
CONCEPT OF NEGLIGENCE AND CURRENT LEGAL PROVISIONS

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ABSTRACT

The purpose and meaning of negligence have been ever evolving. Jurists like Salmond and Winfield have a tremendous contribution to the tort of negligence. However, the theories given by them have not remained the same over the centuries. In 21st century, the tort of negligence has been generalized as compared to when it was still evolving in the 19th century. Jurists like Salmond and Austin have associated negligence with a faulty mental condition that morphs into culpable carelessness which should be sanctioned.

The concept of negligence finds its origin in Roman Law, which was followed in the Roman Empire. In Ancient Rome, when a person committed a wrong and it resulted in some kind of tangible damage to another person, the wrongdoer had to compensate the person who suffered the damage. The entire law of torts as we know today emanates from Roman Law, and the laws in United Kingdom have been made based on the Roman Law, with modifications to suit the conditions and life in Britain. The liability arising out of negligence was initially recognized in specific circumstances which included common callings, such as surgeons, ferrymen, masons, etc. However, it wasn't restricted to this. Acts like nuisance and trespass were also classified under negligent acts. In the 19th century, these acts were separated and negligence became a separate tort in itself.

Since then, there have been a lot of modifications and interpretations by different courts of different countries including the United Kingdom, the United States of America, Australia, and even India.

INTRODUCTION

The foundation of tort law in India is the common law of England. In common law, the rule was that a person would be liable for any harm that he may cause to a person. This rule gave rise to many concepts or actionable rules as a separate tort. One of these actionable rules is negligence.

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate human conduct would do, or doing something which a prudent and reasonable man wouldn't do.¹ According to Winfield, *"negligence as a tort is the breach of legal duty to take care which results in damage, undesired by the defendant to the plaintiff."*²

The concept of negligence has evolved over the years. Courts in different countries have interpreted it in many ways in various judgements. However, the fundamentals of negligence are the same everywhere. There must be a breach of duty of care, which has consequential damage, and that act of negligence must not be intentional, since an intentional act to cause harm or damage will be dealt under Criminal Law. The scope of negligence over the years has widened.

In ***Jacob Mathew v. State of Punjab***³, the Supreme Court in a case of due medical negligence observed-

"The jurisprudential concept of negligence defies any precise definition. In current forensic speech, negligence has 3 meanings. They are:

- 1) a state of mind, in which it is opposed to intention;*
- 2) careless conduct, and;*
- 3) the breach of a duty to take care that is imposed by either common or statute law.*

All three meanings are applicable in different circumstances but any one of them doesn't necessarily exclude the other meanings"

¹ *Blyth v. Birmingham Waterworks Co.*, (1856) 11 Ex 781, 784

² Winfield and Jolowicz on *Tort*, 19th ed., 2014

³ *Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1

ESSENTIALS OF NEGLIGENCE

The essentials of negligence are-

1) **Duty of care**- There have been attempts to give a definitive definition of 'duty of care'. One such attempt was made by Lord Atkin in the landmark case of *Donoghue v. Stevenson*.⁴

In the said case, the plaintiff drank beer which was manufactured by the defendant. The beer bottle had remains of a snail at the bottom. As a result, the plaintiff got sick and sued the manufacturer. The defendant argued that he had no duty towards the plaintiff since there was no contractual relationship. Lord Atkin said that a person must have a duty of reasonable care towards his neighbor. As for who's a neighbor, he said that a neighbor is anyone who can be affected by a person's actions. Connecting the two, he concluded that duty of care is owed to a person who's affected by one's actions.⁵

2) **Breach of duty of care**- The principle of 'breach of duty of care' was laid down in *Blyth v. Birmingham Waterworks Co.*⁶ by Alderson, J. as-

*"Breach of duty is caused an omission to do something which a reasonable man, guided by those conducts which ordinarily regulate human conduct would do, or doing something which a prudent and reasonable man wouldn't do."*⁷

3) **Damages**- It's necessary to show actual damage in a tort of negligence. The damage should be a direct consequence of the negligence, should be foreseeable, and there should be a breach of duty of care by the defendant. This direct consequence is also called a causal relation. The negligent act should have a direct role in the resultant damage and the relation between the 2 shouldn't be remote.

NEGLIGENCE IN CASE OF HAZARDOUS ACTIVITY

When a person is engaged in a hazardous activity, there is a high probability of danger to others from an escape of such hazardous object. If that object escapes due to negligence of the defendant, he'll be held liable even if the defendant took every possible precaution, but the

⁴ *Donoghue v. Stevenson*, (1932) AC 562 (HL)

⁵ Id.

⁶ *Blyth v. Birmingham Waterworks Co.*, (1856) 11 Ex 781, 784

⁷ Id.

object escaped due to an unforeseeable circumstance.

This is the doctrine of strict liability, which originated in *Rylands v. Fletcher*.⁸

In this case, the defendant (A) was the owner of a mill in Lancashire, which was on a land adjoining the plaintiff's land. The plaintiff (B) owned a mine. A. hired contractors and engineers to construct a reservoir on his land. There were old mine shafts beneath A's land which weren't used, connected to B's mines. The engineers had been negligent in their work because of which the water from the reservoir entered the old shafts and flooded the mines.

Blackburn, J. held-

*"The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he doesn't do so he is prima facie answerable for all the damage which is the natural consequence of its escape."*⁹

However, there are some exceptions to this rule. Justice Blackburn said-

*"He (defendant) can excuse himself by showing that the escape was owing to the Plaintiff's default; or, perhaps, that the escape was the consequence of vis major, or the act of God."*¹⁰

At the time of its inception, this rule was considered to be the strictest rule of liability. But over the years, there have been many different interpretations by courts in Britain, United States, Australian, and even India, which have brought a number of exceptions to this rule. Consequently, the original rule has become somewhat inadequate in the cases of strict liability in 20th century. Therefore, it wouldn't be wise to continue to use the original rule. A good example of this is the following Australian case¹¹. In this case, the Australian Gas Light Company had laid gas mains or gas pipes to supply gas. There was a continuous flow of gas at a specific pressure. These gas mains ran beneath the house of the plaintiff, Mrs. Wong. Due to some fault in the mains, the gas leaked and entered the house of Mrs. Wong, as a result of which she was injured. She filed a suit against the secretary of the Australian Gas Light Company, Benning, for personal injuries. The plaintiff's argument was based on the principle

⁸ *Rylands v. Fletcher*, [L.R.] 3 H.L. 330

⁹ Id.

¹⁰ Id.

¹¹ *Wong v. Benning*, (1968) 70 SR (N.S.W.) 290

laid down in *Rylands v. Fletcher*. The defendant raised objections against this suit but they were dismissed by the New South Wales Court of Appeals.

The company appealed to the High Court of Australia¹² seeking a reversal of the decision of NSW Court of Appeals. The company raised 2 questions in the appeal. They argued that since they were authorized to lay gas mains, the rule of *Rylands v. Fletcher* can't apply to them, and the second argument was that the rule in *Rylands v. Fletcher* doesn't entitle anyone to sue for injuries which are personal.

The High Court's bench in a 3-2 decision¹³, held that as per the provisions of the *Australia Gas Light Company Acts, 1837-1935* (NSW) and the *Gas and Electricity Act, 1935-1965* (NSW), the mere leak of the gas from the mains laid down under statutory authority didn't constitute an actionable wrong. The court also gave other grounds according to which the leak from the gas mains didn't constitute a negligent act. It said that something brought on to land which caused damage to an adjoining owner because of its escape doesn't give rise to strict liability if it was done under statutory authority.¹⁴

CURRENT LEGAL PROVISIONS

Although law of torts doesn't have statutory enforcement and has developed through judicial interpretations and precedents, there are some statutes in India which provide compensation for damages under certain kinds of torts. One such statute is the Motor Vehicles (Amendment) Act, 2019.

Sections 161, 162, and 163 of the said act provide for compensation in cases of hit-and-run accidents. The driver's negligent driving may result in the death of the victim, or he may have caused grievous hurt to him. Section 163 contains special provisions for payment of compensation based on a structured formula. Section 166 specifies who can file an application for compensation under Motor Vehicles Act.

ANALYSIS: *KUSUM LATA V. SATBIR*

In *Kusum Lata v. Satbir*¹⁵, the victim was hit by a vehicle, the driver of which was driving fast

¹² *Benning v. Wong*, (1969) 122 CLR 249

¹³ Id (Barwick C.J. and Windeyer J. dissenting).

¹⁴ Ross Macaw, *Case Notes: Benning v. Wong*, 7 Melbourne University Law Review 575, 576 (1970)

¹⁵ *Kusum Lata v. Satbir*, (2011) 3 SCC 646

and negligently. The injuries being severe, he was taken to a hospital where he died. A claim petition was filed by the victim's wife, and her three minor children. The matter went to the Motor Accident Claims Tribunal, which denied the claim stating that the offender's name and vehicle number weren't stated in the FIR. The High Court (HC) in an appeal upheld the Tribunal's order.

The Supreme Court (SC) in this case said that the reasons given by the Tribunal and the HC are not sufficient to deny the claim. It said that when a person has been grievously injured and in need of immediate medical aid, it's natural for his relative to help him instead of noting the name and number of the driver and the vehicle respectively. The name and the number were reported to the police by one Dheeraj Kumar who was a co-villager of the victim, but his name wasn't in the FIR. The Tribunal and the HC said that since his name wasn't in the FIR, he couldn't have seen the accident.

The SC in regard to this referred to *Bimla Devi v. Himachal RTC*¹⁶, said that in a motor accident claim, it's not required by the claimant to give strict proof of accident, as it's required in a criminal trial.

Regarding compensatory assessment, the SC said the multiplier of 16 applied for calculating the compensation by the Tribunal isn't correct. The SC again referred to one of its previous judgements. It said-

*"..considering the age of the victim, the multiplier of 17 should be applied in view of the decision of this Court in Sarla Verma v. DTC."*¹⁷¹⁸

"Three facts need to be established by the claimants for assessing compensation in case of death-

a) age of the deceased;

b) income of the deceased;

*c) number of dependents."*¹⁹

¹⁶ *Bimla Devi v. Himachal RTC*, (2009) 13 SCC 530, 534, para 15

¹⁷ *Sarla Verma v. DTC*, (2009) 6 SCC 121

¹⁸ Supra note 15.

¹⁹ Supra note 17.

In *General Manager, Kerela S.R.T.C. v. Susamma Thomas*²⁰, the SC said that the multiplier represents the number of years' purchase on which the loss of dependency is capitalized.

The SC in *Sarla Verma* said that in cases falling under S.166 of MV Act, *Davies method*²¹ is applicable, which originated in *Davies v. Powell Duffryn Associated Collieries Ltd.*²² Since the claim in *Kusum Lata*²³ was filed under S.166 of MV Act, the multiplier of 17 should be applied as the deceased was 29 years old.

The SC also invoked article 142 of the Constitution to further the cause of justice and set aside the Tribunal's and HC's orders and granted the compensation.

CONCLUSION

Nowadays negligence has, as previously mentioned, become an independent tort. Although now settled, over the years the dichotomy regarding negligence has resulted in myriad stances of different people on the subject. Some jurists refer to negligence as a state of mind while some say it's a specific type of conduct of a man. Quite clearly, the Supreme Court conclusively said that negligence is definitely a state of mind, but it's not the same as intention. Sometimes while deciding whether a man is guilty of negligent conduct or not, the courts make mistakes by looking at the mental state, condition, or attitude of man. They don't factor in the actual act he has done and the damage he has caused as a result of that negligent act.

This is called an external observation. It means that in a case the court tries to decide the case by putting a reasonable and prudent man in a similar situation as in the case. This method was devised by the English courts in the mid-19th century because the number of train accidents were increasing. And if the courts had stuck to deciding negligence cases by looking at the state, condition, or attitude of the defaulting individual, no justice could've been possible for the victims of such negligent acts, as it was observed that the tortfeasors were getting away with their negligent acts after saying that they didn't have any intention of committing a tort.

²⁰ *General Manager, Kerela S.R.T.C. v. Susamma Thomas*, (1994) 2 SCC 176, 185-86, para 17

²¹ In *Sarla Verma*, the Apex Court regarding the Davies Method said-

"Under the formula advocated by Lord Wright in Davies, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and this assessing the loss to the dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier."

²² *Davies v. Powell Duffryn Associated Collieries Ltd.*, [1942] A.C. 601

²³ *Supra* note 14.

In this way the courts have over the years modified the original rule laid down in *Rylands v. Fletcher*. In India, the Supreme Court in *MC Mehta v. Union of India*²⁴, took the concept of strict liability one step further and devised a new concept known as "Absolute Liability".

Thus, negligence is one of the most important concepts of common law, and will remain this important as long as there are human beings present, because if there's one thing that we do marvelously, it's breaking the law in any manner whatsoever.

²⁴ *MC Mehta v. Union of India*, (1987) 1 SCC 395