

CHAPTER 112.

ACCIDENTAL DEATHS AND WORKMEN'S INJURIES
(COMPENSATION).

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CHAPTER 112.

ACCIDENTAL DEATHS AND WORKMEN'S INJURIES
(COMPENSATION).

1929 Ed.
c. 265.
9 of 1940.

[28TH OCTOBER, 1916.]

Short title.

1. This Ordinance may be cited as the Accidental Deaths and Workmen's Injuries (Compensation) Ordinance.

Interpretation.

2. (1) In this Ordinance unless the context otherwise requires,—

“parent” includes father and mother and grandfather and grandmother, and stepfather and stepmother;

“child” includes son and daughter, and grandson and granddaughter, and stepson and stepdaughter;

“workman” means a railway servant, and anyone who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual

labour, whether under twenty-one years of age or not, has entered into or works under a contract with an employer, whether the contract is made before or after the commencement of this Ordinance, or is expressed or implied, oral or in writing, and whether it is a contract of service or a contract personally to execute any work or labour; but "workman" does not include a domestic or menial servant;

"person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence and who is not ordinarily engaged in manual labour.

(2) For the purposes of this Ordinance a person shall be deemed to be the parent or child of the deceased person notwithstanding that he was only related to him illegitimately; and accordingly in deducing any relationship which, under the provisions of this Ordinance only, is included within the meaning of the expressions "parent" and "child" any illegitimate person shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father. 9 of 1940,
s. 2.

(3) The provisions of the last preceding subsection shall not apply in relation to any action in respect of the death of any person before the 21st March, 1940. 9 of 1940,
s. 2.

PART I.

3. (1) Whenever the death of a person is caused by wrongful act, neglect, or default, and the act, neglect, or default is that which would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then 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 has been caused in circumstances amounting in law to felony. Cause of
action when
death is
caused by
negligence.

(2) In assessing damages in any action, whether commenced before or after the 23rd March, 1940, brought under this Part of this Ordinance, there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the 23rd March, 1940. 9 of 1940,
s. 3.

(3) In any action brought under this Part of this Ordinance, damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought. 9 of 1940,
s. 3.

9 of 1940,
s. 3.

(4) The provisions of the last preceding subsection shall not apply in relation to any action in respect of the death of any person before the 23rd March, 1940.

For and by
whom action
to be
brought.

4. The action shall be brought in the Supreme Court and shall be for the benefit of the wife, husband, parent, and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased ; and in the action the Court may give the damages it thinks proportioned to the injury resulting from the death to the parties 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 before-mentioned parties in the shares the Court finds and directs :

Provided that—

Action to be
commenced
within year.

(a) not more than one action shall lie for and in respect of the same subject matter of complaint ; and

(b) every action shall be commenced within twelve calendar months after the death of the deceased person.

Plaintiff to
deliver
particulars.

5. In the action the plaintiff on the record shall be required to deliver to the defendant or his attorney, together with the statement of claim, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

By whom
action may
be brought
where no
repre-
sentative.

6. If and so often as it happens at any time hereafter, in any of the events intended and provided for by this Ordinance, that there is no executor or administrator of the person deceased, or that, there being that executor or administrator, the action in this Ordinance mentioned has not, within six calendar months after the death of the deceased person herein mentioned, been brought by and in the name of his or her executor or administrator, then the action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit it would have been brought if it had been brought by and in the name of the executor or administrator ; and every action so brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by and in the name of the executor or administrator.

7. If the defendant is advised to pay money into court it shall suffice that he pay it as a compensation in one sum to all persons entitled under this Ordinance for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided, and if that sum is not accepted and an issue is taken by the plaintiff as to its sufficiency, and the Court thinks it sufficient, the defendant shall be entitled to judgment upon that issue.

Payment
into court.

PART II.

8. Subject as hereinafter provided, where personal injury is caused to a workman and the person occasioning and the workman suffering the injury are fellow-servants engaged in a common employment for and under the same master, the master shall not be liable for the consequences of the injury :

Doctrine of
common
employment.

Provided that where personal injury is caused to a workman by reason of—

(a) any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or

(b) the negligence of anyone in the service of the employer who has any superintendence entrusted to him whilst in the exercise of that superintendence ; or

(c) the negligence of anyone in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where the injury resulted from his having so conformed ; or

(d) the act or omission of anyone in the service of the employer, done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or

(e) the negligence of anyone in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway,

the workman or, in case the injury results in death, the legal personal representatives of the workman, and anyone entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman nor in the service of the employer, nor engaged in his work.

Exceptions
to amend-
ment of law.

9. A workman shall not be entitled under this Ordinance to any right of compensation or remedy against the employer in any of the following cases, that is to say,—

(a) under subsection (a) of the last preceding section, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to, the negligence of the employer, or of someone in his service and entrusted by him with the duty of seeing that the ways, works, machinery, or plant, were in proper condition ;

(b) under subsection (b) of that section, unless the injury resulted from some impropriety, or defect in the rules, by-laws, or instruction therein mentioned :

Provided that where a rule or by-law has been approved or has been accepted as a proper rule or by-law by the Governor, the Governor in Council, or the Governor and the Legislative Council, it shall not be deemed for the purposes of this Ordinance to be an improper or defective rule or by-law ;

(c) where the workman knew of the defect or negligence which caused his injury and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, unless he was aware that the employer or the superior already knew of the defect or negligence.

Limit of sum
recoverable
as com-
pensation.

10. The amount of compensation recoverable under the last two preceding sections shall not exceed the sum found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

Notice of
injury and
commence-
ment of
action.

11. An action for the recovery under sections 8 and 9 of this Ordinance of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within twelve months, of the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death :

Provided that the want of that notice shall be no bar to the maintenance of the action if the judge is of opinion that there was reasonable excuse for the want.

12. There shall be deducted from any compensation awarded to any workman or representatives of a workman, or persons claiming by, under, or through a workman, in respect of any cause of action arising under this Ordinance, any penalty or part of a penalty paid in pursuance of any other Ordinance to the workman, representatives, or persons in respect of the same cause of action ; and where an action has been brought under this Ordinance by any workman, or the representatives of any workman, or any person claiming by, under, or through a workman, for compensation in respect of any cause of action arising under this Ordinance, and payment has not previously been made of any penalty or part of a penalty under any other Ordinance in respect of the same cause of action, the workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Ordinance in respect of the same cause of action.

Money payable under penalty to be deducted from compensation under Ordinance.

13. (1) Notice in respect of an injury under section 11 of this Ordinance shall give the name and address of the person injured and state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there are more employers than one, upon one of the employers.

Service of notice of injury.

(2) The notice may be served by delivering it to or at the residence or place of business of the person on whom it is to be served.

(3) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business ; and it shall, if served by post, be deemed to have been served at the time when a letter containing it would be delivered in the ordinary course of post ; and, in proving its service, it shall be sufficient to prove that it was properly addressed and registered.

(4) Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering it at or by sending it by post in a registered letter addressed to the office, or, if there are more offices than one, to any one of the offices of that body.

(5) A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice is of opinion that the defendant in the action is prejudiced in his defence by the defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

Action under
Part II may
be brought
in petty
debt court.

14. Nothing herein contained shall prevent any claim by a workman for damages under this Part from being brought in the petty debt court where the amount claimed does not exceed one hundred dollars.
