

THE UNITED REPUBLIC OF TANZANIA



No. 60 OF 1966

In discharge of the functions
of the office of the President

I ASSENT,


Second Vice-President

29TH DECEMBER, 1966

An Act to amend the Workmen's Compensation Ordinance

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Workmen's Compensation Ordinance (Amendment) Act, 1966, shall be read as one with the Workmen's Compensation Ordinance (hereinafter referred to as "the Ordinance") and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Short title,
construction
and
commence-
ment
Cap. 263

2. Section 2 of the Ordinance is hereby amended in subsection (1) by deleting the words "sixteen thousand eight hundred" where they occur in the second line of paragraph (a) of the proviso thereto and by application substituting therefor the words "twenty-four thousand".

Provision
relating to
of
Ordinance
amended
Definition
"insurer"
amended
and
addition of
definitions
"Minister"
and
policy of
insurance"

3. Section 3 of the Ordinance is hereby amended in subsection (1)
(a) by deleting the definition "insurer" and by substituting therefor the following new definition: -
" 'insurer' means any insurance society, company, association or underwriter approved by the Labour Commissioner under the provisions of section 25;"

(b) by adding immediately below the definition "member of the family" the following new definition: -
" 'the Minister' means the Minister for the time being responsible for labour matters;"

(c) by inserting immediately below the definition "partial incapacity" the following new definition: -
" 'policy of insurance' includes a cover note;"

4. Section 4 of the Ordinance is hereby amended by inserting immediately after the words "Ordinance shall" the words and commas ", subject to the provisions of section 25,"

Certain
provisions
not to apply
to
Government

Employer to be liable in all cases of injury resulting in permanent partial incapacity and amendment of the construction Of "course of employment"

5. Section 5 of the Ordinance is hereby amended-

(a) by inserting immediately after the word "injury" in the second line of paragraph (a) of the proviso to subsection (1) the words and commas", other than an injury resulting in permanent partial incapacity, , and

(b) by deleting subsection (2) and substituting therefor the following new subsection: -

"(2) For the purposes of this Ordinance an accident shall be deemed to arise out of and in the course of a workman's employment-

(a) where death or serious and permanent incapacity of the workman results from such accident, notwithstanding that the workman was, at the time when the accident happened, acting in contravention of any statutory or other regulation applicable to his employment or of any orders given by or on behalf of his employer, or that he was acting without instruction from his employer, if such, act was done by the workman for the purposes of and in connection with his employer's trade or business; or

(b) where the accident happened in or about any premises at which the workman was for the time being employed for the purposes of his employer's trade or business, if it happened while the workman was taking steps, in an actual or supposed emergency in or about those premises, to rescue, succour or protect persons who were, or were thought to be or likely to be, injured or imperilled, or to avert or minimise damage to any property owned by the employer or for which the employer was answerable to the owner."

Maximum compensation in fatal case increased

6. Section 6 of the Ordinance is hereby amended-

(a) by deleting the words "thirty-six months' earnings or twenty-four thousand" where they occur in the third line of paragraph (a) and substituting therefor the words "forty-one months' earnings or twenty-nine thousand"; and

(b) by deleting the words "three hundred" in the last line of paragraph (c) and substituting therefor the words "five hundred".

Maximum compensation in case of permanent total incapacity increased

7. Section 7 of the Ordinance is hereby amended-

(a) in subsection (I)-

(i) by deleting the words "forty-eight" where they occur in the third line and substituting therefor the words "fifty-four"; and

(ii) by deleting the words "thirty-four, where they occur in the second line of the proviso and substituting therefor the words "thirty-eight"; and

(b) in subsection (2) by deleting the words "one quarter "where they occur in the fifth line and substituting therefor the words "one half ".

8. Section 8 of the Ordinance is hereby amended in subsection (1) thereof-

Maximum compensation in case of permanent partial incapacity increased

(a) by deleting the words "forty-eight" wheresoever they occur in paragraphs (a) and (b), and substituting therefor the words "fifty-four"; and

(b) by deleting the words "thirty-four" where they occur in the second line of the proviso and substituting therefor the word "thirty-eight"

9. Section 9 of the Ordinance is hereby amended by deleting paragraph (a) of the proviso to subsection (1).

Provisions fixing maximum amount of periodical payment repealed

10. Section 13 of the Ordinance is hereby amended by deleting subparagraph (i) of paragraph (b) of the proviso and by substituting therefor the following new subparagraph- -

Provision relating to failure to claim compensation amended

"(i) in the case of a workman whose earnings do not exceed six hundred shillings per month; or"

11. Section 23 of the Ordinance is hereby repealed and replaced by the following new section: —

Provisions remedies where workman entitled to both compensation and damages amended

"Remedies against both employer and stranger

23. (1) Where the injury in respect of which compensation is payable under the provisions of this Ordinance was caused under circumstances creating a legal liability in Some person other than the employer to pay damages in respect thereof, the workman may take proceedings both against that person to recover such damages and against any person liable to pay compensation under the provisions of this Ordinance to recover such compensation, but shall not, save in the circumstances described in subsection (2), be entitled to recover both such damages and compensation.

(2) Notwithstanding anything contained in subsection (1)-

(a) where a workman has recovered from any person other than the employer damages in respect of an injury for which compensation is payable under the provisions of this Ordinance and the amount of such damages is less than the amount of the compensation so recoverable, the workman shall be entitled to recover from the person by whom such compensation is payable the difference between such two amounts; and

(b) where a workman has recovered compensation under the provisions of this Ordinance in respect of an injury caused under circumstances creating a legal

liability in some person other than the employer to pay damages in respect thereof and the amount of such compensation is less than the amount of the damages so recoverable from such person, the workman shall be entitled to recover from such person the difference between such two amounts.

(3) If a workman has recovered compensation under the provisions of this Ordinance in respect of an injury 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 was paid, and any person who has been called on to indemnify another person under the provisions of section 22 relating to liability in case of workmen employed by contractors, shall be entitled to be indemnified as regards the amount of compensation including costs, by the person so liable to pay damages as aforesaid to the extent of the amount of the damages for which such person is liable, and any question of any such indemnity shall, in default of agreement, be settled by civil suit or, by consent of the parties, by arbitration under the Arbitration Ordinance."

Cap. 15

Damages to abate to the extent of compensation recovered

12. Section 24 of the Ordinance is hereby amended in subsection (1) thereof by deleting the full stop at the end of paragraph (c) of the proviso thereto, substituting therefor a semi-colon and adding, immediately thereafter, the following new paragraph: -

"(d) Where compensation for an injury has been paid by an employer to any person entitled to the same under the provisions of this Ordinance without such compensation having been claimed in any proceedings under this Ordinance and otherwise than pursuant to an agreement come to between the employer and the workman under the provisions of subsection (1) of section 15, the court shall, in any proceedings for recovery of damages for the same injury, take into account the amount of such compensation so paid in assessing the damages recoverable in such proceedings."

Compulsory insurance

13. Section 25 of the Ordinance is hereby amended and replaced by the following new sections: -

"Employer to insure against liability under the Ordinance

25. (1) Subject to the provisions of subsections (3) and (4), every employer shall insure and keep himself insured, with such insurer as may be approved by the Labour Commissioner, in respect of any liability which he may incur under the provisions of this Ordinance to any workman employed by him.

(2) Any employer who fails to insure or keep himself insured as required by subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding twelve months or to both such fine and imprisonment.

- (3) Nothing in this section shall apply to-
- (a) the Government of the United Republic;
 - (b) the Common Services Organization or any of the self-contained Services of that Organization;
 - (c) any city, municipal, town or district council; or
 - (d) any limited liability company carrying *on* business in Tanganyika and having a paid up share capital of not less than five hundred thousand shillings, which provides and maintains by way of security an undertaking by a surety approved by the Labour Commissioner to make good, subject to any conditions specified in such undertaking and up to an amount approved by the Labour Commissioner, any failure by the company to discharge any liability which it may incur under the provisions of this Ordinance to any workman, employed by it:

Provided that any such company as aforesaid shall remain so exempt from the provisions of this section for so long only as such security continues in force.

(4) The Minister may by order in the *Gazette* exempt any employer or class of employers from the provisions of this section.

Certificate
Of
insurance

25A. Whenever an employer insures himself pursuant to the obligation imposed on him by section 25, the insurer shall, at the time of the acceptance of the risk, issue and deliver to the employer a certificate of insurance in the prescribed form.

Certain
conditions
in policies
to be of
no effect

25B. Where a policy of insurance is issued to an employer in respect of any liability required to be covered by insurance under the provisions of section 25 any condition in such policy providing that no liability shall arise under the policy, or that any liability so arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy, shall, as respects such liabilities as are required to be covered by such policy, be of no effect:

Provided that nothing in this section shall be taken to render void any provision in such policy requiring the employer insured to pay to the insurer any sums which the latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of workmen employed by the employer.

Duty to
surrender
certificate of
insurance on
cancellation
of policy

25c. (1) Where a certificate of insurance has been issued under the provisions of section 25A to an employer and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the employer to whom, the certificate of insurance was issued shall, within seven days from the taking of effect of the cancellation, surrender the certificate of

insurance to the insurer or, if it has been lost or destroyed, make a statutory declaration to that effect and deliver the same to the insurer.

(2) An employer who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand shillings.

Duty of
insurers to
satisfy
judgment
against
employers

251). (1) If an employer to whom the provisions of section 25 apply is duly insured as required by that section and judgment in respect of any liability as is required to be covered by such insurance is obtained by a workman against the employer, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy of insurance, the insurer shall, subject to the provisions of this section, pay to the workman entitled to the benefit of the judgment any sum payable thereunder in respect of the liability including any amount payable in respect of costs and any sum payable as interest on that sum by virtue of any law for the time being in force in Tanganyika relating to interest on judgments.

(2) No sum shall be payable by an insurer under the provisions of subsection (1) —

- (a) in respect of any judgment, unless before or within twenty-one days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
- (b) in respect of any judgment so long as execution thereon is stayed pending an appeal; or
- (c) in connection with any liability, if before the happening of the accident which was the cause of the injury giving rise to the liability, the policy of insurance was cancelled by mutual consent or by virtue of any provision contained therein and either before the happening of such accident or after the happening of such accident, but before the expiration of fourteen days from the taking effect of the cancellation of the policy-
 - (i) the certificate of insurance was surrendered to the insurer; or
 - (ii) the employer to whom the certificate of insurance was issued made a statutory declaration stating that the certificate of insurance had been lost or destroyed; or
 - (iii) the insurer has commenced proceedings under this Ordinance in respect of the failure to surrender the certificate of insurance; or
- (d) if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, the insurer has

obtained a declaration from the Court that apart from any provisions contained in the policy of insurance, he is entitled to avoid it on the ground that the employer obtained the insurance by the non-disclosure of a material fact or a representation of fact which was false in some material particular, or, if the insurer has avoided the contract of insurance on that ground, that he was entitled so to do apart from any provision of such contract:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not be entitled to the benefit of this paragraph as respects any judgment obtained before the commencement of that action unless before or within fourteen days after the commencement of any such action for declaration as aforesaid he has given notice thereof to the workman who is the claimant in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such action is so given shall be entitled, if he thinks fit, to be made a party thereto.

(3) If the amount which the insurer becomes liable under this section to pay in respect of a liability of an employer insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy of insurance in respect of that liability, he shall be entitled to recover the excess from that employer.

(4) For the avoidance of doubt it is hereby declared that for the purposes of this section—

"judgment" includes an order of the court made under the provisions of subsection (2) of section 15 and also an order made under section 17; and

"proceedings" includes an application for an order making an agreement between an employer and a workman an order of the court under the provisions of subsection (2) of section 15 and also an application for review made under section 17.

(5) Where pursuant to the provisions of this section an insurer has become liable to satisfy a judgment against an employer, the insurer may—

(a) where the judgment is an order of the court made under the provisions of subsection (2) of section 15, make an application to the court under the provisions of subsection (3) of that section; and

(b) where the judgment is an order for a periodical payment, make an application for review under the provisions of section 17,

as if he were the employer.

Penalty for false statements and wilful avoidance policy

25E. If any, employer, for the purpose of obtaining a policy of insurance as required by section 25 of this Ordinance, makes any false, statement in consequence whereof the of policy is liable to be avoided, or wilfully does any act which disentitles him to claim under the policy, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two, thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Employers against whom claims are made to give information as to insurance

25F,(1) An employer against whom a claim is made in respect of any such liability as is required to be covered by insurance under section 25 shall, on demand being made by the Labour Commissioner or any person authorized by him in that behalf, or by or on behalf of the workman making the claim, state whether he was insured in respect of that liability, give such particulars respecting the policy of insurance as the person making the demand may require and produce for inspection by such person the certificate of insurance.

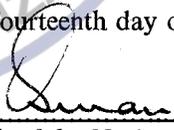
(2) If, without reasonable excuse, any employer fails to comply with the provisions of this section, or wilfully makes any false statement in reply to any such demand as aforesaid, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand shillings."

Employer's maximum liability in respect of medical expenses increased

14. Section 31 of the Ordinance is hereby amended in subsection (1) thereof-

- (a) by deleting the word "four" where it occurs in paragraph (a) and substituting therefor the word "six";
- (b) by deleting the word "two" where it occurs in paragraph (b) and substituting therefor the word "three"; and
- (c) by deleting the words "one thousand" where they occur in paragraph (c) and substituting therefor the word "one thousand seven hundred and fifty"

Passed in, the National Assembly on the fourteenth day of December, 1966.


Acting Clerk of the National Assembly