



Damages (Scotland) Act 2011

2011 asp 7

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 3rd March 2011 and received Royal Assent on 7th April 2011

An Act of the Scottish Parliament to make further provision as regards rights to damages in respect of personal injuries and death; and for connected purposes.

1 Damages to injured person whose expectation of life is diminished

- (1) This section applies to an action for damages in respect of personal injuries suffered by a pursuer whose date of death is expected to be earlier than had the injuries not been suffered.
- (2) In assessing the amount of damages by way of solatium the court is, if the pursuer—
 - (a) was at any time,
 - (b) is, or
 - (c) is likely to become,aware of the reduced expectation of life, to have regard to the extent to which the pursuer, in consequence of that awareness, has suffered or is likely to suffer.
- (3) Subject to subsection (2), no damages by way of solatium are recoverable by the pursuer in respect of loss of expectation of life.
- (4) In making an award of damages by way of solatium, the court is not required to ascribe specifically any part of the award to loss of expectation of life.
- (5) In assessing the amount of any patrimonial loss in respect of the period after the date of decree the court is to assume that the pursuer will live until the date when death would have been expected had the injuries not been suffered (the “notional date of death”).
- (6) Such part of that amount as is attributable to the period between the expected date of death and the notional date of death (the “lost period”) is to be assessed as follows—
 - (a) the court is to estimate what (if anything) the pursuer would have earned during the lost period through the pursuer's own labour or own gainful activity had the injuries not been suffered,
 - (b) the court may, if it thinks fit, add to the amount so estimated (whether or not that amount is nil) an amount equivalent to all or part of what it estimates the pursuer would have received by way of relevant benefits during the lost period had the injuries not been suffered, and

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- (c) the court is then to deduct, from the total amount obtained by virtue of paragraphs (a) and (b), 25% of that amount (to represent what would have been the pursuer's living expenses during the lost period had the injuries not been suffered).
- (7) But, if satisfied that it is necessary to do so for the purpose of avoiding a manifestly and materially unfair result, the court may apply a different percentage to that specified in subsection (6)(c).
- (8) In paragraph (b) of subsection (6), “relevant benefits” means benefits in money or money's worth other than benefits—
 - (a) derived from the pursuer's own estate, or
 - (b) consisting of such earnings as are mentioned in paragraph (a) of that subsection.

Commencement Information

II [S. 1](#) in force at 7.7.2011 by [S.S.I. 2011/268](#), [art. 3](#) (with [art. 4](#))

2 Transmission of deceased's rights to executor

- (1) There are transmissible to a deceased person's executor (“E”) the like rights to damages, including a right to damages for non-patrimonial loss, in respect of injuries suffered by the deceased (“A”) and vested in A immediately before A's death, being—
 - (a) personal injuries, or
 - (b) injuries which, though not personal injuries, are—
 - (i) injuries to name or reputation, or
 - (ii) injuries resulting from harassment actionable under section 8[F¹ or section 8A] of the Protection from Harassment Act 1997 (c.40).
- (2) The “like rights” mentioned in subsection (1) do not include any right to damages by way of compensation for patrimonial loss attributable to any period after the date of death; and in determining the amount of damages for non-patrimonial loss payable to E by virtue of this section, the only period to which the court is to have regard is that ending immediately before A's death.
- (3) In so far as a right to damages vested in A comprises a right to damages for non-patrimonial loss in respect of such injuries as are mentioned in sub-paragraph (i) of subsection (1)(b), that right is transmissible to E only if an action to enforce the right is brought by A and is not concluded before A's death.
- (4) For the purposes of subsection (3) an action is not to be taken to be concluded—
 - (a) while an appeal is competent, or
 - (b) before any appeal taken is disposed of.

Textual Amendments

F1 Words in [s. 2\(1\)\(b\)\(ii\)](#) inserted (21.7.2011) by [Domestic Abuse \(Scotland\) Act 2011 \(asp 13\)](#), [ss. 1\(5\), 5\(2\)](#)

Changes to legislation: There are currently no known outstanding effects for the Damages (Scotland) Act 2011. (See end of Document for details)

Commencement Information

I2 S. 2 in force at 7.7.2011 by [S.S.I. 2011/268](#), [art. 3](#) (with [art. 4](#))

3 Application of sections 4 to 6

Sections 4 to 6 apply where a person (“A”) dies in consequence of suffering personal injuries as the result of the act or omission of another person (“B”) and the act or omission—

- (a) gives rise to liability to pay damages to A (or to A's executor), or
- (b) would have given rise to such liability but for A's death.

Commencement Information

I3 [S. 3](#) in force at 7.7.2011 by [S.S.I. 2011/268](#), [art. 3](#) (with [art. 4](#))

4 Sums of damages payable to relatives

- (1) B is liable under this subsection to pay—
 - (a) to any relative of A who is a member of A's immediate family, such sums of damages as are mentioned in paragraphs (a) and (b) of subsection (3),
 - (b) to any other relative of A, such sum of damages as is mentioned in paragraph (a) of that subsection.
- (2) But, except as provided in section 5, no such liability arises if the liability to pay damages to A (or to A's executor) in respect of the act or omission—
 - (a) is excluded or discharged, whether by antecedent agreement or otherwise, by A before A's death, or
 - (b) is excluded by virtue of an enactment.
- (3) The sums of damages are—
 - (a) such sum as will compensate for any loss of support which as a result of the act or omission is sustained, or is likely to be sustained, by the relative after the date of A's death together with any reasonable expenses incurred by the relative in connection with A's funeral, and
 - (b) such sum, if any, as the court thinks just by way of compensation for all or any of the following—
 - (i) distress and anxiety endured by the relative in contemplation of the suffering of A before A's death,
 - (ii) grief and sorrow of the relative caused by A's death,
 - (iii) the loss of such non-patrimonial benefit as the relative might have been expected to derive from A's society and guidance if A had not died.
- (4) The court, in making an award under paragraph (b) of subsection (3) is not required to ascribe any part of the award specifically to any of the sub-paragraphs of that paragraph.
- (5) For the purpose of subsection (1)(a)—
 - (a) a relative of A is a member of A's immediate family if the relative falls within any of paragraphs (a) to (d) of the definition of “relative” in section 14(1),

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- (b) paragraphs (a)(i) and (b) of section 14(2) are to be disregarded.

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I4 S. 4 in force at 7.7.2011 by S.S.I. 2011/268, art. 3 (with art. 4)

5 Discharge of liability to pay damages: exception for mesothelioma

- (1) This section applies where—
- (a) the liability to pay damages to A (or to A's executor) is discharged, whether by antecedent agreement or otherwise, by A before A's death,
 - (b) the personal injury in consequence of which A died is mesothelioma, and
 - (c) the discharge and the death each occurred on or after 20th December 2006.
- (2) Liability arises under section 4(1) but is limited to the payment of such sum of damages as is mentioned in paragraph (b) of section 4(3).

Commencement Information

I5 S. 5 in force at 7.7.2011 by S.S.I. 2011/268, art. 3 (with art. 4)

6 Relative's loss of personal services

- (1) A relative entitled to damages under paragraph (a) of section 4(3) is entitled to include, as a head of damages under that paragraph, a reasonable sum in respect of the loss to the relative of A's personal services as a result of the act or omission.
- (2) In subsection (1), “personal services” has the same meaning as in section 9(1) of the Administration of Justice Act 1982 (c.53) (damages in respect of inability of injured person to render such services).

Commencement Information

I6 S. 6 in force at 7.7.2011 by S.S.I. 2011/268, art. 3 (with art. 4)

7 Assessment of compensation for loss of support

- (1) Such part of an award under paragraph (a) of section 4(3) as consists of a sum in compensation for loss of support is to be assessed applying the following paragraphs—
- (a) the total amount to be available to support A's relatives is an amount equivalent to 75% of A's net income,
 - (b) in the case of any other relative than—
 - (i) a person described in paragraph (a) of the definition of “relative” in section 14(1), or
 - (ii) a dependent child,
 the relative is not to be awarded more in compensation for loss of support than the actual amount of that loss,
 - (c) if—

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- (i) no such other relative is awarded a sum in compensation for loss of support, the total amount mentioned in paragraph (a) is to be taken to be spent by A in supporting such of A's relatives as are mentioned in sub-paragraphs (i) and (ii) of paragraph (b),
 - (ii) any such other relative is awarded a sum in compensation for loss of support, the total amount mentioned in paragraph (a) is, after deduction of the amount of the sum so awarded, to be taken to be spent by A in supporting such of A's relatives as are mentioned in those sub-paragraphs, and
- (d) any multiplier applied by the court—
 - (i) is to run from the date of the interlocutor awarding damages, and
 - (ii) is to apply only in respect of future loss of support.
- (2) But, if satisfied that it is necessary to do so for the purpose of avoiding a manifestly and materially unfair result, the court may apply a different percentage to that specified in subsection (1)(a).
- (3) In subsection (1)(b)(ii), “dependent child” means a child who as at the date of A's death—
 - (a) has not attained the age of 18 years, and
 - (b) is owed an obligation of aliment by A.

Commencement Information

I7 [S. 7](#) in force at 7.7.2011 by [S.S.I. 2011/268](#), [art. 3](#) (with [art. 4](#))

8 Further provision as regards relative's entitlement to damages

- (1) Subject to subsection (3), in assessing for the purposes of section 4 or 6 the amount of any loss of support sustained by a relative of A no account is to be taken of—
 - (a) any patrimonial gain or advantage which has accrued or will or may accrue to the relative, by way of succession or settlement, from A or from any other person, or
 - (b) any insurance money, benefit, pension or gratuity which has been, or will or may be, paid as a result of A's death.
- (2) In subsection (1)—
 - “benefit” means benefit under the Social Security Contributions and Benefits Act 1992 (c.4) or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7) and any payment by a friendly society or trade union for the relief or maintenance of a member's dependants,
 - “insurance money” includes a return of premiums, and
 - “pension” includes a return of contributions and any payment of a lump sum in respect of a person's employment.
- (3) Where A has been awarded a provisional award of damages under section 12(2) of the Administration of Justice Act 1982 (c.53), the making of that award does not prevent liability from arising under section 4(1); but in assessing for the purposes of section 4 or 6 the amount of any loss of support sustained by a relative the court is to take into account such part of the provisional award relating to future patrimonial loss as was intended to compensate A for a period beyond the date on which A died.