



**BERMUDA
1949 : 68**

FATAL INJURIES (ACTIONS FOR DAMAGES) ACT 1949

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[19 November 1949]

[*preamble and words of enactment omitted*]

Interpretation and construction

- 1 (1) In this Act "dependant" means —
- (a) the wife or husband or former wife or husband of a deceased person ("the deceased");
 - (b) any person who —
 - (i) was living with the deceased in the same household immediately before the date of the death; and
 - (ii) had been living with the deceased in the same household for at least two years before that date; and

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- (iii) was living during the whole of that period as the husband or wife of the deceased;
 - (c) any parent or other ascendant of the deceased;
 - (d) any person who was treated by the deceased as his parent;
 - (e) any child or other descendant of the deceased;
 - (f) any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage;
 - (g) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased.
- (2) The reference to the former wife or husband of the deceased in subsection (1)(a) includes a reference to a person whose marriage to the deceased has been annulled or declared void as well as a person whose marriage to the deceased has been dissolved.
- (3) In deducing any relationship for the purposes of subsection (1)—
- (a) any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the stepchild of any person as his child; and
 - (b) *[deleted by 2002:36]*
- (4) Any reference in this Act to injury includes any disease and any impairment of a person's physical or mental condition.

[Section 1 subsection (3)(b) deleted by 2002:36 Sch para 8(a) effective 19 January 2004]

Right of action for wrongful act causing death

2 (1) If death is caused by any wrongful act, neglect or default which is such as would, if death had not ensued, have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

(2) Subject to section 2A(2), every such action shall be for the benefit of the dependants of the person whose death has been so caused.

Bereavement

2A (1) An action under this Act may consist of or include a claim for damages for bereavement.

(2) A claim for damages for bereavement shall only be for the benefit—

(a) of the wife or husband of the deceased; and

(b) of his parents where the deceased was a minor who was never married.

(3) The sum to be awarded as damages under this section shall be the statutory sum.

(4) Where there is a claim for damages under this section for the benefit of both the parents of the deceased, the sum awarded shall be divided equally between them (subject to any deduction falling to be made in respect of costs not recovered from the defendant).

(5) The expression "statutory sum" in subsection (3) means \$15,000 or such greater or lesser sum as the Premier may by order made in accordance with the affirmative resolution procedure determine.

[Section 2A subsection (5) amended by BR 16/1993 effective 1 April 1993; Section 2A subsection (2)(b) substituted by 2002:36 Sch para 8(b) effective 19 January 2004]

Persons entitled to bring the action

2B (1) The action shall be brought by and in the name of the executor or administrator of the deceased.

(2) If —

(a) there is no executor or administrator of the deceased; or

(b) no action is brought within six months after the death by and in the name of an executor or administrator of the deceased,

the action may be brought by and in the name of all or any of the persons for whose benefit an executor or administrator could have brought it.

(3) No more than one action shall lie in respect of the same subject matter of complaint.

(4) The plaintiff in the action shall deliver to the defendant or his attorney full particulars of the persons for whom and on whose behalf the action is brought and of the nature of the claim in respect of which the damages are sought to be recovered.

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Assessment of damages

2C (1) In the action such damages, other than damages for bereavement, may be awarded as are proportioned to the injury resulting from the death to the dependants respectively.

(2) After deducting the costs not recovered from the defendant any amount recovered otherwise than as damages for bereavement shall be divided among the dependants in such shares as may be directed.

(3) In an action under this Act where there fall to be assessed damages payable to a widow in respect of the death of her husband there shall not be taken into account the re-marriage of the widow or her prospects of re-marriage.

(4) In an action under this Act where there fall to be assessed damages payable to a person who is a dependant by virtue of section 1(1)(b) in respect of the death of the person with whom the dependant was living as husband or wife there shall be taken into account, together with any other matter that appears to the court to be relevant to the action, the fact that the dependant had no enforceable right to financial support by the deceased as a result of their living together.

(5) If the dependants have incurred funeral expenses in respect of the deceased, damages may be awarded in respect of those expenses.

Disregard of benefits in assessment of damages

2D In assessing damages in respect of a person's death in an action under this Act, benefits which have accrued or will accrue to any person from his estate or otherwise as a result of his death shall be disregarded.

Particulars to be delivered by plaintiff

3 In any action under this Act the plaintiff shall deliver to the defendant or his attorney, with the statement of claim, particulars of the person or persons for whom and on whose behalf the action is brought and of the nature of their respective claims.

Payment into court

4 If in any action under this Act the defendant desires to pay money into court it shall be sufficient if he pays a lump sum by way of compensation to all of the dependants of the deceased without specifying the shares into which it is to be divided; and if the lump sum so paid into court is not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury find the lump sum to be sufficient, the defendant shall be entitled to a verdict upon that issue.

Actions tried without a jury

5 Where any action under this Act is tried before a court without a jury section 4 shall have effect as if for the reference to the jury there were substituted a reference to the court.

[Repealed in part by No. 78 of 1951 and amended in part as to actions brought in respect of deaths occurring on or after the 8th day of February, 1965 by No. 4 of 1965 and further amended in part as to causes of action occurring on or after 1 August 1988]

[For the version of this Act as applicable to causes of action occurring before 1 August 1988 refer to the historical database]

[Amended by:

1951 : 78

1965 : 4

1984 : 54

1988 : 24

BR 16/1993

2002 : 36]