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LAW OF TORT

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I INTRODUCTION

LAW OF tort has been evolving over the years, and more so in recent past, in view of the changing landscape of law and life. The varied and different types of cases coming before the courts every year continue to buttress the foundational underpinnings of tort law in India. Every new case, more often than not, is an occasion to add the existing corpus of precedents that have laid down *principles* of fixing liability if anyone suffers *injuria* on account of some tortious act. The year under review deals with cases on some of the important areas of law of tort such as constitutional tort, defamation, negligence, nuisance and so on. The cases have been analysed with a view to bringing to fore the principles that have either been reiterated or have been laid down by the courts along with factual matrix of each case to the extent relevant.

II TORTIOUS LIABILITY[1]

In *Union of India* v. *K. Pushpavanam,*[2] the Supreme Court observed that as far as the law of torts and liability thereunder of the State is concerned, the law regarding the liability of the State and individuals has been gradually evolved by courts. The court further reminded that some aspects of it find place in statutes already in force, and it is a debatable issue whether the law of torts and especially liabilities under the law of torts should be codified by a legislation. However, the court clarified that a writ court cannot direct the government to consider introducing a particular bill before the House of Legislature within a time frame.[3] In *Harpati* v. *State of NCT of Delhi,*[4] the court observed that it is well settled proposition of law

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1 See generally, Glanville L. Williams, "The Foundation of Tortious Liability" 7 *Cambridge Law Journal* 111-132 (1939); Percy H. Winfield, "The Foundation of Liability in Tort" 27 *Columbia Law Review* 1-11 (1927).

2 2023 SCC OnLine SC 987.

3 *Id.*, para.8.

4 (2023) 304 DLT 305 (DB).

that when there are disputed question of facts involved in a case, the high court should not exercise its jurisdiction under Article 226 of the Constitution of India, and particularly in cases where tortious liability and negligence is involved, the remedy under article 226 may not be proper.

Compensation for tortious liability

In *Shakuntala Devi* v. *State of UP,*[5] the deceased was posted as Deputy Director, Animal Husbandry, Mirzapur Division, Mirzapur. In connection with that posting, he had been allotted official accommodation. One day, while he was asleep at that official accommodation, a blast occurred at the storage facility of the Rural Engineering Services, Mirzapur in the adjoining premise. Resultantly, the deceased suffered 70% burn injuries. The court concluded that the tortious act is attributable to the State and its agents only, and second, the victim of tortious act was none other than a government employee. The court therefore pertinently held that:[6]

> In any case, compensation for a tortious liability, may never be examined and/or quantified on the test of an ex-gratia payment. That is an entirely different concept where the payment arises from the grace shown by the payer and not from the entitlement of the payee. It is not applicable to tortious liabilities. Then, compensation for the tortious liability thus incurred may not be defeated occasioned by grant of compassionate appointment to the son of the deceased and/or upon payment of terminal dues, to his wife. Those relief are traceable directly and only to the terms of service of the deceased and/or grace shown by the payer and not to compensation for the liability for tortious injury suffered.

Volenti non fit injuria[7]

In *Animal Welfare Board of India* v. *Union of India*[8], the Supreme Court in the context of Jallikattu observed, relying upon a previous precedent,[9] that it is dangerous not only to bulls but also to humans and many participants and spectators sustained injury in course of such events. It further held that so far as human beings are concerned, their injuries would attract the principle of Tort known in common law as "*volenti non fit injuria.*"

5 2023 SCC OnLine All 2874.

6 *Id*., para.25.

7 See, S P Singh, "*Volenti Non Fit Injuria* and Tortious Liability"17 *JILI* 90-102 (1975).

8 (2023) 9 SCC 322.

9 *Animal Welfare Board of India* v. *A. Nagaraja*, (2014) 7 SCC 547 : (2014) 3 SCC (Cri) 136.

Damnum sine injuria

In *Rajnikant Singh* v. *State Of U.P.*[10], High Court of Allahabad reiterated[11] the following proposition that had been previously laid by the Supreme Court as regards the concept of *damnum sine injuria:*[12]

> A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, 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 called *damnum sine injuria*.

III CONSTITUTIONAL TORT

In the last decades or so, constitutional tort has emerged as an important and evolving area of tort law in India. It ambit and expanse has been widening from 'precedent to precedent' with new cases coming before the courts.[13] In one such case, *Kaushal Kishor* v. *State of U.P.*[14], which lays down an important principle of State liability under constitutional tort, a very seminal question *inter alia* arose before the Supreme Court:[15] whether a statement by a Minister, inconsistent with the rights of a citizen under Part III of the Constitution, constitutes a violation of such constitutional rights and is actionable as 'constitutional tort'? The question has to be seen in view of the observation of the *amicus curiae* in the case who was of the opinion that given the fact that the State acts through its functionaries, the official act of a Minister which violates the fundamental rights of the citizens, would make the State liable under constitutional tort, and that the principle of sovereign immunity of the State for the tortious acts of its servant has been held to be inapplicable in the case of violation of fundamental rights. The Supreme Court succinctly answered the question thus:[16]

> A *mere statement* made by a Minister, inconsistent with the rights of a citizen under Part III of the Constitution, may not constitute a violation of the constitutional rights and become actionable as

10 LQ/AllHC/2023/762.

11 Also see, *Janabai* v. *District Co-operative Election Authority*, 2023 SCC OnLine Bom 265 : (2023) 2 AIR Bom R 749 : (2023) 3 Mah LJ 386; *Dhanuka Agritech Ltd.* v. *Union of India*, 2023 SCC OnLine Del 554; *Shiv Komal Singh* v. *State of UP*, 2023 SCC OnLine All 649; *F Hoffmann-LA Roche Ltd.* v. *Drugs Controller General of India,* 2023 SCC OnLine Del 5615.

12 *Id*., para.1. Also see, *Karma Thupden Chopel Bhutia* v. *State of Sikkim*, LQ/SikHC/2023/41.

13 See generally, *Behera* v. *State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527; *Common Cause* v. *Union of India*, (1999) 6 SCC 667 : 1999 SCC (Cri) 1196

14 (2023) 4 SCC 1. Also see, *State of Assam, Represented by the Principal Secretary to the Govt. of Assam* v. *Abdul Rahman,* 2023 SCC OnLine Gau 3724.

15 There were four other questions before the court.

16 (2023) 4 SCC 1 at 146. Emphasis added.

> constitutional tort. *But if as a consequence of such a statement, any act of omission or commission is done by the officers resulting in harm or loss to a person/citizen, then the same may be actionable as a constitutional tort*.

This is an important addition to the existing jurisprudence on state liability for tortious act, specifically in cases of constitutional tort. Moreover, in an important observation, the High Court of Jammu and Kashmir and Ladakh explained the contours of constitutional tort thus:[17]

> Law is no more res integra that in public law, claim for compensation is available under Article 226 and Article 32 of the Constitution for the enforcement and protection of fundamental and human rights and that the said public law remedy for the purpose of grant of compensation can be resorted to when a fundamental right of the citizen available under Article 21 of the Constitution is violated. The said public law remedy based on strict liability made by resorting to a constitutional remedy for the enforcement of fundamental rights is distinct from and in addition to the remedy in private law for the damages in the tort. The public law remedy in fact has been held to be an invocation of a new tool with the courts which are the protectors of the fundamental rights of the citizens.

In *M. Prakash* v. *M. Vinayaka,*[18] High Court of Karnataka observed that lawful orders passed by the judicial authority are required to be scrupulously enforced by the Police. Failure to do so, constitutes a constitutional tort arising out of breach of a fundamental right of access to justice for victims of crime.

IV DEFAMATION

To quote Aristotle, "Be studious to preserve your reputation; if that be once lost, you are like a cancelled writing, of no value, and at best you do but survive your own funeral". It is well established that defamation is an injury to a man's reputation, and the right to reputation is an absolute right *in rem*, and anybody who touches the reputation of another is said to do so 'at his peril'. It is said that a man's reputation is his property, and, if possible, more valuable than other property.[19] For a civil remedy to lie against defamation the following ingredients must be fulfilled:[20]

i. The statements must be false and defamatory

ii. They must refer to the Plaintiff and

17 *Dawood Ahmad Bhat* v. *State of J and K*, 2023 SCC OnLine J and K 469.

18 ILR 2023 Kar 1655 : (2023) 3 Kant LJ 369 : (2023) 244 AIC 633.

19 *Dixon* v. *Holden* (1869)7 Eq. 488. Also see, Gerald R. Smith, "Of Malice and Men: The Law of Defamation", 27 *Val. U. L. Rev*. 39 (1992); Eric Descheemaeker, "Protecting Reputation: Defamation and Negligence" 29 *Oxford Journal of Legal Studies* 603-641 (2009); Andrew T. Kenyon, "What Conversation? Free Speech and Defamation Law" 73 *The Modern Law Review* 697-720 (2010).

20 *Dnyanesh Maharao* v. *Sanatan Sanstha, Thr. Managing Trustee*, 2023 SCC OnLine Bom 1602.

iii. The statements must be published by the Defendant.

'Reputation'

While emphasising the fact that the intrinsic facet of "Defamation" is harm to "reputation" or lowering the estimation of a person in public domain, High Court of Delhi at length discussed the concept of defamation and its relation to or reliance upon the concept of *reputation* in Major *General M.S. Ahluwalia* v. *Tehelka.Com.*[21] The court observed:[22]

> The distinction between character and reputation needs to be emphasized as it is reputation not character which the law aims to protect. Character is what a person really is; reputation is what he seems to be. One is composed of the sum of the principles and motives which govern his conduct. The other is the result of observation of his conduct, the character imputed to him by others. The right to reputation in its vital aspect, is not concerned with fame or distinction. It has regard, not to intellectual or other special acquirements, but to that repute which is slowly built up by integrity, honorable conduct, and right living. One's good name is therefore as truly the product of one's efforts as any physical possession; indeed, it alone gives the value as sources of happiness to material possessions. *It is, therefore, reputation alone that is vulnerable; character needs no adventitious support.*

Delhi high court in *XYZ* v. *Bharat Prakashan (Delhi) Ltd* [23] observed that right to reputation has been recognized as a fundamental right under Article 21 of the Constitution, and the right to freedom of speech and expression cannot be taken as an unfettered right so as to defame and tarnish the reputation of another person. The court reminded that fundamental right to freedom of speech has to be counterbalanced with the right of reputation of an individual.[24]

Statement made by advocates in courts

In *Pankaj Oswal* v. *Vikas Pahwa*[25] the word "*awara*" was used in written statement by the defendant's advocate for the plaintiff, and as such the defendant was sued in a civil suit for defamation raising the question: whether he is protected by an absolute privilege by virtue of his office of advocate. The high court therefore dealt *in extenso* with the question whether statement made by advocates during a judicial or *quasi* judicial proceeding entails civil liability for defamation. High Court of Delhi observed that as regards the statements made in judicial and *quasi*-judicial proceedings before courts, the same being protected as 'being privileged', a suit for defamation on the basis of statements in such proceedings is clearly not

21 2023 SCC OnLine Del 4275.

22 *Id*., para. 76.

23 2023 SCC OnLine Del 5069.

24 *Id*.,para.17. Also see, *Yusuffali Musaliam Veettil Abdul Kader* v. *Shajan Skariah,* 2023 SCC OnLine Del 8643.

25 2023 SCC OnLine Del 730.

maintainable.[26] In a well-written judgment studded[27] with precedents, both Indian and English, the high court deliberated upon the question and Mini Pushkarna, J. writing the judgment explicated the relevant principles with clarity and authority, and observed thus:[28]

> As regards civil liability for defamation…there is no statute in India dealing with civil liability for defamation. Thus, in the absence of statute law in India regarding civil liability for libel, it has been held that there is no reason why the English law applicable thereto should not be followed. Following the English law,…a person presenting a petition in a court is not liable in a civil suit for damages in respect of statements made therein which may be defamatory of the person complained against.

Outlining the rationale behind the dictum, Pushkarna, J observed that "statements and submissions made by a lawyer during the course of judicial proceedings is an *absolute privilege* and is a complete defence against any allegations of defamation. The justice system would be adversely affected if the lawyers were to be in fear of law themselves for any submission or statement made by them during the course of hearing of a case."[29] Absolute privilege is a special

26 The high court had dealt with a similar question previously also in *Anil Chaudhry* v. *Yakult Danone India (P) Ltd.*, (2019) 365 ELT 428 and .*B C. Rana* v. *Seema Katoch*, (2013) 198 DLT 35. In *Anil Chaudhry*, the high court was of the view that it is a settled law, that statements made in judicial and quasi-judicial proceedings before courts, authorities and tribunals are protected as being privileged. A suit for defamation on the basis of statements in such proceedings is clearly not maintainable. *Id*., para 32.

27 *Ram Jethmalani* v. *Subramaniam Swamy*, (2006) 87 DRJ 603; *Anil Chaudhry* v. *Yakult Danone India (P) Ltd*., (2019) 365 ELT 428; *B.C. Rana* v. *Seema Katoch*, (2013) 198 DLT 35; *Chunni Lal* v. *Narsingh Das*, ILR (1918) 40 All 341; *Sumat Prasad Jain* v. *Sheodatt Sharma*, AIR 1946 All 213; *Kamalini Manmade* v. *Union of India*, (1967) 69 Bom LR 512; *K. Daniel* v. *T. Hymavathy Amma*, AIR 1985 Ker 233; *Ram Kirat Kamkar* v. *Biseswar Nath*, AIR 1933 Pat 35; *Munster* v. *Lamb*, [LR] 11 QBD 588; *Madhab Chandra Ghose* v. *Nirod Chandra Ghose*, AIR 1939 Cal 477; *Atul Kumar Pandey* v. *Kumar Avinash*, (2020) 4 Cal LT 240.

28 *Pankaj Oswal* v. *Vikas Pahwa*, 2023 SCC OnLine Del 730.

29 *Id*., para 36. The court relied upon its judgment in *Ram Jethmalani* v. *Subramaniam Swamy* (2006) 87 DRJ 603, where the high court had reasoned thus: "Rationale of absolute privilege being restricted to court proceedings or proceedings before tribunals which have all the trappings of a civil court and parliamentary proceedings is that if threat of defamation suits loom large over the heads of lawyers, litigants, witnesses, Judges and Parliamentarians it would prohibit them from speaking freely and public interest would suffer." *Id*., para.95.

defence available in an action for defamation under the common law and it has been recognised by the Indian courts as well in a number of cases.[30]

Defamation by in-laws

In *Rarima R* v. *Rejulal K.V.*,[31] husband and father-in-law described a woman as mentally ill in public and statements were made by them stating the same in the pleadings submitted before the family court and uttered in the presence of others. The woman contended that such a statement tarnished her image and reputation in the society. It arguably reflected the malicious intention of her husband and father in law who made the statement in writing as well as orally. The court observed:

> …the husband and the father-in-law allegedly described the appellant as a mentally ill person. There was libel as well as slander. The cause of action for the appellant to claim compensation is the injury allegedly caused to her reputation on account of such libel and slander. It is an action for tort. A tort is a civil wrong and that by itself constitutes cause of action. Whether or not she is married to the [man], the alleged statements made by the respondents if defamatory, is a sufficient cause of action. When the sole reason for claiming compensation is such statements, the marital relationship between [her] and the [man] does not have any relevance or role in resolving such a dispute. The relationship between the appellant and the respondents would not make any impact in the ultimate decision.

Republication of defamatory statement

In the context of immunity available against charges of defamation, High Court of Bombay in *Serum Institute of India Pvt. Ltd.* v. *Yohan Tengra,*[32] observed that absolute privilege only applies to fair reporting of proceedings "by news papers", and only documents read/recorded in course of actual open judicial proceedings can be repeated. The court further added that the mere fact that the defamatory statement might have been made in a pleading/affidavit filed in the course of judicial proceedings does not give any entitlement to the defendant to

30 There is a principle of legal policy that puts a cloak of protection around what advocates and judges do in a court of law as has been observed by Lord Atkinson, whose relevant observation in *Rodriguez* v. *Speyer Bros.*, 1919 AC 59, also quoted by Pushkarna, J in *Pankal Oswal*, is worth reproducing here:

"…the well-established rule of law which throws the protection of an absolute privilege around the observations of a Judge while presiding in a court of justice, of an advocate while, speaking there on behalf of his client, of, a witness while giving his evidence there…. is also based upon a principle of public policy—namely, this, that it is more for the public good that private individuals should be made to suffer in pocket or repute by the observations of the individuals I have named than that these latter should, by the fear of hostile litigation, be deterred from speaking their mind freely when discharging their respective duties."

31 (2023) 1 KLJ 772 : (2023) 2 KLT 3 : (2023) 1 HLR 804 : (2023) 245 AIC 439 : AIR 2023 Ker 126 : (2023) 3 DMC 288.

32 2023 SCC OnLine Bom 1093.

repeat the same. The defendants have no immunity in an action for defamation. It was further held that every republication of a libel is a new libel and each publisher is answerable for his act to the same extent as if the defamatory statement originated with him.

V NEGLIGENCE

Negligence is the breach of a legal duty to take care.[33] Negligence in general and medical negligence in particular remain one such area of tort law where each year courts decide a plethora of cases which also deal with principles of vicarious liability and *res ipsa loquitur* so that justice may be done and liability may be fixed upon the wrong doer.[34] An act of negligence is integrally related the concept of 'duty of care' whose absence triggers fixation of liability. Cases of medical negligence come before the courts in plenty, and the courts rely upon the settled principles of law laid down in numerous prior cases. "Actionable negligence" consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property.[35]

Absence of 'duty of care'

In *Ansar* v. *State of Kerala,*[36] the victim, an eight standard student along with her younger sister was waiting at the bus-stop for boarding a bus for going to their school. After the bus reached the said bus-stop, her boarded the bus followed by two other girls. There was a rush for boarding the bus. When the victim girl tried to board the bus by putting her one leg on the footboard of the bus, the cleaner of the bus pushed her down with his hands while he was standing on the footboard of the bus. The girl fell down on the road and came under the left rear wheel of the bus. She sustained serious injuries including fracture of pelvis. The conductor of the bus rang the bell without waiting for the victim to properly board the bus which was then started by the driver upon hearing the ringing of the bell. The Supreme Court conclusively observed with reasons thus:[37]

> At that relevant time, the bus was overcrowded. There were a number of passengers waiting at the bus-stop. Therefore, it was the duty of

33 According to D D Basu, "…the general rule is that one who enters on the doing of anything attended with risk to the persons or property of others must use a reasonable measure of care and caution to guard against that risk.", See, Rabindra Kr. Pathak, *D D Basu's Law of Torts* (Kolkata, Kamal Law House, 2023). "Negligence ordinarily means breach of legal duty to care, but when used in the expression contributory negligence, it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an 'author of his own wrong'." See, *Bombay Electric Supply and Transport Undertaking* v. *Pradeep Gyanchandra Dubey*, 2023 SCC OnLine Bom 2342. Also see, *A. Biviji* v. *Sunita*, 2023 SCC OnLine SC 1363.

34 See, Andrew Robertson, "On the Function of the Law of Negligence" 33 *Oxford Journal of Legal Studies* 31-57 (2013).

35 *Heaven* v. *Pender* (1883)11 QBD 507.

36 (2023) 8 SCC 175.

37 *Id*. at 179.

> the …conductor to take care of the passengers. Hence, before he rang the bell and gave a signal to the driver to start the bus, he ought to have verified whether all passengers had safely boarded the bus. He could have ascertained this from …cleaner who was standing near the door of the bus. However, he did not take that precaution and care which he was under an obligation to take. Therefore, the [conductor] acted rashly and negligently as he did not perform his duty of being careful. [He] knew that at the relevant bus-stop, a large number of students were waiting to take the bus to reach their school and therefore, [he] ought to have verified whether all the passengers had properly boarded the bus before giving the signal to the driver. However, he did not verify whether the passengers had properly boarded the bus. Therefore, he is guilty of negligence as he failed to perform his duty.

Medical negligence

In *Ashish Kumar Chauhan* v. *Indian Army,*[38] the appellant was a radar operative/technician with the IAF, and was deployed at the India-Pakistan border during *Operation Parakram.* He fell sick whilst on duty during the *operation* and complained of weakness, anorexia and passing high coloured urine. He was admitted to the Army hospital where the doctor, a physician, advised him to undergo a blood transfusion. One unit of blood was therefore, transfused to the appellant, for the management of severe symptomatic anaemia. Notably, The military hospital facility did not have a licence for a blood bank but has been termed by the Indian Army as an "ad hoc blood bank". Moreover, neither any pathologist nor transfusion expert was posted at the facility as it was specifically opened up during *Operation Parakram*. This incident happened in 2002. In 2014, he fell sick again. During treatment, testing of his blood samples revealed that the appellant was suffering from Human Immunodeficiency Virus (HIV). It was found later on that in 2002, when one unit of blood was transfused to the appellant, whether Enzyme Linked Immunosorbent Assay (Elisa) test was conducted before infusing the blood in the appellant's body was conspicuously absent from that medical case sheet. And, in terms of the Medical Board proceedings, the appellant's disability was attributable to service owing transfusion of one unit of blood at the Military Hospital in 2002.

The Supreme Court while reiterating that the *Bolam Test*[39] has gained widespread acceptance and application in Indian jurisprudence observed that it finds resonance in several decisions.[40] The court further emphasised that the Test has been a "bulwark principle in deciding medical (and professional negligence)

38 (2023) 15 SCC 152.

39 *Bolam* v. *Friern Hospital Management Committee* (1957) 1 WLR 582.

40 See, *Arun Kumar Manglik* v. *Chirayu Health and Medicare (P) Ltd.*, (2019) 7 SCC 401 where the Supreme Court stated that "Our law must take into account advances in medical science and ensure that a patient-centric approach is adopted. The standard of care as enunciated in *Bolam case* must evolve in consonance with its subsequent interpretation by English and Indian Courts."*Id*. at 421.

cases, it must adapt and be in tune with the pronouncements relating to Article 21 of the Constitution and the right to health in general."[41] The court concluded that there was a "systemic failure" in ensuring a safe transfusion of blood to the appellant, and that the facts established negligence, and therefore vicarious liability, on the part of the Indian Army. The said that the facts and circumstances of the case, in the opinion of this court, proved and established that by reasonable standards of evidence, the appellant had justified the invocation of the principle of *res ipsa loquitur*.[42]

Contributory negligence and composite negligence

In *Divisional Manager, National Insurance Co. Ltd*. v. *Hemlata*[43], High Court of Bombay had the occasion aarising out of the facts of the case before it to explain the difference between contributory negligence and composite negligence which it did thus:[44]

> The principle underlying the doctrine of contributory negligence is the application of the maxim '*in pari delicto, potior est conditio defendentis*' which means when both parties are equally to blame, neither can hold the other liable. There is clear difference between 'contributory negligence' and 'composite negligence'. Where a person is injured without any act or omission from his part, but as a combined effect of the negligence of two or more persons it is a case of 'composite negligence' and not a case of 'contributory negligence'. The expression 'contributory negligence' applies solely to the conduct of the claimant, in a case of personal injury and in case of compensation for death it applies to the conduct of the victim. It means that there was an act or omission from the part of the injured claimant or victim, which has materially contributed to the damage.

In *Bombay Electric Supply and Transport Undertaking* v. *Pradeep Gyanchandra Dubey*[45], High Court of Bombay quoted a previous precedent of the Supreme Court where the concept of negligence and contributory negligence was delineated upon with perspicuity thus: "the question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused and is of such a nature that it may be properly described as negligence."[46]

VI NUISANCE

According to Spencer, the word "nuisance" comes from the Norman-French word "nuisance", which in turn comes from the Latin *nocumentum*. The word

41 *Ashish Kumar Chauhan* v. *Indian Army*, (2023) 15 SCC 152 at 191.

42 See, Charlesworth and Percy, *Negligence* (Sweet and Maxwell, 2018).

43 (2023) 4 AIR Bom R 663.

44 *Id*., para. 18.

45 2023 SCC OnLine Bom 2342.

46 *Id*., para.23.

originally meant no more than "harm".[47] Notably, though the word "nuisance" is not defined, it can be inferred from the context.[48] In *Rajesh Sinary* v. *State of Goa,*[49] High Court of Bombay, in the context of use of loud music and binding precedent[50] prohibiting the use of loudspeaker after a fixed time, said:[51]

> None can claim a right to create noise even in his own premises which would travel beyond his precincts and cause a nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is a nuisance…noise is defined as unwanted sound. Sound which pleases the listeners is music and that which causes pain and annoyance is noise. At times, what is music for some can be noise for others.

VII MOTOR VEHICLES ACT, 1988

The Parliament enacted the Motor Vehicles Act, 1988 having its root in Entry 35 of the Concurrent List.In *IFFCO Tokio General Insurance Co. Ltd* v. *Geeta Devi*[52] The deceased suffered fatal injuries when a Tempo vehicle driven in a rash and negligent manner, hit his motorcycle. His dependents, *viz*., his parents, widow and children, approached the Motor Accident Claims Tribunal, Rohini Courts, Delhi, under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act of 1988'), seeking compensation. Notably, it was found that licence of the driver was a fake one. The tribunal held in their favour and awarded them a sum of Rs. 13,70,000/- as compensation with interest. However, the tribunal found that the driver of the Tempo had a fake driving licence and observed that the petitioner-insurance company would not be liable to pay the compensation. When the case finally came before the Supreme Court, the court observed that:

> As regards the contention that the driver of the vehicle was not duly licensed as he possessed a fake license, it may be noted that neither Section 149(2)(a)(ii) of the Act of 1988 nor the 'Driver Clause' in the subject insurance policy provide that the owner of the insured vehicle must, as a rule, get the driving licence of the person employed as a driver for the said vehicle verified and checked with the concerned transport authorities. Generally, and as a matter of course, no person employing a driver would undertake such a verification exercise and would be satisfied with the production of a licence issued by a seemingly competent authority, the validity of which has not expired. It would be wholly impracticable for every person

47 See, J. R. Spencer, "Public Nuisance. A Critical Examination" 48 *Cambridge Law Journal* 55-84(1989)

48 Basu *op.cit*.

49 (2023) 3 HCC (Bom) 1

50 *Noise Pollution (V), In re*, (2005) 5 SCC 733.

51 (2023) 3 HCC (Bom) 1 at 11.

52 2023 SCC OnLine SC 1398.

employing a driver to expect the transport authority concerned to verify and confirm whether the driving licence produced by that driver is a valid and genuine one, subject to just exceptions.

VIII CONCLUSION

A careful reflection upon the cases discussed here shows that there is growing dearth of in depth and conceptual analysis of some of the important concepts of tort law. There were few cases where the courts delineated upon the some of the basic principles relying upon the past judicial precedents laid down by the Supreme Court. Even in cases where courts had the occasion to reflect upon and analyse the concepts and precepts of tort law, there was a perceptible lack of detailed discussion barring few cases where the courts did explain the principles and their applications. It is important for the growth of tort law that courts through judicial writings should buttress the jurisprudential foundation of the law of tort. The ever-widening ambit of tort law in contemporary times provides ample opportunity for law-making through judicial precedents. Maybe, in near future, owing to the rise of artificial intelligence and other technological innovations, courts will have occasion to recast the old, and innovate new, precepts of tort law.