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TORT LAW

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I INTRODUCTION

AS REGARDS the development of tort law in India, it has a different landscape *vis-à-vis* some of the other major common law countries,[1] given the bottlenecks that have stifled its growth.[2] If there is no remedy it cannot be called a tort because the essence of tort is to give remedy to the person who has suffered injury, The judiciary has been criticised for being overly activist and overstepping its jurisdiction however, there are certain differences which may indicate judicial activism, hence creating controversy. The year under review, does not seem to have made any substantial contribution in the form of judicial pronouncements, as regards the development of tort law. The ensuing discussion, however, deals with some of the major judgments, delivered by the courts in India which are relevant in the field and are of great public interest.

II DEFAMATION

In *National Stock Exchange of India Limited, Mumbai* v. *Moneywise Media Private Limited, Mumbai,*[3] Patel J at High Court Bombay reminded that a defamation action should not be allowed to be used to negate or stifle genuine criticism, even pointed criticism or criticism that is harshly worded; nor should it be allowed to choke a fair warning to the public if its interest stands threatened in some way.[4] He further observed:[5]

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1 See generally, Roscoe Pound, *A Selection of Cases On the Law Of Torts* (Harvard University Press, Cambridge, 1919). Also see, H. Gerald Chapin, *Illustrative Cases On Torts* (St. Paul West Publishing Co.1916).

2 S. K. Bhatia, "Specific Problems of Law of Torts in India" 11 *JILI* (1969). According to Ramaswami Iyer "…it is a singular circumstance that very few cases of tort go before the Indian courts. The Indian law reports furnish in this respect a striking contrast to the English and the American." S. Ramaswami Iyer, *The Law of Torts* 28 (1965).

3 2015 Indlaw MUM 1112.

4 *Id*., para 24.

5 *Id*., para 25.

> …[o]f all the freedoms guaranteed by Article 19 of the Constitution, the freedom of speech and expression is arguably the most volatile, the most sensitive to assault, and the most precious. Its restrictions, and defamation law is indeed such a restriction, are to be narrowly construed….Defamation is a very thin red line. It must not be crossed, but it is not actionable only because it is approached, however closely. It is indeed protected fair comment when questions are raised in the public interest after due care is shown to have been taken to elicit a response. It is no answer at all to then say that no question of muzzling free speech arises, or to simply allege that there might indeed yet be an answer, and it matters not that that answer, or what passes for it, was not provided when an opportunity presented itself, and the fact of that answer being sought is so wholly concealed. More and more, in the name of security or reputation, we are increasingly too eager to surrender this, and its sister, freedoms. When we do so we forget: we forget that these freedoms are vital to our survival and our existence as a nation, as a people. We forget that these freedoms have not come easily. They have not come cheap. They were hard won after years of sacrifice and toil and struggle. They have not been given. They have been forged. We surrender them at our peril.

In *Subhash Chandra* v. *Positive Television (P)Ltd.,*[6] the plaintiff filed a suit for permanent injunction and damages against the defendants on account of "defamatory broadcast made by the defendants against both the plaintiffs", namely Subhash Chandra and Zee Media Corporation Ltd. One of the alleged stories telecast was *'Salakhho Ke Peeche Honge Chandra*?' with plaintiff no.1's photograph was telecasted by the Focus TV channel. It was contended by the plaintiffs that one of the channels was owned by one of the defendants. The court made a very pertinent observation:[7]

> One of the stories gives an impression to the general public that the plaintiff No.1 has been sentenced for something which he has done. The telecasting of such stories would definitely give rise to a fresh cause of action as the said Focus channel has already pronounced a judgement when even the trial before court is yet to completed. In fact, it is in bad taste. The said story was telecasted when hearing in the matter was being conducted. No view/comments were obtained from plaintiff No.1 (who was targeted in the said story) which is necessary.

In *ESBI Hi-flex Private Limited* v. *Vulkan Technologies Private Limited,*[8] the High Court of Calcutta *inter alia* had to decide whether the word 'spurious' is a

6 MANU /DE /0076 /2015.

7 *Id*., para 31 (emphasis added).

8 2015 Indlaw Cal 1035.

defamatory word. In the instant case, plaintiffs sought compensation for the "defamatory" remark made by the defendant in relation to plaintiffs' products. According to the plaintiffs, they received an information through an e-mail from DNV[9] on July 10, 2008 that the defendant, a business rival of the plaintiffs, had complained about a coupling of the plaintiff no. 1 by an e-mail on July 9, 2008 to DNV which forwarded the e-mail dated July 9, 2008 of the defendant to the plaintiffs on July 10, 2008. According to the plaintiffs, the defendant had used the words "spurious manufacturer" to describe the plaintiffs. Such words in the context of the entire e-mail are defamatory. The plaintiffs having being defamed by such words, they sought damages. Defendant, on the other hand, argued that such e-mail was a confidential communication and in the nature of a complaint made by the defendant to DNV which is an authority. The defendant claims that every statement made in the e-mail dated on July 9, 2008 are true. The words "spurious manufacturer", as *per* defendants, have been rightly used to indicate that the plaintiffs have been trying to deceptively suggest that the products of the plaintiffs were those manufactured by the defendant and/or its parent company. Debangsu Basak J held that although *justification* is a defence in an action for defamation, in the facts of this case the defendant has not substantiated such defence by any evidence. The defendant has not led any evidence. The evidence on record does not support such a defence of the defendant. Therefore, the court said, the words "spurious" is *per se* defamatory in the facts of the case.

III NEGLIGENCE

Negligence is a relatively recent tort to emerge in its own right in the long history of tort, and today has pride of place in tort.[10] Conceptually, it connotes two things, as Winfield said: "Negligence in the law of torts has a double meaning; it may signify a) *a definite tort* (the tort of negligence) ... b) *a possible mental element* in the commission of some other (but by no means all) torts."[11] In India, every year a good number of cases of negligence come before courts for adjudication.

In *Municipal Council, Kharar* v. *Parminder Jit Kaur,*[12] the deceased, who was standing outside his office situated within the municipal area, was attacked by a stray animal from behind causing grievous injuries, which resulted into his death. The high court upheld the decision of the single judge who had held that it was the duty of the municipal council to take care of members of the public using street, and it failed in

9 Det Norske Veritas AS (DNV) is an authorised certified classification agency.

10 *Supra* note 1 at 19. Also see, for a detailed analysis of tort law decisions in recent past, see, B C Nirmal, *supra* note 1; B C Nirmal, "Tort Law", XLVIII *ASIL* 752-782(2012); B C Nirmal, "Tort Law", XLIX *ASIL* 1139-1173-1024 (2013); B C Nirmal, "Tort Law" L *ASIL* 1093-1124 (2014). Also see, Percy H. Winfield "The History of Negligence in the Law of Torts" 42 *L.Q.R.* 184-201 (1926); Franco Ferrari, "*Donoghue* v. *Stevenson's* 60th Anniversary" 1 *Annual Survey of International & Comparative Law* 81-89 (1994).

11 Winfield, *The History of the Law of Torts,* 4 *L.Q.R.* 184, 196 (1926).

12 2016 ACJ 453.

its duty. Therefore, the court held, the widow and child of the deceased were entitled to compensation. In another case before the High Court of Punjab and Haryana, where facts were similar, it was held that "A raging bull on streets is a nuisance and if it had not been tethered and left unattended, the municipal council owes a duty of care to any member using the streets to have it removed to a pound and if it is not done, it must face consequences for the death."[13]

In *Shiv Kumar* v. *Raj Devi,*[14] the appellants had installed live wire in an illegal and in an unlawful manner for running a tubewell with connivance of officials of the electricity Nigam, resulting into death of one Som Prakash who along with his dog came in contact with the high voltage naked electric cable. The high court dismissing the appeal upheld the decision of the subordinate court allowing compensation to be paid by the appellant to the respondent for the death so caused. In an another case[15]of death resulting from electrocution, the High Court of Jammu and Kashmir did not accept the plea of the defendants, Foreman and Lineman of Electric Maintenance and Rural Electrification Ramsu, that the live wire that caused the death had fallen on the ground on account of heavy storm and rain, and it was not because of their negligence. The high court reiterated the standing the court had taken in *Gittan Ram* v. *State of Jammu and Kashmir*[16] thus:[17]

> The legal position being settled by Hon'ble Supreme Court of India as also by this Court in its various decisions that anyone generating, transmitting, supplying or using electric energy of high voltage, is required under law, to ensure that such energy was not transmitted or discharged, unless requisite measures has been taken to prevent its uncontrolled escape, that may injure, impair or take away life or property. Any omission in preventing the discharge of high voltage electric energy by anyone engaged in the activity of supplying such energy, under law of Torts, liable to compensate for the damage caused because of the uncontrolled escape of such energy. The basis of such liability is a foreseeable risk, inherent in the very nature of such activity.

Liability to compensate for the damage caused because of such activity is known as 'Strict Liability'. It suffers from the liability that arises from negligence or fault in this way *i.e.* the concept of negligence comprehends that the foreseeable harm could be avoided by taking requisite precautions. If the operator of such high voltage electric energy had done all that which could be done to avoid harm, it may not be held liable when the action is based on any negligence attributed; but such consideration may be

13 *Parminderjit Kaur* v. *State of Punjab* (2015) 178 PLR 693.

14 MANU/JK/0346/2015.

15 *State of Jammu and Kashmir* v. *Parkasho Devi,* 2015(3)JKJ 310.

16 AIR 2013 J&K 83.

17 *Id*. at 84.

wholly irrelevant in the case of 'Strict Liability' where the operator of the activity is held liable irrespective of its having taken precautions to avoid harm.

The court came to the conclusion that there was a clear want of care and diligence on the part of defendants in maintaining the transmission lines and distributing the current without assessing the damage caused to the transmission lines by "*force majeure*" like storm wind and rain *etc*., and without considering the hazards that a loose hanging or snapped wire with live current could pose to human and animal life. Therefore it was held that the defendants were liable to pay compensation to the plaintiff.

Medical negligence

Cases of medical negligence inviting tortious liability are reported each year in plenty. There are cases which does not involve any novelty in terms of issues involved and the remedies sought. However, there do surface cases which demand attention and analysis given the intricate questions involved.[18] As regards the question of deciding medical negligence, the *Bolam Test* continues to rule the roost. Notably, in England, the test is now considered merely a "rule of practice or of evidence. It is not a rule of law". However, in *Jacob Mathew* v. *State of Punjab*[19] Lahoti CJ has accepted *Bolam* test as correctly laying down the standards for judging cases of medical negligence, Supreme Court follows the same and has refused to depart from it.[20] According to Bolam test, "…a doctor is not guilty of negligence in a medical claim if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art…putting it the other way round, a doctor is not negligent if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view."[21] As regards the element of negligence, it needs to be emphasised, at the outset that, "The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher *i.e.* gross or of

18 See generally, M Srinivas, "Medical Negligence and Consumer Rights: Emerging Judicial Trends" 6 *NALSAR Law Review* (2011). Also see, B.B Pande, "Why do Indian Patients not deserve the Highest Expert Skills from Doctors?" (2009) 4 SCC J-15. According to Pande, "In India in respect of claims for medical negligence the judicial rulings of the Supreme Court of India and of the State High Courts can be put in two distinct lines. The first line, that favours a limited liability based on "ordinary professional standard", as laid down in *Bolam* case. The second line, that favours expanding the sphere of medical profession's liability and demanding a higher duty of care towards the patient and his relatives, particularly where medical expertise is provided on a commercial basis." *Id*. at 20-21.

19 (2005) 6 SCC 1 : 2005 SCC (Cri) 1369. Also see, B C Nirmal, *supra* note 1.

20 See *V. Kishan Rao* v. *Nikhil Super Speciality Hospital* (2010) 5 SCC 513.

21 See observations of McNair J in *Bolam* v. *Friern Hospital management Committee* [1957] 2 All ER 118 at 122, [1957] 1 WLR 583 at 587.

a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution."[22]

In *V. Damothiran* v. *Karnataka Medical Council (KMC), Represented Herein by its President, Basavanagudi,*[23] a patient, wife of the petitioner, died on account of negligence of the doctor, a gynaecologist, in the course of performing laparoscopic procedure. Criminal proceedings were initiated against the doctor (second respondent) by the police, and the papers of the proceedings were sent to Karnataka Medical Council (KMC) by the police. The third respondent represented the doctor before KMC, a move that was objected to by the petitioner. Therefore, the question before the court was: whether the third respondent should be allowed to represent the doctor before KMC. The court held:[24]

> While it is entirely in the discretion of the KMC to even withdraw the permission granted to the third respondent to represent the second respondent, for good reason; it cannot be said that the discretion exercised by the KMC in permitting the third respondent to represent the second respondent, along with her legal counsel, cannot be said to be impermissible or of causing any prejudice to the complainant. The fact that the third respondent is shown to be representing medical practitioners embroiled in such controversies, before other fora in a large number of cases as candidly admitted by the third respondent himself, would actually be a point in his favour. In that, it would only indicate that his conduct has not been reprehensible and that he has not been debarred from such appearances. It cannot be said that such appearances by the third respondent would tantamount to a practise in law. Incidentally, the third respondent states that he never seeks to represent a party before any judicial body.

IV APPLICABILITY OF DOCTRINE OF STRICT LIABILITY

It needs to be reiterated at the outset that a strict liability in torts, private or constitutional, do not call for a finding of intent or negligence. In such a case the highest degree of care is expected from private and public bodies, especially when the conduct causes physical injury or harm to persons.[25] In *Gandra Tiga,*[26] the high court observed that "A person undertaking an activity involving hazardous or risky exposure to human life is liable under law of torts to compensate for the injury suffered

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

23 2015 Indlaw Kar 8974.

24 *Id*., para 7

25 *MCD* v. *Uphaar Tragedy Victims Assn.* (2011) 14 SCC 481 also, see, B C Nirmal, "Tort Law" XLVII *ASIL* 1093-1024 (2011).

26 *Gandra Tiga Alias Oram* v. *State of Orissa* 2015 Indlaw Ori 231.

by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". According to Richard Epstein;[27]

> The doctrine of strict liability holds that proof that the defendant caused harm creates that presumption because proof of the non-reciprocal source of the harm is sufficient to upset the balance where one person must win and the other must lose. There is no room to consider, as part of the *prima facie* case, allegations that the defendant intended to harm the plaintiff, or could have avoided the harm he caused by the use of reasonable care. The choice is plaintiff or defendant, and the analysis of causation is the tool which, *prima facie*, fastens responsibility upon the defendant. Indeed for most persons, the difficult question is often not whether these causal assertions create the presumption, but whether there are in fact any means to distinguish between causation and responsibility, so close is the connection between what a man does and what he is answerable for.

In *Oil and Natural Gas Commission Limited (O. N. G. C Limited)* v. *Narayan Chandra Das,*[28] the defendant no.4 at the instance of defendant no.1 brought in dangerous explosive substances and the use of these substances led to the damage to the property of the plaintiff. The letters exchanged between the parties have been exhibited on record and these letters clearly indicate that the defendant no.4 has not denied that it has used explosive substances. However, the case of the defendant no.4 was that as per the guidelines laid down the safe distance is 145 meters for using 5 to 7 kg of explosive. The stand of the defendant no.4 was that the nearest point where the explosive charge was laid was 780 meters and therefore, the damage to the chimney could not have been caused. The question was whether the plaintiff suffered loss on account of negligent acts of defendants. The court reiterated that:[29]

> When any person brings in a dangerous substance near the land of the other it is the duty of this person to be more careful. The doctrine of strict liability was initially accepted in the case of *Rylands* v. *Fletcher*[30] wherein the House of Lords held "the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is the natural

27 Richard A. Epstein, "A Theory of Strict Liability" 2 *The Journal of Legal Studies* 151-204 (1973).

28 2015 Indlaw TRI 240.

29 *Id*., para 10.

30 (1868) LR 3 HL 330: (1861- 73) All ER Rep 1.

> consequence of its escape." In *Rylands* v. *Fletcher*, Rylands had employed a contractor to build a reservoir on his own land. While constricting the reservoir the contractors discovered a series of old coal shafts improperly filed with debris. Instead of stopping the work and blocking up the coal shafts the contractor continued to work. Shortly thereafter, the reservoir constructed on Rylands land burst and flooded the coal mine run by Fletcher. Applying the principle of strict liability the House of Lords held that Rylands was liable for damages.

The court came to the conclusion that since the plaintiff has proved that he has suffered some damage on account of the negligent act of the defendants he is entitled to damages. In *Meghalaya Energy Corporation Limited, Shillong* v. *Sukendra Sangma,*[31] the deceased died due to electrocution short circuit in uncoated high tension wire. The question before the High Court of Meghalaya was: whether the appellant is liable to pay compensation under the doctrine of strict liability. The court emphasised that it is the duty of the appellant as well as the state government to take all preventive measures to save the life and property of the consumer in general, humans in particular.[32] The court reiterated the following observation of the Supreme Court in *D K Basu* v. *State of West Bengal:*[33]

> The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim and civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

The court further relied upon the time-honoured case of *Rylands* v. *Fletcher*[34] in which it was held that "if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. This rule applies only to non-

31 2015 Indlaw Meg. 34.

32 *Id.*, para. 8.

33 (1997) 1 SCC 421.

34 *Supra* note 30.

natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority." This rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure."[35] The court further reminded that:[36]

> In a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry on as part of developmental programme, Court need not feel inhibited by this rule merely because the new law does not recognize the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to 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, but it has to build up its own jurisprudence. It has to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. If it is found that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy the Court should not hesitate to evolve such principles of liability merely because it has not been so done in England.

In view of the foregoing the High Court of Meghalaya concluded thus: "In the present case, the appellant (respondent in the writ petition) is engaged in inherently dangerous act of stretching/lying overhead H/T livewire through the electric poles and also there is foreseeable risk inherent in the very nature of such activities and principle of strict liability is applicable to them. Therefore, electrocution is a foreseeable risk and as stated above, there is no material pleading regarding taking up of reasonable precaution such as providing guards/disc insulator of the wire of prescribed quality and covering the livewire with insulating material of such quality and thickness as to prevent danger, as provided for such safety measures in the Indian Electricity Rules,

35 *Id.*, para 13.

36 *M C Mehta's* case 1986 Indlaw SC 259. *M.C. Mehta* v. *Union of India* 1987 SCR (I) 819 (oleum gas leak case)

1956, Indian Electricity Act, 2003 and the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 in the counter affidavit of the appellant (respondent in the writ petition)."[37]

V ACT OF GOD

In *Lakshmi Devi* v. *Union of India,*[38] petitioner's husband (deceased) died unnatural death on April 18, 2011 on account of natural calamity (lightening) while harvesting the wheat crops. According to petitioner, a "panchnama" was prepared in presence of Village Pradhan, Area Lekhpal and Naib-Tahsildar on the spot itself. In the report, cause of death of the petitioner's husband has been indicated due to "lightening" in clear words. As there is a circular/government order providing for compensation to the family of the deceased under the National Calamities Emergency Fund, the petitioner preferred an application to the competent authority for *ex-gratia* payment of compensation and completed the necessary formalities. The said claim of the petitioner has been rejected. The petitioner argued that she is being deprived of her rights merely because she failed to produce the copy of post-mortem report. In such cases, the court noted, "ex-gratia payment is made with the sole object to rehabilitate the family who has lost their beloved one all of a sudden due to natural calamity or an Act of God."[39] The court therefore explained the meaning of three important terms crucial to providing remedy in such cases, namely, Act of God, Natural Calamity and ex-gratia payment:[40]

> Act of God" (natural events) means, a direct, violent, sudden and irresistible act of nature which could not, by any reasonable care, have been foreseen or resisted. To put it differently, one cannot predict the events of nature that is why they are called "Acts of God"…. Natural calamity means an event that brings terrible loss, lasting distress, or severe affliction; a disaster. The natural calamities may strike at any person, at any time and keeping this in mind, the Government has created a fund with the sole object to provide immediate relief to those

37 *Supra* 36, para18. It is notable that in *Parvati Devi* v. *Commissioner of Police, Delhi* (2000) 3 SCC 754, The Supreme Court had already laid down that "Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent, and therefore, in the case in hand, it would be NDMC who would be responsible for the death in question. It is found from the records that the appellant was serving as a machine man in The statesman and was aged 54 years on the date of death, and the age of retirement is 60 years. Taking these factors into consideration, we direct that the appellants, who are the legal heirs of the deceased, be awarded compensation to the tune of Rs.1,00,000 and NDMC should pay the same within 3 months from today failing which it will carry interest at the rate of 12%. This should be in total satisfaction of the compensation for the legal heirs of the deceased."

38 2015 Indlaw All 1159.

39 *Id*., para 8.

40 *Id*., paras 9,12,14.

> victims who died due to natural calamity…(And) the word 'ex-gratia payment' means payment which is voluntarily and charitable in nature and therefore, hyper-technicalities should be ignored and equitable consideration should be kept in mind while deciding the matter. Such claims are paid to mitigate hardship to the claimants by way of equitable relief.

The court concluded that "Thunder" or "Sky lightening" is a natural happening and is termed as an "Act of God" When the thunder strikes a person, death is a natural consequence[41] and further added that:[42]

> It is the duty of the Government to safeguard the life and liberty of the people as guaranteed under Article 21 of the Constitution of India. If death occurs to a citizen due to a natural calamity, the Government whether it is State or Central Government, is expected to come forward to "console- comfort-compensate" the members of family of the victim and the Government should avoid shirking its responsibility based on arbitrary and imaginary reasons.

Therefore, in view of the above and given the fact that perusal of the "Government Order …would indicate that there is no mandatory requirement for furnishing post-mortem report to get ex-gratia payment", the court directed the district magistrate to pass fresh order for grant of ex-gratia payment in light of the aforesaid observation, making a further observation that for grant of relief provisions should be interpreted very liberally to cover every victim of natural disaster.

VI QUANTUM OF COMPENSATION

Compensation for death

In *Jagjit Singh* v. *Manjit Kaur,*[43] a suit was filed under sections 1-A and 2 of Fatal Accidents Act, 1855, and the same was decreed by the civil judge (junior division) partly for recovery of compensation/damages to the tune of Rs. 2,96,528/- along with interest @ 6% per annum from the date of decree till realization was allowed. Subsequently, on appeal, the amount of compensation was enhanced by the additional distract judge, fast track court, to Rs. 4,88,528/-. The disputable issue in the present case was the fact that additional district judge was of the considered view that the deceased, a retired school teacher aged 59 years, being an able bodied person could also do labour work and could earn Rs. 100/- daily. Therefore, Rs. 3,000/- could be added towards the income. This put forth before the high court an important question: whether the addition of Rs. 3,000/- per month in the income of the deceased by appellate

41 *Id*., para 13.

42 *Id*., para15.

43 MANU /PH /3389 /2015. Also see, *Harihar Hota* v. *Chief Executive Officer(MD), Nesco* 2015 Indlaw Ori 336.

court holding that he could do the labour work, is justified? The Punjab and Haryana high court held that "The deceased, who was getting pension and whose children were married, will not bring disgrace to his family by doing the work of a casual labourer or by doing manual work. The Additional District Judge, Fast Track Court enhanced the compensation by making an increase in the income of the deceased on the basis of assumption, which was not supported by the facts of the case or reasoning."[44] The court observed that a civil case cannot be decided merely on the basis of presumption unless there is some positive proof.[45]

In *Nagamma* v. *National Insurance Company Limited, by its Manager, Bangalore,*[46] the appellant, a coolie aged 21, was hit by a tempo casing serious injuries while she was waiting for her bus to come at the bus stop. Compensation was awarded by the tribunal under MV Act on account of injuries sustained by the appellant. The tribunal, after hearing both sides and after assessing the oral and documentary evidence, allowed the said claim petition in part and awarded a sum Rs. 2,84,269/- as compensation under different heads with interest at 6% p.a. excluding interest on future medical expenses, from the date of petition till its realization and directed the insurer to deposit the compensation amount.[47] Appellants were dissatisfied with the compensation and approached the high court. The question before the High Court of Karnataka was: whether the compensation awarded by the tribunal to the victim was just and reasonable. The court enhanced the amount of compensation to Rs. 3,94,469 instead of Rs.2,84,269.

In *Dr. Pramod Anigol Anigol Dispensary, New Gandhi Nagar, Belgaum* v. *Imtiyaz Killedar, Occupation Private Service, Belgaum,*[48] the wife of respondent died in the hospital after giving birth to child. Just after giving birth to the child, she started bleeding and the bleeding had not abated and she was diagnosed as being anaemic. Respondent no.1 had refused to get blood to be transfused and therefore, respondent no.1 expressed that he could not afford blood and he refused to cooperate in continuation of treatment. It transpires that the respondent took the patient to the civil hospital and there again he had refused to get blood and the hospital authorities therefore discharged the patient pleading their inability to treat her in the absence of any blood. The patient was then taken to K.L.E. Hospital where the woman is said to have died.[49] In the aftermath of the death, respondent got issued a legal notice to the district surgeon, petitioner and the deputy commissioner, seeking compensation in a sum of Rs.3.00 lakh. The petitioner had replied to the notice. It is stated that respondent no.1 has thereafter filed a claim petition before the permanent lok adalat. The petitioner had filed his detailed objections to the said claim petition. The lok adalat having

44 *Id*., para 13.
45 *Id*., para 14.
46 2015 Indlaw Kar 7466.
47 *Id*., para 5.
48 2015 Indlaw Kar 7453.
49 *Id*., para 2.

framed issues decided the case holding that there was professional negligence on the part of the petitioner to the extent of 75% and granted compensation in a sum of Rs.2,42,000/-. It is the order passed by the lok adalat that was challenged before the court. The court observed: "not all cases can be addressed by Lok Adalats, especially, a serious case as regards medical negligence and the respondents could have been well advised to have approached the consumer forum in seeking to lay claim for compensation on the basis that the petitioner was guilty of medical negligence."[50]

In *Suraj Verma* v. *Delhi Development Authority,*[51] a boy died due to the negligence of the Delhi Development Authority which failed to fill a 15 deep dark pit and to put some kind of fence around the pit as it would have warded off the imminent danger that caused the death of the child. The court, relying on a plethora of judicial pronouncements,[52] came to a reasoned conclusion that plaintiff is entitled to just compensation under sections 1A and 2 of the Fatal Accidents Act, 1885.

In another instance of negligence of the West Bengal State Electricity Board (hereafter WBSEB) in maintaining the electric line under their management and control in consequence of which a minor girl was electrocuted.[53] Due to electric shock the victim's right hand and right thigh were severely burnt. Her right hand had to be amputated and she became disabled. After considering the evidence on record and upon hearing the submissions on behalf of the parties, the trial judge came to the conclusion that plaintiff sustained electric shock and resultant injury due to negligence of the defendant in maintaining properly the electric line concerned. Holding thus, the suit was decreed on contest with cost by the Civil Judge (Senior Division) Katwa, District - Burdwan who awarded Rs.2,00,000/- as compensation to the plaintiff. Being aggrieved by the aforesaid judgement and decree passed , the defendant nos. 1 and 3 (being the WBSEB Katwa and the WBSEB Bidhannagore, Calcutta) filed the appeal. The compensation so awarded was held to be "fair and reasonable". The court observed:[54]

> Drawing inspiration from the decision reported in AIR 1987 Kerala 253 in the case of *Kerala State Electricity Board* v. *Kamalakshy Amma*,[55] the Trial Court did not err in holding that as the plaintiff

50 *Id*., para, 4.

51 2015 Indlaw Del 1919.

52 *Gobald Motor Service Ltd*. v. *Veluswami* 1962 (1) SCR 929; *Laxman Balkrishna Joshi* v. *Trimbak Bapu Godbole,* AIR 1969 SC 128, *Ishwar Devi Malik*. v. *Union of India*, ILR (1968) 1 Delhi 59; *Lachman Singh* v. *Gurmit Kaur*, AIR 1979 P & H 50; *Bir Singh* v. *Hashi Rashi Banerjee*, AIR 1956 Cal. 555*, Lata Wadhwa* v. *State of Bihar*, (2001) 8 SCC 197 2001 Indlaw SC 20611; *Municipal Corporation of Delhi* v. *Association of Victims of Uphaar Tragedy*, AIR 2012 SC 100 and *Delhi High Court in Jaipur Golden Gas Victims Association* v. *Union of India* 164 (2009) DLT 346; *Nagrik Sangarsh Samiti* v. *Union of India,* ILR (2010) 4 Delhi 293 2010 Indlaw DEL 3351; *Ram Kishore* v. *MCD*, 2007 (97) DRJ 445; *Ashok Sharma* v. *Union of India* 2009 ACJ 1063.

53 A*ssistant Engineer (O and M) WBSEB* v *Minor Mahima Ghosh* 2015 Indlaw Cal 858.

54 *Id*., para 8.

55 1986 Indlaw Ker 206.

> succeeded in proving her case of electrocution by a live wire hanging down from an electric post, there is a presumption of fact that there was want of proper care on the part of those in the management and control of power supply system at the particular place. In our instant case, the plaintiff having discharged the burden of proof, it is for the W.B.S.E.B to rebut the presumption with positive evidence to show that they have been properly maintaining the electric installations and electric lines in the area under their control and management and that there has been no negligence on their part.

VII DOCTRINE OF LEGITIMATE EXPECTATION

In *State of Uttar Pradesh* v. *Beehive College of Engineering and Technology,*[56] the High Court of Uttarakhand had to decide disputes that had arisen with respect to a scheme brought out by the Government of India for the benefit of scheduled caste students for their education at the post-matric level. Apparently, this scheme was in force for a fairly long period of time. It is originally revised *w.e.f.* April, 2003. It came to be modified *w.e.f.* August, 2010. The amount representing the reimbursement of fee that was being paid by the State of Uttar Pradesh in respect of the students belonging to the scheduled caste community belonging to the State of Uttar Pradesh studying in other states was being paid to the Institutions prior to year 2012-13.

However, there were complaints made and in order to make the system transparent and fair and to see that there was no misuse or misappropriation of public funds and that it "goes into the account of the students", the Government of Uttar Pradesh /the appellants came out with the impugned rules on September 26, 2012 They, *inter alia*, provided for payment of the amounts into the accounts of the students. In other words, in keeping with clauses IX and X of the Central Government Notification on July 1, 2010, the amounts were to be paid directly into the accounts of the students; no payment could be made directly into the accounts of the institutions. Still further, in this order, they provided for a different method of ascertaining the genuineness of the students, inasmuch as, a committee of the district level with the district social welfare officer as secretary was to sanction the scholarship. More importantly, the order purported to put in place a system of priorities.[57]

The rule so framed by the Government of Uttar Pradesh, in view of the court, raised pertinent questions that were essential to the final outcome of the judgment, namely: whether the rules were meant to operate retrospectively? Does the executive power of the state extend to changing the rules of the game; in the sense, does it have the authority to operate in the past; can legal rights be taken away; what happens if there is no legal right as such, but if it is only a promise; what is the ambit of the doctrine of promissory estoppel; will the principle of promissory estoppel apply in

56 MANU /UC /0427 /2015.

57 *Id*., para 2.

the facts of this case; and what is the ambit of principle of legitimate expectation?[58]

The court came to the conclusion that the rule were meant to be applicable in respect of the year 2012-2013, and as regards the application of the principle of promissory estoppel in the given set of facts in the present case, "There is no express invocation of the principle of promissory estoppel as such"[59] The court clarified that:[60]

> In fact, what is involved in the Rules is not that the scholarship amount will not be paid as such at all in respect of the students. What is involved, essentially, is the laying down of a procedure for the disbursement of the scholarship amount. In this context, it is noteworthy that the scheme is, essentially, one, which has been enunciated by the Government of India. Clause IX of the order dated 01.07.2010, Government of India, in fact, contemplated that the amount should be disbursed directly into the accounts of the students. All that the State of U.P. was attempting to do was to comply with the said salutary procedure, which, even in the contemplation of the Government of India, is a scheme for preventing misuse of the public funds and also to see that the funds reach the doorsteps of the genuine claimants and they are not siphoned off. There is, in fact, a case for the State of U.P. that, out of about 1600 students, almost half were found to be fake.

Therefore, could we say that the impugned rules were not made in public interest, or, could we say that it is an arbitrary exercise of power? Indeed, we cannot, as it is a bounden duty of the State of Uttar Pradesh, in fact, to frame such rules. If at all, they were late in the day in complying with the injunction of the Government of India. There is no explicit promise as such made by any person competent to hold that promise that the practice, which was prevailing in respect of payment of fee reimbursement into the account of the Institutions, would be followed in 2012-2013 also. At this juncture, it is necessary to notice some of the documents relied on by the senior counsel for the writ petitioners.

Therefore, the court held that "Rules have, apparently, been carved out in public interest. We would think that the principle of legitimate expectation would not clothe the writ petitioners with the right to enforce it as a cause of action in, itself, against the action of the appellant State of U.P."[61]

VIII NUISANCE

In *Dr. Mamtesh Gupta* v. *State of U.P.*,[62] the petitioner had installed a generator over *Patri* land which is part of public road, thus causing unlawful obstruction over

58 *Id*., para 24.
59 *Id*., para 27.
60 *Id*., paras. 28-29.
61 *Id*., para. 37.
62 2015 Indlaw All 738.

public place. The installation of the generator caused sound as well as air pollution. Proceedings were initiated by the second respondent, who is a neighbour of the petitioner for directing removal of the generator, as it is causing public nuisance and unlawful obstruction over public road. The Sub-Divisional Magistrate, Meerut, taking into consideration the aforesaid evidence on record, held that the installation of a big generator by the petitioner in front of her house on a public road, is causing noise and air pollution and is thus, a nuisance to the public. It has been further held that the generator had been installed by encroaching on a public road, resulting in unlawful obstruction. Accordingly, the petitioner was directed to remove the generator within 15 days. The high court made the following observation:[63]

> It is not in dispute that the generator had been installed outside the house of the petitioner, over vacant *patri*, abutting public road. Any obstruction made by a person on a public road or *patri* land though in the instant case, objected to only by the second respondent, does not mean that it is only a source of nuisance to the second respondent and not the public at large. In the opinion of the court, it is another matter that the law was set into motion by an individual, but in view of the nature of obstruction and the resultant nuisance, it is a public wrong. In *Hari Ram* vs. *Jyoti Prasad*[64] the Supreme Court held that "an encroachment when made to a public property like encroachment to public road, would be a graver wrong, as such prejudicially affects the number of people and therefore a public wrong."

IX CONCLUSION

To conclude, it may be said that the though cases of survey period do not show any remarkable shift in the understanding of tort law, the cases have further buttressed the bedrock of tort law by providing clarification on some of the issues of great public interest, especially in the areas of death caused by negligence, nuisance, strict liability and defamation. It is heartening to see that court in India continue to uphold and apply the time-tested principles of tort law with alacrity and clarity. It is a healthy sign for the development of Tort law jurisprudence in India in days to come, as is reflected by the fact that the doctrinal tools of great remedial importance like doctrine of legitimate expectations have been taken due note of while delivering judgments in tort cases.

63 *Id*., para 16.
64 (2011) 2 SCC 682.