

DEATH

There are two ways in which death affects liability in tort:

- the survival of causes of action under the Law Reform (Miscellaneous Provisions) Act 1934; and
- the creation of liability under the Fatal Accidents Act 1976 for the benefit of dependants of deceased persons.

Law Reform (Miscellaneous Provisions) Act 1934

This Act comes into play if either the claimant or the defendant dies before the commencement of proceedings. The Act enables the personal representatives of the deceased victim to recover such damages as he might have received had he lived, subject to certain exceptions.

On the death of the defendant or claimant, all causes of action shall survive against, or for the benefit of, his estate (s1(1)). The exceptions are as follows:

- Section 1(1) does not apply to cases of defamation (s1(1)).
- The right of a person to claim for bereavement, under s1A of the Fatal Accidents Act 1976, below, shall not survive for the benefit of his estate on his death (s1(1A), as inserted by the Administration of Justice Act 1982, s4).
- Where a cause of action survives under s1(1), the damages recoverable shall not include (i) exemplary damages; or (ii) damages for loss of income in respect of any period after the deceased's death (s1(2)(a)).

Damages shall be calculated without reference to any loss or gain to the deceased's estate, except that funeral expenses may be included (s1(2)(c)). Thus, for example, the loss of an annuity ceasing on death or the gain arising from a life insurance policy payable upon death are disregarded. Funeral expenses, as stated, may be recovered.

Where damage has been suffered in respect of which a cause of action would have subsisted against the tortfeasor if the tortfeasor had not died before or at the same time as the damage was suffered, a cause of action shall be deemed to have been subsisting against him as would have subsisted if he had died after the damage was suffered (s1(4)).

The rights conferred by this Act are in addition to the rights conferred on the dependants of deceased persons by the Fatal Accidents Acts (s1(5)). Surviving dependants have their own cause of action for economic loss which they have suffered as a result of the death of the breadwinner.

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 dependants

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) any person who was living with the deceased for at least two years as the husband or wife of the deceased ('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 in *Davies v Powell Duffryn Collieries* [1942] 1 All ER 657:

“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).

Relevant contrasting cases on the ‘multiplier’ are:

Graham v Dodds [1983] 2 All ER 953, HL
Corbett v Barking Health Authority [1991] 1 All ER 498, CA

If the deceased and the dependant were in receipt of state benefits before the accident, see:

Cox v Hockenhull [1999] 3 All ER 577, CA

In addition to compensation for lost financial support (the ‘disbursement dependency’) there might also be a claim for lost services and emotional support (the ‘services dependency’):

Cresswell v Eaton [1991] 1 All ER 484, QBD

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:

Stanley v Saddique [1991] 1 All ER 529, CA

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 contributorily negligent.