



ANALYSIS

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1968, No. 16

An Act to effect reforms in the law relating to (1) the effect of death in relation to causes of action; (2) proceedings against, and contributions between, tortfeasors; (3) damages from injury resulting from shock and (4) liability in the case of contributory negligence

(24 December 1968)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and division into Parts - (1) This Act may be cited as the Law Reform Act 1968.

(2) This Act is divided into Parts, as follows:

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| Part I | - | Survival of Causes of action after Death | (Section 2) |
| Part II | - | Liability of Tortfeasors | (Section 3 and 4) |
| Part III | - | Damages for Injury Resulting from Shock | (Section 5) |
| Part IV | - | Contributory Negligence | (Sections 6 to 8) |
| Part V | - | Act to Bind Crown | (Section 9) |

PART I

SURVIVAL OF CAUSES OF ACTION AFTER DEATH

2. Effect of death on certain causes of action - (1) Subject to the provisions of this Part of this Act, on the death of any person after the coming into force of this Act all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of his estate:

Provide that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person -

- (a) Shall not include any exemplary damages, any damages for his pain or suffering, or for any bodily or mental harm suffered by him, or for the curtailment of his expectation of life:
- (b) In the case of a breach of promise to marry shall be limited to such damage (if any) to the estate of that person as flows from the breach of promise to marry:

- (c) Where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this Part of this Act has survived against the estate of a deceased person, unless either -

- (a) Proceedings against him in respect of that cause of action were pending at the date of his death; or
- (b) The cause of action arose not earlier than two years before his death and proceedings are taken in respect thereof not later than twelve months after his personal representative took out representation:

Provided that no such proceedings shall be maintainable unless notice in writing giving reasonable information of the circumstances upon which the proceedings will be based and the name and address of the prospective plaintiff and of his solicitor or agent (if any) in the matter is given by the prospective plaintiff to the personal representative of the deceased person as soon as practicable after the personal representative took out representation.

(4) Notwithstanding anything in subsection (3) of this section, application may be made to the Court, after notice to the personal representative, for leave to bring the proceeding at any time before the expiration of six years after the date when the cause of action arose, whether or not notice has been given to the personal representative under subsection (3) of this section; and the Court may, if it thinks it is just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it is just to impose, where it considers that the failure to give the notice or the delay in bringing the proceedings, as the case may be, was occasioned by mistake or by any other reasonable cause or that the personal representative was not materially prejudiced in his defence or otherwise by the failure or delay. No distribution of any part of the estate of the deceased made before the date of the giving of the notice shall be disturbed by reason of the application or of an order made thereon.

(5) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Part of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(6) The rights conferred by this Part of this Act for the benefit of estates of deceased persons shall be in addition to and not in derogation of any rights conferred by the Deaths by Accidents Compensation Act 1952 of the Parliament of New Zealand, and so much of this Part of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under that Act.

(7) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise, or breach of trust.

PART II

LIABILITY OF TORTFEASORS

3. Proceedings against, and contribution between, joint and several tortfeasors - (1) Where damage is suffered by any person as a result of a tort (whether a crime or not) -

- (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 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 the wife, husband, parent, or child 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 the 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 in time 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) A tortfeasor may recover contribution under this section from the husband or wife or the former husband or wife of the person by whom the damage was suffered in any case where he could have recovered such contribution if the marriage relationship had never existed.

(3) In any proceedings for contributions under this section the amount of the contribution recoverable from any person shall be such as may be found by the Court to be just and equitable having regard to the extent of that person's 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.

- (4) For the purposes of this section -
 - (a) The expressions "parent" and "child" have the same meanings as they have for the purposes of the Deaths by Accidents Compensation Act 1952 of the Parliament of New Zealand;
 - (b) The reference in this section 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.
- (5) Nothing in this section shall -
 - (a) Affect any criminal proceedings against any person in respect of any wrongful act; or
 - (b) Render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

4. Repeal - Section 643 of the Cook Islands Act 1915 is hereby repealed.

PART III

DAMAGES FOR INJURY RESULTING FROM SHOCK

5. Damages may be recovered for injury suffered as a result of shock - In any action for injury to the person, whether founded in contract or in tort or otherwise, a party shall not be debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock.

PART IV

CONTRIBUTORY NEGLIGENCE

6. Interpretation - In this Part of this Act, unless the context otherwise requires, -

"Court", in relation to any claim, means the Court or arbitrator by or before whom the claim falls to be determined:

"Damage" includes loss of life and personal injury:

"Dependant" means any person for whose benefit an action could be brought under the Deaths by Accidents Compensation Act 1952 of the New Zealand Parliament:

"Employer" and "worker" have the same meaning as in The Cook Islands Workers' Compensation Ordinance 1964:

"Fault" means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort or would, apart from this Part of this Act, give rise to the defence of contributory negligence.

7. Apportionment of liability in case of contributory negligence - (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 damages 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) This subsection shall not operate to defeat any defence arising under a contract:

(b) Where any contract or enactment 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) of this section 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) Section 3 of this Act 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) of this section in respect of the damage suffered by any person.

(4) 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 section 2 of this Act the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under the Deaths by Accidents Compensation Act 1952 of the Parliament of New Zealand shall be reduced to a proportionate extent.

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

8. Provision as to workers and employers - (1) Where, within the time limit for the taking of proceedings under The Cook Islands Workers' Compensation Ordinance 1964, an action is brought to recover damages independently of that Ordinance in respect of an injury or disease giving rise to a claim for compensation under that Ordinance, and it is determined in that action that -

- (a) Damages are recoverable independently of that Ordinance subject to such reduction as is mentioned in subsection (1) of section 7 of this Act; and
- (b) The employer would have been liable to pay compensation under The Cook Islands Workers' Compensation Ordinance 1964, -

section 23 of The Cook Islands Workers' Compensation Ordinance 1964 (which enables the Court, on the dismissal of an action to recover damages independently of that Ordinance, to assess compensation under that Ordinance) shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed in accordance with the said section 23, no damages shall be recoverable in the action.

(2) Where a worker or his personal representative or dependant has recovered compensation under The Cook Islands Workers' Compensation Ordinance 1964 in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 7 of this Act from some person other than the employer (hereinafter referred to as the third party), any right conferred by section 27 of the Cook Islands Workers' Compensation Ordinance 1964 on the person by whom the compensation was paid to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the worker had not been at fault.

PART V

ACT TO BIND CROWN

9. Act to bind Crown - This Act shall bind the Crown.
