



Damages (Scotland) Act 1976

CHAPTER 13

ARRANGEMENT OF SECTIONS

Section

1. Rights of relatives of a deceased person.
2. Rights transmitted to executor in respect of deceased person's injuries.
3. Certain rights arising on death of another not transmissible.
4. Executor's claim not to be excluded by relatives' claim: and *vice versa*.
5. Provisions for avoidance of multiplicity of actions.
6. Limitation of total amount of liability.
7. Amendment of references in other Acts.
8. Abolition of right to assythment.
9. Damages due to injured person for patrimonial loss caused by personal injuries whereby expectation of life is diminished.
10. Interpretation.
11. Repeals.
12. Citation, application to Crown, commencement and extent.

SCHEDULES:

- Schedule 1—Definition of "Relative".
Schedule 2—Repeals.

ELIZABETH II



Damages (Scotland) Act 1976

1976 CHAPTER 13

An Act to amend the law of Scotland relating to the damages recoverable in respect of deaths caused by personal injuries; to define the rights to damages in respect of personal injuries and death which are transmitted to an executor; to abolish rights to assythment; to make provision relating to the damages due to a pursuer for patrimonial loss caused by personal injuries whereby his expectation of life is diminished; and for purposes connected with the matters aforesaid.
[13th April 1976]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Where a person dies in consequence of personal injuries sustained by him as a result of an act or omission of another person, being an act or omission giving rise to liability to pay damages to the injured person or his executor, then, subject to the following provisions of this Act, the person liable to pay those damages (in this section referred to as “the responsible person”) shall also be liable to pay damages in accordance with this section to any relative of the deceased, being a relative within the meaning of Schedule 1 to this Act. Rights of relatives of a deceased person.

(2) No liability shall arise under this section if the liability to the deceased or his executor in respect of the act or omission has been excluded or discharged (whether by antecedent agreement or otherwise) by the deceased before his death, or is excluded by virtue of any enactment.

(3) The damages which the responsible person shall be liable to pay to a relative of a deceased under this section shall (subject to the provisions of this Act) be such as will compensate the relative for any loss of support suffered by him since the date of the deceased's death or likely to be suffered by him as a result of the act or omission in question, together with any reasonable expense incurred by him in connection with the deceased's funeral.

(4) If the relative is a member of the deceased's immediate family (within the meaning of section 10(2) of this Act) there shall be awarded, without prejudice to any claim under subsection (3) above, such sum of damages, if any, as the court thinks just by way of compensation for the loss of such non-patrimonial benefit as the relative might have been expected to derive from the deceased's society and guidance if he had not died; and a sum of damages such as is mentioned in this subsection shall be known as a "loss of society award".

(5) In assessing for the purposes of this section the amount of any loss of support suffered by a relative of a deceased no account shall be taken of—

- (a) any patrimonial gain or advantage which has accrued or will or may accrue to the relative from the deceased or from any other person by way of succession or settlement;
- (b) any insurance money, benefit, pension or gratuity which has been, or will be or may be, paid as a result of the deceased's death;

and in this subsection—

1975 c. 14.
1975 c. 15.

"benefit" means benefit under the Social Security Act 1975 or the Social Security (Northern Ireland) Act 1975, and any payment by a friendly society or trade union for the relief or maintenance of a member's dependants;

"insurance money" includes a return of premiums; and

"pension" includes a return of contributions and any payment of a lump sum in respect of a person's employment.

(6) In order to establish loss of support for the purposes of this section it shall not be essential for a claimant to show that the deceased was, or might have become, subject to a duty in law to provide or contribute to the support of the claimant; but if any such fact is established it may be taken into account in determining whether, and if so to what extent, the deceased, if he had not died, would have been likely to provide or contribute to such support.

(7) Except as provided in this section no person shall be entitled by reason of relationship to damages (including damages by way of solatium) in respect of the death of another person.

2.—(1) Subject to subsection (3) below there shall be transmitted to the executor of a deceased person the like rights to damages in respect of personal injuries sustained by the deceased as were vested in him immediately before his death ; and for the purpose of enforcing any such right the executor shall be entitled to bring an action or, if an action for that purpose had been brought by the deceased before his death and had not been concluded before then, to be sisted as pursuer in that action.

Rights transmitted to executor in respect of deceased person's injuries.

(2) For the purpose of subsection (1) above an action shall not be taken to be concluded while any appeal is competent or before any appeal timeously taken has been disposed of.

(3) There shall not be transmitted to the executor of a deceased person any right to damages in respect of personal injuries sustained by the deceased and vested in the deceased as aforesaid, being a right to damages—

(a) by way of solatium ;

(b) by way of compensation for patrimonial loss attributable to any period after the deceased's death,

and accordingly the executor shall not be entitled to bring an action, or to be sisted as pursuer in any action brought by the deceased before his death, for the purpose of enforcing any such right.

3. There shall not be transmitted to the executor of a deceased person any right which has accrued to the deceased before his death, being a right to—

Certain rights arising on death of another not transmissible.

(a) damages by way of solatium in respect of the death of any other person, under the law in force before the commencement of this Act ;

(b) a loss of society award,

and accordingly the executor shall not be entitled to bring an action, or to be sisted as pursuer in any action brought by the deceased before his death, for the purpose of enforcing any such right.

4. A claim by the executor of a deceased person for damages under section 2 of this Act is not excluded by the making of a claim by a relative of the deceased for damages under section 1 of this Act ; nor is a claim by a relative of a deceased person for damages under the said section 1 excluded by the making of a claim by the deceased's executor for damages under the said section 2 ; but this section is without prejudice to section 5 of this Act.

Executor's claim not to be excluded by relatives' claim: and vice versa.

Provisions
for avoidance
of multiplicity
of actions.

5.—(1) This section applies to any action in which, following the death of any person from personal injuries, damages are claimed—

(a) by the executor of the deceased, in respect of the relevant injuries ;

(b) in respect of the death of the deceased, by any relative of his ;

and in this section, in relation to any such action,—

(i) “ the relevant injuries ” means the injuries from which the deceased died, and

(ii) “ connected person ” means a person, not being a party to the action, who (apart from this section) would have a title, whether as the executor of the deceased or as a relative of his, to sue the same defender in another such action based on the relevant injuries, or, as the case may be, on the death.

(2) Where an action to which this section applies has been raised any connected person shall be entitled to be sisted as a pursuer in that action, and except as provided in subsection (5) below every connected person shall be barred from suing the same defender in another such action (whether in the same or any other court) based on the relevant injuries, or, as the case may be, on the death.

(3) A connected person shall not be entitled to be sisted as a pursuer in accordance with subsection (2) above unless he has served notice on all other parties to the action of his application so to be sisted.

(4) Nothing in subsection (2) above shall prevent a court from exercising any power it may have apart from this section to sist any person as a party to an action.

(5) Where an action to which this section applies has been raised nothing in subsection (2) above shall prevent a connected person from suing the same defender in another such action if in that other action he satisfies the court that by reason of lack of knowledge that the first-mentioned action had been raised or for any other reasonable cause he was unable to make an application under the said subsection in that action.

(6) Where an action to which this section applies has been raised it shall be the duty of the pursuer to serve notice of the action on every connected person of whose existence and connection with the action the pursuer is aware or could with reasonable diligence have become aware ; and if in any action it appears to the court that the pursuer has failed to implement the duty imposed on him by this subsection the court may, if it thinks fit, dismiss the action.

(7) A notice under subsection (6) above shall contain a statement of the effect of subsection (2) above.

6.—(1) Where in any action to which section 5 of this Act applies, so far as directed against any defender, it is shown that by antecedent agreement, compromise or otherwise, the liability arising in relation to that defender from the personal injuries in question had, before the deceased's death, been limited to damages of a specified or ascertainable amount, or where that liability is so limited by virtue of any enactment, nothing in this Act shall make the defender liable to pay damages exceeding that amount; and accordingly where in such an action there are two or more pursuers any damages to which they would respectively be entitled under this Act apart from the said limitation shall, if necessary, be reduced *pro rata*.

Limitation of total amount of liability.

(2) Where two or more such actions are conjoined, the conjoined actions shall be treated for the purposes of this section as if they were a single action.

7. In any Act passed before this Act, unless the context otherwise requires, any reference to solatium in respect of the death of any person (however expressed) shall be construed as a reference to a loss of society award within the meaning of section 1 of this Act; and any reference to a dependant of a deceased person, in relation to an action claiming damages in respect of the deceased person's death, shall be construed as including a reference to a relative of the deceased person within the meaning of this Act.

Amendment of references in other Acts.

8. After the commencement of this Act no person shall in any circumstances have a right to assythment, and accordingly any action claiming that remedy shall (to the extent that it does so) be incompetent.

Abolition of right of assythment.

9.—(1) This section applies to any action for damages in respect of personal injuries sustained by the pursuer where his expected date of death is earlier than it would have been if he had not sustained the injuries.

Damages due to injured person for patrimonial loss caused by personal injuries whereby expectation of life is diminished.

(2) In assessing, in any action to which this section applies, the amount of any patrimonial loss in respect of the period after the date of decree—

(a) it shall be assumed that the pursuer will live until the date when he would have been expected to die if he had not sustained the injuries (hereinafter referred to as the "notional date of death");

- (b) the court may have regard to any amount, whether or not it is an amount related to earnings by the pursuer's own labour or other gainful activity, which in its opinion the pursuer, if he had not sustained the injuries in question, would have received in the period up to his notional date of death by way of benefits in money or money's worth, being benefits derived from sources other than the pursuer's own estate ;
- (c) the court shall have regard to any diminution of any such amount as aforesaid by virtue of expenses which in the opinion of the court the pursuer, if he had not sustained the injuries in question, would reasonably have incurred in the said period by way of living expenses.

- Interpretation.** **10.**—(1) In this Act, unless the context otherwise requires—
 “loss of society award” has the meaning assigned to it by section 1(4) of this Act ;
 “personal injuries” includes any disease or any impairment of a person's physical or mental condition ;
 “relative”, in relation to a deceased person, has the meaning assigned to it by Schedule 1 to this Act.
- (2) References in this Act to a member of a deceased person's immediate family are references to any relative of his who falls within subparagraph (a), (b) or (c) of paragraph 1 of Schedule 1 to this Act.
- (3) References in this Act to any other Act are references to that Act as amended, extended or applied by any other enactment, including this Act.

- Repeals.** **11.** The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in relation thereto in the third column of that Schedule.

- Citation, application to Crown, commencement and extent.** **12.**—(1) This Act may be cited as the Damages (Scotland) Act 1976.
- (2) This Act binds the Crown.
- (3) This Act shall come into operation on the expiration of one month beginning with the day on which it is passed.
- (4) Nothing in this Act affects any proceedings commenced before this Act comes into operation.
- (5) This Act extends to Scotland only.

SCHEDULES

SCHEDULE 1

Section 1.

DEFINITION OF "RELATIVE"

1. In this Act "relative" in relation to a deceased person includes—

- (a) any person who immediately before the deceased's death was the spouse of the deceased ;
- (b) any person who was a parent or child of the deceased ;
- (c) any person not falling within paragraph (b) above who was accepted by the deceased as a child of his family ;
- (d) any person who was an ascendant or descendant (other than a parent or child) of the deceased ;
- (e) any person who was, or was the issue of, a brother, sister, uncle or aunt of the deceased ; and
- (f) any person who, having been a spouse of the deceased, had ceased to be so by virtue of a divorce ;

but does not include any other person.

2. In deducing any relationship for the purposes of the foregoing paragraph—

- (a) any relationship by affinity shall be treated as a relationship by consanguinity ; any relationship of the half blood shall be treated as a relationship of the whole blood ; and the step-child of any person shall be treated as his child ; and
- (b) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

SCHEDULE 2

Section 11.

REPEALS

Chapter	Short Title	Extent of Repeal
3 & 4 Geo. 6. c. 42.	Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.	Section 2.
11 & 12 Geo. 6. c. 41.	Law Reform (Personal Injuries) Act 1948.	Section 2(5A).
1 & 2 Eliz. 2. c. 7.	Law Reform (Personal Injuries) (Amendment) Act 1953.	The whole Act.
10 & 11 Eliz. 2. c. 42.	Law Reform (Damages and Solatium) (Scotland) Act 1962.	The whole Act.
1972 c. 33.	Carriage by Railway Act 1972.	Section 3(2).

c. 13

Damages (Scotland) Act 1976

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

(389617)

ISBN 0 10 541376 3