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**ADDIS ABABA UNIVERSITY**

**COLLEGE OF LAW AND GOVERNANCE STUDIES**

**SCHOOL OF LAW**

**GROUP PERSONAL ACCIDENT AND WORKMENS' COMPENSATION  
INSURANCE IN ETHIOPIA: ANALYSIS OF THE LAW AND THE  
PRACTICAL PROBLEMS**

**BY**

**ARON KASSAYE**

**JUNE, 2018**

**Addis Ababa, Ethiopia.**

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(Approval Sheet)

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## Declaration

I, the undersigned, hereby declare that this thesis is my original work and has not been presented in any other institution and that all sources of materials used in the thesis have been dully acknowledged.

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**In Loving Memory of My Mother!**

**(For the Noble Soul who left for Heavenly Abode!)**

## **ABSTRACT**

*Ethiopian labour laws hold the employer liable for an employment related accident and occupational diseases sustained by a worker during or in connection with the performance of his work. Employers, often purchase insurance to shift the financial burden of paying for employment injuries. To this end, the most prominent insurance policies that are sold in our country are Workmen's' Compensation and the Group personal accident insurance.*

*This is a research work on the law and practice of employer's legal liabilities for occupational injuries and the insurance policies related thereto in Ethiopia with an objective of exploring the adequacy of insurance policy frameworks and the associated problems therein. In this thesis, it has been also endeavored to compare and contrast these insurance policies with the employer's legal liability for occupational injuries in Ethiopia. This Paper assesses the treatment of employment injuries in the Ethiopian Labour Proclamation and argues that the insurance policies provided for such injuries are not properly and adequately given in a manner that covers employer's legal liability for occupational injuries. The paper finally comes up with some conclusions drawn from the legal loopholes and the practical problems observed in the practices, and it also recommends some points to be put in place for the proper practice of insurance covers so as to address the increasingly pressing needs for such arrangements.*

## ABBREVIATIONS

GTP	Growth and Transformation Plan
ILO	International Labour Organization
GDP	Gross Domestic Product
SADC	Southern African Development Community
PLC	Private Limited Company
S. C.	Share Company
Proc. No.	Proclamation Number
ETB	Ethiopian Birr
L. P	Labour Proclamation of Ethiopia No. 377/2003
W.C	Workmen's Compensation Insurance Policy
GPA	Group Personal Accident Insurance Policy
E.I.C	Ethiopian Insurance Corporation
MoLSA	Ministry of Labour and Social Affairs
Art.	Article
Arts.	Articles
No.	Number
P.	page
Pp.	Pages
U.K	United Kingdom
G.B	Great Britain

# CHAPTER ONE

## 1 Introduction

### 1.1 Background

Every country in the world has goals it tries to meet in order to advance its economic growth and development. One way to achieve this is, by creating conditions that allow people to have quality jobs that stimulate the economy<sup>1</sup>. Ethiopia, under her GTP II plan, has recognized the fact that accelerating human capital is key to enhance productivity, growth and transformation<sup>2</sup>. Hence, organizations need employees in order to function and citizens need jobs, in order to get income that brings in economic development. That being said, the relationship between industries and their employees that plays essential role in the development of the country needs to go as smoothly as possible in order for it to be effective.

It is well known that industrial activities are full of risks and their employees are most exposed to risks<sup>3</sup>. Risks could be either to life, health, body or to all and the employers are usually required to provide effective and efficient medical access and to compensate the employee or legally entitled persons with suitable amount of money for occupational diseases, injuries or death they sustain as results of working on risky job<sup>4</sup>.

In Ethiopia, the law hold the employer liable for an employment related accident and occupational diseases sustained by a worker during or in connection with the performance of his work<sup>5</sup>. The Civil Code of Ethiopia also lays grounds that entail liability on employers for occupational diseases and injuries<sup>6</sup>.

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<sup>1</sup> Lael Brainard and Bernard L. Schwartz, the Role of Industries in Economic Development, Genève Economic Review, 2003, p.3.

<sup>2</sup> The FDRE National Planning Commission, the Second Growth and Transformation Plan (GTP II) 2015, P.17.

<sup>3</sup> Work Place Safety and Health Institute, Global Estimates of Occupational Accidents and Work related illnesses, 2017, Finland accessed from <www.Wsh-institute.sg >accessed on March 14, 2018, P.4.

<sup>4</sup> Letlhokwa G. Mpedi and Mathias A. Nyenti, Employment Injury Protection in Eastern and Southern African Countries (2016), P.1.

<sup>5</sup> Labour Proclamation of Ethiopia, 2003, Proc. no. 377/2003, Neg.Gaz., year 10, no.12, Arts. 95-110.

<sup>6</sup> Civil Code of the Empire of Ethiopia, 1960, Neg.Gaz., No. 165 of 1960, 19<sup>th</sup> Year No. 2, Art. 2549.

In some countries, employers are required by law to buy insurance that cover their liability towards employees' occupational injuries. For example, in the U.K, the Employers Liability Act imposes a legal duty on employers to insure their liability for claims by their employees<sup>7</sup>. When we come to Ethiopia, the law does not oblige employers to get an insurance cover while it simply recognizes situations where employers buy insurance that cover their liability at law<sup>8</sup>.The only legislation that requires a worker to be covered by life and disability insurance is the Employment Exchange Services Proclamation but it is only deals with workers deployed abroad.<sup>9</sup>

However, even in the absence of legal obligation to purchase insurance, many employers, to avoid going bankrupt or being wound up by paying large sums as compensation following an injury to an employee, have often times opted to shift these burdens to insurance companies that offer workmen's compensation policy<sup>10</sup>.

In Ethiopia, a number of insurance companies sell Workmen's Compensation policies (W.C) and Group Personal Accident policies (GPA) to employers. When we come to what these policies are meant to cover, the Workmen's Compensation Policy covers death or bodily injury of the employee by accident or occupational diseases occurring at the place assigned for work<sup>11</sup>. On the other hand, the Group Personal Accident Policy covers the situation when an insured sustains any bodily injury caused by violent accidental and visible means which injury shall independently of any other cause be the direct and immediate cause of disablement or death<sup>12</sup>.

The practices of our country's insurance transactions show that employers buy Workmen's Compensation Policies when they want to cover the liability they owe their employees and they buy the Group Personal Accident policy when they want to cover their legal liability and also to provide their employees with a wider and better protection to accidents that occur away from the work place and beyond working hours, that workers compensation Policies not cover.

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<sup>7</sup> Employers Liability (Compulsory Insurance) Act,(Great Britain),1969,Chapter 57,Section 1(1).

<sup>8</sup> Labour Proclamation, cited above at note 5, Art. 109(1). It should be noted that Art. 170(1) of the Labour Proclamation empowered the Minister of Labour and Social Affairs to issue a directive on undertakings required to have insurance coverage for the payment of employment injury benefit. But, the minister doesn't bring such directives. Which means employers are not obliged to insure themselves against occupational injuries.

<sup>9</sup> Employment Exchange Services Proclamation, 2009, Proc. No. 632/2009, Neg. Gaz., year 15th, No.54, Article 33.

<sup>10</sup> Diane Lear and Massimo Vascotto , Liability Insurances (2014), P.4.

<sup>11</sup> Ethiopian Insurance Corporation, Workmen's Compensation Policy (2017, Unpublished), page 1.

<sup>12</sup> Ethiopian Insurance Corporation, Group Personal Accident Policy (2017, Unpublished), page 1.

Hence, the insurance policy that is sold in our country, namely, the GPA policy, raises many questions as to whether it actually cover the employers' legal liabilities towards their employees for work place injuries. Hence, the study tries to show the problems and recommend solutions.

## **1.2 Statement of the Problem and Research Questions**

As stated above, Ethiopian laws have articulated the liability of the employer for employment injuries, i.e., for employment accidents which the employee sustained during or in connection with the performance of his work and for occupational diseases which the employee contracts as a consequence of the kind of work he does. Employers, to shift the financial burden of paying for employment injuries, opt to purchase W.C and the GPA insurance cover. The Ethiopian insurance practice has given rise to ongoing concern among stakeholders after the GPA insurance policies have been applied for employers' legal liability.

A GPA policy, in our country, which is believed by employers to cover the employer's legal liability towards its employees, is based on the commercial Code provisions<sup>13</sup>, whereas the legal liability of employers emanates from the labor laws of the country<sup>14</sup>.

Furthermore, GPA policy provide compensation for accidental bodily injuries and death and most GPA Policies usually state that the customer is not covered if the death or injury is caused by sickness or disease<sup>15</sup>. However, the employer still has a legal liability towards employees for occupational diseases<sup>16</sup>. Thus, whether, a liability related to employment accident and disease, which arises from a Labor Proclamation, can be fully covered with a policy that bases itself on the accident insurance section of the Commercial Code is arguable. So we may wonder whether these two go hand in hand especially when we consider the labor law of the country and the insurance section of our Commercial Code have different aims and peculiar features when providing for these insurance schemes. There is also confusion as to the applicable law to be applied in interpreting the insurance contract and determining any dispute between the parties relating to it.

In addition, the Labour Proclamation of Ethiopia states that if an employee dies due to employment injury, the employer will be obliged to pay dependents' benefit to the dependents of the deceased<sup>17</sup>

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<sup>13</sup> Commercial Code the Empire of Ethiopia,1960, Neg. Gaz., Year 19<sup>th</sup>, No. 3. Articles 711 and 712.

<sup>14</sup> Labour Proclamation, 2003, cited above at note 5.

<sup>15</sup> Lear and Vascotto, cited above at note 10, p. 6.

<sup>16</sup> Ibid.

<sup>17</sup> Labour Proclamation, 2003, cited above at note 5, Art. 110.

whereas the Commercial Code stipulate that only specified beneficiaries entitled to get the payment<sup>18</sup>. On the other hand, GPA policies promise to pay to insured's executors and administrators or Legal representatives. This differs from the Proclamation, which only accepts the worker's widow or widower, children of the deceased worker who are under eighteen years of age and any parent who was being supported by the deceased worker as dependent of the worker<sup>19</sup>. So, the legality of paying to beneficiaries or liquidators of the insured needs scrutiny.

Article 712 of the Commercial Code stipulates that the provisions under section 2 relating to life insurance shall not apply to insurance against accident and illness. Section 2 incorporates Article like 705, for example, which indicates the remedies available if a specified beneficiary is not mentioned. But the law clearly prohibits the use of these provisions to accident insurances so that the fate of the payment/compensation when a beneficiary is not named in the policy is not clear.

There are also legal and practical issues that may hinder the effectiveness of insurance and workers' compensation schemes. There are issues that have been raised concerning the manner as to how insurance companies manage covers and as to how courts interpret the laws and policies. The tension between the provisions of the law and stipulations of insurance contracts appear to create ambiguity and at times has misled court decisions. The problems should be assessed to bring a solution to the prevailing gaps and confusions.

The paper, accordingly, attempts to examine the following research questions:-

1. Does Group Personal Accident Insurance Policy fully cover liabilities of employers towards occupational injury under the labour laws?
2. Are the available insurance products in the market in Ethiopia sufficient to cover liabilities of employers for occupational injury? Does the prevailing insurance scheme ensure sufficient and efficient compensation to workers?
3. Are the provisions in the Commercial Code of Ethiopia relating to accident insurance adequate enough to regulate the insurance practice?

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<sup>18</sup> Commercial Code the Empire of Ethiopia, 1960, Cited Above at Note 14, Art. 711. An insurance policy against accidents is a contract whereby the insurer undertakes to pay a specified sum to the insured person, or to the beneficiary named in the policy where the insured person dies.

<sup>19</sup> Labour Proclamation, 2003, cited above at note 5.

### 1.3 Literature Review

N.B:- To the knowledge of the insurer, there is no written literature and a study conducted on the problems and issues at hand in Ethiopia. Only foreign literatures, for the purpose of introducing the topic, will be dealt under.

Employment relationship is a legal notion widely used in countries around the world to refer to the relationship between an “employee” and an “employer”<sup>20</sup>. It is through employment relationship that reciprocal rights and obligation are created, although laws have also incorporated terms to the parties through legislation<sup>21</sup>.

As mentioned above employees are believed to be the most exposed sector of society to risk. Traditionally, where an employee sustains employment injury, it was himself who would be responsible to remedy the injury. The main justifications for the latter were that the wage which was being paid by the employer included payment for possible risks; and the principle of “voluntary assumption of risk” in which the employee assumes the risk of being harmed when he decided to work in such circumstances<sup>22</sup>. Hence the employee was held as his own insurer.

Through passage of time, however, this position gave way to the principle of transfer of risk. Almost all jurisdictions adopted the liability of employers for injuries and disease caused to their employees during the course of employment<sup>23</sup>. The reason for such a paradigm shift has been justified by various reasons. When an employer is held liable to cover the costs of employment injury, it will transfer such cost into society by thinly distributing this expenditure in the price of the product or services which is made available by the employer<sup>24</sup>. Furthermore, it is believed that as the employee sustains injury while committing himself to render personal service for the benefit and under the authority of the employer and since the employer is the one who get benefits and economically in a better position from the service of the employee, it should compensate when loss occurs<sup>25</sup>. Furthermore, scholars contend that since the employee required to render the said service within the frame work of the instruction of the employer and so far as the employer will possess the

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<sup>20</sup> International Labour Organization, the Employment Relationship, ILC, 95th session (2006), p. 7.

<sup>21</sup> Ibid.

<sup>22</sup> D. valance, Workers compensation schemes: Issues and Practices (Unpublished), 2002, p.39.

<sup>23</sup> Id.,P.44

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

prerogative to direct, supervise and control the manner and performance of the employee, accordingly, must share in the good as well as the bad results of that behavior<sup>26</sup>. It shows that an employer is legally entitled to the rewards of an employee's labor an employer also has the legal liability if that same behavior results in harm.

Because of work place injury and illness cases, employers considered the increasing amount of compensation as exposures to risk and have elected to purchase insurance cover to insure their legal liability, which provides some level of cover when an employee is injured, get sick or killed by job-related causes<sup>27</sup>. Insurance provides the continuity in trade and commerce, by covering the risks that could retard the employer and thereby indirectly helps the economy to grow<sup>28</sup>.

Many developed countries and to a lesser extent, developing countries have seen significant development and growth in group insurance policies and employee benefit plans even though the benefit program varies from country to country<sup>29</sup>.As the name implies, group insurance is a means through which group of persons who usually have a business or professional relationship to the contract owner are provided with insurance coverage under a single contract<sup>30</sup>. It is possible to arrange accident insurance for employees of organizations in group scheme, which offer protection against accidental death and bodily injury and not against sickness or disease which may be covered by other types of insurance<sup>31</sup>.

However, group insurance is not believed to be a product available only to employer's legal liability or employees. For example, in USA, groups eligible for group insurance coverage, include employees of a single player, debtor-creditor groups and members of labor union groups may be covered under a group contract issued to the union itself and also the product is available for the board or owner of a company as well<sup>32</sup>.In group accident insurance the cover provided applies not only accidents at work but broadly for accidents of any kind whether at home, while traveling, during leisure time ...etc<sup>33</sup>. This is known as 24-hour cover.

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<sup>26</sup> D. valance, cited above at note 22,P.44.

<sup>27</sup> C. Williams and R.Heins, Risk Management and Insurance (5th ed.1985), P.416.

<sup>28</sup> Anand Ganguly, Insurance Management (2004), P.5.

<sup>29</sup> Kenneth Black and Harold Skipper , Life and Health Insurance, (13th ed.2003), P. 446.

<sup>30</sup> Id., P. 449.

<sup>31</sup> valance, cited above at note 22, P. 44.

<sup>32</sup> Black and Skipper, cited above at note 29, P. 445.

<sup>33</sup> Mike Spice and Paul Phillipson , Reinsurance (2014), P. 11.

Some also argue that group insurance is part of employee benefit plans which provides insurance protection from the view point of the employee<sup>34</sup>. They contend that employers use employee benefit plans to attract and retain high quality employees, to free employees from certain worries, to provide incentives for improved performance, to match the plans of competitors and for good public relations with the society<sup>35</sup>. They argue that the presence of employer-provided benefits may also reduce turn over, thereby contributing to increased productivity and profitability<sup>36</sup>. It is also said that group insurance policy is very beneficial for organizations as it makes a good image amongst workers that the organization is concerned about its employees and has certain measure to sort out such problem arising out of accident<sup>37</sup>. For some writers, GPA policy is a complete package in itself that can be bought by employers to provide extensive coverage to a large number of employees<sup>38</sup>. Others contends that the workmen's compensation does bear certain resemblance to accident insurance, but there are serious dangers if the two are not differentiated and will have a severe impact on the coverage of employer's legal liability<sup>39</sup>.

Hence, the study aims to exhaustively explore the application of the GPA insurance policies for employer's legal liability for occupational injuries through further discovery of the possible literatures, legislative grounds and insurance policies with its practical applications.

## **1.4 Objectives of the Study**

The research is triggered by the current application of GPA insurance policy for occupational injuries and the absence of literatures written in connection with the related problems. It, accordingly, aims at achieving the following objectives.

### **1.4.1 General Objectives**

It aims at contributing to knowledge about the laws governing employer's legal liability for occupational injuries and the insurance policies relating thereto.

### **1.4.2 Specific Objectives**

The study is designed to achieve the following specific objectives:-

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<sup>34</sup> Williams, cited above at note 27, P. 158.

<sup>35</sup> Ibid., Pp. 413-414.

<sup>36</sup> Black and Skipper, cited above at note 29, P. 446.

<sup>37</sup> Valance, cited above at note 22, p.46.

<sup>38</sup> Ibid.

<sup>39</sup> Spice and Phillipson, cited above at note 33.

- To explore the practical application, legality and relevancy of GPA insurance policies towards the laws of employer's liabilities for occupational injuries.
- In light of the research background, problems and questions indicated above, aims at indicating the need, areas and nature of further action by the law maker and stake holders in order to further develop the effectiveness of compensation schemes, the insurance market and the laws.

Hence, the study tries to show legal and practical problems and recommend gap closing solutions.

### **1.5 Significance of the Study**

This study will give clear picture of the problem and try to suggest possible solutions and amendment which need to be made on the insurance policies and on provisions of the laws. This paper will also help insurers and employers, by developing knowledge of an enduring practice, to be careful in selecting covers and to practitioners ,i.e. insurance lawyers and judges, the careful attention needed from them to make an informed decision for their day to day problem in applying and interpreting insurance policies and related laws. The research is, accordingly, useful to both the pursuit of knowledge, the identification of the core problems and possible solutions.

### **1.6 Scope of the Study**

This study is specifically intended to dwell upon employer's legal liability for work place injuries and accident and illness insurance laws as well as pertinent insurance policies in Ethiopia. Towards this, I will be concentrating on the Labor Proclamation No. 377/2003; the Civil Code of Ethiopia; the Commercial Code of Ethiopia dealing with Accident Insurances, GPA and W.C insurance Policies in Ethiopia and the practice will be assessed.

### **1.7 Methodology**

For the study I employed doctrinal methodology<sup>40</sup>. To this end, two approaches are used. First, I analyzed legal provisions of the Labour Proclamations, the Civil Code and Commercial Code of Ethiopia. Furthermore, I also examined 24 GPA and W.C insurance policies of domestic and international insurance companies. I also look into other published and unpublished literatures. Pertinent decisions of the Federal Courts were analyzed.

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<sup>40</sup> This is because the paper will devote on the exploration, reasons, justifications or logical argument on legal provisions and insurance policies.

In addition, I tried to acquire qualified information from the stakeholders through visits, discussions and interviews. Towards this end, eleven (11) selected individuals (insurance underwriters, Legal Department heads of insurance companies, Members of Confederation of Ethiopian Trade unions, employees and employers) based on their experience, position, expertise and other attributes the study so requires are interviewed; and use of own personal observation and work experience as employee in the insurance sector of the country also be considered. The methodology that was employed, therefore, is interplay of both primary and secondary sources.

### **1.8 Limitation of the Study**

This research has come across with some limitations. For one thing, there are no enough available researches conducted or books written related with the topic. There is also difficulty of easily finding the interviewees, legal opinions and court decisions due to confidentiality issues and un modernized case handling system. The fact that some cases are still pending also has its own impact as the author is not able to get access to the cases. However, the researcher has made the utmost efforts in minimizing the impact of such constraints by, for example, diversifying the sources of information and use of own work experiences.

### **1.9 Organization of the Paper**

The Study comprises of six chapters. The first chapter is an introductory chapter consisting of background of the study, statement of the problem, research questions, objective, significance, scope of the study and the methodology used. The second chapter is intended to provide background information's and the prevailing international experiences on the concept of employment injury compensation, employer's legal liability for occupational injuries and GPA and W.C insurance policies. The Third chapter deals with the laws governing employers' legal liability for employment injuries and Accident insurance in Ethiopia. The fourth chapter discusses insurance policies in the Ethiopian market in relation to occupational injuries. Chapter Five makes a survey of the application of the Group Personal Accident and W.C insurance policies for employers' legal liability and the major legal and practical problems associated with the research questions assessed in detail. Lastly, chapter six concludes the findings and forward some recommendations based on the study results.

## Chapter Two

### 2 The General Conception of Employment Injuries and Employers' Legal Liability

#### 2.1 General Overview of Employment Injuries and Employers' Legal Liability

The world of work is laden with risks for workers. According to an estimate made by the ILO in 2015, there are 270 million occupational accidents causing more than 2.3 million people's deaths annually and loss of 1.25 trillion USD, 4% of world's annual GDP<sup>41</sup>. Latest studies have estimated that 2.7 million deaths occur annually across countries attributed to work and that accounts for 5% of the global total deaths<sup>42</sup>.

The construction industry is widely recognized as having high accident rates which result in absence from work, loss of productivity, permanent disabilities and fatalities<sup>43</sup>. The impact of occupational health and safety hazards faced by construction workers in developing countries is 10 to 20 times higher than those in industrial countries<sup>44</sup>. The rates of occupational injuries are expected to increase, given the global growth in urbanization and industrialization especially in developing countries.

When occupational injuries occur, employers are responsible for ensuring access to necessary medical care and fair, equitable, and effective compensation for workers or, in the event of death, to workers' survivors to cover the loss of income<sup>45</sup>. Employment injury compensation schemes aim at ensuring that injured workers and their dependents receive timely provision of benefits<sup>46</sup>.

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<sup>41</sup> International Labor Organization, Work-related fatalities reach 2.3 million annually (2016). <<http://www.nieuwsbank.nl/en/2002/05/24/K016.htm>>. Accessed August 20, 2017.

<sup>42</sup> Work Place Safety and Health Institute, cited above at note 4, P.3.

<sup>43</sup> E. Sewefy, Health Hazards and Safety. *J. of Egypt Med Assoc*, Vol.3(2009), P.51.

<sup>44</sup> X. Dong ., Work Scheduling and Work-Related Injuries Among Construction Workers in the United States, *J. of Work Environment Health*, Vol.31 ( 2005), P. 35.

<sup>45</sup> Valance, ccited aabove at note 22, p.46.

<sup>46</sup> International Labour Organization, 2015, cited above at note 41.

It has been said that employers are liable for work related accidents. Hence, I will switch over to discussing the international standards and countries' experiences towards compensation of occupational injuries.

## **2.2 International and Regional Standards and Countries Experiences towards Employers Liability for Employment Injuries and Compensation Schemes: An Overview**

### **2.2.1 International Labour Organization**

The International Labour Organization has espoused the right to compensation for employment injury since its early days<sup>47</sup>. According to the ILO, employment injury coverage should be compulsory so as to provide 100 % protection for all workers<sup>48</sup>. The ILO states that “the costs of the benefits and administration shall be borne collectively by way of insurance contributions or taxation or both”<sup>49</sup>. The ILO requires coverage to be extended progressively to all categories of employees and other dependent family members<sup>50</sup>.

The contingencies covered under the employment injury benefit include accident-at-work or employment-related diseases: sickness , temporary incapacity for work resulting from such a condition, total or partial loss of earning capacity, and the loss of support suffered by dependents as a result of a death of the breadwinner<sup>51</sup>. Accordingly, the ranges of benefits include necessary medical care, sickness benefit for the period of incapacity for work, disability pension and survivors' pension in case of death of a bread winner<sup>52</sup>.

The ILO also advocates cash benefits in case of permanent or temporary loss of earning capacity<sup>53</sup>. The ILO also requires member countries to provide rehabilitation services schemes which are

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<sup>47</sup> Standards on employment injury insurance are embodied in the Social Security (Minimum Standards) Convention, 1952 (No. 102) (Part VI), and the Employment Injury Benefits Convention, 1964 (No. 121), as well as its accompanying Employment Injury Benefits Recommendation, 1964 (No. 121).

<sup>48</sup> International Labour Organization, Employment Injury Benefits Convention No.121/1964, Art. 4.

<sup>49</sup> International Labour Organization, the Social Security (Minimum Standards) Convention No. 102/1952, Ar. 71.

<sup>50</sup> International Labour Organization, 1964, cited above at note 48, Art. 6.

<sup>51</sup> International Labour Organization, 1952, cited above at note 49, Art. 32.

<sup>52</sup> Id., Art. 6. Medical care shall comprise: general practitioner and specialist in-patient and out-patient care, domiciliary visiting; dental care; nursing care at home or in hospital; convalescent homes, pharmaceutical, medical or surgical supplies, eye glasses; emergency treatment and follow-up treatment in the place of work .

<sup>53</sup> International Labour Organization, cited above at note 48.

designed to prepare a disabled person for the resumption of his previous activity, or, if this is not possible, the most suitable alternative works, having regard to his aptitude and capacity<sup>54</sup>.

Ethiopia has not ratified these social protection conventions such as the Employment Injury Benefits Convention (No. 121), Social Security (Minimum Standards) Convention, 1952 (No. 102) and Medical care and Sickness Benefits Convention, 1970(No.130)<sup>55</sup>.

### **2.2.2 Southern African Development Community (SADC)**

Provisions dealing with occupational injuries can be found in the instruments of the South African Development Community (SADC), a regional economic community of Southern African countries. The Code on Social Security in the SADC reads as follows:

*Member states should provide Compulsory Coverage, either through public or private mechanisms or through a combination of both. All modalities of disablement should be covered, irrespective of whether the disablement occurs in the formal or informal sector. All occupational-related injuries and diseases should be covered. To the extent that use is made of a list of occupational-related diseases, the range of diseases covered in such list should at least be in accordance with the list of diseases contained in the most recent ILO Convention on occupational health and safety. Occupational injury and diseases schemes should provide adequate medical care, appropriate benefits and adequate rehabilitation and reintegration measures<sup>56</sup>.*

### **2.2.3 The United Kingdom**

It is compulsory for employers in Great Britain to effect employers' liability insurance<sup>57</sup>. Its purpose is to provide security for employees if they encounter an accident or incur a disease in the course of their employment, when their employer is responsible<sup>58</sup>. It is prohibited for insurers using certain policy conditions to reject a claim. In the UK, the employer must display one or more copies of certificate of insurance at each place at which they may be easily seen and read by any relevant

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<sup>54</sup> International Labour Organization, cited above at note 49, Arts. 3 and 33.

<sup>55</sup> ILO, Up-to-date Conventions and Protocols not Ratified by Ethiopia (2017) [http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::No:11210P11210\\_COUNTRY\\_ID:102950](http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::No:11210P11210_COUNTRY_ID:102950) accessed September 21, 2017.

<sup>56</sup> SADC, Charter of Fundamental Social Rights in SADC: Code on Social Security (2008) Art. 12.

<sup>57</sup> Employers Liability (Compulsory Insurance) Act, 1969, cited above at note 7.

<sup>58</sup> Lear and Vascotto, cited above at note 10, p. 4.

employee, until the policy expires<sup>59</sup>. The regulation also allows for certificates to be made available online, i.e. on the insured's internet, only where all employees have access to it<sup>60</sup>.

#### **2.2.4 Republic of Kenya**

Kenyan employers are liable to provide medical facility and to pay compensation to an employee who is injured at work or contracted an occupational disease<sup>61</sup>. Compensation is paid to the dependents' of a worker if the worker dies, including reasonable expenses for the funeral of a deceased employee<sup>62</sup>. Since the Kenyan compensation system is an employer-liability system, employers are obliged to get an occupational injury insurance policy with an approved insurer to cover the liability of employees injured at work or who contract an occupational disease<sup>63</sup>.

#### **2.2.5 Kingdom of Swaziland**

In the Kingdom of Swaziland, the law provides for medical treatment and compensation of workers who suffer injury or contract disease in the course of their employment<sup>64</sup>. Every employer other than the government who employs a worker must purchase insurance from the Swaziland Royal insurance Company against various contingencies at work places<sup>65</sup>.

In the next topics, the main reasons behind the purchase of insurance and Workmen's Compensation and Group Personal Accident insurance policies will be dealt with.

### **2.3 Insurance, as a Risk Transferring Mechanism for Employers' Legal Liability**

#### **2.3.1 Meaning and Rationale of Insuring Liabilities**

Because of human error and unforeseen circumstances, occupational injuries are a fact of life. Occupational injuries present several costs to the employer, including: salary costs, productivity losses, loss of a trained employee, part or full off time, retraining, compensation, medical and travel

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<sup>59</sup> Employers' Liability (Compulsory Insurance) Regulations, (Great Britain), 1998, SI No. 2573, Regulation 5.

<sup>60</sup> Ibid.

<sup>61</sup> Work Injury Benefits Act, (Kenya)2007, Act No. 13 of 2007, Chapter 236. Section 10(1).

<sup>62</sup> Id., Section 34.

<sup>63</sup> Id., Section 7.

<sup>64</sup> The Workmen's Compensation Act, (Swaziland)1983, Act No.7 of 1983, Section 25(1).

<sup>65</sup> Ibid.

expenses and additional supervision<sup>66</sup>. Injuries also result in law suits being instituted against employers, by injured workers and their dependents, which result in lengthy court processes<sup>67</sup>. Medical expenses and disability and death compensations involves high amount of monetary cost.

Therefore, employers must know how to deal with the aftermath of injuries, to help their employees, and preserve the smooth operation of their businesses. This is where insurance come in handy. In the absence of insurance, many employers could go bankrupt or be wound up if they are required to pay out large sums as compensation following an injury to an employee<sup>68</sup>.The risk of not receiving any compensation in case of major industrial accidents is high for employees and their survivors , as demonstrated by the Rana Plaza accident<sup>69</sup>.

Many advocate that insurance is a major instrument to prevent the negative effects of occupational injuries, and thus to ensure security of compensation to the workers<sup>70</sup>. A well-functioning insurance market ensures the continuity in trade and commerce, by covering the risks that could retard the economy and thereby indirectly helps the economy to grow<sup>71</sup>.As many agree, insurance aids economic development by promoting financial stability and reduces anxiety<sup>72</sup>. In doing so, it permits businesses to operate with less volatility and risk of failure, thus providing greater financial and social stability within national economies<sup>73</sup>. When something untoward happens to an employee related to his job, instead of facing a court battle with the injured employee, the claim will be against the insurer.

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<sup>66</sup> Sebsibe Tadesse and Dagnachew Israel, Occupational Injuries among Building Construction Workers in Addis Ababa, Ethiopia, Journal of Occupational Medicine and Toxicology ( 2016),P. 27.

<sup>67</sup> Ibid.

<sup>68</sup> Lear and Vascotto, cited above at note 10, p. 6

<sup>69</sup> The Rana Plaza catastrophe in Bangladesh in April 2013, where a five-story commercial building named Rana Plaza collapsed due to structural failure, which took the lives of more than 1,138 workers and injured more than 2,500 others, suddenly made people realize that many workers today still do not have adequate protection in case of work injury to provide for health care, rehabilitation services, and loss of earnings.<[http://www.ilo.org/global/about-the-ilo/newsroom/statements-and\\_speeches/WCMS\\_363015/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/statements-and_speeches/WCMS_363015/lang--en/index.htm)>accessed august 11,2017.

<sup>70</sup> Ganguly, cited above at note 28.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Brainard and Schwartz, cited above at note 1.

The system of insurance is believed to keep small and medium size businesses in the market and enable them maintain their competitiveness<sup>74</sup>. Insurance also serves as one of the great mobilizer of millions of small savings substantial portions of which are channeled into employment-creating and income generating investments<sup>75</sup>. Hence, insurance allows employers and their businesses to remain in business and employees to keep their jobs, suppliers will continue to receive orders, and customers can still purchase the goods and services they desire.

Payment of compensation by the insurer for losses permits workers and their families to be restored to their original financial position after a loss has occurred, and, as a result, they can maintain their financial security<sup>76</sup>. Studies reveal that employees will be happy for the provision of insurance for them<sup>77</sup>. They will tend to continue working hard for a company that has concern for their welfare and for a business that takes care of them during their sickness and injury<sup>78</sup>. Some also argue that employers use employee benefit insurances to attract and retain high quality employees, to free employees from certain worries, to provide incentives for improved performance, to match the plans of competitors and for good public relations with the society<sup>79</sup>.

As mentioned above, in many jurisdictions employers' liability or workers' compensation is subject to compulsory cover within a very strict framework. It is worth noting that even in the countries where no obligation is imposed many of the employers choose to insure their legal liability<sup>80</sup>.

### **2.3.2 Workmen's Compensation Insurance Policies**

Workmen's Compensation Insurance Policy, also called Employers' Liability insurance Policy, is designed to cover the legal liability of an employer for medical expenses, bodily injury, or death sustained by an employee in the course of employment<sup>81</sup>. This policy assures that injured workers get medical care and compensation for a portion of the income they lose where they are unable to return to work and workmen's compensation is usually protects employers from costs and law suits

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<sup>74</sup> D. Skipper, Foreign Insurers in Emerging Markets: Issues and Concerns (2006), P. 4.

<sup>75</sup> Ibid.

<sup>76</sup> <<http://www.iii.org/publications/insuring-your-business-small-business-owners-guide-to-insurance/specific-coverages/workers-compensation-insurance>>.accessed September 8, 2017.

<sup>77</sup> Prudential Group Insurance, Eighth Annual Study of Employee Benefits: Today and beyond (2015), page 25.

<sup>78</sup> Ibid.

<sup>79</sup> Williams and Heins, cited above at note 27, PP. 413-414.

<sup>80</sup> Lear and Vascotto, cited above at note 10, P.6.

<sup>81</sup> Id., P. 5.

by injured workers<sup>82</sup>. The intention of the policy is to cover legal liability of an employer in line with the requirements of the laws of a country<sup>83</sup>. Laws determine such features as the amount of benefits to which an employee is entitled, what impairments and injuries are covered, how impairments are to be evaluated and how medical care is to be delivered<sup>84</sup>.

For example, the wording of Great Britain's Employers' Liability policy is designed to indemnify all sums for which the employer becomes legally liable to pay in respect of bodily injury to an employee as well as costs and expenses<sup>85</sup>. The definition of bodily injury includes death, disease, illness, physical and psychological injury<sup>86</sup>. The psychological injury can be in the form of depression, anxiety, nervous breakdown and post-traumatic stress disorder which can involve physical injury, or, psychiatric only<sup>87</sup>. The insurance policy also covers costs and expenses including the costs of investigation, adjustment, appraisal, defense or settlement of an insured event, including expert, legal, appeal and defense costs and costs of defending criminal prosecutions<sup>88</sup>.

As far as conditions are concerned, it is not permissible to use any policy conditions and exclusions to avoid handling claims<sup>89</sup>. This includes conditions stating specified thing to be done or omitted to be done after the happening of the event giving rise to claim under the policy like the following; the holder does not take reasonable care to protect his employees against the risk of bodily injury or disease in the course of their employment; the policy holder fails to comply with the requirements of any enactment for the protection of employees against the risk of bodily injury or disease in the course of their employment; or the policy holder does not keep specified records or fails to provide the insurer with or make available to him information from such records<sup>90</sup>. As one may realize, it is

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<sup>82</sup> Lear and Vascotto, cited above at note 10, P.6.

<sup>83</sup> <<http://www.iii.org/publications/insuring-your-business-small-business-owners-guide-to-insurance/specific-coverages/workers-compensation-insurance>> , accessed September 8, 2017.

<sup>84</sup> ibid.

<sup>85</sup> ibid.

<sup>86</sup> ibid.

<sup>87</sup> A. Belcher, Employers' Liabilities for Work-Related Stress (2003), P.289. See also section 2(1) of the Health and Safety at Work Act of U.K,1974, and regulation 3(l)(a) of the Management of Health and Safety at Work Regulations 1992 (now 1999),SI 1992/2051.

<sup>88</sup> Lear and Vascotto, cited above at note 10, P.5..

<sup>89</sup> Employer's Liability(Compulsory Insurance) Regulations, 1998, cited above at note 59, Regulation 2.

<sup>90</sup> Employer's Liability(Compulsory Insurance) Regulations ,cited above at note 59.

a matter of public policy overriding policy terms and conditions and this means that insurers may find themselves paying claims for which they otherwise would not be liable.

### 2.3.3 Group Personal Accident Insurance

Accidents prompt tens of millions of visits to hospital emergency departments each year and result in significant costs. To cite one example, the average cost to treat a broken leg exceeds \$10,000 in USA and U.S. emergency rooms logged nearly 38 million injury related visits in 2010, was one out of eight Americans<sup>91</sup>. For injured persons to be charged with meeting their own costs, the expense can be significant. Accident insurance helps to address the financial consequences of an accidental injury by providing payments to claimants that they can use to cover their expenses resulting from accidental injury<sup>92</sup>.

Accident insurance can be purchased by every individual and business organization including lending institutions, partnerships, proprietorships, students, dancers and researchers<sup>93</sup>. Group personal accident insurance comes in also handy for employers who are in a lookout for ways to safeguard their employees against certain risks that can occur outside of working hours<sup>94</sup>. Accident insurance is one of the fastest-growing voluntary employee benefits, and, nearly a third of U.S. employers offered it as of 2010<sup>95</sup>. As the name suggests, GPA insurance is a policy issued to a group of people<sup>96</sup>. It is an extension of the Personal Accident Insurance policy, which is available to individuals, to group of people<sup>97</sup>.

The key feature and the most important purpose of GPA insurance policy is to provide financial protection against expenses incurred due to disablement or death resulting from accidental bodily injury caused solely and directly by violent, accidental, external and visible means.<sup>98</sup>. "Accident" is

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<sup>91</sup> CDC, national Hospital Ambulatory Medical Care Survey: Emergency Department Summary Table (2010) <<http://www.getcoverednow.org>> accessed December 1, 2017.

<sup>92</sup> Group Accident Insurance Policy, the Prudential Insurance Company of America (2017).

<sup>93</sup> R. Anderson, D. Tydings and L. Lewis, Liability Insurance: A Primer for Corporate Counsel (1993), P. 261.

<sup>94</sup> Chubb Insurance Company <<http://www.ntu.sg/SAO/pages/overseas-trakeaspx> > accessed November 15, 2017.

<sup>95</sup> LIMRA, weathering the Storm (2011), page 6. Also see:- American International Group, Inc. (AIG) Why Personal Accident Insurance?, 2017, P.1. <<https://www.aig.co.zaa>> accessed March 14, 2018.

<sup>96</sup> Chubb Insurance Company, cited above at note 94.

<sup>97</sup> Ibid.

<sup>98</sup> Chubb Insurance Company, cited above at note 94.

defined in Black's Law Dictionary as "An unintended and unforeseen injurious occurrence, something that does not occur in the usual course of events or that could not be reasonably anticipated... an unforeseen and injurious occurrence not attributable to mistake, neglect, or misconduct"<sup>99</sup>. If there is any other cause other than the accident which has caused that bodily injury, contributing to the result, the insured event shall be deemed not to have occurred<sup>100</sup>. Such policies usually state that the insured is not covered if the death or injury is caused by any form of disease, sickness or any naturally occurring or preexisting condition or process<sup>101</sup>.

Accident or accidental means, as defined in insurance policies is a sudden, unforeseen and unexpected event happening by chance that results in the insured person's death, disablement or bodily injury<sup>102</sup>. So the cause must be violent and visible for the cover to be operative. As far as "solely and directly as a result of an accident" condition is concerned, the doctrine of proximate cause requires that there must be an unbroken chain of events to the death or disablement, and that if any other cause has contributed to the result an insured event shall be deemed to have not occurred<sup>103</sup>.

Group personal accident policies are not policies of indemnity; they will pay benefits in respect of the happening of events irrespective of whether the insured sustains a pecuniary loss<sup>104</sup>. Had it been a contract of indemnity, the amount recoverable is measured by the extent of the insured's pecuniary loss<sup>105</sup>.

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<sup>99</sup> Garner, A Bryan, Black's Law Dictionary, (eighth edition), 2004, P. 6.

<sup>100</sup> Lear and Vascotto, cited above at note 10, P.48.

<sup>101</sup> Allianz General Insurance Company, Group Personal Accident Insurance Policy, Exclusion No. 3, P.2.

<sup>102</sup> Chubb Insurance Company, cited above at note 94.

<sup>103</sup> Ibid.

<sup>104</sup> Group Accident Insurance Policy, cited above at note 93.

<sup>105</sup> Ibid.

### **2.3.4 Comparison Between Group Personal Accident and Workmen's Compensation Insurance Policies**

Workmen's Compensation Insurance Policies are legal liability policies whereas in GPA policies certain agreed benefits are granted<sup>106</sup>. As has been said before, W.C policy, also called employers' liability insurance policies, are designed to cover the legal liability of employers for all occupational injuries whereas GPA policies cover only accidental bodily injuries or death resulting solely and directly from accident caused by external and violent means<sup>107</sup>. Group personal accident policy is a benefit policy and it avoids the need to prove whether the accident was caused during work and arising out of work related duties.

W.C policies cover occupational diseases that might be contracted by workers arising out of and in the course of employment, whereas, GPA policies merely cover accidental injury due to accidental external and violent means<sup>108</sup>. Most GPA policies make clear in their exclusion part that the insurance company shall not be liable to pay any claim directly or indirectly consequent upon sickness and disease<sup>109</sup>.

The W.C insurance policies may only be purchased by employers for employment related liabilities only<sup>110</sup>. On the other hand, it is possible to purchase accident insurance cover for individuals as well as groups. For instance, the University of Tokyo provides benefit packages for accidents sustained by its students during education and research activities in Japan or while overseas<sup>111</sup>. All students studying at the University of Tokyo are enrolled in the insurance plan, with the university bearing the cost of insurance premium. Similarly, Australia's Leading Insurance Broker provides an insurance cover designed to cover the accidental risks faced by professional dancers, studio teachers

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<sup>106</sup> P. Ingawale , Workmen Compensation V/S Group Personal Accident Policy , Oriental Insurance Company, (2011),P.8.

<sup>107</sup> ibid.

<sup>108</sup> ibid.

<sup>109</sup> Group Personal Accident Insurance Policy, cited above at note 92.

<sup>110</sup> Chubb Insurance Company, cited above at note 94.

<sup>111</sup> University of Tokyo <<http://www.jees.or.jp/gakkensai/inform.htm>> accessed September 7, 2017.

and independent artists<sup>112</sup>. Employees can also buy GPA coverage for themselves, their spouses, and any other dependent children<sup>113</sup>.

In W.C policies, the amounts of compensation depend on the nature of the injuries and, for instance, in case of fatal accidents the compensation is worked out by taking the factors like age and income of the person injured<sup>114</sup>. Thus the W.C varies from case to case and the amount of compensation is also be determined by the laws of the concerned country. However, in GPA policies, certain agreed benefits are given as per cover taken in the policy<sup>115</sup>. In GPA policies there is also no legal restriction with regard to the amount of compensation to be payable for the insured or his beneficiaries. Group personal accident policies are not policies of indemnity; they will pay benefits in respect of the happening of events irrespective of whether the insured sustains a pecuniary loss<sup>116</sup>. Had it been a contract of indemnity, the amount recoverable is measured by the extent of the insured's pecuniary loss. As a benefit, some insurers are effecting payments under GPA policies in addition to any other insurance held at the time of the accident such as Workmen's Compensation<sup>117</sup>.

Group personal accident insurance provides a 24 hours cover for insured's, during everyday life, for death or bodily injury arising out of accidents in accordance to the terms and conditions of the GPA policy, whether they are at work or otherwise<sup>118</sup>. However, W.C policies cover are limited to the incidents related to working hours or/and in connection with the performance of a work. Even though GPA policies provide cover for 24 hours, however, some policies even exclude certain kinds of occupations from cover, which W.C covers. For instance, it is stated in the policies that <<this policy does not cover death or any injury directly or indirectly caused by in connection with occupations like those of Police, army, drivers, persons engaged in mining and tunneling, fireman

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<sup>112</sup> Australia's Leading Insurance Broker, AON, Professional Business Practice Guides (2015),fact sheet 9.

<sup>113</sup> American International Group, Inc. (AIG)Why Personal Accident Insurance?,2017, P.1. <<https://www.aig.co.zaa>> accessed 14/2/2018.

<sup>114</sup> P. Ingawale, cited above at note 106, P.9.

<sup>115</sup> ibid.

<sup>116</sup> Group Accident Insurance Policy, cited above at note 92.

<sup>117</sup> American International Group, Inc. (AIG),cited above at note 113.

<sup>118</sup> ibid.

and oil rig workers>><sup>119</sup>. Among these lists, for example, mining is considered as a sector for repeated fatal outcomes of occupational accidents<sup>120</sup>. However, it is excluded.

As discussed above, under chapter 2, the liability of employers for employment injuries and benefits of insurance are dealt with. We will consider the laws governing occupational injuries in Ethiopia under chapter 3.

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<sup>119</sup> Allianz General Insurance Company ,cited above at note 101,Exclusion No. 14, P.2.

<sup>120</sup> Work Place Safety and Health Institute, cited above at note 3,P.8.

## Chapter Three

### 3 Laws Governing Occupational Injuries in Ethiopia

#### 3.1 Occupational Injuries in Ethiopia

The current rapid economic development has brought changes in workplaces in developing countries, including Ethiopia<sup>121</sup>. In Ethiopia, in the Growth and Transformation Program, it is anticipated that Ethiopia will place industrialization at the forefront to be a middle-income country. For this to happen, textile and garment, leather and leather related products, flower and floriculture industries, cement, metal and metal products, and the production of green energy through renewable energy sources are priority areas identified as the starting points of industrialization<sup>122</sup>. In GTP II, the growth rate is planned to reach at least 18%, with the focus being placed on the manufacturing sectors<sup>123</sup>.

While there are many job opportunities created in relation with the expansion of industries, factories and constructional activities, the exposures of workers to workplace hazards is also increasing. In a study conducted on the prevalence of injury among 806 building construction employees in Addis Ababa, the total of 683 workers (84%) had reported occupational injuries in 12 months, from which 68.9 % respondents' sustained more than one injury<sup>124</sup>.

The prevalence of injury among workers engaged in two metal factories was 333 per 1000 per year<sup>125</sup>. A cross-sectional study in small and medium manufacturing establishments in Gondar Zuria Woreda in 2011 found out that the annual prevalence rates of work-related injury were 335 per 1000 exposed workers<sup>126</sup>. In a study conducted on Muger Cement Factory on the prevalence of

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<sup>121</sup> Ministry of Labour and Social Affairs of the Federal Democratic Republic of Ethiopia, A Report on Occupational Safety and Health Condition in Small and Micro Enterprise Found in Addis Ababa, 2015, P. 26.

<sup>122</sup> Occupational Health and Safety in Ethiopia: A review of Situational Analysis and Needs Assessment.<  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5578617/>> accessed August 15,2017.

<sup>123</sup> The FDRE National Planning Commission, the Second Growth and Transformation Plan (GTP II) ,2015, P.17.

<sup>124</sup> Hanna Mersha, Seid Tariku and Lamessa Dube, Prevalence of Occupational Injuries and Associated Factors among Construction Workers in Addis Ababa, Ethiopia, Journal of Public Health and Epidemiology (2017),P. 6.

<sup>125</sup> Manaye Kibru, Work related injuries and associated risk factors among iron and steel industries workers in Addis Ababa, University of Gondar (2010),P. 16.

<sup>126</sup> Takele T, Abera K., Prevalence and Factors Affecting Work-Related Injury among Workers Engaged in Small and Medium-Scale Industries in Gondar Wereda, North Gondar zone, Amhara Regional State, Ethiopia. Ethiopia J Health Dev, Vol. 21,( 2011), P. 25.

occupational injuries among workers, the average 12 months prevalence of occupational injuries in 2014 was 10.4%<sup>127</sup>. Of the total injured respondents, 37 (71.2%) were hospitalized, 18 (34.6%) had to be absent from work for 15-30 days and 1356 working days were lost as result of 52 occupational injuries<sup>128</sup>.

Similarly, in a study conducted in Afar, 70 (11.0% of the employees) were hospitalized and among them 35.7% were admitted for more than 5-10 days, and 13 (18.6%) were admitted for more than 10 days because of work related injuries<sup>129</sup>. A study done in Kombolcha textile factory revealed that 73 (43.45%) were hospitalized where 67% of the hospitalization were for more than 24 hours<sup>130</sup>. 137 working days were lost as a result of work related injuries in 12 months<sup>131</sup>.

As shown above, industrial injuries are becoming major challenges in Ethiopia. They are posing direct costs, like suffering, loss of employment, absenteeism, loss of working capacity, disability and hospitalizations which result in increase of medical costs and compensation cost on the employer and adversely affect productivity of the employees and the employer<sup>132</sup>.

### **3.2 Liability of Employers'**

Under the following topics, provisions in relation with employers' legal liability for employment injuries will be discussed<sup>133</sup>. The research will discuss thoroughly the Labour Proclamation of Ethiopia No.377/2003, and highlight the provisions of the Civil Code and other laws related with

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<sup>127</sup> Mulu Gebretsadik , Assessment of Occupational Injury and Associated Factors Among Muger Cement Factory Workers in Ethiopia, Senior Thesis, Faculty of Public Health, Haile Selassie I University, 2014, p.38.

<sup>128</sup> Ibid.

<sup>129</sup> Id., P. 41.

<sup>130</sup> Zewdie A, Dagnew E, Takele T., Determinants of Occupational Injury: A Case Control Study among Textile Factory Workers in Amhara Regional State, Ethiopia. Journal of Tropical Medicine (2011), P.18.

<sup>131</sup> Mulu, cited above at note 127, P. 3.5.

<sup>132</sup> Sabsibe and Dagnachew , cited above at note 66.

<sup>133</sup> The work force in Ethiopia is administered under various laws. On the main, the rights and obligations of civil servants are governed by Federal Civil Servant Proclamation No.1064/2017, which addresses employment disability (Art. 55), temporary disablement (Art. 56), permanent partial disability (Art. 57), permanent total disability (Art. 58), medical benefits and injury leave (Art. 59) and disability pension and gratuity (Art. 60). A vast majority of private and government employees are governed by the Labor Proclamation of Ethiopia No. 377/2003 and by the Civil Code of Ethiopia as well. There are also employees administered under regulations, for example, employees of Inland revenues Authority by Regulation No. 155/2000, employees of the National Bank of Ethiopia by Regulation No. 157/2001 and Federal Public Prosecutors by Regulations No. 44/1991 and 72/1993. Which means, the rights and obligations of employers towards occupational injuries are governed by various proclamations, regulations, directives and collective agreements.

employment. Provisions of the commercial code dealing with accident insurance will also be discussed.

### **3.2.1 Labour Proclamation of Ethiopia, No. 377/2003**

The Proclamation is a comprehensive law that is in operation to address basic fundamental rights and obligations of employees by focusing on industrial peace at all work places<sup>134</sup>. The law was formulated in order to guarantee all fundamental rights at work taking into account the political, economic and social policies of the country and in conformity with the international conventions and other legal commitments to which Ethiopia is a party. The Labour Proclamation also intends to define the powers and duties of the organ charged with the implementation of the law particularly labour conditions, occupational safety, health and work environment<sup>135</sup>. It also lays down the procedure for the expeditious settlement of labour disputes<sup>136</sup>. The Labour Proclamation applies to employment relationships that exist between a worker<sup>137</sup> and an employer<sup>138</sup>.

#### **3.2.1.1 Liabilities of an Employer for Occupational Injuries**

Article 96 of the Proclamation has abundantly made clear that the employer is liable for any occupational injury at the workplace, irrespective of fault. In relation to this, the Federal Supreme Court Cassation Bench stated that an employee or his dependents who claim compensation are only obliged to show the occurrence of injury and the fact that third parties have liabilities for the accident doesn't relieve the employer from its liability<sup>139</sup>.

The term "occupational injury", which is envisaged under Article 95 of the Labour Proclamation, is defined as "an employment accident or occupational disease sustained by a worker during or in connection with the performance of his work". The Proclamation further categorized causes of employment injuries in to two. They are either occupational accident or occupational disease.

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<sup>134</sup> Labour Proclamation, 2003, cited above at note 5, Preamble.

<sup>135</sup> *ibid.*

<sup>136</sup> *ibid.*

<sup>137</sup> *Id.*, Art. 2(3). It defines a "worker" as <<a person who has an employment relationship with an employer>>.

<sup>138</sup> *Id.*, Art. 3(1) . An <<employer is a person or entity carrying out any commercial, industrial, agricultural, construction or other lawful activity>>.

<sup>139</sup> Dr. Mandefro Eshete and Jessica Mandefro Vs. Fredrich Ebert Stiftung (Fed. Sup. Ct., 2009, Civil Case No. 36194) Federal Supreme Court Cassation Bench Decisions, Vol. 8, P.162.

### 3.2.1.1.1 Occupational Accident

The term <<Occupational Accident>> is defined as any organic injury or functional disorder sustained by a worker as a result of any cause extraneous to the injured worker or any effort he makes during or in connection with the performance of his work<sup>140</sup>. It includes any injury sustained by a worker while carrying out the employer's order, even away from the work place.

The Proclamation also indicated that occupational accident encompasses any injury sustained by a worker before or after his work or during any interruption of work if he is present in the work place or the premises of the undertaking by reason of his duties<sup>141</sup>. Similarly, any injury sustained by a worker while he is entering in to or from place of work in a transport service vehicle provided by the undertaking for the common use of its workers or in a vehicle hired and expressly destined by the undertaking for the same purpose amounts to occupational accident<sup>142</sup>. Any injury sustained by a worker as a result of an action of the employer or a third party during the performance of his work is also considered as occupational accident<sup>143</sup>.

### 3.2.1.1.2 Occupational Diseases

An "occupational disease" means any pathological condition whether caused by physical, chemical or biological agents which arise as a consequence of the type of work performed by the worker or the surroundings in which the worker is obliged to work during a certain period prior to the date in which the disease become evident<sup>144</sup>. The law has also considered workers who are contracting endemic or epidemic diseases while engaged in combating such diseases by reason of their occupation to be considered as having work place injuries while excluding, as a principle, endemic or epidemic diseases which are prevalent contracted in the area<sup>145</sup>.

The Minister of Labour and Social Affairs is empowered to issue a directive regarding a schedule containing the list of occupational diseases<sup>146</sup>. The law considers any disease which occurs

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<sup>140</sup> Labour Proclamation, 2003, cited above at note 5, Art. 97.

<sup>141</sup> Id., Art. 97 (a)-(d).

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Id., Art. 98(1) a-b).

<sup>145</sup> Id., Art. 98(2).

<sup>146</sup> Id., Art. 98 (3).

frequently only to persons employed in certain occupations shall be presumed to be of an occupational origin where the worker suffering from such a disease was engaged in such an occupation and the existence of the disease is ascertained by a medical doctor<sup>147</sup>. The law also allows the right to present proofs to establish the occupational origin of a disease not listed in the relevant schedule and of diseases listed when they manifest themselves under conditions different from those establishing a presumption of their occupational origin<sup>148</sup>.

### **3.2.1.2 Kinds of Injuries and Benefits:-**

The term "benefits" refers to kinds of benefits the employer is obliged to provide<sup>149</sup>.

#### **3.2.1.2.1 Medical benefits**

As soon as the employee is known to have sustained employment injury, the first step the employer is expected to do is provision of first aid service to the injured employee; transporting the injured employee to the nearest medical facility by an appropriate means and notifying the appropriate government organ about the occurrence of the incident<sup>150</sup>. The employer is obliged to cover expenses in relation to general and specialized medical and surgical care; hospital and pharmaceutical care and any necessary prosthetic or orthopedic appliances<sup>151</sup>.

#### **3.2.1.2.2 Disablement Benefits**

Once a certain injury is held to be employment injury the employer will be liable to provide disability benefit to the employee based on the degree and duration of disability<sup>152</sup>. The effects of disablement come into picture to have an effect, where the employee suffers disablement due to occupational injury. The law specifies the effects of disablement as to (a) Temporary disablement (b) Permanent partial disablement (c) Permanent total disablement and (d) Death<sup>153</sup>. The law has clarified benefits payable as follow:

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<sup>147</sup> Labour Proclamation, 2003, cited above at note 5, Art. 98(6).

<sup>148</sup> *Id.*, Art. 98(5).

<sup>149</sup> *Id.*, Art. 103. Employment injury benefits shall be provided in accordance with the provisions of chapter 3 of the Labour proclamation, as per Arts. 103 up to 112.

<sup>150</sup> *Id.*, Art. 104.

<sup>151</sup> *Id.*, Art. 105.

<sup>152</sup> *Id.*, Art. 99(1). "Disablement" is any employment injury as a consequence of which there is a decrease or loss of capacity to work.

<sup>153</sup> *Id.*, Art. 99(2).

### **3.2.1.2.3 Temporary Disablement**

Temporary disablement results from the reduction for a limited period of time of the worker's capacity for work partially or totally<sup>154</sup>. Article 107 allows a worker who has sustained temporary employment injury to get periodical payment. The amount will be paid for one year and the full wage of the worker for the first three months; not less than 75% of the employee's monthly wage for each of the next three months; and not less than 50% of the monthly wage for each of the remaining six months has to be paid<sup>155</sup>.

### **3.2.1.2.4 Permanent Partial Disablement**

The Labour Proclamation provides that "Permanent partial disablement" means incurable employment injury decreasing the injured worker's capacity<sup>156</sup>. By the same token, injuries which, although not resulting in incapacity for work, cause serious mutilation or disfigurement of the injured person shall be considered permanent partial disablement, for the purpose of compensation and other benefits<sup>157</sup>. The degree of disablement shall be assessed by a competent medical board, which shall determine the extent of the degree of disablement as far as possible within twelve months from the date of injury<sup>158</sup>. However, where a worker who suffered an employment injury sustains a further employment injury; his disablement shall be reassessed in light of his new circumstances<sup>159</sup>. As per Article 109(3), where the injury sustained by the worker is below permanent total disablement a sum proportionate to the degree of disablement calculated on the basis of the compensation provided for in Sub-Article (3) (a) of Article 109, which is based on the employee's five times his annual wages.

### **3.2.1.2.5 Permanent Total Disablement**

"Permanent total disablement" is defined as incurable employment injury, which prevents the injured worker from engaging in any kind of remunerated work<sup>160</sup>. The degree of disablement shall be assessed by a competent medical board<sup>161</sup>. Article 102 of the Proclamation states that the

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<sup>154</sup> Labour Proclamation, 2003, cited above at note 5, Art. Art. 100.

<sup>155</sup> *Id.*, Art. 108(2).

<sup>156</sup> *Id.*, Art. 101.

<sup>157</sup> *Id.*, Art. 101(3).

<sup>158</sup> *Id.*, Art. 101(2)

<sup>159</sup> *Id.*, Art. 101(5).

<sup>160</sup> *Id.*, Art. 101(2)

<sup>161</sup> *Ibid.*

assessment for degree of permanent disablement and partial temporary disablement will be fixed in accordance with assessment table prescribed by directives issued by the Minister of Labour and Social Affairs. In addition, Art. 102 of the Proclamation state that, a competent medical board shall use the assessment table, to determine the extent of the degree of disablement as far as possible with in twelve months from the date of injury.

In cases where the injury resulted in permanent disability, the employer will be obligated to provide lump sum compensation to the injured. The maximum payment available for an employee who suffers total permanent disability due to employment injury is a sum equal to five times of the employee's annual wage<sup>162</sup>.

### **3.2.1.2.6 Dependents' Benefits**

If an employee or apprentice dies due to employment injury, the employer will be obliged to pay dependent's benefit to the dependents of the deceased and funeral expenses<sup>163</sup>.

However, it is not all dependents of the deceased who will be entitled to the dependent's benefit. Accordingly, the employee's widow/widower; children of the deceased who are under the age of eighteen; and any parent of the deceased who was being supported by the injured employee are considered by the Labour Proclamation as a deceased's dependents<sup>164</sup>. Where the deceased left widow, children and parents behind, the deceased's five years wage shall be shared among them.

As a result, a widow or widower is entitled to fifty percent of the payment, while each surviving child who is below the age of eighteen years receives ten percent each and ten percent each for the deceased worker's parents who were being supported by him<sup>165</sup>. The benefits referred to in Article 110 can also be payable where the worker dies after twelve months from the date of the injury if it is proved that the injury was the principal contributory cause of his death<sup>166</sup>.

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<sup>162</sup> Labour Proclamation, 2003, cited above at note 5, Art. 109(3)(a).

<sup>163</sup> *Id.*, Art. 110(1).

<sup>164</sup> *Id.*, Art. 110(2).

<sup>165</sup> *Id.*, Art. 110(3) and (4). If the total of dependents' compensation calculated in accordance with Article 110(3) is in excess of one hundred percent of the total amount to be divided, the amount of compensation of each dependent shall be proportionately reduced. Similarly, if the total of dependents compensation is less than one hundred percent of the total amounts, the amounts of compensation of each dependent shall be proportionately increase by the amount payable to one hundred percent.

<sup>166</sup> *Id.*, Art. 111.

## 3.2.2 Other Relevant Legislations

### 3.2.2.1 The Civil Code of Ethiopia

The Civil Code of Ethiopia has provisions regarding to occupational diseases arising from work<sup>167</sup>. The Code makes the employer liable for accidents which the employee suffers that arise from his work<sup>168</sup>, unless the injury is self-inflicted or in violation of a regulation<sup>169</sup>. Accordingly, the employer shall be liable for accidents which the employee suffers arising from activities which he performs in the interests of the undertaking, notwithstanding that these activities have not been ordered by the employer<sup>170</sup>. The employer has also liability for professional diseases which the employee contracts arising from his work<sup>171</sup>.

As far as the remedy for employment injuries is concerned, the employer is duty bound to meet all the medical, pharmaceutical, hospital, and other expenses which the accident or the disease necessitates for the employee and which the latter reasonably incurs<sup>172</sup>. The employer shall meet the funeral expenses, where the employee dies because of the accident or the disease. The employer shall, during a period of a year, pay to the employee 75 % of his wages from the moment when the employee had to cease work, where the employee is prevented from working because of the accident or the disease<sup>173</sup>. The amount due from the employer shall be increased by 5% for each year that the employee has given to the service of the employer, provided the wages of the employee are not exceeded<sup>174</sup>.

Similarly, if the employees deprived of half or more than half of his capacity to work, after expiry of the period mentioned above, the employer shall maintain the employee and his children who are under age<sup>175</sup>.

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<sup>167</sup> Civil Code of the Empire of Ethiopia, 1960, cited above at note 6, Art. 2512. The Code is in use to adjudicate matters based on contracts of employment regarding managerial employees. See also *Nib Transport S.C. v. Ato Tegenu Meshesha* (Fed.Sup.Ct. Cassation Division, 2005, Civil Case No. 18307), (Unpublished).

<sup>168</sup> *Id.*, Art. 2549.

<sup>169</sup> *Id.*, Art. 2257.

<sup>170</sup> *Id.*, Art. 2550.

<sup>171</sup> *Id.*, Art. 2552.

<sup>172</sup> *Id.*, Art. 2556.

<sup>173</sup> *Id.*, Art. 2557(1).

<sup>174</sup> *Id.*, Art. 2557(2).

<sup>175</sup> *Id.*, Art. 2558.

### **3.2.2.2 Employment Exchange Services Proclamation No. 632/2009**

This Proclamation safeguards the rights, safety and dignity of Ethiopian nationals seeking employment overseas<sup>176</sup>. It requires the employer to pay for insurance coverage via the concerned private employment agency<sup>177</sup>. Currently, this is the only legislation that requires a worker to be covered by life and disability insurance, but it only deals with workers deployed abroad<sup>178</sup>. Article 32(2) requires confirmation of life and disability insurance coverage as required in Article 33. This ensures mandatory insurance for every worker employed overseas with life and disability insurance coverage with details prescribed by MOLSA.

### **3.2.3 Laws Governing Accident Insurance: The Commercial Code of Ethiopia**

The Code defines insurance as a contract whereby a person, called the insurer, undertakes, against payment of one or more premiums, to pay to a person, called the beneficiary, a sum of money where a specified risk materializes<sup>179</sup>. The Code stipulates that <<an insurance policy against accidents is a contract whereby the insurer undertakes to pay a specified sum to the insured person where the insured person is the victim of an accident during the period specified in the policy, or to the beneficiary named in the policy, where the insured person dies<sup>180</sup>>>.

The Code does not provide a definition for what an accident is. It only mentions that accident includes any bodily injury arising out of unexpected extraneous occurrences<sup>181</sup>. It is also true that the insurance policy might not always mention the beneficiary or the beneficiary might be revoked or may have died. However, the remedies available in such situations are nowhere provided in the Code. On top of delineating a sharp line between accident and insurance of persons, the law fails to provide solutions.

The laws discussed above somehow demonstrate how the Ethiopian laws entertain occupational injuries and the available remedies related thereto. The next chapter, chapter 4, will consider the insurance coverage provided for occupational injuries in Ethiopia.

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<sup>176</sup> Employment Exchange Services Proclamation, 2009, cited above at note 9, Art. 33.

<sup>177</sup> *Id.*, Art. 15 (1(e)).

<sup>178</sup> Employment Exchange Services Proclamation, 2009, cited above at note 9, Art. 33.

<sup>179</sup> Commercial Code the Empire of Ethiopia, 1960, cited above at note 13, Art. 654.

<sup>180</sup> *Id.*, Art. 711. This provision also allows the insurer to limit his guarantee to specified accidents or specified consequences of an accident.

<sup>181</sup> *Id.*, Art. 711(3). Art. 711(4) allow the insurer to insure against illness.

## CHAPTER FOUR

### 4 Insurance Policies in relation to Occupational Injuries in Ethiopia

#### 4.1 Introduction

In Ethiopia, it's said that the financial and legal burden of occupational injuries are the responsibility of employers. The law does not obligate employers to get a compulsory insurance cover for occupational injuries while it simply recognizes situations where employers buy insurance that cover their liability in law<sup>182</sup>. However, many undertakings often purchase Workmen's Compensation Insurance and Group Personal Accident Insurance policies<sup>183</sup>.

The experience record of insurance companies in Ethiopia, from the year 2012 up to 2016, shows that they have paid more than 741,293,000.00 birr in compensations for medical expenses and disablement and death injuries relating to occupational injuries and accidents<sup>184</sup>. One government and 17 private insurance companies had collected a premium of birr 1,504,335,000.00 during the period 2012 up to 2016 for these covers<sup>185</sup>. Out of this, birr 698,116,000.00 was collected from workmen's compensation policies and birr 806,219,000.00 was collected from covers relating to accident insurances. It can already be observed from the increasing number of clients that there has been a growth in demand for these covers<sup>186</sup>.

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<sup>182</sup> Labour Proclamation, 2003, cited above at note 8.

<sup>183</sup> Commercial Code the Empire of Ethiopia, 1960, cited above at note 14, Article 657(1). An insurance policy is an evidencing document of the insurance contract where by the agreement of the parties by the terms and conditions as stated therein are referred.

<sup>184</sup> Data obtained from Ethiopian Insurance Corporation ,Business Development and Risk Management Office, November, 2018.

<sup>185</sup> ibid.

<sup>186</sup> ibid. For example, if we take a look at the premium collected by the Ethiopian insurance industry in the year 2012 for accident related damages, it was birr 117,078,000.00 and during the next three years birr 147,173,000, birr 169,551,000.00 and birr 192,002,000.00 was collected respectively. The compensation being paid is also increasing from birr 44,403,000.00 on 2012 to birr 57,808,000.00, birr 61,190,000.00, birr 62,903,000.00 and birr 67,928,000.00 was paid up to 2016 respectively. As to workmen's compensation the industry has collected a premium of birr 65,409,000.00 on 2012, birr 53,175,000.00 on 2013, birr 222,077,000.00 on 2014, birr 189,801,000.00 on 2015 and birr 167,654,000.00 on 2016.

In the following topics, attempt will be made to reveal the major contents of these insurance policies and their relationship with the employer's legal liability for employment injuries.

## **4.2 Workmen's Compensation Insurance Policy**

### **4.2.1 The Coverage**

The insurance companies' providing W.C policies are using almost similar insurance terms in their policies. The first page of each insurance company's policy contains the insuring agreement, i.e., a description of what the policy covers. It contains the insurance company's promise to:

*If at any time during the period of insurance any worker in the insured's immediate service engaged in a category of work described in the schedule shall sustain death or bodily injury by accident or occupational diseases occurring at the place assigned to him for work or arising from his work and during the time of his work and if the insured shall be liable to pay compensation for such death ,bodily injury or occupational disease under Ethiopian law, then subject to the terms exceptions and limitations and conditions contained herein or endorsed here on the corporation will indemnify the insured against all sums for which the insured shall be so liable and will in addition be responsible for all costs and expenses incurred with its consent in defining any claim for such compensation<sup>187</sup>.*

In general, all insurance companies' W.C policies provide cover for death or bodily injury of workers inflicted by accidents or occupational diseases arising out of and in the course of their employment. The schedules, which form part of the policies, show the category of work the employee is assigned on so that cover will only provide so long as the employee suffers occupational injuries while doing the kind of work mentioned in the schedule.

### **4.2.2 Limits of the Benefits Payable**

All WC policies set forth the maximum amount that the insurer will pay for certain specified types of claims. The policies enumerated list of injuries and their respective percentage out of one hundred in their <<Scale of Benefits>>part. The policies read that permanent disabilities not mentioned in the policies shall be compensated in accordance with their seriousness as compared with those mentioned without considering the occupation of the insured person<sup>188</sup>.

In general, the main benefits payable included in the policies are the following:

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<sup>187</sup> Ethiopian Insurance Corporation, Workmen's Compensation Policy ,cited above at note 11,P.1.

<sup>188</sup> *Id.*, P.6.

- **Death-** the policies provide cover for death occurring within twelve calendar months from the happening of the occupational accident or occupational disease. Towards this, five years wage with minimum and maximum amount are stated. The standard amounts set forth in each insurance policy ranges from the minimum amount of birr 10,000 up to the maximum birr 150,000<sup>189</sup>.
- **Permanent Total Disablement-** the policies provide cover for permanent total disablements occurring within twelve calendar months from the happening of the accident or occupational disease; as per the percentage listed under the scale of benefits within the boundary of the employees Five years' salary, but the maximum amount is, in most cases, birr 150,000<sup>190</sup>.
- **Temporary Total Disablement-** all WC policies provide monthly payment of salary up to 12 months for temporary disablements. However, the amount, in most cases, is limited to 100 % of Birr 250.00 of wages per month plus 75 % of additional monthly wages in excess of the first birr 250.00 but not exceeding birr 1,500.00 per month for up to 52 weeks<sup>191</sup>. Temporary total disablement compensation after the first three months will, however, is deducted from the final permanent total/partial disablement compensation<sup>192</sup>.
- **Medical, Pharmaceutical, Hospital, Funeral and other Expenses-** All W.C policies provide covers for medical surgical and hospital expenses incurred in connection with an accident or occupational disease. The amount varies, according to each undertaking procedure and special agreement made between insurers and insureds<sup>193</sup>.

### 4.2.3 Exceptions/Exclusions

All W.C insurance policies invariably hold exclusion parts which specify kind of perils the insurer shall not be liable for. The policies excluded any liability by accident or disease arising in consequence of war, riots, strikes, civil commotions, rebellion, revolution, martial law or state of siege, or to the action connected with or taking part in political or quasi political interference in the

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<sup>189</sup> Africa Insurance S.C, Workmen's Compensation Policy (2017, Unpublished), P.1.

<sup>190</sup> Abay Insurance S.C, Workmen's Compensation Policy (2017, Unpublished), P.1.

<sup>191</sup> The amount varies, according to each undertaking procedure and special agreement made with insurers. For example.in Nile Insurance, Tsehay,Berhan and Abay insurance S.C up to birr 2,000 is payable.However, there is a slight variation. For example, Ethio life, pays 100 % of the first birr 300.00 of wages not exceeding 1800.00.

<sup>192</sup> Ibid. This is stipulated invariably in all W.C policies.

<sup>193</sup> To mention some, The United insurance pays up to birr 1,500,Abay insurance up to birr 1,200, Berhan insurance up to birr 2,000.00, E.I.C,Tsehay,Ethio life and Berhan pay up to birr 2,500.00 per person.

affairs of Ethiopia, robbery; shifta action, any act of banditry<sup>194</sup>. The burden of proving that the liability does not fall within this clause shall be upon the insured

In addition, injuries resulting from intentional self-injury, suicide or attempted suicide, provoked assault, dueling or fighting, except in bona fide self-defense, or venereal disease or indulgence in drink narcotics or drugs are also excluded from cover<sup>195</sup>. Furthermore, any liability while mounting into dismounting from or traveling in an aircraft, except as a fare paying passenger on licensed airlines, are other reasons for rejecting a claim. Also, any accident or occupational disease resulting from any contravention of a regulation results in rejection of claim<sup>196</sup>.

#### **4.2.4 Conditions**

Invariably, in all W.C policies there are terms listed as conditions none abiding of which could result in forfeiture of insurance coverage. The conditions contain provisions requiring the insured to take reasonable precautions to prevent injuries and to comply with all statutory obligations<sup>197</sup>. They also require the policyholder to give timely notice and particulars of the occurrence and timely written notice of any claim made or suit brought against it<sup>198</sup>. The medical adviser appointed by the insurer should also be allowed to make an examination of the worker or, in the event of death, to make a post-mortem examination of the body<sup>199</sup>.

The policyholder is also strictly prohibited from entering into any agreement or settlement following a loss, or incurs any expense, without first obtaining the insurance company's consent<sup>200</sup>. It also requires the policyholder, when applying for a policy, to not willfully misrepresent or conceal material facts, commit fraud, or swear falsely. Otherwise, it is stated the violation of any of these may render a contract of insurance voidable<sup>201</sup>. If the injured engages in a more hazardous occupation than that stated in the insurance no benefit shall be payable<sup>202</sup>. In cases of multiple insurances, the policies emphasize that if at the time any claim arises under the policy there be any

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<sup>194</sup> Nyala Insurance S.C., Workmen's Compensation Policy (2017, unpublished), Exceptions (a), page 1.

<sup>195</sup> Id., Exceptions (b).

<sup>196</sup> Ethio Life and General Insurance S.C., Workmen's Compensation Policy (2017, unpublished), Exceptions (F), p. 1.

<sup>197</sup> Ethiopian Insurance Corporation, cited above at note 11, Conditions No. 2 and 3, page 3.

<sup>198</sup> Id., No. 4.

<sup>199</sup> Oromia Insurance S.C., Workmen's Compensation Insurance Policy (2017, unpublished), Conditions No. 4, P.2.

<sup>200</sup> Id., Conditions No.5, P. 2.

<sup>201</sup> National Insurance Co. of Ethiopia, Workmen's Compensation Policy (2017, unpublished), Conditions No. 11, p.5.

<sup>202</sup> Tsehay Insurance S.C., Workmen's Compensation Insurance Policy (2017, unpublished), Conditions No. 11, P. 2.

other insurance effected by the insured covering the same death, bodily injury or disease the corporation shall not be liable to pay or contribute more than its ratable proportion of any such claim<sup>203</sup>.

### 4.3 Group Personal Accident Insurance Policy

#### 4.3.1 The Coverage

The first page of each insurance company's GPA policies, invariably, contains the insuring agreement, i.e., in what situations the policy provides cover:

*Now this policy witnesses that subject to the terms exceptions and conditions contained herein or endorsed here on the insured shall sustain any bodily injury caused by violent accidental external and visible means which injury shall independently of any other cause be the direct and immediate cause of death, loss or disablement, then the insurer will upon receipt of satisfactory proof be subject and liable to make good and satisfy to the insured or in the event of death of the insured to the insured's executors or administrators such one of the capital sums or allowances as set out in the schedule of benefits<sup>204</sup>.*

This is a policy which compensates the insured in accordance with the schedule of benefits specified in the policy. The Coverage pertains to death or bodily injury or death caused by accident. Even though GPA insurance is only paid out following an accident, we find that definition of the word "accident" is not used in the policy documents. Instead, the policies state that the insured must suffer death or bodily injury as "the direct result of an accidental, external, violent and visible cause". Accordingly, if any other cause other than the accident which has caused that bodily injury contributes to the result, the insured event has not occurred.

#### 4.3.2 Limits of benefits payable

In general, the main benefits payable in the GPA policies are the following:

**Accidental Death-** In case an insured meets with an accident that results in his death, the insured's executors or administrators or legal representatives are paid the capital sum insured as the

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<sup>203</sup> Global Insurance S.C., Workmen's Compensation Policy (2017, Unpublished), Conditions No. 11,P.2.

<sup>204</sup> Ethiopian Insurance Corporation, cited above at note 12, P. 1.

accidental death benefit as per the attached list, if the death occurring within twelve calendar months from the date of the accident<sup>205</sup>.

**Permanent Disablement:** - In the event where an insured meets an accident that results in a permanent disability, the insurer will pay the sum assured or the percentage of the stated amount as detailed in the schedule stating benefits in the insurance policy<sup>206</sup>.

**Temporary Total or Partial Disablement-** The policies provide benefits to the insured in cases of a temporary disablement in consequence of which the insured is incapacitated from attending any business or until the permanent disablement is determined by medical board<sup>207</sup>.

### 4.3.3 Exceptions/Exclusions

All GPA insurance policies hold exclusion part which specifies the kind of perils the insurer shall not be liable for. The policies do not cover death or disablement consequent upon, driving in any kind of race, driving or riding motor cycles, any sporting activities or part-time activities involving exceptional risk of accident<sup>208</sup>. In addition, the insured being in or upon or entering into or alighting or falling from aircraft other than any fully licensed aircraft and airline operating in scheduled air routes<sup>209</sup>.

Furthermore, any accident resulting from intentional self-injury, or whilst the insured is in a state of insanity or is under the influence of intoxicants or drugs or from the insured's own criminal acts or is engaged in mountaineering or the insured committing breach of law are not covered<sup>210</sup>. The policies contain exclusions for various categories of declared or undeclared war, rebellion, revolution, riots and civil commotions, naval, military or air force service or operations<sup>211</sup>. They exclude claims for death or bodily injury resulting from any pre-existing physical defect or infirmity and childbirth or pregnancy<sup>212</sup>. Any accident directly or indirectly caused by or arising from ionizing radiations or contaminations by radioactivity form, any nuclear fuel form, any

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<sup>205</sup> Nyala Insurance S.C., Personal Accident Policy (2017, Unpublished), P.2.

<sup>206</sup> Nib Insurance S.C., Personal Accident Policy (2017, Unpublished), P.4.

<sup>207</sup> Berhan Insurance S.C, Personal Accident Insurance Policy (2017, Unpublished), P.4.

<sup>208</sup> Bunna Insurance S.C, Group Personal Accident Policy (2017, Unpublished), Exceptions (c), P.1.

<sup>209</sup> Id., Exceptions (d), P.1.

<sup>210</sup> Id., Exceptions(e),P.1

<sup>211</sup> Lion Insurance S.C, Personal Accident Policy (2017, Unpublished), Exceptions (a), P.1.

<sup>212</sup> Id., Exceptions (f), P.1.

nuclear waste from the combustions of nuclear fuel<sup>213</sup>.

#### 4.3.4 Conditions

Invariably, in all GPA insurance policies, it is stated that the due observance of the conditions shall be a condition precedent to any liability of the insurer to make payment under the Policy. The insured is not allowed, at any time subsequent to the date of accepting the policy, to be insured against death or disablement with any other insurer without the written consent of the corporation<sup>214</sup>. In addition, he shall not be engaged in any occupation in which greater risk may be incurred without giving notice to the insurer and obtaining permission and paying such reasonable additional premiums as may be required by the corporation<sup>215</sup>. Similarly, withholding or misrepresenting of any fact or if the insured becomes of intemperate habits or make any false statements in support of a claim results in the Policy to be void<sup>216</sup>.

There is also a condition which requires notification of occurrence of any accident promptly to the insurer and to place himself under the care of a duly qualified medical practitioner<sup>217</sup>. The condition part of the policy also makes the insurer free from any liability to pay compensation to the insured or his representatives unless the medical adviser or advisers appointed by the Company/Corporation for the purpose shall be allowed so often as may be deemed necessary to make an examination of the insured or in the event of death, the said medical adviser or advisers shall be permitted to make a post-mortem examination of the body<sup>218</sup>.

It is also indicated in the GPA policies that the policies shall not be assigned without the prior written consent of the Company/Corporation<sup>219</sup>.

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<sup>213</sup> Lion Insurance S.C, cited above at note 211, P.1.

<sup>214</sup> The United Insurance S.C., Personal Accident Policy (2017, Unpublished), P.1.

<sup>215</sup> Ibid.

<sup>216</sup> Nib Insurance S.C., cited above at 206, Conditions No.6, P.2.

<sup>217</sup> Id., Conditions No. 7(1), P. 2.

<sup>218</sup> Ibid.

<sup>219</sup> Nile Insurance S.C, Personal Accident Insurance Policy (2017, Unpublished), Conditions No.6,P.1.

## CHAPTER FIVE

### 5 Major Problems Associated with Group Personal Accident and Workmen's Compensation Insurance Policies in Ethiopia.

As discussed above under chapter 4, employers are buying Workmen's Compensation or Group Personal Accident Insurance Policies in order to discharge their responsibilities under the Labour laws of Ethiopia. Thus, the following study has been conducted to know whether these two insurance policies fully cover liabilities of employers towards occupational injuries and ensure efficient and effective medical coverage and compensation process.

#### 5.1 Problems Associated with Group Personal Accident Insurance for Occupational Injuries

##### 5.1.1 Problems Related to the Scope of Cover

###### 5.1.1.1 Occupational Diseases

Occupational disease is one of the occupational accidents at work and employers have a legal liability to provide appropriate medical coverage and compensation<sup>220</sup>. It has also been verified that the biggest share of work-related mortality comes from work diseases<sup>221</sup>.

Group personal accident insurance policies offered by all insurance companies in Ethiopia state that the policies provide cover "If the insured sustain any bodily injury caused by violent accidental external and visible means which injury shall independent of any other cause be the direct and immediate cause of death, loss or disablement<sup>222</sup>". Thus, one question that may arise here is as to whether an injury which occurred as a result of occupational disease really fulfills these criteria.

GPA insurance contract may often become a bone of contention between employers, insurers and workers. Particularly, employers may argue they bought GPA policies to cover their legal obligation under the Proclamation, while on the other hand insurers may argue that diseases are not

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<sup>220</sup> Labour Proclamation, 2003, cited above at note 5, Art. 98(2).

<sup>221</sup> Work Place Safety and Health Institute, cited above at note 3.

<sup>222</sup> Ethiopian Insurance Corporation, cited above at note 213. See also: - Commercial Code of the Empire of Ethiopia, cited above at Note 14, Art. 711(4). It says the insurer may insure against illness, however, it does not specify whether it includes occupational disease nor does it define this.

covered even if it is of occupational nature unless there is additional insurance cover. Employers and workers who were interviewed also agreed that they were denied payment of compensation by insurers on the ground that the injury sustained or disease contracted by their workers was not covered in the insurance policy, which may give rise to disputes<sup>223</sup>. One of my interviewees stated that rejecting a claim on the ground that disease is not covered in GPA is appropriate, but he believes that making GPA insurance for employer's legal liability is erroneous and is causing disputes, as the two are different in nature<sup>224</sup>.

Even if it is presumed that the contract can cover illness, one of the criteria set in accident insurance contracts is that the accidents must occur in external and violent manner. One of the most common occupational diseases in cement factories, for example, may be respiratory infection, but this does not warrant presuming that it occurred as a result of accident<sup>225</sup>. According to the global estimates made in 2017, for example, it is verified that among the fatal work related diseases more than 70 % were due to respiratory diseases<sup>226</sup>. Moreover; another criterion which says that the effect of the accident should be visible is also dubious in respect of its relevance to the disease. Both diseases and injuries may result in physical and psychological effects and these effects may not be visible but only their effect could be otherwise understandable, for example mental or biological effect<sup>227</sup>.

In a related case, a worker of Bedele Brewery S.C sustained occupational injury in his genital organ following rupture of cable at work which resulted in sexual impotence, and the hospital determined 35% of permanent disablement<sup>228</sup>. The employer had procured GPA insurance coverage from EIC. Nevertheless, the insurer denied payment of compensation on the ground that the injury sustained by the worker does not fulfill the requirement of visible and external injury caused by an external actor as stated to in the GPA policy. The insurer contended that the stated problem may be

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<sup>223</sup> Interview with Ato Kasim Adeo, a former Worker at Mughher Cement, on July 17, 2017. He was a daily laborer of the cement factory when he contracted occupational disease of serious respiratory infection; however, the insurer, EIC, denied payments saying that the disease contracted by the worker is not covered in GPA, which led the worker to bear unbearable burden of exorbitant medical expenses. According to the worker, where the employer should have covered medical expenses while following the litigation with the insurer, he was told to wait for pending conclusion of the proceeding which forced the worker to enormous difficulties.

<sup>224</sup> Interview with Yinebeb Derseh, Manager at Hibret Insurance S.C Legal Service, on January 17, 2018.

<sup>225</sup> Mulu, cited above at note 127.

<sup>226</sup> Work Place Safety and Health Institute, cited above at note 3, P.18.

<sup>227</sup> Interview with Dr. Manuel Kassaye, a Medical Doctor at Black Lion Hospital, on Nov. 7, 2017.

<sup>228</sup> EIC Legal Service Directorate, Legal Opinion given on October 19, 2005 E.C, Letter No. LSD/T-1-125/05.

associated to a previous existing disease contracted by the worker. Due to the litigation that arose between the employer and the insurer over coverage of the insurance policy, the provision of benefit and compensation payable could not be effected to the worker. As a result he was exposed to unnecessary hassle and expenses and the case is still pending in court.

In general, the GPA insurance contracts do not clearly stipulate disease. And even if it is presumed that they include disease, it would be difficult to include these in accident insurance on the ground that the circumstances of occupational disease and accident differ in nature.

### **5.1.1.2 Occupational Accident**

As it is to be recalled, under GPA policies the precondition set stating that the accident should be caused independently of any other cause. In this respect, rejecting the claim on the pretext that the accident occurred as a result of any cause which is not directly related to accidents or that the injury or death sustained to the worker resulted from any disease or was aggravated by it is frequent<sup>229</sup>.

Policies state that “illness and disease or infections even if contracted by accident and an infection that is the direct result of an accidental cut or wound are not covered<sup>230</sup>”. It is also stated in the policies that “this policy does not cover death or any injury directly or indirectly caused by or in connection with occupations like those of Police, army, drivers, persons engaged in mining and tunneling, fireman and oil rig workers”<sup>231</sup>.

Similarly, all GPA policies in Ethiopia clearly exclude some accidents consequent upon occupations, like those of, for example, driving or riding motor cycles, woodworking by machinery and naval or air force services, as believed to involving exceptional risk to accidents<sup>232</sup>. This means insurers can turn down claims on several grounds. Even accidents can be rejected unless the criteria set forth in the contract are fulfilled. Often, workers and their families cry that due to disputes arising between workers and their families on one hand and the employer or the insurer on the other

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<sup>229</sup> Yinebeb, cited above at note 224.

<sup>230</sup> AXA Insurance, Group Personal Accident Insurance, Policy Exclusions No.2, P.4.<<http://www.aegisic.com>> accessed on February 15,2017.

<sup>231</sup> Allianz General Insurance Company ,cited above at note 101,Exclusion No. 14, P.2.

<sup>232</sup> Nile Insurance S.C, cited above at note 219, Exceptions N(c) and (d), P.1. See also, National Insurance S.C., Personal Accident Insurance Policy, Exceptions (d), P.1.

hand they have not received medical benefit or compensation in due time and as per the law and the contract<sup>233</sup>.

Related to this issue, let me analyze a court case in which the scope of the policies is described. The litigation was between Ethiopian Insurance Corporation and Technical Trading Company. An employee of the company, Mr. Michell Dimalgy, dies as a result of falling , and his insurance coverage was a GPA policy<sup>234</sup>.The insurer, EIC, however, rejected claims of the deceased’s heirs on the ground that the cause of death was not directly and solely related to accident but blood pressure disease. The court delivered judgment dismissing the request of plaintiffs, on the ground that the death of the deceased was not directly related to the accident but disease. Thus the insurer was not hold liable to pay compensation.

The plaintiff appealed to the Supreme Court and the court tried to verify the issue by summoning witnesses, as to whether or not the deceased died as a result of disease or external and visible accident. A doctor who first examined the deceased and an independent medical board, formed for this purpose, testified that the deceased died as a result of falling, and before his death, his blood pressure had soared and was in a critical condition.

Thus, after a long proceeding, the court reversed the decision of the lower court by majority vote on the ground that the hypertension resulted from falling by accident. Therefore, the court decided that even if the disease is not covered by insurance policy, the accident which caused the disease is covered by it<sup>235</sup>. The dissenting judge reasoned his point of difference that the medical board has given two folded opinions and the court is deciding the case though falling event was not established as a cause of the death. He stressed that the evidences testify that the death was caused by an internal disease, not external; thus the insurer should not be liable.

In my opinion, the case could be tested in light of the criteria set in the policies. As one writer describes, “External” is used to express anything which is external and are used to distinguish injuries covered by the policy from those due simply to such causes as disease or senility which

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<sup>233</sup> Interview with Ato Kasim Adeo,cited above at note 223.

<sup>234</sup> Ethiopian Insurance Corporation Vs. Technical Trading Co. (Fed.Sup.Ct., 1997, Civil Case No. 488/79 E.C., Addis Ababa), Federal Supreme Court case book, Volume 1, Pp.52-64.

<sup>235</sup> Ibid.

arise internally in the body of the assured<sup>236</sup>. Blood pressure is not a bodily injury caused by accident. But if the disease has been brought on by accident which has physically affected the insured it can be considered<sup>237</sup>. However, the blood pressure existed before the event and should not be treated as a new injury occurred following the falling.

Nevertheless, position of the lower court and Supreme Court is grounded on unequivocal proof of GPA policy which does not cover the disease of the deceased. Moreover, decision of the lower court on the ground of preconditions of the accident insurance contract stating that an accident should not be related to any other cause, proving that it upheld narrow interpretation of the cause of accident. Decision of the Supreme Court by majority vote is also indicative of ambiguities existing in the cover. Despite the fact that the decision was issued in favor of the worker, the case still remains dubious and it is known that the matter is repeatedly used by insurers as pretext to deny claim of damage.

In general, it appears that the scope of cover and the criteria specified as precondition in GPA insurance contract are narrower than those specified under the Labor Proclamation or the Civil Code. Thus, it would be difficult to presume that GPA covers full legal obligations of the employer.

### **5.1.2 Problems in Respect of Parties Which Have Lawful Right to Claim Compensation**

For employment injuries, no doubt that a person who is eligible to receive payment of compensation is the injured worker himself. Main disputes which may arise in relation with recipients of compensation payments have something to do when the employee died of causes related to employment. Following the death of a worker, multiple parties which claim themselves as eligible ones can claim payment. Thus, it will be necessary to review the content of GPA policies with obligations of employers under the Labour Proclamations to know that whether the legal liability of the employer is covered.

**Labour Proclamation:-** In Ethiopia, the employee's widow/widower; children of the deceased who are under the age of eighteen; and any parent of the deceased who was being supported by the

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<sup>236</sup> Merkin,R., Colinvaux's Law of Insurance (7<sup>th</sup> edition,1997),P.6.

<sup>237</sup> Id., P.378.

deceased are considered as deceased dependents<sup>238</sup>. As far as percentage of the benefit concerned, a widow or widower is entitled to fifty percent of the payment, while each surviving child who are below the age of eighteen years old receives ten percent each and ten percent each for the deceased worker's parents who were being supported by him<sup>239</sup>. Hence, the GPA cover purchasing by employers to insure employers liability shall pay these listed dependents.

**The Commercial Code:** - It states that “where the insured person dies the insurer undertakes to pay a specified sum to the beneficiary named in the policy”<sup>240</sup>. Accordingly, recipients of payment of compensation are parties who are specified as beneficiaries in the insurance contract.

Thus, since there is no binding law determining that these beneficiaries should be the worker’s descendants or ascendants or spouse, and since designating a beneficiary is a right reserved to the insured thus claimants specified under Article 110(2) of the Proclamation may be neglected. If that is the case, odds are that dependents specified under the Proclamation may not receive payment. Thus it will be difficult to presume that legal liability of the employer is covered. Rather, those the legislator wanted to protect remain unprotected.

**GPA Insurance Policies:** - The parties specified as eligible beneficiaries of payment of insurance claim in GPA policies are different from what is specified under the Proclamation and the Commercial Code. In GPA policies it is stated that in the event of death of the insured the insurance claim shall be paid to “....insured executors or administrators...”<sup>241</sup> or to “... the insured’s legal representatives”<sup>242</sup>. In this respect, beneficiaries of payment of insurance claims specified under Article 711 of Commercial Code are not clearly specified in GPA contracts. Instead, in “condition” section of all GPA policies, it is stated “this policy shall not be assigned without prior written consent of the insurer”<sup>243</sup>. Thus when insurance contract is executed, there is no way to assign the policy to another beneficiary without the insurers discretion. The legality of such representation in Ethiopia is also questionable.

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<sup>238</sup> Labour Proclamation, 2003, cited above at note 5, Art. 110(2). Also see Art. 2558 of the Civil Code.

<sup>239</sup> *Id.*, Art. 110(3) and (4).

<sup>240</sup> Commercial Code of the Empire of Ethiopia, 1960, cited above at note 13, Art. 711(1). GPA insurance is governed by the provisions of Section 3 of the Commercial Code, which deals about “Insurance against Accident and Illness”.

<sup>241</sup> This is stipulated in page 1 of the following insurance companies GPA policies; Ethiopian Insurance Corporation, Global, Tsehay, Lion, the United, Ethio Life, Berhan, Nyala, Oromia and Nib Insurance companies .

<sup>242</sup> This is stipulated in page 1 of the GPA policies of Abay, Nile, NICE, Buna and Africa Insurance companies.

<sup>243</sup> This is invariably stated in all insurance companies GPA policies as a condition.

## **Insured's Executors or Administrators or Legal Representatives**

Parties which are specified as eligible beneficiaries of payment in GPA policies are insured's executors or administrators or legal representatives. Whether disbursement of payment to them enables the employer to discharge its legal obligations is a question that needs to be addressed. Where these beneficiaries have not been clearly defined in GPA policies, Labor Proclamation or in the Commercial Code, it would be essential to look at definitions in other documents.

Black's Law Dictionary defines "Executor" as a person who takes on the responsibility to act as an executor or administrator of a deceased's property<sup>244</sup>. Similarly, "Administrator" is defined as a person appointed to manage the assets and liabilities of the deceased estate, which involves realizing the assets and paying out them as debts and other claims against the estate<sup>245</sup>. The term "Legal Representative" is defined as a person who manages the affairs of another because of death, such as the executor and administrator of an estate<sup>246</sup>. From the definitions, it could be noted that the main roles of these organs is in respect of matters associated to inheritance of the deceased.

Furthermore, these persons are also referred to as "Liquidators" under the Civil Code of Ethiopia, who are designated by the law or, by will or by court to liquidate the succession<sup>247</sup>. A liquidator who is appointed in one of this ways has also a responsibility of administrating the estate of the deceased from the day when he is appointed until the persons having right to the succession have received their shares of the property to which they are entitled<sup>248</sup>.

The liquidation of succession consists of the determination of the persons who are called to take the property in the inheritance: the determination of what it is made up; the recovery and the payment of the debts due by the succession which are exigible and the payment of the legacies by singular title<sup>249</sup>. The liquidator shall also make a search to find out whether the deceased has left a will, and establish who is to receive the property of the succession<sup>250</sup>. Thus, one can conclude that, the parties designated as beneficiaries in GPA policies are those who are appointed to carry out activities related to inheritance and insurance claim payable on death of the insured is related to be an integral

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<sup>244</sup> Garner, A Bryan, Black's Law Dictionary, (ninth edition), 2004, P. 851.

<sup>245</sup> Id., P.52.

<sup>246</sup> The Civil Code of Ethiopia, cited above at note 6, Art. 1416.

<sup>247</sup> Id., Arts. 946-951.

<sup>248</sup> Id., Arts. 956(b) and 1103.

<sup>249</sup> Id., Art. 944.

<sup>250</sup> Id., Art. 956.

part of payment of inheritance. Hence, I believe that the matter may lead to the following consequences.

It is stipulated that indemnities payable to the relatives or to the spouse of the deceased as a consequence of his death shall not form part of the inheritance<sup>251</sup>. Payments arising out of the GPA insurance are payable to liquidators over property of the deceased specified in the policy shall form an integral part of inheritance. Thus, the insurance policy may be called into question as it contradicts with this provision of the Civil Code. As one of my interviewee contends, this process will make payment of indemnity an integral part of inheritance and makes brothers and sisters of the deceased part of beneficiaries of payment; thus; the matter seems inconsistent with eligible beneficiaries of payment as specified in Article 110 of the L.P or the Civil Code<sup>252</sup>.

Moreover, as prompt and efficient payment of compensation to dependents is stipulated in the labour laws, it would be appropriate to examine whether any payment which is payable in this process is intended to accomplish this goal. As stipulated in Article 942 of the Civil Code, so long as a succession has not been liquidated, it shall constitute distinct estate. Thus, it would mean that payment payable to dependents will be withheld pending completion of succession liquidation. Therefore, as the process involves several steps, the process would take considerable time.

Notwithstanding this, it is stipulated that even after completion of liquidation, outstanding debts of succession shall be paid in the following order: in the first place, the expenses of the funeral of the deceased; in the second place, the expenses of the administration and of the liquidation of the succession; in the third place, the debts of the deceased; in the fourth place, the debts regarding maintenance; in the fifth place, the legacies by singular title ordered by the deceased<sup>253</sup>. Which means it will be mandatory to effect payment of indemnity following death of person occasioned by occupational nature in the last order. This is inconsistent with the preference attached to payment of benefits of occupational injuries and contrary to the provision which prohibits making compensations subject to attachment, assignment, deduction or setoff<sup>254</sup>. Moreover, under such

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<sup>251</sup> The Civil Code of Ethiopia, cited above at note 6, Art. 828.

<sup>252</sup> Interview with Alemayehu Birbirsa, Manager at Abay Insurance S.C Legal Service Department, on August 21, 2017.

<sup>253</sup> Civil Code of Ethiopia, cited above at note 6, Art. 1014.

<sup>254</sup> Labour Proclamation, 2003, cited above at note 5, Art. 112(2).

circumstances, dependents of the deceased worker will be compelled to expect completion of all this process. This is contrary to the provisions which entail timely and effective compensation.

### **Legal Opinions and Court Decisions**

While the provisions of the law and insurance policies are as referred to above, considerable variations have been observed in respect of practical implementation. When looking at the practice of various insurance institutions, I have noted that payment of indemnity under GPA policy by virtue of obligation of the employer still remains a source of dispute. It was noted that in an insurance institution, let alone different insurance institutions, the process and mode of payment of indemnity differs from one branch of a single insurance company to another. In this respect, I have attempted to assess legal opinions and court cases on the process of payment of indemnity and governing laws in relation to GPA policies in sampled cases of Ethiopian Insurance Corporation, Abay Insurance and United Insurance S.Cs.

Most of claim department staff I met in EIC stated that notwithstanding that succession liquidators and administrators are mentioned under GPA insurance contract, in practice they are executing payment for the most part in accordance with the Labour Proclamation, as per the legal opinion issued for implementation of Labor Proclamation<sup>255</sup>. They are of the opinion that the employer's intention behind the purchase of insurance is the main reason to resort to the Labour Proclamation.

It will be necessary to look at a related case here. An employee of Ethiopian Insurance Corporation, Mr. Zewdu Adal was insured by GPA insurance by the employer, and he enters names of his brothers and sisters as beneficiaries and handed it to his employer and the insurer<sup>256</sup>. Although he bore children afterwards, he did not enter these descendants as beneficiaries. Years later, Mr. Zewdu dies of accident. Then, the beneficiaries lodged request to the employer and insurer to receive payment of insurance, stating that despite the fact that they are exclusive beneficiaries of claim under the insurance policy, citing that they have agreed to allow descendants of the deceased to receive half of the amount of insurance claim payable.

However, having received a legal opinion, the employer upheld position that despite the fact that the insurance policy is one of accident, the insurance policy was bought for the purpose of

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<sup>255</sup> Interview with Ato Neway Getahun, Claim Department team Leader in E.I.C, on March 25, 2018.

<sup>256</sup> Ethiopian Insurance Corporation, Legal Service Directorate Legal Opinion No. LSD/T-1- 06, October 28, 2006 E.C.

obligation of the employer to the worker. Thus, annulling the request stating that the specified beneficiaries would have no right on the insurance payment. However, designated beneficiaries protested that they should not be denied lawful right to receive payment as GPA insurance is governed by provisions of the Commercial Code, and the dispute has continued thus far.

In my opinion, rights of designated beneficiaries of insurance policy have been fragmented just because the employer bought GPA insurance policy to cover obligations of the employer to workers. Where there is still better chance to determine beneficiaries by workers particularly in insurance institutions, prohibiting payment just after long silence on the part of the employer is likely to continue entailing similar dispute in the future.

Some insurers pay to siblings of the deceased in so far as adequate evidence of inheritance right is produced. In relation to this, I have looked at legal opinion given by United Insurance Company. Legal opinion is requested on whether payment of insurance can be executed to siblings who were also dependents of the deceased person, who died of occupational injuries<sup>257</sup>. In the legal opinion, the Legal Service Department stated that since the GPA contract is governed by the Commercial Code the claim shall be paid to a beneficiary<sup>258</sup>. However, there was no beneficiary named in the policy and, no solution also stipulated in Commercial Code; thus it will be mandatory to look at the provisions of succession law, it stated. In explanations submitted, it upheld position that notwithstanding that Article 828 prohibits making insurance payment part of inheritance, the request for claim lodged by siblings of the deceased in respect of portion of their mother is partly acceptable. It also stated that if siblings of the deceased produce evidence ratified by court certifying that their father had died, the requested sum of indemnity also needs be paid to them.

In my opinion, the insurer's approach to settlement of the dispute begs several questions. The insurance company position claiming that GPA policy should be exclusively governed by the Commercial Code seems to be correct. But it will result paying to beneficiaries and it will leave employers' liabilities uncovered. In the legal opinion itself, while claiming that the requested indemnity cannot form part of inheritance, it took position stating that the case should be governed by provisions of inheritance laws.

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<sup>257</sup> A Legal Opinion forwarded by Hibret Insurance Company Legal Service Directorate to Claim Department, August 9, 2017, Legal Advice on Claim No. GU/12/3012/2016/00123.

<sup>258</sup> Ibid.

In this respect, I also examined a court case. A GPA insurance was bought by *Wonji* Sugar Factory, and the insured was an employee named Dr. Aschalew, and a litigation was instituted following death of the insured as a result of car accident<sup>259</sup>. The deceased's widow, Mrs. Emebet Berhane had begotten a child for the deceased in his life time, so has Mrs. Bisrat, another claimant to payment of indemnity claiming to be former spouse of the deceased. Mrs. Emebet litigated she is entitled to receive half of sums of insurance indemnity by virtue of being spouse to the deceased. On the other hand, Mrs. Bisrat argued that sums of insurance indemnity should not be paid to wife as it is not associated to life insurance. Shoa Regional High court passed judgment determining that sums of GPA insurance payable shall be paid to the deceased's minor children.

Subsequently, Mrs. Emebet appealed to the Federal Supreme Court; however, the Supreme Court passed a judgment scraping out the appeal, determining that the sum of indemnity shall be paid only to minors<sup>260</sup>. The Supreme Court in its reasoning pointed out that in so far as GPA insurance was purchased by *Wonji* Sugar Factory and was not paid deducting on monthly wages or asset of the deceased worker or from the common income of the spouses; and on the ground that the policy was GPA, benefit, insurance and not life insurance or legal liability policy, the case should be governed by the provisions of Article 711 of Commercial Code. Hence, sums of indemnity payable should be paid first to named beneficiary. On the ground that no other beneficiary named in the policy, the sum of indemnity payable should be paid to successors of the deceased and a wife has no succession right over deceased husband. Therefore, the Supreme Court issued judgment determining that only descendants shall be lawful successors over the deceased<sup>261</sup>.

In my opinion, this judgment is a case in point where court of law issued decision determining on the ground that irrespective of the purpose behind the purchase of the cover any GPA insurance policy should be governed by the Commercial Code so that indemnity payable should be paid first to beneficiary. Notwithstanding that wife is entitled to receive half of sums of indemnity payable under Article 110 of Labor Proclamation, the court, however, determined that the wife is not entitled to receive payment at all. Under the circumstances, wife referred to may lodge claim against the employer thereby exercising her lawful right under Labor Proclamation or the Civil

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<sup>259</sup> *W/ro Emebet Bihae Vs. W/ro Bisrat Tadesse* (Fed.Sup.Ct., 1990, Civil Case No. 195/79., Addis Ababa) Federal Supreme Court case book, Volume 1, Pp.62-70.

<sup>260</sup> *Ibid.*

<sup>261</sup> *Ibid.*

Code. So, it could not be presumed that the employer's liability has been appropriately covered because the employer may face further costs by another claim which may be lodged.

Thus, notwithstanding that sums of indemnity payable under GPA insurance policy, which has been insured for the purpose of legal liability of the employer, should be paid to lawful dependents specified under the Proclamations, however, this is not happening in practice. But it is causing unnecessary disputes.

### **5.1.3 Problems Related to the Prerequisites to receive payment**

As stipulated above, persons who shall be considered dependents have additional conditions attached to them in order to benefit. Thus, the law requires that ascendants or parents shall produce evidence proving that they are dependents and for children to prove that they are less than 18 years of age<sup>262</sup>. Thus, it is expected that any insurance policy bought for the purpose of legal liability of the employer be governed in a similar manner.

On the other hand, under relevant provisions of the Commercial Code and GPA policies, there is no such a criterion which requires the beneficiaries to show that they were being supported by the deceased<sup>263</sup>. As elaborated in chapter four, international perception views insurance against accident as benefit and not legal liability<sup>264</sup>. On the basis of this, it is observed that while some insurance companies pay indemnity to beneficiaries without any precondition, others require beneficiaries of insurance indemnity to produce evidence proving that they were being supported by the deceased person<sup>265</sup>. This procedure is contrary to the law but also cause of repeated grievance on the part of insured persons<sup>266</sup>. If insurance against accident should provide benefit in nature, it will not be appropriate to put preconditions and to apply for the purpose of legal liability, contends one

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<sup>262</sup> Labour Proclamation, 2003, cited above at note 5, Article 110.see also decision of Federal Supreme Court, cited above at note 162.It requires the spouse of a deceased to produce evidences proving that he is a dependent.

<sup>263</sup> Commercial Code of the Empire of Ethiopia, 1960, cited above at Note 13, Art. 711.

<sup>264</sup> Group Accident Insurance Policy, cited above at note 92.

<sup>265</sup> Neway , cited above at note 255.

<sup>266</sup> In EIC, for example, some districts and branches pay sums of indemnity to beneficiaries without any precondition whatsoever . However, in most of functional units, beneficiaries are being told that no sums of indemnity shall be paid to children over 18 years of age, and even other beneficiaries claiming payment of indemnity are required to produce evidence certifying that they were being supported by the deceased, which is consistent with the Provisions of Labor Proclamation but contrary to the Commercial Code and GPA policy stipulations.

interviewee<sup>267</sup>. In insurance companies, it is observed that payment of sums of indemnity of accident insurance is made to beneficiaries without any limitation of 18 years of age<sup>268</sup>.

I have looked at legal opinion submitted by Legal Experts of Abay Insurance Company. The opinion was requested on what the process of payment should look like in relation to a deceased employee that fell from a building while on job<sup>269</sup>. In the legal opinion, Legal Service experts stated that the insurance coverage offered was one of GPA and should be interpreted according to the provisions of the Commercial Code. However, it was underlined that as the employment relation between the employer and workers should be governed by Labor Proclamation; thus order was issued to effect payment in accordance with relevant provisions of Labor Proclamation. In addition, it was stated that despite the fact the insurer is not obligated to make payment to dependents over 18 years of age, however, under inheritance law, there is no age limit and upheld the position to make payment to a dependent over 18 years of age<sup>270</sup>.

In my opinion, obligations of the employer are specified under the law and it is only mandatory to pay indemnity to descendants under 18 years of age. If it is presumed that payment is made to descendants over 18 years of age as well, it means that insurers should bear additional burden which is not obligation of the employer. Moreover, where under Article 110(4) of the Proclamation, for example, it is stipulated that if the total of dependents compensation is less than one hundred percent of the total amounts to be divided, the amounts of compensation of each dependent shall be proportionately increased by the amount payable to one hundred percent. Hence, portions of payment of indemnity should be made to descendants who are under 18 years and if the insurer made payment to those who reached 18 years of age, it is dubious to note that the parties under Article 110 of the Labour Proclamation have further claim against the employer.

In this respect, it is also ambiguous to try to make use of the provisions of Labor Proclamation while also using no-age-limits specified under inheritance law. Notwithstanding that the position of

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<sup>267</sup> Yinebeb , cited above at note 224.

<sup>268</sup> ibid. In United Insurance Company, for example, indemnity payable is being paid to beneficiaries without age limitation on the ground that accident insurance should governed by the provisions of Commercial Code.

<sup>269</sup> Abay Insurance S.C, Legal opinion by the Legal Service on June 30, 2007E.C, on Claim No. BLAB/WMC/0001/0515.

<sup>270</sup> ibid.

the insurer enabled to settle the dispute by the time, it did not take into account the fact that GPA insurance may be bought to benefit the insured as well.

Thus, discrepancies are observed between Labor Proclamation and GPA policies in respect of preconditions of payment of indemnity.

#### **5.1.4 Problems Related to the Law**

##### **5.1.4.1 Dissimilarity in Governing Laws**

While employment relations, particularly liabilities of the employer in respect of occupational accidents, are governed by Labor Proclamation No 377/2003, Civil Code of Ethiopian and other labour laws, GPA policies are governed by the Commercial Code. Thus, apparently, both are operating in different legal frameworks.

People believe the two laws have their own distinct features and objectives and the provisions are designed to implement their objectives, thus these may cause discrepancies in the process of implementations<sup>271</sup>. The approach of the insurer which is characterized by mixing up the provisions of Labor Proclamation with Commercial Code calls into question the predictability and equity of the process. The ambiguity seems to have been created by applying insurance coverage for the purpose of obligations of the employer and, attempting to link two coverage of different nature, argues, Mr. Balew Yeshanew<sup>272</sup>.

Where employer's liability and GPA insurance are governed by different laws, which provision prevails in respect of GPA insurance coverage which forms part of employer's liability? is what is creating gap in the process of implementation<sup>273</sup>. As regards period of limitation, for example, Labor Proclamation contains provisions stating that the maximum period of limitation is one year<sup>274</sup>. On the other hand under Commercial Code which governs GPA insurance, it is stated that period of limitation is two years<sup>275</sup>. The controversy also lies in determining the prevailing provision in respect of the governing law towards recipients of payments, between labour laws and Commercial Code. Courts often held positions that GPA insurance contracts should only be interpreted in light

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<sup>271</sup> Interview with Ato Balew Yeshanew, a technical advisor in E.I.C, on February 23, 2018.

<sup>272</sup> *Ibid.*

<sup>273</sup> Alemayehu, cited above at note 252.

<sup>274</sup> Labour Proclamation, 2003, cited above at note 5, Article 162.

<sup>275</sup> Commercial Code of the Empire of Ethiopia, 1960, cited above at note 13, Art. 674.

of the Commercial code, irrespective of the motive behind<sup>276</sup>. This shows that there is also a problem that has been caused by the existence of different legal frameworks.

#### **5.1.4.2 Problems in the Law Governing Accident Insurance**

It is stipulated in Article 711(1) of the Commercial Code that sums of insurance indemnity shall be paid to “the beneficiary named in the policy”. It is true that the insurance policy might not always mention the beneficiary or the beneficiary might have been revoked or has died. In the absence of a beneficiary designated or named in the policy, the remedy or the one to receive sums payable has not been clearly specified in the Code. There is also no provision which guides the beneficiaries in enforcing their rights or whether the sums to be paid form part of the deceased’s estate or not. The manner of accepting or rejecting the nomination as a beneficiary is not also clear.

Art. 712 merely prohibit applying section two, provisions dealing with life insurance, to insurance against accidents or illness. The law seems to have intentionally made a distinction between life insurance and insurance against accident and illness. As a result, it is not allowed to use life insurance provisions, for example, article 705, which provide solutions in situations where no beneficiary has been specified or he has been revoked or is not alive.

Hence, it is contested that this has created a number of loopholes in terms of interpretation. Some contend that it allows paying sums of indemnity of such insurance policy to beneficiaries referred to in the labour laws or to form part of inheritance<sup>277</sup>. However, where use of these options is clearly prohibited under Article 712, determining payment of sums to successors is not justifiable, others contend<sup>278</sup>. If the policy holder failed to specify a beneficiary, the question of where would the insurance payment go is not clearly answered. As one of my interviewee witnesses, insurers are using these loopholes to deny payment of insurance claims<sup>279</sup>.

In addition, the law does not define accident, other than stating that accident includes any bodily injury arising out of unexpected extraneous occurrences<sup>280</sup>. It is stated that the insurer may insure against illness. However, it did not specify disease, or whether or not occupational disease is

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<sup>276</sup> W/ro Emebet Bihae Vs. W/ro Bisrat Tadesse, cited above at note 259.

<sup>277</sup> Interview with Ato Habtamu Siraj, Legal Supervisor at United Insurance Company, On January 10, 2018.

<sup>278</sup> Interview with Ato Haileab Yihdego, an attorney at Lion Insurance S.C, on December 25, 2017.

<sup>279</sup> *Ibid.*

<sup>280</sup> Commercial Code of the Empire of Ethiopia, 1960, cited above at Note 13, Art. 711(4).

covered, either. Even diseases may not qualify for the preconditions set in respect of accident, making it difficult to apply. Thus, it appears that the provisions of the Commercial Code are not adequate to govern matters related to accident insurance.

## **5.2 Problems Associated With Workmen's Compensation Insurance Policies.**

The other insurance policy employers buy to cover their legal liability for occupational injuries is Workers' Compensation Insurance policy, which is elaborated in chapter four above. In this section, we are examining limitations of W.C insurance policies offered by Ethiopian insurers<sup>281</sup>.

### **5.2.1 Problems Related to Coverage**

#### **5.2.1.1 Death**

According to Article 110(2) of the Labour proclamation, the deceased dependents are entitled five years' wages of the employee. Workmen's compensation insurance policies state that in the event of death of a worker, occurred within 12 months starting from the date of occurrence of occupational injuries, the insurer shall pay compensation of a sum of 5 years' wages of the deceased worker<sup>282</sup>. However, as regards the extent of liability, in most cases, the minimum amount of compensation 10,000 birr and the maximum amount, 150,000 birr is specified<sup>283</sup>.

To begin with, some people argue that the provision that referred to death to occur in 12 months after the injury appears to be restrictive in nature presuming that the effect of accident or disease can be brought after 12 months, thus causing problem in the process of implementation<sup>284</sup>. Insurers are denying payment of indemnity claiming that the death has occurred after 12 months<sup>285</sup>. However, the law allows the benefits to be payable even after 12 months if it is proved that the injury was the principal cause of death<sup>286</sup>. Nonetheless, in my opinion, the W.C provisions in this respect are not consistent with the Proclamation.

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<sup>281</sup> Here, it should be noted that contents of W.C policies are similar. Hence, all policies share similar limitations.

<sup>282</sup> Ethiopian Insurance Corporation, cited above at note 11, Scale of Benefits payable, No.1, P.1.

<sup>283</sup> *Ibid.*

<sup>284</sup> Interview with w/ro Yodit Amare, from Confederation of Ethiopian Labour Unions, on January 15, 2018.

<sup>285</sup> *Ibid.*

<sup>286</sup> Labour Proclamation, 2003, cited above at note 5, Art. 111.

On the other hand, the maximum and minimum amounts stated in W.C policies are not adequate to cover full compensation of an employee who sustained death or permanent total disablement whose monthly wage is over this limit of liability. Therefore, one can conclude that benefits payable by virtue of the W.C policies for deaths and disablements are far from being adequate to cover full legal liability of the employer.

### 5.2.1.2 Permanent Partial Disablement

"Permanent partial disablement" means incurable employment injury decreasing the injured worker's capacity and a sum proportionate to the degree of disablement calculated on the basis of the employee's five times his annual wages<sup>287</sup>.

Most insurers, permanent partial disablement lists specified in their tables of scale of benefit. One of my interviewees argue that scale of benefits below 100% provided for in W.C policies is set just on the basis of the type of physical injury sustained by the worker without taking into consideration whether or not the said injury rendered the worker unable to perform remunerated work<sup>288</sup>. He further contended that the trend of treating cases as partial disablements is escalating where these should have been appropriately treated as permanent total disablements<sup>289</sup>. Contrary to the W.C policies, a decision issued by the Cassation Bench shows that even if the scale of assessment of disablement of a worker is below 100%, it may be considered total permanent disablement, provided that the disablement renders the worker unable to perform any remunerated work<sup>290</sup>.

One of the issues which are repeatedly raised on the part of insurers is that despite the Labor Proclamation stating assessment of disablement to be prescribed by directives, no such directive has been issued thus far after 14 years since the promulgation of the Proclamation, which has created

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<sup>287</sup> Labour Proclamation, 2003, cited above at note 5, Art. 109(3) (a) and (b).

<sup>288</sup> Alemayehu, cited above at note 252.

<sup>289</sup> ibid.

<sup>290</sup> Mr. Dereje Wuletaw Vs. Walia Leather & Leather Products PLC (Fed.Sup.Ct., 2015, Civil Case No. 49273, Vol.9., Addis Ababa) Pp. 238-239. The court stated that <<notwithstanding the scale of the disablement of the worker in question was below 65%, under the provisions of Article 101(2) of Labor Proclamation, it was a disablement which renders the worker unable to perform any remunerated work, and as the scale of assessment of disablement was not set in comparison with general physical conditions of the injured person, the scale of disablement should be considered permanent total disablement, thus determining payment of sums of compensation equal to five years' wages>>.

problems to address this challenge<sup>291</sup>. Where it is stipulated that pending issuance of this directive, the medical board shall continue its functions as usual<sup>292</sup>, disablement assessments set by medical boards are fixed on the basis of comparison with physical conditions of the injured and not his ability to perform remunerated work. It is also stated in W.C policies that «...in case of permanent disabilities not mentioned in the scale the indemnity will be calculated in accordance with the degree of incapacity by referring to the percentage indicated without taking into account the occupation of the person insured<sup>293</sup>>>. This is causing problems but also precedence where even courts indulge in determining degree of disablement indirectly. This has caused controversies associated with consistencies in assessment of disablements of similar nature.

There are also wide risks which may arise from discrepancies between scale of disablement set by medical board and scale of benefits set in the insurance policy. For example, if disablement scale of assessment set in respect of two fingers is 12% under insurance policies, physician's assessment may be higher. Thus, problems are being created where the medical board sets general physical assessment scale of disablement, while insurers determine scale of benefits on the basis of their scale of disablement assessment lists stipulated in the insurance policy<sup>294</sup>. In between, whether the injury decreased the injured worker's capacity or not is not taken into consideration.

On the other hand, as mentioned above, the amount of indemnity payable in W.C policies is limited from the minimum amount of birr 10,000 to maximum amount of birr 150,000. Disputes arise between the parties as employers disputed that a worker cannot claim disablement compensation benefit payable over the limits of insurance coverage as stipulated under the provision of Article 109 of Labor Proclamation. In this respect, both positions of courts and interpretations of the provisions of Article 109 are misleading.

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<sup>291</sup> Labour Proclamation, 2003, cited above at note 5, Art. 102.

<sup>292</sup> *Id.*, Art. 189.

<sup>293</sup> Bunna Insurance S.C, Workmen's Compensation Policy, Scale of Permanent Disablement, P.4.

<sup>294</sup> Interview with Ato Sisay Mammo, an insurance officer in EIC, Feb. 15, 2018. For example, a worker of EIC, named Mr. Sisay Mamo receives 11% in disablement assessment issued by Medical Board of Menelik II Hospital for phalange injury. However, he was told by the employer/insurer that, on the ground that the amount of disablement benefit payable is calculated on the basis of Disablement Assessment Scale of 45% set for phalange decapitation in the table but not in respect of the entire physical injury, he would receive a calculated sum of 11% of 45%, which is 4.95%. But the worker declined the offer as inadequate unless the scale of benefit is calculated on the basis of disablement assessment scale of the medical board. The disagreement continues thus far.

In a related court case, a worker sustained 7% disablement following occupational accident and the insurer, under the insurance policy bought by the employer, paid a compensation in the sum of birr 7,500 to the injured worker. But the worker filed suit to Federal First Instance court, claiming that the sum of payment of compensation received is not adequate to cover the scale of injury sustained<sup>295</sup>. Eventually the suit was scrapped down by the Court. Then the worker appealed and the Appellate High Court annulling the decision of lower court handed judgment ruling that remaining balance sum of compensation to be paid to the worker as per the provisions of Article 109 (3) (6) of Labour Proclamation<sup>296</sup>.

However, the employer took the case to Federal Supreme Court. The Cassation Bench established that the relevant provision of the law applicable to the litigation is the provision of Article 109 (1) and not Article 109 (3) of Labor Proclamation .And that under this provision, compensation payable to a worker under insurance policy bought by employer will be governed by the insurance policy alone. Thus, cassation bench handed judgment determining that compensation sums over what is specified in the insurance policy shall not be paid to the worker<sup>297</sup>.

When looking at the decision, in my opinion, where the worker could have been more benefited from the existence of the insurance, in effect the worker has not received appropriate payment of compensation on time. This interpretation would result in employer's liability and rights of the worker being governed not by the provisions of the Labour Laws but on the basis of the employer's capacity and will to buy insurance coverage. Where liability of an employer who buys minimum insurance coverage will be limited in proportion to insurance coverage bought, which will substantially harm the worker while also leading to extra expenses and extended proceedings.

However, in another court case, the Cassation Bench has given a decision contrary to the above one. In which case the worker working in a Garage suffered 30% permanent partial physical damage. He filed a law suit claiming that the employer failed to pay him the remaining amount after only paying Birr 36,000.00 under its insurance contract with Ethiopian Insurance Corporation<sup>298</sup>.

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<sup>295</sup> Ato W/medhin Bereda Vs. Meta Abo Brewery S.C. (Fed. First. Instance Ct., File No. 16634, 2011 )(unpublished).

<sup>296</sup> Appealant Meta Abo Brewery S.C Vs. Respondent W/medhin Bereda, (Fed. High. Ct.,File No. 99238, 2011).

<sup>297</sup> Ato W/medhin Bereda Vs. Meta Abo Brewery S.C ,(Fed. Sup. Ct.,2011, File No. 65427), Vol.11, Pp.201-203.

<sup>298</sup> Ato Mihret Alene Geremew vs. Ethiopia Tourist Enterprise (Fed. First. Instance. Ct.,File No. 82946,2013)(unpublished)

The Employer argued the compensation for physical damage has been already paid under the insurance coverage the state enterprise has with the insurer, as per Article 109(1) and there is no remaining payment. The Federal First Instance Court in its decision rejected the claim of the worker ruling that there is no ground by which the worker can claim additional payment from the employer, and the Appellate Bench of Federal High Court also validated the decision of the lower court<sup>299</sup>. The worker petitioned to the Federal Cassation bench<sup>300</sup>. The court rendered decision explaining that the employer can only be free from liability as the result of insurance if it is certified that the coverage enables the worker to receive compensation as per the calculation indicated in article 109 (3) of the Proclamation. So, the Bench annulled decisions of the lower courts and decided that the employer should take up the liability for the remaining compensation as long as it is found to have entered in to insurance lower than what is indicted in the law; thus ruling that the worker shall be paid Birr 62,280.00, of which the already paid amount of Birr 36,000.00 shall be deducted and the remaining amount shall be paid by the employer.

This decision is completely different from the decision previously given by the Cassation Bench and bears an appropriate interpretation, which has also shown difference of interpretation and inconsistency and unpredictability of courts decisions. However, since it is arguable as to whether the previous decision was annulled or continues to be operative, the confusion on the rights of workers is expected to continue.

The other point that should be raised as an obstacle for fair and effective compensation is the “Discharge Form” which most of insurance providers cause the workers or their dependents to sign at the time of payment of compensation in case of bodily injury or death. The following interjectional word is inserted in the document on which most workers receiving compensation put their signature as an acknowledgement of the payment. While the title of the contract contains headwords, saying: “*Final Compensation agreement to be valid before the Law and made with the worker Mr./Mrs. \_\_\_\_\_, who sustained physical disablement*”, and the content reads,

*“I,... am certified to have suffered \_\_\_\_\_percent permanent physical damage owing to occupational accident. So, having calculated and believed the amount of compensation payable to me in the name of the*

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<sup>299</sup> Appealant Mihret Alene Geremew Vs. Respondent Ethiopia Tourist Enterprise (Fed. High. Ct. 2013, File No. 136063)(unpublished).

<sup>300</sup> Ato Mihret Alene Geremew Vs. Ethiopia Tourist Enterprise (Fed. Sup. Ct.,2014, File No. 97512)Vol.16, Pp.80-84.

*insurer and in the name of my employer, I have agreed and received birr\_\_\_\_\_on my part, confirming under my usual signature that I have released my employer and the insurance company from any liability, and I shall no longer claim any further compensation or medical treatment for the same accident in future*<sup>301</sup>. Similarly, the contract of discharge to be made by dependents of a deceased is also prepared in a similar fashion<sup>302</sup>.

This being so, it is a common practice for workers or their dependents to file legal suit to charge any remaining payment in the event they are paid insufficient compensation. When employees institute such a suit employers also present their argument by attaching “Document of Discharge” signed by the insurers and referring to the Civil Procedure that the dispute has already been settled through agreement<sup>303</sup>. The court reviewing the case usually explains that the case is already settled through agreement and then closes the file in response to the preliminary objection raised by employers or/and insurers<sup>304</sup>. Workers contend that a worker or his dependents should be paid sufficient compensation and shall have the right to claim additional payments in case of insufficient payment by the insurer.

The employer shall be released from liability only to the extent of the amount paid on its behalf by the insurer; otherwise it would be unfair to fully release the employer from consequent liability without duly compensating the injured worker or his dependents. The document should not have any legitimacy because any contract agreements should not be approved by a court if they run contrary to the law and the moral. Such cases should be discouraged as they fragment the rights of workers from getting appropriate compensation reserved in the law. My standpoint is that the courts shall also consider the point whether the agreement allows the worker to receive the legally established amount of compensation or not.

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<sup>301</sup> A wording taken from discharge forms of insurance companies.

<sup>302</sup> *Ibid.* “I have agreed and received Birr \_\_\_\_\_ as compensation over the death accident of Mr. /Mrs. \_\_\_\_\_, after i have been informed and made to agree on the amount of compensation payable to me under Contract of Workmen Compensation Insurance Policy. Therefore, I confirm under my signature that I will no longer claim any extra payment from the insured (the Employer) regarding the same case, and having agreed to defend back any further claim from other individual or group, I have completely released the insured and the insurer from liability”. So, this contract would be verified by witnesses.

<sup>303</sup> Civil Procedure Code of the Empire of Ethiopia, Neg.Gaz., extra ordinary issue, No. 52 of 1965, Article 244(2)(g).

<sup>304</sup> Interview with Ephrem Zewdie, the Former judge and currently a lawyer, on December 23, 2017.

## CHAPTER SIX

### 6 Conclusion and Recommendations

#### 6.1 Conclusion

The numbers of occupational injuries in the world are highly increasing from time to time, and the consequent medical and compensation payments are greatly soaring. Studies have estimated that there are 270 million occupational accidents causing more than 2.7 million people's deaths annually across countries and that accounts for 5% of the global total deaths and loss of 1.25 trillion USD, 4% of world's annual GDP.

Employers' are responsible for ensuring prompt medical access to a worker injured at work or who contracted an occupational disease .The obligation also extends to provide fair and timely compensation to the worker or to his dependents, when the worker dies. If such expense is to be covered only by the employer, it causes great financial disaster against the employer and prevents the victim and his family from getting the relevant and timely treatment and compensation. So, in many countries' it is compulsory for employers to purchase workers ' compensation insurance policy and it is the more usual trend to cover such legal obligation on voluntary basis even in countries where no obligation is in existence.

In Ethiopia, when occupational injuries occur, the employer is duty bound to meet all the medical, pharmaceutical, hospital and other expenses and disablement and death compensations which the accident or the disease necessitates. While there are many job opportunities created in Ethiopia in relation with the expansion of industries, factories and constructional activities, the number of occupational accidents and diseases are highly increasing and the employers' are exposed to large amount of medical and compensation payments. While the Ethiopian Labor Proclamation, the Civil Code of Ethiopia and other labour laws clearly define employers' liability regarding occupational injuries, the choice to buy insurance for these liabilities is left to the employer without enforcing obligation.

However, the trend of buying Workmen's Compensation (W.C) and Group Personal Accident (GPA) insurance policies has become a common process on the part of employers to help them avoid negative influence on their activities in connection with medical and compensation expenses,

to keep their business from bankruptcy and closure as well as to allow their workers get an immediate medical coverage and compensation and secure the integrity and satisfaction of workers. It can already be observed from the increasing number of clients insurance companies get there has been a growth in demand for an insurance product which covers employer's liability and employees' interest.

The point that needs to be taken into consideration along with the purchase of insurance is the fact that the insurance coverage is in conformity with the legal liability set in the labor laws or collective agreements. It also required to ensure that it achieves the purpose for which the insurance is purchased and that it meets the basic goal of ensuring fair and effective compensation to an injured worker or to his dependents. Otherwise, the missing of these objective elements will lead the insurance to become ineffective, along with a lack of timely treatment and compensation, and will result in instead law suits and a sort of litigation process. Towards this, in this thesis, attempt is made to reveal the relevancy and adequacy of the insurance coverage's. To strengthen the following findings, the writer analyzed a number of court cases, legal opinions, and insurance policies and conducted several interviews. The following differences are observed while examining the insurance policies being widely purchased by employers in Ethiopia. Let's first see the findings on GPA insurance policies.

As regards to the scope of liability, the obligation imposed on the employers by labor laws is that the employer shall cover the accident and disease to be sustained by the worker. The laws considered occupational disease as one of the occupational accidents at work. It has also been verified that the biggest share of work-related mortality comes from work related diseases. Therefore, the GPA policy which shall be bought in this respect is expected to cover this legal obligation of the employer. However, GPA policies cover only accidental bodily injuries resulting solely and directly from accident caused by external and violent means. The GPA insurance contracts do not clearly specify disease and main focus is attached to accidents. As it is to be recalled, under GPA policies the precondition set stating that the accident should be caused independently of any other cause. This means, occupational diseases are not covered and even accidents can be rejected unless the criteria set forth in the contract are fulfilled. Thus, it will be difficult to presume that legal liability of the employer is covered by GPA insurance contract.

As regards payment of indemnity, one point of major difference lies in beneficiaries of payment. As per article 110 the Labour Proclamation of Ethiopia, for example, when the worker dies of occupational injuries employers are only responsible for providing compensation to the employee's widow/widower; children of the deceased who are under the age of eighteen; and any parent of the deceased who was being supported by the deceased. However, according to Article 711(1) of the commercial code, which governs GPA contracts, recipients of payment of compensation are specified beneficiaries in the insurance contract.

On the other hands, the parties specified as eligible beneficiaries of payment in GPA policies are different from what is specified under the Labour Proclamation and the Commercial Code. In GPA policies it is stated that in the event of death of the insured the insurance claim shall be paid to insured executors or administrators or legal representatives. The main role of these organs is in respect of matters associated to inheritance of the deceased. If that is the case, odds are that dependents specified under labour laws, for example under Article 110 of the Labour Proclamation, may not receive payment. Thus, disbursement of payment to the parties specified under GPA policies do not enable the employer to discharge its legal obligations and it is difficult to presume that legal liability of the employer is covered by GPA insurance contract.

On top of that, as per the GPA policies, if payments are payable to succession executors or liquidators it makes the insurance payment form an integral part of inheritance. However, as stipulated under Article 828 of the Civil Code, indemnities payable to the relatives or to the spouse of the deceased as a consequence of his death shall not form part of the inheritance. Thus, such kind of mode of payment makes payment of indemnity an integral part of inheritance and even makes brothers and sisters of the deceased part of beneficiaries of payment of indemnity. Thus, seems inconsistent with eligible beneficiaries of payment specified in the Labor Proclamation.

Moreover, the liquidation and administration of succession consists of multiple tasks and several steps. Even after completion of liquidation, outstanding debts of succession shall be paid as the order listed under the Civil Code. Which means it will be mandatory to effect payment of indemnity following death of person occasioned by occupational nature in the last order. Moreover, under such circumstances, dependants of the deceased worker will be compelled to expect completion of

all this process. The process, would take considerable time and prompt and efficient payment of compensation to dependents is in jeopardy.

Considerable variations have been observed in respect of practical implementation. When looking at execution of payment on the part of insurers some are executing payments to succession liquidators, some to descendants of the deceased exclusively presuming that spouse has no inheritance right of the deceased spouses and others pay to siblings of the deceased in so far as adequate evidence of inheritance right is produced. Notwithstanding that sums of indemnity payable under GPA insurance policy, which has been insured for the purpose of legal liability of the employer, should be paid to lawful dependents specified under the Proclamations, however, this is not happening in practice. But it is causing unnecessary disputes.

In relation to the applicable law, the insurance companies held different positions on whether the applicable law should be that of labour laws while others contending that GPA insurance shall be governed by the Commercial Code, in determining the applicable law and recipients of payment of compensation. In this respect, the Supreme Court once issued judgment determining that GPA insurance, irrespective of the purpose, should be governed by Commercial Code. Notwithstanding that wife is entitled to receive half of sums of indemnity payable under Article 110 of Labor Proclamation, the court, however, determined that wife is not entitled to receive payment at all. Under the circumstances, wife referred to may lodge claim against the employer thereby exercising her lawful right under Labor Proclamation. So, it could not be presumed that the employer's liability has been appropriately covered because the employer may face further costs by another claim which may be lodged.

It is stipulated in Article 110/2/ of the proclamation that the parents of a deceased person are expected to prove their state of dependency and children should be under 18 years of age. However, there is no similar requirement in the Commercial Code and GPA policies. Some insurers are executing payment to the offspring of the deceased above the age of 18. Then it is clear that any minor children or other organs authorized for compensation have the right to claim about the improper execution of payment due to them, and demand additional payment from the employer.

Additionally, the liability of the employer is a legal responsibility and the cover provided for this purpose should be tuned with the manner of discharging such legal liability, and an accident

insurance is not just a liability but is classified as benefit insurance. If its terms are met, a policy will simply pay financial benefit in cases of death or bodily injury. So it is not viewed as having a structure of legal liability emanated from the labor laws, in which case the accident insurance is found to have basic difference from the legal liability of the employer.

It is stipulated in Article 711(1) of the Commercial Code that sums of insurance indemnity shall be paid to “the beneficiary named in the policy”. However, it is true that the insurance policy might not always mention the beneficiary or the beneficiary might have been revoked or may have died. The Commercial Code does not provide any way out regarding the solution when a beneficiary is not referred to in the insurance contract. There is also no provision which guides the beneficiaries in enforcing their rights or whether the sums to be paid form part of the deceased’s estate or not. The manner of accepting or rejecting the nomination as a beneficiary is not also clear. Hence, it is proven that this has created a number of loopholes in terms of interpretation and insurers are using these loopholes to deny payment of insurance claims. Thus, the provisions relating to accident insurances are far from being adequate.

To sum up, effecting GPA insurance for employer’s legal liability is, coupled with legal and practical gaps, causing disputes. Many disputes and rejection of claims are seen following granting of GPA insurance to the employer, keeping the workers or their dependents busy in court litigation and delaying their compensation payments. Where litigations arose between the employer and the insurer over coverage of the insurance policy, the provision of benefit and compensation payable cannot be effected to the workers or dependents in time that worker was exposed to unnecessary hassle and expenses. Thus, as the policies somehow appear to be different in nature from obligations of employer, it would be difficult to presume that it covers full legal obligations of the employer.

The other insurance policy employers buy is Workers’ Compensation Insurance Policy, which covers occupational accident and diseases. No significant problem is observed in most insurance contracts in terms of determining liability because an explanation is made as to the determination on the basis of the Ethiopian labour laws governing occupational injuries.

The problems are related with the scope of covers. As far as death compensation is concerned, W.C policies stated that they are not obligated to pay indemnity on death which occurred after 12

months. However, the benefits referred in labour laws can be payable even after 12 months it is proved that the injury was the principal contributory cause of death. This is inconsistent with the law and obligation of employers. In addition, it is stated in W.C insurance policies that the amount of indemnity payable to death and disablement is limited from the minimum amount of birr 10,000 to maximum amount of birr 150,000., which is not adequate to cover full compensation of an employee whose monthly wage is over this limit of liability.

In addition, in connection with the distortion for interpretation of the Labor Proclamation, Article 109 is considered as a problem. Disputes arise between the parties as employers disputed that a worker cannot claim a sum of disablement compensation benefit payable over the limits of insurance coverage of their legal liability stipulated under the provision of Article 109 of Labor Proclamation. In this respect, both positions of courts and interpretations of the provisions of Article 109 are contradicting. Some decisions allow the worker to claim the remaining amount whenever the payment of compensation received from the insurer is not adequate. Whereas some courts handed judgment claiming that compensation payable to a worker is governed by insurance policy bought by employer so that the compensation payable should not exceed the limit in the insurance policy. In my opinion, the latter interpretation observed in Article 109 would result in rights of the worker being governed not by the provisions of the law but on the basis of the employer's capacity to buy insurance coverage, which is erroneous. This will also substantially harm the worker while also leading to extra expenses and extended proceedings.

The "Discharge Form" which many insurance providers cause the workers or their dependents to sign on during payment of compensation in case of bodily injury or death accident. This document signifies that the case is already settled though agreement and released the employer and the insurer so that no further claim will be raised in the future. I am of the opinion that a worker or his dependents should be paid sufficient compensation and shall have the right to claim further payment in case of insufficient by the insurance provider. The employer shall be released from liability only to the extent of liability paid on its behalf by the insurer. Otherwise it would be unfair to fully release the employer from consequent liability. This greatly affects the right of the worker and deprives him/her of an appropriate compensation.

Scale of benefits below 100% provided for in WC policies is set just on the basis of the type of physical injury sustained by the worker without taking into consideration whether or not the said injury rendered the worker unable to perform remunerated work . This is far from consistent with the provisions of the labour proclamation but also far from adequate to cover legal liabilities of the employer. Article 102 of Labor Proclamation stating assessment of disablement shall be prescribed by directives issued by the Minister. However, no such directive has been issued thus far, which has created problem to address this challenge. This has caused controversies associated to consistencies in assessment of disablements of similar nature. In practice, the trend of treating cases as partial disablements is escalating where these should have been appropriately treated as permanent total disablements.

Hence, it is possible to say that the insurance covers available in the market are insufficient in view of covering the employer's liability in full, for which reason it has problems in making available efficient and sufficient medical access and compensation to the worker.

## **6.2 Recommendations**

As pointed out herein above, GPA and W.C are the most popular forms of insurance policies purchased by employers in Ethiopia. These policies required to be in conformity with the labour laws and should attain the objectives of granting fair, equitable and effective medical and compensation access to workers and their dependents. Having these in mind, the writer would like to recommend the following:

1. The GPA contract is governed by the provision of the Commercial Code and has its own peculiar features. There is also no particular coverage given to diseases. Even the manner of accident occurrence puts its own precondition and GPA policies do also exclude several occupations from cover. Therefore, employers wanting to have their employer liability to be covered by an insurance contract should not regard GPA policies as a means of coverage to discharge legal liability.

In spite of the fact that GPA insurance is not formulated in favor of employer's legal liability, it is not a point of argument that it has its own several benefits. It offers special benefit to the worker by covering accidents happening out of working hours. Hence, employers can make use of it as it is a

better option to provide extra benefit to their workers and cover the expenses caused by accident-related damages.

The main point is that it is mandatory for employers to know that it is problematic to consider this policy as an exclusive way of discharging their liability. In connection with this, if the GPA is to be issued thereof by including the liability of employer during an accident, then the identity of the organs to which payment shall be made under the contract should also be adjusted along with the governing law up until the revision of the Commercial Code to the extent of embracing similar circumstances. Therefore, it must stipulate that the governing law is that of the labor laws governing employer's liability for occupational injuries, and the payment shall be made under the stipulated requirement to those mentioned in these Laws. In addition, the GPA policies have to be modified to encompass diseases. This also requires the rewriting of the GPA policies to cope up with the spirit and conditions of the labour laws. Otherwise, the policyholder might have GPA coverage from one policy and disease and occupational accident coverage from another policies or insurance company. An employer may, therefore, require several forms of insurance policies if he is to obtain complete protection against a legal liability arising out of occupation. Yet its confusing nature seems to be continuing.

Therefore, what the employer needs to buy for covering its legal liability is the Workmen's Compensation Insurance Policy.

2. Even the Workmen Compensation Policy which is formulated on the basis of employer's legal liability by the labor laws, has some limitations and needs the following amendments.
  - The minimum and maximum amounts stated in the policies are very minimal and incompatible with current changes towards employee's salary and medical and compensation costs. Hence as the employers are not considered to have sufficient cover in this respect, they are urged to make improvement through negotiation with insurers.
  - In addition, some policy wordings which are inconsistent with the laws also need amendment. For instance, as the provisions of Article 111 of Labor Proclamation, allow to make payment of indemnity to dependents of the deceased where the worker dies after twelve months from the date of the injury, provided that it is proved that the occupational injury was the principal contributory

cause to his death. However, the W.C policies only promise to pay for claims occurred within 12 months after the injury. In my opinion the trend of stigmatization observed in the insurance policies and insurers need to be redressed in light of this provision.

- In relation with the documents of discharge, the obligation entered by the persons receiving compensation for the purpose of releasing the insurer and the employer is not appropriate. It needs to be adjusted in a manner that does not restrict the right of workers or their dependents to forward further claims as long as insufficient payment is made for their claims. Therefore, the discharge document must be formulated to make the employer and the insurer released from liability only to the extent of liability paid on its behalf by the insurer. Courts also must consider that injured workers and dependents should be paid sufficient compensation and shall have the right to claim further payment only in case of insufficient payment despite payment of compensation by the insurer.
3. The gap created in connection with Article 109 of the Labor Proclamation is causing a great deal of controversy among employers, workers and insurers. Further to which the courts are holding various positions on the matter. This might improperly benefits employers buying insurance coverage while greatly affecting the worker. It should be underlined, interpreted and revised in a manner that the law shall grant the worker the right to demand extra payment from the employer wherever the compensation paid by insurance provider is found insufficient.
  4. Article 102 of Labor Proclamation states that assessment of disablement shall be prescribed by directives issued by the Minister. The failure of the Ministry of Labour and Social Affairs (MOLSA) to issue standards of physical damage assessment is one of the factors for the random assessment of physical damage and has caused the trend of treating cases as partial disablements is escalating where these should have been appropriately treated as permanent total disablements. In most insurers, it is also observed that their scale of benefits specified in their insurance policies is obsolete as it has been in place ever since the date of their establishment. It is also copied particularly from Ethiopian Insurance Corporation, dating back to 30 or 40 years, which presents limitations to adapt to the current context.

So the issuance of this directive can be the basis to treat a kind of damage in the respective levels/Standards of damage classification. Therefore, the Minister should implement a “Schedule of Degrees of Incapacity” and define procedure for consistent implementation of the measurement

5. Article 170/1/ of the Labor Law Proclamation grants power to the Ministry to issue a Directive as to which sectors should be provided with an insurance. So the issuance of a Directive will help to provide enforcing coverage and maximum security for workers engaged in vulnerable sectors. So, it will serve as shield for both the employer and workers, while also protecting employers in case of loss and bankruptcy. But the Ministry has not yet issued the policy, so it needs to be issued with an immediate effect.
6. The provisions of the Commercial Code dealing with accident and illness insurance are not enough to govern the area. So, as Ethiopia is on the eve of enacting a new Commercial Code, the legislative reform should consider and provide additional provisions for accident and illness insurance. Particularly, it is necessary to provide sufficient rules to regulate the possible inadequacy of the law in the absence of beneficiaries.
7. Insurers need to understand the purpose for which insurance is provided, and they should underline the demands of the client. Towards this, it is necessary to understand the purpose for which the client needs to buy insurance, together with the need for giving proper orientation to avoid any future litigation. Insurers have to become customer focused in the insurance product they deliver. In countries like UK, who have an advanced insurance system, there is a regulation to put the insurance certificates in visible places, such as an online access and web-site to allow the insured see contractual terms in clear manner, but the workers and employers of our country have little knowledge altogether about the terms of insurance contract. Among workers who told me of the insurance contract bought for them by their employer, none of them are familiar with the scope of the contract, nor did they know about the presence of such contract at all. Even many workers being working for the insurers are found to know little about the content of the insurance contract bought in their favor. The insured must be fully aware at inception what the policy is providing protection for and what responsibilities it is taking on.

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