

CHAPTER 107

CONTRIBUTORY NEGLIGENCE AND JOINT WRONGDOERS

Act No. 12 of 1968. AN ACT TO AMEND THE LAW RELATING TO CONTRIBUTORY NEGLIGENCE AND JOINT WRONGDOERS, AND TO PROVIDE FOR MATTERS CONNECTED WITH, OR INCIDENTAL TO, THE MATTERS AFORESAID.

[17th April, 1968.]

Short title. 1. This Act may be cited as the Law Reform (Contributory Negligence and Joint Wrongdoers) Act.

(3) Where, in any case to which the provisions of subsection (I) apply, one of the persons at fault avoids liability to any other such person or his personal representative by pleading any written law prescribing the period wherein notice of action should have been given, or limiting the time within which proceedings may be taken, such person shall not be entitled to recover any damages from such other person or his personal representative by virtue of the operation of the provisions of the said subsection.

PART I

CONTRIBUTORY NEGLIGENCE

This Part of this Act to have effect subject to section 7. 2. The provisions of this Part of this Act, other than this section, shall have effect subject to the provisions of section 7, and accordingly shall be so read, construed and applied.

PART II

DELICTS

Contributory negligence. 3. (1) (a) Where any person suffers damage which is 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 only of the fault of the claimant, but the damages recoverable in respect thereof shall be reduced by the court to such extent as the court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage.

4. The provisions of this Part of this Act, other than this section, shall have effect subject to the provisions of section 7, and accordingly shall be so read, construed and applied.

This Part of this Act to have effect subject to section 7.

(b) Damage shall, for the purpose of paragraph (a) of this subsection, be regarded as having been caused by a person's fault, notwithstanding the fact that any other person had an opportunity of avoiding the consequences thereof and negligently failed to do so.

5. (1) Where it is alleged that two or more persons are jointly or severally, or jointly and severally, liable in delict to any other person (hereinafter referred to as the "plaintiff") for the same damage, such persons (hereinafter referred to as the "Joint wrongdoers") may be sued in the same action. Joint and severalliability indelict.

(2) Notice of any action may at any time be given—

(2) Where damages are recoverable by any person by virtue of the operation of the provisions of subsection (I) subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(a) by the plaintiff; or

(b) by any joint wrongdoer who is sued in that action, to any other joint wrongdoer who is not so sued and who may, upon receipt of such notice, intervene as a defendant in that action.

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(3) The court may, on the application of the plaintiff or any joint wrongdoer in any action, order that separate trials shall be held, or make such other order on such application as it may consider just and expedient.

(4) (a) Where a joint wrongdoer is not sued in any action instituted against any other joint wrongdoer and no notice is given to him in terms of paragraph (a) of subsection (2), the plaintiff shall not thereafter sue him, except with the leave of the court on good cause shown as to why notice was not given as aforesaid.

(b) Where no notice, under paragraph (a) or (b) of subsection (2), is given to a joint wrongdoer who is not sued by the plaintiff, no proceedings for a contribution shall be instituted against him under subsection (6) or (7) by any other joint wrongdoer, except with the leave of the court on good cause shown as to why notice was not given to him under the said paragraph (b).

(5) In any subsequent action against another joint wrongdoer, any amount recovered from any joint wrongdoer in a former action shall be deemed to have been applied towards the payment of the costs awarded in the former action in priority to the liquidation of the damages awarded in that action.

(6) (a) Where judgment in any action is given against any joint wrongdoer for the full amount of the damage suffered by the plaintiff, the said joint wrongdoer may, if the judgment debt has been paid in full, but subject to the provisions of paragraph (b) of subsection (4), recover from any other joint wrongdoer a contribution in respect of his responsibility for such damage of such an amount as the court may deem just and equitable having regard to the degree in which that other joint wrongdoer was at fault in relation to the damage suffered by the plaintiff, and to the damages awarded.

(b) The period of prescription in respect of a claim for a contribution shall be twelve months calculated from the date of the Judgment in respect of which a contribution

is claimed or, where an appeal is made against such judgment, from the date of the final judgment on appeal:

Provided that if, in the case of any joint wrongdoer, the period of prescription in relation to any action which may be instituted against him by the plaintiff, is governed by a law which prescribes a period of less than twelve months as the period within which legal proceedings shall be instituted against him or within which notice shall be given that proceedings will be instituted against him, the provisions of such law shall apply *mutatis mutandis* in relation to any action for a contribution by a joint wrongdoer, the period or periods concerned being calculated from the date of the judgment as aforesaid instead of from the date of the original cause of action.

(c) Any joint wrongdoer from whom a contribution is claimed may raise against any other joint wrongdoer who claims the contribution any defence which such other joint wrongdoer could have raised against the plaintiff.

(7) (o) Where judgment in any action is given against one or more joint wrongdoers in respect of the damage suffered by the plaintiff and any joint wrongdoer, in pursuance of such judgment,—

(i) pays to the plaintiff an amount in respect of his responsibility for such damage; and [^]

(ii) the amount so paid is in excess of the amount (hereinafter referred to as the "amount apportioned to the first-mentioned joint wrongdoer") which the court deems just and equitable, having regard to the degree in which he was at fault in relation to the damage suffered by the plaintiff and to the full amount of the damages awarded to the plaintiff,

such joint wrongdoer may, subject to the provisions of paragraph (b) of subsection (4), recover from any other joint wrongdoer a contribution in respect of such other wrongdoer's responsibility for such damage

of an amount not exceeding so much of the amount which the court deems just and equitable, having regard to the degree in which such other joint wrongdoer was at fault in relation to the damage suffered by the plaintiff and to the full amount of the damages awarded to the plaintiff, as has not been paid by such other wrongdoer to the plaintiff or to any other wrongdoer, or so much of the amount paid by the first-mentioned wrongdoer as exceeds the amount apportioned to him, whichever is less.

(b) The provisions of paragraphs (b) and (c) of subsection (6) shall apply *mutatis mutandis* to any claim for a contribution under paragraph (a) of this subsection.

(8) (a) Where judgment in any action is given in favour of the plaintiff against two or more joint wrongdoers, the court—

- (i) may order that such joint wrongdoers pay the amount of the damages awarded jointly and severally, the one paying and the other being absolved;
- (ii) may, if it is satisfied that all the joint wrongdoers have been joined in the action, apportion the damages awarded against the said joint wrongdoers in such proportions as the court may deem just and equitable having regard to the degree in which each joint wrongdoer was at fault in relation to the damage suffered by the plaintiff, and give judgment separately against each joint wrongdoer for the amount so apportioned:

Provided that any amount which the plaintiff is unable to recover from any joint wrongdoer under a judgment so given (including any costs incurred by the plaintiff in an unsuccessful attempt to recover the said amount from the said joint wrongdoer), whether by reason of the said joint wrongdoer's insolvency or otherwise, may be recovered by the plaintiff from the other joint wrongdoer, or, if there are two or more other joint wrongdoers, from those other joint wrongdoers in such proportions as

the court may deem just and equitable having regard to the degree in which each of such other joint wrongdoers was at fault in relation to the damage suffered by the plaintiff;

- (iii) may, where it gives judgment against the joint wrongdoers jointly and severally as aforesaid, at the request of any one of the joint wrongdoers, apportion, for the purposes of paragraph (&), the damages payable by the joint wrongdoers, *inter se*, amongst the joint wrongdoers, in such proportions as the court may deem Just and equitable having regard to the degree in which each joint wrongdoer was at fault in relation to the damage suffered by the plaintiff;
- (iv) may make such order as to costs as it may consider just, including an order that the joint wrongdoers against whom it gives judgment shall pay the plaintiffs costs jointly and severally, the one paying and the other being absolved, and that, if one of the unsuccessful Joint wrongdoers pays more than his *pro rata* share of the plaintiffs costs, he shall be entitled to recover from each of the other unsuccessful joint wrongdoers his *pro rata* share of such excess.

(b) Any joint wrongdoer who pays more than the amount apportioned to him under sub-paragraph (iii) of paragraph (a) of this subsection may recover from any joint wrongdoer who has not paid the whole or any portion of the amount so apportioned to him, a contribution of an amount not exceeding so much of the amount so apportioned to the last-mentioned joint wrongdoer as has not been paid by him, or so much of the amount paid by the first-mentioned joint wrongdoer as exceeds the amount so apportioned to him, whichever is less.

(c) The provisions or paragraph (b) of subsection (6) shall apply *mutatis mutandis* to any claim for a contribution under paragraph (b) of this subsection.

(9) Where judgment is given in favour of any joint wrongdoer, the court may make such order as to costs as it may consider just, including an order—

- (a) that the plaintiff pay such joint wrongdoer's costs; or
- (b) that the unsuccessful joint wrongdoers pay the costs of the successful joint wrongdoer jointly and severally, the one paying and the other being absolved, and that, if one of the unsuccessful joint wrongdoers pays more than his *pro rata* share of the costs of the successful joint wrongdoer, he shall be entitled to recover from each of the other unsuccessful joint wrongdoers his *pro rata* share of such excess, and that, if the successful joint wrongdoer is unable to recover the whole or any part of his costs from the unsuccessful joint wrongdoers, he shall be entitled to recover from the plaintiff such part of his costs as he is unable to recover from the unsuccessful joint wrongdoers.

(10) Where, by reason of the terms of an agreement between a joint wrongdoer and the plaintiff, such wrongdoer is exempt from liability for the damage suffered by the plaintiff or his liability therefor is limited to an agreed amount, then, so much of that portion of the damages which, but for the said agreement and the provisions of paragraph (c) of subsection (6) or paragraph (b) of subsection (7), could have been recovered from such wrongdoer in terms of subsection (6) or (7), or could have been apportioned to him in terms of subparagraph (ii) or (iii) of paragraph (a) of subsection (8), as exceeds the amount, if any, for which he is liable in terms of the said agreement, shall not be recoverable by the plaintiff from any other joint wrongdoer.

(11) (a) Whenever a joint wrongdoer, who is entitled under any provisions of this section to recover a contribution from any other joint wrongdoer, is unable to recover that contribution or any amount thereof from that other joint wrongdoer, whether by reason of the latter's insolvency or otherwise, he may recover from any other joint wrongdoer such portion of that contribution, or that amount thereof, as the court may deem just and equitable having

regard to the degree in which that other joint wrongdoer was at fault in relation to the damage suffered by the plaintiff and to the full amount of the said contribution or the said amount thereof, as the case may be.

(b) Any costs incurred by a joint wrongdoer in an unsuccessful attempt to recover any contribution from any other joint wrongdoer shall, for the purpose of paragraph (a) of this subsection, be added to the amount of that contribution.

(12) Where any joint wrongdoer agrees to pay to the plaintiff a sum of money in full settlement of the plaintiff's claim, the provisions of subsection (6) shall apply *mutatis mutandis* as if judgment had been given by a competent court against such joint wrongdoer for that sum of money, or, if the court is satisfied that the full amount of the damage actually suffered by the plaintiff is less than that sum of money, for such sum of money as the court determines to be equal to the full amount of the damage actually suffered by the plaintiff, and in the application of the provisions of paragraph (fc) of the said subsection (6), any reference therein to the date of the judgment shall be construed as a reference to the date of the agreement.

(13) Whenever judgment in any action is given against any joint wrongdoer for the full amount of the damage suffered by the plaintiff, or whenever any joint wrongdoer has agreed to pay to the plaintiff a sum of money in full settlement of the plaintiff's claim, and the judgment debt or the said sum of money has been paid in full, every other joint wrongdoer shall thereby also be discharged from any further liability towards the plaintiff.

(14) A person shall, for the purposes of this section, be regarded as a Joint wrongdoer, notwithstanding the fact that another person had an opportunity of avoiding the consequences of his wrongful act and negligently failed to do so.

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Section 5 to apply in particular to liabilities imposed under Part VI of the Motor Traffic Act.

6. Without prejudice to the generality of the provisions or the application of section 5, the provisions of that section shall, in particular, apply to any liability imposed under Part VI of the Motor Traffic Act on any person in respect of any loss or damage caused by, or arising out of, the use or driving of a motor vehicle.

(2) Nothing in this Act contained shall derogate in any manner from the provisions of any law relating to collisions or accidents at sea or in the air, and accordingly in the event of any conflict or inconsistency between this Act and such provisions, such provisions shall prevail over this Act.

PART III

GENERAL

Savings.

7. (1) The provisions of this Act shall not—

- (a) apply in respect of any wrongful act committed before the 17th day of April, 1968 ;
- (b) operate to defeat any defence arising under a contract;
- (c) operate to increase the amount of damages beyond any maximum prescribed in any agreement or any law applicable in respect of any claim for damages.

8. In this Act, unless the context otherwise requires—

Interpretation.

" court ", in relation to any claim, means the court or arbitrator by or before whom the claim falls to be determined;

" damage " includes loss of life and personal injury;

" fault" includes any wrongful act, breach of statutory duty or negligent act or omission which gives rise to liability in damages, or would apart from this Act give rise to the defence of contributory negligence.