

No. 520, A.]

[Published July 29, 1949.

CHAPTER 548.

AN ACT to amend 331.045 and to repeal and recreate 331.04 of the statutes, relating to actions for wrongful death and effect of contributory negligence therein.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 331.04 of the statutes is repealed and recreated to read:

331.04 PLAINTIFF IN WRONGFUL DEATH ACTION; DAMAGES LIMITED. (1) An action for wrongful death may be brought by the personal representative of the deceased person or by the person to whom the amount recovered belongs.

(2) The amount recovered shall belong and be paid to the spouse of the deceased; if no spouse survives, to the deceased's lineal heirs as determined by section 237.01; if no lineal heirs survive, to the deceased's brothers and sisters. If any such relative dies before judgment in the action, the relative next in order shall be entitled to recover for the wrongful death. A surviving nonresident alien wife and minor children shall be entitled to the benefits of this section.

(3) If separate actions are brought for the same wrongful death, they shall be consolidated on motion of any party. Unless such consolidation is so effected that a single judgment within the limits hereinafter provided may be entered protecting the defendant or defendants and so that satisfaction of such judgment shall extinguish all liability for the wrongful death, no action shall be permitted to proceed except that of the personal representative.

(4) Judgment for damages for pecuniary injury from wrongful death shall not exceed \$12,500. Additional damages not to exceed \$2,500 for loss of society and companionship may be awarded to spouse or parents of deceased. In any case where a decedent leaves a widow with more than 2 dependent children under 15 years of age, the above maximum limit for pecuniary loss recoverable by such widow shall be increased \$1,000 on account of each such child in excess of 2 but not exceeding a total increase of \$5,000.

(5) If the personal representative brings the action he may also recover funeral expenses; if a relative brings the action he may recover funeral expenses on behalf of himself or of any relative specified in this section who has paid or assumed liability for such expenses.

(6) Where the wrongful death of a person creates a cause of action in favor of the decedent's estate and also a cause of action in favor of a spouse or relatives as provided in this section, such spouse or relatives may waive and satisfy the estate's cause of action in connection with or as part of a settlement and discharge of the cause of action of the spouse or relatives.

(7) Damages found by a jury in excess of either maximum amount specified above shall be reduced by the court to such maximum. The aggregate of such maximum amounts shall be diminished under the provisions of section 331.045 if the deceased or person entitled to recover is found negligent.

SECTION 2. 331.045 of the statutes is amended to read:

331.045 Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished * * * in the proportion to the amount of negligence attributable to the person recovering.

Approved July 26, 1949.
