



TRINIDAD AND TOBAGO.

No. 51—1946.

[L.S.]

I ASSENT,

B. E. H. CLIFFORD,

*Governor.*

24th December, 1946.

AN ORDINANCE to amend the Judicature Ordinance,  
Ch. 3. No. 1.

[31st December, 1946.]

Commence-  
ment.

ENACTED by the Governor of Trinidad and Tobago with the  
advice and consent of the Legislative Council thereof. Enactment.

1. This Ordinance may be cited as the Judicature Short title.  
(Amendment) Ordinance, 1946 and shall be read as one with  
the Judicature Ordinance, hereinafter referred to as the Ch. 3. No. 1.  
Principal Ordinance.

Principal  
Ordinance  
amended.

2. The Principal Ordinance is hereby amended by inserting therein the following new sections between sections 41 and 42 thereof:—

Apportion-  
ment of  
liability in  
case of con-  
tributory  
negligence.

41A. (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage: Provided that—

- (a) this subsection shall not operate to defeat any defence arising under a contract;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of the foregoing subsection 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.

(3) Section 40 of this Ordinance shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) of this section in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under section 41 of this Ordinance the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under the Compensation for Injuries Ordinance shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading the Limitation

Ch. 5. No. 6. of Personal Actions Ordinance or any other enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(6) Where any case to which subsection (1) of this section applies is tried with a jury, the jury shall determine the total damage which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

22 & 23 Geo. 5. c. 36. (7) Article 21 of the Convention contained in the First Schedule to the Carriage by Air Act, 1932 as applied to the Colony (which empowers a court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person), shall have effect subject to the provisions of this section.

Provisions as to workmen and employers. Ch. 22, No. 12. 41B. (1) Where, within the time limited for the taking of proceedings under the Workmen's Compensation Ordinance an action is brought to recover damages independently of the said Ordinance in respect of an injury or disease giving rise to a claim for compensation under the said Ordinance, and it is determined in that action that—

(a) damages are recoverable independently of the said Ordinance subject to such reduction as is mentioned in subsection (1) of the foregoing section of this Ordinance; and

(b) the employer would have been liable to pay compensation under the Workmen's Compensation Ordinance;

subsection (4) of section 3 of the Workmen's Compensation Ordinance (which enables the court, on the dismissal of an action to recover damages independently of the said Ordinance, to assess and award compensation under the said Ordinance) shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with the said subsection (4), no damages shall be recoverable in the said action.

(2) Where a workman or his personal representative or dependant has recovered compensation under the Workmen's Compensation Ordinance in respect of an injury caused under circumstances

which would give a right to recover reduced damages in respect thereof by virtue of section 41A of this Ordinance from some person other than the employer (hereinafter referred to as "the third party"), any right conferred by section 13 of the Workmen's Compensation Ordinance, on the person by whom the compensation was paid or on any person called on to pay an indemnity under section 12 of that Ordinance, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the workman had not been at fault.

Saving for  
Maritime  
Conventions  
Act, 1911 and  
past cases.  
1 & 2 Geo. 5.  
c. 57.

41C. (1) Sections 41A and 41B shall not apply to any claim to which section one of the Maritime Conventions Act, 1911, applies and that Act shall have effect as if those sections were not in force.

(2) Sections 41A and 41B shall not apply to any case where the acts or omissions giving rise to the claim occurred before the coming into force of those sections.

Interpretation.

41D. In Sections 41A and 41B—

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

"damage" includes loss of life and personal injury;

"dependent" means any person for whose benefit an action could be brought under the Compensation for Injuries Ordinance;

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"employer" and "workman" have the same meaning as in the Workmen's Compensation Ordinance as amended by any subsequent Ordinance;

"fault" means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Ordinance, give rise to the defence of contributory negligence.

Passed in Council this thirteenth day of December, in the year of Our Lord one thousand nine hundred and forty-six.

G. E. CHEN,  
*Clerk of the Council.*