



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. I st Semester

SUBJECT: LAW OF TORTS

SUBJECT CODE: BAL 106

Name of Faculty: Dr. Aijaj Ahmed Raj

LECTURE 12

TOPIC: DEATH IN RELATION TO TORTS

Fatal Accidents Act 1976

The Fatal Accidents Act (Lord Campbell's Act) was first passed in 1846. The present Act, consolidating earlier legislation, was itself amended in important respects by the Administration of Justice Act 1982.

Right of Action

If death is caused by any wrongful act, neglect or default, and the tortfeasor would have been liable if death had not ensued, the tortfeasor shall be liable to an action for damages, even though the person injured has died (s1(1)). Therefore, dependants have no right of action if the deceased himself could not have sued during his lifetime.

Classes of dependents

Although an action must be brought by and in the name of the executor or administrator of the deceased (s2), it exists for the benefit of the dependants of the deceased (s1(2)). Section 1(3) defines 'dependant' as:

- (a) the wife or husband or former wife or husband of the deceased;
- (b) a 'common law spouse';
- (c) any parent or other ascendant of the deceased;
- (d) any person who was treated by the deceased as his parent;
- (e) any child or other descendant of the deceased;
- (f) step-children of a marriage;
- (g) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased.

Section 1(4) deals with annulled, void and dissolved marriages and s1(5) provides for illegitimate persons.

If there is no executor or administrator of the deceased, or no action is brought within six months after the death by the executor or administrator, the action may be brought by and in the name of all or any of the persons for whose benefit an executor or administrator could have brought it (s2(2)).

Bereavement

An action under this Act may consist of or include a claim for damages for bereavement (s1A).

A claim for damages for bereavement shall only be for the benefit (a) of the wife or husband of the deceased; and (b) where the deceased was a minor who was never married (i) of his parents, if he was legitimate; and (ii) of his mother, if he was illegitimate (s1A(2)).

The sum to be awarded as damages under s1A shall be £7,500 (s1A(3)).

Where there is a claim for the benefit of both parents of the deceased, the sum awarded shall be divided equally between them (s1A(4)).

Assessment of Damages

Such damages may be awarded as are proportioned to the injury resulting from the death to the dependants (s3(1)).

The method of assessing damages under the Act was enunciated by Lord Wright:

“The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expected for his own personal and living expenses. The balance will give a datum or base figure which will generally

be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties."

In other words, the annual value of the lost expected benefit is estimated (this is called the multiplicand) and is multiplied by a figure related to how long the benefit would have lasted (the multiplier). Any amount recovered, other than damages for bereavement, shall be divided among the dependants in such shares as may be directed (s3(2)). The re-marriage of a widow, or her prospects of re-marriage, shall not be taken into account (s3(3)). In assessing damages payable to a common law spouse, account must be taken of the fact that the dependant has no enforceable right to financial support (s3(4)). Funeral expenses may be recovered by the dependants (s3(5)).

Disregard of Benefits

In assessing damages in respect of a person's death, benefits which have accrued or will accrue to any person from his estate or otherwise as a result of his death shall be disregarded (s4). This applies to financial benefits accruing to the claimant as a result of the victim's death, for example, insurance moneys; and also to service benefits.

Contributory Negligence

Where the deceased died as the result partly of his own fault and partly of the fault of the tortfeasor, any damages recoverable in an action under this Act shall be reduced to a proportionate extent (s5). This allows a reduction of damages if the deceased was contributory negligent.

Exercise:

1. The rule laid down in *Re Polemis* case is that the defendant shall be liable for all
 - a) Direct consequences of his act.
 - b) Direct consequence of his act, if he could foresee some damage to the plaintiff from his act.
 - c) Direct consequence of his act, only if he could foresee the kind of damage which has actually occurred.

- d) Foreseeable damage.
- 2. Which one of the following is not a good defence in suit for damages in an action for negligence ?
 - a) contributory negligence.
 - b) Express contract with plaintiff.
 - c) Express contract where statute prohibits.
 - d) Voluntary assumption of risk

58. The defendants published in tier newspaper a photograph of one Mr. C and Miss X together with the words *“Mr. C, the race-horse owner, and Miss X, whose engagement has been announced.”* The information on which the defendants based their statement was derived from Mr. C. In fact Mr. C was married even though Mr. C and Mrs. C were not living together. Mrs. C sued the defendants for defamation, the innuendo being that Mr. C was not her husband but lived with her in immoral cohabitation. The defendants would be

- a) liable because a publisher is responsible for the consequences of any publication and the plaintiff's innuendo is established
- b) not liable because they genuinely believed the news to be true ans so published the same
- c) liable because the had been negligent in publishing the news
- d) not liable because they had verified the veracity of the news from Mr. C before publishing it.

3. Which one of the following statements correctly explains the offence of defamation

- a) Defamatory statement must be made in good faith
- b) Defamatory statement must be made to the person defamed only
- c) Defamatory statement must be made with the intention of harming reputation of a person
- d) The accused need not believe that such a statement would harm the reputation of person

4. Assertion (A): the mental element in defamation is not required.

Reason (R): the mental element is not mentioned in the Indian Penal Code.

- a) Both A and R are true and R is the correct explanation of A.
 - b) Both A and R are true but R is not the correct explanation of A.
 - c) A is true but R is false.
 - d) A is false but R is true.
5. Nuisance recognizes
- a) The concept of no-fault liability
 - b) Liability based on only on fault
 - c) Liability based only on imputability
 - d) None of the above