



ANNO DECIMO SEXTO

## ELIZABETHAE II REGINAE

A.D. 1967

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### No. 21 of 1967

An Act to amend the Supreme Court Act, 1935-1966.

[Assented to 13th April, 1967.]

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

1. (1) This Act may be cited as the "Supreme Court Act Amendment Act (No. 2), 1966-1967". Short titles.
- (2) The Supreme Court Act, 1935-1965, as amended by this Act, may be cited as the "Supreme Court Act, 1935-1966".
- (3) The Supreme Court Act, 1935-1965, is hereinafter referred to as "the principal Act".
2. This Act shall come into operation on a day to be fixed by the Governor by proclamation. Commencement.
3. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.
4. The following sections are inserted in the principal Act after section 30 thereof :— Enactment of ss. 30a and 30b of principal Act—
  - 30a. Where in any action the Court determines that a party (being an infant) is entitled to recover damages from another party, the Court may by final or declaratory judgment finally determining the question of liability between the parties order payment of any amount or amounts of damages, direct to the plaintiff. Any acknowledgment or receipt in writing of any moneys paid on Power to direct payment to infant.

account of any such amount or amounts pursuant to a judgment under this section shall not if the Court so orders be invalid merely on the ground that the person giving the same was under the age of twenty-one years at the time of his signing or giving the same.

Power to make interim assessment of damages.

30b. (1) Where in any action the Court determines that a party is entitled to recover damages from another party, it shall be lawful for the Court to enter declaratory judgment finally determining the question of liability between the parties, in favour of the party who is entitled to recover damages as aforesaid, and to adjourn the final assessment thereof.

(2) It shall be lawful for the Court when entering declaratory judgment and for any Judge of the Court at any time or times thereafter—

(a) to make orders that the party held liable make such payment or payments on account of the damages to be assessed as to the Court seems just ;

and

(b) in addition to any such order or in lieu thereof, to order that the party held liable make periodic payments to the other party on account of the damages to be assessed during a stated period or until further order :

Provided, however, that where the declaratory judgment has been entered in an action for damages for personal injury, such payment or payments shall not include an allowance for pain or suffering or for bodily or mental harm (as distinct from pecuniary loss resulting therefrom) except where serious and continuing illness or disability results from the injury or except that, where the party entitled to recover damages is incapacitated or partially incapacitated for employment and being in part responsible for his injury is not entitled to recover the full amount of his present or continuing loss of earnings, or of any hospital, medical or other expenses resulting from his injury, the Court may order payment or payments not to exceed such loss of earnings and expenses and such payment or payments may be derived either wholly or in part from any damages to which the party entitled to recover damages has, but for the operation of this proviso, established a present and immediate right or except where the Judge is of opinion that there are special circumstances by reason of which this proviso should not apply.

(3) Any order for payment of moneys on account of damages made hereunder may be enforced as a judgment of the Court.

(4) Where the Court adjourns assessment of damages under this section, it may order the party held liable to make such payment into Court or to give such security for payment of damages when finally assessed as it deems just.

(5) When damages are finally assessed credit shall be given in the final assessment for all payments which have been made under this section and the final judgment shall state the full amount of damages, the total of all amounts already paid pursuant to this section and the amount of damages then remaining payable, and judgment shall be entered for the last-named amount.

(6) Where the Court adjourns assessment of damages under this section, any party to the proceedings may apply to any Judge of the Court at any time and from time to time—

(a) for an order that the Court proceed to final assessment of the damages ;

or

(b) for the variation or termination of any order which may have been made for the making of periodic payments.

On the hearing of any such application the Judge shall make such order as he considers just: Provided that, in an action for damages for personal injury, upon an application for an order that the Court proceed to final assessment of damages, the Judge to whom such application is made shall not refuse such order if the medical condition of the party entitled to recover damages is such that neither substantial improvement nor substantial deterioration thereof is likely to occur or if a period of four years or more has expired since the date of the declaratory judgment unless the Judge is of opinion that there are special circumstances by reason of which such assessment should not then be made.

(7) If it appears to the Court that a person in whose favour declaratory judgment has been entered has without reasonable cause failed to undertake such reasonable medical or remedial treatment as his case might have required or require, it shall not award damages for such disability, pain or suffering as would have been remedied but for such failure.

(8) If at any time it appears to a Judge that a person in whose favour declaratory judgment has been entered and who is incapacitated or partially incapacitated for employment, is not sincerely or with the diligence which should be expected of him in the circumstances of his case, attempting to rehabilitate himself for employment any payment or payments under subsection (2) of this section shall not include by way of allowance for loss of earnings a sum in excess of seventy-five per centum of such person's loss of earnings.

(9a) Notwithstanding anything in the Survival of Causes of Action Act, 1940, when damages are finally assessed under this section for the benefit of the estate of a deceased person where the deceased person died after action brought and declaratory judgment has been entered in favour of such person, the damages finally assessed may include such damages in respect of any of the matters referred to in section 3 of that Act as the Court deems proper.

(b) Where a party dies after declaratory judgment has been entered in his favour but before final assessment of his damages in circumstances which would have entitled any person to recover damages, solatium or expenses by action pursuant to Part II of the Wrongs Act, 1936-1959, it shall be lawful for the executor or administrator of the deceased to proceed in the same action for the recovery of such damages, solatium or expenses for the benefit of such person notwithstanding the declaratory judgment or that the deceased has received moneys thereunder, provided, however, that in any such proceedings all moneys paid to the deceased pursuant to the declaratory judgment in excess of any actual and subsisting pecuniary loss resulting to him from the wrongful act of the party held liable shall be deemed to have been paid towards satisfaction of the damages solatium or expenses awarded pursuant to the Wrongs Act, 1936-1959, and no further damages shall be payable in respect of the injury sustained by the deceased. In any proceedings hereunder, the declaratory judgment and any finding of fact made in the course of proceed-

ings consequent thereupon shall enure as between the party held liable and the executor or administrator of the deceased.

- (c) Where a party dies in the circumstances referred to in the preceding paragraph of this subsection except that the death of the deceased is not wholly attributable to the personal injury, the subject of the declaratory judgment, but was accelerated thereby, it shall be lawful for proceedings to be taken and for the Court to assess damages, solatium or expenses as in the preceding paragraph but such damages, solatium or expenses shall be proportioned to the injury to the person for whom and for whose benefit the proceedings are taken resulting from such acceleration of death ;
- (d) The Court may, if the justice of a case so requires, assess damages under paragraph (a) of this subsection notwithstanding the commencement or prosecution of proceedings under paragraph (b) or (c) of this subsection and the damages so assessed shall be for the benefit of the estate of the deceased and no damages shall be awarded under paragraph (b) or (c) of this subsection.

(10) In the exercise of the powers conferred by this section the Court shall have regard to the facts and circumstances of the particular case, as they exist from time to time, and any allowance, or the final assessment, as the case may be, shall be such as to the Court may seem just and reasonable as compensation to the person actually injured or to his or her dependants as the case may be.

5. Section 50 of the principal Act is amended by inserting after the words "every judgment" first occurring therein the words "including every declaratory judgment entered pursuant to section 30b of this Act and any final assessment made thereon" and by inserting in paragraph (b) of subsection (3) thereof after subparagraph (v) the following subparagraph :—

- (va) Any assessment of damages not being a final assessment made pursuant to section 30b of this Act.

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

EDRIC BASTYAN, Governor.

Amendment of  
principal Act  
s. 50—  
Appeals to  
Full Court.