

CHAPTER 229

Actions for Death and Injuries resulting in Death

§ 1. Damages for Death from a Defective Way.

Annotations—

Governmental tort liability as to highway median barriers. 58 ALR4th 559.

Governmental tort liability for injury to roller skater allegedly caused by sidewalk or street defects. 58 ALR4th 1197.

Excessiveness or adequacy of damages awarded for noneconomic loss caused by personal injury or death of parent. 61 ALR4th 251.

Excessiveness or adequacy of damages awarded for noneconomic loss caused by personal injury or death of spouse. 61 ALR4th 309.

Excessiveness or adequacy of damages awarded for parents' noneconomic loss caused by personal injury or death of child. 61 ALR4th 413.

CASE NOTES

5. Decedents and their survivors

Parents of emancipated deceased adult unmarried child may recover compensatory damages as next of kin for loss of consortium under wrongful death statute. *Schultz v Grogean* (1990) 406 Mass 364, 548 NE2d 180.

If decedent has no spouse or issue, "next of kin" are recipients of recovery in wrongful death action. *Schultz v Grogean* (1990) 406 Mass 364, 548 NE2d 180.

Phrase "next of kin" includes parents of adult child. *Schultz v Grogean* (1990) 406 Mass 364, 548 NE2d 180.

Where decedent had no spouse or issue, next-of-kin are entitled to recover consor-

tium-like damages but reasonable burial expenses and any punitive damages and damages for conscious pain and suffering are recoverable by decedent's estate. *Santos v Lumbermens Mut. Casualty Co.* (1990) 408 Mass 70, 556 NE2d 983.

6. Pleading and practice

Person responsible for death liable in single, indivisible amount to personal representative of decedent for benefit of persons who are to share in recovery according to formula set out in GL c 229 § 1. *Doyon v Travelers Indem. Co. of America*, (1986) 22 Mass App Ct 336, 493 NE2d 887.

§ 2. Damages for Death by Negligence, etc.; General Provisions.

A person who (1) by his negligence causes the death of a person, or (2) by willful, wanton or reckless act causes the death of a person under such circumstances that the deceased could have recovered damages for personal injuries if his death had not resulted, or (3) operates a common carrier of passengers and by his negligence causes the death of a passenger, or (4) operates a common carrier of passengers and by his willful, wanton or reckless act causes the death of a passenger under such circumstances that the deceased could have recovered damages for personal injuries if his death had not resulted, or (5) is responsible for a breach of warranty arising under Article 2 of chapter one hundred and six which results in injury to a person that causes death, shall be liable in damages in the amount of: (1) the fair monetary value of the decedent to the persons entitled to receive the damages recovered, as provided in section one, including but not limited to compensation for the loss of the

reasonably expected net income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent to the persons entitled to the damages recovered; (2) the reasonable funeral and burial expenses of the decedent; (3) punitive damages in an amount of not less than five thousand dollars in such case as the decedent's death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant; except that (1) the liability of an employer to a person in his employment shall not be governed by this section, (2) a person operating a railroad shall not be liable for negligence in causing the death of a person while walking or being upon such railroad contrary to law or to the reasonable rules and regulations of the carrier and (3) a person operating a street railway or electric railroad shall not be liable for negligence for causing the death of a person while walking or being upon that part of the street railway or electric railroad not within the limits of a highway. A person shall be liable for the negligence or the willful, wanton or reckless act of his agents or servants while engaged in his business to the same extent and subject to the same limits as he would be liable under this section for his own act. Damages under this section shall be recovered in an action of tort by the executor or administrator of the deceased. An action to recover damages under this section shall be commenced within three years from the date of death, or within three years from the date when the deceased's executor or administrator knew, or in the exercise of reasonable diligence, should have known of the factual basis for a cause of action, or within such time thereafter as is provided by section four, four B, nine or ten of chapter two hundred and sixty.

History—

Amended by 1989, 215, § 1, approved July 11, 1989, effective 90 days thereafter.

Editorial Note—

The 1989 amendment, in the last sentence, following "death", inserted ", or within three years from the date when the deceased's executor or administrator knew, or in the exercise of reasonable diligence, should have known of the factual basis for a cause of action,".

Total Client-Service Library® References—

- 22A Am Jur 2d, Death §§ 56, 60, 66, 68, 69, 71.
- 17 Am Jur Pl & Pr Forms, Rev, Limitation of Actions, Forms 2, 123.1.
- 4 Am Jur Trials 441, Solving Statutes of Limitation Problems.
- 11 Am Jur Trials 1, Representation of Survivors in Death Actions.
- 12 Am Jur Trials 317, Wrongful Death Actions.
- 4 Am Jur Proof of Facts 71, Actions for Death.

Annotations—

Time from which statute of limitations begins to run against cause of action for wrongful death. 97 ALR2d 1151.

Excessiveness or adequacy of damages awarded for personal injuries resulting in death of persons engaged in trades and manual occupations. 47 ALR4th 134.

Time of discovery as affecting running of statute of limitations in wrongful death action. 49 ALR4th 972.

Excessiveness or adequacy of damages awarded for noneconomic loss caused by personal injury or death of parent. 61 ALR4th 251.

Excessiveness or adequacy of damages awarded for noneconomic loss caused by personal injury or death of spouse. 61 ALR4th 309.