

## CHAPTER 5

### Actions in Wrongful Death

#### SECTIONS

- § 501. Liability in action for wrongful death; Proceedings.**
- § 502. Action to be brought in name of personal representative; Beneficiaries of action.**
- § 503. Damages; Limitation period; Action may be settled by personal representative.**

#### **§ 501. Liability in action for wrongful death; Proceedings.**

(1) When the death of a person is caused by wrongful act, neglect, or default such as would have entitled the party injured to maintain an action and recover damages in respect thereof if death had not ensued, the person or corporation which would have been liable if death had not ensued, or the administrator or executor of the estate of such person, as such administrator or executor, shall be liable to an action for damages notwithstanding the death of the person injured, and although the death was caused under circumstances which make it in law murder in the first or second degree, or manslaughter.

(2) When the action is against such administrator or executor the damages recovered shall be a valid claim against the estate of such deceased person.

(3) When death is caused by wrongful act, neglect, or default in another State, territory, or foreign country, for which a right to maintain an action and recover damages in respect thereof is given by a statute of that jurisdiction, such right of action may be enforced in the Trust Territory. Every such action brought under this section shall be commenced within the time prescribed for the commencement of such actions by the statute of such other State, territory, or foreign country.

**Source:** TT Code 1966 § 25(a); TT Code 1970, 6 TTC 201; TT Code 1980, 6 TTC 201.

#### **Case annotations:**

#### **Wrongful Death**

The common law today reflects no policy against wrongful death actions. The Federated States of Micronesia Supreme Court is not required to adopt the restrictive method of interpretation employed by the first courts who approached wrongful death statutes more than a century ago. *Luda v. Maeda Road Constr. Co., Ltd.*, 2 FSM R. 107, 113 (Pon. 1985).

The FSM tolling statute, 6 F.S.M.C. 806, applies to persons "entitled to a cause of action," including minors for whom wrongful death actions may be brought. *Luda v. Maeda Road Constr. Co., Ltd.*, 2 FSM R. 107, 113 (Pon. 1985).

Wrongful death statutes, including the \$100,000 ceiling on wrongful death claims, are part of the law of the states and are not national law. *Edward v. Pohnpei*, 3 FSM R. 350, 360 (Pon. 1988).

In a case where a patient died following the normal delivery of her child, where the evidence fails to show any demonstrable effort at diagnosis and no treatment as a result of diagnosis, the standard of care expected of a doctor at the Truk State Hospital was not met and the evidence proves negligence. *Asan v. Truk*, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

In a wrongful death claim in Truk State, where the total pecuniary estimated loss was \$15,288 and where an infant child lost his mother, there should be a finding for the plaintiff in the maximum amount allowed by law, \$50,000. *Asan v. Truk*, 4 FSM R. 51, 56-57 (Truk S. Ct. Tr. 1989).

In a wrongful death claim, parents of the deceased child are entitled to claim pecuniary damages and damages for their own pain and suffering from the loss of their child. *Suka v. Truk*, 4 FSM R. 123, 130 (Truk S. Ct. Tr. 1989).

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. *Leeruw v. FSM*, 4 FSM R. 350, 365 (Yap 1990).

The term "pecuniary injury" as used in wrongful death statutes traditionally has been interpreted as including the probable support, services and other contributions that reasonably could have been expected by the beneficiaries had the decedent lived out her full life expectancy, all reduced to present worth. *Leeruw v. FSM*, 4 FSM R. 350, 365 (Yap 1990).

Since under Yapese custom a daughter in her adult years may be expected to provide certain services for her mother, the loss of such customary services should be considered in calculating the mother's pecuniary injury resulting from her daughter's death. *Leeruw v. FSM*, 4 FSM R. 350, 365 (Yap 1990).

That a plaintiff parent of a decedent child can be awarded damages to include mental pain and suffering for the loss of such child is an exception to the general rule that wrongful death actions exclude compensation for pain and suffering, medical expenses, emotional distress or sorrow, or loss of companionship or consortium. *Leeruw v. FSM*, 4 FSM R. 350, 366 (Yap 1990).

Given that a 19-year old daughter is considered a child under Yapese custom, that the decedent was a 19-year old daughter who up to the time of her death continued to live with her parents in Yap and to perform those household chores expected under custom of young female persons within families in Yap, and that the parents were accompanying their daughter en route to obtain medical services when she died, the daughter was a child within the meaning of 6 F.S.M.C. 503. *Leeruw v. FSM*, 4 FSM R. 350, 366 (Yap 1990).

A statutory cap on the amount and scope of recovery in a wrongful death action, lawfully enacted by the Kosrae legislature, does not interfere with traditional Kosraean or Micronesian compensation of a victim's family by the tortfeasor. *Tosie v. Healy-Tibbets Builders, Inc.*, 5 FSM R. 358, 361 (Kos. 1992).

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection analysis. *Tosie v. Healy-Tibbets Builders, Inc.*, 5 FSM R. 358, 362 (Kos. 1992).

There is no fundamental interest in unbounded wrongful death recovery requiring strict scrutiny of a state law imposing a recovery cap. *Tosie v. Healy-Tibbets Builders, Inc.*, 5 FSM R. 358, 362 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. *Tosie v. Healy-Tibbets Builders, Inc.*, 5 FSM R. 358, 363 (Kos. 1992).

**§ 502. Action to be brought in name of personal representative; Beneficiaries of action.**

Every action for wrongful death must be brought in the name of the personal representative of the deceased, but shall be for the exclusive benefit of the surviving spouse, the children, and other next of kin, if any, of the decedent as the court may direct.

**Source:** TT Code 1966 § 25(b); TT Code 1970, 6 TTC 202; TT Code 1980, 6 TTC 202.

**§ 503. Damages; Limitation period; Action may be settled by personal representative.**

(1) The trial court may award such damages, not exceeding the sum of \$100,000, as it may think proportioned to the pecuniary injury resulting from such death, to the persons, respectively, for whose benefit the action was brought; provided, however, that where the decedent was a child, and where the plaintiff in the suit brought under this chapter is the parent of such child, or one who stands in the place of a parent pursuant to customary law, such damages shall include his mental pain and suffering for the loss of such child, without regard to provable pecuniary damages.

(2) Except as otherwise provided, every such action shall be commenced within two years after the death of such person.

(3) A personal representative appointed in the Trust Territory may, with the consent of the court making such appointment, at any time before or after the commencement of the suit, settle with the defendant the amount to be paid.

**Source:** TT Code 1966 § 25(c); TT Code 1970, 6 TTC 203; COM PL 4C-36 § 1; TT Code 1980, 6 TTC 203.

**Case annotations:** Given that a 19-year old daughter is considered a child under Yapese custom, that the decedent was a 19-year old daughter who up to the time of her death continued to live with her parents in Yap and to perform those household chores expected under custom of young female persons within families in Yap, and that the parents were accompanying their daughter en route to obtain medical

services when she died, the daughter was a child within the meaning of 6 F.S.M.C. 503. *Leeruw v. FSM*, 4 FSM R. 350, 366 (Yap 1990).

The two-year period proclaimed in 6 F.S.M.C. 503(2) is subject to the tolling provisions of 6 F.S.M.C. 806. Accordingly, the statute of limitations has not run against the minor children in this case. *Sarapio v. Maeda Road Constr. Co.*, 3 FSM R. 463, 464, (Pon. 1988).

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. *Leeruw v. FSM*, 4 FSM R. 350, 365 (Yap 1990).