

ABSOLUTE LIABILITY

BY- HARSHITA SHARMA

CHAPTER:-1

INTRODUCTION

The researcher is dealing with the topic “absolute liability as mentioned in M.C. Mehta v. Union of India case”. As M.C Mehta is an environment lawyer and the researcher will study the cases related to environmental problems.

The researcher has chosen this topic because it deals with the wrongful act committed against the people in large which cause harm to the people i.e. serious injury or death.

After the deep study of the matter it can be concluded that why a person is held liable for the wrongful act of another person.

He firstly started with the introduction which contains the origin, meaning, and essential elements of law of torts. Secondly he describes about the meaning and kinds of liability. Thirdly he study some of the related case laws and lastly provides us with the conclusion and suggestions which will help us to resolve the main cause of the problem.¹

1.1 Origin of Torts:-

The law of torts owes its origin to the common law of England. It is of French origin and it was derived from a Latin word ‘tortum’ which means twisted, crooked or something which is unlawful. In English it means wrong and wrong is of two types i.e. private and civil wrong but here private wrong is considered and trial is held in civil court.

The concept of law of torts is codified in many countries like USA, UK etc. but in India it is not codified but many acts were passed time to time which embodied the law of torts which are as follows-

1. Sales and Goods Act, 1930
2. Competition Act, 2000
3. Workman’s Compensation Act, 1923
4. Patent and Design Act, 1911
5. Trademark’s Act, 1999
6. Consumer Protection Act, 1986

¹<http://study.com/academy/lesson/what-is-tort-law-definition-and-examples.html> , 01/10/2017, 09:00

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7. Motor Vehicle Act, 1988
8. Public Liability Insurance Act, 1992

The English tort system follows the Roman law which includes trespass, battery and conversion. Negligence is considered as the most popular tort and for liability under negligence of a duty of care must be established owed to a group of persons of which the victim is one. Talking about the law of torts in France, the law is entirely codified in the Article 1382 of the Civil Code of France which states that any act of man which causes damage to other, obliges the one by whose fault it occurred, to compensate it.

In India, the law of torts is uncodified and still in development due to lack of following reasons-

1. If we see the condition of other countries such as USA and UK, we will see that people approach court even for simple cases but in India due to poverty, illiteracy and spirit of toleration, the people here do not approach the court.
2. In India, there is less number of courts which causes in an inordinate delay of cases.
3. British legislature passes the legislation well in advance whenever needed which is missing in India.

1.2. Meaning & Theory:-

When the word tort come to our mind, it means the act which should not be done but done towards the society. It means a wrongful act committed by a person which ultimately infringes the legal rights of an individual or cause damage to him for which the court shall provide remedy in form of unliquidated damages or injunction or any other available relief and unliquidated damages means the amount of money that is to be fixed by the court. It also means a wrongful act which infringes the legal right of an individual or group of individual.

The person who commits the wrongful act is known as tortfeasor whereas the person who suffers the injury or damage is known as injured or aggrieved party. The victim of tortious act is called plaintiff and the person who commits the tort is called defendant. There are two major parts in tort i.e. *injuria sine damno* and *damnum sine injuria*.

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Many thinkers had put forward their thinking on the same subject matter i.e. law of torts and these are as follows-

1. Black's Law Dictionary-

It states that tort is a private or civil wrong other than breach of contract for which court shall provide remedy to the injured party in form of damage.

2. Salmond's theory-

It states that tort is a civil wrong other than breach of trust or contract for which court shall provide remedy to the injured party in the form of unliquidated damages.

3. Fraser's theory-

It states that tort is infringement of legal right of an individual giving rights of compensation at the suit of injured party.

4. *Winfield's theory-*

Tortious liability arises from breach of duty primarily fixed by law and its breach is redressible by an action for unliquidated damages.

Essential elements to prove a tort-

1. Existence of legal duty from the defendant to plaintiff.
2. Breach of duty.
3. Damage as proximate result.

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Characteristics-

1. The person who commits the tort is called tortfeasor or wrongdoer.
2. The person whose legal right is infringed is called plaintiff, aggrieved or injured party.
3. Tort litigation is compoundable and it is a specie of civil wrong.
4. The place of trial is civil court.
5. The remedy is unliquidated damages or any other equitable relief.

1.3. Constituent of Torts:-

After understanding about the law of torts, it is also necessary to know about the vital elements that is to be fulfilled which will constitute a tort. The vital elements which is necessary to constitute a tort are wrongful act or omission, legal damage and legal remedy. If any one of them is missing then it is not possible to say that tort has been committed. The elements are discussed below-

1. Wrongful act/ omission-

It means an act which gives rise to legal damage or it means any act, misstatement or omission in violation of the law especially the civil law. This act includes illegal acts, acts that are immoral, anti-social or libel which results in a civil suit, error or breach of duty by any individual. It means the breach of duty primarily fixed by law. It may be committed negligently or intentionally or even by committing a breach of strict duty.

If the act is done under pressure or with justification i.e. lawful excuse then it does not amount to breach of duty or wrongful act.

2. Legal damage:-

From the word legal damage, we understand that the legal rights of a person has been violated. It means infringement of legal rights of a person provided by our Constitution such as right to property, rights to reputation etc.

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If one has a legal right then the other has a duty towards him not to violate it and if a person has not suffered any loss but his legal right has been violated then he can still succeed.

3. Legal remedy:-

The wrongful act must come under the wrong for which remedy is a civil action provided by the court. It means to provide compensation to the aggrieved party in the form of unliquidated damages or any other equitable relief. It is the amount of money which a plaintiff may be awarded in a lawsuit. It attempts to measure in financial terms the extent of harm a plaintiff has suffered due to an illegal act caused by the other party. Its purpose is to restore the aggrieved party to its original position before he was being harmed. Special types of damages includes medical and hospital bill, ambulance charge, loss of wages and property repair or replacement costs.²

Different types of damages are listed below-

(a) Compensatory damage-

It is a type of damage which is awarded when the loss is suffered by a plaintiff which is not caused directly or immediately by the wrongful act of a defendant but results from the defendant's action instead. It must be real and tangible although it can be difficult to fix the amount with certainty especially in cases involving claims like pain and suffering and it also include emotional distress. In this, the plaintiff can recover damages for both present and future physical pain and suffering. Mental pain like fright, nervousness, grief, anxiety and humiliation are also included in it.

²<http://www.legalservicesindia.com/article/article/is-it-law-of-tort-or-law-of-torts-1260-1.html> ,01/10/2017 09:03

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(b) Nominal damage-

This kind of damages are generally recovered by the plaintiff if he successfully establish that his/her legal right has been violated. The award is small and in some jurisdiction it may be equal the cost of bringing the lawsuit.

(c) Punitive damage-

This kind of damage is provided in addition to compensatory damage when the act of wrongdoer is wilful, malicious, vindictive or oppressive. It is awarded to punish the wrongdoer and to act as a deterrent to others who might engage in similar conduct.

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CHAPTER:-2

LIABILITY

The word liability has a great significance in law of torts. Without this it is not possible to hold a person liable for any wrongful act.

2.1. Meaning:-

The word 'liability' is one of the important part in tort and it means the state of being legally responsible for something.

The concept of liability in torts is based on fundamental principles that it is wrongful to cause harm to others, even if specific protections are present.

According to law, a person is said to be legally liable when he/she financially and legally responsible for the wrongful act caused by the other person.

2.2. Types of liability:-

There are three types of liabilities in law of torts i.e. vicarious liability, strict liability, and absolute liability.

In this research, the researcher is concerned about strict and absolute liability.

(a) Vicarious liability-

It means to assign someone liable for the wrongful act of another who has a legal relationship with the person who did the wrongful act negligently. The doctrine of respondent superior (Latin for 'let the master answer') is based on the employer-employee relationship.

It includes relationship such as master-servant, parent-child, husband-wife, owner of a vehicle etc.

The employer is charged with legal responsibilities because the employee is held to be an agent of the employer. In case of owner of the vehicle, if the driver causes any harm to any

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other person during his working then the owner of the car is held responsible for the wrongful act.³

Constituent of vicarious liability-

There should be legal relationship which is the main constituent of vicarious liability. The wrongful act must be related to the relationship in a certain way and the wrong should be done in course of time.

The liability of the master arises when the tort was committed by the servant as well as in the course of the employment.

(b) Strict liability-

It is a legal responsibility for injury even if the person found strictly liable was not at fault or negligence. In tort, it applies to employer who is totally responsible for the act of the employee.

In product liability cases, harm caused by manufactured goods, strict liability has a major impact on litigation.

Traditionally, strict liability was imposed on damages caused by the animals because the person who keeps the animal has a duty to restrain them.

It means that there should be escape of dangerous material from the property to another protect which causes the harm i.e. a dangerous substance or thing that causes harm or damage on its escape.

The concept of fault is absent along with intention and motive. The activity is carried for the sake of the society but only in accordance with safety measure but liability arises even without negligence on the part of the defendant.⁴

³<https://debitoor.com/dictionary/liabilities>, 01/10/2017, 09:10

⁴<http://www.legaldesire.com/vicarious-liability/>, 02/10/2017, 09:15

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Essentials of strict liability are as follows:-

Dangerous thing-

The liability arose when the dangerous thing escape to one's property causing damage or mischief.

Escape-

It is also essential that the thing that causes damage should escape to the area outside the occupation site and control of the defendant.

Non-natural use of land-

It can be understood by an example that water collected in huge quantity in Rylands v. Fletcher was held to be non-natural use of land.

There are some exceptions to the rule in this category and these are as follows-

Plaintiff's own fault-

Damage or injury cause by plaintiff's own fault is considered as one of the defence in strict liability. It means that the plaintiff suffers damage by his own intrusion into the defendant's property.

Act of God-

Act of God or vis major is also a defence which states that the escape of dangerous thing was not in the control of the defendant and caused by some supernatural forces.

Consent of the plaintiff-

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It means that the plaintiff voluntarily given consent for the accumulation of dangerous thing to be kept in his property. i.e. volenti non fit injuria.

It means that the source of danger is common benefit for the defendant as well as for the plaintiff also.

Act of third party-

If a third party enters i.e. any stranger who cause harm or damage who is neither a defendant's servant nor the defendant has control over him then the defendant cannot held liable for the wrongful act.

Statutory authority-

Any act done under the authority of the state is a defence. But if there is negligence then this defence cannot be pleaded.

(c) Absolute liability-

If a person performs any hazardous work on his property then he must be held liable for any injury caused by it to any person in the society. In this the escape of dangerous things into another's property is not necessary and the damage can be caused from a distance also.

The rule of absolute liability as a part of Indian Law evolved in preference to the rule of strict liability.

2.3. Difference between strict and absolute liability:-

1. In absolute liability, those along with the main authorities should be held liable which are involved in hazardous works whereas in strict liability, one those who was involved in hazardous works should be held liable.

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2. If a person uses any dangerous substance for the sake of the society but it cause damage due to negligence whereas in strict l
3. Safety measure should be taken and if any kind of harm caused due to negligence then the institute must be held liable for the injury and no opportunity is given to the institute that he had taken all care and the harm was caused without any negligence on his part.
4. Applies to both natural and non-natural use of land.

2.4. Necessity of liability:-

According to the researcher, necessity of liability in law of tort means that one should be liable for the wrongful act of the other. If the word 'liability' does not exist then it would not be possible to hold a person liable. It will become impossible that who is the person that will compensate the aggrieved party. In the court of law, it become difficult to predict the person who should be punished i.e. to compensate the plaintiff.

If the word 'liability' does not exist then there can be possibility that wrongful person may not be punished.⁵

⁵ Supra note 7

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CHAPTER 3.

JUDICIAL REVIEW

In this the researcher will deal with some of the cases and judgement provided in that case. As there is no codified law for tort, all the decisions are judge made law. Critical study of the cases help us to know about the judgements made by judges in different cases. here landmark judgements are also discussed. English as well as Indian case laws are mentioned below.

3.1.English case laws:-

3.1.1. Ryland v. Fletcher-

Facts:-

1. In this case, Ryland was the plaintiff and Fletcher was the defendant.
2. Plaintiff owned and operated mine.
3. Adjacent to mine there was artificial pond.
4. The artificial pond belongs to the defendant.
5. The latter caused a mineshaft collapse which resulted in a flood.
6. Due to the above, operation of the plaintiff got damaged.
7. The plaintiff sued the defendant.

Judgement:-

Firstly the judgement was in favour of the plaintiff.

After the appeal the judgement was in favour of the defendant and the Ryland ha to compensate Fletcher.

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This case is taken as example because this case was the reason for the evolution of absolute liability in Indian laws.⁶

3.2 Indian case laws:-

3.2.1. Bhopal gas tragedy (1984)-

Citation-

Facts:-

1. It was a plant owned and operated by Union Carbide (India) Limited in Bhopal, M.P
2. During the night of 2-3 December 1984, a leak of some 40 tons of methyl isocyanate.
3. The official declared that there was 2259 death but the govt. of M.P officially declared that there was 3787 deaths in the tragedy.
4. The cause of the disaster remained under debate.
5. The civil and criminal cases were filed against the company.
6. Eight former employees was also held liable but they died before the judgement was passed.
7. The production done by the company was methylamine + phosgene and carbonyl.

Judgement:-

The disaster caused many deaths and the former chairman of Union Carbide co. (India) and seven other employees was held liable and they were sentenced two year imprisonment with the fine of \$2000 each.

The chairman of Union Carbide Cooperation who lives in US appeared to have gone scot free as he was still an absconder and did not subject himself in the trail. There was no word about

⁶<https://www.casebriefs.com/blog/law/torts/torts-keyed-to-dobbs/the-development-of-common-law-strict-liability/rylands-v-fletcher> , 01/10/2017 , 09:15

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him in the judgement delivered by Chief Judicial Magistrate, Mohan P. Tiwari, 23 years after the trial committed.⁷

3.2.2. Oleum gas leak:-

It is the case of M.C. Mehta v. UOI

Citation- AIR 1987 SC 1086

It is a landmark case in torts.

Facts:-

1. This case was originated in the aftermath of Oleum gas leak from Shriram Food and Fertilizer Ltd. Co. at Delhi.
2. This case occurred after the famous Bhopal gas tragedy case
3. It created a lot of panic in Delhi.
4. One person died and few were hospitalized
5. This case lays down the principle of absolute liability
6. The company, Shriram Food and Fertilizer Ltd was a subsidiary of Delhi cloth mill.
7. The company was engaged in the manufacturing of dangerous chemicals.

Judgements:-

The court said that we are not deciding the question as to whether Shriram was an authority within the meaning of Article 12 so as to be subjected to the discipline of the fundamental rights under Article 21.

We do not think it to be justified in setting up a special machinery for investigation of the claim for compensation made by those who allege that they have been the victim of Oleum

⁷<http://indiatoday.intoday.in/gallery/bhopal-gas-tragedy-30th-anniversary-warren-anderson/1/13577.html> , 01/10/2017 , 09 : 19

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gas leak. But we would direct that Delhi legal aid and advice board to take up the case of all those who claim to have suffered on account of the gas leak and to file actions on behalf of them in the appropriate court for compensation.

Such actions claiming compensation against Shriram may be filed by the Delhi administration in directed to provide the necessary funds to the Delhi legal aid and advice board for the purpose of filing and prosecuting such actions.

Thus the High Court was directed to nominate one or more judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed off.⁸

3.2.3. Klaus Mittlebachert v. East India Hotels Ltd.

Citation- 1999 ACJ 287, 1997 IIAD Delhi 23, AIR 1997 Delhi 201, 65 (1997) DLT 428, 1997 (40) DRJ 147 {equivalent case}

Decided – 3 January, 1997

Facts:-

1. Hotel Oberoi, inter-continental was a five star hotel in New Delhi.
2. A German co-pilot stayed there for few days.
3. The swimming pool of the hotel was defective i.e. not proper in design as well as there was insufficient water in it.
4. When the plaintiff dived into the swimming pool, he was badly injured.
5. The injuries resulted in paralysis.
6. He died after 13 years of accident.

Judgement:-

The court held that if five star charge a high rate then it owes a high degree of care to their guests.

The defect in the design and service attracts absolute liability. The court held ordered the defendant to pay damages to the plaintiff. The damage was of Rs.50 lacs for the accident.

⁸<https://www.elaw.org/content/india-mc-mehta-v-union-india-wp-127391985-19861220-oleum-gas-leak-case>

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3.2.4. Indian Council for Enviro-Legal Action v. Union of India-

Facts:-

1. The enterprise is producing H acid and the discharge from the sulphuric acid plant.
2. It caused environmental pollution in the Bichhri village and other adjacent villages.
3. A writ petition was filed before the Supreme Court under Article 32 on the behalf of the villagers.
4. It was done because the production of acid by the enterprise results in invasion of rights to life under Article 21.
5. The writ petition was directed against Central and State govt. and State Pollution Control Board to compel them to perform their statutory duty.
6. It was held that the writ was actionable and it is the duty of Supreme Court to protect the rights of an individual i.e. right to life.
7. The writ petition was directed against central and State.
8. Population control board to compel them to perform their statutory duty.
9. It was held that the Supreme Court could direct the central govt. to recover cost of remedial measures from the private companies.

Judgement:-

The operative part was therefore constrained by the order by union govt. through its ministry of Environment and Forest to depute its experts to inspect the case.

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The order was passed to pay the amount of Rs.50, 000 by the respondent industries by way of costs to the petitioner.⁹

CHAPTER 4.

CONCLUSION:-

After doing critical study of different cases it can be concluded that it is necessary to hold a person liable for the wrongful of the other. A deep study of absolute liability helps to know why and in what conditions a person is hold liable for the tortuous act of other.

All the cases are related to environment which had a harsh effect on the nature. The cases like Bhopal gas tragedy and Oleum gas leak had a bad effect on the environment and cause great harm to the people.

In both the cases the employee along with the authorities are held liable and they had given compensation as per the consequences.

It can be also concluded that what kind of judgement should be given in different cases by knowing the consequences, reasons and facts.

In the cases discussed above, the judgements made by the court is correct and no changes can be made in them.

At last liability plays a vital role in law of torts and it is very much helpful in past, present and in future also.

We know that there are defences available in strict liability such as act of god , plaintiff's own mistake etc. which are absent in absolute liability because the wrongful act committed by

⁹<https://indiankanoon.org/doc/1356184/> , 01/10/2017 , 10:30

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person due to negligence. The person involved hazardous work should take precaution and negligence should not take place at all.

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