CIVIL AND DELICTUAL CLAIMS

Apportionment Of Damages

Contributory negligence occurs where the negligence of all the parties is considered, and the damages may be apportioned (divided) by the amount each party's negligence contributed to the damages. The Apportionment of Damages Act regulates this.

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What is apportionment of damages?

- A person ("wrongdoer") who is being sued for damages caused by his/her negligence may raise a defence of contributory negligence.
- Contributory negligence occurs where the negligence of all the parties is considered, and the damages may be apportioned (divided) by the amount each party's negligence contributed to the damages. The Apportionment of Damages Act regulates this.
- In other circumstances, a wrongdoer may be held jointly liable with another person towards the plaintiff (person who claims the damages).

What is contributory negligence?

- Where the plaintiff suffers damages, which are partly caused by his/her own fault and partly by the fault of the wrongdoer, the plaintiff's damages claim is reduced based on his/her fault.
- In determining contributory negligence:
    - both parties must have acted negligently to cause the damages;
    - the parties must have deviated from the behavior of a *reasonable person;* and
    - there must be a connection between the negligence of the parties and the damages suffered.
- Contributory negligence is raised during court proceedings and the wrongdoer will have to prove that the plaintiff contributed to the damages suffered.
- For example: If the plaintiff neglects to wear a safety belt and his/her damages are assessed at R1000, but it was later on established that s/he would have sustained only R400 in damages had s/he worn his/her safety belt, only that portion of the damages caused by his/her negligence (R600) is apportioned. Assuming that the plaintiff is 33% negligent, this would mean that 33% of the R600 will be deducted and that the plaintiff will then only be entitled to recover R802.
  Calculation:
  33% of the apportioned (shared amount) amount of R600 = R198
  R600 – R198 = R402
  R402 + R400 = R802 claim

What does "joint wrongdoers" mean?

- Two or more persons (“joint wrongdoers”) through their negligence may be held jointly and severally liable to the plaintiff for the same damages claim.
- Joint wrongdoer/s are sued together during court proceedings.
- A court may also apportion the damages between the parties equally or apportion the damages in proportion to each wrongdoer’s contribution of their negligence.
- Examples of joint wrongdoers:
    - A spouse married in community of property may be held liable with his/her spouse as a joint wrongdoer for damages caused by his/her spouse.
    - An employee and employer are joint wrongdoers if the employer can recover a contribution from the employee.

Glossary of terms:
DEFENCE: a reason the wrongdoer provides to remove or limit the claim of the plaintiff.
JOINT AND SEVERAL LIABILITY: any joint wrongdoer may be liable for damages and if one joint wrongdoer pays the plaintiff individually, then s/he can claim a contribution from the other joint wrongdoer/s.
NEGLIGENT: the failure to take reasonable care, for example, recklessness.
REASONABLE PERSON: a test used to decide what a normal person would have done under the circumstances in that particular situation.

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