ACCIDENTS, COMPENSATION AND THE LAW. By Patrick Atiyah, 1970. Published by Weidenfeld & Nicolson, 5 Winsley Street, Oxford Circus, London, Pp. XXVIII+663. Sh·130.

One of the most refreshing books which has recently contributed its lustre to the legal world is the book under review. Mr. Atiyah, Professor of Law in the Australian National University does not need any introduction. His other published works like *The Sale of Goods, An Introduction to the Law of Contracts and Vicarious Liability in the Law of Torts* have already made marks as standard text books on the subject. Readers of the *Vicarious Liability in the Law of Torts* would remember the original and comprehensive treatment given to the subject with a masterly touch and we expected a comprehensive book on the law of Torts from Atiyah. The present book *Accidents' Compensation and the Law* appears to be part of the great contribution which readers expect from him in the field of torts.

The present book is the first in a new series styled as 'Law in Context' with Robert Stevens, Professor of Law in Yale University and William Twining, Professor of Jurisprudence in the Queen's University of Belfast as the editors. The publishers claim that the present volume is the first in the series which aims to put forward books with a much broader approach than the traditional legal texts. This claim is more than justified by the the book under review, which deals comprehensively with the day to day problems involved in the wake of provisions of compensation for accidents. The emphasis in this book is on the practical application of the legal principles, which have been discussed in a masterly manner, as much in the background if law as in the background of the social security systems as prevailing in most parts of the world today. This is the unique feature of this book which distinguishes this treatise from other standard text books on the subject. Hitherto, jurists had paid little attention to sociology while dealing with the problems of law and the sociologists in their turn paid scant attention to problems of law having a bearing on the social security system. Probably it was due to the fact that a busy lawyer had little time and inclination to study the social security system and the sociologists in their turn had been allergic to the problems of law which were intermingled with the problems of sociology. The broad approach made to the subject by Atiyah tests the legal doctrines involved in the subject in the background of social security systems and is more on a practical plane than on a plane of abstract legal

principles. The book gives a comprehensive account of the law of Torts in the limited field chosen by the author, viz., the accident-compensation problem. In the background of private insurance, the learned author has given a comprehensive account of the way the law of Torts is actually attracted in the cases which arise out of accidents and in which payment of compensation is involved.

To quote the author the book deals with certain kinds of misfortune, and in particular with those arising from accidents. There could not be a better summary of the contents of the book, which runs to more than 600 pages, than that given in a few simple opening sentences of the introduction by the author.

What 'accidents' does the law concern itself with? How does it seek to avoid them? Which accidents are or should be met by the payment of compensation? How is that compensation assessed? How should it be assessed? Who pays the compensation? Who should pay for it? How is a compensation system administered? These are the questions with which this book is principally concerned.

It has, however, to be borne in mind that the learned author has based his observations with highly nerve strung and emotionally surcharged westerners in his mind and it would be rather not safe to make an unqualified acceptance of the statements in our country. Thus the phenomenon of 'compensation-neurosis' dealt with by the author with great emphasis may hardly be applicable in our country. The phenomenon of compensation-neurosis, from the book, appears to be a prevalent phenomenon in cases of torts in the western countries. What is this compensation-neurosis which has been presumed by the learned author to be prevalent all over the world whenever a claim for compensation under torts is presented in a court of law? As we understand from the author in many cases under torts anxiety over the damages which may be recovered is so great that it postpones the complete recovery of the plaintiff. The author points out that damages in a tort action are awarded in a lump sum being made once for all and there are no chances of increasing or decreasing the award at a subsequent stage because of the change of situation. The judge has, therefore, to make a number of predictions at the date of trial in order to calculate damages which may be awarded to the plaintiff. The judge will, therefore, be faced with problems as to whether the plaintiff would make a complete recovery? If so, the period which might be taken by the plaintiff to recover? If not, the residual degree of disability which may still persist in the plaintiff and the collateral question as to how far this would affect the earning capacity of the plaintiff and whe-

ther the plaintiff would suffer further pain and discomfort and whether his life span would now be shorter than what it would otherwise had been, had the accident not taken place. The author points out that if a judge thinks that the plaintiff will make a complete recovery and the judge is proved wrong the plaintiff gets lesser damages than what should have been awarded to him and conversely if the judge thinks that the plaintiff might not make a complete recovery and the judge is proved wrong, the plaintiff gets more damages than what should have been awarded to the plaintiff and these difficulties are sometimes aggravated by the phenomenon of compensation-neurosis which tends to prolong the period of rehabilitation and convalescence until after trial or settlement of a tort claim. It is pointed out that the judge may assume certain disabilities to be permanent and they could vanish over-night since the compensation-neurosis would exist up to the settlement of a tort claim and in this manner the plaintiff would have been over-compensated. Conversely if the judge thinks that the case is one of compensation-neurosis and if actually the prolonging of the period of rehabilitation and convalescence of the plaintiff is not because of compensation-neurosis but because of the injury suffered by him due to the accident, the plaintiff would be under-compensated by the wrong assumption of the judge that the plaintiff will become better after the trial. In this connection the learned author has given an instance of the case Lattimer v. Orient Navigation Company.[1] The author has pointed out the practice of postponing the trial to such a point when it could be reasonably ascertained as to whether permanent damage had been caused to the plaintiff. The author has pointed out the evil effects of such postponement which not only causes delay but may still be not correct because of compensation-neurosis which would exist till compensation is finally settled.

In our country the phenomenon of compensation-neurosis has so far never been met by any court and we do not find a reference to this phenomenon in any of our reported decisions. Here the impact of the accident can reasonably be assessed by the judge, whenever the plaintiff has become fit enough after his discharge from the hospital so as to present a petition for compensation in a court of law. The judge knows that with the exception of very rare cases in which some injury or injuries might lie latent and might ultimately lead to some future complication, the plaintiff has suffered injuries already treated in the hospital and if some evil effects persist even at the time of the presentation of the peti-

1. (1953) 2 Lloyd's Rep. 168.

tion, the chances are that the evil effects would be persisting for the rest of the plaintiff's life. Thus the plaintiff who suffers from amputation of a leg or an arm will remain so throughout his life. Even in cases of latent injuries the subsequent complications arise not on account of any neurotic factor but on account of physical causes. This may be a blessing to us that we do not suffer from this neurosis complex because of our simplex living, our love and fear of God and our essential belief in the truth, the good and the beautiful which we consider as attributes of God. The westerners may be deprived of this blessing to some extent because of their different approach mentally and spiritually which has led to problems of neurosis which have been so comprehensively dealt with by the author but which have little place in our jurisprudence or in the Indian courts of law. I want to point out that it would be a great mistake to make a liberal application of the principles of compensation-neurosis in our Indian courts or to advance an argument against the plaintiff that if there is a prolonging of rehabilitation and convalescence, the same might be due to the phenomenon of compensation-neurosis.

Likewise, I may point out that the standard accepted by the learned author while dealing with the problems of widows claiming compensation for the deaths of their husbands has to be screened and applied in the back ground of our Indian society and culture. According to the author this problem has been much discussed in recent years in England as to what would be the requirements for assessing the likelihood or remarriage of a widow who is claiming damages for the death of her husband. The author points out that since these damages are primarily awarded for the loss of financial support, the amount to be awarded may be far less if there is likelihood of the remarriage of the widow in the near future for in that case she would made good her lost support. Consequently, according to the author the judge has to assess the chances of remarriage of a widow and this he can only do by listening to what she has to say and by making some assessment of "how attractive she appears to be". According to the author if the possibility of remarriage is ignored by the judge, the widow might be compensated for a loss which she does not suffer.

It is respectfully submitted that this approach by the learned author is quite shocking to an Indian mind. The deprivation of the companionship of the husband has a two-fold meaning to an Indian widow. She not only loses the financial support of her husband, but she also loses the physical company of her husband and suffers shock on a mental plane almost to the same degree which has been suffered by the husband under the impact of the

accident. The loss of the husband by itself entitles an Indian widow to compensation in the wake of deprivation of the company of the husband. If we are to accept the view of Atiyah, the deprivation of the company of the husband has no meaning and all that the court should be concerned with is the question of financial support to the widow. Indian courts have never been presided over by a judge assessing the poor widow presenting a petition for compensation in the wake of death of her husband by an accident, as to how attractive she looked.

It appears that such a materialistic approach should be accepted by us with great caution as something peculiar to the modern civilization of the west and must not be accepted in its entirely in our country. In our country while considering even the loss of financial support to a widow the courts *inter-alia* take into consideration the requirements of the widow and her children in the background of her social status and award damages accordingly. If the courts arrive at a conclusion about the minimum requirements necessary for the financial support of the widow and her children in the background of her social status they do not lessen the amount on the ground that the widow was an attractive lady and that there were reasonable chances of her re-marriage.

Likewise, I would point out that the chart relied upon by Atiyah from which he has concluded that the re-marriage rate for widows is almost identical with the marriage rate for spinsters in most age groups, has very little application in our country. The figures reproduced by the author from the Registrar-General's Statistical Review for 1965 are as follows:—

Age group	Remarriage rate per 1000 widows.	Marriage rate per 1000 spinsters.
25-30	148	153
30-35	123	70
35-45	60	61
45-55	23	22
Over 55	3	2

A look at this table would convince any Indian that the same has absolutely no application in our country. In our country the marriage rate of spinsters would many times out number the re-marriage rate of widows within the age group of 25-30 years. After 30 years the spinsters may yet marry but the number of

widows, who are re-married after 30 years, is practically negligible.

In the end, I may state that it is certainly a text book of law different from conventional text books. By its emphasis on the actual application of law of Torts in practice with special reference to the relationship between the law of Torts and the institution of liability insurance and by presenting a careful examination of the rules of settlement as well as of the litigation in the compensation process, the book undoubtedly fulfils a great need in the field of law. Besides the book may also be said to be complementary to the established traditional principles of the law of Torts by pointing out the various modes in the wake of accident-compensation other than those emanating under the traditional law of Torts. Thus, in dealing with private insurance, the scheme relating to criminal injuries compensation and the scheme relating to social security benefits of the welfare state, the book serves both as a complement to the traditional law of Torts and as an opener of fresh channels of legal thinking.

Conventional authors on the subject of the law of Torts might argue that the function of a law course is to teach the students what the law is rather than what it ought to be. This argument apparently has no appeal to the learned author and this reviewer quite agrees with him that a function of university is not merely to teach the students what the law is and that the universities should surely be the places where new ideas take their birth and where students think about the equity or justice or policy of law with an open mind. If the teaching which imparts knowledge of law to the students is to be practical and not merely academic, the students of law ought to be well versed with the practical side of the application of law and must be thoroughly acqainted with the liability insurance system, the Motor Insurers' Bureau, criminal injuries compensation system and the social security system.

The learned author has also pointed out the need of changes in university law courses. It would not be out of place to make a brief mention of these lines suggested by the learned author which may profitably be examined by the people responsible for the formulation of policies regarding teaching of law in Indian universities so far as I know the lines suggested by Atiyah have not been applied as yet either in Indian universities or in any university of the United Kingdom or the United States. It is not known whether they have been incorporated in the Australian National University itself, where Atiyah occupies the chair of Professor of Law. These ideas are revolutionary and at the same time highly practical; as such, before

parting with this review I would briefly make a mention of the same. According to the learned author, firstly, economic torts should be taken out of the syllabus and should be dealt with as a part of labour law and the law relating to trade competition. Secondly, according to the author, torts like defamation and false imprisonment ought to be treated as part of a separate course like a course in civil liberties or a course in constitutional law. Thirdly, according to the author, the subject of nuisance might to some extent be accommodated in modernised course relating to land law such as legislation in respect of town planning. Lastly, Atiyah believes that the torts of conversion and detinue should be studied as a part of the law of property.

The learned author has likewise taken up the question of reforming the torts system in the wake of wide spread dissatisfaction with it as a method of compensating people for personal injuries. The learned author has pointed out the stream of proposals for reform which has emerged out of the entire common law world. The topic which has attracted the widest discussion in the common law world relates to road accidents because it is in this area that the torts system is most widely used and, therefore, its deficiencies are most generally observed. The learned author has pointed out the proposals for reform very enormously. He has pointed out to the *Report of* the *Winn Committee* which accepts the basic structure of the existing system and is concerned simply with improving its operation by making proposals to improve the procedure of personal injury litigation such as providing for provisional awards for damages and methods to reduce delay in sttlements. The author has also discussed various proposals put forth by Professor Keeton and Prof. O' Connell of the United States which have now come to be known as the proposals relating to 'Basic Protection Insurance' and the author has pointed out that this Basic Protection Insurance plan is mainly designed for the American market and that there are many fundamental differences between the position in America and the position in England so that the plan could not be acceptable in England.

The author has also mentioned two more comprehensive proposals for reform in the torts system as a method of compensating people for personal injuries. The first is the *Report of the New Zealand Royal Commission on Compensation for personal injury which* the author has described as a document of first rate importance. The second comperhensive proposal was taken by Ison in his book '*Forensic Lottery's* which puts forward a proposal for a scheme which does not substantially differ from the *Report of the New Zealand Royal Commission.* The

learned author has quite rightly pointed out that the evaluation of all these plans and proposals must be related to the existing social institutions of the country concerned. Tht conclusion of the author appears to be that the right path for reform is to abolish the tort sysem so far as personal injuries and disabilities are concerned and to use the money at present being poured into the torts system to improve the social security benefits and the social services generally. I would only state that this conclusion of the author would hardly be acceped in our country in the background of the law administered in our country and our social structure.

In short it is a book which blends in itself the philosophy and the practical application of the law attracted in the limited field of accident and compensation which has received the touch of the master in this very valuable publication in recent years.

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