

2136

2009-2010 Regular Sessions

I N S E N A T E

February 11, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to payment of damages in wrongful death action

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Paragraph (a) of section 5-4.3 of the estates, powers and
2 trusts law, as amended by chapter 100 of the laws of 1982, is amended to
3 read as follows:
4 (a) The damages awarded to the plaintiff may be such sum as the jury
5 or, where issues of fact are tried without a jury, the court or referee
6 deems to be fair and just compensation for the [pecuniary] injuries
7 resulting from the decedent's death to the persons for whose benefit the
8 action is brought. In every such action, [in addition to any other
9 lawful element of recoverable damages, the reasonable expenses of
10 medical aid, nursing and attention incident to the injury causing death
11 and the reasonable funeral expenses of the decedent paid by the distri-
12 butees, or for the payment of which any distributee is responsible,
13 shall also be proper elements of damage] DAMAGES SHALL INCLUDE THE
14 FOLLOWING:
15 (1) EMOTIONAL LOSS AND MENTAL ANGUISH WHICH MAY INCLUDE COMPANIONSHIP,
16 GUIDANCE AND ADVICE OF THE DECEDENT;
17 (2) COMPENSATION FOR
18 (I) REASONABLY EXPECTED PECUNIARY LOSS AND
19 (II) THE LOSS OF SERVICES, PROTECTION, AFFECTION, CARE AND ASSISTANCE
20 PROVIDED BY THE DECEDENT;
21 (3) EXPENSES FOR THE CARE, TREATMENT AND HOSPITALIZATION OF THE DECE-
22 DENT INCIDENT TO THE INJURY RESULTING IN DEATH; AND
23 (4) REASONABLE FUNERAL EXPENSES.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD08807-01-9

1 Interest upon the principal sum recovered by the plaintiff from the
2 date of the decedent's death shall be added to and be a part of the
3 total sum awarded.

4 S 2. Section 5-4.3 of the estates, powers and trusts law is amended by
5 adding a new paragraph (a-1) to read as follows:

6 (A-1) DAMAGES ENUMERATED IN SUBPARAGRAPH (1) OR CLAUSE (II) OF SUBPAR-
7 AGRAPH (2) OF PARAGRAPH (A) WHICH ARE AWARDED BY A JUDGE OR JURY, OR
8 APPROVED BY THE COURT PURSUANT TO 5-4.6, SHALL SPECIFY BOTH THE AMOUNT
9 AND THE PERSON FOR WHOSE BENEFIT THE DAMAGES ARE AWARDED OR APPROVED.

10 S 3. The opening paragraph of paragraph (a) of section 5-4.4 of the
11 estates, powers and trusts law, as amended by chapter 595 of the laws of
12 1992, is amended to read as follows:

13 [The] EXCEPT AS PROVIDED IN PARAGRAPH (A-1), damages, as prescribed by
14 5-4.3, whether recovered in an action or by settlement without an
15 action, are exclusively for the benefit of the decedent's distributees
16 and, when collected, shall be distributed to the persons entitled there-
17 to under 4-1.1 and 5-4.5, except that where the decedent is survived by
18 a parent or parents and a spouse and no issue, the parent or parents
19 will be deemed to be distributees for purposes of this section. The
20 damages shall be distributed subject to the following:

21 S 4. Section 5-4.4 of the estates, powers and trusts law is amended by
22 adding a new paragraph (a-1) to read as follows:

23 (A-1) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, DAMAGES
24 AWARDED PURSUANT TO PARAGRAPH (A-1) OF 5-4.3 SHALL BE DISTRIBUTED TO THE
25 PERSON FOR WHOSE BENEFIT SUCH DAMAGES ARE AWARDED.

26 S 5. This act shall take effect April 1, 2010 and shall apply to caus-
27 es of action arising on or after such date.