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Law of Tort on Negligence – An Indian Legal Perspective

Neelargo Ray

Student of BA. LL.B (Hons.)

College of Law - Vivekanand Education Society, Mumbai

ABSTRACT:

In this research paper we will discuss the Tort law in community jurisdiction, compensation is a civil offense in which the plaintiff is lost or injured and puts the offender's legal liability. "This can include intentional infliction of emotional distress, negligence, financial losses, injuries, invasion of privacy, and many other things."

But this paper is basically going to focus mainly on tort of law of negligence which is a civil tort that arises when one person causes serious or legal harm to another person by violating their obligations to owe another person. From a layman's point of view, negligence can be explained as a lack or inactivity caused by careless behaviour. This paper will also explain you negligence in a nit deep by explaining its essentials, defences one legal maxim which is related to negligence "RES IPSA LOQUITUR" which is a "Latin phrase that means the thing speaks for itself. In personal injury law, the concept of *res ipsa loquitur* (or just *res ipsa* for short) operates as an evidentiary rule that allows plaintiffs to establish a rebuttable presumption of negligence on the part of the defendant through the use of." We will also analyse some Indian cases based on only on negligence tort of law.

Keywords: Tort Law, Negligence. Res Ipsa Loquior, Civil Negligence, Criminal Negligence.

INTRODUCTION:

Objectives of Research:

I am trying here to describe the following:

- Definition of negligence.
- Types of negligence.
- To Study on Elements of Negligence with the decided cases.
- Analysis of Case Laws.

Research questions:

- What is criminal negligence?
- What is civil negligence?
- What is Res Ipsa Loquitor?

Research Methodology:

The researcher relied on the secondary source of data such as books, journals, e – sources, articles, and newspapers and the relevant provision with decided case laws. Primary source of interview can't be conducted which researcher unable to refer due to shortage of time.

Hypothesis: I am trying here trying to define negligence, laws related to the negligence law, types of negligence and general usage of this law.

Review of Literature:

From the book of “D.R. R.K. Bangia’s Law of Torts” textbook, I get to know what exactly negligence is. Negligence was considered an independent advisor. In the claim for negligence, the plaintiff must prove the following important points: 1. The defendant must be careful with the plaintiff.

2. The defendant failed to fulfil this obligation.

3. As a result, the plaintiff was damaged.

From the book “The law of Torts by Ratanlal and Dhirajlal”, I get to know the essential of negligence:

Duty of care to the plaintiff: This refers to a legal obligation, not a simple moral, religious or public obligation. Proving the defendant's negligence is not enough, but the applicant must prove that the defendant has a special legal obligation for the plaintiff to be careful.

From the website Legal Service India, I analysed the case of Donoghue V. Steveson, a bottle of gingerbread was bought from the seller to a friend, the appellant. Some of the contents were poured into the glasses and she drank the same. When the rest of the bottle was poured into the glass, the snail's rotten body floated along with the ginger beer. The applicant claimed that her health was seriously impaired as a result of consuming some of the contaminated contents. The bottle was made of dark glass and surrounded by a metal lid, so its contents could not be verified by inspection. He filed a claim against the manufacturer for damages. The Senate ruled that manufacturers should ensure that their bottles do not contain hazardous substances and that they should be held liable for violations of their obligations. The Senate also ruled that the consumer could bring the case and thus the case was discarded despite no contractual relationship between the producer and the consume participation in the contract is “misleading.

I analysed two Indian case laws from the SCC, Indian Kanoon.

Tort: Crime, common law, civil law and most of the legal systems on which it is based, physical abuse or property infringement on individuals, all incidents of harmful behaviour such as economic interests (in some circumstances), honour, reputation and confidentiality. The term comes from the Latin Tortum, meaning "slightly twisted, inaccurate or twisted". This concept applies only to civil offenses not related to the contract.

The Criminal Torts Act is a very broad topic and is better understood in subtopics such as "Negligence, Audience Responsibility, Hypocrite Accusation"

This document presents a broad perspective on India's legal negligence.

Negligence: Negligence is a violation of an obligation that results from refusing to do what a reasonable person does, according to considerations that usually lead to direct human effort. Significant negligence includes ignoring the use of experience or standard considerations related to individuals that respondents are required to follow generally accepted considerations and abilities, resulting in injury to persons or property. Negligence is a form of misconduct that has occurred taking into account the fact that many types of accidents or injuries have occurred between parties for which no agreement has been reached, so that one person has nothing to prosecute another. There are two types of negligence: criminal negligence and civil negligence. "¹

Criminal Negligence: Criminal negligence is the moment when a person engages in an act involving an undeniable danger to the safety of human existence. For a protest to be considered criminal negligence, investigators must demonstrate that the person is at risk of death or serious injury by acting in negligence. Criminal negligence means two things:

There must be at least one well-founded mistake or accident-for a protest to be considered criminal negligence, it must not be mere negligence or misjudgement.

2. Be aware of the threats-Respondents must be aware that their protests are or may endanger others. Also, a healthy person can anticipate dangers in such situations.

¹ Twenty-Fifth Edition, D.R. R.K. BANGIA, Law of Torts, 2020

Civil negligence: If an individual refuses a routine trial (also known as due diligence), a misconduct or general negligence is considered negligence. Criteria for common negligence are assessed based on what to do in a similar situation. As a result, normal misconduct or negligence allows a person to act with "reasonable" care so as not to harm or harm others when dealing with others. Routine negligence is an accident, not intentional, and an accident that occurs without intention. However, in order to receive compensation for damages caused by the accident, the victim must prove that the defendant is responsible for the accident.²

HISTORY: "Blyth v. Birmingham Water Works Inc. (1856) LR 11 Exch. 781³;"

OLDERSON B. has defined negligence as not acting in relation to what a reasonable person can do or that a wise or rational person cannot do. The negligence of British law did not appear as an excuse for free activity until the 18th century. Similarly, IPC 1860 of the Humanitarian Law was amended to include Article 304A in 1870 as it did not contain measures that could lead to death of a person due to negligence. In 1932, in the case of Stephenson's Donoghue, the Senate came to the conclusion that it could sue someone or sue someone who injured someone, with or without a contract relationship. A friend gave Donoghue a pitcher of the ginger stock he bought for her. After drinking a large amount of the substance, he discovered that the snail broke down into a kettle and was shocked. Under contract law, Donoghue was not able to sue the producers because her partner was not her, but part of the contract. However, the Senate decided to enact another statute that requires everyone to take care of their neighbours, and allowed them to sue the manufacturer for damage to the Dono vacation.

² 28th Edition, Ratanlal & Dhirajlal, The Law of Torts, 2019

³ Blyth v. Birmingham Water Works Inc., (1856) 11 Ex Ch 781, 156 ER 1047

ESSENTIALS OF NEGLIGENCE:

In order to successfully file a treatment settlement case, the plaintiff must prove:

(1) Duty of care: It is a legitimate duty rather than a mere good, a strict or public duty. It is not enough just to show that the accused is negligent, the accused must prove that the accused has a special legal obligation to care for the perpetrator.

(2) Violation of care obligations: Care obligations for negligence may be violated if the defendant does not specify the precautionary measures required by law. This means that you are not aware of the appropriate treatment needed in your particular situation. When a care obligation is discovered, it is important to ensure that respondents behave in a manner that violates the care obligation.

(3) Damage: In order to be able to take legal action against negligence, the damage caused by someone else's actions must be clear. Damage from negligence can be physical or mental. It is the responsibility of the victim to show that the damage has occurred and that the damage was caused by the defendant's obligations. Also, there should be no intermediaries. The court will ask if the person has been "paid" for the other person's actions.

Proof of negligence: RES IPSA LOQUITUR

In the case of an unmatched case, the reality can be so overwhelming that the court choosing the attorney must show that it is not negligence. The legal term for this is "res ipsa loquitur" (reality stands for itself). It is applied in situations where the defending party has a great influence on the cause of the damage and if properly considered, the incident would not have occurred. It is used regularly in clinical situations, for example, when a specialist needs to show that the stick has been inadvertently gripped inside the patient. "⁴

⁴ Res Ipsa Loquitur: A new paradox in blasting cases, Vol. 28, No. 4 (Summer, 1961), pp. 762-771 (10 pages)

DEFENCES AVAILABLE IN TORT OF NEGLIGENCE:

There are several remedies available to the defendant if it turns out to be negligent. Here we speak only for 2 people and Odin will completely excuse them. The other reduces the degree of damage they are responsible for.

(1) Unavoidable accidents: Unavoidable accidents are things that cannot be prevented in any way or in any form with general attention, attention and ability. This makes the accident really inevitable.

(2) Natural Disaster: This is a particularly raw, harsh and convincing demonstration of nature that turned out to be incompetent and never expected to be of human interest and ability. It was to resist. For example, storms, lightning storms and extraordinary thunderstorms, unmatched tides, earthquakes, etc.

(3) Contributory negligence: Contributory negligence removes part of the fault from the defendant in the event that it tends to be demonstrated the plaintiff contributed here and there to their misfortune or harm. The defendant is as yet obligated, yet will confront a decreased harms pay-out

DEVELOPMENT OF LAW OF TORTS IN INDIA:

Although there have been violations of Hindu and Islamic laws to prevent harmful behaviour of individuals, it is generally said that those crimes were officially inflicted on the Crown of India. It relies on values, justice, and standards of a beautiful, quiet voice. Criminal law is primarily governed by the "Case Law" standard, which is the British criminal law. The application of tort law applies specifically to courts of India, given the suitability of Indian culture.

Judge Bhagwati and M.S. Meta v. Noteret. Union of India”:

“We need to develop new principles and set new standards to adequately address new problems arising in the industrial economy. We cannot allow our legal thinking to be built on

the basis of the law because the law operates in the UK or any other country. We are ready to accept light from any light source, but we have to make our own case law. ".⁵

Indian Cases which would help to understand the concept of negligence in India:

(1) "Municipal Corporation of Delhi v. Subhagwanti, AIR 1966 SC 1750"⁶

In the area of Chandni Chowk, Delhi a clock tower was collapsed due to which several persons lost their life. Normally, the life of such towers is 40-45 years but this tower was almost 80 years old which got collapsed and injured several people. The High Court thought about that it was the *duty* of the Municipal Committee to do periodical assessment to decide if weakening had occurred in the design and whether any safeguard was important to reinforce the structure. It was held by the Court of advances that the litigant was at risk for negligence and that if attributable to need of fixes premises on an interstate become perilous and a nuisance and a bystander or an abutting proprietor endures harm by the breakdown the occupier or the proprietor in the event that he has attempted the duty of fix, is liable whether he knew or should have known about the threat or not.

(2) "Sudhir Kumar Rana v. Surinder Singh and others"⁷

In this case, the filed a suit against a mini truck driver who was driving negligently and rashly but the driver of that mini truck driver alleged that the plaintiff was also negligent as he was driving a two wheeler without having a driving license and he was around 17 1/2 years. The Tribunal believed that as the plaintiff didn't have a driving license, he should be held to have contributed to the mishap. The inquiry which emerges for thought is with respect to whether the appealing party can be supposed to be blameworthy of contributory negligence. And later on, this was found that just because appellant didn't have a driving license court couldn't held him liable because the truck driver was negligent on

⁵ Rajarshi Maity, Development of the Law of Torts in India, Legal Service India

⁶ Municipal Corporation of Delhi v. Subhagwanti, AIR 1966 SC 1750

⁷ Sudhir Kumar Rana, (2008) 12 SCC 436

his part by driving rashly. Therefore, the court decided that the appellant is entitled to the compensation of RS.30,000 with the interest of 7¹/₂ per annum from the date of award till the payment of the compensation. And the court couldn't said just because appellant not possessing any license therefore court failed to say that this leads to *contributory negligence*.

CONCLUSION: India is dealing with negligence successfully with a "section 304-A of IPC" which describes the punishment for negligent act which leads to the death of someone. "S.337 of IPC" describes the punishment for negligent act hurting someone. "S.338 of the IPC" explains the punishment for grievous hurt by negligent act of someone.

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