

EMPLOYERS' LIABILITY ACT, 1934.

No. 2150 of 1934.

An Act to consolidate the Acts usually known as the
"Employers' Liability Acts."

[Assented to 18th October, 1934.]

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

Short title. **1.** This Act may be cited as the "Employers' Liability Act, 1934."

Repeals. **2.** The Employers' Liability Act, 1884, and the Employers' Liability Amendment Act, 1889, are repealed.

Interpretation.
325, 1884, s. 9.
458, 1889,
ss. 2 and 5.
Cf. U.K.
43 & 44 Vict.
c. 42, s. 8.

3. (1) In this Act, unless the context otherwise requires—

"employer" includes a body of persons corporate or unincorporate :

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

"workman" means the following persons whether under the age of twenty-one or above that age :—

(a) a railway servant and any other person who, being a labourer, servant in husbandry, journeyman artificer, handicraftsman, miner, or otherwise engaged in manual work or labour, has entered into or works under a contract with an employer, whether the contract is express or implied, oral or in writing, and whether it is a contract of service or a contract personally to execute any work or labour ;

(b) a seaman or other person engaged in manual labour employed upon a ship or boat who has entered into or works under a contract for service with an employer whether the contract be express or implied, oral or in writing.

The term does not include a domestic or menial servant.

(2) This Act, in the case of a seaman, shall apply only to personal injury caused in a South Australian port.

4. (1) Where personal injury is caused to a workman—

Liability of employers.

(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

325, 1884, s. 1.
458, 1889, s. 3.
U.K. 43 & 44
Vict. c. 42,
s. 1.

(b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted 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 workman at the time of the injury was bound to conform, and did 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 points, locomotive engine, or train upon a rail or tramway,

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer nor engaged in his work.

(2) Where personal injury is caused to a workman by reason of any defect in the condition of any spars, rigging, tackle, machinery, fittings, apparel, or furniture connected with or used in any ship or boat whereon such workman is employed, such injury shall be deemed to have been caused by reason of a defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer within the meaning of this Act.

S. 4. CARTER V. GIBBONS AND ANOTHER (1925) S.A.S.R. 409. Held, on the facts, that personal injury had been caused to the plaintiff by negligence, that the negligence was that of a person to whose directions the plaintiff was bound to conform, and that the injury resulted from his having so conformed.

Exceptions to liability.
325, 1884, s. 2,
U.K. 43 & 44
Vict. c. 42,
s. 2.

5. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say :—

- (a) Under paragraph (a) of subsection (1) of section 4, 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 entrusted by him with the duty of seeing that the ways, works, and machinery or plant were in proper condition :
- (b) Under paragraph (d) of subsection (1) of section 4, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned :
- (c) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or some person entrusted with any duties of superintendence in or over that department in which the defect or negligence existed, whether such superintendent was ordinarily engaged in manual labour or not, unless the injured person himself performed duties of superintendence, in which case such person must have given notice to the employer or to a person entrusted with any superintendence over himself, unless the employer or such superior already knew of the said defect or negligence.

Limit of sum recoverable as compensation.
325, 1884, s. 3,
U.K. 43 & 44
Vict. c. 42,
s. 3.

6. The amount of compensation recoverable under this Act shall not exceed a sum 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 workman is employed at the time of the injury.

Limit of time for recovery of compensation.
325, 1884, s. 4,
U.K. 43 & 44
Vict. c. 42,
s. 4.

7. An action for the recovery, under this Act, of compensation for an injury shall not be maintainable, unless notice that injury has been sustained is given 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.

Deduction of penalty from compensation.
325, 1884, s. 5.
Of U.K.
43 & 44 Vict.
c. 42, s. 5.

8. (1) There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of

a penalty which has been paid in pursuance of any other Act to such workman, representatives, or persons in respect of the same cause of action.

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

9. All the provisions of this Act shall have effect and be enforced by every court in every case, notwithstanding any contract or agreement excluding all or any of the provisions of this Act or otherwise interfering with the operations thereof: Provided that in determining in any case the amount of compensation payable under this Act by an employer, the court shall take into consideration the value of any payment or contribution made by such employer to or for the injured person in respect of his injury, and also the value of any payment or contribution made by such employer to any insurance or compensation fund to the extent to which any person who would otherwise be entitled to compensation under this Act has actually received compensation out of such payment or contribution at the expense of such employer.

Contracting out
325, 1884, s. 6

10. Every action for the recovery of compensation under this Act, if for an amount not exceeding four hundred pounds, shall be brought in a local court: Provided that—

Action to be
brought in
local courts.
325, 1884, s. 7
Of. U.K.
43 & 44 Vict.
c. 42, s. 6.

- (a) upon the trial of any such action in a local court one or more assessors may be appointed for the purpose of ascertaining the amount of compensation;
- (b) 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 local court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time, in the same manner as rules and regulations for regulating the practice and procedure in other actions in local courts.

s. 10. *FLETCHER V. THE S.A. STEVEDORING CO., LTD.* (1890-91) 24 S.A.L.R. 54. Order made, that the action, in which £490 was claimed and in which a difficult question of law arose, should be removed from the Local Court to the Supreme Court.

Notice of
injury.

325, 1884, s. 8.
Of, U.K.
43 & 44 Vict.
c. 42, s. 7.

11. (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, 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 it to or at the residence or place of business of the person on whom it is to be served. 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 the letter containing it would be delivered in the ordinary course of post ; and in proving the service of the notice, it shall be sufficient to prove that the notice was properly addressed and registered.

(3) Where the employer is a body of persons, corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it 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.

(4) A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the court which 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.

Amendment
of notice.

325, 1884,
s. 7 (iii.)
453, 1889, s. 4.

12. Any court in which an action for recovery of compensation under this Act is commenced or is pending may—

(a) at any stage of the proceedings amend any defect in the notice of injury or death ; or

(b) direct that the action shall proceed and be maintainable notwithstanding that such notice has not been given duly or at all if, having regard to the circumstances, the court thinks it just so to direct, and that it appears to the court that within the time limited by this Act for giving such notice the employer or his agent or representative had knowledge or notice of the occurrence of the accident and of the fact that the workman was injured thereby or that there was reasonable excuse for such defect or omission.

ENGINE DRIVERS

see Steam Boilers and Enginedrivers.