

# **LAW OF TORTS**

## **Paper -v**

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### **Negligence In Law Of Torts:-**

#### **Introduction**

It is already known that the Indian law of torts is based on the English common law. Thus, the law relating to negligence is adopted and modified by the courts of India on the principles of justice, equity and good conscience. The term Negligence is derived from the Latin word *negligentia*, which means 'failing to pick up'. In the general sense, the term negligence means the act of being careless and in the legal sense, it signifies the failure to exercise a standard of care which the doer as a reasonable man should have exercised in a particular situation.

Negligence in English law emerged as an independent cause of action only in the 18th century. Similarly in Indian law, the IPC, 1860 contained no provision for causing the death of a person by negligence which was subsequently amended in the year 1870 by inserting section 304A.

#### **Definition of Negligence:-**

According to Winfield and Jolowicz, Negligence is the breach of a legal duty of care by the plaintiff which results in undesired damage to the plaintiff.

In *Blyth v. Birmingham Water Works Co*, Negligence was defined as the omission to do something which a reasonable man would do or doing something which a prudent or reasonable man would not do.

#### **Illustration**

Z, An owner of a big dog requests his friend X to take care of the dog while he is away. X leaves the dog unattended who attacks a passerby badly injuring him. Here it will be said that the act occurred due to the negligence of X.

In the general sense, the extent of liability in tort is determined by the number of damages a party has incurred. Consequently, in criminal law, the extent of liability is determined by the amount and degree of negligence

### **How is Criminal Negligence Different from Civil Negligence?**

- Criminal negligence is said to take place when a person acts in a particular way which is an extreme departure from which a reasonable person would act in a similar or same circumstance. The difference in civil negligence is that the conduct may not be seen as a radical departure from the way a reasonable person would have responded.
- Civil negligence occurs when a person fails to exercise ordinary care or due diligence but criminal negligence relates to a conduct that is considered so extreme and rash that it is a clear divergence from the way an ordinarily prudent person would act and is considered to be more than just a mistake in judgment or distraction.
- In civil negligence, there is a lesser burden of proof because the plaintiff in such a case only has to prove that it is most likely that the defendant was negligent. But in criminal negligence, the plaintiff has to prove “beyond a reasonable doubt” that the defendant was negligent which is the highest standard of proof which means that the evidence is so strong that there is no other logical explanation besides the fact that the defendant acted with criminal negligence.
- The punishment for a person who was liable in a civil negligence case only extends to the extent of damage caused to the plaintiff i.e compensation for the damages.

In criminal negligence cases, the punishment is much more serious and can be convicted for a prison term, fine and probation supervision. Example the punishment for criminal negligence amounting to death under section 304A of IPC can extend to 2 years of jail and fine or both.

- For example, if someone driving a vehicle under the influence of drugs and alcohol and caused the death of an individual, it would amount to criminal negligence since this is considered extreme carelessness on their part. But if a housekeeper in an office is mopping the floor and has forgotten to keep a ‘wet floor’ signboard, any accident that occurs would amount to civil negligence

as there was only a lack of due diligence on the part of the housekeeper but not extreme neglect.

## Essentials of negligence

- To commit the tort of negligence, there are primarily 6 main essentials that are required. An act will be categorized as negligence only if, all the conditions are satisfied namely –

### Duty Of Care

- It is one of the essential conditions of negligence in order to make the person liable. It means that every person owes, a duty of care, to another person while performing an act. Although this duty exists in all acts, but in negligence, the duty is legal in nature and cannot be illegal or unlawful and also cannot be of moral, ethical or religious nature.
- In the case of *Stansbele vs Troman(1948)*, A decorator was engaged to carry out decorations in a house. Soon after The decorator left the house without locking the doors or informing anyone. During his absence, a thief entered the house and stole some property the value of which the owner of the house claimed from the decorator. It was held that the decorator was liable as he was negligent in leaving the house open and failed his duty of care.

### The Duty must be towards the plaintiff

- A duty arises when the law recognizes a relationship between the defendant and the plaintiff and requires the defendant to act in a certain manner toward the plaintiff. It is not sufficient that the defendant owed a duty of care towards the plaintiff but it must also be established which is usually determined by the judge.  
In the case of *Bourhill v. Young (1943)* the plaintiff who was a fishwife got down from a tram car and while she was being helped in putting her basket on her back, a motor-cyclist after passing the tram collided with a motor car at a distance of 15 yards which was on the other side of the tram. The motorcyclist died instantly and the

plaintiff could not witness the accident or the dead body since the tram was standing between her and the place where the accident occurred. She had only heard the sound of the collision and once the body had been removed from the place of accident, she visited the place and saw some blood which was left on the road. As a reaction to this incident, she suffered a nervous shock and gave birth to a still-born child of 8 months because of which she sued the representatives of the deceased motorcyclist. It was held that the deceased had no duty of care towards the litigant and therefore she could not claim any damages from the deceased's representatives.

- The case of *Donoghue v. Stevenson (1932)* has evolved the principle that we each have a duty of care to our neighbor or someone we could reasonably expect to be affected by our acts or omissions. It was held that, despite no contract existed between the manufacturer and the person suffering the damage an action for negligence could succeed since the plaintiff was successful in her claim that she was entitled to a duty of care even though the defective good i.e a bottle of ginger beer with a snail in it was bought, not by herself, but by her friend.

## **Breach of Duty to take care**

- It's not enough for a plaintiff to prove that the defendant owed him a duty of care but he must also establish that the defendant breached his duty to the plaintiff. A defendant breaches such a duty by failing to exercise reasonable care in fulfilling the duty. In other words, the breach of a duty of care means that the person who has an existing duty of care should act wisely and not omit or commit any act which he has to do or not do as said in the case of *Blyth v. Birmingham Waterworks Co, (1856)*. In simple terms, it means non-observance of a standard of care.
- In the case of *Ramesh Kumar Nayak vs Union of India(1994)*, The post authorities failed to maintain the compound wall of a post office in good condition on the collapse of which the defendant sustained injuries. It was held that postal authorities were liable since that had a duty to maintain the post office premises and due to their breach of duty to do so, the collapse occurred. Hence they were liable to pay compensation.
- In the case of *Municipal Corporation of Delhi v. Subhagvanti (AIR 1966)* A very old clock tower situated right in the middle of a crowded area of Chandni Chowk suddenly collapsed thereby causing the death of many people. The clock

tower was 80 years old although the normal life span of the clock tower should have been 40-45 years. The clock tower was under the control of The Municipal Corporation of Delhi and they had a duty of care towards the citizens. By ignoring to repair the clock tower, they had breached their duty of care toward the public and were thereby liable

### **Actual cause or cause in fact**

- In this scenario, the plaintiff who is suing the defendant for negligence has the liability to prove is that the defendant's violation of duty was the actual cause of the damages incurred by him.

This is often called the "but-for" causation which means that, but for the defendant's actions, the plaintiff would not have incurred the damages.

For example, When a bus strikes a car, the bus driver's actions are the actual cause of the accident.

### **Proximate cause**

- Proximate cause means "legal cause," or the cause that the law recognizes as the primary cause of the injury. It may not be the first event that set in motion a sequence of events that led to an injury, and it may not be the very last event before the injury occurs. Instead, it is an action that produced foreseeable consequences without intervention from anyone else. A defendant in a negligence case is only responsible for those damages that the defendant could have foreseen through his actions.

In the case of *Palsgraf vs Long Island Railroad Co(1928)*, A man was hurrying while trying to catch a train and was carrying a packed item with him. The employees of the railway saw the man who was attempting to board the train and thought that he was struggling to do so. An employee on the rail car attempted to pull him inside the train while the other employee who was on the platform attempted to push him to board the train. Due to the actions of the employees, the man dropped the package. Which had contained fireworks, and exploded when it hit the rails. Due to the explosion, the scales fell from the opposite end of the station and hit another passenger, Ms.

Palsgraf, who then sued the railway company. The court held that Ms. Palsgraf was not entitled to damages because the relationship between the action of the employees

and the injuries caused to him were not direct enough. Any prudent person who was in the position of the railway employee could not have been expected to know that the package contained fireworks and that attempting to assist the man the railcar would trigger the chain of events which lead to Ms. Palsgraf's injuries.

### **Consequential harm to the plaintiff**

- Proving that the defendant failed to exercise reasonable care is not enough. It should also be proved that the failure of the defendant to exercise reasonable care resulted in damages to the plaintiff to whom the defendant owed a duty of care.
- The harm may fall into the following classes:-
  - a.) Bodily harm
  - b.) Harm to the reputation
  - c.) Harm to property
  - d.) Financial Loss
  - e.) Mental Harm.
- When such damage is proved, the defendant is bound to compensate the plaintiff for the damages occurred.
- In the case of *Joseph vs Dr. George Moonjely(1994)* The Kerela high court awarded damages amounting to Rs 1,60,000 against a surgeon for performing an operation on a 24-year-old girl without following proper medical procedures and not even administering local anaesthesia.

### **Res ipsa loquitur**

- Res ipsa loquitur is a Latin phrase that means “the thing speaks for itself.” It is considered to be a type of circumstantial evidence which permits the court to determine that the negligence of the defendant led to an unusual event that subsequently caused injury to the plaintiff. Although generally the duty to prove that the defendant acted negligently lies upon the plaintiff but through res ipsa loquitur, if the plaintiff presents certain circumstantial facts, it becomes the burden of the defendant to prove that he was not negligent.

- This doctrine arose out of the case of *Byrne vs Boadle(1863)*  
The plaintiff was walking by a warehouse on the road and suffered injuries from a falling barrel of flour which rolled out of a window from the second floor. At the trial, the plaintiff's attorney argued that the facts spoke for themselves and demonstrated the warehouse's negligence since no other explanation could account for the cause of the plaintiff's injuries.
- Thus the following are the three essential requirements for the application of this maxim-
- 1)The thing causing the damage must be under the control of the defendant or his servants  
2)The accident must be such as would not have happened in the ordinary course of things without negligence.  
3)There must be no evidence of the actual cause of the accident.

### **Defenses available in a suit for negligence**

**Contributory negligence by the plaintiff--** Contributory negligence means that when the immediate cause of the damage is the negligence of the plaintiff himself, the plaintiff cannot sue the defendant for damages and the defendant can use it as a defense. This is because the plaintiff in such a case is considered to be the author of his own wrong. It is based on the maxim *volenti non fit iniuria* which states that if someone willingly places themselves in a position which might result in harm, they are not entitled to claim for damages caused by such harm.

### **The plaintiff is not entitled to recover from the defendant if it is proved that-**

- The plaintiff by the exercise of ordinary care could have avoided the consequence of the defendant's negligence.
- The defendant could not have avoided the consequence of the plaintiff's negligence by an exercise of ordinary care

- There has been as much want of reasonable care on the plaintiffs part as on the defendants part and the former cannot sue the latter for the same.
- The burden of proving contributory negligence rests on the defendant in the first instance and in the absence of such evidence, the plaintiff is not bound to prove its non-existence
- In the case of *Shelton Vs L & W Railway(1946)*, while the plaintiff was crossing a railway line, a servant of the railway company who was in charge of crossing shouted a warning to him. Due to the plaintiff being deaf, he was unable to hear the warning and was consequently injured. The court held that this amounted to contributory negligence by him.

### **An Act of God**

- An Act of God is a direct, violent and sudden act of nature which by any amount of human foresight could have been foreseen and if foreseen could not by any amount of human care and skill have been resisted. Thus such acts which are caused by the basic forces of nature come under this category. For example storm, tempest, extraordinary high tide, extraordinary rainfall etc.
- If the cause of injury or death of a person is due to the happening of a natural disaster, then the defendant will not be liable for the same provided that he proves the same in the court of law. This particular defence was talked in the case of *Nichols v. Marsland (1876)* in which the defendant had a series of artificial lakes on his land. There had been no negligence on the part of the defendant in the construction and maintenance of the artificial lakes. Due to unpredictable heavy rain, some of the reservoirs burst and swept away four country bridges. It was held by the court that the defendant could not be said to be liable since the water escaped by the act of God.

### **Inevitable Accident**

- An inevitable accident can also be called as a defense of negligence and refers to an accident that had no chance of being prevented by the exercise of ordinary care, caution, and skill. It means a physically unavoidable accident.
- In the case of *Brown v. Kendal (1850)*, the plaintiff's and defendant dogs were fighting and their owners attempted to separate them. In an effort to do so, Defendant beat the

dogs with a stick and accidentally injured the Plaintiff, severely injuring him in the eye. The Plaintiff brought suit against the Defendant for assault and battery. It was held that the injury of the plaintiff was as a result of an inevitable accident.

## **Conclusion**

- Negligence as a tort has evolved from the English law and accepted by the Indian law as a substantially important tort. As discussed negligence is of two types, civil and criminal and each has various repercussions. In order to prove that an act was negligent, it is necessary to prove all the essentials namely duty, breach of duty, damages and actual and proximate cause. An important maxim regarding negligence i.e Res Ipsa Loquitur is used by the courts when a negligent act cannot be explained. Also, the defences in a suit for negligence can be used by the defendant to defend himself from a suit issued by the plaintiff.