

*Hon. Mr. Mason*

## CONTRIBUTORY NEGLIGENCE

### ANALYSIS

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### A BILL INTITULED

AN ACT to amend the Law relating to Contributory Negligence. Title.

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

1. This Act may be cited as the Contributory Negligence Act, 1947. Short Title.

2. In this Act, unless the context otherwise requires,—  
10 “ Court ”, in relation to any claim, means the Court or arbitrator by or before whom the claim falls to be determined:  
“ Damage ” includes loss of life and personal injury:

15 “ Dependant ” means any person for whose benefit an action could be brought under the Deaths by Accidents Compensation Act, 1908:

No. 11—1

Interpretation.  
*Cf.* Law Reform (Contributory Negligence) Act, 1945 (8 & 9 Geo. VI, c. 28), (U.K.), s. 4  
  
See Reprint of Statutes, Vol. VI, p. 427

See Reprint  
of Statutes,  
Vol. V, p. 597

“Employer” and “worker” have the same meaning as in the Workers’ Compensation Act, 1922, as amended by any subsequent enactment:

“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. 5

Apportionment  
of liability in  
case of  
contributory  
negligence.  
Cf. 8 & 9  
Geo. VI,  
c. 28, s. 1

3. (1) 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: 10 15

Provided that—

(a) This subsection shall not operate to defeat any defence arising under a contract: 20

(b) Where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable. 25

(2) Where damages are recoverable by any person by virtue of the *last preceding* subsection subject to such reduction as is therein mentioned, the Court shall find and record the total damages which would have been recoverable if the claimant had not been at fault. 30

1936, No. 31

(3) Section seventeen of the Law Reform Act, 1936 (which relates to proceedings against, and contribution between, joint and several tort-feasors), 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 *one* of this section in respect of the damage suffered by any person. 35

1936, No. 31

(4) 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 Part I of 40

the Law Reform Act, 1936, the damages recoverable would be reduced under subsection *one* of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under the  
 5 Deaths by Accidents Compensation Act, 1908, shall be reduced to a proportionate extent.

See Reprint  
of Statutes,  
Vol. VI, p. 427

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

(6) Where any case to which subsection *one* of this section applies is tried with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

(7) Article twenty-one of the Convention set out in the First Schedule to the Carriage by Air Act, 1940  
 20 (which empowers a Court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person), shall have effect subject to the provisions of this section.

1940, No. 15

4. (1) Where, within the time limited for the taking of proceedings under the Workers' Compensation Act, 1922, an action is brought to recover damages  
 30 independently of that Act in respect of an injury or disease giving rise to a claim for compensation under that Act, and it is determined in that action that—

Provisions as  
to workers  
and employers.

Cf. 8 & 9  
Geo. VI, c. 28,  
s. 2

See Reprint  
of Statutes,  
Vol. V, p. 597

(a) Damages are recoverable independently of that Act subject to such reduction as is mentioned  
 35 in subsection *one* of section *three* of this Act; and

(b) The employer would have been liable to pay compensation under the Workers' Compensation Act, 1922,—

40 section fifty-two of the Workers' Compensation Act, 1922 (which enables the Court, on the dismissal of an action to recover damages independently of that Act, to assess and award compensation under that Act),

shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with the said section fifty-two, no damages shall be recoverable in the action. 5

(2) The *last preceding* subsection shall apply, with the necessary adaptations, in any case where compensation is recoverable under a scheme certified under section sixty-four of the Workers' Compensation Act, 1922, if the scheme applies section fifty-two of that Act, 10 or contains any provision similar to that section.

(3) Where a workman or his personal representative or dependant has recovered compensation under the Workers' Compensation Act, 1922, or under any scheme certified under section sixty-four of that Act, 15 in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section *three* of this Act from some person other than the employer (hereinafter referred to as the third party), any right conferred by 20 section fifty of the Workers' Compensation Act, 1922, on the person by whom the compensation was paid, or on any person called on to pay an indemnity under section thirteen of that Act, to be indemnified by the third party shall be limited to a right to be indemnified 25 in respect of such part only of the sum paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the worker had not been at fault. 30

Saving for maritime rules and past cases.

Cf. 8 & 9 Geo. VI, c. 28, s. 3

See Reprint of Statutes, Vol. VIII, p. 452

Saving for claims in respect of death or injury of miners.

Ibid., Vol. V, pp. 911, 1098

5. (1) This Act shall not apply to any claim to which section two of the Shipping and Seamen Amendment Act, 1912, applies, and that Act shall have effect as if this Act had not been passed. 30

(2) This Act shall not apply to any case where the 35 acts or omissions giving rise to the claim occurred before the passing of this Act.

6. This Act shall not apply to any proceedings under section one hundred and forty-seven of the Coal-mines Act, 1925, or section two hundred and ninety-five 40 of the Mining Act, 1926.