

CHAPTER 3

CIVIL REMEDIES (SPECIAL) : THE PUBLIC LIABILITY INSURANCE ACT

3.1. Scope of the Act

The Public Liability Insurance Act, 1991, was enacted to make two kinds of provisions. In the first place, the Act creates “no fault” liability, for harm caused by an accident caused while handling any hazardous substance. Secondly, for such liability, it is made compulsory to take out liability insurance.

3.2. Impact of the Act in tort liability

The first objective of the Act, mentioned above, makes an important modification in the principles of tort liability as applicable to such accidents.

3.3. *Rylands v. Fletcher*

Liability, in tort, to pay compensation for death, personal injury or damage to property, (to beign with) depends on intention or negligence of the wrong-doer. But, in certain cases, the rule in *Rylands v. Fletcher*, applies, whereunder liability for harm caused by the escape of certain substances may arise without proof of intention or negligence. Mr. Justice Blackburn in that case enunciated the rule thus.¹

“We think that the true rule of the law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is prima facie

1. *Rylands v. Fletcher* (1868) L.R. 1 Ex. 265, 279, 280.

answerable for all the damage which is the natural consequence of its escape”.

To the above formulation, certain refinements were added by the House of Lords while upholding the judgment. Lord Cairns, (in the House of Lord) rested his decision on the ground that the defendant had made a “non-natural use” of his land, though he stated that he entirely concurred in the judgment of Mr. Justice Blackburn which he regarded as reaching the same result. Some debate has arisen as to the complexity that has resulted from the words used by Lord Cairns, making a distinction between ‘natural’ and non natural use of lands.¹ But the requirement of “non-natural use” is generally accepted.

3.4. Strict and absolute liability

It is now recognised that liability under the rule in *Rylands v. Fletcher*, is not absolute, but is ‘strict liability’. Though stated as a rule of absolute liability (‘absolute duty to keep it in at his peril’), in the judgment of Mr. Justice Blackburn, it is settled that there are several exceptions to the rule, as under:

- (1) Consent of the plaintiff.
- (2) Common benefit.
- (3) Act of stranger.
- (4) Statutory authority.
- (5) Act of God.
- (6) Default of the plaintiff.²

In general, the position as stated in the above analysis of the rule in *Rylands v. Fletcher* was followed in India. The applicability of the rule had been accepted in several decisions of Indian High Court.³ But the Supreme Court of India enunciated a new principle of liability in *M.C. Mehta’s case* mentioned below.

1. *Heargrave v. Goldman*, (1963-64)37 A.J.L.R. 277,283 (per Windeyer, J.).

2. Winfield & Jolowicz on Tort (1990), pages 432 to 440.

3. See, for example :

(i) *Ramanuja Chariar v. Krishnaswami Mudali*, (1907) I.L.R. 31 Mad. 169.

(ii) *Dhanusa v. Sitabai*, I.L.R. (1948) Nag. 698.

(iii) *M. Madappa v. K.Karappa*, A.I.R. 1964 Mys. 80.

(iv) *Mukesh Textile Mills Pvt. Ltd., v. Subramanya Sastry*, A.I.R. 1987 Karn. 887.

3.5. Liability under M. C. Mehta's case

In *M. C. Mehta's case*¹ the Supreme Court enunciated a new principle of liability for enterprises engaged in hazardous or inherently dangerous activities. After discussing at some length the rule in *Rylands v. Fletcher*, the conditions for its applicability and the exceptions to that rule, the Supreme Court expressed itself as under:-

"We are of the view that an enterprise which is engaged in a *Hazardous or inherently dangerous* industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas *owns an absolute and non delegable duty* to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the *highest standards of safety* and if any harm results on account of such activity, the enterprise must be *absolutely liable to compensate* for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation or substance or any other related element that caused the harm, the enterprise must be held *strictly liable* for causing harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity indemnified all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity, regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against

1. *M.C. Mehta v. Union of India* A.I.R. 1987, S.C. 1086.

hazards or dangers and to provide warnings against potential hazards. We would, therefore, hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous and inherently dangerous activity resulting, for example, in the escape of toxic gas, the enterprise is *strictly and absolutely* liable to compensate all those who are effected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the fortuitous principle of strict liability under the rule in *Rylands v. Fletcher*.

It will be noticed that in the above passage, while, at some places the epithet strict is used, at some places, the epithet absolute is used. Finally, at a few places, both the epithets are used.

3.6. Bhopal case (Mass disaster)

The question came up again before the Supreme Court, when it upheld¹ the validity of the Bhopal Gas Disaster (Processing of Claims) Act, 1985 in its judgment of 1990. The judgment discussed the doctrine of *parens partria* and took note of the fact that the legislation in question related to the subject of "actionable wrongs" under the Constitution, Seventh Schedule, Concurrent List, entry 8. But it also contains a suggestion to lay down certain norms and standards in regard to the industries dealing with materials which are of dangerous potentialities. In the judgment of Mr. Justice Ranganathan, there is a suggestion, that either the Fatal Accidents Act should be amended or fresh legislation should be enacted, to deal with the victims of mass disaster. *Inter alia*, the suggested legislation should deal with the following matters :

- (i) Fixed minimum compensation on 'no fault' basis, pending final adjudication of the case.
- (ii) Creation of special forum with specific power to grant interim relief in appropriate cases.
- (iii) Evaluation of a procedure to be followed by such (special) forum, which will be conducive to the determination of the

1. *Charan Lal Sahu v. Union of India* A.I.R. 1990 S.C. 1480 Para 129.

claim and avoid a high degree of formalism in the proceedings.

- (iv) A provision requiring industries and concerns engaged in hazardous activities to take out compulsory insurance against third party risk.

The Public Liability Insurance Act, enacted in 1991, covers, *inter alia*, manufacturers and distributors also. At the same time, it is confined to accidents occurring while *handling an hazardous substance*.

3.7. Liability for Chattels: *Donoghue v. Stevenson*

In *Donoghue v. Stevenson*¹ in respect of latent defects in chattels, Lord Atkin expressed the rule as follows, regarding products:-

“A manufacturer of products which he sells in such a form that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparation or putting up of the product will result in injury to the consumer’s life or property, owes a duty to the consumer to take that reasonable care”.

3.8. Public Liability Insurance Act : No Fault Liability

So much as regards the common law background, the principle of no fault liability for hazardous activities has been adopted in the Public Liability Insurance Act. The marginal note to section 3 of the Act is “Liability to give relief in certain cases on principle of no fault”. The substantive provision in section 3(2) provides that the claimant for relief for death or personal injury or damage to property caused by accident while handling *an hazardous substance* shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made “was due to any wrongful act, neglect or default of any person”. The extent, if any, to which this provision of the Act takes away the defences recognised in the law in respect of the rule in *Rylands v. Fletcher* (discussed above) could be a matter of debate. But it is clear that at least the condition of *non-natural* use of land

1. *Donoghue v. Stevenson* (1932) A.C. 562 (House of Lords).

(required by the rule in *Rylands v. Fletcher* is not required for the statutory liability under section 3(2), Public Liability Insurance Act to arise.

3.9. Public Liability Insurance Act : The general scheme

- (a) The Public Liability Insurance Act, 1991 consists of 23 sections and one Schedule. Short title and commencement of the Act are dealt with in section 1, while section 2 contains several definitions. The substantive provisions of the Act are mainly contained in sections 3 and 4. Section 3 incorporates the principle of liability without fault for death or injury to any person (other than a workman) or damage to any property, resulting from an accident -- "accident" having been defined in section 2(a) as meaning, *inter alia*, an accident occurring while handling any hazardous substance. It is against this liability that section 4 of the Act makes it mandatory for the owner (that is to say, the person who owns or has control over handling any hazardous substance), to take out one or more insurance policies whereby such owner is insured against the liability imposed by section 3(1).
- (b) Section 4(2A) and succeeding sub-sections make certain detailed provisions as to contents of the policies. By section 4(3), the Central Government is empowered to grant exemption from the duty to take out an insurance policy. But this is conditional on the establishment and maintenance, by the owner, of a fund for meeting the liability imposed by section 3(1).
- (c) Sections 5 to 7 of the Public Liability Insurance Act deal with the preliminary formalities and procedure for applications for claims for relief under the Act. Section 5 requires the Collector to verify the occurrence of an accident, if it comes to his notice, and to cause publicity to be given to it for inviting applications for claims for relief. Section 6 deals with the manner of making such applications and also prescribes a time limit of five years for making such applications. The inquiry into the application by the Collector, and the award of relief by him, are matters dealt with in section 7, which also provides that the amount awarded shall

be recoverable as arrears of land revenue or of public demands. Section 7A (inserted in 1992), provides for the creation of Environmental Relief Fund.

- (d) Section 8 saves any other right to claim compensation in respect of death, injury to person or damage to property under any other law for the time being in force. Certain powers necessary for the working of the Act are dealt with, in sections 9, 10 and 11, relating to calling for information, entry and inspection and search and seizure. A very important provision, contained in section 12, is to the effect that the Central Government may issue written directions “for the purposes of the Act”, to any owner or any other person and regulating the handling of any hazardous substance or a direction stopping or regulating the supply of “electricity, water or any other service”. By section 13, the Central Government or an authorised person is also given power to apply to the court for an order restraining the owner handling any hazardous substance in contravention of the Act.
- (e) Sections 14 to 18 deal with offences, penalties and procedural provisions connected therewith. By section 19, the Central Government is empowered to delegate its powers under the Act, excepting the rule making power. Section 20 protects action taken in good faith under the Act. Section 21 provides for an advisory committee on matters relating to insurance policies under the Act. Section 22 gives to this Act an overriding effect. Power to make rules is given to the Central Government by section 23.
- (f) The Schedule to the Act gives a tariff of compensation to be awarded as a result of the liability provided for in section 3(1) of the Act.