

New Mexico Wrongful Death Act; Action for Damages

41-2-1. [Death by wrongful act or neglect; liability in damages.]

Whenever the death of a person shall be caused by the wrongful act, neglect or default of another, although such death shall have been caused under such circumstances as amount in law to a felony, and the act, or neglect, or default, is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.

41-2-2. Limitation of actions.

Every action instituted by virtue of the provisions of this and the preceding section [\[41-2-1 NMSA 1978\]](#) must be brought within three years after the cause of action accrues. The cause of action accrues as of the date of death.

41-2-3. Personal representative to bring action; damages; distribution of proceeds.

Every action mentioned in [Section 41-2-1 NMSA 1978](#) shall be brought by and in the name of the personal representative of the deceased person, and the jury in every such action may give such damages, compensatory and exemplary, as they deem fair and just, taking into consideration the pecuniary injury resulting from the death to the surviving party entitled to the judgment, or any interest in the judgment, recovered in such action and also having regard to the mitigating or aggravating circumstances attending the wrongful act, neglect or default. The proceeds of any judgment obtained in any such action shall not be liable for any debt of the deceased; provided the decedent has left a spouse, child, father, mother, brother, sister or child or children of the deceased child, as defined in the New Mexico Probate Code [\[Chapter 45 NMSA 1978\]](#), but shall be distributed as follows:

- A. if there is a surviving spouse and no child, then to the spouse;
- B. if there is a surviving spouse and a child or grandchild, then one-half to the surviving spouse and the remaining one-half to the children and grandchildren, the grandchildren taking by right of representation;
- C. if there is no husband or wife, but a child or grandchild, then to such child and grandchild by right of representation;
- D. if the deceased is a minor, childless and unmarried, then to the father and mother who shall have an equal interest in the judgment, or if either of them is dead, then to the survivor;
- E. if there is no father, mother, husband, wife, child or grandchild, then to a surviving brother or sister if there are any; and
- F. if there is no kindred as named in Subsections A through E of this section, then the proceeds of the judgment shall be disposed of in the manner authorized by law for the disposition of the personal property of deceased persons.

41-2-4. Death caused by railroad, stage coach or public conveyance; action for damages; defense.

Whenever any person shall die from any injury resulting from, or occasioned by[,] the negligence, unskillfulness or criminal intent of any officer, agent, servant or employee, whilst running, conducting or managing any locomotive, car or train of cars, or of any driver of any stage coach or other public conveyance, while in charge of the same as driver; and when any passenger shall die from injury resulting from or occasioned by any defect or insufficiency in any railroad or any part thereof, or in any locomotive or car, or in any stage coach or other public conveyance, the corporation, individual or individuals, in whose employ any such officer, agent, servant, employee, engineer or driver, shall be at the time such injury was committed, or who owns any such railroad, locomotive, car, stage coach or other public conveyance, at the time any injury is received resulting from or occasioned by any defect, insufficiency, negligence, unskillfulness or criminal intent above declared, shall be liable in damages compensatory and exemplary, for such sum as a jury may deem fair and just, taking into consideration the pecuniary injury or injuries resulting from such death to the

surviving party or parties entitled to the judgment or any interest therein, recovered in such action and also having regard to the mitigating or aggravating circumstances attending such defect or insufficiency, which may be sued and recovered; first by the husband or wife of the deceased; or second, if there be no husband or wife, or if he or she fails to sue within six months after such death then by the minor child or children of the deceased; or third, if such deceased be a minor and unmarried, then by the father and mother; or fourth, if the deceased has reached the age of majority and is unmarried, by a dependent father or mother or dependent brother or sister, who may join in the suit; and each shall have an equal interest in the judgment; or if either of them be dead, then by the survivor. In the event there are no such persons entitled to sue or in the event suit is not brought by any such persons within nine months after such death, suit may be brought by the personal representative or representatives of such deceased person.