

## LAW OF TORT

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### I INTRODUCTION

TORT LAW represents a society's revealed truth as to the behaviours it wishes to encourage and the behaviours it wishes to discourage.<sup>1</sup> The sphere of tort law is getting wider as a result of the felt necessities of the prevailing times, more so in areas such as climate change that requires a revisitation to the foundational idea of corrective justice<sup>2</sup>, an idea so essential to understand the working of tort law.<sup>3</sup> However, as regards tort law in India, based upon Common Law and largely uncodified,<sup>4</sup> this law has evolved keeping in view the 'local conditions' as it was believed that we cannot incorporate English torts without any *adaptation* into Indian law.<sup>5</sup> This process of evolution and adaptation rests upon the contribution made by way of judicial pronouncements. The 'survey' seeks to map the growth of tort law each year taking into the account the judgments of the Supreme Court and the high courts that contribute to its growth. This year's survey explores some of the important judgments that need to be discussed in order to understand and appreciate the incremental growth that has taken place in tort law.

### II TORTIOUS LIABILITY

One of the well-accepted understandings of tortious liability is to be found in the following words, "tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by

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1 M Stuart Madden, "Tort Law Through Time And Culture: Themes of Economic Efficiency" in M Stuart Madden (ed) *Exploring Tort Law* 12 (Cambridge University Press, 2005).

2 Matthew D. Adler, "Corrective Justice and Liability for Global Warming" 155 *U. Pa. L. Rev.* 1859 (2007).

3 Hanoch Sheinman, "Tort Law and Corrective Justice" 22 *Law and Philosophy* 21(2003).

4 "A draft code of torts for India was prepared by Sir Frederick Pollock but it was never enacted into law." See, M C Setalvad, *The Common Law in India* 110 (London, Steven and Sons Limited, 1960).

5 Per Krishna Iyer, J in *Rohatas Industries Limited v. Rohats Industries Staff Union*, AIR 1976 SC 425.

an action for unliquidated damages.”<sup>6</sup> The elements of duty, breach and remedy draw the broad contours of tortious liability that arises in varied circumstances depending upon the differing factual matrix. The cases discussed hereinafter illustrate situations where these elements become a key to fixation of liability in a ‘tortious’ sense.

#### Maintainability under tort law

In *Qamar Hasnain v. Syed Waseem Rizvi*,<sup>7</sup> aggrieved with an online self-publication titled “Muhammad”, purportedly authored by the defendant, the plaintiff approached the Delhi high court seeking orders restraining defendant from making derogatory, demeaning and incendiary statements against the religion of Islam, the Holy Qur’an and Prophet Mohammed and other revered personages. The plaintiff also made a prayer for awarding damages to be made by the defendant to the plaintiff. Narula, J made the following pertinent observation:<sup>8</sup>

... first, the decree for damages as sought by the Plaintiff is purely a right *in personam*. Further, the Plaintiff is seeking permanent and mandatory injunction on behalf of the followers of the religion of Islam - which is a right *in rem*. For such reliefs, the Court has also gone to the length of considering if such an action can lie in tort law. To maintain such a suit, it is essential that there should be a personal legal right, a corresponding personal legal injury, and an act which gives rise to legal or actual damage. Guided by the fact that [plaintiff] admits to there being no reference/remarks/allegations of a derogatory or defamatory nature against the person of the Plaintiff; and further that the remarks/allegations as alleged to be made are against his religion and its tenets as a whole, the Court is of the opinion that the plaint certainly does not disclose any such legal right. Any injury or hurt to personal religious sentiments of the Plaintiff are not an actionable wrong under the law of torts. At best, a case may have been made under provisions of criminal law, which has certainly neither been pleaded nor would bestow any maintainability to the case before this Court.

Therefore, the high court held that in the absence of disclosure of infringement of any legal right, the plaintiff’s prayer seeking injunction and damages on account of being offended or aggrieved by the contents of a book -which allegedly is hurtful to his religious sentiments - would not give him any right to approach this court by way of the present suit.<sup>9</sup>

6 W.V.H. Rogers, *Winfield and Jolowicz on Tort* 4 (1994). Also see, R K Pathak, *D D Basu on Law of Torts* (Kolkata, Kamal Law House); John Cooke, *Law of Tort* (Longman, 2009); Jenny Steele, *Tort Law: Texts, Cases and Materials* (Oxford University Press, 2014); Saul Levmore and Catherine M. Sharkey, *Foundations of Tort Law* (Lexis Nexis, 2012).

7 2021 SCC OnLine Del 5539.

8 *Id.*, para.10.

9 See, S. 9, Code of Civil Procedure, 1908 which states that provides that courts shall have jurisdiction to try all suits, subject to the provisions contained in the Code, excepting suits, the cognizance of which is either expressly or impliedly barred meaning thereby that when a legal right and its infringement is alleged and disclosed, a civil court is bound to take cognizance. *Id.*, para.9.

**Remedy for tortious liability**

The High Court of Gauhati in *Abdul Khaleque v. State of Assam*<sup>10</sup> observed that as a general rule, claims of compensation based on tortious liability are decided by way of private law remedy in the civil court of competent jurisdiction. But in a case of loss suffered because of admitted negligence in the discharge of statutory duty by a public authority, there can be no bar to invoke the public law remedy and for a writ court to entertain a claim of compensation for such loss.

***Ubi jus ibi remedium***

In *Airone Charters Pvt. Ltd. v. Jetsetgo Aviation Services Pvt. Ltd.*,<sup>11</sup> the High Court of Delhi observed that *ubi jus, ibi remedium* is a doctrine which stands fossilized in legal lore. Right to legal redress is a fundamental right. It cannot be compromised. There are well-recognized exceptions to the principle that the right to legal redress carries, with it, a remedy. Considerations such as limitation, constructive *res judicata* and the like can render the remedy unavailable, though the right subsists. Balancing of equities<sup>12</sup> is, therefore, the *raison d'être* behind these conceptual exceptions to the *ubi jus ibi remedium* principle.<sup>13</sup>

The Madras high court in *Selvaraj v. Koodankulam Nuclear Power Plant India Limited*<sup>14</sup> observed that the bedrock of our civil justice system rests on the maxim *Ubi jus ibi remedium*. A legally enforceable right, when violated, or when faced with a threat of violation is remediable in law. Section 9 of the Code of Civil Procedure, 1908 is but a statutory expression or a manifestation of this maxim, which has recognised the right of any litigant to approach a civil court to seek a remedy in vindication of violation to any civil right.<sup>15</sup>

***Damnum sine injuria***

Supreme Court dictum in *Ravi Yashwant*<sup>16</sup> regarding *damnum sine injuria* was relied upon and reiterated by the high courts<sup>17</sup> in the year under review. The Supreme Court in aforesaid case had observed that a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is

10 (2022) 3 Gau LR 595 : (2022) 2 GLT 321

11 2021 SCC OnLine Del 4693.

12 “*ubi jus ibi remedium* is one of the maxims of equity.” See, *Cooper v. Lehtimäki*, [2020] UKSC 33.

13 See, *Assam Public Service Commission v. Hrishikesh Das* (2021) 4 GLT 788, where the High Court of Gauhati held that under the circumstances in absence of any safeguards provided for the minimizing or reducing errors in evaluation, the petitioner is right in seeking to invoke the principle of “*ubi jus ibi remedium*”. Also see, *Mukti Rani Paul alias Mukta Paul v. Union of India* (2021) 6 Gau LR 667 : (2021) 226 AIC 661; *Ratul Mahanta v. Nirmalendu Saha* 2021 SCC OnLine SC 567.

14 (2021) 4 CTC 539: (2021) 5 Mad LJ 467: (2021) 3 MWN (Civil) 73: (2021) 3 LW 677.

15 Also see, *Om Prakash Mali v. Jugal Kishore*, (2021) 2 RLW 1028; *Monika Rajendra Mhaske v. State Election Commission* 2021 SCC OnLine Bom 1844.

16 *Ravi Yashwant Bhoir v. Collector* (2012) 4 SCC 407.

called *damnum sine injuria*. There must be injuria or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons *i.e.*, a claim devoid of reasons.

### III DEFAMATION

Anil Kumar, J. in *Muthuveetil Chandran v. M. Santhakumari*<sup>18</sup> made a notable observation as to what constitutes defamation. His lordship said, “The essence of the offence of defamation consists in its tendency to cause that description of pain, which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-human beings and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.”<sup>19</sup> The cases pertaining to defamation have to be carefully dealt with given the fact that the element of reputation, so essential to a dignified life, remains at stake. Equally important is necessity to safeguard free speech, though within reasonable restrictions. That being so, rationality and pragmatism should be the guiding light while deciding cases of defamation.

#### A felonious tort

In *Rajesh Churiwala v. State of U.P.*,<sup>20</sup> the High Court of Allahabad reiterated that defamation *i.e.*, an injury to a person’s reputation, is both a crime and a civil wrong. In a civil action for defamation in tort, truth is a defence, but in a criminal action, the accused would be required to prove both the truth of the matter and also that its publication was for public good and no amount of truth would justify a defamatory act unless its publication is proved to have been made for public good.

#### Publication of false and baseless allegation

In *Southern Railway Mazdoor Union (SRMU) v. A.V. Praveen Kumar*,<sup>21</sup> the defendant started malicious campaign against the plaintiff to the effect that he had misbehaved with a female employee during the course of his employment. The defendant printed and published posters containing false and baseless allegations of misbehaviour of the plaintiff with the female employee of the Railway Department and the posters were published by affixing them on walls and pillars within the railway station premises. According to the plaintiff, the publications are *per se* defamatory and resulted in causing damage to his reputation in the eyes of the public and also the employees of the railway department. Moreover, he averred that he had suffered severe mental agony as a result of the publication and even his reputation in the family was affected. The high court upheld the decision of the trial court holding the defendant liable to pay Rs. 1,00,000/- as damages.

17 *Sadashiv Pandey v. State of UP*, 2021 SCC OnLine All 1057; *Jang Bahadur Singh v. State of UP*, 2021 SCC OnLine; *Sanchi Automobiles v. Union of India*, 2021 SCC OnLine MP 1605.

18 (2021) 1 KLT 685 : (2021) 2 KLJ 409.

19 *Id.*, para.13.

20 (2021) 116 ACC 890 : (2021) 226 AIC 897.

21 2021 SCC OnLine Kar 14971.

**Comparative advertisement**

In *Reckitt Benckiser India Private v. Hindustan Unilever Limited*,<sup>22</sup> the advertisement in question allegedly depicted the plaintiff's product as an ordinary toilet cleaner and claimed that the product of the defendant is much superior. The defendant argued that the bottle represented in the advertisement as an ordinary toilet cleaner did not in any manner pertain to the plaintiff's product as it was a generic bottle used by various toilet cleaners in the market. However, the plaintiff argued that the *said* shape of the bottle was registered by the plaintiff and that the said act clearly sought to denigrate and defame the product of the plaintiff. The high court observed that the bottle depicted in the advertisement is deceptively similar to the ones used by the plaintiff, and that advertisement did announce that the liquid in the said bottle was "ordinary toilet cleaner and is apparently unable to remove the stains/malodour in a toilet." The high court held that averments made in the four advertisements, *prima facie*, did appear to disparage the product of the plaintiff, and restrained the defendant from publishing the four advertisements on any forum till they removed all references to the product of the plaintiff. The court made the following observations:<sup>23</sup>

In comparative advertising, the comparing of one's goods with that of the other and establishing the superiority of one's goods over the other is permissible. However one cannot make a statement that a good is bad, inferior or undesirable as that would lead to denigrating or defaming the goods of the other.

**Right to reputation**

In *Deepa Jayakumar v. A.L. Vijay*,<sup>24</sup> the appellant, brother's daughter of former Chief Minister of Tamil Nadu late. J. Jayalalitha, approached the high court for interim injunction to restrain the respondents from in any manner making, releasing, publishing, exhibiting publicly or privately selling, promoting or advertising or entering into film festival or otherwise producing in any format, any film, drama, serial, tele-serial, web serial or any other literary or artistic expression in respect of the life of J. Jayalalitha and/or her family members and their direct descendants without the consent of the appellant. While dismissing the appeal, the Madras High court observed:<sup>25</sup>

... reputation earned by a person during his or her life time, extinguishes with his or her death. After the death of a person, the reputation earned cannot be inherited like a movable or immovable property by his or her legal heirs. Such personality right, reputation or privacy enjoyed by a person during his life time comes to an end after his or her life time. Therefore, ... "posthumous right" is not an "alienable right" and the appellant/plaintiff is not entitled for an injunction on the ground

22 (2021) 88 PTC 584 : (2022) 286 DLT 715.

23 *Id.*, para.10.

24 AIR 2021 Mad 167.

25 *Id.*, para.38.

that the “posthumous right” of her aunt is sought to be sullied by the respondents by reason of the release of the film....

### **Opportunity to defend publication**

In *T.V. Today Network Limited v. Cognate*,<sup>26</sup> the High Court of Delhi observed that in a suit for defamation, award of damages is normally considered as an adequate remedy. However, a court may grant pre-trial injunction or order removal of a published defamatory article, pending trial. Moreover, there is a tendency to afford the author of an alleged defamatory speech an opportunity to defend the publication, on the anvil of defences recognized by law. The author can defend his/her statement as a fair comment, imputation of truth, public interest, expression in good faith *etc.*

### **Posthumous defamation**

In *Babuji Rawji Shah v. S Hussain Zaidi*,<sup>27</sup> the plaintiff (appellant) sought a decree of permanent injunction restraining defendants (respondent) from printing, publishing, advertising, selling, alienating, assigning and/or creating any third party rights and/or holding any press meets, promoting the novel namely *The Mafia Queens of Mumbai* and/or writing any other story on the life of mother (late Gangubai Kathiawadi) of the plaintiff. While rejecting the prayer of the plaintiff, the High Court of Bombay made the following observation:<sup>28</sup>

The law on the principle of Torts that an action dies with the person, in a defamation proceedings is required to be appreciated. The contents of defamatory nature against so called adoptive mother of the Appellant dies with her death. Apart from above, it is for the Appellant to demonstrate that he is adoptive son of deceased-Gangubai Kathiawadi, which he has *prima facie* failed to. The Appellant-Plaintiff has not claimed the relief of declaration that he is adoptive son of deceased Gangubai Kathiawadi and as such he has suffered a legal injury.

The court further observed that in a case of claim for defamation, action can be brought by a person in court of law provided he claimed to be defamed.<sup>29</sup>

In *H.D. Devegowda v. Nandi*<sup>30</sup> Infrastructure Corridor Enterprise Limited, the High Court of Karnataka observed that “the suits founded on the tort of defamation need to be tried as expeditiously as possible; reputation, be it personal or occupational, for any person is sacrosanct”. The court further has observed that “the right to reputation is a facet of Article 21 of the Constitution of India...in defamation suits, award of damages in terms of money hardly constitutes a full recompense for the injury suffered; delayed justice makes it still worse; this is an added reason for the speedy trial of such suits; they cannot be allowed to be dragged on indefinitely.”

26 (2021) 282 DLT 246 : AIR 2022 (NOC 229) 109.

27 2021 SCC OnLine Bom 13717.

28 *Id.*, para. 8.

29 *Id.*, para.9.

30 ILR 2021 Kar 3899 : 2021 AIR CC 768 : (2021) 1 AIR Kant R 662 : (2021) 2 Kant LJ 638 : (2021) 2 KCCR 1872 : (2021) 3 ICC 299.

## IV NEGLIGENCE

Negligence remains one such area of tortious liability in which cases pertain to different aspects of human life. It may be case of medical negligence; it may be a case of negligence on the part of the governmental agencies. It may be a case of someone acting or omitting to act negligently affecting others adversely in day-today life.<sup>31</sup> Negligence as a form of tortious liability, therefore, has a pervading presence as regards human existence in a given society, regardless of boundaries of time and place. It plays a significant role in regulating human behaviour in modern times.<sup>32</sup>

In *Bangalore Electricity Supply Company Limited v. W. Milton*,<sup>33</sup> plaintiff's wife went to the backyard to attend nature's call and came in contact with a snapped wire that was tied to the ends of a tree for drying clothes. The wire was electrified due to leakage of electricity from the electric pole installed by the defendants. As a result, the wife of the plaintiff fell down and when her daughter attempted to save her, she too was electrocuted and later, her son also was electrocuted seriously and he died at the spot. The plaintiff claimed that his son was pursuing his final year B.Sc. and had completed C++ Computer course and having regard to his academic qualifications, he had a prospect of earning a sum of Rs. 30,000/- to 40,000/- per month. Thus, the plaintiff filed a suit for compensation of a sum of Rs. 10,00,000/- against the defendants on the ground that the electric lines were not maintained properly which led to leakage and the consequent electrocution. The defendants did not deny the fact that a high tension wire passed close by and therefore, during heavy rain, it could quite be possible that these lines came in contact with the tree. The defendants admitted that it is their responsibility to maintain the electric lines and also to ensure that trees below or near the lines are trimmed well in time to ensure that there is sufficient gap between the electric lines and other objects which could get charged. Therefore, it was held that the defendants, being negligent, were responsible for the incident, and bound in law to indemnify the loss caused to the plaintiff.

**Medical negligence**

In *Ganesan v. State of Tamil Nadu*,<sup>34</sup> a 14 year old girl baby, was under medical observation as she was suffering from Congenital Anomalies at a Government Hospital. The parents of the toddler had gone out and when they returned to the ward where the child was given treatment, to their shock and dismay, it was found that a portion of the left hand thumb was severed and it was lying in the floor and the child was profusely bleeding due to severance of a portion of the left hand thumb. The parents found that a staff nurse at the government hospital while removing the paediatric venflon (cannula) from the left thumb, which was wrapped with the surgical tape, had cut a portion of the left hand thumb of the child. Immediately, doctors conducted an emergency surgery

31 See generally, Andrew Robertson, "On the Function of the Law of Negligence" 33 *Oxford Journal of Legal Studies* 31 (2013).

32 See generally, John G. Fleming, "The Role of Negligence in Modern Tort Law" 53 *Virginia Law Review* 815 (1967).

33 MANU/KA/2225/2021.

34 MANU/TN/4586/2021.

by placing the cut portion in the left hand thumb and it was sutured. The learned counsel appearing for the petitioner submitted that even though an operation was performed, the doctors were not able to properly refix the thumb and, as a result of the same, the child is facing a permanent disability. Venkatesh J., observed that in cases of this nature, the strict liability theory which is otherwise called as *Rylands v. Fletcher* doctrine has to be necessarily applied. The high court held that incident *prima facie* shows that there is negligence and hence, some interim compensation must be paid by the government to the parents of the child, more so in view of the fact that such positive response from the government is expected in a welfare State. Further, the court directed payment of interim compensation to the parents of the child.

In *Tamil Selvi v. State of Tamil Nadu*,<sup>35</sup> the petitioner's child was admitted only for the purpose of tonsil surgery and nothing else. Even before the surgery could be performed on the child, the child developed complications following the administration of anesthesia. The learned counsel for the petitioner would strongly allege that *but for* the negligence on the part of the anesthetist and other doctors, the child would not have died. On the basis of the literature available on the subject of anesthesia, the high court was of the observed that "There are always instances when a drug does not accord with the body of the patient and that leads to unfortunate complications. The case on hand appears to be one such." Therefore, the court held that the respondent anesthetists had not committed any act of medical negligence. However, be that as it may, the court held that:<sup>36</sup>

When a patient is admitted in a government hospital for treatment and he/she suffers any injury or death which is not anticipated to occur in the normal course of events, even in the absence of medical negligence, the government is obliged to disburse ex-gratia to the affected party. In the case on hand, liability has to be fastened on the government....It appears that every Government doctor contributes certain sum of money towards this corpus fund and whenever compensation is directed to be paid by the courts, amount will be drawn from this fund and paid.

***Res ipsa loquitur***

In *Harish Kumar Khurana v. Joginder Singh*,<sup>37</sup> the Supreme Court held that in every case where the treatment is not successful or the patient dies during surgery, it cannot be automatically assumed that the medical professional was negligent. To indicate negligence there should be material available on record or else appropriate medical evidence should be tendered. The negligence alleged should be so glaring, in which event the principle of *res ipsa loquitur* could be made applicable and not based on perception. The court further observed that principle of *res ipsa loquitur* is invoked only in cases the negligence is so obvious, and that every death of a patient cannot on the face of it be considered to be a case of medical negligence. The *ratio*

35 MANU/TN/1248/2021.

36 *Id.*, para. 10.

37 (2021) 10 SCC 291.



in the above judgment was further relied upon by the Supreme Court in *Bombay Hospital and Medical Research Centre v. Asha Jaiswal*.<sup>38</sup>

In a case,<sup>39</sup> where a car met with an accident, the insurance company refused the car owner to avail the accident claim benefits on the ground that the driver at the time of the accident was under the influence of alcohol. Of the many issues framed, one of the questions related to the application of the principles of *res ipsa loquitur*. The Supreme Court held that the principle is used in cases of tort and where the facts without anything more clearly and unerringly point to negligence. The principle of *res ipsa loquitur*, as such, appears to be inapposite, when, what is in question, is whether driver was under the influence of alcohol.

#### V STRICT LIABILITY

The concept of strict liability fixes responsibility on a person even though there is no fault or negligence on his part. The only thing that is to be taken into account is that the person was involved in an “inherently dangerous or hazardous” activity that has caused injury to the other person.

In *Western Electricity Supply Company v. Mohan Padhan*,<sup>40</sup> the plaintiff was going to attend the call of nature, and came in contact with the snapped live overhead electric wire. He got partially electrocuted. Though his life was saved, he lost his right arm for ever and become permanently disabled thereby. According to the plaintiff, incident and the result thereof is on account of gross negligence on the part of the defendants who are in-charge of supply of electricity and maintenance of the supply lines, accessories and so on. Plaintiffs further stated that he lost his income for properly maintaining himself as also in providing assistance to the members of the family in their day today living. That being so, the plaintiff filed a suit claiming a maintenance of Rs. 5 lakh. The high court upheld the decision of the trial court holding the defendants liable for the injury suffered due to electrocution, and observed:<sup>41</sup>

Principle of law has been settled 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 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”.

The court relied on some of the prominent authorities on law of tort, and further held that “Authorities manning such dangerous commodities have extra duty to chalk

38 2021 SCC OnLine SC 1149.

39 *IFFCO-Tokio General Insurance Co. Ltd. v. Pearl Beverages Ltd.*, (2021) 7 SCC 704; (2021) 3 SCC (Cri) 167 : (2021) 4 SCC (Civ) 175.

40 Available at: <https://indiankanoon.org/doc/35068478/> (last visited on Dec. 20, 2022).

41 *Id.*, para.10. Emphasis added. The court quoted Justice Blackburn who famously said: “The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape.” See, *Rylands v. Fletcher*, 1868 Law Reports (3) HL 330.

out measures to prevent such mishaps. The opposite parties cannot shirk their responsibility on trivial grounds. For the lackadaisical attitude exhibited by the opposite parties, a valuable life was lost.”<sup>42</sup>

#### Violation of article 21

In *State of Nagaland v. Moba Changkai*,<sup>43</sup> petitioner’s pregnant mother had labour pain at about 2 A.M., and during the labour one of the arms of the baby emerged from the birth canal. As the baby could not be taken out completely, she was taken to the district hospital located about 130 km away from the village. She died on the way to the hospital with the stillborn baby. Petition was filed *inter alia* for the award of Rs. 10000000/- as an exemplary compensation against the State of Nagaland. The high court observed that during the last about four decades there have been tremendous developments in the field, of public law remedy whereby the high courts exercising jurisdiction under article 226 and the Supreme Court under article 32 have entertained and granted compensation and damages in appropriate cases for violation, of fundamental rights.<sup>44</sup> Notably, the court invoked the principle of strict liability to fix liability upon the state government. To quote the high court:<sup>45</sup>

...the aforesaid principle was adopted primarily to deal with cases of wanton abuse of human rights which was gradually extended to other cases of violation of fundamental rights, viz., where loss of lives occurred due to negligent acts of the State or its agents as being violative of article 21 of the Constitution of India by invoking the principle of strict liability. Principle of strict liability which was propounded in the famous case of *Rylands v. Fletcher*<sup>46</sup> reiterated in *Donoghue v. Stevenson*,<sup>47</sup> continues to be the guiding principle with the courts by making it absolute, but without the exceptions carved out as held in *M.C. Mehta* (1987).

The court awarded the petitioner rupees five lakhs as compensation, and further clarified that award of such compensation by way of public law remedy will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357, Cr PC.<sup>48</sup>

42 *Ibid.*

43 (2021) 5 Gau LR 272 : (2021) 4 GLT 277 : AIR 2022 (NOC 157)

44 The high court further held that in due course, public law remedy for grant of compensation for violation of human rights and fundamental rights had been improvised by the constitutional courts in favour of the aggrieved persons rather than leaving it to the vagaries of long drawn traditional litigation process in civil courts.

45 *Id.* at 299.

46 [L.R.] 3 H.L. 330

47 [1932] A.C. 562

48 *Supra* note 43 at 317.

## VI VICARIOUS LIABILITY

In *State of J and K v. Parbat Singh*,<sup>49</sup> respondent's wife while climbing a pear tree to pick up fruit for her personal consumption, got electrocuted coming in contact with high tension electric line touching the said tree. It is the case of the respondents (plaintiffs) that the deceased died due to negligence of the appellants as the electric department had fixed the high-tension line ignoring the specifications and standing instructions for the erection of the high-tension live lines. The appellants denied negligence on their part and stated that high-tension line in question existed on the same route for more than thirty years, having adequate ground clearance and trees were also at adequate distance. The trial court on the basis of the evidence adduced decided the case in favour of the respondents, and held that since field staff of the power development department were employees of the appellants, the State is vicariously liable for their negligence in discharge of their duties. The high court taking stock of the matter before it was of the view that:<sup>50</sup>

In a Welfare State it is, otherwise, responsibility and bounden duty of the functionaries of the Government/State that the citizens do not fall prey to any mishap due to lackadaisicalness on their part inasmuch as legal position being settled by the Supreme Court in its slew of 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 had been taken to prevent its uncontrolled escape that may injure, impair or take away life or property of any citizen. Any omission in preventing discharge of high voltage electric energy by anyone engaged in the activity of supplying such energy is liable to compensate for the damage caused because of uncontrolled escape of such energy.

The high court upheld the decision of the trial court as regards the vicarious liability of the appellants and the their liability to pay compensation the respondents.

**Quantum of compensation**

In *M. Ramesh v. The Chief Secretary, Government of Tamil Nadu*,<sup>51</sup> writ petitions were filed by the parents of the deceased children, who died due to drowning in abandoned government quarry. The petitioners made a prayer to direct the respondents to pay a sum of Rs. 25 lakhs each as compensation for the death of their sons on the ground that their death was occasioned due to negligence and carelessness on the part of the respondents in maintaining the quarry with minimum safeguards and/or protection. The question before the court was: whether the government is to be vicariously liable for the death so caused? That required delving into the some of the important factual aspects of the case.

49 MANU/JK/0790/2021, 2021(3)JKJ 225.

50 *Id.*, para10.

51 MANU/TN/6138/2021; (2021)7MLJ 102.

It is notable that the site, where the drowning took place, was earlier given on lease to a company which had excavated the land to several feet of depth, and after the period of lease expired, neither the said company had taken any steps to fence the land or to erect a caution board to wean away people from the site, nor did the respondents question the company for not taking steps to ensure minimum protection to avoid any untoward incident. A huge amount of water subsequently got collected in the site during rainy season making it look like a pond. Therefore, the court held that the respondents are statutorily and vicariously liable to compensate the petitioners for the death of their sons. The court was of the view that as the deceased have died as a result of the negligence on the part of the officials, they are bound to pay compensation to the victims' family for the loss suffered by them.<sup>52</sup> However, the court cognizant of the fact that there is no codified law for arriving at the quantum of compensation in cases of this type relied upon a host of judgements of the Supreme Court and held thus:<sup>53</sup>

As regards the quantum of compensation, the amount of money as reparation for the results of tortious conduct for which the law holds the wrong doer responsible is determined by applying as far as possible the general principle of restitution *integrum*. In many cases, however, a perfect compensation is hardly possible and would even be unjust. The court in doing justice between the parties considers the general rules as to damages with some liberality and does not apply them rigidly, and, thus, the damages are in difficult case normally limited to a sum which can in the circumstances be considered as a reasonable amount of compensation. Courts should not also in such cases allow a calamity to turn into a windfall. In ascertaining the pecuniary loss caused to the dependents, it must be borne in mind that these damages are not to be given as *solatium* for the loss of a son or daughter, wife or husband, father or mother, not on sympathetic or sentimental consideration, but only with reference to pecuniary loss.

#### VII MOTOR VEHICLES ACT, 1988

It is a legally settled position that the compensation under a motor accident is one based on negligent driving giving rise to a tortious liability. The Motor Vehicles Act, 1988 has codified to a certain extent the manner in which a claim has to be

52 The Court made a poignant point thus: "Human lives are precious and loss of a life is not capable of evaluation in terms of money. Death of human lives is certain but when it will occur is uncertain. All who are born will certainly die. However, in cases of death due to the negligence of others, the tort-feasor has to be made liable to pay compensation to the family of the victim. An unexpected death of one of the members in the family will traumatise the family members besides it will leave a vacuum. In such cases, though the payment of compensation cannot restore the lost lives, it will certainly serve as a balm to the pained hearts." *Id.*, para. 22.

53 *Id.*, para.19. The Court relied upon the following cases: *Nilabati Behera v. State of Orissa*, MANU/SC/0307/1993 : 1993 (2) SCC 746; *State of Rajasthan v. Vidhyawati*, MANU/SC/0025/1962 : 1962 Supp (2) SCR 989; *Rabindra Nath Ghosal v. University of Calcutta*, MANU/SC/0844/2002 : AIR 2002 SC 3560 : 2002 (7) SCC 478.

preferred and the procedure to be followed in considering the claim. The tribunal ascertains the quantum of compensation to be paid and also determines the persons who are liable to pay the compensation. So far as the liability of the insurer is concerned, it depends on the motor vehicle policy which has been pressed into service.<sup>54</sup>

#### **Standard of proof for determination of fair compensation**

In *E.C. Ajjappa v. E. Nagaraj*,<sup>55</sup> the injured person filed the claim petition under section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 10,00,000/. Notably, the accident is not disputed and only manner of accident is disputed. The claimant in the claim petition has contended that he was proceeding as a pedestrian and the tractor hit him. It is the specific contention of the insurance company that the injured fell from the tractor. But the fact remains that he was subjected to surgery and on account of the injuries, he has suffered permanent disability. Relying upon the Supreme Court judgment in *Sunita v. Rajasthan State Road Transport Corporation*,<sup>56</sup> the high court observed:<sup>57</sup>

...in terms of Section 166 of the MV Act, Tribunal *stricto sensu* is not bound by pleadings of parties, and its function is to determine amount of fair compensation. Claimants are merely to establish their case on touchstone of preponderance of probability, and standard of proof beyond reasonable doubt cannot be applied by Tribunal dealing with motor accident cases. The Apex Court considering Articles 166 and 173 of the MV Act held that lower standard of proof, of preponderance of probabilities applicable in tort matters, which include accident claim cases under MV Act.

#### VIII CONCLUSION

During the *review* period, some of the judgments bear great relevance and are important judicial pronouncements that deal with some of the essential aspects of tort law while there were at the same time routine judgments that reiterate the well-established principles and practices under tort law, but they, nonetheless, contribute, in their own way, in buttressing the jurisprudence of tort law in India. Having said that, it is equally important to highlight the fact that unlike the growth of law in other spheres, tort law has been growing in India in an incremental manner, though the development could have been substantial had the judicial<sup>58</sup> and academic<sup>59</sup> output been adequately responsive. Preceding few decades have witnessed a sea-change as regards life and law with the progress and changes taking place in the different walks of life, more so with the emergence of man-made problems such as climate change

54 *New India Assurance Company Limited v. Vasantha Menon*, (2021) 6 KLT 691.

55 2021 SCC OnLine Kar 12566.

56 (2020) 13 SCC 486.

57 2021 SCC OnLine Kar 12566, para.15.

58 There were twenty five cases or so in the year under review where one can find some judicial contribution, to a greater or lesser extent, being made to the growth of tort law in India.

59 To the best of reviewer's knowledge, the academic out-put has majorly been in the form of textbooks or the revised editions of classical works on tort law in India.

and global warming.<sup>60</sup> Tort law may only ill-afford to remain ashore and inattentive to such changes and challenges. The age-old tortious liability principles need to be revisited while fixing liability upon the wrong-doers for acts such as global warming. Problems as well as remedies thereto, of the 21<sup>st</sup> Century should find reflection in the growing jurisprudence of tort law, as they do in other spheres of law.

60 Matthew D. Adler, "Corrective Justice and Liability for Global Warming", 155 *U. Pa. L. Rev.* 1859 (2007). Also see, Douglas A Kysar, "What Climate Change Can Do About Tort Law", 41 *Environmental Law* 71(2011); Amelia Thorpe, "Tort-Based Climate Change Litigation and the Political Question Doctrine", 24 *Journal of Land Use & Environmental Law* 79 (2008).