



**BERMUDA
1951 : 39**

LAW REFORM (LIABILITY IN TORT) ACT 1951

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[29 May 1951]

[preamble and words of enactment omitted]

Interpretation

1 In this Act —

"court" means, in relation to any claim or action, the court or arbitrator by or before whom the claim falls to be determined or the action to be heard;

"damage" includes loss of life and personal injury;

"fault" means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort;

"dependant" means any person for whose benefit an action could be brought under the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*];

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"personal injury" includes any disease and any impairment of a person's physical or mental condition, and "injured" shall be construed accordingly.

Savings

2 (1) Nothing in this Act shall be construed so as to affect any criminal proceedings taken against any person in respect of any wrongful act which constitutes a criminal offence, so, however, that the provisions of the Act shall have effect in relation to the making of a compensation order under Part XXVII of the Criminal Code.

(2) Nothing in this Act shall apply to any claim to which section 1 of the Act of the Parliament of the United Kingdom entitled the Maritime Conventions Act 1911, (which relates to the division of liability in respect of damage to or loss of a ship arising out of the fault of another ship) applies.

(3) Nothing in this Act shall apply so as to vary the effect of Article 21 of the Convention contained in the First Schedule to the Act of the Parliament of the United Kingdom entitled the Carriage by Air Act 1961 (which empowers a court to exonerate wholly or partly a carrier who proves that damage to an injured person was caused by or contributed to by the negligence of that person) as that Act is applied to Bermuda subject to the modifications contained in section 1 of the Act of the Parliament of the United Kingdom entitled the Law Reform (Contributory Negligence) Act 1945.

Apportionment of liability where contributory negligence

3 (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the amount of damage recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Provided that —

- (a) nothing in this subsection shall operate to defeat any defence arising under a contract;
- (b) where any contract or provision of law providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of subsection (1) subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Notwithstanding anything in this section, where any case to which subsection (1) applies is tried with a jury, then the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

(4) Section 5 (which relates to proceedings against, and contribution between, joint and several tortfeasors) shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) in respect of the damage suffered by any person.

(5) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under the Survival of Actions Act 1949 [*title 8 item 68*], the damages recoverable would be reduced under subsection (1), then any damages recoverable in an action brought for the benefit of the dependants of that person under the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*], shall be reduced to a proportionate extent.

(6) Where, in any case to which subsection (1) applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading any provision of law limiting the time within which proceedings may be taken, then in any such case he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of subsection (1).

Defence of common employment abolished

4 (1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the fault of a person employed by him, that that person was at the time the injuries were caused in common employment with the person injured.

(2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto, (including a contract or agreement entered into before 29 May 1951) shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the fault of persons in common employment with him.

Joint and several tortfeasors

5 (1) Where damage is suffered by any person as a result of a tort (whether or not a criminal offence) —

- (a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been

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liable as a joint tortfeasor in respect of the same damage;

- (b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of a dependant, of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;
- (c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contributions under subsection (1) the amount of the contribution recoverable from any person shall be such as the court, or, where the proceedings are by way of an action tried with a jury, then the jury, thinks just and equitable having regard to that person's share in the responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) The reference in subsection (1) to "the judgment first given" shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

Acts or omissions occurring before 29 May 1951

6 [omitted]

Application of Act to Crown

7 This Act shall bind the Crown.

[Amended by
1952 : 11]/