



ANNO DECIMO QUINTO

GEORGII VI REGIS.

A.D. 1951.

No. 50 of 1951.

An Act to amend the Wrongs Act, 1936-1944.

[Assented to 13th December, 1951.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Short titles.

1. (1) This Act may be cited as the "Wrongs Act Amendment Act, 1951".

(2) The Wrongs Act, 1936-1944, as amended by this Act, may be cited as the "Wrongs Act, 1936-1951".

(3) The Wrongs Act, 1936-1944, is hereinafter called "the principal Act".

Incorporation.

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act.

Enactment of s. 26a of principal Act—

3. The following section is enacted and inserted in the principal Act after section 26 thereof :—

Insurers and nominal defendants under Road Traffic Act.

26a. An insurer or nominal defendant who has been properly sued under section 70d of the Road Traffic Act, 1934-1950—

(a) for the purposes of this Part shall be deemed to be a tort-feasor in relation to the relevant death or bodily injury if the insured person or (as the case may

be) the driver of the motor vehicle the identity of which cannot be ascertained, was a tort-feasor in relation to that death or bodily injury :

(b) for the purposes of section 26 of this Act shall be deemed to be responsible for the damage to the same extent as such insured person or driver would have been held to be responsible if sued.

4. The following heading and sections are enacted and inserted in the principal Act after section 27 thereof:—

Enactment of ss. 27a and 27b of principal Act—

Apportionment of liability in cases of contributory negligence.

27a. (1) In this section—

Apportionment of liability in cases of contributory negligence.
Cf. U.K. 8 & 9 Geo. 6 c. 28, ss. 1-4.

“ 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, personal injury, and suffering for which a sum by way of solatium may be awarded under section 23a or 23b of this Act :

“ damages ” includes any such solatium as mentioned in section 23a or 23b of this Act but does not include any sum payable as compensation pursuant to the Workmen’s Compensation Act, 1932-1950 :

“ dependant ” means any person for whose benefit an action could be brought under Part II. of this Act :

“ 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 Act, give rise to the defence of contributory negligence.

(2) Every reference in this section to the fault of a person shall be deemed to include a reference to a fault for which that person is vicariously responsible.

(3) 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) this subsection is subject to subsections (4) and (5) of this section.

(4) Where damages (not being a solatium) are recoverable by virtue of subsection (3), subject to such reduction as is therein mentioned, and a contract or enactment providing for a limitation of liability is applicable to the claim or the jurisdiction of the court is limited, the amount of the damages recoverable shall be arrived at as follows :—

- (a) the court shall find the total damages which would have been recoverable if the claimant had not been at fault and there had been no limitation of liability or of the jurisdiction of the court ;
- (b) the total damages so found shall be reduced to such an extent as the court thinks just and equitable having regard to the claimant's share in responsibility for the damage and the reduced amount shall, except as provided in paragraph (c) of this subsection, be the amount recoverable ;
- (c) if the amount of damages as reduced under paragraph (b) of this subsection exceeds the limit provided for in the contract or enactment or the limit of the jurisdiction of the court the court shall award the maximum amount of damages permitted by the contract, enactment, or limit of the court's jurisdiction.

(5) Where a solatium is recoverable by virtue of subsection (3) subject to such reduction as is therein mentioned, the amount of the solatium recoverable shall be arrived at as follows :—

- (a) the court shall find the amount of solatium which would have been recoverable if the claimant had not been at fault, but having regard to the limitation prescribed by section 23a or 23b of this Act ;
- (b) the amount so found shall be reduced to such extent as the court thinks just and equitable, having regard to the claimant's share in responsibility for damage.

(6) Where damages are recoverable by any person by virtue of subsection (3) subject to such reduction as is therein mentioned, the court shall in every case find and record the total damages which apart from any limitation

of liability provided by contract or enactment, or any limitation of the jurisdiction of the court would have been recoverable if the claimant had not been at fault.

(7) Sections 24 to 27 (inclusive) of this Act (which relate to proceedings against, and contributions between, joint and several tortfeasors) 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 (3) of this section in respect of the damage suffered by any person.

(8) 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 the Survival of Causes of Action Act, 1940, the damages recoverable would be reduced under subsection (3) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under Part II. of this Act and any amount recoverable by way of solatium under that Part shall be reduced to a proportionate extent.

(9) Where—

- (a) a person (in this subsection called “ the injured person ”) suffers damage as a result partly of his own fault and partly of the fault of any other person or persons ; and
- (b) by reason of the damage to the injured person a third person suffers damage (whether by way of the loss of the society or services of the injured person or otherwise),

then, in any claim by the third party for the damage so suffered by him the fault of the injured person shall be taken into account under subsection (3) of this section for the purpose of reducing the damages recoverable by the third party as if the said fault were the fault of the third party.

(10) Where, in any case to which subsection (3) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading any enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contribution from that other person or representative by virtue of the said subsection.

(11) Where any case to which subsection (3) of this section applies is tried with a jury, the jury shall determine the total damages which apart from any limitation of liability provided by contract or enactment or any limitation of the jurisdiction of the court, would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

Savings.

27b. (1) Section 27a of this Act shall not apply to any claim to which section 111 of the Supreme Court Act, 1935-1947, applies and that section shall have effect as if section 27a of this Act had not been passed.

(2) Section 27a of this Act shall not apply to any case where the acts or omissions giving rise to the claim occurred before the passing of the Wrongs Act Amendment Act, 1951.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. W. M. NORRIE, Governor.