

Tanzania

Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Chapter 310

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Law Reform (Fatal Accidents and Miscellaneous Provisions) Act
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Tanzania

Law Reform (Fatal Accidents and Miscellaneous Provisions) Act

Chapter 310

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[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]

[R.L. Cap. 360; Ord. No. 6 of 1955; Acts Nos. 55 of 1968; 5 of 1971; 10 of 1971; 27 of 1991]

An Act to effect miscellaneous reforms in the law relating to civil actions and for related matters.

Part I – Preliminary provisions

1. Short title and application

- (1) This Act may be cited as the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act.
- (2) This Act shall bind the Republic, but as regards the Republic's liability in tort shall not bind the Republic further than the Republic is made liable in tort by the Government Proceedings Act.

[Cap. 5]

2. Interpretation

In this Act, unless the context otherwise requires-

"**damage**" includes loss of life or personal injury;

"**dependant**" means the wife or, where the marriage was a polygamous marriage, each of the wives, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, and includes an infant child whom the deceased had accepted as a member of his family and every other person who is, on the death of the deceased, entitled to succeed to his property (otherwise than under a will) in accordance with the law of succession applicable to the estate of the deceased; and a person shall be deemed to be the father or mother or son or daughter of the deceased notwithstanding that he or she was related to him illegitimately or in consequence of adoption according to law;

"**personal injury**" includes any disease and any impairment of a person's physical or mental condition and the expression "injured" shall be construed accordingly;

"**wrongful act**" means any negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort.

[Act No. 5 of 1971 Sch.]

Part II – Fatal accidents

3. Action maintainable when death caused by wrongful act

If the death of any person is caused by the wrongful act of any person and the wrongful act is such as would, if death had not ensued, have entitled the person injured thereby to maintain an action recover damages in respect thereof 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 was caused under such circumstances as would amount in law to a criminal offence.

4. Action to be for benefit of dependants

- (1) Every action brought under the provisions of this Part shall be for the benefit of the dependants of the person whose death has been so caused, and shall be brought either by and in the name of the executor or administrator of the person deceased or by and in the name or names of all or any of the dependants (if more than one) of the person deceased.
- (2) In every such action the court may give such damages as it may think proportionate to the injury resulting from such death to the parties respectively for whom and for whose benefit such action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the aforesaid parties in such shares as the court shall find and direct:

Provided that, not more than one action shall lie for and in respect of the same subject matter of complaint.

[Act No. 10 of 1971 2nd Sch.]

5. Payment into court

Notwithstanding the provisions of section 4, it shall be sufficient, when the defendant pays money into court, that he pays it as compensation in one sum to all persons entitled under section 4 to damages for his wrongful act, without specifying the shares into which it is to be divided by the court; and if the said sum is not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the court shall think the same sufficient, the defendant shall be entitled to judgment on that issue.

6. Plaintiff to deliver particulars

In every action brought under the provisions of this Part the plaintiff shall deliver to the defendant or his advocate, together with the plaint, full particulars of the person or persons for whom and on whose behalf such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

7. Exclusion of payment by insurers in assessment of damages

The court in assessing damages in any action brought under the provisions of this Part shall not take into account any sum paid or payable on the death of the deceased under any contract of insurance or assurance.

8. Damages may be awarded in respect of funeral expenses

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.

Part III – Survival of causes of action

9. Effect of death on certain causes of action

- (1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate:

Provided that, this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.
- (2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person-
 - (a) shall not include any exemplary damages;
 - (b) in the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and
 - (c) where the death of that person has been caused by the wrongful act which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.
- (3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person unless either-
 - (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
 - (b) proceedings are taken in respect thereof not later than six months after his executor or administrator took out representation.
- (4) Where damage has been suffered by reason of any wrongful act in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that wrongful act as would have subsisted if he had died after the damage was suffered.
- (5) The rights conferred by this Part for the benefit of the estate of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by Part II and so much of this Part as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under Part II as it applied in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.
- (6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in relation to which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

Part IV – Joint tortfeasors

10. Proceedings against, and contribution between, joint and several tortfeasors

- (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)-
 - (a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;
 - (b) if more than one action is brought in respect of that damage by and on behalf of the person by whom it was suffered, or for the benefit of the estate, or of a dependant of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise) the sums recoverable under the judgment given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;
 - (c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would, if sued, have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.
- (2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.
- (3) The reference in this section to "the judgment first given" shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

Part V – Contributory negligence

11. Appointment of liability in case of contributory negligence

- (1) Where any person suffers damage as the result partly of his own wrongful act and partly of the wrongful act of any other person, a claim in respect of that damage shall not be defeated by reason of the wrongful act 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 subsection (1) subject to such reduction as is therein mentioned, the court shall find out and record the total damages which would have been recoverable if the claimant had not been at fault.

- (3) The provisions of Part IV 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) in respect of the damage suffered by any person.
- (4) Where any person dies as the result partly of his own wrongful act and partly of the wrongful act of any other person, and accordingly if an action were brought for the benefit of the estate under Part III the damages recoverable would be reduced under subsection (1), any damages recoverable in an action brought for the benefit of the dependants of that person under Part II shall be reduced to a proportionate extent.
- (5) Where, in any case to which subsection (1) applies, one of the persons at fault avoids liability to any other such person or his executor or administrator by reason of any 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 executor or administrator by virtue of the said subsection.
- (6) For the purposes of this section, "wrongful act" includes any act or omission which would, apart from this section, give rise to the defence of contributory negligence.

12. Provisions as to workers and employers

- (1) Where, within the time limited for the taking of proceedings under the Workers' Compensation Act (hereinafter in this section referred to as the Act), an action is brought to recover damages independently of the Act in respect of an injury or disease giving rise to a claim for compensation under the Act, and it is determined in that action that-
 - (a) damages are recoverable independently of the Act subject to such reduction as is mentioned in subsection (1) of section 11 of this Act; and
 - (b) the employer would have been liable to pay compensation under the Act,subsection (2) of section 25 of the Act (which enables the court, on the dismissal of an action to recover damages independently of the Act, to assess and award compensation under the Act) 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 (2), no damages shall be recoverable in the said action.
- (2) Where a worker or his executor or administrator or dependant has recovered compensation under the Act, in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 11 of this Act from some person other than the employer (hereinafter referred to as "the third party"), any right conferred by section 24 of the Act, on the person by whom the compensation was paid, or on any person called on to pay an indemnity under section 23 of the Act, 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 worker had not been at fault.
- (3) For the purposes of this section, "employer" and "worker" have the same meaning as in the Act.

[Cap. 263]

Part VI – Abolition of the doctrine of common employment and miscellaneous provisions

13. Common employment

- (1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the wrongful act of a person employed by him, that that person was, at the time the injuries were caused, in common employment with the person injured.

- (2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this Act) shall be void insofar as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the wrongful act of persons in common employment with him.

14. Criminal liability unaffected

Nothing in this Act shall affect any criminal proceedings against any person in respect of any wrongful act.

15. Amendment

Amends R. L. Cap. 2.

16. Disapplication of United Kingdom Act and savings

For the avoidance of doubt it is hereby declared that the Fatal Accidents Acts, 1846 to 1908, of the United Kingdom, shall no longer apply to Tanzania:

Provided that, any right or liability accrued or incurred thereunder shall be deemed to have accrued or been incurred under Part II of this Act as if this Act had been in force on the date when such right or liability so accrued or was incurred and any remedy or legal process in respect thereof may be instituted, continued or enforced accordingly.

[27 and 28 Vict., c. 958; Edw. 7, c. 7]

Part VII – *Mandamus*, prohibition and *certiorari*

17. Orders of *mandamus*, prohibition and *certiorari* substituted for writs

- (1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of *mandamus*, prohibition or *certiorari*.
- (2) In any case where the High Court would but for subsection (1) have had jurisdiction to order the issue of a writ of *mandamus* requiring any act to be done or a writ of prohibition prohibiting any proceedings or matter, or a writ of *certiorari* removing any proceedings or matter into the High Court for any purpose, the Court may make an order requiring the act to be done or prohibiting or removing the proceedings or matter, as the case may be.
- (3) No return shall be made to any such order and no pleadings in prohibition shall be allowed, but the order shall be final, subject to the right of appeal therefrom conferred by subsection (5).
- (4) In any written law, references to any writ of *mandamus*, prohibition or *certiorari* shall be construed as references to the corresponding order and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.
- (5) Any person aggrieved by an order made under this section may appeal therefrom to the Court of Appeal.

[Act No. 55 of 1988]

18. Attorney-general to be summoned as party

- (1) Where leave for application for an order of *mandamus*, prohibition or *certiorari* is sought in any civil matter against the Government, the court shall order that the Attorney-General be summoned to appear as a party to those proceedings; save that if the Attorney-General does not appear before the court on the date specified in the summons, the court may direct that the application be heard *ex parte*.

- (2) In any proceedings involving the interpretation of the Constitution with regard to the basic freedoms, rights and duties specified in Part III of Chapter I of the Constitution, no hearing shall be commenced or continued unless the Attorney-General or his representative designated by him for that purpose is summoned to appear as a party to those proceedings; save that if the Attorney-General or his designated representative does not appear before the Court on the date specified in the summons, the court may direct that the hearing be commenced or continued, as the case may be, *ex parte*.

[Cap. 2]

- (3) For the purposes of this section, the term "Government" includes a public officer and any office in the service of the United Republic established by or under any written law.

[Act No. 27 of 1991 Sch.]

[s. 17A]

19. Rules of court

- (1) The Chief Justice may make rules of Court prescribing the procedure and the fees payable or documents to be filed or issued in cases where an order referred to in subsection (2) of section 17 is sought.
- (2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe that applications for an order under section 17 shall, in specified proceedings, be made within six months or such shorter period as may be prescribed after the act or omission to which the application for leave relates.
- (3) In the case of an application for an order to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed under any Act, and where the proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the Court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

[s. 18]

Part VIII – Application of Act

20. Omitted

Reproduced as s. 1(2).