

No. VIII.

EMPLOYERS'
LIABILITY.
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An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their service. [27th August, 1886.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Amendment of law.

1. Where after the commencement of this Act personal injury is caused to a workman—

- (I) By reason of any defect in the state or condition of the ways works machinery or plant connected with or used in the business of the employer or
- (II) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence or
- (III) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform where such injury resulted from his having so conformed or
- (IV) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf or

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- (v) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal-points engine or train upon a rail or tramway—

the workman or in case the injury results in death the legal personal representatives of the workman and any persons entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer nor engaged in his work.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases that is to say— Exceptions to amendment of law.

(I) Under subsection one of section one unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer and entrusted by him with the duty of seeing that the ways works and machinery or plant were in proper condition.

(II) Under subsection four of section one unless the injury resulted from some impropriety or defect in the rules by-laws or instructions therein mentioned.

(III) In any case where the workman knew of the defect or negligence which caused his injury and failed within a reasonable time to give or cause to be given information thereof to the employer or some person entrusted with any duties of superintendence in or over that department in which the defect or negligence existed whether such superintendent be ordinarily engaged in manual labour or not unless the injured person should himself perform duties of superintendence in which case such injured person must have given notice to the employer or to a person entrusted with any superintendence over himself unless the employer or person so entrusted already knew of the said defect or negligence.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury. Limit of sum recoverable as compensation.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks and the action is commenced within six months from the occurrence of the accident causing the injury or in case of death within twelve months from the time of death. Provided always that the want of such notice shall be no bar to the maintenance of such action if upon motion made for leave to proceed notwithstanding no such notice has been given a Judge shall be of opinion that there was reasonable excuse for such want of notice and where the action is intended to be brought in any District Court the Judge thereof shall for the purpose of this proviso have all the powers of a Judge of the Supreme Court. Limit of time for recovery of compensation.

5. There shall be deducted from any compensation awarded to any workman or representatives of a workman or persons claiming by or through a workman in respect of any cause of action arising under this Act any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman representatives or persons in respect of the same cause of action and where an action has been brought under this Act by any workman or the representatives of any workman or any persons claiming by or through such workman for compensation in respect of any cause of action Money payable under penalty to be deducted from compensation under Act

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action arising under this Act and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action such workman representatives or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

Employer entitled to credit for insurance effected by him.

6. In determining in any case the amount of compensation payable under this Act by an employer the Court shall take into consideration the value of any payment or contribution made by such employer to or for the injured person in respect of his injury and also the value of any insurance or compensation to which such person shall have become entitled by virtue of any payment or arrangement made by such employer.

Defective notices may be amended.

7. The Court in which any action for recovery of compensation under this Act is commenced or is pending may at any stage of the proceedings amend any defect in a notice of injury or death or direct that the action shall proceed and be maintainable notwithstanding that such notice has not been given duly if the Court having regard to the circumstances of the case thinks just so to direct.

Mode of serving notice of injury.

8. Notice in respect of an injury under this Act shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date at which it was sustained and shall be served on the employer or if there is more than one employer upon one of such employers. The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered. Where the employer is a body of persons corporate or unincorporate the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office or if there be more than one office any one of the offices of such body. A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein unless the Judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy.

Definitions.

9. For the purposes of this Act unless the context otherwise requires the expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence and who is not ordinarily engaged in manual labour. The expression "employer" includes a body of persons corporate or unincorporate or corporation sole. The expression "workman" means a railway servant and any other person who being a labourer servant in husbandry journeyman artificer handicraftsman miner or otherwise engaged in manual labour whether under the age of twenty-one years or above that age has entered into or works under a contract with an employer whether the contract be made before or after the passing of this Act be express or implied oral or in writing and be a contract of service or a contract personally to execute any work or labour.

Commencement of Act.

10. This Act shall come into operation at the end of this present Session of Parliament which date is in this Act referred to as the commencement of this Act.

Short title.

11. This Act may be cited as the "Employers' Liability Act 1886."