by this Act shall be enforceable in the Supreme Court or some other Court of competent jurisdiction, and not (save with the consent of the parties) in the Court of Arbitration.

## **20 Proceedings may be taken by agreement before Magistrate.**

*1913, No. 70, sec. 7. 1920, No. 52, sec. 9.*

- (1.) Notwithstanding anything in the last preceding section, in any case where the parties, by writing signed by them or their solicitors, so agree, or in any case where the amount claimed does not exceed fifty pounds, proceedings for the recovery of compensation in respect of any injury by accident which has not caused the death of a worker may be taken in a Magistrate's Court, and shall be heard and determined by a Magistrate sitting alone.
- (2.) The order of the Magistrate in any such case shall be final and conclusive, and shall be binding on the parties in the same manner as if it were the order of the Court of Arbitration.
- (3.) An order made under this section shall, for the purposes of this Act, be deemed to be an order made by the Court of Arbitration, and all applications subsequent to the making of such order and made in respect thereof shall be made to the Court of Arbitration.
- (4.) Until altered by regulations, the procedure in any proceedings before a Magistrate's Court pursuant to this section shall, with such modifications as the Court deems necessary, be determined by the regulations for the time being in force with respect to similar proceedings before the Court of Arbitration.

## **21 Magistrate may award compensation in certain cases.**

*1913, No. 70, sec. 8.*

Where in an action in the Magistrate's Court for the recovery of damages independently of this Act in respect of an injury to a worker by accident arising out of his employment the worker fails to establish his claim, the Magistrate shall have the same jurisdiction as the Supreme Court to award compensation under this Act, and the provisions of section fifty-two hereof shall, with the necessary modifications, extend and apply accordingly.

## **22 Procedure to be determined by regulations under Act.**

*1908, No. 248, sec. 20*

- (1.) Subject to the provisions of this Act, the procedure in any proceedings taken in the Court of Arbitration by virtue of this Act, and the mode of enforcement of any order made by the said Court by virtue of this Act, and the fees payable

in respect of any such proceedings, shall be determined by regulations made under the authority of this Act; and in default of any such regulations, or so far as they do not extend, the procedure shall be the same as that of the said Court in the exercise of the powers vested in it by the Industrial Conciliation and Arbitration Act, 1908, subject only to such modifications and additions as, in the opinion of the Court, shall be necessary.

- (2.) No appeal shall lie to any other Court from any order made by the Court of Arbitration under this Act, nor shall any such order be removed by certiorari or otherwise into any other Court to be there quashed or varied on any ground other than want of or excess of jurisdiction.
- (3.) Every action in the Court of Arbitration under this Act shall be commenced by writ of summons in the prescribed manner.

### **23 Proceedings in case of death of worker.**

*Ibid., sec. 21.*

- (1.) In the case of an accident causing the death of a worker, proceedings for the recovery of compensation shall be taken by the representative of the deceased worker on behalf of the dependants.
- (2.) If there is no such representative, or if no such proceedings are taken by him within three months after the death of the worker, the proceedings may be taken by the dependants of the worker, or by any one or more of them on behalf of all of them.

### **24 Recovery of expenses of medical attendance or of funeral of deceased worker.**

*Ibid., sec. 22. 1911, No. 34, sec. 11.*

- (1.) Any money payable under this Act by way of compensation in respect of the expenses of the medical or surgical attendance or funeral of a deceased worker may be recovered by action in the Magistrate's Court in accordance with this Act at the suit of the representative or of any dependant of that worker, or at the suit of any person by whom the said expenses or any of them have been incurred, or at the suit of any person entitled to receive any payment in respect of the said attendance or funeral.
- (2.) Any money payable under this Act in respect of the expenses of the medical or surgical attendance on an injured worker may be recovered by action in the Magistrate's Court in accordance with this Act at the suit of that worker, or at the suit of any person by whom the said expenses or any of them have been incurred, or at the suit of any person entitled to receive any payment in respect of the said attendance.
- (3.) All moneys so recovered shall, in default of agreement between the parties interested, be subject to the order of the Court, and shall be disposed of in such

manner and in such shares as the Court orders for the benefit of all or any of the persons who are so entitled to sue for the same.

**25 Court may order joinder of plaintiffs or of defendants.**

*1908, No. 248, sec. 23*

- (1.) In any proceedings under this Act the Court of Arbitration may order any other parties to be joined as plaintiffs or defendants whose joinder is, in the opinion of the Court, necessary or advisable for doing complete justice in the matter of the proceedings.
- (2.) The said Court shall have full power to amend all defects and errors in its proceedings, or in the proceedings of parties before it, such amendments to be upon such terms as to costs or other conditions as it shall consider just.

**26 Notice of accident to be given to employer.**

*Ibid., sec. 24.*

- (1.) An action for the recovery of compensation shall not be maintainable by a worker unless notice of the accident has been given as soon as practicable after the happening thereof.
- (2.) The want of or any defect or inaccuracy in any such notice shall not be a bar to the action if the Court is of opinion that the employer has not been prejudiced in his defence or otherwise by the want, defect, or inaccuracy, or that the want, defect, or inaccuracy was occasioned by mistake, or by absence from New Zealand, or by any other reasonable cause.
- (3.) Notice of an accident shall be in writing, 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 and place at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of them.
- (4.) The notice may be served by delivering it at or sending it by post in a registered letter addressed to the residence or any office or place of business of the person or corporation on whom it is to be served.
- (5.) The notice if served by registered post shall be deemed to have been served at the time when it would have been delivered in the ordinary course of post, and in proving the service it shall be sufficient to prove that the notice was properly addressed and posted.
- (6.) When the worker is employed by or on behalf of the Crown the notice shall be served on the Solicitor-General at Wellington.
- (7.) In the case of an accident happening, whether in New Zealand or elsewhere, to a seaman in the course of his employment as such, the notice required by this section may be served on the master of the ship on which he is employed, unless he is himself the master thereof.

- (8.) Nothing in this section shall apply to the recovery of compensation for the death of a worker.

**27 Limitation of actions under Act.**

*Ibid., sec. 25.*

- (1.) Save as provided in this section, no action for the recovery of compensation shall be commenced except within six months after the date of the accident causing the injury, or, in case of death, except within six months after the date of the death.
- (2.) If any payment of compensation or damages has been made by or on behalf of the employer in respect of the injury or death, an action for compensation may be commenced against the employer at any time within six months after that payment, or after the last of any such payments, if more than one.
- (3.) If any admission of liability to pay damages or compensation in respect of the injury or death of a worker has been signed by the employer or by any person duly authorized on his behalf, an action for compensation may be commenced against that employer at any time within six months after the date of the signing of that admission, or after the date of the signing of the last of any such admissions, if more than one.
- (4.) A failure to commence the action within the time hereby limited shall be no bar to the action if, in the opinion of the Court, the failure was occasioned by mistake, or by absence from New Zealand, or by any other reasonable cause.

**28 Declaration of liability by employer in certain cases.**

*1908, No. 248, sec. 26*

- (1.) In the case of any injury suffered by a worker which does not presently cause incapacity, but may cause it in the future, he may, within the time limited in this Act for commencing an action for compensation, bring an action against his employer, or against any other person who would be liable to pay compensation in respect of that future incapacity, for a declaration of liability under this Act; and the Court may in that action make a declaration of such liability, which shall have the effect of a judgment for compensation to be afterwards assessed, and within six months thereafter the worker may in that action apply to the Court to have compensation assessed in pursuance of the declaration on proof that incapacity has resulted from the injury, and the compensation so assessed shall be payable accordingly as under a judgment of the Court.
- (2.) All the provisions of this Act with respect to an action for the recovery of compensation shall, so far as applicable, extend and apply to an action for a declaration of liability.
- (3.) In any action for the recovery of compensation, if it is proved that an accident has happened for which the defendant would be liable to pay compensation if incapacity had resulted therefrom, but it is not proved that any incapacity

has so resulted, the Court may, if it thinks fit, instead of dismissing the action, make a declaration of liability under this Act, and any such declaration shall have the same effect as a like declaration made under the foregoing provisions of this section.

**29 Order or agreement for weekly payment may be reviewed by Court.**

*Ibid., sec. 27. 1911, No. 34, sec. 12.*

- (1.) Any order or agreement for a weekly payment of compensation may at any time and from time to time, in an action brought or application made for that purpose, be reviewed by the Court of Arbitration; and on any such review the payments may be ended, suspended, diminished, or increased, or may be revived after any period of suspension, or may be commuted for a lump sum, or the order or agreement may be otherwise varied, but so that the compensation so awarded is in conformity with the provisions of this Act.
- (2.) Every such action or application for a review may be brought or made by or against the worker entitled to the compensation, and against or by the employer or other person liable to pay that compensation, or to indemnify any other person against it, whether by way of insurance or otherwise.
- (3.) On any such review the order ending, suspending, diminishing, increasing, or reviving the payments may be made retrospective to such extent and in such manner as the Court thinks fit.

**30 Order may be set aside or varied.**

*1908, No. 248, sec. 28*

- (1.) Where the Court of Arbitration is satisfied—
  - (a.) That any order made by it under this Act has been obtained by fraud or other improper means; or
  - (b.) That any person has been erroneously included or erroneously not included in any order as a dependant of a deceased worker,—the Court may set aside or vary the order, and may make such order (including an order as to any sum already paid under the order) as under the circumstances the Court thinks fit.
- (2.) An application under this section to set aside or vary an order shall not be made after the expiration of six months from the date of the order, except by leave of the Judge of the Court of Arbitration.

**31 Apportionment of compensation.**

*Ibid., sec. 29.*

- (1.) Any sum payable by way of compensation to or on behalf of the dependants of a worker shall, in default of any agreement between the dependants, be allotted among them in such proportions as the Court determines.

- (2.) When there are both total and partial dependants the compensation may be allotted partly to the total and partly to the partial dependants, as the Court thinks fit.
- (3.) In any case the compensation may be allotted wholly to one or more of the dependants to the exclusion of the others, as to the Court seems fit.

**32 Compensation in case of death to be paid into and applied by Court.**

*Ibid., sec. 30.*

In any action for the recovery of compensation payable to or on behalf of dependants in the case of the death of a worker the Court may order that the amount of that compensation shall be paid into Court; and any sum so paid into Court shall be invested, applied, or otherwise dealt with by the Court in such manner as the Court in its discretion thinks fit for the benefit of the said dependants or any of them.

**33 Moneys to be invested by Public Trustee.**

*Ibid., sec. 31*

Any sum directed in pursuance of this Act to be invested shall be paid to the Public Trustee, who shall deal with all such moneys and the income thereof in accordance with regulations and the orders of the Court.

**34 Court to direct mode of weekly payment.**

*Ibid., sec. 32*

In any order for weekly payments of compensation the Court may give such directions as it thinks fit as to the times, intervals, and manner at or in which those payments are to be made, and as to the payment in a lump sum or otherwise, as the Court thinks fit, of all arrears of weekly payments in respect of any period of incapacity prior to the making of the order.

**35 Apportionment of compensation may be varied by order of Court.**

*Ibid., sec. 33*

Where money has been paid into Court by way of compensation on the death of a worker, and it subsequently appears to the Court, on application made by or on behalf of any dependant, that on account of neglect of children on the part of a widow, or on account of a variation in the circumstances of the various dependants, or for any other sufficient reason, any order of the Court as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum allotted to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the Court may make such order for the variation of the former order as in the circumstances of the case the Court thinks just.

**36 Court to direct payment where compensation due to person under twenty-one, or of unsound mind.**

*1908, No. 248, sec. 34*

- (1.) Where any money is payable under this Act to a person under the age of twenty-one years, or of unsound mind, or under any other legal disability, the Court may order either that the money shall be paid to that person himself or to any other person on his behalf, or that it shall be paid into Court to be dealt with for the benefit of the person entitled thereto in such manner as to the Court seems fit.
- (2.) Unless and until the Court otherwise orders, any weekly payment to which a person under the age of twenty-one years is entitled by virtue of this Act may be paid to him, and his receipt thereof shall be a sufficient discharge.

**37 Payment to representative.**

*Ibid., sec. 35.*

- (1.) Subject to and until there is any order of the Court to the contrary, any money payable by way of compensation under this Act in respect of the death of a worker may be paid to the representative of the said worker, and his receipt thereof shall be a sufficient discharge.
- (2.) Compensation payable in respect of medical, surgical, or funeral expenses may be paid to any person entitled to take proceedings for the recovery of such compensation, and his receipt thereof shall be a sufficient discharge.
- (3.) When compensation has been so received by the representative of a worker on behalf of the dependants, he shall, in default of any agreement between the dependants as to the distribution or application thereof, hold the same subject to any order which the Court may make in the matter under the provisions of section thirty-one of this Act or otherwise.
- (4.) Application to the Court for any such order may be made by the representative of the worker, or by any dependant, or by any person on behalf of a dependant.

**38 Compensation-moneys on death to be paid to and disbursed by Public Trustee.**

*1913, No. 70, sec. 9.*

- (1.) Where the amount of the compensation-money due in respect of the death of a worker has been arrived at, whether by the judgment of the Court of Arbitration or otherwise, the employer or other person liable to pay the same shall, unless the Court otherwise orders, pay the same to the Public Trustee; and the receipt of the Public Trustee, or of any one authorized by him in that behalf, shall be a complete discharge to such employer or other person.
- (2.) The Public Trustee shall thereupon hold the said money for the person or persons entitled thereto, or pending an order of the said Court disposing of or apportioning the same. Application for an order under this subsection may be

made by any dependant or by the Public Trustee on the request in writing of any dependant.

- (3.) If within one month after the receipt of the said money the Public Trustee does not receive notice from any dependant interested therein that application is being made for such order, it shall thereupon become the duty of the Public Trustee to apply for such order.
- (4.) A certificate under the hand and seal of the Public Trustee showing the receipt of the said money shall, in any Court or proceedings whatsoever, be sufficient evidence of the facts therein stated without any further proof.

**39 Costs in discretion of Court.**

*1908, No. 248, sec. 36*

Subject to any regulations made in that behalf, the costs of any action or other proceeding in the Court of Arbitration under this Act shall be in the discretion of the Court.

**40 Solicitor's claim to costs.**

*Ibid., sec. 37. 1913, No. 70, sec. 7(5)*

The solicitor of a person claiming compensation shall not be entitled to recover from him any costs in respect of any action or other judicial proceedings under this Act, or to claim a lien in respect of such costs on any sum payable as compensation under any order or agreement, or to deduct such costs from any sum so payable, except to the extent to which such costs have been allowed as between the solicitor and his client by the Judge of the Court of Arbitration, or by the Magistrate where the proceedings are taken in the Magistrate's Court, on the application either of the solicitor or of the client.

**41 Court may direct payment of interest where undue delay in payment of compensation.**

*1908, No. 248, sec. 38*

If in any action or proceeding for the recovery of compensation the Court is of opinion that there has been unreasonable delay in the payment of that compensation, the Court may, if in its discretion it thinks fit, increase the compensation payable under this Act by adding thereto interest calculated as from the commencement of the incapacity or from the death of the worker, as the case may be, up to the date of the assessment of compensation, at any rate not exceeding six per centum per annum on the total amount of compensation in the case of a lump sum, and on the aggregate amount of weekly payments up to the date of the said assessment in the case of weekly payments.

**42 Action for recovery of compensation for accident out of New Zealand may be stayed until plaintiff undertakes not to take proceedings elsewhere.**

*1911, No. 34, sec. 7.*

When an action is commenced for the recovery of compensation in respect of an accident happening out of New Zealand the action shall, on the application of the defendant, be stayed until the plaintiff has given to the defendant a sufficient undertaking not to institute any proceedings for the recovery of compensation or damages from the defendant in any other part of the British dominions in respect of the same accident.

**43 Proceedings taken outside New Zealand available as a defence to action in New Zealand for recovery of compensation.**

*Ibid., sec. 8.*

In any action for the recovery of compensation it shall be a good defence that proceedings for the recovery of compensation or damages in respect of the same accident have been instituted by or on behalf of the same person against the same defendant in any part of the British dominions other than New Zealand, or that any claim by or on behalf of the same person against the same defendant for compensation or damages in respect of the same accident under the laws of any part of the British dominions other than New Zealand has been settled by agreement or fully satisfied.

**44 Court may require security for costs from plaintiff outside New Zealand.**

*1908, No. 248, sec. 39*

In any action for compensation brought by any person resident out of New Zealand the Court may, if it thinks fit, order the plaintiff to give security for the costs of the action and may stay the action until security is so given.

**45 Court to direct mode of deduction from compensation.**

*Ibid., sec. 40.*

Whenever, in accordance with this Act, any sum is to be or may be deducted from any weekly payment or other money receivable by way of compensation the deduction shall, in default of agreement, be made in such manner and at such time or times and by such instalments (if any) as the Court thinks fit to direct.

**46 Evidence.**

*1913, No. 70, sec. 14.*

In any action or other proceeding under this Act the Court may accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.

### Part III Miscellaneous Provisions

**47 Compensation for injury in mine, &c., to be an equitable charge upon employer's interest therein.**

*1908, No. 248, sec. 41*

- (1.) When injury is caused to a worker by accident arising out of and in the course of his employment in or about any mine, building, factory, or ship, the amount of compensation or damages for which the employer is liable in respect of that injury, whether under this Act or independently of this Act, shall be an equitable charge upon the employer's estate or interest in that mine, building, factory, or ship, and in the plant, machinery, and appliances in or about the same, and in the land on which the mine, building, or factory is situated.
- (2.) This charge shall take effect from the date of the accident causing the injury, notwithstanding that the amount of the employer's liability may not yet have been determined.
- (3.) As between themselves all such charges shall have priority according to the dates of the accidents out of which they arise, and in the case of accidents happening on the same day to two or more workers the charges arising therefrom shall rank equally with each other, and shall be deemed to arise at the time when the first of those accidents happens.
- (4.) Subject to the provisions of the last preceding subsection, every such charge shall have priority over all existing or subsequent mortgages, charges, or encumbrances, howsoever created, other than mortgages, charges, or encumbrances created by any Act repealed by this Act and existing at the time of the coming into operation of this Act.
- (5.) For the purpose of enforcing any such charge after the amount of the employer's liability has been determined in due course of law, whether by action, agreement, or otherwise, the Supreme Court or a Judge thereof may, on summons, make such order as he or it thinks fit, either for the sale of the estate or interest which is subject to the charge, or for the appointment of a receiver, or otherwise; and any order for sale shall be carried into effect by the Sheriff in the same manner as in the case of a writ of sale, with any modifications that may be necessary or may be provided by rules of Court in that behalf.

**48 Liability to be a charge upon insurance-moneys payable as compensation when employer dies insolvent or becomes bankrupt.**

*Ibid., sec. 42.*

- (1.) When any employer has entered into a contract with any insurer for an indemnity in respect of any liability to pay compensation or damages to any worker, or to the representative or dependants of any worker, in respect of any accident, then in the event of the employer dying insolvent, or becoming bankrupt, or

making a composition or arrangement with his creditors, or, if the employer is a body corporate, in the event of that body corporate having commenced to be wound up, the amount of that liability, whether already determined or not, shall be a charge upon all insurance-moneys which are or may become payable in respect of that liability, or which would be or become payable in respect thereof had no such insolvency, bankruptcy, composition, arrangement, or winding-up taken place.

- (2.) The said charge shall have priority over all other charges or claims affecting the said insurance-moneys, and where the same insurance-moneys are subject to two or more charges by virtue of this Act those charges shall have priority between themselves in the order of the dates of the accidents out of which the liability arose, and if two or more accidents happen to different workers on the same day the charges arising out of those accidents shall rank equally between themselves.
- (3.) Such a charge shall be enforceable by way of an action against the insurer by the worker or the representative or dependants of the worker in the same manner and in the same Court as if the action was against the employer for compensation under this Act or for damages, as the case may be; and in respect of any such action, and of the judgment given therein, the parties shall to the extent of the charge have the same rights and liabilities, and the Court shall have the same power, as if the action was against the employer.
- (4.) Such an action may be brought although judgment has been already recovered against the employer for compensation or damages in respect of the same matter.
- (5.) This section does not apply when a body corporate is wound up voluntarily merely for the purposes of reconstruction or amalgamation with another body corporate.
- (6.) Any payment made by an insurer under the contract of insurance without actual notice of the existence of any such charge shall to the extent of that payment be a valid discharge to the insurer, notwithstanding anything in this section contained.
- (7.) No insurer shall be liable under this section for any sum beyond the limits fixed by the contract of insurance as between himself and the employer.

**49 Act not to affect independent liability.**

*1908, No. 248, sec 43*

- (1.) Save as otherwise expressly provided by this Act, nothing in this Act shall affect any civil liability of an employer or any other person which exists independently of this Act.
- (2.) Any sum received by a worker, or by or on behalf of any dependant of a worker, from any person by way of damages in respect of an accident shall be

deducted from the sum recoverable by that worker, or by or on behalf of his dependants, by way of compensation in respect of the same accident.

- (3.) Any sum received by a worker, or by or on behalf of any dependant of a worker, by way of compensation in respect of any accident shall be deducted from the sum recoverable by that worker, or by or on behalf of his dependants, from any person by way of damages in respect of the same accident.
- (4.) When judgment has been recovered by or on behalf of any person for compensation that person shall not be entitled thereafter to recover damages from any person in respect of the same accident unless the Court is satisfied that all reasonable steps have been taken to obtain satisfaction of the judgment for compensation, and that the judgment has not been satisfied.
- (5.) When judgment has been recovered against any person for damages independently of this Act in respect of an accident, no person by or on whose behalf that judgment has been recovered shall be entitled thereafter to recover compensation from any person in respect of the same accident unless the Court is satisfied that all reasonable steps have been taken to obtain satisfaction of the judgment for damages, and that the judgment has not been satisfied.

#### **50 Indemnity of employer in certain cases**

*Ibid., sec. 44.*

Where the injury for which compensation is payable was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the person by whom the compensation is paid or payable, whether directly or by way of an indemnity, shall be entitled to be indemnified by the person so liable to pay damages to the extent of his liability to pay the same.

#### **51 Agreement for compensation binding.**

*1908, No. 248, sec. 45*

When any claim against an employer for compensation under this Act, or for damages independently of this Act, has been settled by agreement, no person bound by that agreement shall be entitled to recover from the employer in respect of the same accident any sum, whether by way of damages or of compensation, other than the amount so agreed upon.

#### **52 Procedure where action brought independently of this Act.**

*Ibid., sec. 46*

- (1.) If within the time limited by this Act for commencing an action for the recovery of compensation an action is brought in the Supreme Court to recover damages independently of this Act in respect of an accident, and it is determined in the action that the accident is one for which the defendant is not liable independently of this Act, the action shall be dismissed; but the Judge before whom the action is tried, or, if he cannot conveniently act, some other Judge,

shall, on the application of the plaintiff made at the time of the dismissal or as soon thereafter as practicable, proceed to determine whether the defendant is liable to pay compensation under this Act, and, if he is found to be so liable, the Judge shall thereupon assess the compensation as if in an action for the recovery thereof, but he shall deduct from the amount of compensation the costs which in his opinion have been caused by the plaintiff suing for damages instead of for compensation.

- (2.) For the purposes of any such determination of the defendant's liability under this Act, and the assessment of compensation, the Judge may hear such further evidence (if any) as he thinks fit, as if the hearing of the application were the trial of an action in the said Court, or may act upon the evidence already given in the trial of the action.
- (3.) The Judge shall thereupon give under the seal of the Supreme Court a certificate of the amount of compensation so assessed by him, subject to such deduction as aforesaid, and shall cause the certificate to be delivered to the Court of Arbitration to be filed in that Court.
- (4.) In any such certificate the Judge may make any order as to the payment, distribution, receipt, application, investment, or other disposition of the compensation so assessed which might be made by the Court of Arbitration in an action for the recovery of that compensation.
- (5.) The certificate when so filed in the Court of Arbitration shall be deemed to be and shall have the effect of a judgment of that Court in an action for compensation, and the Court of Arbitration shall in respect of that certificate and judgment have the same powers as are in this Act conferred upon that Court in respect of judgments given thereby.
- (6.) No appeal or application for a new trial shall lie or be made in respect of any such assessment of compensation by a Judge of the Supreme Court, or in respect of any order so made by him as to the compensation so assessed.
- (7.) If any appeal or application for a new trial is brought or made by the plaintiff in respect of the dismissal of the action in which any such assessment of compensation is made, and the appeal is allowed or the application granted, the assessment of compensation shall thereupon cease to have any force or effect, as if it had not been made.
- (8.) During the pendency of any such appeal or application for a new trial any Judge of the Supreme Court may, if he thinks fit, make an order staying all proceedings on the said assessment and certificate.
- (9.) If in any such action as is mentioned in subsection one of this section judgment for damages is given for the plaintiff, and the judgment is reversed on appeal, the Court of Appeal may, if it thinks fit, remit the case to the Judge before whom the action was tried, or to any other Judge of the Supreme Court, to determine the liability of the defendant to pay compensation under this Act,

and the said Judge shall thereupon have the same powers in that behalf as are hereinbefore in this section set forth.

- (10.) Save as in this section provided, when an action has been brought in any Court against an employer to recover damages for an accident independently of this Act, and it has been decided in that action that the employer is not so liable, he shall not be liable to pay in respect of the same accident compensation under this Act either to the plaintiff in that action or to any other person on whose behalf the said action was brought.

**53 Compensation claims provable in bankruptcy.**

*1908, No. 248, sec. 47*

- (1.) When there is any actual or contingent claim for compensation under this Act against any person or corporation, and that person is adjudicated bankrupt, or files a petition to be so adjudicated, or that corporation commences to be wound up, as the case may be, after the happening of the accident out of which the claim arises, the said claim shall be provable in the bankruptcy or winding-up.
- (2.) No such bankruptcy or winding-up shall preclude or affect the commencement or continuance of any action or proceeding in the Court of Arbitration or elsewhere for the determination of the validity or amount of the said claim, or for the determination of any other question relating thereto.
- (3.) If weekly payments are payable by way of compensation under any agreement or any order of the Court, the claim to be proved shall be for such lump sum in lieu thereof as is agreed upon between the Official Assignee or the liquidator and the person entitled to recover the compensation, or as is assessed either by the Court of Arbitration or by any Court having jurisdiction in the bankruptcy or winding-up.

**54 Claim for compensation in case of death not barred by any judgment obtained by worker in respect of accident causing death.**

*Ibid., sec. 48.*

No claim to compensation in respect of the death of a worker shall be barred by any judgment obtained by the worker himself in his lifetime in respect of the injury which caused his death, whether that judgment was obtained under this Act or independently of this Act, or by any settlement or accord and satisfaction made by the worker in his lifetime in respect of his claim to damages or compensation for that injury; but the claim for compensation in respect of his death shall be reduced by the amount of all moneys paid or payable by way of damages or compensation under any such judgment, settlement, or accord and satisfaction, or otherwise received by the worker from his employer in respect of his injury:

Provided that every such claim shall be made within six months after the death of the worker or the last date of admission of liability by the employer.

**55 Cause of action survives on death of party.**

*1913, No. 70, sec. 10.*

The right to recover compensation under this Act or to recover damages independently of this Act in respect of an accident to a worker shall survive notwithstanding the death either of the employer or other person liable to pay the compensation or damages or of the worker, and all proceedings for the enforcement of such right may be begun or continued by or against the representative of the deceased person.

**56 Right of dependant to compensation to survive dependant.**

*1908, No. 248, sec. 50*

- (1.) The right of a dependant who survives a worker to receive compensation for the death of that worker shall survive the dependant, and may be enforced by or on behalf of the representative of the dependant in the same manner in which it might have been enforced by or on behalf of the dependant had he been alive.
- (2.) All moneys so recovered by the representative of a deceased dependant shall form part of the estate of that dependant, but shall not be available as assets for the payment of his debts or liabilities.

**57 Injured worker to submit himself for medical examination if so required.**

*Ibid., sec. 51.*

- (1.) Where a worker has given notice of an accident or claims compensation or is entitled to weekly payments under this Act, he shall, if and as often as so required by the employer or by any person by whom the employer is entitled to be indemnified, whether by way of insurance or otherwise, in respect of any liability under this Act, or by any other person liable to pay compensation under this Act, submit himself, at the expense (if any) of the employer or of such other person, for examination by any registered medical practitioner nominated and to be paid by the employer or such other person.
- (2.) If the worker at any time without sufficient justification refuses or neglects to submit himself to any such examination or in any way obstructs or delays the same, his rights under this Act in respect of the accident to which the examination relates shall be suspended until the examination takes place, and shall absolutely cease if he fails without sufficient justification to submit himself for examination within one month after being required so to do.
- (3.) Where a right to compensation is so suspended, no compensation shall be payable in respect of the period of suspension.
- (4.) This section shall apply whether the worker is at the time when he is required to submit himself for examination resident in New Zealand or elsewhere, but if he is resident elsewhere than in New Zealand he shall be required to submit

himself for examination by a duly qualified medical practitioner of the place where he is resident.

- (5.) This section shall be read subject to any restrictions and conditions which may be imposed by regulations as to the frequency of medical examinations and the manner in which they are to be conducted.

#### **58 Medical referees.**

*Ibid., sec. 52*

- (1.) The Governor-General may appoint such registered medical practitioners to be medical referees for the purposes of this Act as he thinks fit, and the remuneration of those medical referees shall, subject to regulations made under this Act, be paid out of moneys appropriated by Parliament for that purpose.
- (2.) The Court of Arbitration may submit to a medical referee for report any matter which seems material to any question arising in relation to compensation under this Act, and may, if it thinks fit, act in accordance with that report in the same manner as if it were evidence duly given before the Court.
- (3.) The Court of Arbitration may, in the course of any action or proceeding under this Act, order any person who claims or is entitled to compensation in respect of any injury or disease to submit to medical examination by any one or more medical referees or other registered medical practitioners nominated by the Court, and in respect of any such order subsections two and three of the last preceding section shall be applicable.
- (4.) Where a worker claims compensation under this Act and a dispute exists between the worker and his employer as to the existence, nature, or cause of the injury or disease from which the worker is alleged to suffer, or as to the fitness of the worker for any kind of employment, the worker and employer may by writing under their hands submit any such question to a medical referee, and the written certificate of the referee delivered in duplicate to the employer and the worker shall be conclusive evidence of the facts so certified by him.

#### **59 Reciprocal application of Act outside New Zealand.**

*1908, No. 248, sec. 53*

Where the Governor-General is satisfied that by the laws of any other country within the dominions of the Crown compensation for accidents is payable to the relatives of a deceased worker although they are resident in New Zealand, he may, by Order in Council, declare that relatives resident in that country shall have the same rights and remedies under this Act as if resident in New Zealand.

**60 Compensation-moneys not assignable.**

*Ibid., sec. 54.*

No money paid or payable by way of compensation under this Act, and no money so paid and remaining in the hands of the Public Trustee under any order of the Court, shall be capable of being assigned, charged, taken in execution, or attached, nor shall any claim be set off against it, nor shall it be assets in the bankruptcy of the person entitled thereto.

**61 Moneys paid by employer on account of injury to worker to be deducted from compensation.**

*Ibid., sec. 55.*

When under the provisions of any statute an employer has paid or is liable to pay any sum of money (other than damages) to or for the benefit of a worker or any dependant of a worker in respect of any accident happening to that worker, or where any sum of money has in respect of any such accident been paid or is payable to or for the benefit of the worker or any such dependant out of any fund to which the employer is by any statute bound to contribute, the amount of any money so paid or payable shall be deducted from any compensation payable under this Act in respect of the same accident.

**62 Superannuation Acts not affected.**

*Ibid., sec. 56*

Nothing in this Act shall affect the provisions of the Public Service Classification and Superannuation Act, 1908, and its amendments (relative to the Public Service Superannuation Fund or the Teachers' Superannuation Fund), or of Part III of the Government Railways Act, 1908 (relative to the Government Railways Superannuation Fund).

**63 Mining contractors deemed to be workers.**

*Ibid., sec. 57. 1920, No. 52, sec. 5*

- (1.) Notwithstanding anything in this Act or any other Act, when a contract to perform any work in a gold-mine or coal-mine, or a contract to cut standing timber (including the cutting of scrub), or a contract to clear land of stumps or logs, or a contract for more than one of such subjects, is let directly to one or more contractors who do not either sublet the contract or employ wages-men, or who, though employing wages-men, actually perform any part of the work themselves, those contractors shall for the purposes of this Act be deemed to be working under a contract of service with an employer.
- (2.) No deduction shall be made from the wages or other remuneration of any such contractor or his wages-men on account of any insurance or indemnity issued by an insurance company or otherwise to any person indemnifying him against liability in respect of accidents to any such contractor or his wages-men, and

any such deduction shall constitute an offence against Part II of the Wages Protection and Contractors' Liens Act, 1908.

**64 Contracting out under scheme for compensation approved by Arbitration Court.**

*1908, No. 248, sec. 58*

In any case where, on application in the prescribed manner to the Judge of the Court of Arbitration, the Court, after taking steps to ascertain the views of the employer and workers, certifies that any scheme of compensation, benefit, or insurance for the workers, whether or not such scheme includes other employers and their workers, is on the whole not less favourable to the general body of workers and their dependants than the provisions of this Act the following provisions shall apply:—

- (a.) The employer may, until the certificate is revoked, contract with any of those workers that the provisions of the scheme shall be substituted for the provisions of this Act; and thereupon the employer shall, as respects the workers with whom he so contracts, be liable in accordance with the scheme in lieu of this Act; but, save as aforesaid, this Act shall apply, notwithstanding any contract to the contrary.
- (b.) The Court may give such certificate, to expire at the end of a limited period to be specified therein, being not more than five years.
- (c.) No scheme shall be so certified which contains an obligation upon the workers to join the scheme as a condition of their hiring.
- (d.) If during the currency of the certificate complaint is made to the Court by or on behalf of the employer or the workers, or a majority of them, that the provisions of the scheme are no longer on the whole so favourable to the employers or to the general body of workers and their dependants as the provisions of this Act, or that the provisions of the scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Court shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.
- (e.) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workers, or as may be determined by the Court in the event of a difference of opinion.
- (f.) For the purposes of this section it shall be the duty of the employer and workers to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Court.

**65 Regulations.**

*Ibid., sec. 59.*

The Governor-General may from time to time, by Order in Council, make regulations for the following purposes:—

- (a.) Prescribing the procedure in any proceedings under this Act:
- (b.) Prescribing the Court fees (if any) payable in any such proceedings:
- (c.) Prescribing the duties of the Public Trustee in respect of moneys to be invested or administered by him under this Act:
- (d.) Declaring that any disease shall come within the provisions of this Act in addition to those herein specified:
- (e.) Making any other provisions consistent with this Act which he thinks necessary or advisable in order to give full effect to the provisions of this Act.

**66 Condition of accident-insurance policies.**

*1908, No. 248, sec. 61.*

Every policy of insurance or indemnity indemnifying an employer against his liability in relation to workers' compensation under this Act, or at common law or otherwise, issued on or after the coming into operation of this Act, shall contain only such provisions as may be approved by the Governor-General in Council.

**67 Rule as to common employment abolished**

*Ibid., sec. 62. 1911, No. 34, sec. 13. 1920, No. 52, sec. 6.*

- (1.) When any injury or damage is suffered by a servant by reason of the negligence of a fellow-servant, the employer of those servants shall be liable in damages in respect to that injury or damage in the same manner and in the same cases as if those servants had not been engaged in a common employment.
- (2.) This section applies to every case in which the relation of employer and servant exists, whether the contract of employment is made before or after the commencement of this Act, and whether or not the employment is one to which the other provisions of this Act apply.
- (3.) No servant shall be entitled to recover from his employer in an action brought under this Act in respect of the negligence of a fellow-servant a larger sum by way of damages for any one cause of action than one thousand pounds.

**68 Provision where insurer contests claim.**

*1908, No. 248, sec. 63.*

Where an insurance company or person indemnifies an employer against his liability for accidents to workers under this Act, or at common law or other-

wise, and has used or uses such employer's name or has acted on his behalf in any action or proceedings in the Court of Arbitration or other Court, such insurance company or person shall be bound by the decision of the Court in the same manner and to the same extent as the employer, and shall indemnify him accordingly, provided that the liability of the insurance company or person shall be limited by the terms and conditions of the policy.

**69 Repeals.**

The enactments mentioned in the Third Schedule hereto are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this Act.

## SCHEDULES

**FIRST SCHEDULE**  
**Occupations**

Section 3. 1908, No. 248, First Schedule.  
1911, No. 34, sec. 14. 1920, No. 52, sec. 7.

Mining; quarrying; excavation; the cutting of standing timber, including the cutting of scrub and clearing land of stumps and logs; the erection or demolition of any building or structure; the manufacture or use of any explosive; the charge or use of any machinery in motion and driven by steam or other mechanical power; the driving of any vehicle drawn or propelled by horse-power or mechanical power; domestic service in which the employment or engagement is for a period of not less than three days; any occupation in which a worker incurs a risk of falling any distance exceeding twelve feet, if the injury or death of the worker results from such a fall.

## SECOND SCHEDULE

Section 8. 1908, No. 248, Second  
Schedule. 1911, No. 34, sec. 15. 1913, No.  
70, sec. 11. 1920, No. 52, sec. 8.

Nature of Injury.	Ratio of Compensation to Full Compensation as for Total Incapacity.
Loss of both eyes	
Loss of both hands	
Loss of both feet	
Loss of a hand and a foot	100 per cent.
Total and incurable loss of mental powers involving inability to work	
Total and incurable paralysis of the limbs or of mental powers The total loss of the right arm or of the greater part of the right arm	80 per cent.
The total loss of the left arm, or of the greater part of the left arm	75 per cent.
The total loss of the right hand, or of five fingers of the right hand, or of the lower part of the right arm	70 per cent.
The total loss of the same for the left hand and arm	65 per cent.
The total loss of a leg	75 per cent.
The total loss of a foot, or the lower part of a leg	60 per cent.
The total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	75 per cent.
The total loss of hearing	50 per cent.
The total loss of the sight of one eye	50 per cent.
The total loss of a thumb	30 per cent.
The total loss of the forefinger of the right hand	20 per cent.
The total loss of the forefinger of the left hand	15 per cent.
The total loss of a joint of a thumb	15 per cent.
The total loss of the little finger of a hand	12 per cent.
The total loss of the middle finger or of the ring- finger of a hand	8 per cent.
The total loss of the big toe of either foot	10 per cent.
The total loss of a toe other than a big toe, or of a joint of a finger	5 per cent.
Complete deafness of one ear	10 per cent.
The total loss of two joints of a finger—	
If the forefinger of the right hand	12½ per cent.
If the forefinger of the left hand	10 per cent.
If the little finger of either hand	8½ per cent.
If the middle finger or the ring-finger of either hand	6½ per cent.

For the purposes of this Schedule the expression "loss of" includes "permanent loss of the use of."

Where a worker suffers by the same accident more than one of the injuries mentioned in this Schedule, he shall not in any case be entitled to receive more than full compensation as for total incapacity.

**THIRD SCHEDULE****Enactments repealed**

1908, No. 248.—The Workers' Compensation Act, 1908.

1909, No. 25.—The Workers' Compensation Amendment Act, 1909

1911, No. 34.—The Workers' Compensation Amendment Act, 1911

1913, No. 70.—The Workers' Compensation Amendment Act, 1913.

1920, No. 52.—The Workers' Compensation Amendment Act, 1920