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c 132 Fatal Accidents Act

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CHAPTER 132

The Fatal Accidents Act

1. In this Act,

- (a) "child" includes son, daughter, grandson, grand-daughter, stepson, stepdaughter, adopted child, and a person to whom the deceased stood *in loco parentis*; Interpretation.
- (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. 1937, c. 210, 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, shall be 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. 1937, c. 210, s. 2. Liability for damages where death caused by wrongful act, neglect, or default.

3.—(1) Every such action shall be 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 such 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 amongst the above-mentioned persons in such shares as may be determined at the trial. R.S.O. 1937, c. 210, 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 \$250 for necessary expenses of the burial of the deceased including transportation and things supplied and services rendered in connection therewith. 1946, c. 30, s. 1. Funeral expenses.

Assessment of damages, insurance premiums.

(3) In assessing the damages in any action there shall not be taken into account any sum paid or payable on the death of the deceased or any future premiums payable under any contract of assurance or insurance. R.S.O. 1937, c. 210, s. 3 (2).

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. 1937, c. 210, s. 4.

One action only to lie for the same cause.

5. Not more than one action shall lie 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. 1937, c. 210, s. 5.

Particulars of beneficiaries.

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 or a judge thereof, if of opinion that there is a sufficient reason for doing so, may dispense with the filing of the affidavit. R.S.O. 1937, c. 210, s. 6.

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 procedure in such case.

(2) Every action so brought shall be for the benefit of the same persons, and shall be 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. 1937, c. 210, s. 7.

Apportionment.

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

(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. 1937, c. 210, s. 8. When payment may be postponed.

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 may deem 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. 1937, c. 210, s. 9. Where several actions brought by rival claimants.
