

- (i) "qualified medical practitioner" means any person registered <sup>1</sup>[...] under any Act of the Federal Legislature or any Provincial Legislature providing for the maintenance of a register of medical practitioners, or; in any area where no such last-mentioned Act is in force, any person declared by the Provincial Government, by notification in the official Gazette to be a qualified medical practitioner for the purposes of this Act;
- (j) [Omitted by the Workmen's Compensation (Amendment) Act, XV of 1933];
- (k) "seaman" means any person forming part of the crew of any ship, but does not include the master of the ship;
- (l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement:

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

<sup>2</sup>[(l)] "Tribunal" has the same meaning as in the

**11. Medical examination:** (1) Where a workman has given notice of an accident, the employer shall, before the expiry of three days from the time at which service of the notice has been effected, have the workman examined free of charge by a qualified medical practitioner, and the workman shall submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act, shall if so required, submit himself for such examination from time to time:

Provided that a workman not examined free of charge as aforesaid may get himself examined by a qualified medical practitioner and the expenses of such medical examination shall be reimbursed to the workman by the employer:

Provided further that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refused to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3),

dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of Section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has referred to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner whose instructions he had followed, and compensation, if any, shall be payable accordingly.

### COMMENTS

The sanction for the refusal of a workman to submit to medical examination by a qualified medical practitioner is suspension of the workman's right to compensation for so long as his refusal or obstruction lasts, unless the man was prevented by any sufficient cause from submitting himself to such examination. It was *held* by a majority that a workman had no positive right in law to the presence of his own medical man when undergoing a medical examination pursuant to the Workmen's Compensation Act. 1912 AC 74.

Order of the Commissioner awarding compensation was challenged on ground that injured workman did not in compliance with order of the Commissioner get himself examined from named Doctor. Workman however

examined by the Medical Board constituted by employer (Railway Administration). Objection that accused was got examined by the Railway Medical Board and had not appeared himself of his own accord before such Board, in circumstances was immaterial and was rejected. 1984 PLC 768.

Plea that the payment of compensation should have been suspended under Section 11(2) during the period for which workman refused or failed to present himself before the doctor of the company was repelled as being devoid of substance in circumstances of case. NLR 1983 Labour 141.

Disability is distinguished from total incapacity to perform certain duty and the compensation claimed for 30 per cent. disability as per certificate of doctor with the doctor in evidence stated that injury had totally incapacitated worker (Driver) to drive a vehicle, such fact, *held*, in itself would not entitle workman to compensation on the basis of 100 per cent. disability because he had not been incapacitated from gainfully following another profession. Compensation of 100 per cent. disability awarded by Commissioner in circumstances, was set aside. 1981 PLC 171.

**Examination of medical expert as witness in compensation proceedings is not a must:** The proposition that unless a medical expert is examined as a witness the proceedings and order of the Commissioner would be either incompetent or without jurisdiction is not acceptable. It would depend upon the circumstances of each case whether the Commissioner cannot decide for himself the questions which might require medical opinion. It goes, however, without any fear of contradiction that if a case before the Commissioner is simple, the extent of the injury and results/consequences thereof can either be stated or demonstrated by the victim and/or his other non-expert witnesses and can also be observed by the Commissioner, he need not examine an expert. For example, if it is a question of the chopping off of a finger which can be made the subject-matter of a statement by any witness. No matter whether he is a doctor or a layman and/or the fact can be observed by the Commissioner with a naked eye it would not be necessary to examine a doctor/expert. This is a clear example but there can be other less vivid cases in which the Commissioner might be able, on account of his experience, learning and knowledge to make assessment and opinion of his own either *qua* the nature or the effect of the injury. If this is possible, it cannot at all be said that the further question of the loss in earning capacity cannot be assessed without help of the doctor. In cases covered by specified items in Schedule I it will only be a question of fitting the injury in a particular item and then the calculations would easily follow. But in cases not so covered, the Commissioner would be able, on account of his own experience and knowledge of human conduct and capabilities to make the estimates in loss of earning capacity. PLD 1975 Lah. 169.

**Suspension of right of compensation:** Workman failed to present himself before doctor of employer establishment despite direction.

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Subsequently during cross-examination before the Commissioner stated that he was prepared to get himself examined by the said doctor. Commissioner refused to suspend claim on ground that workman was willing to be examined by the said doctor. Order of the Commissioner was not challenged by the employer. Plea that payment of compensation should have been suspended during the period for which workman failed to present himself before the said doctor, in circumstances could not be considered in appeal. 1983 PLC 1042.