



27

## TORT LAW

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### I INTRODUCTION

IN INDIA, the Supreme Court and High Courts have played a very important role in the development of the law of tort in the recent past. The role of law of tort in the protection of environment is well recognized. The ‘polluter pays principle’ which requires the polluter to pay to the victims of environmental pollution and also restore the damaged environment to its original status is an example of monetary compensation available under the law of tort. The year under survey witnessed several significant judgements, giving rise to liability in cases of medical negligence, defamation, malicious prosecution and strict/absolute liability.

### II LIABILITY FOR MEDICAL NEGLIGENCE

There is a growing awareness among people in the recent years about medical negligence. In view of this, a number of complaints have been filed against the medical practitioners and hospital managements. These relate to inadequacy of facilities available, low standards of professional competence, appropriateness of the therapeutic and diagnostic methods.

In the law of tort, medical negligence has occupied great attention in the past few years. In the year under survey, important decisions were pronounced by the Supreme Court on the tort of medical negligence. Under civil law, where an action for medical negligence is not covered under the Consumer Protection Act, 1986 (CP Act), it can be instituted under the law of tort to protect the interests of the patients. This also applies to medical professionals who provide free service. Thus, where services offered by the doctor or hospital do not fall within the ambit of “service” under the CP Act, the patient can initiate an action for negligence under the law of tort and claim compensation. However, the *onus* lies on the patient to prove that the doctor was negligent and that the injury was a consequence of the doctor’s negligence.<sup>1</sup> The claimant must discharge the onus by leading cogent

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1 *Philips India Ltd. v. Kunju Pannu*, AIR 1975 Bom 306.



evidence. He must provide the *facta probanda* as well as the *facta probantia*.<sup>2</sup> Once the initial burden has been discharged by the patient-complainant by making out a case of negligence on the part of the doctor or hospital concerned, the onus shifts on the attending doctors or on the hospital.<sup>3</sup> The cases of medical negligence may include transfusion of blood of incorrect blood group;<sup>4</sup> leaving a mop in a patient's abdomen after operation;<sup>5</sup> unsuccessful sterilisation resulting in birth of a child;<sup>6</sup> removal of organs without taking consent;<sup>7</sup> operating on a patient without giving anaesthesia,<sup>8</sup> administering wrong medicine resulting in injury,<sup>9</sup> etc.

#### Hearing inability caused by medicine

*Martin F. D'Souza v. Mohd. Ishfaq*<sup>10</sup> explains at length the law relating to medical negligence. In this case, the respondent filed a complaint before the national consumer disputes redressal commission, (NCDRC) under the CP Act, claiming compensation from the appellant for damaging the hearing ability of the respondent on account of having prescribed "Amakacin" injections for treatment of infection caused to the respondent due to renal failure. The claim of the respondent was that an excessive dosage of "Amikacin" had damaged his hearing ability. The commission allowed the complaint and awarded compensation. Aggrieved by the order of the commission, the appellant filed an appeal before the Supreme Court. The court after stating the general principles relating to medical negligence as laid down in *Jacob Mathew v. State of Punjab*,<sup>11</sup> explained the meaning of 'degree of skill and care' required of a medical practitioner, by quoting the following paragraph from *Halsbury's Laws of England*:

The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greatest skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical

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

3 *Nizam Institute of Medical Sciences v. Prasanth S. Dhananka*, C.A. Nos. 4119 of 1999 and 3126 of 2000 decided on 14.05.2009.

4 *Kalra Satyanarayana v. Lakshmi Nursing Home* (2003) 1 CPJ 262.

5 *Achutrao Haribhao Khodwa v. State of Maharashtra* (1996) 2 SCC 634.

6 *State of Haryana v. Smt. Santara*, AIR 2000 SC 1888.

7 *Lakshmi Rajan v. Malar Hospital* (1998) 111 CPJ 586.

8 *P.N. Rao v. G. Jayaprakasu*, AIR 1950 AP 201.

9 *Spring Meadows Hospital v. Harjot Ahluwalia*, AIR 1998 SC 1801.

10 AIR 2009 SC 2004.

11 *Supra* note 2.



men skilled in a particular art, even though a body of adverse opinion also existed among medical men.

The court added that:

Deviation from normal practice is not necessarily evidence of negligence to establish liability on that basis; it must be shown that (i) there is a usual and normal practice; (ii) that the defendant has not adopted it; and (iii) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care.

Applying the classical statement of law as laid down in *Jacob Mathew*<sup>12</sup> as decisive of the standard of care both of professional man, generally, and medical practitioners, in particular, the Supreme Court held that no medical negligence was committed by the appellant. The court noted that (i) the respondent who was suffering from chronic renal failure and high fever, was advised to get admitted in the hospital by the appellant but the respondent refused and (ii) the respondent was suffering from severe urinary tract infection which could be treated only by “Amikacin” injections, the use of which was alleged to have impaired the hearing ability of the respondent. The court observed that the appellant was not to blame in any way for the impairment of the hearing ability of the respondent. In fact, it was the non-cooperative attitude of the respondent and his continuing with “Amikacin” injection even after the doctor had stopped it, which had led to the impairment of the hearing ability of the respondent. Accordingly, setting aside the order passed by the commission, the appeal was allowed by the Supreme Court.

#### **Stricter standards of medical care**

In *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee*,<sup>13</sup> the appellant had filed a petition against the decision of the High Court of Calcutta stating that there was no medical negligence on the part of the respondents. In this case, the appellant’s wife had developed a serious disease called toxic epidermal necrolysis (TEN). She was initially treated by Dr. Sukumar Mukherjee, respondent no.1, who prescribed “Depomedrol” injection of 80 mg twice daily, for three days. The deceased did not respond to this medicine. Her condition deteriorated rapidly. She was examined by two more experts but her condition worsened. She was shifted to Beach Candy Hospital in Mumbai. Her condition worsened further and she ultimately died. The deceased’s husband filed a complaint before the NCDRC for deficiency

<sup>12</sup> *Supra* note 2.

<sup>13</sup> (2009) 9 SCC 221.



in service and claimed Rs.77,76,73,500 as compensation. The NCDRC dismissed the complaint. In the appeal filed before the Supreme Court, it was contended that the respondent had made a wrong diagnosis of the deceased's illness and that prescribing corticosteroid depomedrol injection at a dose of 80 mg twice daily was wrong which led to her death. The question was whether the respondent had committed the tort of negligence against the deceased. The court defined negligence as the "breach of duty caused by the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do." It further stated that negligence meant "either subjectively a careless state of mind, or objectively careless conduct. It is not an absolute term, but is a relative one; it is rather a comparative term. In determining whether negligence exists in a particular case, all the attending or surrounding facts and circumstances have to be taken into account."<sup>14</sup> The court also observed that negligence is strictly nonfeasance and not malfeasance. It is the omission to do what the law requires, or the failure to do anything in a manner prescribed by law. It is that act which can be treated as negligence without any proof as to the surrounding circumstances, because it is in violation of the statute or ordinance or is contrary to the dictates of ordinary prudence.

The court also reiterated the view taken in *Jacob Mathew*<sup>15</sup> on what acts constituted negligence in medical practice and observed that:

- (i) Mere deviation from normal professional practice is not necessarily evidence of negligence.
- (ii) Mere accident is not evidence of negligence.
- (iii) An error of judgment on the part of a professional is not negligence *per se*.
- (iv) Simply because a patient has not responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable *per se* by applying the doctrine of *res ipsa loquitur*.

Applying the above principles, the court came to the conclusion that there was clearly a breach of duty to take care on the part of the respondents towards the patient.

The court held that the grant of compensation involving an accident is within the ambit of the law of torts which is based on the principle of *restitutio in integrum*. According to this principle the person entitled to damages should get the sum of money which would put him in the same position as he would have been had he not sustained the wrong.

<sup>14</sup> See *Municipal Corporation of Greater Bombay v. Laxman Iyer* (2003) 8 SCC 731.

<sup>15</sup> *Supra* note 2.



## III DEFAMATION

**Defamation action by a public official**

In *A. Raja v. P. Srinivasan Publisher and Printer of Junior Vikatson Vasan Private Ltd.*,<sup>16</sup> the appellant sought a permanent injunction restraining the respondent from printing, publishing and circulating the defamatory news items and the photographs of the plaintiff's minor daughter in their bi-weekly magazine named '*Junior Vikatan*' in any manner without seeking clarification from the plaintiff. He also asked for damages for the injury caused to their reputation as a consequence of publishing highly derogatory, defamatory, misleading and baseless matter against them. The respondents, on the other hand, contended that the suit for defamation was not maintainable as it was well settled that, (i) a public official, who was the first appellant, could not maintain any action for damages with regard to acts and conduct relevant to the discharge of his public duties; (ii) the plaint that was filed did not reproduce articles that were purportedly defamatory; (iii) the injunction relief sought by the plaintiff was in violation of the fundamental right guaranteed under article 19(1)(a) of the Constitution of India to publish and disseminate news to the people of India in public interest; (iv) the news report that had been published concerned only the acts and conduct of the first appellant relevant to the discharge of his duties and not to the post held by the second appellant, who was the wife of the first appellant; (v) it was not only the defendants that had raised the issues of the impropriety in the allocation of the spectrum space to the second plaintiff but even other prominent newspapers like the *New Indian Express* and the *Pioneer* had published this information in their papers; (vi) the publication of the photo of the first appellant's minor child had in no way invaded the privacy of the minor child as the particular photograph was in the public domain; and (vii) that the press had a right to comment on the discharge of duties by a public official which was part and parcel of the right to freedom of speech and expression which included the freedom to communicate, advertise, publish and disseminate information to the citizens of the country. After hearing both the parties, the single judge dismissed the petition and vacated the *ad-interim* injunction initially granted. He also directed the first appellant to pay a sum of Rs.10,000/- to the first respondent. Thereafter, the plaintiffs filed an appeal before the High Court. The division bench of the Madras High Court after examining the law relating to defamation, referred to the following principles of law relating to the right to privacy laid down by the Supreme Court:<sup>17</sup>

The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by article 21.... It is 'a

<sup>16</sup> (2009) 8 MLJ 513.

<sup>17</sup> *R. Rajagopal Alias R.R. Gopal v. State of Tamil Nadu* (1994) 6 SCC 632.



right to be left alone.’ A citizen has a right to safeguard the privacy of his own family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for defamation. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

Applying the above principle, the Madras High Court held:<sup>18</sup>

If this action can be maintained against a newspaper, it can also be maintained against every private citizen who ventures to criticize the ministers who are temporally conducting the affairs of the government. In a free democratic society those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter criticism amounts to political censorship of the most insidious and objectionable kind ...”

The court also held that while the respondents were justified in criticizing the acts of the first appellant as long as they were connected or concerned with his official position as a union minister, the respondents had erred in publishing the family photograph of the appellants. The court further held that there was no need to publish the photographs of the minor child of the first appellant and by doing so it had violated the right of privacy of the child and family relationship of the first appellant. As regards the publication of the photograph of the second appellant was concerned, the court held that it was a violation of her right to privacy. The court pointed out that the instances of publication of photographs of the first appellant along with the chief minister on the cover page of the magazine of the respondent would undoubtedly seriously damage the image of the first appellant in the minds of the readers of the magazine and infringes the right to privacy of the first appellant. The court, accordingly, held that the respondent cannot be allowed to take shelter under the doctrine of the freedom of press and the same cannot be extended to publishing exclusively private affairs of the appellants calling it as connected to, or concerned with, public life. In view of this, it issued an *ad-interim* injunction against the respondent restraining them from printing and publishing the defamatory news items and the photographs of the first appellant and his family. The court also directed that the issue of the quantum of compensation awarded

18 *Supra* note 16.



to the appellants by the trial court should be taken up afresh as the amount awarded was miserably low.

#### IV MALICIOUS PROSECUTION

##### **Conditions necessary for an action against malicious prosecution**

In the *Secretary to the Government of Tripura, Department of Food and Civil Supplies v. Shri Babulal Majumdar*,<sup>19</sup> the plaintiff-respondent had started a clothes shop in the year 1990 at Belonia, South Tripura after obtaining a valid license from the competent authority, namely, the SDO (Food and Supplies), Belonia, South Tripura. In a short span of time, the plaintiff's business expanded in the town of Belonia, which was not acceptable to some of the political and business tycoons of the area. Soon, the plaintiff-respondent had to face the wrath of these political and business tycoons. Three years later in 1993, when the plaintiff-respondent applied for the renewal of license for carrying on his business, the SDO, Belonia, South Tripura did not renew it but simply kept it pending by writing a note "wait for obvious reason" on the license of the plaintiff-respondent. Meanwhile, upon the order of the SDO, Belonia, South Tripura, certain officials of the food and supplies department sealed the shop of the plaintiff-respondent and registered a criminal case against him under section 7(1)(a)(ii) of the Essential Commodities Act, 1955. Further, with the help of police, the defendant-appellant broke the seal of the plaintiff-respondent shop, seized the entire stock available there, dumped it in the police station and ultimately auctioned it.

The criminal case filed by the police against the plaintiff-respondent was transmitted to the special judge, South Tripura, at Udaipur for taking cognizance of the offence. After a full length trial, the learned special judge came to the conclusion that the accused was not at fault in running his business without license as it was the licensing authority as well as the food inspector who were responsible for the non-renewal of the license. The accused was accordingly acquitted. The High Court of Guwahati had the occasion to redefine the ingredients of a tort action for the wrong of malicious prosecution. The plaintiff respondent then filed a money suit before the civil judge, South Tripura for recovery of damages for malicious prosecution, for closing the business and shop of the plaintiff-respondent and for causing mental agony. He claimed an amount of Rs.5,00,000/- against the defendant-appellants. Later on, the money suit was transferred to the additional district judge, Belonia, South Tripura by an order of the district judge, Udaipur. The district judge held that the accused was not at fault. Against this order, the accused filed an action for damages in the High Court.

19 2009 Cr LJ 4757.



The High Court held that in an action for malicious prosecution, the plaintiff must show that: (i) He was prosecuted by the defendant; (ii) The prosecution resulted in favour of the plaintiff; and (iii) The criminal case was initiated without reasonable and probable cause and the same was instituted maliciously. The court also added that the *onus* of proving all the above ingredients is on the plaintiff himself and the plaintiff has to prove that the prosecution was instituted by the defendant due to a malicious intention and not with a mere intention of carrying the law into effect or, in other words, the plaintiff was actuated by malice in prosecution. The court then explained the expression “malice” in the following words:<sup>20</sup>

(M)alice here, does not imply hatred, spite or ill-will, but malice animus meaning improper and indirect motive and not proper motive, which is a desire to secure ends of justice and vindicate the law.

In the past, malice was identified with lack of reasonable and probable cause and *vice versa*. But the present state of law seems to be that the concept of malice is to be kept distinct from the concept of lack of reasonable and probable cause. Ordinarily, malice denotes, spite or hatred against an individual, but it is often difficult to infer spite or hatred from the conduct of a person. It is said that the devil does not know the mind of man. Therefore, the ordinary meaning of malice cannot be determined by any subjective standard. In order to give an objective meaning to the term ‘malice’, it should be found out whether the accused had commenced prosecution for vindication of justice. A reasonable and probable cause should also be understood objectively. It can only mean that the grounds for the plaintiff’s guilt are reasonable according to a reasonable and prudent man and that there are materials which might result in the conviction of the accused. The defendant can rebut the evidence of malice by showing good faith. He can show this by placing all facts and circumstances which were present at the time of instituting the prosecution. The court cautioned:<sup>21</sup>

(I)t is true that everyone has a right to set in motion the judicial machinery for the protection of his own rights or public interest, but such person should not infringe the corresponding rights of others by instituting legal proceedings in order to harass by unjustifiable litigation. The policy of encouraging the citizens to add in the enforcement of the law cannot be extended to such an extent as to justify false and scandalous charges.

20. *Ibid.*

21. *Ibid.*





The High Court upheld the decision of the trial court observing that there was not only absence of reasonable and probable cause in prosecuting the plaintiff-respondent but there existed a malicious mind to prosecute the plaintiff. As a consequence, the High Court saw no merit in the criminal case instituted against the plaintiff-respondent and dismissed the petition.

#### V RULE OF STRICT/ABSOLUTE LIABILITY REVISITED

The rule of strict liability as laid down in *Rylands v. Fletcher*<sup>22</sup> and the rule of absolute liability as propounded in the *Oleum Gas Leakage* case<sup>23</sup> were re-examined by the Delhi High Court in *Jaipur Golden Gas Victims Association v. Union of India*.<sup>24</sup> In the instant case, a writ petition was filed by the petitioner-association in public interest under article 226 of the Constitution of India for the issuance of an appropriate writ, direction or order, *inter alia*, directing the respondent to pay the victims of the Jaipur Golden fire tragedy a suitable amount of compensation for the loss of lives and injuries suffered. The petitioner association also prayed for the prosecution of the erring officials who were responsible for the Jaipur Golden fire tragedy and for the implementation of the recommendations made by the members of certain committees to prevent future tragedies in Delhi such as the one that occurred at Jaipur Golden.

In this case, respondent no. 5 had stored a consignment of rodent-killing pesticide (which contained aluminum phosphate & zinc phosphate) in a godown in a residential area. The owner of the godown had neither taken any precaution nor obtained prior license from the municipal corporation of Delhi as required by section 417 of the Delhi Municipal Corporation Act, 1958. On the fateful day, fire broke out in the godown which resulted in the emission of a highly poisonous gas. As a consequence, several persons were injured and four persons died. A question arose whether the storage of rodent-killing pesticide in the godown could be described as inherently dangerous and hazardous so as to attract the application of the rule of strict liability as propounded in *Rylands v. Fletcher*.

The court, applying the concept of non-natural use of land, laid down in *Rylands v. Fletcher*, held that once it was established that the land was put to non-natural use as a consequence of which damage had been caused to the public at large, the cause of fire in the godown became irrelevant. The court further added that once it recognized that the storage of chemical pesticides was certainly an inherently dangerous and/or hazardous activity, it had to determine the measure of liability of such an enterprise towards people who

22 1868 LR 3 HL 330.

23 AIR 1987 SC 1086.

24 164 (2009) DLT 346.



had died or were injured by reason of an accident occurring in such an enterprise. The court acknowledged the view taken by the Supreme Court in *Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat* and observed:<sup>25</sup>

(W)hat is fundamental is the injury and not the manner in which it is caused. ‘Strict liability, ‘fault liability’ and ‘neighbour proximity’ are all refinements and developments of law by English courts for the benefit of the society and the common man. Once the occasion for loss or damage is failure of duty, general or specific, the cause of action under tort arises.

While highlighting the utility of the principle of absolute liability as laid down in the *Obeum Gas Leakage* over that of the principle of strict liability as propounded in *Rylands v. Fletcher*, the court in *Jaipur Golden*<sup>26</sup> noted that though *Rylands v. Fletcher* had created a new legal principle of strict liability in the case of hazardous activities, it was beset with many limitations.<sup>27</sup> The court observed that in fact the limitations or exceptions to the principle of strict liability had considerably diluted the efficiency of the rule of strict liability which was contrary to the modern philosophy of social justice.<sup>28</sup> Noting that the dilution of the rule in *Rylands v. Fletcher*<sup>29</sup> had often left the individual injured by the activities of the industrial society, virtually without protection, the court applied the following principle of absolute liability as evolved in the *Oleum Gas Leakage* case<sup>30</sup> to enterprises engaged in dangerous and hazardous activities:

(L)aw cannot remain static. The court cannot allow judicial thinking to be constricted by reference to the law as it prevails in England or in any other foreign country. Though the court should be prepared to receive light from whatever source it comes it has to build up its own jurisprudence. It has to evolve new principles and lay down new norms which would adequately deal with new problems which arise in a highly industrialized economy ....

Thus, the rule in *Rylands v. Fletcher* that strict liability could be imposed only in situations where there was non-natural use of land and foreseeable damage, was modified by the apex court in the *Oleum Gas Leakage* case. In this case, the court held that such exceptions cannot be extended to cases where injury was caused on account of the use of

25 (1994) 4 SCC 1.

26 *Supra* note 23.

27 See *Union of India v. Probha Kumar Vjaya Kumar* (2008) 9 SCC 527.

28 *Pearson v. North Western Gas Board* (1968) 2 All ER 669.

29 *Supra* note 21.

30 *Supra* note 22.



hazardous substances. The court in *Jaipur Golden* case held that as the owner of the godown, in which rodent-killing pesticides were stored, was engaged in an inherently dangerous or hazardous activity, his duty of care was absolute. The court very explicitly stated that the exceptions to the principle of strict liability as evolved in *Rylands v. Fletcher* were not applicable. It, accordingly, held the owner of the godown liable to compensate the victims of the gas and fire tragedy in accordance with the principle of absolute liability as evolved by the Supreme Court in *M.C. Mehta*<sup>31</sup> case. The court held that the MCD had made a breach of the 'precautionary principle'<sup>32</sup> and, was, therefore, liable to pay damages to the fire and gas victims.

**Application of material contributor and not "but for" test**

It has been held by Devlin, J. in *Heskell v. Continental Express Ltd.*<sup>33</sup> that where the wrong is a tort, it is settled law that the wrongdoer cannot excuse himself by pointing to another cause. It is enough that the tort should be the cause and the material contributor to the damage caused. It is unnecessary to evaluate competing causes and ascertain which of them is dominant. Therefore, the contention raised by the counsel on behalf of the petitioner that two of the four victims who had died were not entitled to compensation as they were already suffering from tuberculosis, was not accepted by the court in *Jaipur Golden* case. In fact the court held that due to inhalation of gas their disease had got aggravated which caused their premature death and accordingly they were entitled to full compensation. The court categorically stated that now it was neither necessary, nor has it ever been, for the plaintiff to establish that the defendant's negligence was the 'sole cause' of the injury. There will frequently be a myriad of other background events which were necessary pre-conditions to the injury occurring. As long as the defendant was part of the cause of an injury, the defendant was liable even though his act alone was not enough to cause the injury. Thus, the court held that denying liability to the two victims of the fire tragedy because they were already suffering from tuberculosis, would offend the basic notions of fairness and justice.

31 *Supra* note 22.

32 The 'precautionary principle' which is an essential feature of 'sustainable development' in the context of municipal law means:

- (i) Environmental measures by the State Government and statutory authorities – must anticipate, prevent and attack the causes of environmental degradation;
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.

33 (1950) 1 All ER 1033.

**Application of the 'egg-shell skull' rule**

In the *Jaipur Golden* case,<sup>34</sup> the Delhi High Court applied the 'egg-shell skull' rule which lays down the principle of law that a party in breach has to take his victim as he comes. This rule means that if it was reasonable to foresee some injury, however slight, it may be, to the claimant, (assuming him to be a normal person), then the infringing party was answerable for injury which the claimant had sustained owing to some peculiar susceptibility. The "egg-shell skull rule" applied only when the claimants pre-existing hyper sensitivity was triggered into inflicting the injury complained of or an existing injury was aggravated by the infringing party's act. An example of the hyper sensitivity type of case is that of persons suffering from hemophilia or egg-shell skull. Mackinnon LJ said that "one who is guilty of negligence to another must put up with idiosyncrasies of his victim that increase the likelihood or extent of damage to him: it is no answer to a claim to a fractured skull that its owner had an unusually fragile one."<sup>35</sup> Basing its decision on the law laid down in *M.C. Mehta* case<sup>36</sup> and the above mentioned principles of law, the High Court of Delhi allowed the petition in *Jaipur, Golden* case<sup>37</sup> and awarded compensation to the victims.

**VI CONCLUSION**

Undoubtedly, the law of tort is an effective tool in protecting the rights of the people who cannot get relief under any other branch of civil law. Considering the fast pace at which development is taking place in our country, there are bound to be situations where the rights of the people are adversely affected by unscrupulous people. In this context, the role played by the judiciary assumes great importance. The court must play a pro-active role in furthering the growth and development of tort law in the country. The court through its various judgments can make the common man aware of his rights to seek remedy under the law of tort. A survey of cases under study in the area of medical negligence reveals the conflicting views expressed by the judiciary while defining the standard of medical care to be followed by the doctors and hospitals in the treatment of the patients. This creates uncertainty and leaves sufficient scope for exploitation of the patients. However, while addressing the issue of right to privacy of a public official and the law of defamation, the Madras High Court drew a distinction between acts which are purely private to a public official and acts which are part of his official functions. With regard to acts which are purely private to the public official, he stands on the same footing as an ordinary citizen

34 *Supra* note 23.

35 *Owens v. Liverpool Corporation*, 1939 (1 KB 294 at 400-401).

36 *Supra* note 22.

37 *Supra* note 23.



and if something defamatory is published about his private life, he has a cause of action for damages against the publisher under the law of defamation. But acts performed in the capacity of a public official are not immune from publication if the same are in public interest.<sup>38</sup> The Delhi High Court continued to hold the view that the rule of absolute liability as propounded in *M.C. Mehta v. Union of India*<sup>39</sup> would apply to all enterprises or factories engaged in hazardous activities.

<sup>38</sup> *Supra* note 16.

<sup>39</sup> *Supra* note 22.

