

CHAPTER 41.

An Act to abolish the defence of common employment, to amend the law relating to the measure of damages for personal injury or death, and for purposes connected therewith. [30th June 1948.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Common employment.

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

43 & 44 Vict. c. 42.

(2) Accordingly the Employers' Liability Act, 1880, shall cease to have effect, and is hereby repealed.

(3) 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 in so far 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 negligence of persons in common employment with him.

Measure of damages.

2.—(1) In an action for damages for personal injuries (including any such action arising out of a contract), there shall in assessing those damages be taken into account, against any loss of earnings or profits which has accrued or probably will accrue to the injured person from the injuries, one half of the value of any rights which have accrued or probably will accrue

to him therefrom in respect of industrial injury benefit, industrial disablement benefit or sickness benefit for the five years beginning with the time when the cause of action accrued.

This subsection shall not be taken as requiring both the gross amount of the damages before taking into account the said rights and the net amount after taking them into account to be found separately.

(2) In determining the value of the said rights there shall be disregarded any increase of an industrial disablement pension in respect of the need of constant attendance.

(3) The reference in subsection (1) of this section to assessing the damages for personal injuries shall, in cases where the damages otherwise recoverable are subject to reduction under the law relating to contributory negligence or are limited by or under any Act or by contract, be taken as referring to the total damages which would have been recoverable apart from the reduction or limitation.

(4) In an action for damages for personal injuries (including any such action arising out of a contract), there shall be disregarded, in determining the reasonableness of any expenses, the possibility of avoiding those expenses or part of them by taking advantage of facilities available under the National Health Service Act, 1946, or the National Health Service (Scotland) Act, 1947, or of any corresponding facilities in Northern Ireland.

9 & 10 Geo. 6. c. 81.
10 & 11 Geo. 6. c. 27.

(5) In assessing damages in respect of a person's death in any action under the Fatal Accidents Act, 1846, as amended by any subsequent enactment, or under the Carriage by Air Act, 1932, there shall not be taken into account any right to benefit resulting from that person's death.

9 & 10 Vict. c. 93.
22 & 23 Geo. 5. c. 36.

(6) For the purposes of this section—

(*a*) the expression "benefit" means benefit under the National Insurance Acts, 1946, or any corresponding Act of the Parliament of Northern Ireland;

(*b*) expressions used in the National Insurance Acts, 1946, for any description of benefit under those Acts have the same meanings as in those Acts, except that they include also the like benefit, if any, under any corresponding Act of the Parliament of Northern Ireland;

(*c*) an industrial disablement gratuity shall be treated as benefit for the period taken into account by the assessment of the extent of the disablement in respect of which it is payable.

Definition of "personal injury".

3. In this Act the expression "personal injury" includes any disease and any impairment of a person's physical or mental condition, and the expression "injured" shall be construed accordingly.

Application to Crown.

4. This Act shall bind the Crown.

Northern Ireland.

5.—(1) If the Parliament of Northern Ireland passes legislation for purposes similar to the purposes of this Act, then in connection with that legislation any limitation on the powers of that Parliament imposed by the Government of Ireland Act, 1920, shall not apply in so far as it would preclude that Parliament from enacting a provision corresponding to some provision of this Act.

10 & 11 Geo. 5. c. 67.

(2) This Act, except in so far as it enlarges the powers of the Parliament of Northern Ireland, shall not extend to Northern Ireland.

Short title and commencement.

6.—(1) This Act may be cited as the Law Reform (Personal Injuries) Act, 1948.

9 & 10 Geo. 6. c. 62.

(2) Section one and subsection (1) of section two of this Act shall apply only where the cause of action accrues on or after the day appointed for the National Insurance (Industrial Injuries) Act, 1946, to take effect; but subsections (4) and (5) of the said section two shall apply whether the cause of action accrued or the action was commenced before or after the commencement of this Act.

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