

1960

## c 138 Fatal Accidents Act

Ontario

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## CHAPTER 138

## The Fatal Accidents Act

## 1. In this Act,

Interpre-  
tation

- (a) "child" includes son, daughter, grandson, grand-daughter, stepson, stepdaughter, adopted child, and a person to whom the deceased stood *in loco parentis*;
- (b) "parent" includes father, mother, grandfather, grandmother, stepfather, stepmother, a person who adopted a child, and a person who stood *in loco parentis* to the deceased. R.S.O. 1950, c. 132, s. 1.

2. Where the death of a person has been caused by such wrongful act, neglect or default, as, if death had not ensued, would 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, is liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances amounting in law to culpable homicide. R.S.O. 1950, c. 132, s. 2.

Liability for  
damages  
where death  
caused by  
wrongful  
act, neglect,  
or default

3.—(1) Every action brought under this Act is for the benefit of the wife, husband, parent and child of the person whose death was so caused, and, except as hereinafter provided, shall be brought by and in the name of the executor or administrator of the deceased, and in every such action such damages may be awarded as are proportioned to the injury resulting from the death to the persons respectively for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided among the above-mentioned persons in such shares as are determined at the trial. R.S.O. 1950, c. 132, s. 3 (1).

For whose  
benefit and  
in whose  
name action  
to be  
brought;

(2) In an action brought under this Act where funeral expenses have been incurred by the parties for whose benefit the action is brought, damages may be awarded not exceeding \$300 for the necessary expenses of the burial of the deceased, except that, where the body of the deceased is transported a considerable distance for burial, further damages may be awarded for the necessary extra expenses of burial thus entailed. 1959, c. 36, s. 1.

Funeral  
expenses

Assessment  
of damages,  
insurance  
premiums

(3) In assessing the damages in an action brought under this Act there shall not be taken into account any sum paid or payable on the death of the deceased or any future premiums payable under a contract of insurance. R.S.O. 1950, c. 132, s. 3 (3).

How money  
may be paid  
into court

4. The defendant may pay into court one sum of money as compensation for his wrongful act, neglect or default, to all persons entitled to compensation without specifying the shares into which it is to be divided. R.S.O. 1950, c. 132, s. 4.

One action  
only lies  
for the same  
cause

5. Not more than one action lies for and in respect of the same subject matter of complaint, and every such action shall be commenced within twelve months after the death of the deceased and not afterwards. R.S.O. 1950, c. 132, s. 5.

Particulars  
of bene-  
ficiaries

6.—(1) The plaintiff shall, in his statement of claim, set forth the persons for whom and on whose behalf the action is brought.

Proof as  
to persons  
entitled

(2) There shall be filed with the statement of claim an affidavit by the plaintiff in which he shall state that to the best of his knowledge, information and belief the persons on whose behalf the action is brought as set forth in the statement of claim are the only persons entitled or who claim to be entitled to the benefit thereof.

Dispensing  
with proof

(3) The court in which the action is brought, if of opinion that there is a sufficient reason for doing so, may dispense with the filing of the affidavit. R.S.O. 1950, c. 132, s. 6, *amended*.

When action  
may be  
brought by  
persons  
beneficially  
interested

7.—(1) If there is no executor or administrator of the deceased, or there being such executor or administrator, no such action is, within six months after the death of the deceased, brought by such executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by such executor or administrator.

Regulations  
and pro-  
cedure in  
such case

(2) Every action so brought is for the benefit of the same persons and is subject to the same regulations and procedure, as nearly as may be, as if it were brought by such executor or administrator. R.S.O. 1950, c. 132, s. 7.

Apportion-  
ment

8.—(1) Where the compensation has not been otherwise apportioned, a judge in chambers may apportion it among the persons entitled.

When pay-  
ment may  
be  
postponed

(2) The judge may in his discretion postpone the distribution of money to which infants are entitled and may direct payment from the undivided fund. R.S.O. 1950, c. 132, s. 8.

9. Where actions are brought by or for the benefit of two or more persons claiming to be entitled, as wife, husband, parent or child of the deceased, the court in which the actions or either of them are pending may make such order as it deems just for the determination not only of the question of the liability of the defendant but of all questions as to the persons entitled under this Act to the damages, if any, that may be recovered. R.S.O. 1950, c. 132, s. 9.

Where  
several  
actions  
brought  
by rival  
claimants

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