

LAW OF TORTS. (8th edition, reprint 1983). By R.K. Bangia. Allahabad Law Agency, 9 University Road, Allahabad-2. Pp. xli+544. Price Rs. 36.

THE PRIMARY purpose of the law of torts is to indemnify a person for the damage caused to him due to some wrongful act of another. The secondary purpose which is served thereby is to discourage the wrongdoer from doing such an act. "In the great majority of tort actions coming before the courts, the plaintiff is seeking monetary compensation (damages) for the injury he has suffered and this fact strongly emphasises the function of tort in allocating or redistributing loss."¹ Hitherto the wrongdoer was himself required to compensate the injured party. In some cases the rule of vicarious liability recognized additional liability of the principal or the master as well. With the advent of urbanization and industrialization, and scientific advancements, particularly with the enormous increase in the use of motor vehicles, the situations of tort damage have tremendously increased. With the changed circumstances arising out of increase in the number of tort situations and also sometimes huge financial responsibilities, it might generally become difficult and sometimes even impossible for the wrongdoer or his master, if that be the situation, to meet the burden of the claim. To cope up with the situation the insurance idea is being adopted. That helps not only to shift the burden from the wrongdoer to the insurer, but also ensures compensation to the aggrieved party, which may sometimes otherwise be not possible. A great contribution in this regard has been made by the provision of compulsory insurance against third party risks under the Motor Vehicles Act 1939.

Unlike criminal law the law of torts does not require any mental element like *mens rea* in all cases. Sometimes the basis of liability is negligence, whereas in some other areas like deceit, conspiracy, and malicious prosecution, a particular kind of mental element constitutes one of the essentials of the wrong. The liability for defamation may arise even without an intention to defame. In some areas the law recognizes "strict" or "no-fault" liability. In the interest of greater social justice there is a welcome trend of recognizing "no-fault" liability² and imposing liability through statutes.³

Law of torts is mainly non-statutory law and is based on judicial precedents. In Indian context this branch of law occupies a peculiar position. There is very little tort litigation in India. The factors mainly responsible for the same are : the lack of consciousness about their rights

1. Winfield and Jolowicz, *Tort* (11th ed. by W.V.H. Rogers) 3 (1979).

2. See s. 92A, Motor Vehicles Act 1939.

3. See Fatal Accidents Act 1855, Workmen's Compensation Act 1923, Indian Railways Act 1890, Carriage by Air Act 1972.

by the general masses, poor economic conditions of the litigants, high cost of litigation, long delays in the decision of cases, award of generally inadequate amount of compensation and generally apathetic attitude of the courts, particularly in new kind of situations.⁴ For lack of judicial precedents in India the courts generally follow English decisions. The problem becomes peculiarly strange in those cases where English position is changed by statutes. In many such cases we continue to follow the English rules which have been discarded in the country of their origin. Unfortunately our courts and the legislatures have not kept pace with the changing needs, particularly in this branch of the law.

With the lack of easily available Indian material on the subject and the fact that the law on the subject is non-statutory makes the task of writing a book on the subject arduous. The author has ably overcome this difficulty and has given a systematic topic-wise treatment of the subject and explained various principles not only through English cases, but also through large number of decisions of the Indian High Courts and the Supreme Court. Comparative position of the English and Indian law is also reflected in the discussion of relevant statutory provisions at appropriate places. The author's successful effort in giving Indian stance to the subject deserves to be commended. The book contains an uncommon combination of simple language, lucid exposition, and authentic material by the uptodate discussion of both Indian and English case law and legislative provisions. At various places the author has given critical analysis and useful suggestions.⁵ The fact that the book is running in its 8th edition (reprint) and there are very frequent editions of the book, is self-explanatory about its quality and warm reception by its readers. The printing and get-up is good. There are, however, some printing mistakes in the book.

The book has been divided into 20 chapters. The first chapter deals with nature and definition of tort. The next four chapters deal with general principles. Chapters 6 to 19 deal with specific torts and the last chapter deals with remedies.

In the beginning of chapter 1, the author traces the origin of the law of torts in England and makes a mention about "Law of Torts in India". The Indian position should have been mentioned in greater detail and substantiated by illustrations from the material referred to in some of the following chapters. Apart from explaining the main features of a tort and referring to various definitions, the maxims *damnum sine injuria* and *injuria sine damno* have been discussed. The author has rightly described that the recent decision of the Allahabad High Court⁶ is an unhappy one

4. See R.K. Bangia, *Law of Torts* (8th ed.) preface at iv (1983).

5. *Id.* at 25 (f.n. 60) and 37 etc.

6. *Vishnu Datt Sharma v. Board of High School and Intermediate Education*, A.I.R. 1981 All. 46.

and needs reconsideration.⁷ In that case a student, who lost one year of his career due to the negligence of the school authorities in calculating the attendance, was denied the relief on ground of lack of precedents. The decision is obviously unjust.

In chapter 2 various general defences have been exhaustively dealt with. While discussing *volenti non fit injuria* the author rightly takes note of the relevant provisions of Unfair Contract Terms Act 1977, of England, which restricts the rights of a person to limit or exclude his liability for negligence. The author should have compared the cases of *Thomas v. Quartermaine*⁸ and *Smith v. Baker*,⁹ which he has discussed.^{9a} He has also not mentioned about the disapproval of the *Thomas* case by the House of Lords in *Smith*. Although the author has discussed that the consent should be free, the aspects of consent to illegal acts and consent to breach of statutory duty have not been mentioned.¹⁰

In chapters 4, while discussing vicarious liability, the author has referred to the Supreme Court decision in *Sitaram v. Santanuprasad*.¹¹ He has compared various cases including *Ricketts v. Thomas Tilling Ltd.*,¹² and has discussed the majority opinion in *Sitaram* but has not referred to the dissenting opinion of Subbarao J. regarding constructive liability. The author has also discussed in detail the vicarious liability of the state and he rightly describes the position in this regard as unsatisfactory by observing that it is "absurd if we continue to apply English rule [of exemption of state from liability] which has been discarded even in the country of its origin."¹³

In the chapter on remoteness of damage, two important cases, viz., *Roe v. Minister of Health*¹⁴ and *Smith v. Leech Brain & Co. Ltd.*,¹⁵ and also remoteness principles vis-a-vis property have not been discussed. Similarly, in the chapter on nervous shock, the relevant Indian cases like *H.I. Halligua v. Mohana Sundaram*,¹⁶ and *Dipchand Kundanmal Marwari v. Manak Chand Multanmal Marwari*¹⁷ have not been discussed.

The author has not merely mentioned the position of law of torts but at places the relevant position of other branches has been mentioned. In the context of assault and battery in chapter 6, he refers to the offences

7. *Supra* note 4 at 25 (f.n. 60).

8. [1887] 18 Q.B.D. 685.

9. [1891] A.C. 325.

9a. *Supra* note 1 at 38 and 42 respectively.

10. See S.P. Singh, "Volenti Non Fit Injuria," 17 *J.I.L.I.* 90 at 92 (1975).

11. A.I.R. 1966 S.C. 1697.

12. [1915] K.B. 644.

13. *Supra* note 4 at 154-55.

14. [1954] 2 Q.B. 66.

15. [1962] 2 Q.B. 405.

16. A.I.R. 1951 Mad. 1056.

17. A.I.R. 1939 Nag. 154.

of assault and criminal use of force¹⁸ and in the context of false imprisonment also refers to the offences of wrongful restraint and wrongful confinement as defined in sections 339 and 340, Indian Penal Code, respectively. Reference has also been made to the provisions of the Criminal Procedure Code in connection with the power of arrest.¹⁹ Similarly, reference to section 499 regarding defamation²⁰ and to section 268 regarding public nuisance²¹, (both of the Indian Penal Code) are some other useful references from the point of view of comparative study.

The author has taken note of various English²² and Indian legislative provisions,²³ and also some state legislations.²⁴ There are, however, quite some Indian writings on the law of torts but the author has missed them. It is hoped that he will take them into account in subsequent editions.

Chapter 20 discusses various remedies. The question of damages under the Fatal Accidents Act and the Motor Vehicles Act has been discussed in sufficient detail. The author has tried to incorporate in the text latest changes in the law, which is illustrated by the discussion of the relevant provisions of the Motor Vehicles (Amendment) Act 1982 in the reprinted 8th edition, which is under review. It would have been better if the remedy of injunction had also been discussed in greater detail.

Summary of every chapter at the end of the book adds to the utility of the book. It gives some idea about the whole chapter to a person not interested in the details, and helps the students particularly to revise a topic.

On the whole it is an up-to-date, authentic and well written book on the subject by an Indian author. The book should prove to be of great help to students, lawyers and others interested in the study of the subject.

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18. *Supra* note 4 at 165.

19. *Id.* at 174-75.

20. *Id.* at 180, 197, 199, 205-06.

21. *Id.* at 213.

22. For instance Congenital Disabilities (Civil Liability) Act 1976, Unfair Contract Terms Act 1977, Torts (Interference with Goods) Act 1977, Consumer Safety Act 1978, and Civil Liability (Contribution) Act 1978.

23. For instance, Fatal Accidents Act 1855, Indian Easements Act 1882, Workmen's Compensation Act 1923, Parliamentary Proceedings (Protection of Publication) Act 1977, Motor Vehicles Act 1939, Motor Vehicles (Amendment) Act 1982.

24. Kerala Torts (Miscellaneous Provisions) Act 1976.

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