British Journal of Multidisciplinary and Advanced Studies 5(5),1-8, 2024

Business and Management Sciences

Print ISSN: 2517-276X

Online ISSN: 2517-2778

Website: https://bjmas.org/index.php/bjmas/index

Published by the European Centre for Research Training and Development UK

Injuries at the Work Place: An Examination of the Basis for Claim Under Nigeria's Employees Compensation Act (ECA) 2010

Musa Binyaminu Usman Esq.
Department of Shari'ah and Civil Law
Jigawa State College of Education and Legal Studies,
PMB 1009, Ringim, Jigawa State
08069018078

doi: https://doi.org/10.37745/bjmas.2022.04172 Published September 10, 2024

Citation Usman M.B. (2024) Injuries at the Work Place: An Examination of the Basis for Claim Under Nigeria's Employees Compensation Act (ECA) 2010, *British Journal of Multidisciplinary and Advanced Studies*, 5(5),1-8

Abstract: *The Employer employee relationship has been in existence since the time immemorial, Master servant relationship was initially practiced up to the time where such relationship was abolished, which was replaced with an institutionalized relation i.e. Employer employee relations, where each of the parties has his own rights and duties spelt out by the Laws establishing and guiding their relationship. In most cases during the course of this relationship, parties may sustain an injury of different degrees, ranging from partial or permanent disabilities, at some instances to the extent of even loss of life in the course of that employment, depending on the nature of the employment. This work will explore the available statutes ranging from the International treaties which Nigeria happened to be a signatory to, and the other Nigerian legislations, and Case Laws regulating the Employee employer relationship with a view to examining such injuries based on their compensability and what will qualify them to be so i.e. the basis for the claim of damages based on the injuries sustained under the Employee's Compensation Act 2010, and also to examine how such claims could be made appropriately in accordance with the law. At the end of this work, the Employer and employee would be better educated in the nature of the injuries that attracts compensation as well as what qualified them to be so, and how it could be done in accordance with the law*

Key Words: employee, work place, compensable injuries, basis for claim

INTRODUCTION

An employee has been defined as a person who works under direction and control of another (the employees) in return for a wage or salary[1] looking at this definition, it can be implied that, there exist a kind of contract that exist between the two parties i.e. the employer of the service and the employee under the consideration of a wage or salary as may be agreed by the parties.

[1] Oxford, Dictionary of Law, (New Edition) Oxford Paper backs, Oxford University Press (1997).

Print ISSN: 2517-276X
Online ISSN: 2517-2778
Website: https://bjmas.org/index.php/bjmas/index
Published by the European Centre for Research Training and Development UK

It is also implied that where an agreement exists, between the parties it is covered by duties a breach of which will amount to a redress in form of compensation.

Compensation been defined as a monetary payment to compensate for loss or damage when someone has committed a criminal offence that caused personal injury, loss or damage to another[2]. It is therefore obvious that, before such a compensation could be awarded, a proper foundation most be laid for it to stand, since it involved the payment of an amount in return for an injury, loss or damage sustained by one of the parties, i.e. (The employee).

Historical Background of Employee's Compensation Acts

The workmen's compensation scheme is over a century old, this is because the first English workmen's legislation was enacted in 1897[3]. And in Nigeria the first Workmen's compensation legislation was the ordinance of 1942 since when the country was under British colonial rule following the English statute of 1925[4].

This first ordinance in Nigeria was repealed by Workmen's Compensation Act 1987[5]. This was because the first Act in Nigeria suffered a series of criticism part of which was restricting the non-manual worker whose earnings does not exceed N1,600 per annum from claiming any compensation[6]. The Act was therefore criticized as outdated and irrelevant to the modern industrial needs[7]. The 1987 Act which came to remedy some inadequacies of the former Act was also faced with its own deficiencies in different angles, for example it is considered so narrow that, it covered only employees employed under manual labour, clerical work or otherwise, and it had been severally interpreted to exclude the professionals[8]. It also narrowed the compensable injuries as injuries that occurred by accidents at the work place leaving other injuries non-compensable. The heads to compensation under the Act were also limited to compensation in fatal cases, permanent total incapacity, permanent partial incapacity and temporary incapacity[9]. All these above mentioned short comings and others necessitate the birth of the new Act on the 17th of December, 2010 named employee's compensation Act 2010.

Nature and Scope of Compensable Injuries

Generally, injury may be defined as harm done to a persons or an animal's body. Or damage to a person's feelings.[10] In a more technical sense, injury may include any disease or impairment of a person's physical or mental conditions[11].

[2] Ibid
[3] Mickeal Dugeri (op-cit)
[4] Emiola A. Nigerian Labour Law, 4th Ed. Emiola Publishers, Pgmosho Nig. (2008) pg. 302.
[5] Cap W6, Laws of the federation of Nigeria 2004.
[6] Ogunyi O., Labour & Employment law in perspective. Folio publishers Ltd. Okeja, Lagos (1991) pg. 126
[7] Ibid
[8] Olaniwun, ALP. "Employer and Employee Relations". The employees compensation.
[9] Compensation Act 2010 "http://www.olamiwunajayi.net.clientalartemployers"
[10] Oxofrd advanced learners Dictionary, 6th Edition, Oxford University press .
[11] Osborn's Concise law dictionary, edited by Sheila Bone. London Sweet & Maxwell, 2001.

British Journal of Multidisciplinary and Advanced Studies 5(5),1-8, 2024

Business and Management Sciences

Print ISSN: 2517-276X

Online ISSN: 2517-2778

Website: https://bjmas.org/index.php/bjmas/index

Published by the European Centre for Research Training and Development UK

From the two definitions above an injury can be seen as a harm bodily or mentally which was inflicted on an individual, therefore the two definitions do not put any limit as to what could be considered as an injury, so far as to what could be considered as an injury, so whenever a harm or damage was inflicted, then one can be said to have sustained an injury.

There is no doubt that, the Act has extended the scope and limit of the liability for compensation beyond what was obtainable in the repealed Act[12] which limited the compensable injuries primarily to personal injuries including the fatal injuries and occupational diseases arising from and in the course of employment. Compensation for mental stress and hearing impairment are clearly the innovations introduced by the Employees Compensation Act 2010.

The Basis for Claim under the Employee's Compensation Act 2010.

a. By accident: -

An accident denotes an unlooked for mishap or an untoward event which is not expected or designed.[13]

The accident was implied in the provision of section 7(1) of the Act, though it was mentioned in the sub-section (4) of the same section where it states:-

> "*Where the injuring or disease is caused by accident and the accident arose out of employment……."*

The accident was defined by the Act to mean "an occurrence arising out of or in the course of work which results in fatal or non-fatal occupational injuring that may lead to compensation under this Act."[14]

For a compensation to be payable by the employer, the injury most have emanated from an accident, this is because if the injury was attributed to the serious and wilful misconduct of the employee the compensation should be disallowed.[15] This position was implied in the provision of (4) of section 7 above where it stated as:-

> *"…… unless the contrary is shown, it shall be presumed that, the injuring occurred in the course of the employment."*

The misconduct as above mentioned need to be serious as opposed to accident or negligence as Bram well L.J stated in the case of Lewis v Great Western Railway co.[16] and whether misconduct amounts to serious misconduct in any given case is a matter of fact to be determined by the facts of each case.[17]

In a nutshell an injury could be considered if it occurred as a result of an accident, a real accident that involved the employee out of and in the course of employment to the exclusion of any injury that occurred from a serious and wilful misconduct or a deliberate self-injury.

[12] Workmen's Compensation Act (1987) Op-cit

[13] Fenton v Thortey (1903) A.C. 443 at 443, 451

[14] Hedayo oke-lawal employee compensation Act, 2010 – A primer, posted by P and G (solicitors advocates and Arbitrators)posted on line on march 22, 2012.

[15] E.E Urighava (Op-cit) pg. 251.

[16] (1877)QBD3 at 195

[17] Per Lord James in Johnson v Marshall sons and co. ltd (1906) AC 409

Print ISSN: 2517-276X
Online ISSN: 2517-2778
Website: https://bjmas.org/index.php/bjmas/index
Published by the European Centre for Research Training and Development UK

b. Arising out of employment: -

Payment of compensation under the Act is largely dependent on the injury that disable the employee from earning his salary, and such injury most arise out of the employment he was employed to perform[18].

Ordinarily the phrase "arise out of employment" means that, the injury must occur as a direct result of work the employee was employed to do. In essence there must be a causal link or relationship between the injuries sustained by the employee and he work, the absence of which will negate his claim as stated in UAC V Orekyen.[19]

The phrase "arising out of employment" requires that, the cause of accident that led to the injury need to be inquired[20]. In other words, the phrase is a matter of factual scope which needs the proof of the limit of the work that the employee is employed to perform and other works that are incidental to it.

In achieving that, the limit to the course of employment is therefore determined by the time, place and the activity[21] of the employee. This simply means that, the accident that resulted in the injury that warrants the claim must occur at the time, place and where the employee is doing what he was employed to do. Bearing in mind the provision of the Act which expands the places considered to be the places in which if an injury was sustained in the ways to or from it, the employee is entitled to make a claim.[22] Which include the employee's principal or secondary residence among others. This position is in tandem with the international standard as enshrined in ILO's Convention on commuting accident.[23] In furtherance of the compliance with this standard, the Act went ahead and extend the claim to the injuries sustained outside or beyond the normal workplace where the employee is required to work both in and out of the work place.[24] But in all these places, the employee most has the authority or permission of the employer in so doing.[25]

The Act does not restrict the basis for the claim to only injuries resulting from accidents, but extends to it to injuries sustained by other factors such as mental stress, occupational diseases and etc. However, where the claim was made under accidents the court need the dependents to prove that it is as a result of accident no other reasons like diseases and etc.[26]

c. Arising in the course of employment: -

The injured employee after showing that the injuring subject matter of the claim occurred out of employment that he was employed to do, he must also prove that, it also arose in the cause of employment.[27]

[18] Section 7(1) ECA 2010
[19] (1961)LLR 144.
[20] Ride out, R.W (1979) Principles of Labour Law , (London; sweat and Maxwell) pg. 616
[21] Worugji, INE (op-cit) at pages 67 to 82
[22] S. 7(2) ECA 2010.
[23] Article 7, ILO convention C 121 (1964)
[24] S.11 (a-c) ECA 2010
[25] Paragraph(c) of S. 11 above
[26] Hensey V white (1900)IQB 481
[27] Lord wright in the case of Dover navigation Co. V Craig (1959)4 All ER 558, 563.

Print ISSN: 2517-276X
Online ISSN: 2517-2778
Website: https://bjmas.org/index.php/bjmas/index
Published by the European Centre for Research Training and Development UK

In the course of employment here means. The employee is doing something part of which he was employed to do and no other, or in other words he is doing something in discharge of his duty directly or indirectly as imposed upon him by his contract of his service.[28] However, this scope has been widened by different authors and different judges in many cases, to mean not only when the employee is discharging what he was employed to do. For instance Lord Dening MR described the rule as a "very sensible rule that even through a person is not obliged to be in a particular place, but goes there for something incidental to his employment, such as for a meal to a canteen he is acting in the course of his employment.[29] This we can say in essence incorporated in to the provision of section 7(2) ECA where places such as places where meals and remuneration were taken are considered to be covered under which if injuries sustained therefrom, it is considered compensable.

This position was maintained by Australian Compensation Laws, where the supreme court of Victoria in the matter of Hickok V Education Department maintained as: -
"when a worker, while not performing the actual duties of his employment was caused injury at a time and place doing something which might be regarded as reasonably incidental to, consequential upon or ancillary to his employment not necessarily being required to be done as part of his employment as an employee but rather as something that would be reasonably required, authorized or expected of a worker by his employer as inferred from the facts and circumstances of the existing relations between the worker and the employer then the workers is entitled to compensation as having suffered injuring in the course of this employment.[30]

The position was further elaborated as: -
"In the course of employment" inclusions and
"In the course of employment" exclusions

As for the former the phrase is intended to cover those injuries which:-

a. Are not directly caused by the nature of duties for which a worker is employed
b. Happened at the time, the worker was working either by: -
   i. An accident in the work place such as a falling object or
   ii. Doing some incidental task or duty that the worker could be reasonably expected or authorized to do.

As for the later, an injury which occurs during a period of work may still not occur during the course of employment, if it occurs while a worker is doing something for their own purposes without the knowledge or consent of the employer, the examples given under this situation are:

a. Where the worker interrupts their work to something for themselves such as using workshop equipment to repairs their son's bicycle or
b. Where the worker, without authority, leaves work to move his private car from a restricted parking area or
c. Where the worker is intoxicated or

[28] Lord Kinson in St. Helens (Shery Co ltd V. Hewitson (1224) AC 59, 71
[29] R V Industrial injuries comm. (1966)2 QB, 47.
[30] Supreme Court of victoria in the matter of Hickok V Education Department (1974) Supra

Print ISSN: 2517-276X
Online ISSN: 2517-2778
Website: https://bjmas.org/index.php/bjmas/index
Published by the European Centre for Research Training and Development UK

d. If the worker unreasonably and unreasonably exposes themselves to a risk for which they were not employed.[31]

The above examples are not exhaustive therefore in the course of employment may be limited to only those duties implied by the contract of employment or extended to other duties as implied in the just cited examples. So succession in the claim under this phrase "in the course of employment" will be a question of fact to be determined by the facts of each case.

These two phrases out of employment and in the course of employment are no doubt two different concepts but intersecting each other. The courts in Nigeria while trying to interpret the earlier compensation laws.[32] Particularly in determination of the relationship between the two phrases reached to the conclusion leading to some level of injustices.[33] To remedy this situation, the current Act.[34] Has not only put the phrases in disjunctive form by the use of the word "or" but has gone further to provide that, where the injury or disease is caused by accident, and the accident arose out of the employment, unless otherwise is proven, it shall be presumed that, the injury occurred in the course of the employment.[35] This presumption clearly dealt with the requirement for the determination of the compensability of the injuries or otherwise, the burden on the employee to establish causal link between the employment and the injury is no longer necessary for his claim to succeed. However, if otherwise is proved as required by (4) of sections 7 as mentioned earlier, it will negate the earlier position.

Procedure for making the Claim

a. employee's notification of injury

The employee in the event of sustenance of any injury in the work place or a disabling occupational disease within the scope of the Act shall within 14 days of the occurrence or receipt of the information of the occurrence. Inform the employer by giving the information of the disease or injury to the manager or supervisor, first aid attendant, agent in charge of the work where the injury occurred or other representative of the employer, and such information shall include the name of the employee, the time and place of the occurrence and in an ordinary language the nature and cause of the disease or injury if known, this should be by the injured employee himself or by this dependent where death is resulted on the employee.[36]

In the event of disabling occupational disease, the employer to be informed of the death or disability is the employer who last employed the employee in the employment to the nature of which the disease is due.[37]

Where the injured employee or his defendant failed to provide the information as required by the Act as discussed previously may be the bar to a claim for the compensation unless the board

[31] Victorian Work Cover Authority Melbowine, Austrian (2005).
[32] i.e Workmens compensation Act (2004)
[33] See the cases of Scandnivian Shipper Agencies V Garuba Ajide (1965) All NLR 652 and Hannah Christopher Ngankam V Stras bag (Nig) ltd (1960) SCNLR 525.
[34] E.C.A (2010)
[35] Ibid at S.7 (4).
[36] S.4 (1) Ibid
[37] (2) Ibid

Print ISSN: 2517-276X
Online ISSN: 2517-2778
Website: https://bjmas.org/index.php/bjmas/index
Published by the European Centre for Research Training and Development UK

is satisfied that, the information although imperfect in some respects is sufficient to describe the disease or injury suffered. Or employer or the employer's representative had knowledge of it or employer has not been prejudiced, and the Board considers that the interest of justice requires that the claim be allowed.[38]

b- Employer's obligation to report death, injury or disease of an employee.

The employer has the duty by law to report to the Board and the nearest office of the council for occupational safety and Health in the state within 7 days of its occurrence every injury to an employee that is one to be arising out of and in the course of employment.[39]

He is also required by law to immediately report the death of an employee arising out of and in the course of employment to the board and to the local representative of the board. The report on this shall also be in a form and manner as prescribed by the board and shall consist the name of the employee, the time and place of the disease, injury or death, the nature of the injury, the name and address of any specialist or accredited medical practitioner who attend to the employee, and any other particulars required by the Board under this Act or any regulation made under the authority given to the Board by the Act.[40]

Failure to make report as required under the Act constitutes an offence under the Act, unless where the Board allowed on the ground that, the report for some sufficient reasons could have been made.[41]

The Board is also allowed without prejudice to the generality of the provision of the Act to define and prescribe a category of minor injuries not required to be reported under this sections.[42]

And finally it is the Board that has the authority of making rule or procedures for making any claim for compensation.[43]

c- Application for compensation:

By law it is the Board that has the right to prescribe how the application for compensation should be made, and if the application was made it shall be signed by the employee that sustained an injury resulting from accident or occupational disease or his defendant in case he was dead.[44]

The application for any claim for compensation must be made within one year after the date of death, injury or disability arising from occupational accident or disease. Otherwise, the claimant may lose the right to any compensation thereof.[45]

However, where the Board is satisfied that, there existed special circumstances which necessitate the non-filing of the application for claim within one year after the date of the occurrence of the death or contraction with the disease, then the Board may allow the

[38] (4) Ibid
[39] S.5(1) Ibid
[40] S.5(4) Ibid
[41] (5) of S.5 above
[42] (6) of S. 5 Ibid
[43] S. 5 (8) Ibid
[44] S. 6 (1) Ibid
[45] (2) Ibid

Print ISSN: 2517-276X
Online ISSN: 2517-2778
Website: https://bjmas.org/index.php/bjmas/index
Published by the European Centre for Research Training and Development UK

application and subsequently pay the compensation if such an application was filed within 3 years after that date.[46]
Furthermore, the Board may still pay the compensation after the expiration of the one year and the subsequent 3 years as discussed above if the Board has no sufficient medical or scientific evidence to recognized the disease as an occupational disease until the other or a later date if this evidence are shown, notwithstanding the expiration of the year, still by this provision the board can go ahead and accept the application and pay the compensation, if the application is re-filed.[47]

CONCLUSION

On the conclusion note, it is believed that, no doubt the employees compensation Act 2010 is an advanced law as the employee's compensation is concerned, it is also believed that, it is a step in the right direction, for it incorporated a lot of internationally recognized conventions into the domestic laws to the extent that one will be correct if he said that, the labour law in Nigeria is advancing.

However, despite the strive by the Act under sections 8,9 and 10 and the first schedule, still the Act is short of international standard because it left about 33 categories of internationally recognized occupational disease, such as health conditions relating to "mental and behavioural disorders.[48] And with the expectation of more industrialization, particularly in the mining and agricultural sector, that now the country is trying to invest in, in line with the diversification of the economy to non-oil sectors, it is believed that a lot need to be done to cover the expected gaps that will come with it. It is also believed that, with the experts in the field, such challenges will be overcome, and Nigeria will be seen as one of the developed nations as far as labour relations is concerned.

[46] (3) (bid
[47] S.6 (5)(a) and (b) Ibid
[48] Mike Dugeri (Op-cit)