

# THE INJURED WORKMAN, MEDICAL EVIDENCE AND ASSESSMENT OF COMPENSATION UNDER THE SECOND SCHEDULE TO THE WORKMEN'S COMPENSATION ACT\*

A Review of *Obasuyi & Sons (Sawmills) Ltd. v. Erumiawho*,  
Nigerian Education Law Journal University of Ibadan.  
(2001) Vol. 4 No. 1 p. 89 - 98

The Workmen's Compensation Act<sup>1</sup> 1990 and the Workmen's Compensation (Rules of Court) Rules made pursuant to the Act contain special provisions and procedure for the expeditious determination of the claims for compensation for the death of or injuries suffered by, a workman in the course of his employment. The proceedings under the Act are peculiar in the sense that the statute and the Rules contain comprehensive procedure under which an injured employee will seek redress in Court from his employer. This contribution examines the issues relating to medical evidence in proceedings for assessment of compensation for an injured workman under the Second Schedule to the Act.<sup>2</sup> The recent decision of the Court of Appeal in *A.O. Obasuyi & Sons (Sawmill) Ltd. v. Gabriel Erumiawho*<sup>3</sup> to be examined presently has provoked this inquiry.

It is important to state the facts of this case and the decision of the Court of Appeal as a basis of our informed discussion hereafter.

## I. FACTS OF THE CASE:

The respondent brought an application under the Workmen's Compensation Act, Cap. 470, Laws of the Federation of Nigeria, 1990.

In the application, the respondent averred that on 11/11/95 in the course of his duty in the employ of the appellant, he sustained injuries in which three of his fingers were totally severed and the fourth finger was permanently damaged. He sustained the said injuries while operating the cross saw machine of his employer, the appellant.

In resume, the respondent claimed the sum of N67,372.00 from the appellant representing 50% of his monthly earnings for 54 months, full salary for the month of December, 1995, two weeks full pay in lieu of annual salary and transport expenses in respect of treatment as an out-patient in a clinic in Benin City.

On the other hand, the appellant in its answer to the claim of the respondent averred *inter alia* that the injuries were sustained by the respondent due to his own negligence and went further to join issues with the respondent as to whether the appellant was entitled to defray the respondent's medical and travelling expenses incurred in the course of receiving medical treatment. The appellant also questioned the issue of leave allowance being brought under the Workmen's Compensation Act. The appellant further averred that in the unlikely event that the respondent's claim succeeded, he would be entitled to the sum of N20,262.00.

At the conclusion of the case, the trial court found for the respondent and awarded him the sum of N62,060.00.

---

\* P. Ehi Oshio, Associate Professor and Acting Dean, Faculty of Law, University of Benin, Benin City, Nigeria.

<sup>1</sup> Cap. 470 Volume 24 Laws of the Federation of Nigeria 1990. Unless otherwise indicated, this Act shall hereafter be referred to as "the Act" in this contribution

<sup>2</sup> Compensation in the case of the death of the injured workman is not the subject of this contribution.

<sup>3</sup> (1999)12 N.W.L.R. (Part 630) p.227. This decision appears to be the only one by the Court of Appeal so far on the Workmen's Compensation Act in Nigeria. Interestingly, the present writer was Counsel to the Applicant at the High Court and the Respondent at the Court of Appeal.

Dissatisfied with the decision of the trial court, the appellant appealed to the Court of Appeal contenting *inter alia* that the trial court was wrong in not giving due weight to the medical evidence, Exhibit GE.7 tendered by the appellant which placed the respondent's disability at 29% instead of 50% on which the trial court based its assessment.

In a well considered judgment, the Court of Appeal upheld the decision of the High Court.

## II. MEDICAL REPORT

An important observation from the judgment of the Court of Appeal is that the Court used the terms "medical report" and "medical assessment" interchangeably without any formal attempt to distinguish between them.<sup>4</sup> But it is submitted that having regard to the provisions of the Act, the two terms are distinguishable and the distinction is not only merely academic as would be demonstrated in the present discussion. For instance, whereas medical report would be required as part of the usual documentary evidence to prove the injury sustained by the workman even in cases of injuries specified in the Second Schedule to the Act, a medical assessment is not required in such cases. Secondly, there is no specific direct provision for medical report in the Act but the contrary is the case with medical assessment.<sup>5</sup>

Under Section 15 of the Act it is provided that where a workman has given notice of an accident, the employer shall, as soon as possible arrange to have him medically examined free of charge to the workman, either by a medical practitioner named by the employer or by a medical practitioner named by the workman with the employer's approval, and such approval shall not be unreasonably withheld. This provision contemplates the production of medical report following such medical examination. Such report would be tendered in evidence in the proceedings, where appropriate, as part of the normal documentary evidence required.

There is therefore, no doubt that medical report is very important in a case in which it forms part of the evidence. However, the issue is whether Exhibit GE.7 is the kind of medical report envisaged or required under the Workmen's Compensation Act in this case.

It is submitted that Exhibit GE 7 is not the kind of medical report required under the Act in this case. Rather, the Exhibit was merely an unsolicited assessment of the percentage disability purportedly done by a Medical Practitioner said to be retained by the Appellant. The said doctor did not appear in court to authenticate the document and to be cross-examined on the same and there were several other issues rendering the Exhibit unreliable as a medical Report. The exhibit is hereby reproduced for easy reference and discussion.

"The Managing Director,  
**Obasuyi Sawmill Ltd**  
Benin City.

Dear Sir,

### **RE: GABRIEL ERUMIAWHO - PERCETAGE DISABILITY**

Following Mr. Erumiawho Gabriel accident on the 11<sup>th</sup> December 1995, here is the percentage Disability, using the Workmen's Compensation Act classification.

---

<sup>4</sup> See pages 238, 239 and 240 of the judgment. The term "Medical evidence" would appear to cover the two terms hence it is employed in our title to this article.

<sup>5</sup> See Section 8(1) & (2) of the Act. Subsection 3 thereof even contemplates the production of a medical assessment before a trial court in a case in which it is relevant.

INJURY

PERCENTAGES OF DISBILITY

1.	Loss of Index Finger	Two Phalanges 10
2.	Loss of Middle Finger	Three Phalanges 10
3.	Loss of ring finger	Three Phalanges 6
4.	Loss of little finger	One phalange <u>3</u>
	Total:=	<u>29%</u>

**Many thanks,**

Yours faithfully'

Signed  
Dr. D. U. IYAMU."

This Exhibit did not purport to be a medical report neither would it have been admitted as such. Accordingly, it was wrongly admitted as a medical report. But the fact of the admissibility of any document in evidence albeit unchallenged does not mean that such document will invariably attract probative value or legal weight. In essence, the fact that Exhibit GE 7 was tendered without objection, does not clothe it with probative value,<sup>6</sup> because admissibility is one thing but the weight to be attached to the evidence is a different matter.<sup>7</sup> Furthermore, it is trite that an admission does not necessarily mean proof of what is contained therein. An admission relied upon by any party is not *ipso facto* accepted to be the truth by the court once it is not in accordance with the truth of the case. It is the duty of the Court to decide the case in accordance with the facts pleaded and proved to be true.<sup>8</sup>

It is submitted that Exhibit GE. 7 did not satisfy the test of admissibility as a medical report under Section 91 of the Evidence Act<sup>9</sup> and was therefore wrongly admitted. Under that section such a document could only be properly admitted:

(a) if the maker had personal knowledge of the matters dealt with in the document, and

(b) he is called as a witness in the proceedings.

On the contrary, Dr. Iyamu who purportedly made Exhibit GE.7 was not called as a witness and therefore section 91(1)(b) of the Evidence Act was not satisfied. Nor did Exhibit GE.7 satisfy the proviso thereof or any other subsection of Section 91 aforesaid.<sup>10</sup>

<sup>6</sup> Counsel to the Applicant at the trial Court, the present writer, knew this well, hence he allowed the document to be admitted but attacked it as unauthenticated, discredited and unreliable in his address to the Court at which time it was impossible for the counsel to the respondent to save the document!

<sup>7</sup> See section 92 of the Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990.

<sup>8</sup> See *A.C.B. Ltd. v Alhaji Umaru Gwagwada* (1994) 16 L.R.C.N. 89, at 103 (31-35, per Olatawura J.S.C.), (1994)5 N.W.L.R. (pt. 342) p.25.

<sup>9</sup> Cap. 112, Volume 8, Laws of the Federation of Nigeria 1990 (Section 91 (1) (a) and (b)).

<sup>10</sup> The proviso to section 91 (1) (b) reads: "provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success." Section 91 (1) (a) (ii) and other subsections are not applicable.

The effect of all we have examined above is to render Exhibit GE.7 of little probative value as a medical report notwithstanding the fact that it was admitted as an exhibit, hence, in our view, the trial Court was right in not attaching much weight to it.

### III. MEDICAL ASSESSMENT

As may be gleaned from the provisions of the Workmen’s Compensation Act, Medical report is distinguishable from Medical Assessment. Whereas the Act makes direct provisions on Medical Assessment, there are no such provisions in respect of medical report- the latter arising only by implication or as a part of the evidence of the injury resulting in the compensable disability or incapacity.<sup>11</sup>

Under Section 8(1) of the Act the Labour Minister may on the recommendation of the Minister charged with responsibility for matters relating to health compile a list of medical assessors for the purposes of the Act. By subsection 2 of that section the court may, in its discretion summon to its assistance from the list of medical assessors prepared by the Labour Minister, any medical practitioner to act in advisory capacity in the hearing of any application for compensation in cases of injuries which are not specified in the Second Schedule to the Act.

Under section 17(2) of the Act the court also has discretion to invite any public officer or any medical practitioner to give evidence if it is of the opinion that such expert knowledge will be of assistance to it.

The effect of the discretionary powers given to the court by these provisions is that medical assessment is not mandatory in all proceedings relating to compensation under the Act. Secondly, it is submitted that in the case of proceedings for compensation in respect of injuries resulting to disability specified in the Second Schedule to the Act, medical assessment is superfluous or unnecessary. This is because the Second Schedule to the Act reproduced hereunder appears to have facilitated the exercise of computing the percentage disability to applicants whose disabilities come under it without the necessity for a medical assessment.

“SECOND SCHEDULE”	Sections 7, 8, and
41	
INJURY	Percentage of
Disability	
Loss of two limbs .. .. .	100
Loss of both hands of all fingers and thumbs.. .. .	100
Loss of both feet .. .. .	100
Total loss of sight .. .. .	100
Total paralysis.. .. .	100
Injuries resulting in being permanently bedridden .. .. .	100
Any other injury causing permanent total disablement .. .. .	100
Loss of arm at shoulder .. .. .	80
Loss of arm between elbow and shoulder .. .. .	70
Loss of arm at elbow .. .. .	70
Loss of arm between wrist and elbow .. .. .	70
Loss of hand at wrist .. .. .	70

<sup>11</sup> Not all injuries are compensable under the Act. Only those resulting in death, disability or incapacity recognised under the Act are compensable. These are: (a) Permanent total incapacity, (b) Permanent partial incapacity and (c) temporary incapacity whether total or partial – see sections 5,6,7,9 and 41 of the Act. See also Containers (W.A.) Ltd. v. Momodu Iyomifokhia (1959) L.L.R. 130 where a workman lost two upper teeth and it was held that the injury was not an incapacity though permanent. See also C.K. Agomo (Mrs) “Social Security Legislation in Nigeria in Issues in Nigerian Law, Omotola (edited), Faculty of Law, University of Lagos, 1991, 183, 198 – 199.

Loss of four fingers .. .. .	50
Loss of thumb-both phalanges .. .. .	35
one phalange .. .. .	10
Loss of index finger-	
three phalanges .. .. .	15
two phalanges.. .. .	6
one phalange .. .. .	4
Loss of middle finger .. .. .	10
Two phalanges .. .. .	6
One phalange .. .. .	4
Loss of ring finger-	
three phalanges .. .. .	6
two phalanges.. .. .	5
one phalange .. .. .	3
Loss of little finger-	
three phalanges .. .. .	5
two phalanges.. .. .	4
one phalange .. .. .	3
Loss of metacarpals-	
1 <sup>st</sup> or 2 <sup>nd</sup> (additional) 3 <sup>rd</sup> , .. .. .	4
4 <sup>th</sup> or 5 <sup>th</sup> (additional) .. .. .	3
Loss of leg- at or above knee .. .. .	75
Loss of leg- at or below knee .. .. .	60
Loss of foot .. .. .	40
Loss of toes-	
all of one foot .. .. .	20 great-both
phalanges .. .. .	10
one phalange .. .. .	3
other than great, if more than one toe lost, each .. .. .	2
Loss of sight of one eye .. .. .	30
Loss of hearing- one ear .. .. .	10
Total loss of hearing .. .. .	100
Loss of remaining eye by one-eyed workman .. .. .	100
Loss of remaining arm by one armed workman .. .. .	100
Loss of remaining led by one legged workman .. .. .	100

- (1) Total permanent loss of the use of a member shall be treated as loss of such member.
- (2) In the case of a right-handed workman, an injury to the left arm or hand and in the case of a left-handed workman, to right arm or hand shall be rated at ninety per cent of the above percentages.
- (3) Where there is loss of two or more parts of the hand, the percentage of incapacity shall not be more than for loss of the whole hand, and any necessary lesser percentage shall be applied accordingly."

From the above, it is clear as rightly observed by the Court of Appeal, that proof of the first thirteen items in the Second Schedule are factual or what can be seen with little or no medical aid e.g. injury to the hands, fingers, feet, etc. The judge can easily assess any of these without medical assistance since, at any rate, the percentage of disability is clearly stipulated in the Second Schedule and the quantum of compensation payable in respect of each degree of disability is clearly spelt out by virtue of sections 5, 6, and 7 of the Act<sup>12</sup> Accordingly, it is submitted that compensation in respect of injuries/disabilities specified under the Second Schedule to the Act is not

<sup>12</sup> Sections 5 and 6 make provisions on compensation for permanent total incapacity while section 7 makes provision on permanent partial incapacity.

a medical issue to be determined by a doctor but rather it is a legal issue based on the provisions of the Act and the Schedule on which the trial court can reach a decision as it deems necessary. Thus, in *Oke v. Trenco (Nigeria) Limited*<sup>13</sup> the learned Trial Magistrate rejected the medical assessment of both parties to the case and the High Court upheld the decision of the lower court. Indeed, section 17 provides that all claims for compensation under the Act, unless determined by agreement, and any matter arising out of the proceedings thereunder shall be determined by the court whatever may be the amount involved. In addition, section 30 of the Act makes the decision of the Court in this regard final.

There are other important observations to be made in respect of the relevance and admissibility of Medical Assessment under the Workmen's Compensation Act arising from the case

1. Where Medical Assessment is relevant under the Act, it must be proved that the maker of the document is in the list of medical assessors compiled by the Minister of Labour for the purposes of the Act pursuant to section 8(1) thereof. Exhibit GE.7 failed to satisfy this requirement in the case being considered as there was no evidence before the trial court that Dr. Iyamu, the maker of the medical assessment was on the list of medical assessors compiled by the Labour Minister under section 8(1) of the Act. Accordingly, the Court of Appeal rightly held that the medical assessment did not fall within the contemplation of section 8(1) of the Act.<sup>14</sup>
2. For a medical assessment to be of any probative value where it is relevant, section 8(2) provides that the assessor must not be employee of, or associated in any pecuniary way with the employer of the injured workman. Exhibit GE.7 also failed to satisfy this requirement since, in that case, there was abundant evidence that the appellant (employer) retained Daya Clinic (from where the Exhibit emanated) as the medical outfit for its staff hence the Exhibit became of little probative value.<sup>15</sup>
3. The Second Schedule to the Act which has adequately provided for the percentage of disability suffered by workmen makes a medical assessment superfluous in cases coming under it. In addition to this, the provision of section 8(2) also renders medical assessment irrelevant in proceedings involving compensation for disability specified under the Schedule. It makes it abundantly clear that medical assessment is only relevant in cases not falling within the injuries specified under the schedule as it provides:

"The court may in its discretion summon to its assistance from the list so compiled any medical assessor to act in an advisory capacity in the hearing of any application for compensation **in cases of injuries which are not specified in the Second Schedule to this Act** but such assessors shall not be employees of, or associated in any pecuniary way with, the employer by whom the workman is employed."

One important question arising from the foregoing analysis however, is when a medical assessment relevant? This is not difficult to answer. It is not absolutely necessary in all cases involving the Second Schedule to the Act unless the Court

---

<sup>13</sup> (1963) All N.L.R. 621.

<sup>14</sup> Section 8(1) provides: "The Minister may, on the recommendation of the Minister charged with responsibility for matters relating to health, compile a list of medical practitioners to act as medical assessors for the purposes of this Act." See also (1999) 12 N.W.L.R. (part 630) p.239 – 240.

<sup>15</sup> Ibid. at p.239. Also section 8(4) contains similar disqualification for another category of assessor as it provides: "A person shall not be summoned, nominated or selected or, if summoned, nominated or selected, shall not sit or act as an assessor, if he has in connection with the injury or death out of which the application arises, given professional assistance or advice with regard to the accident or question in dispute to either party to the application or to any person with whom an insurance has been effected in respect of the payment of compensation under this Act to that workman."

exercises a discretion to the contrary. Medical Assessment is relevant however, in all cases involving injuries relating to disabilities not specified in the Second Schedule. This will include cases involving occupational diseases for which provisions are made under sections 32 – 35 of the Act. Under these sections the appropriate Minister may also appoint a Medical Board for the purpose of proper assessment of compensation in that regard. In dealing with these cases, a trial Court could call in aid Medical Assessors by exercising its discretion under the relevant sections of the Act already examined.

Another important issue, which the Court of Appeal did not directly address in this case, is the proper interpretation of the word “Loss” appearing several times in the Second Schedule to the Act. Admittedly, the word “Loss” is not defined either in the Act or in the Second Schedule itself. However, it is submitted that it means “loss of use.” For instance, a man loses his leg if the leg is paralyzed and he cannot use it even though the leg is still physically attached to the body. If a man’s hand is stiffened and cannot be used as a result of injury sustained, such a hand is lost within the meaning of the Act even though it is still physically attached to the body. The same would apply to fingers, eyes etc.<sup>16</sup> In fact, the Court of Appeal would appear to have approved this interpretation with the observation that:

“In the instant appeal, there is respondent’s evidence at pages 20 and 21 of the record of appeal that he **lost the use of** four fingers. This item of evidence was unshaken even by cross examination. The evidence therefore remains valid and useful for the purpose of the Second Schedule. Item 13 of the Second Schedule to Cap 470 takes care of the uncontroverted evidence on **loss of use** of four fingers. It stipulates that a workman who suffers that degree of disability is entitled to 50% of the compensation referred to in Section 5 of Cap 470.”<sup>17</sup>

For the avoidance of doubt, any contrary argument to the effect that a finger needs to be “**sliced off**” before it could be regarded as lost under the Second Schedule to the Act<sup>18</sup> is obviously untenable. Such argument, if accepted, would defeat the clear purpose, intentment and obvious ends of the Act which aims at providing compensation to rehabilitate poor workmen disabled for life as a result of injuries in the course of their employment. Rather, our submission on this point, adopted by the Court of Appeal, is based on the purposive and broader interpretation or beneficial construction. This is the tendency of the courts, when faced with a choice between a wide meaning which carries out what appears to have been the object of the Legislature more fully and narrow meaning which carries it out less fully or not at all, to choose the former.<sup>19</sup>

## SUMMARY CONCLUSION

The result of the foregoing examination may be summarized as follows:

1. Medical report may be required to prove the injury sustained by a workman in proceedings for compensation for injuries, which are specified in the Second Schedule to the Workmen’s Compensation Act. The maker of such report need not be in the list of medical assessors prepared pursuant to section 8(1) of the Act - (See section 15 of the Act).

---

<sup>16</sup> This was the argument of Counsel to the Respondent in his brief of argument which would appear to have been adopted by the Court of Appeal in this case.

<sup>17</sup> See page 239 of the judgment already cited above.

<sup>18</sup> This was the argument of Counsel to the Appellant in his brief of argument to the Court of Appeal.

<sup>19</sup> Savannah Bank of Nigeria Ltd. Anor v. Ajilo & Anor. (1989)1 N.S.C.C. 135, 155 (per Obaseki J.S.C.); Nafiu Rabi v. The State (1980) 12 N.S.S.C. 291. 300 – 301 (per Udo Udoma J.S.C.)

2. Medical Assessment may be required in all other cases involving compensation for injuries not specified in the Second Schedule to the Act. The maker of such Medical Assessment must be on the list of medical assessors prepared by the Minister of Labour pursuant to section 8(1) the Act. (See section 8 of the Act.)
3. In all matters relating to compensation under this Act the decision of the Court is final. Accordingly, the court is not bound to follow a medical report/assessment but may reach a decision as it deems fit having regard to the provisions of the Act and the evidence before it. (See section 30 of the Act.)