

1937

c 115 Negligence Act

Ontario

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Bibliographic Citation

Negligence Act, RSO 1937, c 115

Repository Citation

Ontario (1937) "c 115 Negligence Act," *Ontario: Revised Statutes*: Vol. 1937: Iss. 1, Article 119.

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CHAPTER 115.

The Negligence Act.

1. In this Act,—

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|---|----------------------|
| | Interpre-
tation. |
| (a) "Action" shall include counterclaim; | "Action." |
| (b) "Defendant" shall include a plaintiff against whom a counterclaim is brought. | "Defend-
ant." |
| (c) "Plaintiff" shall include a defendant who counter-claims. 1930, c. 27, s. 2. | "Plaintiff." |

2.—(1) Where damages have been caused or contributed to by the fault or neglect of two or more persons the court shall determine the degree in which each of such persons is at fault or negligent, and, except as provided by subsections 2 and 3, where two or more persons are found at fault or negligent, they shall be jointly and severally liable to the person suffering loss or damage for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each shall be liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent. 1930, c. 27, s. 3; 1931, c. 26, s. 2; 1935, c. 46, s. 2 (1).

(2) In any action brought for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting on to, or alighting from a motor vehicle other than a vehicle operated in the business of carrying passengers for compensation, and the owner or driver of the motor vehicle which the injured or deceased person was being carried in, or upon or entering, or getting on to, or alighting from is one of the persons found to be at fault or negligent, no damages, contribution or indemnity shall be recoverable for the portion of the loss or damage caused by the fault or negligence of such owner or driver, and the portion of the loss or damage so caused by the fault or negligence of such owner or driver shall be determined although such owner or driver is not a party to the action.

Extent of
liability,—
remedy
over.

Where
plaintiff is
passenger.

Where plain-
tiff is spouse
of negligent
person.

(3) In any action founded upon fault or negligence and brought for loss or damage resulting from bodily injury to, or the death of any married person where one of the persons found to be at fault or negligent is the spouse of such married person, no damages, contribution or indemnity shall be recoverable for the portion of loss or damage caused by the fault or negligence of such spouse, and the portion of the loss or damage so caused by the fault or negligence of such spouse shall be determined although such spouse is not a party to the action. 1935, c. 46, s. 2 (2).

Plaintiff
guilty of
contributory
negligence.

3. In any action for damages which is founded upon the fault or negligence of the defendant if fault or negligence is found on the part of the plaintiff which contributed to the damages, the court shall apportion the damages in proportion to the degree of fault or negligence found against the parties respectively. 1930, c. 27, s. 4.

Where
parties to
be deemed
equally at
fault.

4. If it is not practicable to determine the respective degree of fault or negligence as between any parties to an action, such parties shall be deemed to be equally at fault or negligent. 1930, c. 27, s. 5.

Adding
party
defendant.

5. Whenever it appears that any person not already a party to an action is or may be wholly or partly responsible for the damages claimed, such person may be added as a party defendant upon such terms as may be deemed just. 1930, c. 27, s. 6.

Jury to
determine
degrees of
negligence
of parties.

6. In any action tried with a jury, the degree of fault or negligence of the respective parties shall be a question of fact for the jury. 1930, c. 27, s. 7.

When
plaintiff may
be liable for
costs.

7. Where the damages are occasioned by the fault or negligence of more than one party, the court shall have power to direct that the plaintiff shall bear some portion of the costs if the circumstances render this just. 1930, c. 27, s. 8.