CONSUMER PROTECTION AND PRODUCT LIABILITY – A THEORY ON EVOLUTION

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INTRODUCTION

The Law of product liability provides the consumers with a remedy or recourse for any legal injuries faced from a defective product. It is reckoned that lakhs of people across the globe are negatively affected by defective products. The manufacturers or sellers pay large amounts for products-liability insurance and damages. The product must meet the usual expectations of consumers. Therefore, it is the responsibility of the manufacturer and seller to ensure the safety and quality of the product as described. However, this was not always the case. The theory of "warning empty", which means that shoppers should be careful, was based on general consumer law from the 18th century to the beginning of the 20th century.[1] We were able to face the manufacturer directly and did not require court or legislative intervention. However, along with changes in production and consumption methods such as the Industrial Revolution, problems caused by defective products have increased due to technological advances. The Product Liability Law has been enacted.

The cutting-edge marketplace for customers for items in addition to offerings has gone through a drastic transformation with the emergence of the world deliver chains, upward push in global change and the fast improvement of e-trade has caused now no longer the most effective plethora of services and products however additionally new transport systems, alternatives and possibilities for customers. It has additionally rendered the purchaser at risk of new varieties of unethical and fraudulent practices and the sale of merchandise primarily based totally on deceptive information. Therefore, a strong prison framework is needed to adjust the industries and defend the hobbies of customers.

[1] Don Mayer, Daniel M. Warner, George J. Siedel and Jethro K. Lieberman, "Basics of Product Liability, Sales, and Contracts".

Quite recently so, the Indian Ministry of Consumer Affairs, Food and Public Distribution made the brand-new Consumer Protection Act, 2019 ("CPA of 2019") powerful, which changed the erstwhile Consumer Protection Act, 1986 in its entirety. One of the important thing capabilities of the CPA 2019 is the idea of legal product responsibility. Before this, there has been no unique provision beneath neath any statutes in India which ruled legal product responsibility and additionally, there has been no complete law concerning this. Law associated with legal product responsibility in India became ruled through contracts and typically beneath the Act of Consumer Protection, 1986, Sales of Goods Act, 1930, the Indian Penal Code, 1860 and certain unique statutes relating to unique items and standardization.

The Consumer Protection Act of 2019 now provides for a detailed ambit on product liability with specific responsibilities and liabilities of a 'product manufacturer',[2] 'product service provider'[3] or 'product seller'[4], providing products or services to compensate for damages suffered by consumers as a result of the lack of such incompletely manufactured or sold products or related services. It is important to recognize the principles and historical developments of the Law pertaining to Product Liability in order to understand the origin of these specific provisions and the overall concept of Product Liability introduced in the CPA of 2019.

PRODUCT LIABILITY LAW AND ITS PRINCIPLES.

The Law related to Product Liability stems from the common law concept of "*caveat venditors*". That is, the seller needs to be careful and holds the seller accountable for any problems that the buyer may encounter with the service or product. Product liability includes liability for damages caused by defective products which were made available to the manufacturer or seller of such goods. As a result, product liability cases have led to the development of general principles of tort law and contract law. As a result, product liability is founded on the notion of "warranty" in contract law and on the principles of "negligence" and "responsibility for negligence through strict liability" in tort law.

THEORIES PERTAINING TO PRODUCT LIABILITY- AN EXCERPT.

The initial days of product liability law revolved around the principles of contract law, where

[2] Sections 2(36) and 84 of the CPA of 2019.
[3] Sections 2(38) and 85 of the CPA of 2019.
[4] Sections 2(37) and 86 of the CPA of 2019.

courts granted relief for product warranty violations. Warranty is synonymous with warranty, either implicit or explicit, and is essentially a manifestation of the nature or quality of the goods that form the basis of the purchase. Therefore, deviations from the guaranteed condition or the quality of the goods may lead to consumer claims of product liability. However, there is an ambiguous line between guarantees and trade negotiations. For example, the seller's representation of a defective car is "A1 format", and "mechanically sound" can be interpreted as an explicit warranty[5], But the seller's representation of a defective bull. "Put the buyer on the map" and "his father was the finest dairy cow in the world" are all I have to say.[6] In addition, the principle of guarantee only sues a negligent person if the data subject is involved in a transaction with the data subject. Inadequate protection of contract law in product liability cases has led courts to shift to the principle of negligence and strict liability tort to protect the interests of consumers.

The term "Negligence" virtually states the lack of due or affordable care and is frequently powerful in instances of faulty designs, privity and warnings. Sellers that fail to work out due caution fall withinside the lure of negligence. However, there are numerous feasible defences to a declaration of negligence that make holes in such claims, along with proximate cause, contributory negligence, next alteration of product, misuse of product, and assumption of threat via way of means of the assumption of the risk stated by the plaintiff.

Due to the failure of the guarantee and defence of negligence, the court developed the principle of strict liability. According to this, the seller is liable for products that are unreasonably defective and dangerous to property damage or personal injury. However, the fact that this principle is absolute is not accurate because there may be a product liability disclaimer or because reuse restrictions or financial losses may not be recoverable. It is to be noted that based on this limited principle, the CPA of 2019 also provides some specific exceptions to product liability claims.[7]

DEVELOPMENTS IN CASE LAWS

In response to the question posed by the famous British case of *Winterbottom v Wright, 1842*, the concept of strict liability and negligence to the manufacturer was born. Light on maintaining privacy requirements. In this case, the bus company signed a contract with the postmaster,

[5] *Wat Henry Pontiac Co. v. Bradley, 210 P.2d 348.*
[6] *Frederickson v. Hackney, 198 N.W. 806*
[7] Section 87 of the CPA of 2019.

provided the bus for postal services, and was in charge of bus maintenance. The plaintiff, who was hired by the postmaster to drive the bus and deliver the mail, was later injured when the bus collapsed due to the reason of inadequate maintenance. The plaintiff sued the bus company. The court herein stated that the driver was not entitled to recover from the company due to the reason that the plaintiff had not been a party to the contract pertaining to the maintenance between the postmaster general and the coach company.

About ten years after this case, yet another famous case, *MacPherson v. Buick Motor Co., 1916*, had removed the mandatory requirement of privity of contract in negligence. The present plaintiff, Donald C. MacPherson, had been injured when one of the wheels made of wood of his 1909 "Buick Runabout" had collapsed. The defendant in the case, Buick Motor Company, was the one who had manufactured the present vehicle but had not manufactured the wheel, as it had been manufactured by another party. However, the wheel had been set up by the defendant. More evidence pointed towards the fact that the defect could have been discovered upon inspection made reasonably, but no inspection of any kind was carried out. The defendant had denied any liability because the plaintiff herein had purchased the aid automobile from another person who was a dealer and not directly from the present defendant. Judge Cardozo, in the present matter of the New York Court of Appeals, held that a company, if it was negligent, then it was liable to compensate, even if it had no privity of contract with the person who suffered the injuries. In this case, for the very first time, such a concept of "privity of contract" had been discarded, and according to legal jurists, it was "the conquest of tort over the contract."

In order to prove the defendant's negligence, the plaintiff must prove that the defendant's actions failed to meet the relevant duty of care. It is very difficult to prove the cause of standard care, breach, or negligence. Therefore, during the period of early 20th century, many courts considered it unfair to require seriously injured consumer plaintiffs to prove their negligence claims against manufacturers or retailers and tended to impose strict liability. Judge Trainer in *Escola v. Coca Cola Bottling Co., 1944*, said: "Knowing that it can be used without testing, it has flaws that can lead to personal injury." In addition, the court has begun investigating the facts where the manufacturer can be characterized as an explicit or implied warranty made to the consumer. The doctrine of *res ipsa loquitur* that "the problem speaks for itself" has also been extended to reduce the burden of proof for plaintiffs. The concept of manufacturer responsibility without negligence was created by Greenman. Yuba Power Products, Inc., and Implicit Safety Theory, Henningsen. Bloomfield Motors Inc. In the case of *Greenman v. Yuba*

Power Products, Inc., 1963, Greenman (plaintiff) was the one who had purchased a device called "Shopsmith", a compound power tool that can be used as a saw, drill, or wooden lathe. Plaintiffs looked at the workshops demonstrated by retailers and looked at the pamphlets produced by the manufacturers. Later his wife bought a "Shopsmith" in such a store, and she gave it to him as a gift. He purchased the attachments needed to use the Shopsmith as a lathe. After he had worked on the lathe several times without any problems, she suddenly threw a piece of wood, which hit his head and seriously injured him. He sued both retailers and manufacturers. The unanimous court upheld the lower court's decision that consumers could sue manufacturers for breach of warranty. Consumers simply prove that they were injured when using the product as intended and that their injury was due to design and manufacturing defects that prevented the product from being used safely as intended. It was enough to prove the case in favour of the plaintiff.

In the case *Henningsen v. Bloomfield Motors, Inc., 1960*, the present plaintiff bought the car from the defendant's dealer. Only ten days after delivery, the steering failed, and the plaintiff's wife was involved in an accident. Plaintiffs have sued the dealer and his car maker. The dealer alleged that the plaintiff-signed warranty contained a clause that freed the defendant from liability for personal injury. The warranty covers the defective parts' replacement for a period of 90 days or 4000 miles. However, the court granted Henningsen's damages. The sale of real estate is accompanied by an implicit guarantee of security. No other defendant can claim that Henningsen's wife has suffered damages, and she is not liable. According to the court, the warranty applies" to all predictable users of the product."

Often, the cases in India pertaining to the issues of product liability have mostly been dealt with by courts basis on the principles of strict liability and negligence, while the statutes have been silent historically, related to the provisions for liability of manufacturers or sellers for defective and faulty products and services.[8]

In the case of *A.S. Mittal v. State of Uttar Pradesh, 1989,* the Apex Court pondered upon a question of Law which involved the product liability and opined that the same would depend on the facts and shreds of evidence presented before the court of Law. In the case of Airbus Industries v. Laura Howell Linton, 1994, the facts were such that, on one aircraft, a scheduled passenger flight from Bombay to Bangalore, in the course of the flight, while attempting to land at Bangalore airport, contacted the ground approximately 2,300 feet before the beginning

[8] *Manubhai Punamchand Upadhya v. Indian Railways, 1995*

of the runway and immediately hit the boundary wall. As a result of which, the fuselage, the wings and various other parts of the aircraft had been disintegrated. Due to this, 92 passengers and four crew members passed away, and the remaining 54 survivors sustained injuries of varying degrees of severity. Inaction by the appellants to recover the compensation from the aircraft manufacturers, airlines and airport authority of India, the respondents made a claim stating that the Court of Texas was more of an appropriate forum as India, unfortunately, had no law on strict product liability. In regards to this, the High Court of Karnataka rejected the claim of the respondents and stated that the liability lies of the appellants on the basis of common law concepts of causation and principles of negligence rather than strict product liability and later on also concluded that "a mere fact that the Indian Courts does not have the strict product liability law, it is not wise to say that in such a situation and parties can go without any remedy. As it was done in *Charan Lal Sahu v. Union of India* (Bhopal Gas Disaster) that such antiquated acts can be drastically amended or fresh legislation should be enacted to save the situation."

CONCLUSION

Since the enactment of the Consumer Protection Act of 1986, the consumer market for goods and services has undergone major changes. Prior to the 2019 CPA and the regulations enacted under it, there was uncertainty and ambiguity in India's legal framework for product liability. The Consumer Protection Act of 1986 was amended in 1993 and 2002, with no provisions on product liability. 2011, 2015, and 2018 Consumer Protection Acts also show a consumer-friendly approach to the government, calling for the renewal of the Law to correct legal uncertainty and lack of precedents therein.

All of the above proceedings gradually led to the enactment of a new CPA of 2019 that referred to the provisions of this document on product liability based on the principles of strict liability of tort law and case law established by the courts. In addition, the 2019 CPA-based e-commerce guidelines require e-commerce entities to support product liability structures while at the same time requiring consumers to disclose relevant information, transparency and details, which allows for enhanced protection. In addition, the Indian Penal Code,1860, the Sales of Goods Act, 1930 and certain specific statutes pertaining to specific goods and standardization (like the Drugs and Cosmetics Act, 1945; Prevention of Food Adulteration Act, 1954, Food Safety and Standards Act, 2006; Bureau of the Indian Standards Act, 1986; Agricultural Produce (Grading and Marking) Act, 1937; as an additional consumer protection measure.

As legal liability for product liability continues to mature, we hope that more interesting decisions from the courts and new legislation will come into force in the future. In addition, with the advent of the Product Liability Act in India, how the industry and the judiciary deal with the increase in unethical and fraudulent activity of certain consumers are what we need to take notice of at the onset of it.