

CHAPTER 8:06

DAMAGES (APPORTIONMENT AND ASSESSMENT) ACT

Acts 41/1971, 41/1973, 28/1985.

AN ACT to amend the law relating to contributory negligence and to provide for other matters incidental thereto.

[Date of commencement: Sections 2 to 8, 1st June, 1971;
Section 9, 9th November 1973.]

1 Short title

This Act may be cited as the Damages (Apportionment and Assessment) Act [*Chapter 8:06*].

2 Interpretation

In this Act—

“fault” means negligence, breach of statutory duty or any other act, omission or circumstance which gives rise to delictual liability, or which would, but for this Act, give rise to the defence of contributory negligence.

3 Application of Act

(1) This Act shall bind the State.

(2) This Act shall not operate to—

(a) defeat any defence arising under a contract;

(b) increase the amount of damages beyond any maximum prescribed in any agreement or a law applicable in respect of a claim for damages.

4 Apportionment of liability in case of contributory negligence

(1) Where any person suffers damage which was caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant, but the damages awarded in respect thereof shall be reduced by the court to such extent as the court may deem just and equitable having regard to the respective degrees of fault of the claimant and of such other person in so far as the fault of either of them contributed to the damage.

(2) Damage shall, for the purpose of subsection (1), be regarded as having been caused by a person’s fault notwithstanding the fact that another person had an opportunity of avoiding the consequences thereof and negligently failed to do so.

(3) Where, in any case to which subsection (1) applies, one of the persons at fault avoids liability to a claimant by pleading and proving that the time within which proceedings should have been instituted or notice should have been given in connection with such proceedings in terms of any law has been exceeded, such person shall not, by virtue of that subsection, be entitled to recover damages from that claimant.

(4) A claim by any person in respect of damage suffered as a consequence of the death of or injury to another person shall not be defeated by reason of the fact that the person who was killed or injured had an opportunity of avoiding the occurrence which resulted in his death or injury and negligently failed to do so.

5 Apportionment of damages in cases involving two or more wrongdoers

Where any person suffers damage which was caused by the fault of two or more wrongdoers, whether or not they were acting in concert, the court may—

(a) order that the amount of damages awarded be paid by the wrongdoers jointly or severally, the one paying the other or others to be absolved:

Provided that the court may, at the request of one of the wrongdoers, specify the proportions of the damages payable by the wrongdoers amongst themselves as the court considers just and equitable, having regard to the respective degrees of fault of the wrongdoers;

(b) order that the amount of damages awarded be paid by the wrongdoers in such proportions as the court considers just and equitable, having regard to the respective degrees of fault of the wrongdoers;

(c) make such order as to costs as the court considers just and equitable in all the circumstances of the case, including an order that costs be paid—

(i) jointly and severally by such persons as the court may specify, the one paying the others to be absolved:

Provided that the court may, at the request of one of such persons, specify the proportions of the costs payable by such persons amongst themselves;

(ii) in such proportions by such persons as the court considers just and equitable, having regard to the respective degrees of fault of those persons.

6 Joinder of all wrongdoers

(1) If a person who suffers damage which was caused by the fault of two or more wrongdoers, whether or not they were acting in concert, brings an action for damages against one or more, but not all, of the wrongdoers concerned—

- (a) the claimant shall not be entitled thereafter to bring another action for damages in respect of the same cause of action against any other such wrongdoer who was not joined in the first action, without leave of the court granted upon good cause being shown;
- (b) any wrongdoer who has been joined in the action may, before the close of pleadings, give notice to any other wrongdoer, who has not been joined, of his entitlement to intervene in the action and, if he does not give such notice, shall not be entitled thereafter to sue him for any contribution in respect of the damages concerned, without leave of the court granted upon good cause being shown.

(2) A person who has been given notice in terms of paragraph (b) of subsection (1) shall be entitled to intervene as a defendant in the action concerned.

7 Claim for contribution by wrongdoer

Where a wrongdoer pays damages to a person who has suffered damage as a result of the fault of that wrongdoer and one or more other wrongdoers, whether or not they were acting in concert—

- (a) in full settlement of the damages suffered; or
- (b) to an extent which is greater than that which might have been apportioned to him by a court, having regard to his respective degree of fault;

such first-mentioned wrongdoer may claim a contribution in respect of damages he has paid from the other wrongdoer or wrongdoers concerned, having regard to their respective degrees of fault.

8 Injured or deceased person treated as a wrongdoer

Where any person suffers damage as a result of the injury to, or death of, another person and the injury or death was caused by the fault of the injured or deceased person and one or more wrongdoers, sections *five*, *six* and *seven* shall apply, *mutatis mutandis*, as if the injured or deceased person or his estate, as the case may be, were a wrongdoer.

9 Certain benefits to be excluded in assessment of damages

(1) In this section—

- “benefit” means any payment by a friendly society or trade union for the relief or maintenance of a defendant of a member;
- “insurance money” includes a refund of premiums and any payments of interest on such premiums;
- “pension” includes a refund of contributions and any payment of interest on such contributions and also any payment of a gratuity or other lump sum by a person or provident fund or by an employer in respect of the employment of any person.

(2) In assessing damages for loss of support as a result of the death of a person, no insurance money, pension or benefit which has been or will or may be paid as a result of the death shall be taken into account.