

## LAW OF TORT

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### I INTRODUCTION

THE LAW of tort has been evolving through centuries, and each passing year adds to its existing corpus. Traceable to a time when the penal law was not the law of crimes, it was law of wrongs<sup>1</sup> or, to use a more technical term, tort, it developed in a time when the states were not sufficiently organised to have a *centralised prosecuting authority*, and the task of punishing the wrongful conduct was left to private individuals.<sup>2</sup> As it is said, tort law was a form of legalised self-help.<sup>3</sup> Tort law in its present form owes much to the rigours of judicial minds that have over the years toiled hard to put in place a series of doctrines and principles that form the foundation of the edifice of tort law.<sup>4</sup> That being so, judicial pronouncements occupy a primal place in the realm of law of tort, and it is a matter of great significance to be aware of what the courts have said on a particular question of tortious liability. The year under review brings to fore some of the important judgments of the Supreme Court and the high courts that have either added to tort law jurisprudence in India or have at last reiterated or applied the time-tested principles of tort law in the context of Indian cases.

### II CONSTITUTIONAL TORT

The concept of constitutional tort found its expression in India in early 1980s<sup>5</sup>, and since then it has evolved by dint of copious judicial pronouncements of the Supreme Court. Each passing year adds to the existing corpus of judgments on constitutional tort, and in one such case, namely, *Sanjay Gupta v. State of UP*,<sup>6</sup>

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1 Henry Maine, *Ancient Law*, 328(1918). Also see, Percy H Winfield, *The Province of the Law of Tort*, 8-31(1931)

2 Mark Lunney & Ken Oliphant, *Tort Law: Text and Material*, 1(2000)

3 *Ibid.*

4 See generally, Rabindra Kr. Pathak, *D D Basu's Law of Torts*(2023).

5 See, *Devaki Nandan Prasad v. State of Bihar*, (1983) 4 SCC 20. Also see, B C Nirmal, "Tort Law", *ASIL* 765-802 (2011).

6 (2022) 7 SCC 203. Also see, *Reddy Veerana v. State of Uttar Pradesh*, LNIND 2022 SC 325.

a writ petition was preferred by the victims of the fire tragedy which occurred on 10-4-2006, the last day of the India Brand Consumer Show organised at Victoria Park, Meerut, Uttar Pradesh by Mrinal Events and Expositions (the organisers). This unfortunate incident claimed the lives of 65 persons and left 161 or more with burn injuries. A one-man commission was appointed by the Court, and it submitted its report apportioning the liability between the Organisers and the State as 60:40. No dispute was raised regarding percentage of liability determined by any of the party to the present proceedings. Therefore, what remained to be seen now was the question of compensation payable to the victims and/or their families. The list of deceased and injured persons was produced by the learned counsel for the petitioners. The court said that the amount of compensation payable to each of the victim including the families of the deceased has not been computed and such amount was required to be computed in accordance with the principles of just compensation as in the case of accident under the Motor Vehicles Act, 1988 by the Motor Accidents Claims Tribunal.<sup>7</sup> Be that as it may, there are certain notable aspects of the judgment that need to be discussed, more so in view of payment of compensation under article 226 or article 32 for violation of rights under article 21 of the constitution. The Court replied upon a catena of judgments of the Supreme Court where it has been clearly held that in a case where life and personal liberty have been violated, absence of statutory provision for compensation in the statute is of no consequence. The precedents laid down in these aforesaid cases, according to the Court, fall in three categories:<sup>8</sup> first category is where the acts of commission or omission are attributed to the State or its officers such as *Nilabati Behera*<sup>9</sup>; the second category of cases is where compensation has been awarded against a corporate entity which is engaged in an activity having the potential to affect the life and health of people such as *M.C. Mehta*<sup>10</sup>; the third category comprises of the cases where the liability for payment of compensation has been apportioned between the State and the Organisers of the function.<sup>11</sup>

7 *Id.* at 246.

8 *Id.* 232. See generally, Usha Ramanathan, “Tort Law”, *ASIL* (2001) where she traces the beginning of constitutional tort to early eighties, and which was, according to her, “cemented into a judicial precedent” in *Nilabati Behera*.

9 *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527. *Sube Singh v. State of Haryana*, (2006) 3 SCC 178 : (2006) 2 SCC (Cri) 54], *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141 : 1983 SCC (Cri) 798, *Bhim Singh v. State of J&K*, (1985) 4 SCC 677 : 1986 SCC (Cri) 47 and *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416 : 1997 SCC (Cri) 92.

10 *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37.

11 *Dabwali Fire Tragedy Victims Assn. v. Union of India*, 2009 SCC OnLine P&H 10273.

The Supreme Court in *Baiju K G v. Dr V P Joy*<sup>12</sup> observed that “the onus of a public wrong can be attributed to the State if it fails to protect the fundamental rights of the citizenry and compensation can be awarded in such cases.”<sup>13</sup>

In *Tarun Preet Singh v. Union Of India*<sup>14</sup> the Petitioner and his two friends were travelling in a car and had stopped at Barakhamba Road, near Connaught Place when a shootout involving the Delhi Police, took place. When the three friends were taken to Hospital, the two friends of the Petitioner were declared brought dead, and the Petitioner got injured injured. The petitioner filed a writ before the court seeking compensation of Rupees one crore. After referring to a plethora of cases and taking into consideration the facts of the case, the high court concluded:<sup>15</sup>

In the instant case, the violation of the constitutional right to life of the victims of the shoot out at Connaught Place by the personnel of the Delhi Police stands clearly established. The criminal culpability of the police personnel has been proved beyond reasonable doubt. It is imperative for this Court approached under Article 226 of the Constitution to provide compensation as a public law remedy for the constitutional tort committed by officers of the State.

In another case<sup>16</sup> the Madras high court observed that callous indifference in passing detention orders coupled with total apathy towards the violation of the fundamental right guaranteed under Article 21 would clearly constitute a “constitutional tort.” The court held that ignoring the law, and passing detention orders demonstrates a clear and wilful refusal of the State to follow the law, and this being a clear case of conscious abuse of statutory power, it must follow that an irrepressible urge to use preventive detention must be now be sternly dealt with by imposing punitive damages on the State.

#### **Violation of rights under Article 300A**

In a case of land acquisition<sup>17</sup>, the Supreme Court held, notably, that in the *peculiar* facts of this case, the civil right of appellant is violated in breach of

12 (2022) 206 PLR 691, [2022] 3 SCR 569, 2022 (3) KLJ 528, LQ/SC/2022/658.

13 The Supreme Court quoted the following observation of Justice A S Anand in *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746: “The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen.” *Id.*, para.34.

14 291 (2022) DLT 346, 2022 ACJ 1852, 2022/DHC/001569, LQ/DelHC/2022/1368.

15 *Id.*, para.17.

16 *Sunitha v. Additional Chief Secretary to Government*, 2022 (3) MWN (CR.), 430 (2023) 1 .MLJ (CrI) 337, LQ/MadHC/2022/6462 .

17 AIR 2022 SC 2225, 2022 (6) ADJ 389, [2022] 3 SCR 663, LQ/SC/2022/590

Article 300-A of the Constitution of India. Such action clearly amounts to constitutional tort.

### III NUISANCE

Delineating the essentials of nuisance, the Supreme Court has observed that for an actionable tort, there has to be a wrongful act, and damage or loss or inconvenience or annoyance caused to another, by reason of the wrongful act. Annoyance or inconvenience or loss alone does not give right to a legal action. The question of what constitutes nuisance is a question which the Court has to determine. The Court has first to ascertain what is the legal duty of which there has been breach. The right to an injunction depends on the legal right and this must be determined before any relief can be granted by the Court.<sup>18</sup>

In *Sai Bhairavalaya Animal Welfare Trust v. Executive Officer, Mammallapuram Special Grade Town Panchayat, Chengalpattu District*<sup>19</sup>, the *lis* was instituted questioning the validity of the notice issued by the respondent asking the petitioner to remove the Stray Dogs, numbering 41, kept in their premises, within a period of three days, failing which actions will be initiated against the petitioner, a 'Trust', set up with an objective of promoting and ensuring the welfare of the Stray, Injured, or Ill animals. The petitioner contended that the Trustee of the petitioner being an 'Animal Lover', takes care of the Street Dogs and when the Trust is functioning for the welfare of the Stray Dogs, the petitioner may be permitted to continue the activities of the Trust. However, petitioner that if the neighbours are disturbed on account of continuous barking and other smell or any other reasons, the petitioner is ready and willing to shift the subject premises *within a reasonable period of time*. However, the high court was of the view that keeping 41 stray dogs in a residential area, no doubt, would cause great nuisance to the neighbours and residents of that locality and more-so, it may produce smell and other problems, which may cause health issues to the humans residing in that locality. Therefore, taking into account the relevant precedents of the Supreme Court and application provisions of law, the court pertinently observed thus:<sup>20</sup>

No doubt, few people are willing to do services to the animal, as they are 'Animal Lovers.' However, while doing so, they are bound to do the same in accordance with law and without causing any nuisance or hindrance to the neighbours and the people of that locality. When the Statute provides certain prohibitions and restrictions, then proper license is to be obtained and the provisions of the Statute and Rules are to be scrupulously followed. In the present case, the petitioner is keeping 41 stray dogs in the residential area without even obtaining proper license from the Competent Authorities of the Municipality. Therefore, an action taken is in consonance with the provisions of the Act and there is no infirmity

18 *Babuji Rawji Shah v. S. Hussain Zaidi*, 2022 SCC OnLine SC 1892

19 LNINDORD 2022 MAD 68

20 *Id.*, para. 16.

as such. Nuisance is an offence under the Indian Penal Code. Section 240 of the Tamil Nadu District Municipalities Act, prescribes action against keeping animal, so as to be a nuisance or dangerous.

The court held that 'Right to Life' enunciated under the Constitution provides noise free, pollution free environment and health being an integral part of , Article 21 of the Constitution of India , any issue involving public health and nuisance are to be viewed seriously.<sup>21</sup> The court rejected writ petition.<sup>22</sup>

**'Stray dogs causing nuisance'**

In another case<sup>23</sup> of nuisance caused by the stray dogs in the city of Nagpur, the high court (Nagpur bench) directed the Commissioner of Police and Superintendent of Police, Nagpur (Rural) to take necessary steps within their respective areas for controlling the menace of stray dogs/bitches in terms of Section 44 of the Maharashtra Police Act. The taking into account the precedent laid down by the Bombay high court in *India Animal Welfare Association v. Brihanmumbai M. Corporation*<sup>24</sup> the court directed in that:<sup>25</sup>

...no citizen and no resident of Nagpur and areas surrounding it shall feed or make any attempt to feed the stray dogs in public places, gardens etc. We further direct the Municipal Commissioner of Nagpur, Municipal Corporation to ensure that no such feeding at any place except own homes of such persons shall be undertaken. We further direct that if any person is interested in feeding stray dogs, he shall first adopt the stray dog/bitch, bring it to home, register it with Municipal Authorities or put it in some dogs shelter home and then showering his love and affection on it, may feed it while taking it's personal care in all respect.

21 *Id.*, para. 22.

22 The Court made a notable point: "Rights, duties and responsibilities are corresponding and a person claims right must honour the rights of other citizen while exercise of his right or performing his duties. The consequences of certain services, possible infringement of the rights of other citizen and other repercussions and implications are also of paramount importance, while considering such nature of cases." *Id.*, para.15.

23 *Vijay Shankarrao Talewar v. State of Maharashtra*, 2022 SCC OnLine Bom 4055

24 (2007) 4 Bom CR 1

25 2022 SCC OnLine Bom 4055, para.9.

### Defamation

It has been reiterated by courts so often that law of defamation seeks to protect individual reputation.<sup>26</sup> It is well established that “reputation of an individual has been placed at the highest altar and has been considered as akin to Right to Life of a citizen under Article 21 of the Constitution of India. Thus, there is imperative need to protect reputation of an individual.”<sup>27</sup> That being so, law seeks to protect this important facet of the right under article 21, and accordingly provides remedies as well.

In *Babuji Rawji Shah v. S. Hussain Zaidi*,<sup>28</sup> the petitioner approached the Supreme Court through a Special Leave Petition. He claimed to be an adopted son of the protagonist of the film “Gangubai Kathiawadi”, which was given requisite certificate by the Central Board of Film Certification (CBFC) under the Cinematograph Act, 1952 of which Section 5-B lays down the principles for certifying films, and provides that a film shall not be certified for public exhibition, if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against, inter alia, decency, or morality, or involves *defamation*. Notably, an injunction action can be initiated even after a certificate is issued under the Act. The film is based upon the book “Mafia Queens of Mumbai”. The petitioner had sought permanent injunction restraining printing, publishing, advertising, selling, alienating, assigning and/or creating any third party rights or holding any press meets to promote the novel “Mafia Queens of Mumbai” and/or otherwise writing any other stories on the life of the petitioner’s mother. Moreover, the petitioner also sought permanent injunction restraining any act of producing, selling, assigning any rights to any entity, company, firm, cinema halls, multiplexes, social media or any other platforms or giving any press statement in public or on electronic media of the trailer/promo and/or film of the movie “Gangubai Kathiawadi”. Respondents asserted that the book and the film based on the book eulogise the protagonist “Gangubai”, and that She has not been defamed. They argued that the respondents cannot be denied their fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. *Per contra*, the petitioner argued that there is no fundamental right to defame,

26 See, *Madangopal v. Partha*, LNIND 2022 NGP 249; *Munish v. Partha* LNIND 2022 NGP 255; *Future Generali India Life Insurance Company Limited v. Partha*, 2022 SCC OnLine Bom 6184. It is important to take note of the following observation made by the Delhi high court in *Vinai Kumar Saxena v. Aam Aadmi Party*, 2022 SCC OnLine Del 3093: “Article 19(1)(a) of the Constitution afford the right of freedom of speech and expression to all persons. However, the same is subject to restrictions under Article 19(2), which includes defamation. Therefore, the right to freedom of speech and expression is not an unfettered right in the garb of which defamatory statements can be made to tarnish the reputation of a person. The fundamental right to freedom of speech has to be counterbalanced with the right of reputation of an individual, which has been held to be a basic element of the right to life consecrated in Article 21 of the Constitution of India.” Also see, *Umesh Kumar v. State of A.P.*, (2013) 10 SCC 591; (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237.

27 *Smriti Zubin Irani v. Pawan Khera* 2022 SCC OnLine Del 2310.

28 2022 SCC OnLine SC 1892.

which the concerned respondents have done in their book and in the film based on the book. The Court made a notable observation: “A right in tort may arise when any imputation concerning a deceased person harms the reputation of that person, if living or is intended to be hurtful to the feelings of his family members or other near relatives.”<sup>29</sup> It was held by the court that *prima facie*, it appeared that the movie was an artistic expression within the parameters of law. The Court was also aware of the fact that there were no materials disclosed or even pleadings to show, even *prima facie*, that the petitioner was a family member or a near relative of Gangubai. In view of all this, the Court refused to grant interim relief to the petitioner. As regards the question of defamation, the ensuing observation of the Court merits mention:<sup>30</sup>

For maintaining an action in tort of defamation, the applicant for interim relief would have to satisfy the Court, that (i) the applicant was a member of the family or a near relative of the person defamed; (ii) what was stated about the deceased family member/relatives was untrue; and (iii) what was stated would lower the character and reputation of the deceased. Mere hurting of sensibility is not defamation, if the person said to be defamed is not lowered in character or credit in the eyes of others.

In *Ruba Ahmed v. Hansal Mehta*,<sup>31</sup> defendants produced a movie by the name of “Faraaz” to which an objection was taken by the plaintiffs. One of the grounds of objection was defamation and emotional trauma caused by the portrayals made in the movie. The High Court of Delhi, while holding that the plaintiffs were not entitled to injunction against the film, observed:<sup>32</sup>

Defamation of a deceased person does not give rise to a civil right of action and common law in favour of the surviving family or relatives who are not themselves defamed. A libel on the memory of the deceased person is not deemed to inflict on the surviving relatives of any such legal damage as sustained a civil action for defamation. The defamatory matter must be published concerning the plaintiff. As a matter of sound public policy, malicious defamation of the memory of a dead is condemned as an affront to the general sentiments of morality and decency, and the interest of society demand its punishment through the criminal courts but the law does not contemplate the offence as causing any special damage to another individual, though related to the deceased, and therefore, it cannot be made the basis for recovery in a civil action. Where one is supposed to stand upon his own merits and where success or failure is entirely dependent upon the accidents of rank of family connection.

29 *Id.*, para.19.

30 *Id.*, para.22.

31 (2022) 294 DLT 584

32 *Id.*, para.73

A defamation of such character however grievous or disturbing can afford no injury that can be measured by a pecuniary standard.

The court was of the view that emotional trauma *per se* may be relevant as a component of defamation, but cannot be the sole basis for making a *prima facie* case in favour of the plaintiffs. Moreover, the court stated, relevantly so, that defamation is a personal right and is not pre-emptive in nature. The defamation essentially can be asserted only after the movie has been released.<sup>33</sup>

**‘disparaging remarks about brand or products’**

In *Gujarat Cooperative Milk Marketing Federation Ltd. v. Akshar Foods and Beverages*<sup>34</sup> permanent injunction was sought for restraining the infringement of the trademark, *defamation*, permanent and mandatory injunction and damages by the Plaintiffs, namely, Gujarat Cooperative Milk Marketing Federation Ltd. and Kaira District Cooperative Milk Producers’ Union Ltd., who are the owners of the mark ‘AMUL’ and the variants thereof. Defendant, itself is a milk producer, through its website published an article titled as ‘*Is Amul Milk Pure? : Must Know Health-Related*’ which, in view of the Plaintiffs, is highly libellous and disparaging, and wherein various allegations against the Plaintiffs and its products have been levelled. According to the Plaintiffs, the tone and tenor of the said article was meant to completely tarnish the reputation of the ‘AMUL’ brand and make baseless and unverified allegations against them. Relying upon a string of past precedents, the high court said:<sup>35</sup>

...disparaging remarks about any brand or products cannot be made without properly verifying the underlying facts. Sensationalism has to be avoided especially in matters of goods relating to mass consumption. Responsibility has to be taken before publication of articles that denigrate a product or a brand. While defamation may apply qua an individual, commercial disparagement would be caused to a brand or a business against whom unfounded allegations are made.

The court cautioned that putting up of a slanderous article on website without adducing any proof or evidence, if permitted, would give a free hand to defamation and slander, and therefore, it was held that publication of unverified allegations purely with an intent to tarnish and dilute the reputation of a known brand or mark cannot be permitted or tolerated.<sup>36</sup> The court, therefore, permanently restrained the defendant and others from uploading any articles/videos/photographs/posts identical or similar to the impugned defamatory article or any portions thereof in future, on any social media platform, websites or anywhere on the internet or anywhere in print or electronic media.

<sup>33</sup> *Id.*, para. 78.

<sup>34</sup> 2022 SCC OnLine Del 4899.

<sup>35</sup> *Id.*, para.20.

<sup>36</sup> *Id.*, para.21. Also see, *Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels*, (2014) 210 DLT 381; *United Coffee House v. Raghav Kalra*, (2013) 55 PTC 414 (Del).



## V NEGLIGENCE

In *State of UP through Secretary (Excise) v. M/S McDowell and Company Limited*<sup>37</sup>, the Supreme Court discussed at length the concept of negligence. According to the Court, negligence is one such class of “wrongs” that leads to liability<sup>38</sup> and that being so “failure to exercise that care which a reasonably prudent person would usually exercise under similar circumstances would amount to negligence; it is not necessary that negligence would always be advertent one where the wrongdoer is aware of unreasonable risk being created but it may be inadvertent or passive too, arising for want of foresight or because of some omission.”<sup>39</sup>

**Medical negligence**

In *P.K. Pounraj v. Dr. S. Ranganathan*<sup>40</sup>, the question for consideration before the court was: whether the order of the learned trial Judge in discharging the accused on a finding that there is no *prima facie* case made out is fair and proper? The high court made a preliminary observation, in view of the Supreme Court’s binding guidelines<sup>41</sup>, that no Investigation Officer should take up the complaint made on allegations of medical negligence *without obtaining an independent medical opinion*, from a competent person preferably from a doctor in Government services, qualified in their profession of medical practice who can normally be expected to give an impartial and unbiased opinion applying ‘Bolam test’ to the facts collected during the cause of investigation.<sup>42</sup> What makes the judgment worth-reading is the number of conclusions that the court makes, one of them, notable one, being:<sup>43</sup>

A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis

37 LNIND 2022 SC 30; (2022) 6 SCC 223 : (2022) 3 SCC (Civ) 319.

38 *Id.*, para.49. The Court quoted Salmond: “Liability or responsibility is the bond of necessity that exists between the wrongdoer and the remedy of the wrong.” *Ibid.*

39 *Id.*, para.52. The quoted observation echoes the views expressed by the Supreme Court in *State of Maharashtra v. Kanchanmala Vijaysing Shirke* (1995) 5 SCC 659.

40 [2022] 2 MLJ (CRL) 257.

41 *Mathew v. State of Punjab* (2005) 1 MLJ (Crl) 1077, (2005) 6 SCC 1.

42 *Id.*, para.10. Also see, *Bolam v. Friern Hospital Management Committee* [1957] 1 W.L.R. 582.

43 *Id.*, para. 48.

or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

Therefore, the court held that a doctor cannot be immediately blamed for any unfavoured result of his treatment unless he had omitted to exercise *reasonable competence* in the given circumstances of the case.

The observation of the high court is in tune with the observation of the Supreme Court in *Dr. (Mrs.) Chanda Rani Akhour v. Dr. M.A. Methusethupathi*<sup>44</sup> where it was reiterated that negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.<sup>45</sup>

#### VIMOTOR VEHICLES ACT, 1988

The provisions of the Motor Vehicles Act, 1988 gives paramount importance to the concept of ‘just and fair’ compensation. It is a beneficial legislation framed with the object of providing relief to the victims or their families.<sup>46</sup>.....

Section 163 A of the Motor Vehicles Act is an important piece of legislation having special provisions “as to payment of compensation on structured formula basis”, and has been at the centre of interpretational exposition by the courts. Simply put, it provides that the *owner* of the motor vehicle or the authorised *insurer* shall be liable to pay compensation in the case of *death* or permanent *disablement* due to accident arising out of the use of motor vehicle, and that the claimant shall not be required to plead or establish that the death or permanent disablement due to any *wrongful act* or *neglect* or *default* of the owner of the vehicle or vehicles concerned or of any other person. The ensuing judgment, therefore, has to be read in view of the law settled by the Supreme Court.<sup>47</sup> In *Divisional Manager, TATA AIG General Insurance Company Limited v. A.C.*

44 LNIND 2022 SC 277.

45 *Id.* para. 25. Also see, *Devarakonda Surya Sesha Mani v. Care Hospital, Institute Of Medical Sciences*, 2022 (4) RCR (Civil) 296, (2022) 4 ICC 943, 4 (2022) CPJ 7, LQ/SC/2022/1573. *Harnek Singh v. Gurmit Singh*, AIR 2022 SC 2643, 2022 (4) ABR 201, 2022 (4) ALD 39, (2022) 7 SCC 685, 2022 ACJ 2266, (2022) 4 ICC 740, 2022 (236) AIC 74, 2 (2022) CPJ 88. *Civil Hospital v. Manjit Singh*, 2022 (4) RCR (CIVIL) 410.

46 *Anjali v. Lokendra Rathod*, 2022 SCC OnLine SC 1683

47 For instance, Supreme Court in *Ramkhiladi v. United India Insurance Co.*, (2020) 2 SCC 550 observed thus: “It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the principle of no-fault liability. However, at the same time, the *deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner* and he cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle....” *Id.* at 560. (Emphasis added).

*Jagadeesann*<sup>48</sup>, the issue that arose for the consideration of this Court was the liability of the appellant Insurance Company to compensate the injuries suffered by the 1st respondent while using the motor vehicle belonging to the 2nd respondent and which was insured with the appellant Company. The brief factual matrix of the case is that the respondent 1 was driving the car and met with an accident. He suffered grievous injuries. He filed a claim petition under Section 163A of the Motor Vehicles Act, 1988. The insurance company made certain objections, namely, 1st respondent, who was the driver on wheels of the insured vehicle, at the time of the accident, was the father of the insured and considering the fact that he was the driver of the insured vehicle, he steps into the shoes of the owner.<sup>49</sup> Further, the he was not entitled to claim compensation as a third party.<sup>50</sup> The appellant also questioned the amount of compensation that has been claimed and stated that the same is an exorbitant claim. In view of the foregoing facts and arguments, the questions before the court were: Whether the petition was maintainable under Section 163(A) of the Motor Vehicles Act and whether the petitioner was entitled to compensation? Whether the appellant Insurance Company is liable to compensate the 1st respondent for the injuries sustained by him in an accident which was caused by him without any third party intervention? Before answering the foregoing questions, the high court made the following notable observation:<sup>51</sup>

The scheme of the Act contemplates 4 players - the victim, the driver of the offending vehicle, owner of the offending vehicle and lastly, its insurer. In any accident which results in any damage to person or property the person who is primarily at fault is the driver of the vehicle that caused the accident. Once, the fault is fixed on the driver, the owner of the vehicle becomes vicariously liable. At times the owner and the driver may be the same person. Thereafter, if the vehicle possesses a valid insurance then the insurer is bound to indemnify the owner of the vehicle...it is clear that a person claiming compensation under the "No Fault Liability" has to first establish a third party involvement in the mishap.

48 2022 SCC OnLine Mad 4566.

49 The appellant argued that under Section 147 of the Motor Vehicles Act, they were liable to indemnify the insurance risk only against the third party risk. The 1st respondent being the owner, had himself caused the accident, therefore, the question of indemnifying him would not arise. The appellant, on the other hand, relied upon the judgment of the Supreme Court *T.S. Shylaja v. Oriental Insurance Company* (2014) 2 SCC 587, to buttress his arguments that since if the claimant was the paid driver of his son, the owner of the vehicle, the Tribunal ought to have granted him the Award under Section 163A of the Act.

50 The appellant relied upon the Supreme Court dictum in as *Ramkhiladi v. The United India Insurance Company* (2020) 2 SCC 550. Also see, *Oriental Insurance Co. Ltd. v. Jhuma Saha* (2007) 9 SCC 263, *National Insurance Co. Ltd. v. Laxmi Narain Dhut* (2007) 3 SCC 700, *Premkumari v. Prahlad Dev* (2008) 3 SCC 193

51 2022 SCC OnLine Mad 4566(para.43).

While allowing the appeal, the court observed that the principle of ‘No Fault Liability’ obviously implies that the injury or death of the claimant is the result of the involvement of a third party with the claimant being an innocent by-stander and the accident has occurred out of no fault of his.

In *Gunjari Deviv. Lal Mohan Yadav*<sup>52</sup> the deceased, Mohan Paswan, a private tutor, aged 26, along with his relatives was travelling in Bolero vehicle which dashed the salt bags near the road side and turned turtle due to rash and negligent driving of the driver and he succumbed to injuries. Besides, the routine questions that arise in such cases for compensation, one of the important questions that the court took note of and explained with reference to existing precedents of the Supreme Court on the matter was with respect to the scope and ambit of provisions under section 163A and Section 166 of the Act. The court held that:<sup>53</sup>

...the basis on which the dependents of a victim in case of death of the victim or the victim himself can be entitled to compensation under , Section 166 of the Motor Vehicles Act are different from the requirements of , section 163A of the Motor Vehicles Act, 1988 , the principle of law settled by the court or a precedent in respect of an application under , Section 166 of the Motor Vehicles Act cannot be used as a strait jacket formula in respect of a petition under , Section 163A of the Motor Vehicles Act.

And, therefore, the court observed that<sup>54</sup>

...the principles of law as enunciated<sup>55</sup>...regarding adding additional amount towards future prospects in case of applications under section 166 of the Motor Vehicles Act, 1988 , cannot as a general rule be applied in respect of an application filed under , Section 163 A of the Motor Vehicles Act, 1988 or for that purpose the compensation under filial consortium, spousal consortium, parental consortium or other conventional head under general damages cannot be applied to an application under Section 163A of Motor Vehicle Act, 1988...

As to the compensation to be paid under section 166 of the Act and the procedure to be followed, the Supreme Court in *Janabai v. M/S. I.C.I.C.I. Lambord Insurance Company Ltd.*<sup>56</sup>, made an important observation to the effect that “rule

52 LNIND 2022 JHAR 477. Also see, *Sohwa Devi v. Ranjit Das*, LNIND 2022 JHAR 517, where the high court reiterated that the principle of law laid down in *Pranay Sethi*(2017) 16 SCC 680) regarding adding additional amount towards future prospects cannot as a general rule be applied in respect of an application filed under Section 163 A of the Motor Vehicles Act, 1988 .

53 *Id.*, para. 12.

54 *Ibid.*

55 *National Insurance Company Limited v. Pranay Sethi*(2017) 16 SCC 680, *N. Jayasree v. Cholamandalam MS General Insurance Company Limited*, [2022] Acci. C.R. 165 (S.C.) and *Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru*, 2018 (4) JLJR 230 SC.

56 LNIND 2022 SC 526

of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature...The application under the Act has to be decided on the basis of evidence led before it *and not on the basis of evidence which should have been or could have been led in a criminal trial.*<sup>57</sup> The Court further clarified in view of the factual matrix of the case that “If the daughters of the deceased have not been impleaded as claimants, it is immaterial as the amount of compensation payable by the tortfeasor will not get enhanced because of the daughters being party to the claim application. It is since the daughters are married, the mother has not impleaded the daughters as the claimants.”<sup>58</sup>

In *Sidram v. United India Insurance Co. Ltd.*<sup>59</sup>, The appellant claimant suffered grievous injuries in a road accident while he was walking on the left side of the road. A goods vehicle being driven in a rash and negligent manner banged into the appellant claimant. He was shifted to a hospital and treated. On account of the accident, he suffered permanent disability to the extent of 45%. He suffered from paraplegia due to the accident. He was in the business of selling utensils in different villages of the district. The appellant approached the Supreme Court by way of appeal against the impugned final judgment of the High Court of Karnataka (Dharwad Bench)<sup>60</sup> for further enhancement of compensation. High Court had enhanced the compensation awarded by the Motor Accidents Claims Tribunal, Belgaum by Rs 3,13,800 to a total of Rs 9,26,800. The Tribunal had awarded compensation of Rs 6,13,000 under the various heads along with interest @ 6% p.a. from the date of filing of the petition till the date of realisation of payment. The Supreme Court said:<sup>61</sup>

The appellant suffers from paraplegia because of the accident and requires an attendant throughout the day and hence, attendant charges of Rs 4500 per month ought to be awarded to the appellant, which has not been considered by the Tribunal as well as the High Court. The appellant is unable to stand, walk or sit and is unable to bend his body or lift any weights. It is pertinent to point out herein that the appellant as a consequence of his grievous injuries will not be able to work in the same manner as he used to prior to the accident and therefore, functional disability of the appellant ought to be considered as 100%.

The Court further reiterated the settled legal position thus:<sup>62</sup>

...even in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for

57 *Id.*, para.10. (Emphasis added).

58 *Id.*, para. 11.

59 (2023) 3 SCC 439 : (2023) 1 SCC (Cri) 730.

60 *Sidram v. Siddu Mahadev Bhosale*, 2018 SCC OnLine Kar 4197.

61 (2023) 3 SCC 439 at 459.

62 *Id.* at 462. Also see, for similar views, *Pappu Deo Yadav v. Naresh Kumar*, 2020 SCC OnLine SC 752.

future loss of income, amounts for future prospects as well...There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases — and admits such possibility of future prospects, in case of the victim's death.

Allowing the appeal, the Court further stated notably that the attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the Judge's mind, whenever tasked to adjudge compensation claims.<sup>63</sup>

#### VII CONCLUSION

The analysis of cases on tort law shows that in some of major areas of law of tort, the judgments of the Supreme Court and the high courts have either reiterated or strengthened the settled position of law or the foundational principles. Moreover, there is noticeable surge in the number of cases pertaining to constitutional tort. The general trend, though there are exceptions, appears to be that of relying upon the past precedents and judicial observations, and thus eschewing the onerous judicial responsibility of restating the law or the principles in the light of new facts before the courts. Though there is so much that law of tort in India owes to the English law, it will be a fruitful exercise to adopt a comparative approach in the realm of tort law so that newer principles and practices elsewhere may become a part of our own tort law jurisprudence subject to necessary adaptations, if need be. It is perhaps the time to create space for a comparative approach, more so in view of the hitherto unforeseen challenges that will become more and more dominant and demanding in near future.

<sup>63</sup> *Id.*, at 501.