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CHAPTER 5. No. 5.

COMPENSATION FOR INJURIES.

AN ORDINANCE TO PROVIDE FOR COMPENSATION IN CASES OF ACCIDENTAL DEATHS IN GENERAL AND IN CASES OF INJURIES TO WORKMEN.

Ordinance
Ch. 5. No. 5-
1940.

[10th December, 1896.]

Commence-
ment.

1. This Ordinance may be cited as the Compensation for Injuries Ordinance.

Short title.

2. (1) In this Ordinance—

Interpre-
tation.

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

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

“person” and “employer” include a body of persons, corporate or unincorporate;

“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;

“workman” does not include a domestic or menial servant, but, save as aforesaid, means a railway servant, driver or conductor of any tram or tramcar however propelled, any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be expressed or implied, oral or in writing, and be a

contract of service or a contract personally to execute any work or labour.

Meaning of
"parent"
and "child."

(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 in this Ordinance 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.

Action for compensation.

Action for
compensation main-
tainable
against
person
causing
death
through
neglect, etc.,
notwith-
standing
death of
person
injured.

3. Whenever the death of any person shall be caused by some wrongful act, neglect, or default, and the act, neglect, or default is such as would before the commencement of this Ordinance (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case 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 shall have been under such circumstances as amount in law to felony.

Action
against
employer for
injury to
workman.

4. Whenever 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 any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence, or

(c) the negligence of any person 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 such injury resulted from his having so conformed, or

(d) the act or omission of any person in the service of the employer done or made in obedience to the

rules or regulations 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 any person 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 representative of the workman, and any person 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 of the employer, nor in his service or engaged in his work.

5. No right of compensation or remedy against the employer under this Ordinance shall accrue to any workman, or to his legal personal representative, or to any person entitled in case of his death in any of the following cases, that is to say,—

Exceptions to liability of employer.

(a) under paragraph (a) of section 4, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to, the negligence of the employer, or of some person in the service of the employer and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition;

(b) under paragraph (d) of section 4, unless the injury resulted from some impropriety or defect in the rules, regulations, or instructions therein mentioned; and

(c) in any case 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 such superior already knew of the said defect or negligence.

Notices.

6. An action for the recovery of compensation under this Ordinance shall not be maintainable unless notice in writing

Limit of time of notice and commencement of action.

that injury has been sustained is given within six weeks, and the action is commenced within six months, from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided that in case of death, the want of such notice shall be no bar to the maintenance of such action if the court or Judge is of opinion, at the trial, that there was reasonable excuse for such want of notice.

Particulars to be contained in and mode of service of notice.

7. (1) Notice in respect of an injury under this Ordinance shall give the name and address of the person injured, and shall state in ordinary language the nature and cause of the injury and the date at which it was sustained, and shall be served on the person liable for such injury or his attorney or agent, or left at the last known residence or place of business of any such person: Provided that where there is more than one person liable, the notice may be served on any one of such persons or his attorney or agent.

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

Procedure.

By whom action in case of death to be brought.

8. (1) Every action in respect of injury resulting in death shall be for the benefit of the wife, husband, parent, and child, as the case may be, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.

(2) If there be no executor or administrator of the person deceased, or if although there be such executor or administrator no such action shall, within six months after the death of such deceased person, have been brought by and in the name of his executor or administrator, then and in every such case such 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 such action would have been if it had been brought by and in the name of such executor or administrator.

9. In every action in respect of injury resulting in death, the plaintiff on the record shall be required, together with the statement of claim, to deliver to the defendant or his solicitor full particulars of the person or persons for whom and on whose behalf such action is brought.

Particulars of persons for whom action brought.

10. In every action in respect of injury resulting in death, the Judge, or, where the trial is had before a jury, the jury, may give such damages as he or they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action has been brought; and the amount so recovered, after deducting the costs, if any, not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the Judge, or the jury by their verdict, shall find and direct:

Measure of damages recoverable, and division thereof.

Provided that the amount of compensation recoverable under section 4 of this Ordinance shall not exceed such sum as may be 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 within the Colony:

Provided also, that it shall be sufficient, if the defendant is advised to pay money into court, 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 by the Judge or jury; and if the said sum is not accepted and an issue is taken by the plaintiff as to its sufficiency, and the Judge or jury think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

11. Every action for recovery of compensation under this Ordinance shall be brought in the Supreme Court, and not more than one action shall lie for and in respect of the same subject matter of complaint.

Trial of action.

*Supplemental.*Funeral
expenses.

12. In an action brought under 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.

Saving
Clause.

13. Subsection (2) of section 2 and section 12 shall not apply in relation to any action in respect of the death of any person before the 24th of December, 1936.