

Uniform Fatal Accidents Act

(1964 Proceedings, pages 20, 27, 110)

1. In this Act

Interpretation

- (a) "child" includes a son, daughter, grandson, grand-daughter, step-son, step-daughter, (*an adopted child*), an illegitimate child, and a person to whom the deceased stood in *loco parentis*;

(NOTE: In some provinces the legislation respecting adoption of children may render it unnecessary to include an adopted child in this definition.)

- (b) "deceased" means a person whose death has been caused as mentioned in section 3(1);
- (c) "parent" includes a father, mother, grandfather, grandmother, step-father, step-mother, (*an adoptive parent*) and a person who stood in *loco parentis* to the deceased;

(NOTE: In some provinces the legislation respecting adoption of children may render it unnecessary to include an adopted parent in this definition.)

- (d) "tortfeasor" means a person whose wrongful act, neglect, or default has caused the death, or contributed to the cause of the death of the deceased and who, if death had not ensued, would have been liable to him for damages, and includes a person who would have been liable vicariously or otherwise for such damages.

2. (1) Where the death of a person is caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the deceased to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, is liable for damages, notwithstanding the death of the deceased, even if the death was caused in circumstances amounting in law to culpable homicide.

Liability for damages caused by death

(2) Subject to subsection (5), the liability for damages under this section arises upon the death of the deceased.

When cause of action arises

(3) No settlement made, release given, or judgment recovered in an action brought, by the deceased within a pe-

Effect of settlements made by deceased

riod of three months after the commission or occurrence of the wrongful act, neglect, or default causing his death is a bar to a claim made under this Act or is a discharge of liability arising under this Act, but any payment made thereunder shall be taken into account in assessing damages in any action brought under this Act.

Effect of settlements made by deceased

(4) Unless it is set aside, a settlement made or release given or a judgment recovered in an action brought by the deceased after the expiration of the period mentioned in subsection (3) is a discharge of liability under this Act.

Prior death of tortfeasor

(5) If, at the time of the death of the deceased, the tortfeasor is himself dead, the liability arising under this Act shall be conclusively deemed to have been subsisting against the tortfeasor before his death.

Subsequent death of tortfeasor

(6) Where the tortfeasor dies at the same time as the deceased, or in circumstances rendering it uncertain which of them survived the other, or after the death of the deceased, the liability and cause of action arising under this Act shall be conclusively deemed to lie upon, and continue against, the executor or administrator of the tortfeasor as if the executor or administrator were the tortfeasor in life.

Persons entitled to benefit

3. (1) Every action under this Act shall be for the benefit of the wife, husband, parent, child, (*brother and sister*), or any of them, of the deceased, and except as hereinafter provided, shall be brought by and in the name of the executor or administrator.

(NOTE: The reference to brothers and sisters to be included at the discretion of the enacting province.)

Amount of damages

(2) Subject to subsection (3), in every action under this Act such damages as are proportional to the pecuniary loss resulting from the death shall be awarded to the persons respectively for whose benefit the action is brought.

Funeral expenses

(3) Where an action has been brought under this Act there may be included in the damages awarded an amount sufficient to cover the reasonable expenses of the funeral and the disposal of the body of the deceased (not exceeding dollars in all) if those expenses were incurred by any of the persons by whom or for whose benefit the action is brought.

(NOTE: The words "not exceeding dollars in all" may be deleted at the option of the enacting province.)

4. (1) Where a person for whose benefit alone or with others an action may be brought under this Act is a tortfeasor, the damages that would otherwise be awarded for his benefit shall be reduced in proportion to the degree in which the court finds that his wrongful act, neglect, or default contributed to the cause of the death of the deceased.

Contributory negligence of beneficiary reduces his damage

(2) Where the wrongful act, neglect, or default of the deceased contributed to the cause of his death, the damages that would otherwise be awarded under this Act shall be reduced in proportion to the degree in which the court finds that his wrongful act, neglect, or default contributed to the cause of his death.

Contributory negligence of deceased

5. (1) Where, within three months after the death of the tortfeasor

Appointment of special administrator of deceased tortfeasor

(a) no executor of his will or administrator of his estate has been appointed in the province; and

(b) no letters probate of his will or letters of administration of his estate have been re-sealed in the province,

any person intending to bring or continue an action under this Act may apply to a judge of the court in which the action is to be, or has been, brought to appoint an administrator of the estate of the tortfeasor to act for all purposes of the intended or pending action and as defendant therein; and the judge, on such notice as he may direct, given either specially or generally by public advertisement and to such persons as he may designate, may appoint such an administrator.

(2) The administrator so appointed is an administrator against whom an action under this Act may be brought or continued and by whom such action may be defended; and the administrator may bring any action or take any proceeding in respect of the action that the tortfeasor could have brought or taken if he were alive.

Powers and liabilities of administrator

(3) Any judgment obtained by or against the administrator so appointed has the same effect as a judgment in favour of or against the tortfeasor or the executor of his will or the administrator of his estate.

Effect of judgment

(4) No application shall be made under subsection (1) after the expiration of the period of one year mentioned in section 9(4), but where such an application is made not earlier than three months before the expiration of that period,

Limitation on application

the judge may, in his discretion and if he thinks it just to do so, extend for a period not exceeding one month the time within which action may be brought as provided in section 9(4).

(NOTE: Section 5 will not be required in provinces in which it is provided by statute or under court rules of procedure that actions may be brought against an official administrator where a deceased has no legal personal representative.)

Bringing of action where no executor or administrator

6. (1) Where there is no executor or administrator of the estate of the deceased, or there being an executor or administrator no action is brought by him, within six months after the death of the deceased, an action may be brought by and in the name or names of any one or more of the persons for whose benefit the action would have been brought if it had been brought by the executor or administrator.

(NOTE: The period of six months allowed to the personal representative to commence an action might be altered at the discretion of the enacting province.)

Idem

(2) Every action so brought shall be for the benefit of the same persons as if it were brought by the executor or administrator.

Idem

(3) Where an action is brought under this Act but has not been set down for trial within six months after it was begun, the (*statement of claim*) in the action and all subsequent proceedings therein may, on application, be amended by substituting or adding as plaintiff, all or any of the persons for whose benefit the action was or should have been brought.

(NOTE: Subsection (3) may be included at the option of the enacting province.)

Considerations in assessing damages

7. In assessing damages in an action brought under this Act there shall not be taken into account,

- (a) any sum paid or payable on the death of the deceased under any contract of insurance or assurance, whether made before or after the coming into force of this Act;
- (b) any premium that would have been payable in future under any contract of insurance or assurance if the deceased had survived;
- (c) any benefit or right to benefits, resulting from the

death of the deceased, under (*Workmen's Compensation Act, Social Allowances Act, or Child Welfare Act*) or under any other Act that is enacted by any legislature, parliament, or other legislative authority and that is of similar import or effect;

- (d) any pension, annuity or other periodical allowance accruing payable by reason of the death of the deceased; and
- (e) any amount that may be recovered under any statutory provision creating a special right to bring an action for the benefit of persons for whose benefit an action may be brought under this Act.

(NOTE: As regards clause (c) above, for the Acts named in brackets, each province will substitute the relevant Acts in force in that province and consider whether reference to Workmen's Compensation Act should be included.)

As regards clause (e), there may be Acts in force in the enacting province that create special rights of action for the benefit of beneficiaries under the Fatal Accidents Act, e.g. sec. 293 of the Liquor Control Act of Manitoba. If not required in any province, the clause may be omitted.)

8. (1) Only one action lies under this Act in respect of the death of the deceased. One action only

(2) Except where it is expressly declared in another Act that it operates notwithstanding this Act, it is not necessary that any notice of claim or intended claim, or notice of action or intended action or any other notice, or any other document, be given or served, as provided in any such other Act, or otherwise, before bringing an action under this Act. Procedure in bringing of action

(3) If the deceased, at the time of his death, could not have brought an action against the tortfeasor by reason of lapse of time or failure to comply with any statutory or contractual condition, a person entitled to bring action under this Act is not, solely by reason of that fact, barred from so doing. Limitations on bringing on claimant

(4) Except where it is expressly declared in another Act that it operates notwithstanding this Act, an action, including an action to which section 3(5) or (6) applies, may be brought under this Act within one year after the death of the Limitation on bringing of action

deceased, but, subject to section 6(4), no such action shall be brought thereafter.

Effect of contract

(5) This section has effect notwithstanding any contract.

Payment into court

9. The defendant may pay into court one sum of money as compensation for his wrongful act, neglect, or default to all persons entitled to damages under this Act, without specifying the shares into which, or the parties among whom it is to be divided under this Act.

Particulars required in bringing action

10. (1) In every action brought under this Act

(a) the (*statement of claim*) shall contain, or the plaintiff shall deliver therewith, full particulars of the names, addresses, and occupations of the persons for whose benefit the action is brought; and

(b) the plaintiff shall file with the (*statement of claim*) an affidavit in which he shall state that to the best of his knowledge, information, and belief, the persons on whose behalf the action is brought as set forth in the (*statement of claim*) or in the particulars delivered therewith are the only persons entitled, or who claim to be entitled, to the benefit of the action.

Order for particulars and effect of failure to give particulars

(2) Where the plaintiff fails to comply with subsection (1), the court, on application, may order the plaintiff to give such particulars or so much thereof as he is able to give; and the action shall not be tried until he complies with the order; but the failure of the plaintiff to comply with subsection (1) or with an order made under this subsection is not a ground of defence to the action, or a ground for its dismissal.

Order dispensing with affidavit

(3) A judge of the court in which the action is brought may dispense with the filing of an affidavit, as required in subsection (1), if he is satisfied that there is sufficient reason for doing so.

Apportionment by judge

11. Where the amount recovered has not been otherwise apportioned, a judge in chambers may apportion it among the persons entitled thereto.

Determination of questions between persons entitled

12. Where an action is brought under this Act, a judge of the court in which the action is pending may make such order as he may deem just for the determination of all questions as to the persons entitled under this Act to share in the amount, if any, that may be recovered.

(NOTE: Taken from Ontario and Manitoba Acts. Each province should consider whether this section is necessary under the practice of its courts.)

13. Her Majesty in right of is bound by this Liability of Crown
Act.

14. This Act comes into force on..... Commencement of Act

(NOTE: Each province should consider whether it is necessary to include a section dealing with the approval by the court of any settlement made where any of the beneficiaries of the action are infants or persons of unsound mind.)

