CHAPTER 22

FATAL ACCIDENTS

To repeal and replace existing provision for the compensation of dependants of persons killed as a result of tortious acts.

[1 November 1986.]

1. This Ordinance may be cited as the Fatal Accidents Ordinance.

2. (1) In this Ordinance, unless the context otherwise requires—

"adopted" means adopted in pursuance of an adoption order made under the Adoption Ordinance or of any adoption recognized as valid by the law of Hong Kong;

"dependant", in relation to a deceased person, means—

(a) the wife, husband, former wife or former husband of the deceased and any person whose marriage to the deceased has been annulled or declared void;

(b) a concubine lawfully taken by the deceased before 7 October 1971;

(c) any person who—

(i) was living with the deceased in the same household immediately before the date of his death; and

(ii) had been living with the deceased in the same household for at least 2 years before that date, as the husband or wife of the deceased;

(d) any parent or other ascendant of the deceased;

(e) any person (not being a parent of the deceased) who, during any marriage to which that person was a party, treated the deceased as a son or daughter of the family in relation to that marriage;

(f) any child or other descendant of the deceased;

(g) any person (not being a child of the deceased) who, during any marriage to which the deceased was at any time a party, was treated by the deceased as a son or daughter of the family in relation to that marriage;

(h) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased;

(i) any person who is, or is the issue of, a brother or sister of a grandparent of the deceased;

(j) any godchild or godparent of the deceased according to Chinese custom;
“wife” means—

(a) in the case of a Christian marriage or its civil equivalent, the lawful wife; and

(b) in the case of any other lawful marriage—
   (i) the lawful wife of such marriage; or
   (ii) if there is more than one lawful wife, the lawful principal wife recognized as such by the personal law of the husband of such marriage, or if there is no lawful principal wife, the lawful wives so recognized.

(2) In deducing any relationship for the purposes of this Ordinance—

(a) an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and, subject thereto;

(b) any relationship by affinity shall be treated as relationship by consanguinity, any relationship of the half-blood as a relationship of the whole blood, and the stepchild of any person as his child; and

(c) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

3. If death is caused to any person (“the deceased”) by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the deceased to maintain an action and recover damages in respect thereof, then subject to section 4(2) an action for damages may be brought for the benefit of the dependants of the deceased against the person who would have been liable in damages to the deceased in respect of that wrongful act, neglect or default.

4. (1) An action under this Ordinance may consist of or include a claim for damages for bereavement unless, by reason of the act, neglect or default referred to in section 3, any person has recovered, by action or otherwise, a sum in respect of loss of the deceased’s society under section 20C(1) of the Law Amendment and Reform (Consolidation) Ordinance.

   (2) A claim for damages for bereavement shall only be for the benefit of such of the following persons as survive the deceased for not less than 30 days—

   (a) the wife or husband of the deceased, unless they had been living apart for a continuous period of at least 2 years immediately preceding the death of the deceased; or

   (b) where there is no spouse by or for whom a claim can be made under paragraph (a), the children of the deceased; or

   (c) where there is no person by or for whom a claim can be made under paragraph (a) or (b), the wife or husband of the deceased (notwithstanding that they had been living apart); or
(d) where there is no person by or for whom a claim can be made under paragraph (a), (b) or (c), any concubine taken by the deceased before 7 October 1971; or

(e) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c) or (d), any person who—
   (i) was living with the deceased in the same household immediately before the date of his death; and
   (ii) had been living with the deceased in the same household for at least 2 years before that date, as the husband or wife of the deceased; or

(f) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d) or (e), the parents of the deceased or (if the deceased was illegitimate) his mother; or

(g) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d), (e) or (f), but the deceased was at the date of his death a minor, any person who during any marriage to which that person was a party treated the deceased as a son or daughter of the family in relation to that marriage; or

(h) where there is no other person by or for whom a claim can be made under this subsection, any brother or sister of the deceased.

(3) Subject to subsection (4), the sum to be awarded as damages under this section shall be $40,000.

(4) Where there is a claim for damages under this section for the benefit of 2 or more persons, the sum awarded shall be divided equally between them (subject to any deduction falling to be made in respect of costs not recovered from the defendant).

(5) The Legislative Council may by resolution amend subsection (3) by varying the sum specified therein.

5. (1) An action under this Ordinance shall be brought by and in the name of the executor or administrator of the deceased.

   (2) If—
      
      (a) there is no executor or administrator of the deceased; or
      
      (b) no action is brought within 6 months after the death by and in the name of an executor or administrator of the deceased,

the action may be brought by and in the name of all or any of the persons for whose benefit an executor or administrator could have brought it.

(3) Not more than one action shall lie for and in respect of the same subject-matter of complaint.
(4) The plaintiff in the action shall be required to deliver to the defendant or his solicitor full particulars of the persons for whom and on whose behalf the action is brought and of the nature of the claim in respect of which damages are sought to be recovered.

6. (1) In the action, such damages, other than damages for bereavement, may be awarded to dependants in such proportions as reflect their respective injuries as a result of the death.

(2) Where damages are awarded under subsection (1), any costs not recovered from the defendant shall be deducted from those damages and thereafter those damages shall be divided among the dependants in such proportions as has been decided under that subsection.

(3) In an action under this Ordinance, or under the Carriage by Air (Overseas Territories) Order 1967, where there fall to be assessed damages payable to a widow in respect of the death of her husband there shall not be taken into account the re-marriage of the widow or her prospects of re-marriage.

(4) In an action under this Ordinance where there fall to be assessed damages payable to a person who is a dependant within the meaning of paragraph (c) of the definition of that term in section 2, in respect of the death of the person with whom the dependant was living as husband or wife, there shall be taken into account (together with any other matter that appears to the court to be relevant to the action) the fact that the dependant had no enforceable right to financial support by the deceased as a result of their living together.

(5) In assessing damages in any action brought under this Ordinance the funeral expenses of the deceased person, if such expenses have been incurred by the parties for whose benefit the action is brought, shall be taken into account.

(6) Money paid into court in satisfaction of a cause of action under this Ordinance may be in one sum without specifying any person’s share.

7. In assessing damages in respect of a person’s death in an action under this Ordinance or under the Carriage by Air (Overseas Territories) Order 1967, benefits which have accrued or will or may accrue to any person from his estate or otherwise as a result of his death shall be disregarded.