

LAW REFORM (MISCELLANEOUS PROVISIONS) ACT.

Act No. 28, 1944.

George VI.
No. 28, 1944.

An Act to amend the law with respect to the effect of death in relation to causes of action; to amend the law in relation to actions for the recovery of damages; and for purposes connected therewith. [Assented to, 8th December, 1944.]

BE it enacted by the King'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:—

PART I.

PRELIMINARY.

Short title
and
division
into Parts.

1. (1) This Act may be cited as the "Law Reform (Miscellaneous Provisions) Act, 1944."

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

PART I.—PRELIMINARY—s. 1.

PART II.—SURVIVAL OF CAUSES OF ACTION AFTER DEATH—s. 2.

PART III.—INJURY ARISING FROM MENTAL OR NERVOUS SHOCK—ss. 3, 4.

PART II.

SURVIVAL OF CAUSES OF ACTION AFTER DEATH.

Effect of
death on
certain
causes of
action.
24 and 25
Geo. V,
c. 41, s. 1.

2. (1) Subject to the provisions of this section, on the death of any person after the commencement 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: Provided that this subsection shall not apply to causes of action for defamation or seduction.

seduction or for inducing one spouse to leave or remain apart from the other or to claims under section fifty-two of the Matrimonial Causes Act, 1899, as amended by subsequent Acts, for damages on the ground of adultery. No. 28, 1944.

(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;
- (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;
- (d) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall not include any damages for the pain or suffering of that person or for any bodily or mental harm suffered by him or for the curtailment of his expectation of life.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section 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 twelve months before his death and proceedings are taken in respect thereof not later than twelve months after his personal representative took out representation:

Provided that the fact that the cause of action arose earlier than twelve months before such death shall not, of itself, be a bar to the maintenance of such proceedings where the court in which the proceedings are taken is satisfied that sufficient cause has been shown or that,
having

No. 28, 1944. having regard to all the circumstances of the case, it would be reasonable to allow such proceedings to continue; but nothing in this proviso shall affect the operation of any statute of limitation.

(4) 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, 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.

(5) The rights conferred by this Part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Compensation to Relatives Act of 1897, as amended by subsequent Acts, and so much of this Part as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Act as so amended as it applies in relation to other causes of action not expressly excepted from the operation of subsection one of this section.

(6) The rights conferred by this Part shall be in addition to and not in derogation of any rights conferred by or under the Motor Vehicles (Third Party Insurance) Act, 1942.

PART III.

INJURY ARISING FROM MENTAL OR NERVOUS SHOCK.

3. (1) In any action for injury to the person caused after the commencement of this Act, the plaintiff shall not be debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock.

(2) In determining any question of liability for injury to the person caused before the commencement of this Act, no regard shall be paid to the fact that this section has been enacted, or to the provisions hereof.

4.

Personal
injury
arising
from
mental or
nervous
shock.
cf. Act No.
18 of 1939
(S.A.), s. 6.

4. (1) The liability of any person in respect of injury No. 28, 1944.
caused after the commencement of this Act by an act, Extension
neglect or default by which any other person is killed, of liability
injured or put in peril, shall extend to include liability in certain
for injury arising wholly or in part from mental or cases.
nervous shock sustained by—

- (a) a parent or the husband or wife of the person so killed, injured or put in peril; or
- (b) any other member of the family of the person so killed, injured or put in peril where such person was killed, injured or put in peril within the sight or hearing of such member of the family.

(2) Where an action is brought by a member of the family of any person so killed, injured or put in peril in respect of liability for injury arising wholly or in part from mental or nervous shock sustained by the plaintiff as aforesaid and claims have been made against or are apprehended by the defendant at the suit of other members of the family of such person in respect of liability arising by operation of subsection one of this section out of the same act, neglect or default the defendant may apply to the court and the court may thereupon stay any proceedings pending at the suit of any such other member of the family arising out of the same act, neglect or default and may proceed in such manner and subject to such regulations as to making members of the family of such person parties to the action as to who is to have the carriage of the action and as to the exclusion of any member of the family who does not come in within a certain time as the court thinks just.

The jurisdiction conferred by this subsection may be exercised by any judge of the court sitting in its Common Law Jurisdiction.

(3) Where any application under subsection two of this section is made the action shall be for the benefit of such members of the family of the person so killed, injured or put in peril as are joined by the court as plaintiffs pursuant to such application and the jury may give such damages as they may think proportioned to the injury resulting to the persons joined as plaintiffs respectively, and the amount so recovered after deducting the costs not recovered from the defendant shall be divided

No. 28, 1944. divided amongst the persons joined as plaintiffs in such shares as the jury by their verdict find and direct.

(4) Any action in respect of a liability arising by operation of subsection one of this section shall be taken in the Supreme Court.

(5) In this section—

“Member of the family” means the husband, wife, parent, child, brother, sister, half-brother or half-sister of the person in relation to whom the expression is used.

“Parent” includes father, mother, grandfather, grandmother, stepfather, stepmother and any person standing in loco parentis to another.

“Child” includes son, daughter, grandson, granddaughter, stepson, stepdaughter and any person to whom another stands in loco parentis.
