

Liability in
respect of
injury.

36. Subject to the next succeeding section, the liability of a carrier under this Part in respect of personal injury suffered by a passenger, not being injury that has resulted in the death of the passenger, is in substitution for any civil liability of the carrier under any other law in respect of the injury.

Certain
liabilities
not excluded.

37. Nothing in this Part shall be deemed to exclude any liability of a carrier—

- (a) to indemnify an employer of a passenger in respect of liability of that employer under a law of the Commonwealth or of a State or Territory of the Commonwealth providing for compensation to workmen or employees in respect of accidents arising out of or in the course of their employment; or
- (b) to pay contribution to a tort-feasor who is liable in respect of the death of, or injury to, the passenger,

but this section does not operate so as to increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by or in accordance with this Part.

Proceeds
of insurance
policies, &c.

38. In assessing damages in respect of liability under this Part there shall not be taken into account by way of reduction of the damages—

- (a) a sum paid or payable on the death of, or injury to, a passenger under a contract of insurance;
- (b) a sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union;
- (c) any sum in respect of a pension, social service benefit or repatriation benefit paid or payable, consequent upon the death or injury, by any government or person;
- (d) in the case of death, any sum in respect of the acquisition by a spouse or child of the deceased, consequent upon the death, of, or of an interest in, a dwelling used at any time as the home of that spouse or child, or of, or of an interest in, the household contents of any such dwelling; or
- (e) a premium that would have become payable under a contract of insurance in respect of the life of a deceased passenger if he had lived beyond the time at which he died.

Contributory
negligence.

39.—(1.) If, in an action against a carrier under this Part, the carrier proves that the damage was caused or contributed to by the negligence of the passenger, the damages recoverable shall be assessed in accordance with this section.

(2.) The court shall first determine the damages that would have been recoverable if there were no limit on the amount of those damages fixed by or in accordance with this Part and there had been no negligence on the part of the passenger.