



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 126 of 1986

An Act to amend the Wrongs Act, 1936.

[Assented to 24 December 1986]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the "Wrongs Act Amendment Act, 1986". Short title.

(2) The Wrongs Act, 1936, is in this Act referred to as "the principal Act".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. The following heading and section are inserted after section 35 of the principal Act: Insertion of new heading and section 35a.

Principles governing assessment of damages in relation to injuries arising from motor accidents

35a. (1) Notwithstanding any other law, where damages are to be assessed for or in respect of an injury arising from a motor accident, the following provisions apply: Motor accidents.

(a) no damages shall be awarded for non-economic loss unless—

(i) the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least seven days;

or

(ii) the injured person has reasonably incurred medical expenses of at least the prescribed minimum in connection with the injury;

(b) if damages are to be awarded for non-economic loss, they shall be assessed as follows:

(i) the injured person's total non-economic loss shall be assigned a numerical value on a scale run-

ning from 0 to 60 (the greater the severity of the non-economic loss, the higher the number);

and

(ii) the damages to be awarded for non-economic loss shall then be calculated by multiplying the prescribed amount by the number assigned under subparagraph (i);

(c) no damages shall be awarded for mental or nervous shock except in favour of—

(i) a person who was physically injured in the accident, who was the driver of or a passenger in or on a motor vehicle involved in the accident or who was, when the accident occurred, present at the scene of the accident;

or

(ii) a parent, spouse or child of a person killed, injured or endangered in the accident;

(d) if the injured person was incapacitated for work, no damages shall be awarded for loss of earning capacity in respect of the first week of the incapacity;

(e) if—

(i) the injured person is to be compensated by way of a lump sum for loss of future earning capacity or other future losses;

and

(ii) an actuarial multiplier is used for the purpose of calculating the present value of the future losses.

then in determining the actuarial multiplier a prescribed discount rate shall be applied;

(f) no damages shall be awarded to compensate for the cost of the investment or management of the amount awarded;

(g) no damages shall be awarded—

(i) to allow for the recompense of gratuitous services except services of a parent, spouse or child of the injured person;

or

(ii) to allow for the reimbursement of expenses, other than reasonable out-of-pocket expenses, voluntarily incurred, or to be voluntarily incurred, by a person rendering gratuitous services to the injured person;

(h) damages awarded to allow for the recompense of gratuitous services of a parent, spouse or child shall not exceed four times State average weekly earnings;

(i) if the injured person (not being a minor) was, contrary to the requirements of the Road Traffic Act, 1961, not

wearing a seat belt at the time of the accident, the damages to be awarded shall, on account of that contravention, be reduced by 15 per cent or such greater percentage as the court thinks just and equitable having regard to the extent to which the proper use of a seat belt would have reduced or lessened the severity of the injury;

(j) if—

(i) the injured person (not being a minor) was, at the time of the accident, a voluntary passenger in or on a motor vehicle;

and

(ii) the driver's ability to drive the motor vehicle was impaired in consequence of the consumption of alcohol or a drug and the injured person was aware, or ought to have been aware of the impairment,

it shall be presumed that the injured person was negligent in failing to take sufficient care for his or her own safety, and the damages shall be reduced to such extent as may be just and equitable having regard to that negligence;

(k) no interest shall be awarded on damages compensating a non-economic or prospective loss;

and

(l) any interest awarded must not be calculated from a date antecedent to the date of commencement of the proceedings.

(2) Notwithstanding the limits fixed by subsection (1) (h), if the court is satisfied that by rendering gratuitous services a parent, spouse or child has saved or will save the injured person the cost of engaging another person to provide those services (those services being reasonably required by the injured person), the court may make an award of damages in excess of that limit but the damages awarded in that event must not reflect a rate of remuneration for the person providing the services in excess of State average weekly earnings.

(3) A person shall not be regarded as a voluntary passenger in or on a motor vehicle for the purposes of subsection (1) (j) if, in the circumstances of the case, that person could not reasonably be expected to have declined to become a passenger in or on the vehicle.

(4) Where a presumption of negligence arises under subsection (1) (j), the defence of *volenti non fit injuria* is not available against the injured person.

(5) For the purposes of this section, an injury shall not be regarded as arising from a motor accident if it is not a consequence of—

(a) the driving of a motor vehicle;

(b) the parking of a motor vehicle;

or

(c) a motor vehicle running out of control.

(6) In this section—

“the Consumer Price Index” means the Consumer Price Index (all groups index for Adelaide) published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth:

“court” includes an authority with judicial or quasi-judicial powers:

“injury” means bodily injury and includes—

(a) mental and nervous shock;

and

(b) death;

and “injured” has a corresponding meaning:

“medical expenses” includes—

(a) the fees of medical practitioners and other professional medical advisers and therapists;

(b) the cost of hospitalization;

(c) the cost of medicines and therapeutic appliances:

“motor accident” means an incident in which injury is caused by or arises out of the use of a motor vehicle:

“non-economic loss” means—

(a) pain and suffering;

(b) loss of amenities of life;

(c) loss of expectation of life;

(d) disfigurement:

“the prescribed amount” means—

(a) in relation to an injury arising from a motor accident that occurred during 1987—\$1 000;

(b) in relation to an injury arising from a motor accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$1 000 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter, 1986:

“the prescribed discount rate” means—

(a) if no percentage is fixed by regulation for the purposes of this definition—5 per cent;

(b) if such a percentage is fixed by regulation—the percentage so fixed:

“the prescribed minimum” means—

(a) if no amount is fixed by regulation for the purposes of this definition—\$1 000;

(b) if such an amount is fixed by regulation—the amount so fixed:

“State average weekly earnings”, means the amount published by the Commonwealth Statistician as an estimate of Average Weekly Earnings for Ordinary Hours of Work for each Full-time Employed Male Unit in the State.

(7) This section is intended to apply to the assessment of damages in respect of an injury arising from a motor accident that occurred in this State—

(a) irrespective of whether the assessment is made by a court of the State or by a court of some other state, territory or country;

and

(b) notwithstanding that the court by which the assessment is made would not (but for this subsection) assess the damages in accordance with, or by reference to, South Australian law.

(8) If—

(a) damages in respect of an injury arising from a motor accident that occurred in this State are assessed by a court that is not a court of the State;

(b) notwithstanding subsection (7), the court does not assess damages in accordance with this section and the amount of the damages awarded exceeds the amount that would have been awarded in an action before a court of the State;

and

(c) the State Government Insurance Commission or the Crown is liable to pay the damages awarded either under a policy of insurance or on the basis of vicarious liability, the State Government Insurance Commission or the Crown is entitled to recover from the person to whom the damages were awarded any amount in excess of the damages that would have been awarded by a court of the State had the damages been assessed by such a court in accordance with this section.

(9) In the course of proceedings under subsection (8) a court may—

(a) receive in evidence any transcript of evidence in proceedings before the court by which the damages were awarded and draw any conclusions of fact from the evidence that it considers proper;

or

(b) adopt any of that court's findings of fact.

4. The amendments made by this Act do not affect a cause of action that arose before the commencement of this Act. Transitional provision.

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

D. B. DUNSTAN, Governor