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TORT LAW

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I INTRODUCTION

A TORT is a civil wrong other than a breach of contract, which the law redresses by award of damages. To constitute a tort there must be a wrongful act or omission that injures someone in some way, and for which the injured person may sue the wrong doer for damages. The law of torts is an instrument for making people adhere to standards of reasonable behaviour and respect the rights and interests of one another. Tortious liability thus exists primarily to compensate the person injured by compelling the wrong doer to pay damages for the damage he has done.

The year under survey, shows that the horizon of tortious liability has been expanding with every passing year. There is a growing awareness amongst the tort victims of their right to be redressed and the good number of cases surveyed this year bear testimony to this fact.

II CONSTITUTIONAL TORT

Constitutional tort denotes the case in which compensation or exemplary damages are awarded by the court when a constitutional right is violated. In India, there is no legislation, which governs constitutional tort. Article 300 of the Constitution of India, enumerates the liability of the Union or the state for tortious acts. The question of tortious liability of state was first raised in *Devki Nandan Prasad v. State of Bihar*.¹ Since then there have been a series of judicial pronouncements on the subject to cement this concept.²

Custodial death

The most precious fundamental rights of the citizen is right to life guaranteed by article 21 of the Constitution. It is the bounden duty of the state to protect the life and personal liberty of a citizen and it shall not be

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1 AIR 1983 SC 1134.

2 *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746; *Rudul Sah v. State of Bihar & Anr.*, (1983) 4 SCC 141; *State of Maharashtra v. Christian Community Welfare Council of India & Anr.*, AIR 2004 SC 7.



deprived of except according to procedure established by law. Award of compensation for established infringement of indefeasible right is a remedy available in public law.

In *Bhopal Singh v. State of U.P. & Ors.*,³ the deceased, a young man of 22 years and the earning member of the family was charged with the offence of theft. On the next day of his arrest, he was found dead in the police custody. As per the report, the cause of his death was alcoholic poison. The inquiry report revealed that the deceased had suffered injuries at the hands of the 'public' at the time of his being apprehended. But FIR was silent on this point. When he was arrested and presented before the magistrate, he was not under influence of alcohol and except his clothes nothing was found in his possession. Hence, the court held that poison was administered to him inside the jail. Terming it as a custodial death the court issued direction to the state to pay Rs. 2,50,000/- as compensation to his mother.

The relief of monetary compensation as exemplary damages, in a proceeding under article 226 is undoubtedly a remedy available in public law based on strict liability principle for contravention of the guaranteed basic and indefeasible right of a citizen. In *Shri Dinod DG Dympep & Anr. v. State of Meghalaya & Ors.*,⁴ while allowing a petition for compensation alleging violation of fundamental right to life, the court observed that such petitions being not criminal proceedings proof beyond reasonable doubt could not be insisted upon. Once the petitioners have made out a *prima facie* case of custodial violence resulting in death, provision of section 106 of the Evidence Act, 1872 could readily be invoked. It is then for the state to prove that the police or the jail authorities have had no hand in the victim's death.

Any death in the custody of the army, being a custodial death, shall result in the infringement of the basic human right guaranteed under article 21 of the Constitution. In *Phulo Bala Das v. Union of India*,⁵ the victim was a college student who was actively associated with many social and educational activities relating to the student's welfare. On the fateful night while he was participating in certain celebrations in his friend's house, a group of army men picked him up and the next day handed over his dead body to the police station. The army's claim that the deceased was a militant and he was killed during search operation was not supported by any records. The civil authorities were also not informed of any search operation. Holding that the case was squarely covered by the catena of decisions of the Supreme Court relating to the violation of article 21 of the Constitution, the court awarded compensation of Rs. 2,00,000/- to the petitioner.

In *Masooda Praveen v. U.O.I. & Others*,⁶ the writ petitioner was a widow praying for job and compensation from Union of India on compassionate grounds for custodial death of her husband. The petitioner's

3 2007(1) ALJ 215.

4 AIR 2007 Gau 155.

5 2007 (2) GLT 465.

6 (2007) 4 SCC 548.



case was that on the allegation of the deceased being a militant, a unit of army along with some surrendered militants searched her house, but having found nothing incriminatory therein took her husband to the army camp and tortured him mercilessly resulting in his death. To camouflage the murder explosives were placed on his body. However, the court found nothing to hold the case a custodial death. After having found that the deceased was taken into custody under the provisions of the Armed Forces (Jammu & Kashmir) Special Powers Act, 1990 and that even the Prime Minister's office refused to pay compensation to the deceased's family, the court denied any compensation to the petitioner.

In *S. Kahaowon v. Union of India & Ors.*,⁷ the petitioner's husband was apprehended by the personnel of 20 Assam Rifles and was killed while in their custody. The affidavit filed by the respondent army denied the fact of arrest; however, it asserted that the petitioner's husband was an activist of banned outfit NSCN (IM). The district judge in his inquiry found no evidence to prove this claim and his report established that death occurred when the deceased was in the custody of army personnel. Holding that the state must repair the damage done by its officers, the petitioner was awarded Rs. 3,00,000/- as compensation.

Hasan Ali v. State of Meghalaya & Ors.,⁸ presents another instance of custodial death. The deceased was a businessman of 23 years of age. He along with his friends went to witness Rangali Bihu festival on 15.4.2002 wherein he was assaulted brutally by the police personnel on duty. Considering the seriousness of his condition the police admitted him to hospital but he died on 18.4.2002. The post mortem report coupled with the statement of eye witness proved involvement of two officials in the assault. The victim was in good health when he was arrested. Therefore, as per the court the burden was on the state to explain how he sustained the injuries which caused his death. Since the state failed to discharge this burden the court awarded a further sum of Rs. 1,50,000/- in addition to the *ex gratia* compensation already paid by the state.

Giribala Das v. Union of India & Ors.,⁹ is yet another case where an innocent poor man was brutally killed at the hands of the security agencies in the name of counter insurgency operations. There was no option left to the court but to award compensation for the gross violation of the fundamental right guaranteed under article 21.

Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. If the functionaries of the government become law breakers, it is bound to breed contempt for law. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of article 21 of the Constitution, whether it occurs during investigation,

7 2007 (1) GLT 26.

8 2007 (1) GLT 228.

9 2007 (1) GLT 1.



interrogation or otherwise. Therefore, the rights inherent in articles 21 and 22(1) of the Constitution require to be conscientiously and scrupulously protected through prompt judicial intervention.

Illegal custody

In our constitutional jurisprudence, the remedy by way of compensation in proceedings under article 226 or 32 is based on strict liability principle for contravention of fundamental rights to which the principle of sovereign immunity does not apply.¹⁰ The government is vicariously liable for the damage done by its employees¹¹ and the right to compensation is some palliative for the unlawful acts of the state instrumentalities.¹² This judicial trend was reiterated in *Prabir Kumar Das v. State of Orissa and Ors.*,¹³ where one Pratap Naik who was initially convicted by the session's court under section 302, IPC was acquitted by the high court on 31.10.1994. Though against the order of acquittal by the Orissa High Court no appeal was filed in the Supreme Court, the prisoner was not released from custody till 21.1.2003. According to state it was the fault of a sessions clerk which led to the illegal detention. By holding that the right to liberty of Pratap Naik under article 21 of the Constitution was grossly violated in the hands of the state agencies a compensation of Rs. 8 lakhs was awarded by the court for eight years of illegal detention.

Police atrocity

The judiciary is incredibly vigilant in India and executes prompt actions when the state agencies break law. The violence and the police firing which took place in Nadigram on 14. 03. 2007 and the subsequent judicial intervention underline the proactive role of Indian judiciary in making the officers of the sovereign liable for their tortious acts. The court took *suo motu* cognizance on the basis of media report of the action taken by the West Bengal police against agitating farmers and other villagers in Nandigram village. The police in an indefensible manner shot down innocent people and committed every kind of major violent crimes including murder, arson, and rape. The court observed that in Nandigram, law and order was non-existent and there was rampant violation of fundamental rights. The action of the police department to open fire was wholly unconstitutional and unjustified under any provision of the law. The court came down heavily on the state functionaries by stating thus: "It seems as if the police department which is under the control of the Home Department is not even aware of the existence

10 *Bhim Singh v. State of J. & K.*, AIR 1986 SC 494; *Peoples' Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters*, (1989) 4 SCC 730; *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960.

11 *Chairman, Railway Board and Ors. v. Chandrima Das and Ors.*, AIR 2000 SC 988; (2000) 2 SCC 465; *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

12 *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.

13 2007 (II) OLR 435.



of Article 21 of the Constitution of India". While dealing with the PIL filed on the same issue¹⁴ the court further directed the State of West Bengal to pay to the relatives of the deceased an immediate compensation of Rs. 5 lakhs, to the injured a sum of Rs. 1 lakh and to the victims of rape a sum of Rs. 2 lakhs.

Immunity of the state for its sovereign acts is claimed on the basis of the old English maxim *rex non potest peccare*, meaning that the 'king can do no wrong'. In India, the maxim holds no merit and the courts in appropriate cases, hold the sovereign state and its officers liable for their tort. In *Kalpana Mandal & Ors. v. State of Orissa & Ors.*,¹⁵ the writ petitioners were the wife and children of the deceased who was killed in a police firing while he was travelling in a bus as passenger. The police started aimlessly firing at the bus when it was not stopped for checking. The court observed that in a writ under article 226, compensation can be awarded particularly when negligence on the part of police is writ large. Since the deceased was aged about 35 years at the time of his death and an able bodied youth, the court ordered to award Rs. 5,00,000/- in addition to Rs. 1,00,000/- already paid from the chief minister's relief fund.

The cases of police atrocities and illegal police custody cannot be equated with the preventive detention under special Act and compensation can be claimed only for redressal of established violation of article 21. *Dharam Pal Yadav v. Superintendent, District Jail Budaun & Ors.*,¹⁶ illustrates this principle. The petitioner was detained under the provisions of National Security Act and the detention was not approved by the government. However, on the same day of his release, a second detention order was passed and he was detained. He claimed damages for initial detention which was revoked by the government. It was held that if any atrocity was committed on the accused while he was in police custody, articles 21 and 22 of the Constitution would be applicable, but that analogy could not be imported when a person was detained under a preventive Act and no atrocity was shown to have taken place. Since the petitioner was detained under the authority of law and there was no averment of torture while he was in detention, the claimant was awarded no compensation.

Culpable inaction

Where the damage caused is not on account of any positive action taken by the state while maintaining law and order but is on account of culpable inaction on the part of the police in not taking adequate safety measures, doctrine of exercise of sovereign power is not applicable and state is liable to pay compensation. In *K. Venkata Raman and Another v. State of Tamil*

14 *Association for Protection of Democratic Rights v. State of West Bengal and Ors. & Sk. Anwar Ali v. Amit Kiran Dev, Chief Secretary of the State of West Bengal and Anr.*, 2007(4) CHN 842.

15 AIR 2007 (Ori.) 94.

16 2007 (1) ALJ 269.



Nadu, rep. by Secretary to Government, Home Department, Chennai and Others,¹⁷ the petitioner was an advocate who appeared as special public prosecutor in high profile cases involving rape and murder, wherein, the accused persons were various police officials. The high court, in the said cases, had directed for launching prosecution against the concerned police officials. The petitioner suffered huge loss due to mob violence. In spite of prior information, regarding untoward incident, no precautionary measures had been taken by the local police and the district collector. The damage was caused to the petitioner and his properties on account of police's culpable inaction in not taking adequate safety measures. As such, according to the court, the doctrine of exercise of sovereign powers would not be applicable.¹⁸ While awarding a compensation of Rs. 7 lakhs to the petitioner, the High Court of Madras held thus:¹⁹

Where it is established that the officers of the state, namely, the police personnel ordained with duty of maintaining law and order have failed to protect the life, liberty and property of persons and when such failure, amounts to dereliction of duty the state would be liable to pay compensation.

In *U.O.I. v. Smt. Shanti Devi & Anr.*,²⁰ the inaction of the authorities in not granting gratuity in time to a poor widow was severely criticized by the court. While directing immediate payment to the widow the court also held the employer liable to pay 12% interest on the amount and also a further sum of Rs. 52,469/- on proper computation of amount.

Right to privacy

The right to privacy as an independent and distinctive concept arose from the law of tort which results in damages in case of infringement.²¹ The right to privacy has two aspects, one is the general law of privacy which affords a tort action for damages in case of an unlawful invasion of privacy and secondly, the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. In *Managing Director, Makkal Tholai Thodarpu Kuzhuman Ltd. v. Mrs. V. Muthulakshmi*,²² telecasting of a serial about M. Veerappan, a notorious brigand who was killed in an encounter was challenged by his wife contending that such publication would amount to violation of her right to privacy. The serial was based on matters available in public domain. Since Veerappan's

17 (2007) 2 MLJ 804.

18 *Id.* at 814.

19 *Id.* at 813.

20 2007 (2) ESC 780.

21 *R. Rajagopal alias R.R. Gopal and Anr. v. State of T.N. and Ors.*, (1994) 6 SCC 632.

22 2007 (5) CTC 694. (2007) 6 MLJ 1152.



life was an open book and everything about his life was known to all, the Madras High Court held that there was no violation of privacy. The right to privacy is available only when the parties maintain their privacy. If the privacy comes out to public, the question of retaining the privacy does not arise and hence not actionable in law of tort.

III MALICIOUS PROSECUTION

Law is well settled that in a case of damage for malicious prosecution onus of proof of absence of reasonable and probable cause rests on the plaintiff. But this is qualified to the extent that in cases where the accusation against the plaintiff purports to be in respect of an offence which the complainant/defendant claims to have seen him commit and the trial in the criminal case ends in acquittal on merits, the presumption would be that not only the plaintiff was innocent but also there was no reasonable and probable cause for such accusation.²³ In *Antarajami Sharma v. Padma Bewa & Ors.*,²⁴ due to previous enmity between the parties, respondents 2 and 3 got respondent 1, the plaintiff's maid servant, to file a false case against the petitioner of outraging her modesty. The criminal case ended in acquittal. In the case filed for malicious prosecution against all the three respondents, the trial court found only respondent no. 1 guilty and held her liable for damages. On appeal, the question before the Orissa High Court was whether the presumption of malice was equally available against respondent nos. 2 and 3 who got the appellant falsely implicated in order to defame him. Answering the question in affirmative, the court held that although no specific precedent is available, logically the presumption of malice could also be extended to respondent nos. 2 and 3 who got the false case filed and also deposed in the court that they saw the appellant committing the alleged offence.

In law of tort, the claimant suing for damages for malicious prosecution must prove that all the elements of malicious prosecution are present in his case. The elements of malicious prosecution are:

- (i) commencement of prosecution against the plaintiff by the defendant;
- (ii) presence of malice therein: the prosecution was intentional and malicious;
- (iii) the prosecution is without any probable cause; and
- (iv) the termination of the proceedings in favour of the plaintiff.

Failure to prove these elements will be fatal for recovering damages. In *State of Tripura and Another v. Ranjit Kumar Debath and Others*²⁵ the

23 *Lambodar Sahu v. Laxmidhar Pani*, 1972 (1) CWR 370.

24 AIR 2007 Ori 107.

25 AIR 2007 Gau 108.



BSF personnel raided the plaintiff's shop, seized all his saleable clothes and lodged a criminal complaint against him which ultimately led to his acquittal. The trial court, holding it as malicious prosecution awarded compensation of rupees 10 lakhs for damage caused to his shop, obstructions created in rolling of capital, mental and physical sufferance etc. While setting aside this order, the Gauhati High Court held that the elements of cause of action for malicious prosecution were absent in his case. The criminal case instituted by a competent authority is not a malicious prosecution and the government is not liable for any damage caused by anything done in good faith.²⁶

In *West Bengal State Electricity Board v. Dilip Kumar Ray*²⁷ the Supreme Court clearly stated that damages for malicious prosecution cannot be awarded when proceedings were not specifically challenged on that ground. The trial court and the high court had awarded damages for harassment and for loss of reputation due to institution of disciplinary proceedings against the appellant-respondent which was later vitiated. The Supreme Court categorically observed that the disciplinary proceedings were vitiated not on the ground of malicious prosecution. The trial court even did not frame an issue as to whether there was any malicious prosecution and no evidence was led to show malice. However, the trial court awarded Rs. 50,000/- for harassment and Rs. 50,000/- for loss of his reputation. The Supreme Court observed that though the high court noted that plaintiff was not entitled to damages for defamation, but while affirming the trial court's judgment, the high court held that damages granted for harassment must be read as damages for malicious prosecution causing harassment. By setting aside the high court's order, the apex court ruled that damages for malicious prosecution cannot be awarded when proceedings were not specifically challenged on that ground.

The appellant, who belonged to a respectable family, sought a decree for damages, in *Bhaskara Menon v. Ayyappan*,²⁸ alleging malicious prosecution which caused him mental agony and loss of reputation. But the Kerala High Court refused damages holding that acquittal in a criminal prosecution would not automatically establish malicious prosecution. The burden is on the plaintiff to establish that he was prosecuted with malice and without any reasonable cause.

IV NEGLIGENCE

Negligence as a 'tort' has many manifestations — it may be an active negligence, gross negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, hazardous

26 S.15, Essential Commodities Act, 1955.

27 AIR 2007 SC 976.

28 2007 (3) KLT 914.



negligence, active or passive negligence, reckless negligence or negligence per se. Negligence becomes actionable on account of injury resulting from an act or omission. The essential legal components of negligence are three: duty, breach and resulting damage. It is the amount of damage incurred which is determinative of the extent of liability in tort.

Medical negligence

The vicarious liability under torts in respect of doctors employed by the state would arise only if doctors are found to be negligent. In *Dr. Alice George & Anr. v. Lakshmi*,²⁹ the plaintiff having three children, decided to undergo tubectomy operation on doctor's advice. However, she conceived even after the operation and was advised not to go for abortion since it would cause complications in her health. Consequently, she delivered her fourth child. The defendants stated that even after sterilization operation, there was approximately 0.5% chance of pregnancy. While awarding compensation, the Madras High Court pointed out that before taking such a stand that the plaintiff's case fell within the 0.5% chance, a duty was cast upon the defendants to prove that tubectomy operation was done carefully and without any negligence whatsoever which the defendant had failed to do.

In a similar case, in *Natwarlal & Anr. v. State of M. P. & Anr.*,³⁰ plaintiff no. 2 underwent sterilization operation in 1983 but she gave birth to plaintiff no. 1 in 1986. Relying on *Raj Rani*³¹ the court held that it was only when negligence of the doctor who had performed the sterilization operation was proved which resulted in another birth that the state became liable to pay compensation. According to the court, the appellant had the opportunity to get herself thoroughly examined and investigated to show that it was on account of the negligence of the doctor the birth of a child took place. Since this was not done the appellants were held not entitled to any damages. However, considering the appellants' poor financial status, an amount of Rs. 20,000/- was granted as ex-gratia by the court.

It is humbly submitted that the court, as in the case of *Dr. Alice George*, could have asked the doctors to disprove negligence on their part instead of insisting on the appellants to prove the doctor's negligence.

State of Chattishgarh through Collector and Others v. Smt. Manju Bai,³² reveals facts of another sterilization operation where the doctor was held not liable. The plaintiff was advised to maintain abstinence for three months after sterilization operation, however, she conceived immediately. The negligence of doctor who conducted the operation was neither pleaded nor proved. The court noted that the plaintiff did not get her pregnancy terminated though it was permissible under law. In these circumstances, the

29 AIR 2007 Mad 130.

30 AIR 2007 MP 128.

31 *State of Haryana v. Raj Rani*, AIR 2005 SC 3279; *State of Punjab v. Shiv Ram*, AIR 2005 SC 3280.

32 AIR 2007 Chh 87.



court concluded that the child born to the plaintiff was not an unwanted child and hence not entitled to any compensation.

Dr. (Mrs.) A. Athilakshmi v. A. Ravi & Ors.,³³ presents a glaring example of the negligence of medical practitioners. The patient was administered local anesthesia for a family planning operation. Mid way through the operation, effect of anesthesia worn off and the patient started screaming in pain. The anesthetist was not present at the time of operation but was called subsequently. The patient died during the course of operation due to cardiac arrest. Without informing this to the relatives, the doctor advised them to shift the patient to another hospital where she was declared brought dead. The court held that death of the patient occurred due to negligence of concerned doctors and awarded a compensation of Rs. 4 lakhs along with interest and cost.

In *Jagdish Ram and Ors. v. State of Himachal Pradesh and Ors.*,³⁴ the patient was taken for family planning operation without testing for adverse effect of anesthesia and she died due to over dose of anesthesia. The medical record did not show the time and the quantity of anesthetic dose administered. Nevertheless, the defendants had thereafter made an all out attempt to cover-up their lack of basic medical skill and negligence by making certain entries in the treatment chart and procuring an expert committee's report based on non-existent factual material. Though the district court exonerated the doctors from liability of negligence in tort, the High Court of Himachal Pradesh found them guilty of negligence and awarded compensation of Rs. 3,50,000/- to the husband and the children of the deceased.

In *Dr. S.R. Ranganadhan v. Alluri Seetharama Raju*,³⁵ the plaintiff was operated for appendicitis. Some foreign objects were negligently left in his abdomen and this necessitated performance of a second operation. Since even in the second operation all sutures were not properly removed, there was infection and the patient was forced to undergo a series of operations on different dates. The Andhra Pradesh High Court held the doctors guilty of medical negligence and awarded compensation for medical expenses, loss of health, mental agony and suffering.

In India, professional negligence is distinguished from occupational negligence. Test for professional negligence laid down in *Bolam* case³⁶ is held applicable in India. The basis of liability of a professional in tort is negligence. Unless negligence is established, the primary liability cannot be fastened on the medical practitioner. Unless the primary liability is established, vicarious liability of the state cannot be imposed. In *Dr. Parimal Chakraborty and Etc. v. Smt. Bijaya Pant & Ors.*,³⁷ the appeal

33 2007 (3) ALJ (NOC) 349.

34 2008 ACJ 433.

35 AIR 2007 (NOC) 1233 (AP).

36 (1957) 2 All ER 118.

37 AIR 2007 Gau 72.



was preferred against the judgment of a single judge holding the state vicariously liable, declaring doctors to be negligent in their duties and awarding compensation of Rs.1,00,000/- in a writ petition. The division bench while setting aside the impugned order held that the question of negligence and vicarious liability of state in respect of its employees involve different elements and factors for appraisal of evidence and as such, cannot be determined under article 226.

Negligence of exam board

The liability for negligence of examiner for failure to issue correct mark sheet was the issue for the court in *President, Board of Secondary Education, Orissa and D. Suvankar and Another*.³⁸ The error in mark sheet of the respondent of his high school certificate examination conducted by the appellant board initially occurred due to wrong entry made in the computer. When he made a representation, the error was rectified and a fresh mark sheet was issued. On further checking the respondent was found to have secured more marks than what was allotted to him. This error had occurred due to the negligence of examiner and scrutinizer. By upholding the award of Rs. 20,000/- as compensation granted by the high court the apex court held that neither the computer error nor the casual and negligent approach of the examiner/scrutinizer was excusable. Ultimately, it is the responsibility of the board to ensure issuance of correct mark sheet. Under the garb of non-sovereign statutory duty the board can neither take shelter nor avoid liability for negligence of examiners for their failure to issue correct mark sheet in time.

Duty of care

In *M.C. Mehta v. U.O.I.*,³⁹ the Supreme Court had issued directions to school bus owners as regards overloading, over-speeding, licences of drivers, drunken driving etc. The Tamil Nadu Government had not implemented these directions and this was questioned in *M. Chandrasekar v. U.O.I.*⁴⁰ The court found fault with the authorities in not implementing the directions and admonished the concerned authorities to comply with the directions in letter and spirit to ensure safety of school children travelling by school vehicles.

V VICARIOUS LIABILITY

State's liability

A school boy died on account of collapse of school's boundary wall in *G. Gouri Sankara v. State of Orissa and Ors.*⁴¹ The school in which he was

38 (2007) 1 SCC 603.

39 AIR 1998 SC 186.

40 (2007) 6 MLJ 675. See also *Swapan Kumar Saha v. South Point Montessori High School and Others*, 2007 (1) GLT 135.

41 AIR 2007 Ori 74.



studying was a government school and the boundary wall was constructed by the public works department. The victim had just appeared in H.S.C. Examination before the accident and also was working at a medical store on a monthly salary of Rs. 2000/-. The court held the state vicariously liable to pay compensation and awarded a compensation of Rs.1.50 lakhs.

In *Eeidi Ganirajau v. State of Andhra Pradesh, rep. by Secretary Social Welfare Department*,⁴² where a minor inmate in a government hostel was raped by the hostel-matron's husband, the court held the government vicariously liable for the tortious act of its officers. The court opined that the unfortunate incident took place only because of the utter negligence of the matron, who was a government employee.

Similarly, in a series of cases involving electrocution, the various high courts have held the respective electricity boards responsible for the deaths casting vicarious liability on the state to compensate the victims' dependants.⁴³

Liability of bank

In *Manager, ICICI Bank Ltd. v. Prakash Kuar and Ors.*,⁴⁴ the Supreme Court has come down heavily on recovery agents. The writ petitioner was a defaulter in payment of the instalment against a loan taken from the ICICI Bank, Allahabad branch for purchase of a truck. On default, the vehicle was seized by the so called 'recovery agents' in public place, causing embarrassment to the petitioner. The court observed: " A man's self respect, stature in society are all immaterial to the agent who is only primed at recovery. This is the modernized version of shylock's pound of flesh... The banks get away scot-free and escape liability since agents are not salaried employees of bank. Hence, it is mandatory that the banks be held vicariously liable for such acts of agents. The recovery of loans and seizure of vehicles could be done only through legal means. The banks cannot employ goondas to take possession by force."

VI COMPENSATION

When life and liberty of citizen is violated by the state or its instrumentalities the courts have the power to direct the state to pay compensation and recover the same from the erring officers. During the year under survey the courts have made the state to pay compensation in all proven

⁴² 2007 (1) ALT 609.

⁴³ *State of J. & K. & Ors. v. Mohd. Iqbal* AIR 2007 (J. & K.) 1; *Borawwa w/o Mallappa Guggari & Anr. v. Karnataka Power Transmission Corporation Ltd. & Ors.*, 2007 AIHC 1034; *State of Manipur & Ors. v. Hurlungkamei*, 2007 (4) GLT 342; *Mosht. Amendabewa v. Assam State Electricity Board & Ors.*, 2007 (3) GLT 32; *Eshappa Goudar v. Chief Engineer (Electricity) Bellary Zone & Anr.*, 2007 AIHC 324. etc. These cases are discussed in detail under the heading 'rule of strict liability'.

⁴⁴ (2007) 2 CHN 63.



cases of custodial death,⁴⁵ illegal custody,⁴⁶ police atrocity,⁴⁷ culpable inaction,⁴⁸ negligence⁴⁹ etc.

The right to compensation in tort may even arise where the plaintiff has no title to the damaged property. In *Secretary, K. S. E. B. & Anr. v. M. V. Abraham & Anr. etc.*,⁵⁰ the plaintiffs were in possession and undisturbed enjoyment of nine acres of government land from 1966 onwards. They made valuable improvements by clearing the original forest land and planting various trees and plants on it. There has been no case by the government till then that the plaintiffs were trespassers. The defendants, the Kerala Electricity Board, cut the trees in the land to implement a project called Lower Periyar Hydro Electric Project. The water level of the river arose as a result of the project work and submerged substantial portion of the property. After appraisal of the facts, the court held that owing to the cutting of trees the plaintiffs have lost their means of livelihood. By upholding the award of compensation granted by the lower court, the Kerala High Court observed thus:⁵¹

As long as the defendants have no claim of title to the properties in question, they are not entitled to raise a contention that the plaintiffs cannot claim damages in respect of the improvements on the ground that the land in question belonged to the government. Such a plea is available only in favour of the Government of Kerala and not to the Kerala state electricity board. The plaintiff having proved that they were in possession and enjoyment of the properties and they have effected the improvements and the defendants having put forward no claim of title to the properties, the plaintiffs are entitled to compensation for the tortious acts done by the defendants due to which the plaintiff sustained loss and injury.

Death of young children

Determination of damages for loss of human life is an extremely difficult task and more so when the deceased is a child.⁵² In the case of death

45 *Bhopal Singh v. State of U.P. & Ors.*, 2007(1) ALJ 215; *Shri Dinod DG Dympep & Anr. v. State of Meghalaya & Ors.*, AIR 2007 Gau 155; *Phulo Bala Das v. Union of India*, 2007 (2) GLT 465; *S. Kahaowon v. Union of India & Ors.*, 2007 (1) GLT 26; *Hasan Ali v. State of Meghalaya & Ors.*, 2007 (1) GLT 228; *Giribala Das v. Union of India & Ors.*, 2007 (1) GLT 1.

46 *Prabir Kumar Das v. State of Orissa and Ors.*, 2007 (II) OLR 435.

47 *Supra* note 14.

48 *Supra* note 17.

49 *Dr. Alice George & Anr. v. Lakshmi*, AIR 2007 Mad. 130; *G. Gouri Sankara v. State of Orissa and Ors*, AIR 2007 Ori 74; *State of J. & K. & Ors. v. Mohd. Iqbal*, AIR 2007 (J & K) 1; *Borawwa w/o Mallappa Guggari & Anr. v. Karnataka Power Transmission Corporation Ltd. & Ors.*, 2007 AIHC 1034 etc. etc.

50 AIR 2007 (KER) 12.

51 *Id.* at 17.

52 2007 (4) KLT 319 (SC).



of young children, the assessment of income on estimated basis cannot be done due to uncertainties with regard to academic pursuits, achievements in career etc. The Supreme Court upheld the compensation of Rs.1,00,000/- awarded by the tribunal for the death of a 14 year old boy in motor accident.⁵³ In *Oriental Insurance Co. Ltd. v. Syed Ibrahim*,⁵⁴ where a child of seven years lost his life due to truck accident Arijit Pasayat J held that the parents will have a valid claim only if they establish that they had a reasonable expectation of pecuniary benefit if the child had lived. He observed thus:⁵⁵

In case of the death of an infant, there may have been no actual pecuniary benefit derived by the parents during the child's life-time. But this will not necessarily bar the parents' claim and prospective loss will find a valid claim provided the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived... Neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation... In cases, where parents are claimants, relevant factor would be age of parents.

The apex court refused to uphold the enhancement of compensation awarded by the Karnataka High Court from Rs. 51,500/- to Rs. 1,52,000/-, and restored the tribunal's award.

VII DEFAMATION

Mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with the intention, knowledge or belief that it will harm the reputation of the person concerned. The Kerala High Court affirmed this principle in *Mammen Mathew v. Radhakrishnan*,⁵⁶ and held that the offence of defamation consists of three essential ingredients, viz., (i) making or publishing an imputation concerning a person; (ii) such imputation must have been by words either spoken or intended to be read or by signs or by visible representations; and (iii) the said imputation must have been made with the intention of harming or with the knowledge or having reasons to believe that it will harm the reputation of the person concerned.

The right to reputation is a facet of right to life. In *State of Maharashtra v. Public Concern for Governance Trust and Others*,⁵⁷ an appeal was filed by the State of Maharashtra for expunging certain remarks made by the high

53 *Kaushlya Devi v. Karan Arora*, 2007 AIR SCW 3424.

54 2007 (4) KLT 319 (SC).

55 *Id.* at 321-22.

56 2007 (4) KLT 833.

57 (2007) 3 SCC 587.



court against the then chief minister who was not even a party to the case. The apex court, by allowing the petition, observed that reputation of an individual is an important part of one's life. One is entitled to preserve and protect one's reputation. In case any authority on discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter and the violation of the same will have to bear the scrutiny of judicial review.

In *Ram Jethmalani v. Subramaniam Swamy*,⁵⁸ the court examined the scope and limit of defense of absolute privilege of counsels in matters connected with defamation. The commission of inquiry constituted under the Commissions of Inquiry Act, 1952 was examining the matters pertaining to the events, facts and circumstances relating to the assassination of late Shri Rajiv Gandhi. The defendant who appeared as witness made wild allegations in his written submission against the plaintiff senior counsel that he had been receiving money from LTTE. By holding that the statement against the plaintiff was *ex facie* defamatory the court observed that the diatribe against the plaintiff in the written submission was a clear case of exceeding the privilege and that by itself was evidence of malice. Since the offending words were communicated in writing before a commission under the Commissions of Inquiry Act and have been proved to have been additionally read out during the course of final submissions and the fact that it was used not when the defendant was standing before the commission as a witness, defence of absolute privilege was not available to the defendant. The court held that the plaintiff had established actual malice as the defendant exceeded the limits of qualified privilege. Considering the professional standing of the plaintiff and his stature in social life, the court ordered the defendant to pay damages amounting to Rs. 5 lakhs.

Locus standi

An action for defamation can be instituted only by a person who is defamed and not by others, *viz.*, family members, relatives, friends etc. So also, when the defamatory statements are directed, not against the institution, *i.e.*, a company or a registered society, but against the individuals in the institution, such individuals would not have the *locus standi* to bring in an action for damages in the name of the institution. The Delhi High Court affirmed this principle in *Ritnand Balved Education Foundation v. Alok Kumar*.⁵⁹ The plaintiff, Ritnand Balved Education Foundation, a registered society running various educational institutions in the name and style of "AMITY" all over India, filed a suit for damages for defamation. It was imputed that the reputation of the plaintiff was allegedly damaged by the defendant by making false and malicious statements and supplying confidential information to certain parties. However, all purported

⁵⁸ AIR 2006 Del 300.

⁵⁹ AIR 2007 Del 9.



defamatory statements were directed against the members of executive board of the society and not against the plaintiff society itself. The court held that when the target of the defamatory statements is the individuals in the institution, it is the individuals alone who can file a suit and the institution would have no cause of action.

VIII RULE OF STRICT LIABILITY

The persons or authorities undertaking an activity involving hazardous or risky exposure to human life are liable under law of torts to compensate for the injury suffered by any other person in respect of any negligence or carelessness on the part of the persons/authorities, who undertake such hazardous or risky activity. The liability cast on this count is known as 'strict liability.'

In *State of J. & K. & Ors. v. Mohd. Iqbal*,⁶⁰ two young children were electrocuted because of short circuit emanating from an electric pole installed near an electric transformer at bus stand. One side of the transformer enclosure was open and there was no sign board of danger or of any prohibition regarding entry. The High Court of Jammu and Kashmir held it as negligence on the part of the state and its functionaries in not taking requisite measures to ensure that the electricity being supplied by it does not cause harm to the passers by. The state and the electricity board had claimed that the death of the children had occurred because of their own act. Rejecting this contention the court observed that in the case of minors, the state has an added responsibility to take care. By awarding an amount of rupees seven lakhs as compensation to the father of the deceased, the court stated thus:⁶¹

So long as the electricity transmitted through the wires is potential of dangerous dimensions, the manager of its supply, i.e., state government, have the added duty to take safety measures to prevent escape of such energy and to see that there is no short circuit of such equipments wires etc. and none is put to any peril. The state cannot be conceded any defence of attributing mischief to users of the road for electrocution because of short circuit. This is particularly so in case of minors, who under law, are presumed to be disabled of taking care of themselves. The transmission of electric energy by the state, carries with it the added responsibility of ensuring that the carriage cause damage to no one and that all the electric lines and areas through which the energy is to pass, are not prone to damage to the users of public road or areas in and around such areas.

⁶⁰ AIR 2007 (J & K) 1.

⁶¹ *Id.* at 3.



Once death is attributed to be in the context of the functioning of the electricity board the principle of strict liability is attracted and the victim and dependants will have to be compensated by the board which is engaged in hazardous and endangering activities.⁶² This position was reiterated in *Borawwa w/o Mallappa Guggari & Anr. v. Karnataka Power Transmission Corporation Ltd. & Ors.*,⁶³ where the victim died due to electrocution. The court held that the board cannot absolve itself from liability on grounds that the accident took place due to illegal act on part of the victim in trying to draw power from main line. Once death is attributed to be in context of the functioning of the board, the principle of strict liability applies and the board is bound to compensate the claimants.

State of Manipur & Ors. v. Hurlungkamei,⁶⁴ presents another clear case of negligence on the part of the officials of electricity department in maintaining the electric line. Death occurred as electric current was allowed to pass through the line even as supply was not supposed to be given through the line. By discarding the plea of the electricity department that death was caused by an act of God, the court adhered to the rule of strict liability and held the board liable to pay compensation.

In *Eshappa Goudar v. Chief Engineer (Electricity) Bellary Zone & Anr.*,⁶⁵ the petitioner's wife was electrocuted due to the negligence of officials in not carrying out the repair. She left behind three minor children with nobody to look after them except the petitioner. He too being a coolie had to go out for work to feed himself and the children. Having regard to the particular facts and circumstances of the case and negligence on the part of the respondent in not monitoring and following up the electric work, the high court enhanced the compensation amount from Rs. 1 lakh to Rs. 8 lakhs.

IX PROTECTION OF ENVIRONMENT AND PREVENTION OF NUISANCE

Right to clean environment is a fundamental right enshrined in our Constitution. It is the responsibility of the officers of the state to take precautionary measures against all harmful activities threatening the safety of environment and endangering citizens' right to have clean environment. In *V.R. Thangaraj v. State of Tamil Nadu*,⁶⁶ the quarry operators permitted by the public works department were dumping granite waste into irrigation tanks in Periyar Vaigai River Basin. The court instructed the district collector to ensure that neither the quarry operations nor dumping of the granite wastes created any environmental hazards and caused hardship to irrigation facilities of the agriculturists as well as the inland fishing rights of the villagers.

⁶² *Madhya Pradesh Electricity Board v. Shail Kumari*, AIR 2002 SC 551.

⁶³ 2007 AIHC 1034.

⁶⁴ 2007 (4) GLT 342 .See also *Mosht. Amendabewa v. Assam State Electricity Board & Ors.*, 2007 (3) GLT 32.

⁶⁵ 2007 AIHC 324.

⁶⁶ (2007) 6 MLJ 813.



Similarly, dairies situated in the city of Jodhpur were causing hazard to health and creating nuisance to the citizens from 1956 onwards. The menace of stray cattle had also increased as there was no check by the authorities. The plots meant for developing milk dairies had become large commercial houses. The high court directed relocation of the milk dairies from the city to outside city limit. This was challenged in *Milkmen Colony Vikas Samiti v. State of Rajasthan & Ors.*⁶⁷ Upholding the order of the high court the apex court observed that the government and its agencies in Jodhpur had been negligent in discharging their functions and obligations. Inaction by the government amounted to indirectly permitting unauthorized use of the scheme meant for milkmen. The object and spirit of the high court's order was to meet the community need though it might cause some inconvenience to a set of people. However, to minimize the inconvenience the court issued directions to the government to ensure basic facilities to the relocated operators of milk dairies.

X ACCIDENT LAW

In *Oriental Insurance Co. Ltd. v. Meena Variyal and Others*,⁶⁸ the court had to answer the question, when does the vicarious liability of employer for acts of employees under tort law arise in case of motor accidents? The victim herein was the regional manager of the company that owned the car. He was himself driving the vehicle when the accident which resulted in his death occurred. The vehicle was insured with the appellant insurance company in terms of the Motor Vehicles Act, 1988. There was no special contract. The question was whether the victim should be treated as the owner of the vehicle or as an employee of the owner of the company which owned the vehicle. The tribunal held that the claimants, the widow and the daughter of the deceased, were entitled to receive compensation from the owner of the vehicle — the employer company; but the insurance company was not liable, since the vehicle was being driven by the deceased himself. The high court, on appeal, held that it was not open to the insurance company to avoid the liability under the Act and directed it to pay compensation and recover the amount from the company in accordance with the directions in *Swaran Singh* case.⁶⁹ The Supreme Court, however, reversed the decision of the high court and restored the award of the tribunal. The court pointed out that where a person is not a third party within the meaning of the Motor Vehicles Act, 1988, the insurance company could not be made automatically liable merely by resorting to *Swaran Singh*. The deceased being an employee not covered by the Workmen's Compensation Act of the insured company, has not to be covered compulsorily under the Motor Vehicles Act. Only by

⁶⁷ (2007) 2 SCC 413.

⁶⁸ (2007) 5 SCC 428.

⁶⁹ *National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297.



entering into a special contract by the insured with the insurer could such a person be brought under its coverage.

In *Oriental Insurance Co. Ltd. v. K.Balasubramaniam and Others*,⁷⁰ the Madras High Court held that when the driver of the offending vehicle did not lead evidence to disprove his negligence in the criminal case and the claimant adduced reliable evidence to prove negligence of the driver, the finding of the motor accident claims tribunal that the accident occurred solely due to the rash and negligent driving was correct.

In *United India Insurance Co. Ltd. v. Sunanda d/o Ramesh Dhumone*,⁷¹ it was held that under section 163-A of the Motor Vehicles Act, which provides for no fault liability, it is not necessary for the claimant to plead or establish that death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned or of any other person.

Legal representative

In the realm of torts, the Indian courts have recognized the English maxim - *actio personalis moritur cum persona*- a personal action dies with the person. But with the enactment of the Fatal Accidents Act, 1855 there has been a departure from the above principle and now legal representatives of the deceased can bring an action for compensation. The apex court way back in 1977 itself observed that “in an Indian family brothers, sisters, brothers’ children and sometimes foster children live together and they are dependant upon the bread winner of the family and there is no justification to deny them compensation while referring to the provisions of the Fatal Accidents Act which stands substantially modified by the provisions contained in the Motor Vehicles Act.”⁷² By expanding it further the court in *Chamansab S/o Ibrahimsab Jambagi v. Parappa*,⁷³ held that the expression ‘legal representative’ should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased. The appellant in the present case, the brother of the deceased claimed compensation as she was an issueless widow who lived with the appellant and contributed to the family. The court observed thus: “in a petition under section 140 of the Act, if the claimant satisfies the Tribunal (a) that an accident arose out of the use of a motor vehicle, (b) which resulted in imminent disablement or death of a person and that (c) the claim is made against the owner and insurer of the motor vehicle involved in the accident; claimant including the legal representative of a deceased victim, is entitled to receive compensation without establishing any other fact or circumstance.”

70 2007 6 MLJ 585.

71 2007 (3) Mh LJ 256.

72 *Meghibhai Khimji Vira v. Chaturbhai Taljabhai*, AIR 1977 Guj 195.

73 2008 (1) Kar LJ 233.



XI JURISDICTION

In law of torts, cause of action for negligence arises only when damage occurs. The claimant has to satisfy the court on evidence that all three ingredients of negligence, namely, (a) existence of duty to take care; (b) failure to attain that standard of care; and (c) damage suffered on account of breach of duty, were present for holding the defendant liable for negligence. Since Employees' Insurance Court has been given only specific powers these issues/ingredients cannot be adjudicated upon and decided by it. Thus in *Kishore Lal v. E.S.I. Corporation*,⁷⁴ the apex court held that *employees'* insurance court did not have the jurisdiction to adjudicate upon matters of negligence and observed thus:

Claim for damages for negligence of the doctors of the E.S.I. hospital/dispensary is clearly beyond the jurisdictional power of the Employees' Insurance Court...[t]he medical service rendered in the ESI hospital/dispensary by the respondent corporation falls within the ambit of section 2 (1) (o) of the Consumer Protection Act and, therefore, the Consumer Forum has jurisdiction to adjudicate upon the case of the appellant.⁷⁵

In *Smt. Maya Rani Ghosh v. State of Tripura & Ors.*,⁷⁶ the court clarified the jurisdictional difference of the motor accidents claims tribunal and the civil courts in matters relating to tortious liability. When an injury or death occurs due to negligence or default, the claims tribunal constituted under the Motor Vehicles Act, 1988 will have the jurisdiction to decide the question of compensation; but if the person is killed or injured in a public place, it will be the civil courts which have the jurisdiction to decide the issue of compensation. The court observed that a claim for damages for tortious acts, such as, electrocution, would, in the absence of any specific law having been made in this regard, be amenable to the jurisdiction of the ordinary civil courts and can be initiated only by instituting a 'suit'. The court made it clear that a district judge has no jurisdiction to entertain a 'petition' seeking compensation made under the Fatal Accidents Act of 1855 inasmuch as such compensation can be made only by instituting a 'suit' and upon payment of adequate court-fees thereon.

XII RES IPSA LOQUITUR

The normal rule is that it is for the plaintiff to prove negligence. But there is an exception to this rule which applies where the circumstances

⁷⁴ 2007 (4) SCC 579.

⁷⁵ *Id.* at 595.

⁷⁶ AIR 2007 (Gau) 76.



surrounding the thing which causes the damage are at the material time exclusively under the control or management of the defendant or his servant and the happening is such as does not occur in the ordinary course of things without negligence on the defendant's part. The principle has been clearly stated in Halsbury's *Laws of England* as follows:

An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence tells its own story of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which, if he is to succeed in his defence, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part.⁷⁷

In a set of cases that came before the Delhi High Court,⁷⁸ the petitioners were the parents of young children who died in tragic circumstances. They sought compensation from the Municipal Corporation of Delhi (MCD) and from the Delhi Development Authority (DDA) for the death of their children in various accidents. One boy aged 11 years died instantaneously when the wall of a municipal lavatory maintained by the MCD collapsed on him while he was easing himself. Another boy of 15 years died in the bathing facility on the banks of the river Yamuna maintained by the DDA. In the third case, a child of 7 years died when a heavy iron gate at a park maintained by the DDA fell on him. The authorities denied liability by contending that they were not responsible for causing the death of the victim and that there was no failure of any duty of care which might be termed as negligence on their part. By applying the principle of *res ipsa loquitur* the court held the statutory bodies liable in law to compensate the petitioners and awarded compensations of Rs. 5,12,595/-, Rs. 5,83,174 /- and Rs. 12,78,509/-, respectively.

In case of motor accidents it is for the respondents to prove the doctrine of *res ipsa loquitur* and the manner of accident. In *Santosh Devi and Ors. v. Chander Bhan and Ors.*,⁷⁹ the court held that, it is for the respondents

⁷⁷ 2nd Edn., Vol. 23, at 671.

⁷⁸ *Ram Kishore v. Municipal Corporation of Delhi; Mohd. Yasheen v. Lt. Governor and Ors.; Bhagwan and Anr.v. Delhi Development Authority*, Writ Petition (C) Nos. 4328 of 2001, 6360 of 2002 and 7390 and 7391 of 2005, commonly decided on: 18.07.2007.

⁷⁹ (2008) 149 PLR 60.



to explain that the accident was not caused due to the rash and negligent driving of them, in view of the doctrine of *res ipsa loquitur*. Failure to prove or explain the same will lead to the presumption that the accident occurred due to the rash and negligent driving.

The maxim is based on common sense and its purpose is to enable justice to be done when the facts bearing on causation and on the care exercised by the defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant. In *Sh. Kishan Lal and Ors. v. Govt. of NCT of Delhi and Ors.*,⁸⁰ a petition was filed against the Government of National Capital Territory of Delhi and the Municipal Corporation of Delhi whose negligence caused the death of a 7 year old boy, Puran. Sulabh International Social Service Organization, a private organization, was impleaded as respondent, in this case, with whom the corporation had an agreement to manage and oversee the toilet complexes on the corporation's property. Puran went to use the free lavatory owned by the corporation; he never returned, and on the next day his body was found floating in an open manhole near the lavatory. The court found all the three ingredients, viz., (i) the accident must be of a kind which does not ordinarily occur in the absence of someone's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (iii) it must not have been due to any voluntary action or contribution on the part of the plaintiff, in the instant case for applying the principle of *res ipsa loquitur* and awarded a compensation of Rs. 5,13,801/- to the plaintiff.

XIII LIMITATION

Smt. Maya Rani Ghosh v. State of Tripura & Ors.,⁸¹ offered a chance to the court to clarify the nature of suits under the Fatal Accidents Act and the period of limitation thereto. It was a claim for compensation for death caused by electrocution; the accident took place in 1989 and the claim was made in 1994. The court avowed that when there is death by electrocution, it is an 'actionable wrong' which falls within the ambit of 'tort' and a subsequent claim for damages, under the Fatal Accidents Act, 1855 is nothing but a suit relating to tort. In such a case, no provisions, other than those contained in part VII of the Limitation Act, 1963 applied. Therefore, article 137 which relates to applications cannot be applied. As part VII covers 'suits relating to tort only' one cannot read into article 82, the word 'application' or 'petition' too in place of the word 'suit' occurring therein. Article 82, appearing in part VII of the Schedule to the Limitation Act specifically mentions the words "fatal accidents" and the period of limitation prescribed therein is two years from the date of death.

80 WP (C) Nos. 5072-73/2007, decided on: 03.07.2007.

81 *Supra* note 76.



In *Rajendra Singh v. Nishan Singh Pesar*⁸² the question was whether suits relating to physical injury could be brought under article 79 of the Limitation Act for determining period of limitation? The Rajasthan High Court observed that the suit for physical injury has not been included in articles 72 to 91, which deal with the period of limitation relating to tort. A bare reading of article 79 shows that it provides limitation for suits claiming compensation on account of distress and distress doesn't mean physical injury to person. Thus, it was held that for suits for compensation on the ground of causing injury by other, no period of limitation has been provided under the Limitation Act. Hence, such suits are covered by article 113⁸³ and, therefore, the period of limitation is three years from the date of accrual of cause of action.

Where the patient was operated several times to remove the foreign body left in the abdomen during first operation the court held, in *Dr. S.R. Ranganadhan v. Alluri Seetharama Raju*,⁸⁴ that the period of limitation would start only from the date on which the sutures were finally removed.

XIV MISCELLANEOUS

Contractual liability of state

If the action of the state or its instrumentality is related to contractual obligations or obligations arising out of tort, the court may not, ordinarily, examine it unless the action has some public law character attached to it.⁸⁵ The directions for payment of dues of a citizen can be given under article 226 of the Constitution if the writ petitioner can show that non-payment of his dues affects his fundamental rights.⁸⁶ It would be available to undo the wrong done by the state and to command the state to pay its unpaid dues, which it is, under its contractual obligation, bound to pay, but has unfairly, unjustly and unreasonably refused to pay.⁸⁷ This view got endorsed in *Abdul Kasem Ali Ahmed v. State of Assam and Ors.*,⁸⁸ The petitioners completed their part of the contract and raised demand for payment. However, there was total inaction on the part of the government, in making the payment though it admitted its liability. Holding the act of the government a clear case of arbitrariness, the Guwahati High Court directed the concerned government department to pay the unpaid dues of the contractors.

82 RLW 2007 (3) Raj 2281.

83 Art 113 deals Suits for which there is no prescribed period is provided. It runs as follows: The period of limitation for any suit for which no period of limitation is provided elsewhere in this Schedule is three years.

84 *Supra* note 35.

85 *Kamala Kanta Kalita (DR.) and Ors. v. Assam Cricket Association and Ors.*, (2006) 1 GLT 528; *Life Insurance Corporation of India v. Escorts Ltd. and Ors.*, AIR1986 SC 1370.

86 *Life Insurance Corporation of India v. Asha Goel*, (2001) 2 SCC 160.

87 *ABL International Ltd. v. Export Credit Guarantee Ltd.*, (2004) 3 SCC 553.

88 2007 (1) CTLJ 323 (Gau).



XV CONCLUSION

Not many cases reached the apex court relating to tort in the year under survey and the majority of the decisions came from various high courts. However, the large number of cases decided by the courts proves the growing awareness of people as regards torts. The doctrine of strict liability was applied with increased frequency. The principle of *res ipsa loquitur* was applied and expanded especially in cases relating to electrocution and drowning etc. The concept of constitutional tort was given wider amplitude and applicability.