

REVISITING THE LEGAL FRAMEWORK OF SAFETY AT WORK AND COMPENSATION FOR INJURIES IN NIGERIA* **

Abstract

The need for the protection of a nation's workforce from work-related accidents, injuries, diseases and deaths on one hand, and the prompt payment of adequate compensation upon the unfortunate injury or death of a worker, whether in the private or public sectors, are subjects that can never become mundane. Thus, this paper made it its purpose to search and interrogate the legal rules governing these critical labour issues in Nigeria. This is with a view to understanding how far-reaching these legal rules go to provide legal safeguards for employees engaged in works that may sometimes result to loss of lives and limbs at the workplace. The paper found that while the legal rules making provisions for the safety of employees to which they apply, fall short in many respects of the kind of positive law presently required to guarantee safe places of work in contemporary times, the legal rules on compensation for work-related injuries appear to have pushed the boundaries towards bringing to bear a simple, equitable and accessible compensatory framework for work-related injury, disability and death.

Keywords: Employees, Employers, Compensation, Factories, Injuries, Workplace.

I. Introduction

The responsibility of an employer to provide for a safe place of work, competent fellow-workers, safe equipment, a safe system of work and adequate supervision, and the concomitant right of the employee to a seemingly guaranteed and adequate compensation for disease, disabilities, injuries or death arising out of the course of employment transcends the express terms of a contract of employment.

These issues whether expressed in contractual terms or implied by a common understanding in the relationship between the employer and the employee, are nonetheless governed by statutory rules that cannot be excluded. In Nigeria, these critical issues in an employer-employee relationship are governed essentially by the Labour Act¹, the Employee Compensation Act² and the Factories Act³. While these legislations are the principal domestic legal rules on those subjects, the impact of the Common Law and International Instruments cannot be glossed over. In actuality, it can be argued, that the development of these areas of law pertaining to safety at work and compensation for injuries in Nigeria is the joint product of Common law, International Labour Instruments and domestic legislations. This, however, does not derogate from the Constitution⁴ and other laws directly or remotely providing for occupational safety and health procedures as the Nigerian Minerals and Mining Act 2011, the Nuclear Safety and Radiation Protection Act⁵, the Nigerian Radiation Safety in Nuclear Medicine Regulations 2006, the Minerals Oils (Safety) Regulations 1962 and the National Environmental Standards and Regulations

* **ONYI-OGELLE Helen Obioma**, Professor of Law, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University, Awka; Email: ho.onyi-ogelle@unizik.edu.ng and

** **GREEN Promise**, MSc., M.A, LLB, LLM, BL, Lecturer, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University, Awka; Email: p.green@unizik.edu.ng

¹ Cap. L1, LFN, 2004.

² No. 13, 2010.

³ Cap. F1 LFN, 2004.

⁴ CFRN, 1999, s.17 (3)(c)(d); Item 34 of Part I (Exclusive legislative List) Second Schedule and Item H paras 17(a) of Part II (Concurrent Legislative List) in the Second Schedule to the Constitution.

⁵ Cap. N142, LFN 2004.

Enforcement Agency (establishment) Act, 2007 being veritable sources for ensuring the safety and safe working environment for the worker.

This paper therefore undertakes the task of examining the issues of the safety of the Nigerian worker at his place of work and the compensation or entitlements, if any, accruable to him/her or dependants in the event that he/she suffers work-related injury, disease, disability or death. Efforts will be made to benchmark the legal protections afforded by the Common law and Nigeria's domestic laws against relevant International standards and instruments. This is in order to evaluate their continued viability and adequacy as frameworks for the Nigerian worker to assert a right to safety and protection, and claim for compensation where injury occur; as well as the liability of the employer for breach of the duty to provide a safe working environment under the law. Reliance will also be placed on related literatures to enable a broader view of the subject under discussion.

2. Common Law Context on the Safety of Employees

Arguably, the early attentions of the Common law on the safety of employees at work only went as far as providing for damages after an employee would have suffered injuries or even become deceased.⁶ It hardly truly concerned itself with imposing an incumbent duty and burden on an employer to ensure the actual prevention of injuries to the employee at work. Thus, the Common law duty of care to make a work premises safe by providing safe tools or equipment, and a safe system of work, is more or less a duty imposed on employers' to do what is reasonably expected of them. And is by no means a positive obligation to ensure the absolute prevention of accidents and injuries caused to workers as a result.⁷

Under the Common law, the employer is under no immediate or pressing obligation to guarantee the safety of an employee where he exercises 'reasonable care' in the provision of competent staff, materials and a safe system of working. Though what 'reasonable care' entails varied from case to case, the phrase nonetheless continues to govern and limit the scope of the employer's duty under the Common law.⁸ Consequently, an employee's right of action against an employer for breach of duty of care resulting to any injury to him lie in the tort of negligence which must be proved by the employee.⁹ What is more, the employee must prove that such negligence caused or materially contributed to his injury before he can succeed.¹⁰

This predisposition of Common law only makes it possible for an employee to sue after suffering an injury and not before. Worse still, the early decisions of English courts¹¹ based on Common law were of such arbitrariness that it sowed the seed of the 'doctrine of common employment'¹² which almost insulated the employer from any liability for breach of the duty of care causing harm and injury to the

⁶ *Taylor v Rovers Co. Ltd.* (1959) AC, 604; *Western Nigeria Trading Company Ltd v Ajao* (1965)NMLR, 178; EE Uvieghara, *Labour Law in Nigeria* (Malthouse Press Ltd., 2001), 193.

⁷ OVC Okene, *Labour Law and Industrial relations in Nigeria* (Fourth Edition, RSU, 2019.), 95-98; EE Uvieghara, *ibid*, 145, 149; *Clyde Coal Co. Ltd v English* [1938] AC, 57; *Smith v Baker* (1891) AC, 325; *Davis v New Merion Board Mills Ltd*(1966)IWLR, 1491; *Latimer v A.E.C. Ltd* (1953) AC,643; *Woods v Durable Suites Ltd* (1963) IWLR, 589.

⁸ EE Uvieghara, (n.6), 150.

⁹ *Ibid.*

¹⁰ *Bonnington Casting Ltd. v Wardlaw* [1956] AC, 613.

¹¹ *Hutchinson v York Newcastle and Berwick Railway Co* (1850) 5 Exch, 343; *Priestly v Fowler* (1873) 3. M&WI *ibid*; *Wilso v Cunningham* (1868) LR ISC & Div. 326; *Bartonshill Coal Co. v Mcuire* (1858)3 Macq 300.

¹²The doctrine holds that the employee by accepting a contract of employment impliedly undertook the risk of injury caused by the negligence of his fellow employees.

employee. While the doctrine of common employment was later abolished, hence reinstating the duty of the employer to take reasonable care for the safety of the employee as the main determinant for an employer's liability, it would appear, as Viscount Simonds said, that the shadow of the doctrine of common employment is still upon us.¹³

While it can be said, arguably, that the question of employees' safety at work has received considerable attention at Common law, the incessancy of litigations resulting from injuries suffered by employees at the workplace clearly suggests that the Common law pays more attention to liability for damages that results from workplace accidents and injuries than it pays to the prevention of accidents and injuries to workers at the workplace. Hence under the Common law context, employees' continually remain exposed to the risk of injuries caused by negligence by employers, who for profit-making motives are mostly in defiance of the Common law duty to take reasonable care for the safety of employees. However, certain statutes, as mentioned earlier, beginning with the Labour Act are seen to have made provisions for the protection and safety of certain categories of employees at the work place.

3. The Legal Framework for Safety and Protection at Work

Strictly, the Labour Act may not have directly and sufficiently provided for the protection and safety of employees at work but its stipulations under part III regarding 'labour health areas' no doubt lays down some rules on safety at the work place. Section 66 empowers the Minister¹⁴ to designate by an order any remote and isolated area where an industrial or agricultural undertaking is situated as 'labour health area', after considering the existing medical and health conditions and facilities, including water supplies and communications channels in such an area. Pursuant to this power, s.67 further empowers the Minister to make regulations¹⁵ for a range of subject- matters in respect of such particular labour health area or areas.

It would appear from the provisions of s.67 that the main purpose for which 'labour health areas' would be created under the Act is to ensure the health and safety of workers from contagious and infectious diseases, as well as work-related injuries and death in any industrial or agricultural undertaking situated in remote and isolated area.¹⁶ Another key provision of the Labour Act which touches, however remotely, on protection and safety of employees at work is seen in s.12 of the Act. Section 12 expressly outlawed the defence of common employment to the extent that an employer cannot by any provisions contained in a contract of service or agreement with an employee exclude himself or limit any liability in respect of injury caused to the employee by the negligence of persons in common employment with the injured employee. According to the section, such contract or agreement shall be void.

¹³ *Davie v New Merton Board Mills Ltd.* [1959] AC 60.

¹⁴ Minister means the Federal Minister of Employment, Labour and Productivity; See Labour Act, s.91.

¹⁵ The Special Regulations for labour health areas, otherwise titled 'Regulations 34 – 43' were made under s.62(9) of Ordinance No.1 of 1929 and remains in force as if made under the Labour Act, 2004. They are however not reproduced in print in the current Labour Act, 2004.

¹⁶ Though, not applicable to labour health areas, Regulations 20, 21, 22, 23 and 24 under part II of the Schedule to the Act made provisions on subject regarding housing accommodation and sanitary condition of labourers' camp or quarters; provision for the medical and surgical treatment of labourers by employers, care and feeding of sick and injured labourers prior to their been received as in-patients by a hospital authority; and if necessary, provision of hospitals and dispensaries for the accommodation and treatment of their (employers) sick and injured labourers.

Whereas the Labour Act may not have strictly and sufficiently provided for the protection and safety of employees at work, as noted earlier, the Factories Act¹⁷ may very gainly have addressed some of the issues arising from health, safety and welfare of persons employed in factories. Ordinarily, the Factories Act applies only to the factories and premises that come within the definition of a factory under the Act¹⁸, except where a contrary intention appears.¹⁹

The Factories Act, in a wide range of areas, imposed a number of strict duties and liability on the employer and/or occupier of a factory to ensure the safety of his employees and those lawfully on the premises. These duties which are required to be complied with for securing the health, safety and welfare of persons employed in a factory are covered mainly under Parts I, II, III, IV and V of the Act. They entail, amongst others²⁰ that plants, vessels containing dangerous liquids, electric generators, stock-bar, transmission or other machineries of the nature mentioned in the Act must be securely fenced to make them safe to every person working on the premises as it should be. The importance of this duty to fence machineries - as a measure of ensuring safety in factories - is reinforced by the further provision that fencing, when required, must not only be of substantial construction but must be constantly maintained and kept in position while the machine is in use, to safeguard the parts for which they were constructed.²¹ It is argued that this shows a clear intention to encourage and promote the use of standard materials for the construction of our factories.²²

In a like manner, the Act requires that all hoists, lifts, chains, ropes, lifting tackles, cranes, steam boilers, steam receivers and containers used in factories must be of good mechanical construction, sound material and adequate strength, free from patent defects; and must be periodically examined thoroughly for purposes of proper maintenance. Furthermore, that the employer or occupier must keep a register of all chains, ropes, lifting tackles and machines according the particulars set out in the Third Schedule to the Act.²³ By the Act, the occupier or employer must also ensure that an employee is guaranteed of safe access to every place at which the employee has to be or work in the factory. Hence, all floors, steps, stairs, passages, gangways and other parts of factory buildings must be of sound construction with handrails provided for staircase; factory buildings fitted with easily accessible fire detecting and extinguishing devices²⁴, as well as maintenance of fire escape routes.²⁵ The Act equally provides that adequate precautions and safety, including provision of breathing and reviving apparatus, safety belts tightly secured with ropes, adequate means of egress, are made available for workers expected to work in chambers, tanks or other confined area in which dangerous fumes are likely to be present. In addition, the employer must have first notified the Director of Factories in writing and must have taken adequate

¹⁷ Cap. F1 LFN, 2004.; The first legislation on factories in Nigeria is said to be the Factories Ordinance No.33 of 1955. The Ordinance was modelled on the British Factories Act of 1937.

¹⁸ See the Factories Act, s.87 for the general meaning and particular description of premises that qualifies as factory.

¹⁹ Factories Act, s.83.

²⁰ Such areas as cleanliness, overcrowding, ventilation, lighting, drainage of floors, sanitary conveniences, supply of Drinking water, washing facilities, accommodation for clothing and first-aid etc. are covered under the head of the general provisions on health and welfare.

²¹ Factories Act, s.19.

²²OVC Okene, 'A Note On the Factories Act' [--](-)(-) *The Journal of Commercial, Private and Property Law*, 90

²³ Factories Act, ss.24, 25, 26, 27, 31, 32, 33.

²⁴*ibid*, s. 35(1).

²⁵*Ibid*, s.36.

steps to remove any fumes that may be present, as well as to prevent any ingress of fumes, before using his employee for a work required in a confined place.²⁶

Another important provision of the Act is in respect of the duty on the employer or occupier of a factory to provide and maintain suitable protective clothing and appliances, including suitable gloves, footwear, goggles (effective screens in certain process) and head covering, for his workers engaged in processes that would usually expose them excessively to substance of such a nature capable of causing risk of bodily injury, or be offensive to the workers or any class of them.²⁷ Factory employers and occupiers also have a mandate to provide and maintain first aid box of the standard prescribed by the Act.²⁸

In regulatory terms, the Act makes copious provisions mandating the Minister to make declarations, orders and regulations on a whole range of matters towards the effective implementation of the provisions of the Act. While by s.49 the Act gives the Minister the general powers to make regulations for securing the health, safety and welfare of persons employed in a factory or any class of them, other sections namely; ss.5(4), 8((7), 9(2), 10(3), 12(2), 41, 52, 53(2) and.57 the Minister is given the power to make regulations on matters ranging from governing the procedure of the Factories Appeal Board, increasing the number of cubic metre to stem overcrowding, specifying standard of adequate ventilation for factories, specifying standard of suitable and sufficient ventilation for factories, determining what is suitable for sanitary conveniences to specifying standard of adequate washing facilities. In fact, as at now, there are a number of extant Regulations under the Factories Act, namely; Factories (Wood working Machinery) Regulations, LN 189; s (Registration, Fees etc.) Regulations, 2007; Factories (Notification of Dangerous Occurrences) Regulations, LN 105 of 1961; Docks (Sanitary Accommodation) Regulations, 1958; Docks (Safety of Labour) Regulations, LN 42 of 1958; Declaration of Industrial Disease Notice, LN 114 of 1956; First Aid Boxes (Prescribed Standards) Order, LN !88

Significantly, the Factories Act by its provisions aims at preventive rather than punitive measures in order to safeguard the worker employed to work, handle implements and operate machines within any premises or close or curtilage referred to as a factory. This point had been put more starkly by Lord Pearson, thus:

The Act ... should be regarded as beneficial rather than a penal statute. Its object is to secure proper working conditions for persons employed to do manual labour in certain operations, and the penalties for failure to provide such conditions are merely incidental to the object²⁹

Arguably, the Factories Act is probably one of the responses to the fact that man in his inventive nature, leading to the inventions and use of various machines and unnatural implements for work, has not only the burden to bear the consequences and hazards associated with it but must continue to device means of lessening the adverse effects of his inventions on both himself and his environment.³⁰

4. Brief Review of International Standards on Safety at Work

²⁶ *Ibid*, s.29, 30.

²⁷ Factories Act, ss.47 and 48.

²⁸ Factories Act, ss.43.

²⁹ *Stone v Haygarth* (1968) AC, 157.

³⁰ O Akanle, *Regulation of Occupation Safety, Health and Environment in Nigeria* (NIALS, 1991) 2.

Under the International Labour Organisation (ILO) to which Nigeria is a member, there are in existence at least Forty (40) Standards or Conventions specifically dealing with occupational safety and health, in addition to forty (40) Codes of Practice adopted by member States. This underscores the importance with which matters dealing directly or indirectly with occupational safety and health of workers within member-States are viewed.

One common theme about these standards/conventions on occupational safety is their objective to make available legislative and regulatory tools essential for member-States governments, employees and employers to create workplace best practices that guarantees maximum safety at work places. Through the standards/conventions and codes of practice, ILO places emphasis, insistence or more correctly persuades member-States to provide both positive laws and regulatory environments that ensures that workers in member-States are protected from unwarranted, avoidable and preventable work-related diseases, injuries, disabilities and death. For instance, in 2003, the ILO adopted a Global Strategy on Occupational Safety and Health that recognised the role of ILO instruments as a central pillar in the promotion of occupational safety and health; and particularly, the need for a tripartite national commitment and action in engendering a preventive approach and safety culture as means to promoting sustainable improvements in safety and health at work.³¹

It is on record that Nigeria has ratified forty (40) ILO Conventions out of which ten (10) are said to have been automatically denounced.³² Importantly, Nigeria has ratified three (3) of the key ILO occupational safety and health Conventions namely, C155 - Occupational Safety and Health 1981, C032 – Protection against Accidents (Dockers) 1932 and C019 –Equity of Treatment (Accident Compensation) 1925. The core objectives of C155 – 1981 for instance, borders on providing appropriate national structures responsible for ensuring the implementation of sound occupational safety and health practices in member-States. A fortiori, it aims at facilitating on a tripartite basis, the formulation, implementation and periodic review of a coherent national policy on occupational safety that helps to prevent accidents and injury arising/occurring in the course of work, and minimise as far as possible hazards inherent in the working environment.

Although by virtue of s.12 of the Constitution of Nigeria mere ratification does not make these Conventions enforceable unless enacted into law by the National Assembly³³, it is noteworthy that by s.254C (1)(f)(h)³⁴ the National Industrial Court (NICN) now has the jurisdiction, arguably, to apply the Conventions domestically despite not having been passed into law by the National Assembly. This much was captured in *Aero Contractors Co. of Nig. Ltd v National Association of Aircraft Pilots and Engineers*³⁵ when the NICN stated thus:

By Section 254C (1)(f) and (h) and (2) of the 1999 Constitution, as amended, this court is mandated to apply international best practice and treaties, conventions and protocols ratified by Nigeria ... What this means is that in adjudicating labour/employment, the court is mandated to apply in international best practice and treaties, conventions and protocols ratified by Nigeria.

³¹ ILO on Occupational Safety and Health <www.ilo.org> info > lang-en> accessed 6 September, 2021.

³² Nigeria Country Profile on Occupational Safety and Health, 2016 <www.ilo.org> wcms_552748> accessed 6 September, 2021.

³³ Nigeria operates the dualist method which requires the National Assembly to formally pass into law any or all Treaties ratified by the Federal Executive arm of Government; See s.12 CFRN.

³⁴ (Third Alteration Act, 2010 No.3).

³⁵ Suit No. NICN/LA/120/2013.

Thus, it may be desirable to argue that the decisions in *MHWUN v Minister of Labour*³⁶ and *Fawehinmi v Abacha*³⁷ which is to the effect that based on s.12(1) of the Constitution, ILO Conventions not domesticated by the National Assembly has no force of law in Nigeria, is no longer good law.

5. Legal Basis for Employee Compensation for Injuries

The Factories Act having laid down the general rules on the acceptable practices and standards regarding health, safety and welfare in factories and premises defined as such, nevertheless fell short in its attempt to prescribe in the form of a penalty, the compensation payable for the injuries or death of an employee in the course of his work.³⁸ While the Factories Act focuses on the prevention of accidents, hazards and injuries in factories, it offered no real compensatory solution to an injured worker or the dependants of a deceased worker whose ordeal resulted from his work. This perhaps is the basis for a law on compensation for work-related injuries, diseases, disabilities in the form of the Employee's Compensation Act, 2010.

The Employee's Compensation Act, 2010 is a direct response to the shortcomings of its precursor – the Workmen's Compensation Act, Cap. W6 LFN, 2004 – which it repealed by s.72. The object of this legislation, amongst others, is to provide for a comprehensive and effective system and framework that guarantees a seemingly secured future for all Nigerian employees' or their dependants in the event that some untoward situation resulting to any form of disability or death occur. This it tries to do by establishing an Employers' Compensation Fund under s.56 and/or Part VII of the Act, in which funds or mandatory contributions from employers shall be kept for the purpose of applying them to the payment of adequate compensation for all employees or their dependants for any injury, disease, disability arising out of employment.

Interestingly, compensation for injury and death of an employee under this Act is on the basis of 'No fault Principle'. This rule can be gleaned from the provisions of ss. 4 and 7 where a combined reading shows that in every case where an employee suffers either from an injury, death or occupational disease disabling him (and limiting his ability to earn remuneration) whether directly or indirectly in a work place, such an employee is entitled to payment of appropriate compensation provided he appropriately notifies the employer. The rule is by all intent and purposes in conformity with the ILO Recommendation No.121 of 1964, that employees' who suffer work-related injury/accidents should be entitled to certain benefits irrespective of whose fault it is or what the cause of the accident is.

One key provision of the Act made it mandatory for employers' to officially report to the National Social Insurance Trust Fund Management Board³⁹ or the nearest office of the National Council of Occupational Safety and Health every injury, disabling occupational disease or death of an employee presumed to be arising out of an employment (whether claimed, alleged or not) within seven (7) days. The only exceptions being either where by regulation the Board may have defined and categorised such injuries as minor injuries not required to be reported or where the Board permit failure to make a report on the ground that the report for some sufficient reason could not have been made.

Parts III and IV of the Act comprehensively provided for when compensation is payable and what is payable as compensation whether monthly or calculated in accordance with the Second Schedule to the

³⁶ (2005)17 NWLR (Pt. 953) 120.

³⁷ (2000) 6 NWLR (660)228.

³⁸ Factories Act, s.71; See also Factories Act, ss.70 and 73.

³⁹By s.2 (2) of the Act, the NSTIF Board has the power to implement the Act and the Fund established under s.56.

Act upon the death, injury or diseases causing disability or disfigurement based on the severity and degree of the injury and disease. According to s.19:

The Board shall make monthly payments under the Act for the life of the person to whom the payment is to be made, unless a shorter period applies under the provisions of this Act, or as the Board may, from time to time by regulation, specify.

Particularly, Part IV provides for the scale of compensation in the case of death of an employee and the varying rights accruable to dependants or person to whom the deceased employee stands in locus parentis; or collateral relatives who may be entitled. It is noteworthy that the right or benefit of an employee to compensation under the Act cannot under any circumstance be waived by an agreement between the employer and employee or employee dependants. Any such agreement stands void and unenforceable.

Generally, the current employee's compensation regime has made some commendable innovative improvements on what the Workmen's Compensation Act, 2004 had to offer. From the creation of a government managed fund to a simple claim procedure and resolution mechanism, and to improved compensation according to graduation of injuries, the Employee's Compensation Act seem to be offering what many have touted as a comprehensive legislation on its area of concern.

6. A Critical Analysis of Safety at Work and Compensation for Injuries:

From the preceding discussions, there is clearly no doubt that there is no shortage of laws on the area of safety at work and compensation for work-related injuries in Nigeria. What is however in shortage is the satisfaction they hold for persons who should enjoy their protection and benefits.

Despite the presumptuousness of Common law to impose a duty of care which requires an employer to provide a safe place of work, safe working system, safe equipment and competent staff, it equally provides a robust escape routes for the employer to avoid liability whenever it fails in this duty. It (Common law) indulges the employer with the defences of Volenti non fit injuria, contributory negligence and remoteness of damage to avoid liabilities to pay compensation to injured employees.⁴⁰ And this situation has actually left employees' who have suffered injury on account of their work to be without remedy in many cases. In the eyes of Common law, in reality, the employer is not regarded as an insurer of safety but merely expected to exercise reasonable care, which apparently is limited to certain specific minimum obligations.⁴¹ It is submitted therefore that the Common law in its remedy of employers' duty of care to the employee blows hot and cold.

Nevertheless, the Common law has remained an ally, playing and continues to play a complementary role on the issues of safety and compensation today, even though there exist presently legislation covering the areas.⁴² Thus, a Common law action for damages is either an action for negligence; in other words an action for breach by an employer of the duty of care he owes to his employee, or an action for breach of statutory duty imposed by legislation such as the Factory Act and the Employee's

⁴⁰ OVC Okene, 'A Note On the Factories Act' [--](-)(-) *The Journal of Commercial, Private and Property Law*, 90; OD Amucheazi, 'The Workmen's Compensation Act: A Statute in dire need of Reform' [2006](10)(1-2) *Modern, Practice Journal*, 123.

⁴¹ O Akanle, (n.33) 2.

⁴² OVC Okene, *ibid.* 89.

Compensation Act. Writing on the Factories legislation, Uvieghara avidly reiterates the same point when he stated thus:

[w]hile the role of the Common law was, on the whole, chiefly compensatory, the provisions of the Act are directed primarily to prevention of accidents and health to those engaged in factories. However ..., the common law has come to the aid of the factory employee by developing the action for breach of statutory duty⁴³

Instructively, an action for breach of statutory duty is available only to those who are covered by the respective legislation.⁴⁴

As noted earlier, the Factories Act made copious provisions touching a wide range of areas regarding the duty of employers/occupiers of factories and premises to provide safe working environments which guarantee the safety, health and welfare of employees. But those provisions, as it were, are limited in scope to only premises that fit into the Act's definition of factory and available to a limited category of persons employed in factories. For instance, it has been argued that premises in which building operations or works of engineering construction are carried on are themselves not factories.⁴⁵ The implication of this has been and will always be that employers who occupy premises where work processes are carried on using dangerous machines, implements and even hazardous substances but which does not fit into the strict definition of factory provided by the Act are excused, as it were, from complying with the strict safety standards under the Act. And this, in reality has been the position which has resulted in countless injuries and death of workers in Nigeria. What is more, accidents, injuries and deaths from such premises are unaccounted for since occupiers of such premises not being within the monitoring scope of the Factories Inspectorate Division of the Federal Ministry of Labour and Employment will not bother and are under no obligation to register their premises and report cases of injury and death as required by the Act. As Akanle puts it:

... a vast majority of workplaces are not registrable under the prevailing law and are therefore not within the regulatory supervision of the Factories Inspectorate or any other agency of government. Yet accidents, even fatal ones, occur daily from and in workplaces. ... About three weeks ago, the Evening Times reported that two workmen who were engaged to clean an underground storage tank for petroleum products [filling station] were victims of suffocation in which one died and the other ...⁴⁶

Reasoning from the above, he pointed out clearly that since a petrol station is not within the regulatory ambit of the Factories Inspectorate and may not also be within that of the Petroleum Inspectorate of the NNPC, owners or occupiers of the premises are therefore under no statutory obligation to provide a safe work or safe working environment for the workmen. This clearly is unfortunate and exposes the weakness of the Factories Act in terms of its scope. It is even more unfortunate that contrary to s.3 of the Factories Act which not only mandatorily require premises' that qualify as factories under the Act to be registered before use as factories but penalises such contravention, numerous occupiers or owners, in breach of the provisions, are operating such unregistered premises across Nigeria without being prosecuted and penalised. As one empirical study indicates, while the entire system is tainted with

⁴³ EE Uvieghara, (n.6), 193.

⁴⁴ EE Uvieghara, (n.6), 145.

⁴⁵ *Ibid.*

⁴⁶ O Akanle, (n.33) 2.

corruption, there is no record of prosecution/sanction of offenders of this provision by the Inspectorate Division of the Federal Ministry of Labour and Employment.⁴⁷

While the above illustrates the case of premises not within the purview of the Act as well as unregistered factories, there is even the more disturbing problem of underreporting of work-related accidents, injuries, diseases and deaths from factories registered with the Factories Inspectorate; consequent upon, as it were, the poor staffing and weak technical, logistical and financial capacity of the Factories Inspectorate Division to effectively enforce the provisions of the Act. Admitting this fact, the Federal Ministry of Labour and Employment stated in one of its official documents that:

[u]nderreporting of accidents to the Occupational Safety and Health Department of the Ministry of Labour and Employment appears high ... This is partly so due to perceptions, on the part of most employers, that such reports may subject them to punitive measures from the enforcement authorities.⁴⁸

This admission is, amongst other problems already stated above, indicative of government's lack of commitment to genuinely enforce safety at the workplace. But more importantly for us in this paper, it indicates the absence of substantial compliance with ss.51 and 53 of the Factories Act which mandatorily require factory employers to record and report to the nearest inspectorate office accidents causing deaths or disablement of a worker for more than 3 days or accidents that may have caused occupational disease.

The degree of this non-compliance can be appreciated against the background that over a five year period from 1979 – 1983 about 4,200 cases of people who suffered serious injuries from factory and dock accidents; out of which 136 lost either one or both eyes and 60 died were reported⁴⁹. And that from 1987 - 1996 (spanning a ten year period) a total of 3,183 were reported, of which 71 were fatal.⁵⁰ While from 2002 - 2012 (spanning an eleven year period) 40 accidents were reported with 93 injuries, 46 deaths and 4 near misses.⁵¹ Although the foregoing data showed a progressively high case fatality rate, it pointedly suggest a significant reduction in the rate of accident report to the Factories Inspectorate Division created by the Act. Hence, it should be understood unequivocally that the above data is a tip of the iceberg of the rate of accidents in factories in Nigeria when compared to the substantial percentage of accidents not reported; and given the great proportion of registrable premises that do not apply for registration.⁵²

Worse still, the penalty of ₦1, 000 for failure to report accident by occupiers of factories under the Act is grossly inadequate. While, the monetary penalty of a paltry ₦5, 000 or less that an occupier or owner of the factory is liable to pay⁵³ where the death of a worker actually occurs on account of the occupier's

⁴⁷ N Umeokafor and others, 'Pattern of Occupational Accidents, Injuries, Accident Causal Factors and Intervention in Nigerian Factories' [2014](4)(15) *Developing Country Studies* <www.resarchgate.net> accessed 6 September, 2021.

⁴⁸ Nigeria Country Profile on Occupational Safety and Health, 2016, (n.35), 49.

⁴⁹ O Akanle, (n.33) 3.

⁵⁰ A O Ezenwa, 'A Study of Fatal Injuries in Nigerian Factories' [2001](51)(8) *Occupational Medicine*, 485 -489 <doi:10.1093/occmed/51.8.485.PMID:11741079>

⁵¹ N Umeokafor and others, (n.47), 124.

⁵² O Akanle, (n.33) N Umeokafor and others, *ibid*.

⁵³This is in alternative to a term of imprisonment not more than two year.

contravention of any provision of the Act or regulation leaves much to be desired. The non-severity of these penalties, it is posited, makes factory owners/offenders carefree.⁵⁴

These issues as highlighted above remain an actual threat to the existence and continued relevance of the factories Act; and without equivocation, it is submitted that the Factory Act is a statute in dire need of reform.

Besides the attempt at imposing safety culture and practices in factories through legislation, the legal process of claiming and obtaining compensation in Nigeria when a work-related accident involving injuries or death occur was beleaguered in rough paths. In other words, processes and procedure of claiming and obtaining compensation at Common law and/or at the instance the repealed Workmen's Compensation Act was not always smooth. But with the advent of the Employee's Compensation Act, it is now believed that the procedures for making claims and obtaining compensation by workers who may suffer work-related disability culminating in the impairment of earning capacity or death is made simple, fair and accessible.

Undoubtedly, the Employee's Compensation Act brings to bear a form of equitable social security theory which holds that an employee will not suffer a work-related injury, disability or death to be without compensation. This is founded on a solvent employee compensation scheme (fund) established under the Act and co-funded by the Federal government and employers to support employees of almost all categories that have suffered disability or his legal dependants with benefits in the event of death. According to one writer, the creation of a State managed compensation fund under the Act, "appears to be some sort of collective liability on the part of [government] and employers in both private and public sectors of the economy, as all employers collectively share responsibility for funding the cost of employee's compensation insurance".⁵⁵ Nevertheless, the Fund is managed and controlled by a government agency, the Nigerian Social Insurance Trust Fund (NSITF), for the interest of employees and employers. As part of its responsibility, interestingly, the NSITF through its Health Safety and Environment Department receives and generate reports of industrial incident/accident through engagements in workplace incident/accident investigations. Thus from January 2014 – September 2016 the NSITF received and generated report of 3,461 occupational accidents/injuries and 238 fatalities across various sectors of the economy.⁵⁶

The Employee's Compensation Act also made some notable innovations in terms of progressive law making. For instance, it pushed the boundaries in respect of the definition of who an employee is to include all employers and employees in public and private sectors in Nigeria apart from members of the armed forces. Thus part-time, casual and temporary employees who had not been covered under any compensation scheme now come under the compensation scheme established by the Act. This is an immense departure from the restrictive definition of who a workman is under its precursor – that is, the Workmen's Compensation Act. Again, the Act provided for not just monetary compensation or benefit

⁵⁴ E E Idubor and M D Osiamoje 'An Exploration of Health and Safety Management Issues in Nigeria's Efforts to Industrialise' [2013](9)(12) *European Scientific Journal*, 154-169; O Okojie, 'System for Reporting Occupational Diseases in Nigeria' [2010](20)(3) *African Newsletter on Occupational Health and Safety*, 51-53

⁵⁵ C O Ajie 'Employee's Compensation Law in Nigeria: The Position So Far' [2017](6)(1) *The Journal of Property Law and Contemporary Issues*, 236.

⁵⁶ Nigeria Country Profile on Occupational Safety and Health, 2016, (n.35), 48.

but equally provided for non-monetary benefits to injured employee, namely; vocational rehabilitation for injured employees to assist them return to work; medical, surgical, hospital, nursing and other care for an employee undergoing rehabilitation and counselling services to dependants of an affected employee while being rehabilitated amongst others.

There is no gainsaying that the inception of the Employee's Compensation Act in 2010 met with loud ovation and applause clearly for reasons of its innovative provisions and considerable improvements on the state of the law under Workmen's Compensation Act. However, it cannot be said that the Act may have existed without challenges. And some of these have been identified as the lack of a clear provision for the right of an employee whose employer is in default of making its statutory contributions to the compensation fund; absence of a specified time frame within which an injured employee entitled to compensation can receive his benefit without leaving it at the discretion of the NSITF Board; lack of provision for periodic review of the scale of compensation in the Act to cater for changing economic times without the rigours of legislative amendment; and the inadequate list of occupational diseases under the First Schedule to the Act that not only falls short of ILO guidelines on occupational diseases but has grave implications for any worker who suffer a disease excluded from the Schedule yet work-related.

7. Conclusion And Recommendations

So far, this paper demonstrated that the legal framework for safety at work, coming at the heels of the Common law, supposedly to fill the gaps created by Common law lack of proactiveness to insure Nigerian employees from dangerous employment that exposes them to risks, accidents and death, exhibits considerable shortcomings.

As revealed, the provisions of the foremost legal framework birthed as Factories Act made provisions to secure safe working conditions for persons employed in factories and by extension placed them in a position where they need not prove negligence on the part of the employer to show that the statutory duty owed them by the employer is in breach and has caused damage. But it was also made clear that in so far as a modern occupational safety, health and welfare framework/regulatory procedure - as a mean of social control - to stem the tide of industrial hazards in Nigerian factories is concerned, the factories Act is not only limited in scope but has become obsolete. It should be concerning that while the increase in accident cases involving injuries of high fatality rate in all manner of workplaces - in both the informal and formal sectors - remain a present reality, the Factories Act which is the main legal framework for regulating issues of safety is in reality meek. It limits the category of workplaces under its coverage and by implication exclude many an employee who put themselves at risk daily working in these places not covered from its protection. Of course, "an employee who does not fall within a given definition in a statute [Factories Act] or who is expressly excluded by a statute cannot claim a benefit under the same statute nor can he be made liable under it"⁵⁷

Therefore, it is proposed or recommended that the Act be repealed and replaced, taking into consideration Nigeria's recent National Policy on occupational safety put in place in 2006 and guidelines of ILO Standards and Code of Practice on occupational safety, health and welfare.

It is a fact, as some newspaper reports revealed, that in 2012 a bill on occupational safety, health and welfare was passed by the National Assembly.⁵⁸ But it is doubtful, as the present writers are at loss, if

⁵⁷ ⁵⁷ EE Uvieghara, (n.6), 193.

⁵⁸ H Umoru and I Shaibu 'Senate Passes Labour Safety Act' Vanguard (Lagos, 28 September, 2012)

anything became of it. As no records show in our law books that any such bill has been assented to by the President of the Federal Republic of Nigeria. This sort of absurdities underscores government's unwillingness to truly address the concerns of employees and other stakeholders on the unsuitable state of the law – the Factories Act - on safety in workplaces. Furthermore, it also underscores the attitude of the organs of government and of all the authorities and persons exercising legislative and executive powers to undermine and/or derogate from the constitutional duty and responsibility imposed on them to provide and direct state policy towards ensuring that health, safety and welfare of all persons in employment in Nigeria are safeguarded and not endangered or abused.⁵⁹ The argument may also be proposed that in the light of the continued need for a comprehensive law on labour and safety, the 2012 bill should be revisited for review, legislative passage and presidential assent.

Similarly, this paper demonstrated that the Employee's Compensation Act, on its part, is a further and better step on the compensatory regime regarding employees who despite any prevention code of practice put in place, unfortunately, suffer from accidents or other forms of workplace hazards. Generally, the Act aims to guarantee due compensation and/or rehabilitation to employees who suffer injury or disability of any degree owing to occupational exposure in the workplace or compensation to dependants who lost their loved one to work-related accident. It would appear that this compensation Act is the domestication of the ILO Convention on equality of treatment for local and expatriate workers with respect to workmen's compensation for industrial accident - C019 – Equality of Treatment (Accident Compensation), 1925.⁶⁰

Yet, it is proposed/recommended that the Act be amended in line with the ILO list/guidelines on occupational diseases in the workplace to provide for the seeming lacuna resulting from the list of occupational diseases under the First Schedule to the Act.

<www.vanguardngr.com> accessed 11 September 2021.

⁵⁹ CFRN, s17(3)(c).

⁶⁰ Nigeria Country Profile on Occupational Safety and Health, 2016, (n.35), 19.