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TORT LAW

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I INTRODUCTION

THE LAW of torts has a long history and predates criminal law. In ancient communities, it was the law of wrongs, or, as Maine says, the technical term 'tort', not the law of crimes. Subsequent periods saw the state coming into existence, and a stage emerged when a wrong could be redressed by thewrongdoerpaying compensation to the person who would suffer from the act of wrongdoing. In modern times, the State's role has become significant. The advent of vicarious liability of the state and constitutional tort widened the sphere of tortious liability. And, courts have played a significant role since the formative years of the law of tort, fixing liability of individuals and the state. An attentive analysis of some of the landmark cases of tortious liability over the years shows how courts have been able to respond to changing social milieu, and it has to be so, as Friedmann says that this branch of the law must strongly reflect changing social conditions and the principles of liability are greatly influenced by changing moral and social ideas.[1] The year under survey shows how courts have safeguarde*d* the founding principles of tort law in numerous cases, some of which were notable and therefore find a place in the ensuing discussion.

II TORTIOUS LIABILITY

Tortious liability arises from the breach of a duty primarily fixed by law, owed to persons generally. Breach of duty is redressable by an action for unliquidated damages.[2] One of the founding principles of fixing tortious liability is the age-old maxim *res ipsa loquitor*. There has been a slew of precedents in which the principle underlying the maxim has been applied and explicated. In one such case, *Municipal*

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1 Winfield and Jolowicz, *Tort* (Sweet & Maxwell, 2025); *Also see*, A L Goodhart, "The Foundation of Tortious Liability", 11 *Modern Law Review*1-13(1938); Peter Cane, "Justice and Justification for Tort Liability", *Oxford Journal of Legal Studies* 30-62 (1982).

2 2024 SCC OnLine Del 9332.

Corporation of Delhi v. *Gurbachan Kaur*[3], the deceased was injured by stray cattle on the public road. A cow, without any provocation, became aggressive and attacked the deceased with its horns and hooves. As a result of the attack, he sustained grievous injuries, including severe injuries to his head, face, mouth, eyes and ribs. In hospital, the deceased succumbed to his injuries. The respondent (plaintiffs) filed a suit seeking compensation and contended that the incident occurred due to the negligence of the local municipal authorities, who failed to prevent stray cattle from roaming on public roads, and that this negligence and failure of the Municipal Corporation of Delhi to abide by the statutory duty directly led to the fatal injuries sustained by the deceased. The trial court decreed the suit in favour of the respondent (plaintiffs), awarding them a sum of Rs 4,80,000 as compensation. MCD moved to the High Court of Delhi against the award of compensation. The respondent drew the attention of the court to section 298 of the Delhi Municipal Corporation Act, 1957, which *inter alia* provides that all public streets in Delhi are vested with the MCD, envisaging its responsibility to maintain the roads in a safe condition, including not allowing stray animals and cattle on these roads, endangering the lives of citizens.

The high court took note of various decisions passed by the courts regarding compensation for death caused by negligence of *statutory authorities*[4], where the courts had fixed liability relying upon the principle encapsulated in the maxim *res ipsa loquitur.*[5] In *Dipali Tripura* v. *State of Tripura*, the court elaborated upon the principle thus: "Said principle in law of Tort fastens the liability upon the defendant(s) for damages when harm is caused to somebody due to negligent act or omission on the part of somebody else which would not have occurred in ordinary course except for such negligent act or omission to take care of such object which has caused the harm and which was solely under his/their control."[6]

3 *Shakuntala* v. *State (NCT of Delhi),*2009 SCC OnLine Del 1736; *Shyam Sunder* v. *State of Rajasthan*, (1974) 1 SCC 690; *Kasturi Lal Ralia Ram Jain* v. *State of U.P.*, 1964 SCC OnLine SC 38 : AIR 1965 SC 1039 : (1965) 1 SCR 375 : (1965) 2 SCJ 318; *David Kawananakoa* v. *Ellen Albertina Polyblank*, 1907 SCC OnLine USSC 94 : 205 US 349 (1907), 353; *MCD* v. *Subhagwanti*, 1966 SCC OnLine SC 22; *Davies* v. *Powell Duffryn Associated Collieries Ltd.*, 1942 AC 601

4 "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference immediately arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence tells its own story of negligence on the part of the defendant, the story so told being clear and unambiguous. To these cases the maxim *res ipsa loquitur* applies. Where the doctrine applies, a presumption of fault is raised against the defendant, which, if he is to succeed in his defence, must be overcome by contrary evidence, the burden on the defendant being to show how the act complained of could reasonably happen without negligence on his part." See, *Halsbury's Laws of England*, Vol. 23, 671 (2nd edn., 1936).

5 *Id.*, para. 9.

6 2024 SCC OnLine SC 3069. Also see, *Bherulal Bhimaji Oswal* v. *Madhusudan N. Kumbhare*, 2024 SCC OnLine SC 3821; *Haryana Urban Development Authority* v. *Abhishek Gupta*, 2024 SCC OnLine SC 2991.

In *Neeraj Sud* v. *Jaswinder Singh*[7], the Supreme Court cautioned that in a case relating to medical negligence, simply for the reason that the patient has not responded favourably to the surgery or the treatment administered by a doctor or that the surgery has failed, the doctor cannot be held liable for medical negligence straightway by applying the doctrine of *res ipsa loquitor* unless it is established by evidence that the doctor failed to exercise the due skill possessed by him in discharging of his duties. It is a significant addition to the application and import of the principles underlying the maxim.

III CONSTITUTIONAL TORT

In *Shagufta Ali* v. *Government of NCT of Delhi*[8], *the* High Court of Delhi was called upon to adjudicate the dispute pertaining to the claim for compensation on account of the unfortunate death of the petitioner's husband due to electrocution. The question before the court was: whether the extraordinary jurisdiction of this court under article 226 of the Constitution could be invoked by a dependent of the deceased for seeking compensation on account of death due to electrocution? The high court, while holding that a public law remedy can be resorted to and monetary compensation can also be awarded in cases of violation of article 21 of the Constitution of India, observed thus:[9]

> …a claim for compensation for the contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for the enforcement and protection of such rights in public law. Moreover, such a claim based on strict liability made by resorting to a constitutional remedy envisaged for the enforcement of a fundamental right has been held to be distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. *Since the defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights, there could be no question of such a defence being available in the enforcement of a constitutional remedy.*

In this case, the high court also dwelt upon the maxim *res ipsa loquitor* in detail in the context of the negligence and duty incumbent upon the State, and said:[10]

> …where the negligence and breach of duty by the State are manifestly evident, the maxim *res ipsa loquitur* shall apply. When the State is under a statutory duty of care and fails to fulfil such duty, the presumption of liability without proof will also arise. In such cases, it is practically not possible for the aggrieved persons to gather positive evidence of negligence, and therefore, the doctrine of *res*

7 2024 SCC OnLine Del 6250.
8 *Id*., para 18. Emphasis added.
9 *Id*., para. 46.
10 *Surmila* v. *Commissioner of Police*, 2024 SCC OnLine Del 6551.

> *ipsa loquitur* comes to the rescue and helps in overcoming the formal evidentiary burden. However, the same is subject to the proof of foundational facts and manifest negligence.

In a case[11] where there were allegations against the neighbours for creating a nuisance[12], the High Court of Delhi observed that such a claim constitutes a private tort of nuisance, which would need to be adjudicated by a competent civil court if the petitioner were to seek relief on that ground. The high court said it lacked jurisdiction to determine private tort claims under article 226 of the Constitution.

IV PRINCIPLE OF STRICT LIABILITY[13]

In *Union of India* v. *Kartik Dip*[14], the deceased was travelling in the Samaleswari Express. She accidentally fell from the running train and succumbed to injuries. Her parent sought compensation by filing an application under Section 16 of the Railways Claims Tribunal Act, 1987, describing the death as an "untoward incident". Section 124A of the Railways Act, 1989, provides for compensation for untoward incidents. Notably, the parents stated that the deceased had a general class express ticket for the journey, which was lost during the accident. The appellant, i.e. Union of India, contended that the deceased was not a bona fide passenger since no valid ticket was recovered from her possession. They stated that the claim of a purchased ticket was unsubstantiated and lacked documentary proof. Railway Claims Tribunal concluded that the death of the deceased was indeed caused by an accidental fall from the running train, as was corroborated by the FIR, inquest report, post-mortem report, and final police report— all of which pointed to the fall as the cause of death. Moreover, post-mortem findings confirmed severe injuries consistent with a fall from a running train. The tribunal, therefore, awarded compensation, against which the appellant approached the high court, which upheld the compensation order of the tribunal, and while doing so made the following pertinent observations:[15]

> The emergence of the Welfare State heralded a transformative shift in legal philosophy, steering jurisprudence away from the rigidity of positivism toward the more human-centred ideals of sociological jurisprudence. In this context, certain lawful activities in an industrial society, laden with inherent risks to the public, demanded a recalibration of legal doctrines to uphold societal justice. The principle of strict liability, or no-fault liability, arose as a landmark departure from the traditional tort law axiom that liability arises only from fault.

11 The narrow public street in front of the plaintiff's house was being utilised for parking vehicles by certain neighbours.

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

13 2024 SCC OnLine Ori 2865.

14 *Id*., para. 10.

15 *Id*., para 11.

The court further elaborated:[16]

> This doctrine, profound in its implications, reflects the ethical responsibility of individuals and institutions to safeguard the collective welfare when engaging in inherently hazardous activities. It recognises that in a complex and interdependent society, the costs of industrial progress and public utility cannot fall solely on the injured. By placing the burden of compensation on those who undertake such activities, strict liability embodies a moral and social compact, a recognition that the law must act as a shield for the vulnerable, ensuring that harm, when inevitable, does not leave its victims without redress.

The court observed that there is a wealth of judicial authority affirming that section 124-A of the Railways Act, 1989, imposes strict liability on the Railways, embodying the legislative intent to prioritise the welfare and protection of passengers over technical defences.[17]

V DEFAMATION

The question of defamation is primarily linked to one's reputation that commands among one's fellow beings, and it is the infringement of this right to have one's reputation preserved intact, and that gives the cause of action.[18] The law of defamation, like every other branch of law of torts, expects a balancing of interests between the right of a person to enjoy his reputation and the freedom of speech and expression available to another.[19]

'Context' of speech

In *Nipun Malhotra* v. *Sony Pictures Films India Private Limited*[20], Chandrachud, CJ, reflected upon the role of context in cases of derogatory speeches and stereotypes. The case pertained to the portrayal in a film of people suffering from certain disabilities. Relying upon the writing of Jeremy Waldron, he underscored the "importance of the 'context' of speech as paramount in deciding the validity of restraints on it." According to him, "Derogatory speech and stereotypes usually target the marginalised. The impact of the speech on human dignity, the identity of the speaker and the target, and the linguistic connotations of the speech may be considered in deciding issues around stereotypical speech."[21] In this case, the appellant was aggrieved by the manner in which persons with disabilities have been portrayed in the movie titled '*Aankh Micholi'*. A part of the judgment deals with the jurisprudential aspect of *hate speech* and *group defamation*

16 *Id*., para.12.
17 *Subhan Khan* v. *Afroz*, 2024 SCC OnLineKar 79.
18 *Khanjan JagadishkumarThakkar* v. *Waahiid Ali Khan*, 2024 SCC OnLineBom 1079
19 2024 SCC OnLine SC 1639
20 *Id*., para.27
21 Ronald Dworkin, "Foreword", in Hare and Weinstein (eds)., *Extreme Speech and Democracy*, v-ix.(Oxford UniversityPress, 2009); Jeremy Waldron, *TheHarm in Hate Speech*,175 (Harvard UniversityPress Cambridge, Massachusetts London, England, 2012); John Stuart Mill, *On Liberty* (PenguinBooks, 1982)

laws, drawing upon the writing of Ronald Dworkin, John Stuart Mill and Jeremy Waldron.[22] Chandrachud, CJ, favours the view of Waldron *vis-à-vis* the views of Dworkin and Mills, and observes with respect to hate speech, "This affront to one's dignity and objective treatment by society, rather than the more subjective notion of the 'effect on one's feelings' by way of such speech must be curbed."[23]

Legal malice

In *Mahaveer Singhvi* v. *Hindustan Times Ltd.*[24], the plaintiff, in his student life, was a well-known figure of Rajasthan, and various newspapers continuously highlighted his scholastic achievements for an extraordinarily brilliant academic record. He was selected twice for the Union Civil Services and in the year 1999, was appointed to the Indian Foreign Service. He filed suits seeking compensation/damages in the sum of Rs 5 crores each for loss of his reputation, against the defendants, which included the newspaper *Hindustan Times*, its reporter and editor, for publishing an article titled "IFS probationer sacked after tapes 'prove' misconduct". Moreover, similar news was also published in the Hindi Edition of the Newspaper *Hindustan* under the caption "shadi se inkarkarne par adhikari ne yuvti ka jeena haram kiya". The plaintiff contended that there was not even an iota of truth in the facts mentioned in these articles regarding the obnoxious conversation with a woman on tape and the abusive and expletive language used by the plaintiff. He further stated that such a conversation never took place with any woman at any point in time, despite which defamatory facts were published in this regard with the ulterior motive of defaming him in public. According to him, it was a cooked-up story. Relying upon a plethora of past precedents, the court said that, in essence, any statement which has a tendency to injure the *reputation* of the person or lower him in the estimation of members of the society results in loss of reputation and is consequently defamatory.[25] Deliberating upon the concept of *legal malice*, the court said:[26]

> The law of defamation in the civil context provides that even the words spoken without ill will may be actionable, and in such cases, the malice is *implied* in the act of speaking or publication. This kind of malice is called "legal malice" or "malice in law". It is said to exist in speaking defamatory matter without legal excuse, because such words are spoken wherein the law implies malice. Thus, the legal malice is a fiction which is implied from the circumstances.

22 2024 SCC OnLine SC 1639, para.26. Also see, Johnny Holschuh,"Utilizing Torts to Combat Hate Speech in Online Social Media", 82 *University of Cincinnati Law Review* 953 (2018).

23 (2024) 3 HCC (Del) 595.

24 *Id*. at 613.

25 *Ibid*. "…in civil proceedings, the malicious intention of a person making an imputation is immaterial; when a statement is untrue and is defamatory by its very nature as there is a presumption of "malice in law"." *Id*. at 614.

26 *Id*. at 614.

The court stated that the court concerned needs to consider:[27]

> …whether the averments made in the plaint come within the contours of "malice in law", i.e. whether it has a tendency to injure the reputation of the person or lower him in the estimation of members of the society, results in loss of reputation and is consequently defamatory. For this, the malicious intention of a person making an imputation is immaterial. Also, some evidence of loss of reputation is necessary. While so adjudicating, the court cannot concern itself with the trifles or mere vulgarity which, though may be distasteful, essentially lacks the potential of being injurious.

The court concluded that the newspaper articles had, in a neutral/truthful manner, simply reported the news on the basis of the information collected from the verified sources, and that the reply that was subsequently filed by the Union of India corroborated the truthfulness of the reported news. Therefore, it could not be said that the reporting was either malicious or not made in good faith. And, the articles were held not to be defamatory.

Trade libel/ malicious falsehood

In *Zydus Wellness Products Ltd.* v. *Prashant Desai*[28]*,* the plaintiff sought to restrain the defendant and all those acting on his behalf from infringing upon/ disparaging and/or denigrating the mark namely 'COMPLAN'/'COMPLAN PISTA BADAM' registered in the plaintiff's name, which is one of the country's biggest food and nutrition products company and had adopted mark 'COMPLAN' in the year 1956 through its predecessors and started using the same since the year 1994. Delhi High Court passed an order in favour of the plaintiff, and reiterated essential ingredients of the tort of *trade libel*, variedly referred to as *slander of goods*, *malicious falsehood* or even *injurious falsehood*. The Court said that for a plaintiff to succeed in an action based on malicious falsehood, the necessary ingredients are:[29]

(i) a false statement is made which is calculated to cause financial damage;

(ii) the statement is made maliciously with an intent to cause injury;

(iii) the impugned statement has resulted in special damage, unlike defamation, in which the falsehood of the statement is presumed, and it is for the defendant to prove that the statement is true.

VI NEGLIGENCE

The three essential components of negligence consist of *duty*, *breach* of duty and resulting *damage*. In *Smti Debirung Aslong* v. *State of Tripura*[30], the plaintiff was the mother of the deceased, who, along with two friends and others,

27 (2024) 100 PTC 425

28 *Id*., para. 60. Also see, *Dabur India Limited* v. *Colortek Meghalaya Pvt. Ltd.*, 2009 SCC OnLine Del 3940 and *Hindustan Unilever Limited* v. *Cavincare Private Ltd.*, (2010) 44 PTC 270 (Del).

29 LQ/TriHC/2024/770.

30 2024 SCC OnLine Bom 650

was playing football in the playground of the School. According to her, when the deceased was running with the football, suddenly he fell into an abandoned ring well, situated inside the said school compound and did not come out therefrom, and to save him, his friend thereafter got down into the well and he also did not come out and then their other friend went inside the well to rescue his two friends and he also did not come out. The dead bodies of three of them were taken out of the well by the Fire Service, and they had died of suffocation by methyl gas emitted from the well. The plaintiff alleged that the school authority, or rather the defendants, were in charge of the management and control of the said abandoned ring well, and they left it in an uncared condition without any fencing or protection, wherefore the said incident occurred. The plaintiff had her claim based upon the provision of section 1(A) of the Fatal Accident Act, 1855.

Having taken into account all the relevant facts, the court was of the view that the well was inside the School compound and it was lying in an abandoned and uncared condition without taking any protective measures thereon, for which ultimately three innocent youths lost their lives. Moreover, the court said that it was the duty of the school authority to take proper care and caution in maintaining said well in such a manner that no such incident could occur, but the defendants failed in their duties, and it showed their neglect and default. Therefore, they were held responsible for paying damages to the plaintiffs.

Professional negligence

In *State of Maharashtra* v. *Anil Pinto,*[31] the High Court of Bombay observed that dealing with negligence as a tort, professional negligence consists in the neglect of the use of ordinary care and 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.[32] The court laid down the following principle for fixing liability for professional negligence:[33]

> …a professional may be held liable for negligence on one of 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, and 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, and it is not necessary for every professional to possess the highest level of expertise in that "branch which he practices."

However, the court did mention that a mere deviation from normal professional practice is not evidence of negligence. An error of judgment on the part of a professional is also not negligence per se.[34]

31 *Id*., para.74.
32 *Id*., para.80.
33 *Id*., para.84.
34 *Id*., para.86.

Medical negligence

While emphasising the fact that negligence in cases of medical professionals "calls for a different treatment", the high court in *Anil Pinto* was of the considered view that:[35]

> To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. *A case of occupational negligence is different from one of professional negligence*. A simple lack of care, an error of judgment or an accident is not proof of negligence on the part of a medical professional. *So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence* merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.

Following the well-settled principles of liability in cases of medical negligence, different high courts and the Supreme Court decided cases where medical negligence was alleged on the part of the doctor or the hospital. In one such case, *P C Jain* v. *R P Singh, the doctor was found guilty of medical negligence by the Ethics Committee of the Medical Council of India (MCI), which conducted an enquiry into allegations of medical negligence against Dr R P Singh,* who was directed to pay compensation to P C Jain. The negligence on the part of the doctor had resulted in the loss of vision of the plaintiff.

VII JUST COMPENSATION

In *K.S. Muralidhar* v. *R. Subbulakshmi*[36]*,* Justice Karol dwelt upon the concept of just compensation, underscoring the difficulty in computation in cases of awarding non-pecuniary damages, because there is no manner in which such determination lends itself to formulaic ciphering. He said: "Every person in life has undertaken certain steps towards the realisation of dreams, held goals and aspirations, and when they end up in such an unfortunate situation, where, for no fault of theirs, the trajectories of their lives are forever altered. Although abstract in the written word, these factors form a large part of the '*pain and suffering*' one undergoes apart from the manifested disability, which may be visible to another person."[37]

The appellant was travelling in his company's vehicle towards his place of employment and collided with a container that was being driven rashly and negligently. As a result, he suffered injuries, causing substantial disability. The two issues before the court related to rash and negligent driving and the quantum of compensation. Notably, both the tribunal and the high court from where the

35 2024 SCC OnLine SC 3385.
36 *Id.*, para. 3.
37 Sloan, Bovbjerg and Blumstein, "Valuing Life and Limb in Tort: Scheduling 'Pain and Suffering'", *Northwestern University Law Review* (1989).

matter came before the Supreme Court noted that the disability suffered was to the extent of 100%. Relying upon writings, judicial and academic, Justice Karol observed that it is unquestionable that the sense of something being irreparably wrong in life and vulnerability and futility is present, and such a feeling will be present for the remainder of his natural life. The Supreme Court thus modified the compensation awarded by the high court on two grounds: *future prospects* and '*pain and suffering*'. Justice Karol approvingly quotes Sloan, Bovbjerg and Blumstein:[38]

> Pain and suffering and other intangible or non-economic losses are even more problematic. Physical pain and attendant suffering have for centuries been recognised as legitimate elements of damages, and "modern" tort law has seen a marked expansion of the rights to recover for forms of mental anguish.

Justice Karol in *Jyoti Devi* v. *SuketHospital*[39], a case relating to payment of damages, reiterated the *eggshell skull rule* and explained its conceptual contours thus:[40]

> This rule…holds the injurer liable for damages that exceed the amount that would normally be expected to occur. It is a common law doctrine that makes a defendant liable for the plaintiff's unforeseeable and uncommon reactions to the defendant's negligent or intentional tort. In simple terms, a person who has an eggshell skull is one who would be more severely impacted by an act that an otherwise "*normal person*" would be able to withstand. Hence, the term eggshell to denote this as an eggshell is, by its very nature, brittle. It is otherwise termed as "*taking the victim as one finds them*", and, therefore, a doer of an act would be liable for the otherwise more severe impact that such an act may have on the victim.

As regards the question of just compensation, the Court observed that the idea of compensation is based on *restitutio in integrum*, which means making good the loss suffered, so far as money is able to do so. In other words, it implies taking the receiver of such compensation back to a position, as if the loss or injury suffered by them had not occurred.[41]

38 (2024) 8 SCC 655.

39 *Id*. at 661.

40 As the court rightly referred to previous precedents where it has been settled that for a compensation to be just, it is important that it must be, (i) adequate; (ii) fair; and (iii) equitable, in the facts and circumstances of each case. See, *Sarla Verma* v. *DTC*, (2009) 6 SCC 121, *Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327, *V. Krishnakumar* v. *State of T.N.*, (2015) 9 SCC 388: (2015) 4 SCC (Civ) 546, *Nand Kishore Prasad* v. *Mohib Hamidi*, (2019) 6 SCC 512: (2019) 3 SCC (Civ) 343.

41 2024 SCC OnLine SC 2337

VIII MOTOR VEHICLES ACT, 1988

Meaning of 'owner' and resultant liability

In *Vaibhav Jain* v. *Hindustan Motors (P) Ltd*[42]., the Supreme Court observed that "owner" of a vehicle is not limited to the categories specified in section 2(30) of the MV Act. *If the context so requires*, even a person at whose command or control the vehicle is, could be treated as its owner for the purposes of fixing tortious liability for payment of compensation.[43]In this case, a claim petition for death compensation was filed before the Tribunal by *respondent* (claimants and legal heirs of the deceased who died in the accident) under section 166 of the Motor Vehicles Act, 1988 against driver of the offending vehicle, Hindustan Motors Pvt. Ltd. (manufacturer of the vehicle); and Vaibhav Jain (proprietor of Vaibhav Motors and the *appellant*). Notably, the driver and the deceased were employees of Hindustan Motors. The accident took place when the vehicle was taken out for a test drive from the dealership of the appellant, who was a dealer for the manufacturer of the vehicle, *i.e.*, Hindustan Motors. The significant question before the Tribunal was: whether prior to the accident, Hindustan Motors had sold the offending vehicle to Vaibhav Motors (*i.e.,* the dealer)? If not, whether the dealer can be held liable for the compensation, jointly and severally, with M/s Hindustan Motors?

The tribunal concluded that, as regards the issue of ownership of the vehicle, on the day of the accident, M/s Hindustan Motors was the owner of the vehicle, though Vaibhav Motors was in possession of the vehicle as its *dealer*. Therefore, the Tribunal held that Hindustan Motors as well as Vaibhav Motors (the appellant) were jointly and severally liable for the compensation awarded.

Aggrieved by the quantum of compensation awarded, the claimants preferred a Miscellaneous application before the high court; whereas the dealer (the appellant) questioned the award to the extent it made him jointly and severally liable for payment of the compensation. Hearing both the appeals together, the

42 *Id*., para 19. The Court did mention that the clause defining "owner" is prefaced with the expression "unless the context otherwise requires" and, therefore, in the light of the decision in *Ramesh Mehta* v. *Sanwal Chand Singhvi*, (2004) 5 SCC 409, it was held that where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned. *Id*., para. 27. While deliberating upon fixing of tortious liability, the Court relied upon the following observation in *Rajasthan SRTC* v. *Kailash Nath Kothari*, (1997) 7 SCC 481:

"17. … The general proposition of law and the presumption arising therefrom that an employer, that is the person who has the right to hire and fire the employee, is generally responsible vicariously for the tort committed by the employee concerned during the course of his employment and within the scope of his authority, is a rebuttable presumption. If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the case may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner." *Id*. at 488.

43 *Id*., para. 23. Emphasis added.

high court enhanced the compensation of the claimants and dismissed the appellant's appeal. Aggrieved, the appellant approached the Supreme Court, and argued that *first*, on the date of accident, the owner of the offending vehicle was its manufacturer Hindustan Motors in whose name the vehicle was temporarily registered and there was no evidence that the vehicle was transferred to the appellant, and *second*, that the driver of the vehicle and the deceased were both employees of M/s Hindustan Motors and they took the vehicle from the dealership for a test drive, therefore, the vehicle, at the time of accident, was in the control and possession of Hindustan Motors through its employees. It was further argued that the liability for compensation is of the owner of the vehicle, including the driver. Section 2(30) of the MV Act defines the "owner" as a person in whose name a motor vehicle stands registered. Therefore, the appellant further contended, thedealership agreement between the appellant and Hindustan Motors was neither an agreement of hire-purchase nor of lease or hypothecation; therefore, even if the dealer was taken to be in constructive possession of the vehicle, the dealer would not be its owner within the meaning of section 2(30) of the MV Act. On the other hand, Hindustan Motors averred that they had sold the vehicle to the appellant for an amount of Rs 7,73,475, and the car bearing temporary registration number was delivered to the appellant on a principal-to-principal basis. As the sale stood complete in all respects, it was argued, the appellant was the owner of the vehicle on the date of the accident. In view of the settled precedents and the facts before the court, it was held thus:[44]

> As per the finding of the Tribunal, which remained undisturbed, the aforesaid two employees of M/s Hindustan Motors took the vehicle from M/s Vaibhav Motors (the appellant) for a test drive. None of the employees of the dealer was present in the vehicle. Rather, at the time of the accident, the driver and the co-passenger of that vehicle were employees of M/s Hindustan Motors. There is nothing on record to suggest that the dealer had the authority to deny those two persons permission to take the vehicle for a test drive. More so, when they were representatives of the owner of the vehicle,in these circumstances, … at the time of the accident, the vehicle was not only under the ownership of M/s Hindustan Motors but also under its control and command through its employees. Therefore, in our view, the appellant, being just a dealer of M/s Hindustan Motors, was not liable for compensation as an owner of the vehicle.

Motor accident and contributory negligence

In *PremLal Anand* v. *Narendra Kumar*[45], the appellant (claimant) was riding a bike along with his wife. While overtaking a tractor on the road, they were faced with two rashly and speedily driven tractors, resulting in an accident. The claimant

44 (2024) 9 SCC 441: (2025) 1 SCC (Cri) 127in

45 Michael L. Rustad, "Twenty-First-Century Tort Theories: The Internalist/Externalist Debate", 88 *Indiana Law Journal* 430 (2013)

sustained several injuries, whereas his wife died on the spot. Negating any element of contributing negligence on the part of the claimant, the Supreme Court was of the view that, in view of the facts and circumstances of the case, merely because a person was attempting to overtake a vehicle, it cannot be said to be an act of rashness or negligence, with nothing to the contrary suggested from the record. The appellant was doing something, *i.e.,* overtaking a vehicle, which is a common occurrence on the road. It was the tractor that was being driven rashly and negligently.

IX CONCLUSION

The year under survey had cases coming before the courts on some of the important areas of tort law. There has, however, been a surge in cases of constitutional tort and tortious liability arising out of wrongdoing taking place on social media. As the cases relating to cyber tort and misuse of technology are on the rise, the growth of tort law is inevitable in these new emerging areas. The modern tort theory, Rustad rightly says, "must account for evolving cyber torts in an increasingly cross-border legal environment, where tortfeasors can defame, invade privacy, and misappropriate trade secrets at the click of a mouse in hundreds of jurisdictions simultaneously."[46] Tort jurisprudence has been enriched in its succeeding periods of development by the changes sweeping the society. In the years to come, courts will have to play a pivotal role in buttressing their foundations and ensuring their growth to deal with new problems of life and law.