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Act, 2013 1421

NATIONAL COUNCIL FOR LAW REPORTING

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THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) (AMENDMENT) ACT, 2013

No. 50 of 2013

Date of Assent: 7th January, 2014

Date of Commencement: 28th January, 2014

An Act of Parliament to amend the Insurance (Motor Vehicle Third Party Risks) Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Insurance (Motor Vehicle Third Party Risks) (Amendment) Act, 2013 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Short title and commencement.

2. Section 3 of the of the Insurance (Motor Vehicle Third Party Risks) Act is amended by inserting the following definition in its proper alphabetical sequence-

Amendment of section 3 of Cap. 405.

“dependency” means that part or portion of the deceased’s earnings that he or she spent on maintenance or financial support of his or her dependants or in the case of a person who was not in employment, reasonably anticipated earnings;

“earnings” means revenue gained from labour or services and includes the income or money or other form of payment that one receives from employment, business or occupation or in the absence of documentary evidence of such revenue, the applicable minimum wage under the Labour Relations Act, 2007 or the determination of the reasonable income, whichever is higher;

“hand dominance” means the preference to use the right or left hand for fine motor skills;

“judgment” means a determination of the right to compensation and the sums payable;

“multiplier” means the number of years a dependant would reasonably have been expensed to receive financial support from the deceased person.

Amendment of
section 10 of Cap.
405.

3. Section 10 of the Insurance (Motor Vehicle Third Party Risks) Act is amended

- (a) by inserting the following subsections immediately after subsection (1)-

Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in section 5(b) prescribed in respect thereof in the Schedule

- (b) by inserting the following subsections immediately after subsection (1)-

(1A) The Minister may, in consultation with the Director of Medical Services and the Insurance Regulatory Authority, prescribe compensation for other categories of disablement not provided for in the Schedule.

“(1B) The percentage of the sum specified in section 5(b) and prescribed in the Schedule under this Act shall include but not limited to the medical expenses on the judgment or claim.

- (c) in subsection (2), by deleting the words “fourteen days” appearing in paragraph (a) and substituting therefor the words “thirty days”;
- (d) in subsection (3), by deleting the words “delivered to the insurer” and substituting therefor the words “duly served upon the insurer together with a disclosure under oath of all the documents intended to be used to prove the claim whether in or out of court”

- (e) by inserting the following new subsections immediately after subsection (3)—

(3A) No judgment or claim shall be payable by an insurer unless the claimant had, before determination of liability at the request of the insurer, subjected themselves to medical examination by a certified medical practitioner.

(3B) An insurer shall have a right to obtain or verify information from the institution which issued

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the documents intended to be used to prove the claim and this right shall be enforceable before judgment is passed.

Provided that such verification shall be done within a month.

(f) by inserting the following subsection immediately after subsection (4)—

(4A) Notwithstanding any other provision under this Act or any other written law, any person who willfully presents false or inaccurate information to the insurer or any court of competent jurisdiction with the intention of benefiting under this Act through—

- (a) falsification and alteration of treatment documents and records;
- (b) exaggeration of injuries or degree of incapacitation;
- (c) falsification and alteration of police documents and records;
- (d) falsification and alteration of identification documents and records,

commits an offence and upon conviction, in addition to the applicable penalty, the claim or judgment the subject matter of the false or inaccurate information shall not be payable by the insurer”.

4. The Insurance (Motor Vehicle Third Party Risks) Act is amended in section 12 by inserting the following new subsections immediately after subsection (1)—

Amendment of
section 12 of Cap.
405.

“(1A) The insurer shall, upon being served with the statutory notice and documents, admit or deny liability for the claim or judgment by a notice in writing to the person or persons presenting the claim or judgment.

(1B) The claimant or judgment debtor or his representative shall upon receipt of the admission of liability shall allow the insurer a period of not

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more than sixty days to settle the claim or judgment out of court and both the insurer and the claimant or judgment debtor or his representative commit to arbitration or mediation during that period before resorting to court”.

Amendment of
section 17 of Cap.
405.

5. The Insurance (Motor Vehicle Third Party Risks) Act is amended in section 17 by—

- (a) deleting the words “five thousand shillings” and substituting therefor the words “five hundred thousand shillings”;
- (b) deleting the words “three months” and substituting therefor the words “one year”;
- (c) deleting the words “for which no other penalty is specifically provided”.

Insertion of
Schedule in Cap.
405.

6. The Insurance (Motor Vehicle Third Party Risks) Act is amended by inserting the following Schedule immediately after section 18-

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SCHEDULE

(s.10)

STRUCTURED COMPENSATION LIABILITY SCHEDULE

DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
A. DEATH AS A RESULT OF AN ACCIDENT		
Adult		(10-100) based on the following computation =Multiplier (yrs) * Multiplicand (earnings) * 12 months *Dependency Ratio.
	Minor (ages 0-5 yrs)	10
	Minor (age 5-12 yrs)	15
	Minor (age 12-18 yrs)	20 or the formula in 1 above (where applicable) whichever is higher.
B BLINDNESS		
1.	Total	100
2.	Partial	
	(a) Acuity 1/20	75
	(b) Acuity 1/10 – 1/20	70
3.	Narrowed Field of Vision	
	(a) Affecting one eye	
	(i) 30-10 degrees from focal point	1 – 5
	(ii) Less 10 degrees from focal point	5 – 15

DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
	(b) Affecting both eyes	
	(i) 30-10 degrees from focal point	10 – 50
	(ii) Less 10 degrees from focal point	50 – 60
	(c) Paracentral scotoma	
	(i) Affecting one eye	5 – 15
	(ii) Affecting both eyes	15 – 30
4.	Hemi-anopsia (with central vision)	15 – 25
	(a) Homonymous right or left	5 – 10
	(b) Nasal	50 – 60
	(c) Bitemporal	5 – 10
	(d) Upper	10 – 30
	(e) Lower	5 – 10
	(f) Upper Quadrant	10 – 30
	(g) Lower Quadrant	5 – 10
5.	Double Vision (diplopia)	5 – 10
	(a) Affecting upper field of vision	10 – 20
	(b) Affecting lower field of vision	10 – 20
6.	Aphakia (loss of lens) – bilateral	25

DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
7.	Aphakia (loss of lens) – unilateral	20
8.	Ectropion ,entropion, lagophthalmos	0 -5
C. INJURY (GENERAL)		
1.	Bilateral shoulder luxation	10
2.	Unilateral shoulder luxation	5
3.	Chewing impairment	
(a)	Mild	2 – 10
(b)	Moderate	10 – 15
(c)	Severe	15 – 25
4.	Severe, painful functional impairment of vertebral column	90
5.	Quadriplegia (all limbs)	100
6.	Severe lung impairment	50
7.	Severe kidney impairment	
(a)	One kidney	50
(b)	Both kidneys	75
8.	Impairment of memory or ability to concentrate	40
9.	Post traumatic epilepsy	
(a)	One seizure yearly	10 -15

DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
	(b) Two seizures yearly	15 – 30
	(c) More than two seizures yearly	30 – 50
10.	Severe psycho-organic syndrome (Loss of speech)	75
11.	(a) Loss of arm at shoulder (by amputation or paralysis) (consider hand dominance)	Right 65
	(b) Loss of arm at shoulder (by amputation or paralysis) (consider hand dominance)	Left 60
12.	(a) Loss of arm at elbow (by amputation or paralysis) (consider hand dominance)	Right 50
	(b) Loss of arm at elbow (by amputation or paralysis) (consider hand dominance)	Left 50
13.	Loss of arm between shoulder and elbow (consider hand dominance)	50
14.	(a) Loss of hand at wrist (by amputation or paralysis) (consider hand dominance)	Right 50
	(b) Loss of hand at wrist (by amputation or paralysis) (consider hand dominance)	Left 40
15.	Loss of arm between wrist and elbow (consider hand dominance)	50

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DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)	
16.	Loss of four fingers and thumb of one hand (by amputation or ankylosis) (consider hand dominance)		60
17.	Loss of four fingers (by amputation or paralysis or ankylosis)		40
18.	Loss of thumb (consider hand dominance)		
	(a)	One phalanx	5
	(b)	Both phalanges	Right 25
			Left 10
19.	Loss of index finger		
	(a)	One phalanx	5
	(b)	Two phalanges	10
	(c)	Three phalanges	10
20.	Loss of middle finger		
	(a)	One phalanx	2
	(b)	Two phalanges	4
	(c)	Three phalanges	6
21.	Loss of ring finger		
	(a)	One phalanx	2
	(b)	Two phalanges	4
	(c)	Three phalanges	4

DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
22. Loss of little finger		
(a)	One phalanx	1
(b)	Two phalanges	2
(c)	Three phalanges	3
23. Loss of toes		
(a)	All	15
(b)	Great, both phalanges	5
(c)	Great, one phalanx	2
(d)	Smaller toes, each	1
24. Loss of eye		
(a)	Eye off	30
(b)	Lens damage	30
25. Ears, loss of hearing and associated defects		
(a)	Hearing loss, one ear	15
(b)	Hearing loss, both ears	50
(c)	Unilateral hyperacusis	0 – 12
(d)	Bilateral hyperacusis	10 – 15
(e)	Subjective noise in the ears	1 – 2
(f)	Loss of one ear	10
(g)	Vertigo (dizziness, rotating feeling, unsteadiness)	2 – 10

DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
26. Monoparesis (Monoplegia)		
(a)	Right upper limb	50
(b)	Left upper limb	25
(c)	Lower limb	50
27. Hemiparesis		
(a)	Spastic hemiplegia	10 – 50
(b)	Flaccid hemiplegia without urinary/fecal incontinence	50 – 80
(c)	Flaccid hemiplegia with urinary and/or fecal incontinence	80 – 90
28. Paraparesis		100
29. Post-traumatic neurosis		10 – 20
30. Post-traumatic dementia		75
31 Loss of voice		
(a)	Dysphonia	0 – 10
(b)	Aphonia	25
32. Nose and mouth		
(a) Defects in smell detection		
(i)	Hyposmia or anosmia	2 – 5
(ii)	Nasal defects leading to breathing difficulties	2 – 4

DEGREE OF DISABLEMENT			COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
	(iii)	Loss of Nose	30
	(b)	Teeth loss (not replaced)	
	(i)	Incisor	1
	(ii)	Premolar	1 – 1.5
	(iii)	Canine and molars	2
	(iv)	Total loss of all teeth	30
	(v)	Loss of pulp vitality of a tooth	1
	(c)	Tongue loss (total or partial)	0 – 10
	(d)	Total permanent unilateral facial nerve paralysis	25
	(e)	Partial unilateral facial paralysis	10
	(f)	Injury to the trigeminal nerve and its branches	
	(i)	Inferior orbital	2 – 4
	(ii)	Lower dental nerve	2 – 4
	(iii)	Lingual nerve	2 – 4
	(g)	Scalp injury – aesthetic damage	1 – 5
33.	Joints		
	(a)	Aggravation of previous arthritis	2 – 5
	(b)	Segmentary neuralgia with	

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
			slight ligament or bone lesions stiffness (without neuro-sensory complications of:-	
		(i)	Cervical column	5 – 15
		(ii)	Dorsal (thoracic) column	5 – 10
		(iii)	Lumber column	5 – 15
		(c)	Fracture/dislocation of cervical vertebra with stiffness	15 – 20
		(d)	Fracture/stiffness of thoracic/lumber vertebra	10 – 15
		(e)	Ankylosis (fusion of two bones across a joint space)	
		(i)	Shoulder joint	Right 30
			“	Left 25
		(ii)	Elbow joint	Right 20
			“	Left 15
		(iii)	Wrist Joint	Right 25
			“	Left 15
		(iv)	Hand (all joints)	Right 50
			“	Left 25
		(f)	Joint stiffness – average stiffness	

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)	
		(i)	Shoulder joint	Right	15
			"	Left	10
		(ii)	Elbow joint	Right	10
			"	Left	5
		(iii)	Wrist Joint	Right	15
			"	Left	10
		(iv)	Hand (all joints)	Right	25
			"	Left	10
		(g)	Paralysis of various nerves of upper limb		
		(i)	Radial nerve (consider hand dominance)	Right	50
			"	Left	25
		(ii)	Circumflex nerve	Right	25
			"	Left	10
		(iii)	Musculocutaneous	Right	10
			"	Left	8
		(iv)	Subscapular	Right	8
			"	Left	6
		(v)	Median nerve (at arm)	Right	30
			"	Left	25
		(vi)	Median nerve (at wrist)	Right	15

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
			“	Left 10
		(viii)	Cubital nerve (at arm)	Right 25
			“	Left 20
		(viii)	Cubital nerve (at wrist)	Right 15
			“	Left 10
	34. Limbs			
	(a) Lower limb shortening			
	-	Less than 3 cm		0 – 2
	-	3 – 6 cm		2 – 8
	-	6 – 10 cm		8 – 15
	(b) Total loss by amputation or paralysis			
	(i)	At hip		60
	(ii)	At thigh		58
	(iii)	At knee		50
	(iv)	At leg		45
	(v)	At ankle		30
	(c) Tarsometatarsal			
	(i)	All toes		15
	(ii)	Great toes		5
	(d) Ankylosis (fusion in anatomical position)			

DEGREE OF DISABLEMENT			COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
	(i)	At the hip	50
	(ii)	At the knee	30
	(iii)	At the ankle	20
	(iv)	At the toes	10
	(e)	Stiffness (loss of full range of movement at joint)	
	(i)	At the hip	25
	(ii)	At the knee	10
	(iii)	At the ankle	4
	(iv)	At the toes	2
	(f)	Articular (Joint) instability	
	(i)	At the hip (hip dislocation)	30 – 35
	(ii)	At the knee	
	-	Loose ligaments (well corrected to allow normal activity)	2 – 5
	-	Loose ligaments (but hampering some activities even after correction)	5 – 10
	-	Loose ligaments hampering walking	10 – 20
	(g)	Heel instability	

DEGREE OF DISABLEMENT			COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
	(i)	In form of diastasis without clinical impact	0 – 4
	(ii)	Causing recurrent sprains	4 – 10
	(iii)	Hampering walking	10 – 12
	(h)	Paralysis of nerves of lower limb	
	(i)	Sciatic nerve	20 – 30
	(ii)	Popliteal nerve (back of knee)	10 – 20
	(iii)	Femoral nerve (thigh)	30 – 50
	(iv)	Sciatic neuralgia (pains)	10 – 20
	(i)	Total prosthesis of the Hip	10 – 15
	(j)	Anthrodesis of the knee	2 – 5
	(k)	Patellectomy	3
	(l)	Meniscus injury	
	(i)	Without operation	10 – 15
	(ii)	After operation	5
	(m)	Special care of the foot	
	(i)	Some pain while walking – normal or slightly reduced movement	0 – 2
	(ii)	Sporadic pain, moderate limitations of	2 – 5

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
			movement some claudication: but foot stable	
		(iii)	Pain while walking (subsides on rest); some claudication; limiting walking; circulatory disorders	5 – 10
		(iv)	Ankylosis of tibio-tarsal joint at a functional position	10
		(v)	Severe pains of the foot equines deformity; moderate trophic disorders; limited walking using a walking stick.	10 – 25
		(vi)	Sharp pains on walking or standing; severe stiffness, equinism; trophic disorders requiring two walking sticks or crutches	25 – 30
		(vii)	Sharp pains of the foot interfering with sleep ankylosis at critical position or sever deformity: walking on crutches	30 – 35
		(viii)	Severe pains (continuous); severe deformity; impossible	35 – 40

DEGREE OF DISABLEMENT			COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
		to stand unless on crutches	
35. The Pelvis			
	(a)	Pubic symphysis separation or sacro-iliac separation	5 - 10
	(b)	Post injury coccydynia with a fracture detected by radiography	2 - 5
	(c)	Obturator neuralgia	2 - 5
36. Respiratory Injuries			
	(a)	Slight respiratory insufficiency (dyspnoea occurring during great strain)	0 - 5
	(b)	Moderate respiratory insufficiency (dyspnoea during moderate strain)	5 - 20
	(c)	Considerable respiratory insufficiency (dyspnoea during normal activities)	20 - 50
	(d)	Dyspnoea at rest	50 - 100
37. Circulatory Injuries			
	(a)	No cardiac insufficiency (subject leads a normal life but treatment necessary)	0 - 10
	(b)	Mild cardiac insufficiency (treatment necessary -	10 - 20

DEGREE OF DISABLEMENT			COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
		disorders occur during exertion but subject leads a normal life)	
	(c)	Moderate cardiac insufficiency (Constant treatment necessary, exertion to be avoided, daily life is interrupted)	20 – 50
	(d)	Aortic prosthesis	20
	(e)	Valvular prosthesis	25
	(f)	Severe Cardiac Insufficiency (treatment needed, rest mandatory, daily activities severely disrupted)	50
38	Alimentary system and abdominal organs		
	(a)	Biliary hepatic system	
	(i)	Minor disorders without ascites, jaundice or esophageal varices	0 – 10
	(ii)	Marked liver disorders shown by laboratory tests but without nutritional or general disorders ascites jaundice or oesophageal varices	10 – 20
	(iii)	Nutritional/general disorders present e.g. ascites, hemorrhages, e.g. from oesophageal	20 – 60

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
			varices hepatic coma, recurrent obstructive jaundice	
		(iv)	Progressive liver failure ascites jaundice haemorrhage, hepatic coma and nutritional disorders	60 – 100
		(b)	The spleen – splenectomy	10
		(c)	Abdominal wall - hernia	5 – 10
		(d)	Stomach, Small intestines and Pancreas	
		(i)	No operation after effects – normal weight maintained without special diet or treatment	0 – 5
		(ii)	Uptake (absorption) disorders leading to weight loss (less than 10% weight loss)	5 – 15
		(iii)	Weight loss (due to uptake disorder) in range of 10-20% average body weight; electrolyte imbalance	15 – 30
		(iv)	Weight loss: diarrhea x4 - x6 daily; abdominal cramps, steatorrhea electrolyte imbalance	30 – 50
		(v)	Weight loss more than 20% anaemia	50 – 60

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
			hypoproteinaemia	
		(e)	The Colon	
		(i)	No functional disorder normal body weight and activity	0 – 5
		(ii)	Weight disorder – moderate pains, but no nutritional disorders	5 – 10
		(iii)	Uptake disorders sporadic abdominal pains anemia weight loss – diet and treatment necessary	10 – 30
		(iv)	Permanent uptake disorders: pains, general disorders – diet and treatment necessary	30 – 50
		(v)	Colostomy done	
		-	Descending colon	50 – 60
		-	Transverse colon	30 – 40
		-	Ascending colon	20 – 30
		(f)	The kidneys and urinary system	
		(i)	Severe nephrotic syndrome and hypertension	50 – 60
		(ii)	Renalcolic, with respect to number of attacks	0 – 20

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
		(iii)	Renal atrophy (total kidney loss)	10
		(iv)	Nephrectomy (kidney removal)	10
		(v)	Partial atrophy, normal life	0- 10
		(vi)	Renal insufficiency	
		-	Normal life, minor insufficiency - creatinine clearance 80-100ml/min	5 - 10
		-	Normal life on treatment creatinine clearance 40-80ml/min: high blood pressure	10 - 20
		-	Creatinine clearance 15-40 ml/min	20 - 50
		(vii)	Chronic cystitis	5 - 20
		(viii)	Urinary retention	
		-	Mild (weekly catheter)	10 - 15
		-	Moderate (catheter several time a week)	15 - 20
		-	Severe (indwelling catheter)	20 - 40
		(ix)	Cystostomy done	40
		(x)	Urethral stricture requiring manual	5 -10

DEGREE OF DISABLEMENT				COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
			dilatation (no renal infection)	
		(xi)	Urethral stricture requiring frequent dilatation (no renal infection)	15 – 40
		(g)	Genital system and reproductive organs	
		(i)	Mechanical failure in sexual relations	30 – 40
		(ii)	Loss of ovary or testicle (but subject to the next item)	5
		(iii)	Bilateral castration or sterility while functionally healthy	30 – 40
		39.	Special conditions	
		(a)	Mild pain/disfiguration (Soft tissue Injuries/blunt trauma, minor cuts & lacerations, bruises)	2
		(b)	Moderate pain/disfiguration(Deep cuts& lacerations, frictional burns	10
		(c)	Severe pain/disfiguration(severe degloving requiring skin graft, very severe burns)	50

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DEGREE OF DISABLEMENT		COMPENSATION (AS PERCENTAGE OF THE MAXIMUM OF SHS. 3 MILLION PROVIDED BY S. 5(b)(iv) OF THE ACT)
40	General	
	Except where otherwise expressly provided, the following conditions shall apply to all assessments in this schedule;-	
	(a) Combination of two or more categories of injuries or disablement	Percentage for the most severe or dominant injury