

New Zealand.**EMPLOYERS' LIABILITY.****1908, No. 54.**

AN ACT to consolidate certain Enactments of the General Assembly relating to the Liability of Employers to make Compensation for Personal Injuries suffered by Workers in their Service.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) The Short Title of this Act is "The Employers' Liability Act, 1908." Short Title.

(2.) This Act is a consolidation of the enactments mentioned in the Schedule hereto. Enactments consolidated.

(3.) All matters and proceedings commenced under any of the said enactments, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

2. In this Act, if not inconsistent with the context,—

Interpretation.

"Employer" includes a body of persons, corporate or unincorporate, and the Governor or any Minister acting for or on behalf of His Majesty, or His Majesty's Government in New Zealand:

1882, No. 0, sec. 2

"Person who has superintendence intrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour:

"Seaman" includes every person employed upon a ship, whether at sea or in port:

"Ship" includes any vessel of whatever kind, whether propelled by steam, sails, oars, or by any other motive power:

1891, No. 10, sec. 2

"Worker" means any person, male or female, whether under or over the age of twenty-one years, who, under contract with an employer, whether made before or after the coming into operation of this Act, contracts personally to do or

Ibid, sec. 3

perform any work or manual labour of any kind, whether technical, skilled, or unskilled, and whether such contract is oral or in writing, express or implied; and includes a "seaman," but does not include a domestic servant of either sex.

3. Where personal injury is caused to a worker—

- (a.) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or
- (b.) By reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him, while in the exercise of that superintendence; or
- (c.) By reason of the negligence of any person in the service of the employer to whose orders or directions the worker at the time of the injury was bound to conform, where such injury resulted from his having so conformed; or
- (d.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or
- (e.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, point, locomotive engine, or train upon a railway—

the worker, or, in case the injury results in death, the legal personal representatives of the worker, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the worker had not been a worker of or in the service of the employer or engaged in his work.

4. A worker shall not be entitled under the last preceding section to any right of compensation or remedy against the employer—

- (a.) Under paragraph (a) of that section, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to, the negligence of the employer, or of some person in the service of the employer and intrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition: or
- (b.) Under paragraph (d) of the same section, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned:

Provided that where a rule or by-law has been duly made or approved under any Act it shall not be deemed, for the purposes of this Act, to be an improper or defective rule or by-law: or

- (c.) In any case where the worker knew of the defect or negligence that caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer, or some person superior to himself in the service of the employer, unless he knew that the employer or such superior already knew of the said defect or negligence.

5. Where, in any navigable waters within or in the jurisdiction of New Zealand, personal injury is caused to a seaman—

Compensation for personal injury to workers in certain cases.
1882, No. 20, sec. 3

Cases where worker not entitled to compensation.
Ibid, sec. 4

Remedy for injury to seamen employed in ships.
891, No. 10, sec. 4

- (a.) By reason of any defect or unfitness in the condition of any spars, rigging, tackle, machinery, fittings, apparel, or furniture of any ship, or by reason of the absence of any necessary spars, tackle, machinery, fittings, or other apparel or furniture, if such defect, unfitness, or absence could by reasonable care or diligence have been discovered by the employer or by some person in his service intrusted by him with the care, custody, or control of such spars, tackle, machinery, fittings, apparel, or furniture respectively; or
- (b.) By reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him, whilst in the exercise of such superintendence; or
- (c.) By reason of the negligence of any person in the service of the employer to whose orders or directions the seaman or any other person was at the time of the injury bound to conform and did conform—

the seaman, or, in case of his death, his legal personal representatives, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as a worker or his legal personal representatives or such persons as aforesaid would, under this Act, have in like cases against his employer.

6. (1.) An action under this Act for the recovery of compensation for an injury shall not be maintainable unless notice in writing that injury has been sustained is given by the worker, or his solicitor or agent, within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death:

Notice of action to be given.
1882, No. 20, sec. 6
1891, No. 10, sec. 7

Provided that where such worker has sustained injury under such circumstances as render him physically or mentally incapable of giving or directing the giving of such notice, or if, in the opinion of his medical adviser, it would be injurious to such worker to give or direct the giving of such notice, and so as in any of such cases to be unable or unfit to give the notice required by this section, then such notice may be given not later than one month after the worker becomes physically or mentally capable of giving or directing the giving thereof, or when his medical adviser considers it would not be injurious to such worker to give or direct the giving of such notice, as the case may be; and in any such case the right of action shall be extended to a period of three months from the date when the person is capable or fitted to give or direct the giving of such notice as aforesaid, and shall not reckon from the occurrence of the accident causing the injury:

Provided also that in case of death the want of such notice shall be no bar to the maintenance of such action if the Judge is of opinion that there was reasonable excuse for such want of notice.

(2.) Where it may be necessary to make an affidavit for the purposes of any action or suit brought or proposed to be brought under this Act, such affidavit may, notwithstanding any Act or law to the contrary, be made and taken before any person authorised by law to take affidavits in the Supreme Court.

Ibid, sec. 8

7. (1.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained,

Notice of injury to be given, and may be served by delivery or registered letter.
1882, No. 20, sec. 9

and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(2.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(3.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

Service of notice on corporations or public officers.
1882, No. 20, sec. 10

Notice and proceedings against the Crown.

8. (1.) Where the employer is a body of persons, corporate or unincorporate, the notice shall be served by delivering the same at, or by sending the same by post in a registered letter addressed to, the office or, if there be more than one office, any one of the offices of such body.

(2.) Where the employer is His Majesty, notice may be given in the mode prescribed by Part II of "The Crown Suits Act, 1908," and, notwithstanding anything hereinbefore contained, all the provisions of that Act, so far as applicable, shall extend to claims made under this Act upon or against His Majesty.

Notice not invalidated for want of form.
Ibid, sec. 11

9. A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the Judge or Magistrate who tries the action arising from the injury mentioned in the notice is of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

All cases with consent of parties may be in Magistrate's Court.
Ibid, sec. 8

10. (1.) Every action for the recovery of compensation under this Act shall be brought in any Court of competent jurisdiction, but may, with the consent of both parties, be brought in a Magistrate's Court, notwithstanding the amount claimed may be beyond his statutory jurisdiction; and such Magistrate is hereby empowered to hear and determine any such case.

Appointment of Assessors to decide amount of compensation.

(2.) Upon the trial of any such action in a Magistrate's Court, one or more Assessors may be appointed for the purpose of ascertaining the amount of compensation.

Rules for regulating appointment, remuneration, and procedure, &c., of such Assessors, and for consolidating actions under this Act.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such Assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a Magistrate's Court, and otherwise preventing multiplicity of such actions, rules and regulations may from time to time be made in the same manner as rules and regulations for regulating the practice and procedure in other actions in Magistrates' Courts.

Court or jury to assess compensation.
1891, No. 10, sec. 5

11. (1.) The amount of compensation recoverable under this Act shall be estimated and determined at such amount and in such manner as the Court before which the case is heard, or as the jury or the Assessors, as the case may require, think fair and reasonable.

(2.) In cases heard before a jury the amount of compensation recoverable shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the worker is employed, unless the Judge, at the instance of the foreman of the jury, upon

being requested by three-fourths of such jury, directs that in his opinion such earnings would not be a fair and reasonable compensation under the circumstances :

Provided that nothing in this subsection shall apply to the case of an apprentice or artieded pupil.

12. (1.) In determining the amount of compensation payable by an employer, the Court shall take into consideration the value of any payment or contribution made by the employer to or for the injured person in respect of his injury, and also the value of any payment or contribution made by the employer to any insurance or compensation fund to the extent to which any person who would otherwise be entitled to compensation has received or is entitled to receive compensation out of such fund.

Payments by employer in respect of an injury to be considered when compensation awarded.
1891, No. 10, sec. 6

(2.) In any action the fact of any payment or contribution having been made by the employer as aforesaid shall not of itself be any admission of liability on his part.

13. (1.) There shall be deducted from any compensation awarded to any worker, or representative of a worker, or persons claiming by, under, or through a worker, in respect of any cause of action arising under this Act, any fine or part of a fine paid in pursuance of any other Act to such worker, representative, or persons in respect of the same cause of action.

Money payable under penalty to be deducted from compensation awarded.
1882, No. 20, sec. 7

(2.) Where an action has been brought under this Act by any worker, or representatives of any worker, or any persons claiming by, under, or through such worker, for compensation in respect of any cause of action arising under this Act, and payment has previously been made of any fine or part of a fine under any other Act in respect of the same cause of action, such worker, representatives, or persons shall not be entitled thereafter to receive any fine or part of a fine under any other Act in respect of the same cause of action.

14. Where compensation is awarded in case of the death of a worker for an injury sustained by him in the course of his employment, the amount recovered, after deducting the costs not recovered from the defendant, may, if the Judge or Magistrate so directs, be divided between the wife, husband (where the deceased was a wife), parents, and children of the deceased in such shares as the Judge or Magistrate may determine.

Judge or Magistrate may divide compensation.
1891, No. 10, sec. 14

15. Where personal injury to a worker who is illegitimate results in death, the same rights of compensation shall exist for the benefit of his mother, or of brothers and sisters by the same father and mother, as if he and such brothers and sisters were legitimate.

Worker being illegitimate no bar to claim.
Ibid, sec. 10

16. In an action against an employer a worker shall not, by reason of his continuing in the employment of the employer with knowledge of the defect, negligence, act, or omission which caused his injury, be deemed to have voluntarily incurred the risk of the injury.

Worker knowing of defect, &c., not deemed to have voluntarily incurred risk.
Ibid, sec. 11

17. A worker shall not be entitled to any right of compensation or remedy against his employer in any case where the employer was ignorant of the defect, negligence, act, or omission which caused his injury, and such worker knowing of the same failed, without a reasonable excuse, to give or cause to be given, within a reasonable time, information thereof to his employer or to some person superior to himself in the service of his employer.

Worker not informing of defect not to recover damages.
Ibid, sec. 12

No redress for
damage caused by
negligence.
1891, No. 10, sec. 13
Liability of
employer for
injuries in respect
of workers for
contractors and
subcontractors.
1892, No. 21, sec. 5

18. No worker shall be entitled to recover damages or compensation in respect of any injury arising from his own negligence.

19. (1.) Where an employer enters into a contract, either written or verbal, with an independent contractor to do part of such employer's work, or where such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer for injuries to the workers of such contractor or subcontractor resulting from any defect in the condition of the ways, works, machinery, or plant, if they are the property of the employer, or furnished by him, and if such defect arose, or had not been discovered or remedied, through the negligence of the employer or of some person intrusted by him with the duty of seeing that such condition is proper.

(2.) Nothing in this section shall take away any right of action which the principal employer may have against his contractor or subcontractor, or any right of action which any worker may have against his immediate employer; but the worker shall not be entitled to recover compensation more than once in respect of the same injury.

Defence of common
employment.
Ibid, sec. 6

20. (1.) Where a worker in the course of his employment is injured through a negligent act of another worker in the course of his employment, employed in or about the same work, the injured worker shall have his remedy against the employer of the worker whose negligence caused the injury, and the defence of common employment shall not avail in any such action unless the worker injured and the worker whose negligence caused the injury were not only engaged in a common employment but were in the employ of a common employer; provided that the injured worker shall not be entitled to recover if he shall have been guilty of contributory negligence.

(2.) Nothing in this section shall be construed to take away or to limit any other defence which the employer, against whom such action is brought, might otherwise have to such action.

(3.) The employer shall be entitled to be indemnified by the worker whose negligence has caused the injury to the extent of any damages and costs which such employer may have paid.

Representatives
of deceased
employer may
be sued.
1891, No. 10, sec. 15
Maximum amount
of compensation
recoverable.
Ibid, sec. 5
1892, No. 21, sec. 7
Contracts in bar
of benefit of Act
to be void.
1891, No. 10, sec. 9

21. An action under this Act shall lie, and may be maintained, against the representatives of a deceased employer.

22. Notwithstanding anything hereinbefore contained, it is hereby declared that the amount of compensation recoverable under this Act shall not exceed five hundred pounds in respect of any one cause of action.

23. Every covenant, contract, or agreement hereafter made or entered into whereby any worker or person binds himself or his personal representatives, either expressly or by implication, not to claim any benefit or enforce any right under this Act shall be null and void.

SCHEDULE.

ENACTMENTS CONSOLIDATED.

1882, No. 20.—“The Employers' Liability Act, 1882.”

1891, No. 10.—“The Employers' Liability Act Amendment Act, 1891.”

1892, No. 21.—“The Employers' Liability Acts Amendment Act, 1892.”