THE INDIAN LAW INSTITUTE

Seminar

on

The Problems of Law of Torts

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Difficulties of the tort-litigants in India highlighted through the tort of Malicious prosecution

By

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The object of the paper is to put before the Seminar the difficulties of the tort-litigants in India. These are considered under two headings; difficulties in general and the difficulties in a particular cause of action. Since it is not possible to consider the difficulties in each and every tort, a tort which is most common and which forms the major bulk of the reported cases is taken up for consideration. All the cases reported in the All India Reporter since 1914 to 1965 are arranged tort-wise, with an object to know the importance of every tort.

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From the table it is clear that the tort which is frequently litigated is malicious prosecution. Quantum of damages and delay, though they are common to all torts, since the facts on which conclusions are drawn are from the cases on malicious prosecution, they are considered under the second heading i.e. difficulties in a particular cause of action. Otherwise there is no justification to consider under that head.

GENERAL DIFFICULTIES

A. Law in the Presidency towns:

It may be difficult to say factually when the English law came to be applied to the natives of India. It may be any time after 1600 A.D. But it is usually the accepted doctrine that the English law was introduced to the natives of India by the Charter, 1726. This was so held by Lord Kingsdown in Advocate General of Bengal v. Ranee Surnomoe Dossee.[1] Rt. Hon Sir George Clans Rankins observed, "That the law intended to be applied by these courts was the law of England is clear enough from the terms of the Charter though this is not expressly stated; and it has long been accepted doctrine that this Charter introduced into the Presidency towns the law of England - both common and statute law - as it stood in 1726[2]" From this it is clear that the law to be applied to the people in the Presidency towns is the law of England, as it stood in 1726.

Law applicable to the people of India is laid down under seven distinct heads in the Morley's Digest.[3]

1. The Common law, as it prevailed in England, in the year 1726, and which was not been subsequently altered by statutes especially extending to India or by the Acts of the Legislative Council in India;

2. The Statute law which prevailed in England in 1726, and which has not subsequently been altered by Statutes especially extending to India, or by the Acts of Legislative Council in India;

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1. M.I.A. Vol.9 at p.391: "The English civil and criminal law has been usually considered to have been made applicable to the natives within the limits of Calcutta, in the year 1726 by the Charter 13th Geo. I.
2. Background to Indian Law, at p.1(1946).
3. Vol.I at p.22.

3. The Statute law expressly extending to India which has been enacted since 1726 and has not been since repealed, and the statutes which have been extended to India by the Acts of the Legislative Council in India;

4. The civil law as it obtains in the Eccelesiastical and Admiralty courts in England;

5. Regulations made by the Governor-General in Council and Governors in Council previous to the 3rd and 4th Will. IV C.85 and registered in the Supreme Courts and the Acts of the Legislative Council of India, made under the 3rd and 4th Will. IV C.85;

6. The Hindu law in actions regarding inheritance and succession to lands, rents and goods, and all matters of contract and dealing between party and party in which a Hindu is a defendant;

7. The Mohammedan Law in actions regarding inheritance and succession to lands, rents and goods and all matters of contract and dealings between party and party in which a Mohammedan is a defendant.

Though the learned author has taken the trouble in explaining the law applied by the courts in India, under distinct heads, the decisions in India do not agree with him wholly Advocate General of Bengal v. Ranee Surnomoyee Dossee,[4] Sheikh Parabdi Sahan v. Sheikh Mohamed Hossein,[5] Bhola Nath Nundi v. Midnapore Zamindary Co.[6] and so many cases on slander and contribution of the Joint tort-feasors show that the English common law is not strictly followed by the Indian courts. The English statutes on Maintenance, Conspiracy and Champerty, 4 Edw. 3 C.11 have been held not applicable in India.[7] Only those statutes of England which were suitable to the local conditions in India were held applicable. So unless and until a judge decides, it is difficult to know what statute of England applies to India. So it is not possible to say whether a particular principle of English law applies to the people in these presidency towns.[8] One thing is clear i.e. the application

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4. M.I.A. Vol.9 at p.391.
5. B.L.R. A.C. 37.
6. 31 C. 503 P.C.
7. Ram Coomar v. Chunder Canto,(1876) I.L.R. 2 Cal.233 P.C. and also in Raja Rai Bhgawat v. Debi Dayal Sahu, 10 Bom. L.R. 230.
8. M.P. Jain, Outlines of Indian Legal History, at p.537 (1966).

of the English law of torts to the natives of India is not very certain.

B. Law of torts in the Mofussils:

Provisions of the Act of 1781 allowed the company courts to function in the mofussils of Bengal, Bihar and Orissa. Before the organization of the Adalt system in the mofussils by Sir Impey, justice was administered by the servants of the company. These people not being trained in the administration of justice, usually entrusted this work to the native Pandits and Kazis. When Impey took charge of the Adalat, he compiled a Civil Procedure Code, 1781, wherein he allowed the Hindus to be governed by the Hindu law and the Muslims by the Muslim law in the matters specified. In the same Code he made a provision for those cases which would not fall under the heads specified, to be decided in accordance with justice, equity and good conscience. Sir Ilbert observed, "An English man would naturally interprete these words as meaning such rules and principles of English law, as he happens to know and considered applicable to the case; and thus under the influence of the English judges, natives laws and usage, were without express legislation, largely supplemented, modified and superseded by English law."[9]

This is how the English law of torts came to be applied to the natives of India in the mofussil. In the mofussil, the judges while applying the English law have taken the peculiar conditions of the country into consideration. Almost the same provisions of Sir Impey's Code were introduced in the Madras through Sec.XVII of Regulation II of 1802 and also in the Elphinstone Code of 1827.

Judges while trying cases under the maxim, justice, equity and good conscience used their own discretion. The discretion varied from judge to judge. The inevitable result of this state of law is uncertainty.

C. Conclusions of the two positions:

Thus, we see that the English law is the source and guidance to the courts in the Presidency towns, and also to the judges in the mofussil. Administration of English law of torts in the Presidency towns and in the mofussil, in some respects differ from each other. For instance, in Bhooni Moni Dase v. Natower Biswas,[10]

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9. Supplement to the Government of India Act, Sir Ilbert, at p.360(3rd edition).
10. I.L.R. 28 Cal.452.

the Calcutta High Court held that the plaintiff's suit for damages for defamatory words (slander) failed, because he failed to prove the special damage he suffered. But whereas in Parvati v. Mannar,[11] a case from the mofussil of the Madras, the High Court held that the slander is actionable without proof of special damage. Parvati v. Manner, is followed in good number of cases.[12] From this, it is clear that the dichotomy between the law in the Presidency towns and mofussil is still kept up. Dr. M.P. Jain observed, "be it noted however, that this dichotomy was substantially reduced, but was not completely eliminated."[13]

The position of the plaintiff either in the Presidency towns or in the mofussil is not very happy. In the first instance it is difficult to know before hand whether a particular statute of England can govern his ease. If that particular statute is repealed or amended in England, can that affect the law in India, No definite answer can be given.

In the mofussil also, it is difficult to know one's position before by referring to the maxim, "justice, equity and good conscience." What does this maxim suggest? Dr. M.P. Jain observed, "The maxim did not have any presise and definite connotation. In simple terms, it meant nothing else but the discretion of the judge. No way was specified, in the beginning, in which the judges have to exercise their discretion They had full freedom to decide the cases coming before them to do substantial justice between the parties concerned. It was like legislation by the judges. The inevitable result of such a flexible state of law was bound to be confusion and uncertainty in the country's legal system."

D. These difficulties every tort-litigant has to face.

Neither the litigant nor the lawyer can with certainty know the law that will govern the case. Added to these, there are some peculiar uncertainties. For instance, in the State liability, the judge in order to know whether the government is liable for the torts committed by its servants, referred to Art.300 of the Constitution, Art.300 in its turn directs the judge to the Government of India Act, 1935, S.176 (1). And S.176(1)

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11. (1884) 8 Mad., 175,180.
12. Dawan Singh v. Mahip Singh(1888)10 All.425; Harakh Chand v. Ganga Prasad Rai(1924) 47 All.391; Sukkan v. Bipad I.L.R. 34 Cal.48.
13. M.P. Jain, Outlines of Indian Legal History, at p.587 (1966).

refers back to the legal position as it obtained before the enactment of that Act, i.e. S.32 of the Government of India Act, 1915. It says, "Every person shall have the same remedies against the secretary of the State in Council, he might have had against the East India Company, if the Government of India Act 1858, and this Act had not been passed. That is the liability of the present Indian Republic for the torts committed by its servants should be known by referring back to the liability of the East India Company. What streneous efforts the judge has to make in order to know the proper law to apply? What guarantee is there that all the judges follow the same path? What happens, when the cause of action arose not in the territory under the control of the British Govt., but under an independent Raja? In that case, Art.300 of the Constitution refers not to the Government of India Act, 1935 but the laws of the independent state. This means almost anarchy prevails.

Difficulties of the litigants in Malicious Prosecution:

The books which are usually referred to by the judges while deciding cases on torts are the following.[14] This is usually an indiscreminate referring.

1. Winfield on tort;
2. Clerk & Lindsell on tort;
3. Salmond on torts;
4. Pollock on torts;
5. Fleming on torts;
6. American Restatement on torts;
7. S. Ramaswami Iyer on torts;
8. Ratanlal & Dhiraj lal on tort
9. R.L. Anand & Sastry.

Flemings and American Restatement of torts are being referred in the recent judgments.

These authors are not of one view:

This is shown by referring to, as to what these authors have to say on the essentials of the malicious prosecution. The Judicial Committee of the Privy Council in Balbhaddar Singh v. Badri Sah[15] held that the plaintiff in an action for malicious prosecution has to prove.

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14. The list is collected from the actual study of the cases reported in the All India Reporter from 1914 to 1965.
15. A.I.R. 1926 P.C. 46.

1. that he was prosecuted by the defendant;
2. that the prosecution ended in his favour;
3. that the defendant acted without reasonable and probable cause;
4. that the defendant was actuated by malice.16

But the above authors express atleast two different views on the essentials of malicious prosecution. The first group of the jurists hold that the plaintiff in order to succeed has to prove the four essentials as laid down in Balbhaddar Singh's case. And the second group of the jurists hold that the plaintiff in order to succeed has to prove damage in addition to what is laid down in the Balbhaddar Singh's case.

A. The first view:

According to Winfield,[17] Salmond,[18] Clerk & Lindsell,[19] Flemings[20] and Ramaswami Iyer[21] the plaintiff has to prove the same four essentials mentioned. Even in these authors there are statements which are inconsistent with what they say. For instance, Prof. Winfield observed, "Assuming that there is damage the plaintiff must prove; (i) that the defendant prosecuted him; and (ii) that the prosecution ended in the plaintiff's favour; and (iii) and that the prosecution lacked reasonable and probable cause; and (iv) that the defendant acted maliciously."[22] But the same author observed, "The action for malicious prosecution being an action on the case it is essential for the plaintiff to prove damage."[23] The inconsistency between these two statements is quite obvious.

Pollock in his book on torts says that in an action for malicious prosecution, the plaintiff has to prove first (a) that he was innocent and that his innocence was pronounced by the tribunal before which the accusation was made; (b) secondly that there was a want of reasonable and probable cause for the prosecution, or as it may be otherwise stated, that the circumstances of the case were such as to be in the eyes of the judges inconsistent with the existence

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16. This what is laid down by Viscount Simonds in Glinski v. McIver (1962) A.C. 726 at p.742.
17. Winfield on tort, at p.575(1967).
18. Salmond on tort, at p.720(1961).
19. Clerk & Lindsell on tort, at p. (1954).
20. Fleming, The law of torts, at p.577(1965).
21. S. Ramaswami Iyer, The law of torts, at p.256(1965).
22. Winfield on tort, at p.575.
23. Ibid, at p.574-575(1967).

of reasonable and probable cause, and lastly, (c) the proceedings of which he complains were initiated in a malicious spirit, that is, from an indirect and improper motive, and not in furtherence of justice.[24]

From the reading of the above, it appears that the plaintiff in order to suceed has to prove his innocence. But Pollock has attached a foot-note. It runs thus, "A plaintiff who, being indicted on the prosecution complained, of, has been found not guilty on a defect in the indictment is sufficiently innocent for this purpose."[25] If the essentials as laid down by him are understood in the light of the foot-note, he does not differ from what is laid in the first view. But the language of Pollock is likely to mislead.

B. The second view:

Underhill,[26] R.L. Anand & Sastry,[27] Ratan Lal & Dhirajlal,[28] hold that the plaintiff in order to succeed has to prove damage in addition to the four essentials laid down.

If this is the case, what the plaintiff in a malicious prosecution has to prove depends upon the book, the judge refers. What book judge refers in turn depends upon the equipment of the court library. Many of the district courts in India are not equipped with standard books. From this point of view, the position of the Munsifs and Sub-ordinate judges is still predicamental. Lawyers' arguments and pleadings are bound to suffer from the lack of the standard books and the law reports. Ultimately the parties suffer.

Indian courts on the essentials of malicious prosecution:

Reported judgments are also not very happy. They represent three different views. First group of the cases hold that the plaintiff has to prove 1,2,3, and 4 essentials as laid down in Balbhaddar Singh's case. The second group of the cases hold that the plaintiff in addition has to prove that he was innocent. And the third group holds that the plaintiff in addition to usual four essentials, has to prove that he has suffered damage.

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24. Pollock on torts, at p.233-234(15th edition).
25. Ibid, at p.234, footnote No.23(1951).
26. Underhill, A summary of the law oftorts, at p.291 (6th ed.)
27. At p.850(1956).
28. At p.209(1965).

A. First view:

On the essentials of the cause of action, before Balbhaddar Singh's case, the Calcutta High Court in Syma Charan Karmokar v. Jhato Halder,[29] and in Harischandra Neogy v. Nishikanta Banarjee, the Madras High Court in Nallappa Goundan v. Koilappa Goundan,[30] Lahor High Court in Pohlo Ram v. Hukum Singh,[31] Patna High Court in Harihar Singh v. Dasrath Ahir,[32] Bombay High Court in Alam Khan Mahomed Khan v. Banemiya Rasul,[33] held that the plaintiff has to prove that he was innocent of the charge of which he was tried. But the same Madras High Court in Gopalakrishna v. Narayana[34] held that there is no necessity to prove his innocence. Wallis C.J. and Spencer J. observed, "In an action for malicious prosecution the plaintiff must prove four things, (1) that he was prosecuted; (2) that the prosecution ended favourably; (3) that the defendant acted without reasonable and probable cause; (4) that the defendant was actuated by malice. Under the second and third heads, question as to plaintiff's innocence generally arise. But they must be regarded only as incidental to the question whether the prosecution ended in the plaintiff's discharge or acquittal and whether the defendant acted without reasonable and probable cause."[35] This is the only case in India wherein the essentials of the malicious prosecution laid down by Pollock in his book are understood in the light of the footnote.[36]

B. Whether the plaintiff has to prove his innocence in a suit for malicious prosecution, came before the Privy Council, in Balbhaddar Singh v. Badri Sah.[37] The Judicial Committee of the privy Council held that there is no necessity of proving his innocence. Even after the Privy Council's decision in the Balbhaddar Singh's case, the Sind High Court in Raghunath Kewaji v. Teja,[38] and Kanyalal v. Mahomed Idris Abdullah,[39] held that the plaintiff has to prove his innocence in order succeed. This shows that the parties cannot with certainty depend upon the decisions of the Highest Court.

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29. 6 C.W.N.
30. (1901) 24 Mad. 59.
31. A.I.R. 1919 Lahore 255.
32. A.I.R. 1925 Pat. 469.
33. A.I.R. 1926 Bom. 306.
34. A.I.R. 1919 Mad.1039.
35. A.I.R. 1919 Mad. 1039.
36. Pollock on torts, at p.234, footnote No.23(1951).
37. A.I.R. 1926 P.C. 46.
38. A.I.R. 1936 Sind 133.
39. A.I.R. 1938 Sind 11.

C. After Balbhaddar Singh's case, Mohammed Amin v. Jogendra Kumar Banerjee,[40] is a case of importance. The defendant in this case made a criminal complaint charging the plaintiff with cheating. When a criminal complaint is made to a magistrate, he may act upon it either by issuing process under S.204 of the Criminal Procedure Code, or may hold enquiry under S.202 of the same Code. In this particular case, the magistrate acted under S.202. Notice was issued to the parties. The plaintiff attended the enquiry with his lawyer. The magistrate observed that no criminal case was made out at all and so he dismissed the complaint under S.203 of the Criminal Procedure Code. In a suit brought by the plaintiff for malicious prosecution the Privy Council had before them the two conflicting views of the different High Courts in India. One, prosecution begins only when the process is issued and the other prosecution begins as soon as a charge is preferred before a magistrate. The Privy Council have expressed the disapproval of the second view. It could not hold the defendant liable under the first view as no prosecution in that sense had taken place. But it was fully convinced that the plaintiff had suffered damage because of the wrong of the defendant. As notice was issued by the court, the plaintiff was almost compelled to appear with his own lawyer. In the light of these facts, the Privy Council held the defendant liable by laying down the following principle: "The test is not whether the criminal proceedings have reached a stage which may be described as a prosecution; the test is whether such proceedings have reached a stage at which damage to the plaintiff results."

The proper interpretation of the case seems to be in cases where the process is issued, the court presumes damage and in cases where the process was not issued, the plaintiff to succeed has to prove damage. Many text book writers after this decision have taken the view that the plaintiff in order to suceed has to prove damage.[41] Some judges are holding damage as an essential to be proved in malicious prosecution. For instance, Raj. Kishore Prasad J, of the Patna High Court relying upon the Privy Council's decision observed, "The plaintiff in order to suceed must prove(1) the prosecution by the defendant; (2) that the proceedings complained of terminated in his

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40. A.I.R. 1947 P.C. 108.
41. James, The general principles of the law of torts, at p.295(2nd Ed.); Ratanlal & Dhirajlal on torts, at p.199(18th Ed.). R.L. Anand & Sastry, at p.850 (1956).

favour; (3) that the defendant instituted or carried the proceedings maliciously; (4) that there was absence of reasonable and probable cause; and (5) that the plaintiff has suffered damage.[42]

What is shown above is that the courts in India are not of one view even on the essentials of the cause of action. Almost on every issue there is uncertainty. Here is the brief list of conflicting decisions.

Burden of proof:

The Allahabad High Court in Bishun Sarup v. Bindraban[43], held that the burden of proof in malicious prosecution is not stationary.

V. Ramaswami C.J. Untwalia J. of the Patna High Court in Ucho Singh v. Nageswar Prasad,[44] held that the burden of proof in malicious prosecution never shifts from the plaintiff.

Prosecution:

The Gobanjan v. Bholanath,[45] the Calcutta High Court held that there is no prosecution until the process is issued. The same High Court in Bishun Pershad Narain Singh v. Phulman Singh,[46] held that the prosecution commences as soon as a charge is made to the magistrate.

Prosecutor:

The Madras High Court in Narshinga Rao v. Muthayya Pillai,[47] held that the person who gives information to the police is not liable as a prosecutor.

The Calcutta High Court in Bhul Chand Patro[48] v. Palun Bas held that a person who gives false information to the police is liable as a prosecutor for the intended and natural consequences.

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42. Nagendra Kumar v. Etwari Sahu A.I.R. 1957 Pat. 786.
43. A.I.R. 1923 All.531.
44. A.I.R. 1962 Pat. 478: "The fact that the defendant purported to be an eye witness of the occurrence of murder is no doubt a factual circumstance which should be taken into account in deciding whether the plaintiff has discharged the burden of proof. But legally speaking the burden of proof never shifted from the plaintiff to the defendant.
45. (1911) I.L.R. 38 Cal.800.
46. A.I.R. 1915 Cal.79.
47. 26 Mad. 362.
48. 12 C.W.N. 818 Note.

Termination of the prosecution:

The Madras High Court in Narayya v. Seshayya,[49] held that the prosecution terminated on the day of the acquittal and not on the day of the dismissal of the revision petition.

But the Allahabad High Court is Madan Mohan v. Ram Sunder,[50] held that the prosecution terminated with the dismissal of the revision petition.

Damages:

In S.K. Mehtab v. Balji Krishna Rao Sen J. of the Nagpur High Court held that the damages for malicious prosecution are in the nature of a solatium and should not be given for punishing the defendant.[51]

But Bose A.J.C. and Mudholkar J. of the same High Court in Sm. Maujeh v. Sohrab Peshotham,[52] took just the oppostive view.

CLAIMS IN INDIA ARE VERY LOW

A person who is suing under the above circumstances, cannot ask for huge or deserving sums. Since so many positions of law are unsettled, a prudent advocate advises his client to claim a megre sum, so that he may not spend much on court fee etc. Of course, low claims in India may due to so many reasons. Very few persons in the rural India can afford litigation. Even if some people desires to get their grievances redressed, the cost of litigation is too much. Lawyers having sufficient knowledge of the Indian court's attitude in awarding damages, will be careful in advising their clients. The table below is meant to explain three factual situations; it explains that the claims are low; it explains that the awards are also low in the light of the amount claimed and lastly, it is meant to explain how the sum awarded becomes still in significant in the light of the time taken for decision.

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49. (1900) 23 Mad. 24.
50. A.I.R. 1930 All.326.
51. A.I.R. 1946 Nag.46.
52. A.I.R. 1949 Nag. 273.

Citation	Amount Claimed Rs.	Amount Awarded Rs.	Time taken Yrs.
1914 Lah.531	1500	1000	
1916 Pat.174	--	100	
1916 Mad.610(2)	--	1000	
1917 Pat. 43	280	20	
1918 Nag.128	--	20	
1919 Mad.1039	3500	2000	
1919 Mad.229	--	100	
1919 Oud. 31(b)	--	58¾	
1920 Cal.855(1)	--	61½	
1921 Bom.144	--	500	3½
1924 Mad.665	--	35000	3
1924 All.845	--	500	4
1925 Nag.216	7032	5182	4½
1927 Lah.120	2000	550	
1927 Oud.471	500	500	
1928 Cal.691	--	250	1½
1929 All.265	--	120	2
1930 Cal.729	Nominal damages	10	3
1930 All.216	1400	415	3
1930 All.742	1000	700	5
1932 Cal.847	--	300	3
1932 Mad. 53	5250	1500	8½
1933 Oud. 94	14500	2889	2
1933 Nag.299	1100	597	5
1933 Cal.706	--	6000	2
1933 Cal.909	--	3000	1½
1934 All.696	500	200	4
1938 Sind 11	1000	276	2
1939 Cal. 267	--	250	3½
1939 Lah. 505	2500	972	2½
1946 Nag. 46	3000	550	10
1947 Oud. 116	5250	3778	5
1946 All.139	500+500	two suits 60+50	6
1948 Oud.135	500	290	5
1948 Oud.291	2000	1150	6½
1949 Nag.273	5075	5075	6½
1950 Cal.259	503	203	6
1951 Raj.160	250	100	
1953 Pun.213	10000	1	5
1955 Nag.265	11300	315	9
1956 Pat.285	4099	500	13½
1957 Mad.646	10000	650	6½
1959 Pat.490	5250	500	9½
1960 Ker.264	1000	250	6½
1961 M.P.329	390	101	8
1962 Mys.153	1000	130	8
1963 All.580	575	199	10½

A case is selected to show that the courts in India are not very liberal while awarding damages. This is Venkatappayya v. Ramakrishnamma.[53] In this case, the plaintiff could prove to the satisfaction of the court the essentials of the tort of malicious prosecution. The facts in the case are mentioned in order to highlight the factors like enemity between the parties amount of inconvenience, time taken for decision and also the status of the plaintiff that should have a bearing on the amount awarded. In this case, the plaintiff was the President of the Local Fund Union and a respectable man of 53 years. Because of the ill-feelings that were existing between the plaintiff and the defendants, the defendants joined together and hatched a plot. It was pretended that defendant No.2, executed a promissory note in favour of the 4th defendant and borrowed from him a sum of money. Defendant No.1 was to profess falsely to have been the messenger who carried the promissory note to the 4th defendant and received from the sum required. While he was taking this money to the defendant No.2's house at about 12'0 in the night, it was to be given out that the plaintiff and two others suddenly pounced on him and committed robbery. The plaintiff left his office at about 9 P.M. When he came right in front of the police station, some of these defendants created a row, which acted as a signal for the sub-inspector to come out, and with his help they seized the plaintiff and pushed him into the station where he was confined in the police lock-up. The next day the plaintiff was sent to the magistrate. The prosecution was ended in acquittal as the magistrate found the whole case was false. In a suit for damages for malicious prosecution for Rs.5250, the lower court awarded him Rs.500. In appeal by the plaintiff for substantial damages, Venkatasubba Rao and Walsh JJ. holding that was a case where punitive damages should be awarded, enhanced the damages from 500 to 1500. The suit was filed in 1923 and it was finally decided in 1932. Though the court held that it was a case for punitive damages, it awarded only 1500 to the plaintiff who was subjected to all sorts of troubles. Amount awarded also becomes insignificant in the light of the time taken for decision.

Conclusions:

It is seen that the law to be applied to a tort case is not very certain; the distinction between the application of the English law in the Presidency towns and in the

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53. A.I.R. 1932 Mad.53.

mofussil is not completely gone; even on the essentials of a tort neither the books referred to by the judges while deciding, nor the decided cases agree; on almost all points courts have expressed inconsistent opinions; for so many external and internal reasons the claims of the plaintiffs are very low and also the amounts awarded as damages by the courts are neither encouraging nor sufficient to cover the expenses the plaintiffhad incurred. On the whole the position of the tort litigant in India is very deplorable.

Points for discussion at the Seminar:

1. Whether India stand in an urgent need for a fulfledged Code on Torts?
2. If so, it should be on what lines?
3. Is it desirable to declare the general principle and leave the rest to the courts?
4. Is it desirable to take up particular topics for legislation?
5. If so by what tests, the particular topics should be picked up for legislation?
6. Is it desirable to follow the method of declaration of law on simple and intelligible lines, as is done by the American Law Institute?
7. If so, to what advantage the Indian decisions upto now be turned to?
8. In the opinion of the Seminar how far the court-fee in different states is oppressive?
9. What should be done in order to reduce the delay in deciding?

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