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TORT LAW

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I INTRODUCTION

TORT IS a developing branch of law. The conventional theory is that the law of torts[1]falls in the category of distributive justice as it is concerned with the allocation and prevention of losses occurring in our society, but the correct approach would be to also recognize its preventive functions in our society and consider appearance, justice, deterrence and compensation as the possible bases of action for damages in tort.[2] According to Salmond, tort had its roots in criminal procedure. Even today there is punitive element in some aspects of the rules on damages.[3]The biggest challenge, it is believed, in Law of tort is how to define tort with precision. Winfield suggests that tortuous liability arises from the branch of the duty primarily fixed by the law, such duty is towards person generally and its breach is redressible by an action for unliquidated damages.[4]It is submitted that the above definition is insufficient to indicate what conduct is and what is not sufficient to include a person in tortuous liability.[5] According to Smith, "Tort is that branch of civil law relating to obligations imposed by operation of law on all natural and artificial persons. These obligations, owned by one person to another embody harms of the

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1 For definition of tort, see Winfield, *Province of the Law of Tort,* Ch. XII (Cambridge University Press, London, 1931) and William and Hepple, *Foundations of the Law of Tort,*22 (Butterworth, London, 1984). For a collection of discussion of English and American decisions, see Rogers, *Torts* Ch. I (4th edn.), Clerk and Lindsell, *Tort* (Sweet and Maxwell, London, 15th edn. 1982).

2 B.C. Nirmal, "Tort Law"XLVII *ASIL* 765 (2011).

3 R.F.V. Heuston and R.A. Buckley, *Salmond and Heuston on the Law of Tort,* 20th edition, 1998, at 8.

4 Winfield, *Province of the Law of Torts* 92(1931).

5 B.C. Nirmal, "Tort Law" XLVIII, *ASIL*, 751 (2012).

conduct that arise out side contract and unjust enrichment.[6] In the context of this developing branch of law the role of courts in clarifying earlier principles and evolving new principles is very important. The proactive approach of judiciary needs to be continued for development of Law of Torts. The Supreme Court and various high courts, in the year under survey, have attempted through a catena of cases to compensate the violation of rights of individuals and evolved certain new principles of law applicable to the torts cases.In the present survey, an attempt has been made to evaluate the role played by the judiciary in this regard.

II NEGLIGENCE

Negligence is an independent tort with a number of elements. It usually signifies inadvertence by the defendants to the consequences of his behavior.[7] The tort of negligence has over the years gainedso much flesh, weigh, vigour and vitality that it has overwhelms the other torts.[8] It is the breach of duty caused by the omission to do something which reasonable man would do or refrain from doing some act which a reasonable prudent man would not do.[9] It is not every careless act that a person may be held responsible for in law, nor even for every careless act that causes damage. He will only be liable in negligence if he is under a legal duty to take care.[10] A general principle was made for the first time by Brett M.R. in *Heaven* v. *Pender*[11] but the important generalization is that of Atkin in *Donoghue* v. *Stevention*,[12] where it was laid down that "you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbors." Wilberforce in *Anns* v. *Merton Borough Council*[13] laid down the famous two stage test which expanded the scope of the duty of care principle. It involves reasonable foresight, proximity and imposition of a duty 'fair, just, and reasonable' in all the circumstances. The prominent judgments on law of negligence handed over by courts have been evaluated under various heads below.

Electrocution

Rama Santa v. *Chairman-cum-Managing Director Orissa*[14]is the case of electrocution arising out of the negligence in maintaining the electric transmission line. The deceased was a daily labourer and when he was returning to his district, his umbrella came in contact with the live electric transmission line which was hanging low between the two poles because of poor maintenance. The respondents

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6 See Smith (2011) 31 OJLS 1.
7 W.V.H. Rogers, *Winfield and Jolowicz on Tort* 51(Sweet and Maxwell, London,15th edn., 1998).
8 *Id.* at 766.
9 *PoonamVerma* v. *Ashwin Patel* (1996) 4 SCC 332.
10 *Id*. at at 752.
11 (1883) 11 Q.B.D 503.
12 (1932) A.C. 562.
13 (1978) A.C. 728.
14 2014 SCC online ori 166.

were responsible for maintenance of transmission and supply of electricity, as a result of which the deceased got electrocuted and died at the spot. It was denied that the respondents were negligent in maintaining electric transmission line and the deceased died of electrocution. A specific plea was also taken that even if it is held that the deceased died of electrocution, but the same being an act of God, inasmuch as the electric poles are tilted on account of rain and storm, not due to the negligence, there is no liability to pay the compensation. The Orissa High Court held that it is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it, the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension, the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defense on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps. The court discussing the issue of strict liability held that even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way *i.e.,* the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But, such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

The Motor Vehicles Act, 1988

The Motor Vehicle Act, 1988 is enacted with one of the objectives to award compensation payable as a result of motor accidents in respect of death and permanent disablement and to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of vehicles involved in the accident.It provides for payment of compensation in cases of "no fault liability" and in hit and run motor accidents. It also provides for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles. But at the same time section 149(2)

(a) (ii) lays down that "No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award if the vehicle is driven by a person who is not duly licensed, or by any person who has beendisqualified for holding or obtaining a driving licence during the period of disqualification". In *Pepsu Road Transport* v. *National Insurance Company,*[15] it was the question before the Supreme Court that where the owner has satisfied himself thatthe driver has a licence and is driving competently but the driver has produced the fake license, whether it is breach of section 149(2) (a) (ii). Another question before the court was, can the insurance company absolve its liability in the said condition? The facts of the case are that the appellant employer had employed the third respondent as driver. In the process of employment, he had been put to a driving test and he had been imparted training also. A motor accident had occurred on account of negligent driving by the third respondent driver of a bus owned by the appellant. The claimant's father had died in the accident. The bus was insured with the respondent. The tribunal awarded compensation to the claimants. However the respondent was absolved of its liability under section 149(2) (a) (ii) of the Motor Vehicles Act, since the driving licence issued to the driver was found to be fake. It was the contention of the appellant that they had appointed the third respondent as driver and he was given proper training and having taken reasonable steps in verifying the driving licence and thereafter, having trained the driver by the employer himself, it cannot be said that the insurance company is not liable. There is no breach of any conditions by the insured. In other words, it is contended that even if the licence is fake, the owner having taken allreasonable steps thus the insurer is liable. The other contention onmerits was that the insurer had not established before the tribunal that the licence issued was fake. Allowing the appeal the Supreme Court held that when an owner is hiring a driver he will therefore have tocheck whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner isnot expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive thevehicle, he will hire the driver. It is rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself thatthe driver has a licence and is driving competently there would be nobreach of section 149(2) (a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unlessthey prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. The court applied the rule laid down by Supreme Court in *National Insurance Company Limited* v. *Swaran Singh*[16] where the bench was of the view that in case the insured did not take reasonable and adequate care and caution to verify the genuineness or

15 (2013) 10 SCC 217.
16 (2004) 3 SCC 297.

otherwise of the licence, the liability would still be open-ended and will have to be determined on the basis of facts of each case. The court relied upon law which has been laid down in*United India Insurance Company Limited* v. *Lehru*[17] where two-judge bench has taken the view that the insurance company cannot be permitted to avoid its liability only on the ground that the person driving the vehicle at the time of accident was notduly licensed. It was further held that the willful breach of the conditions of the policy should be established. Still further, it was held that it was not expected of the employer to verify the genuineness of a driving licence from the issuing authority at the time of employment. The employer needs to only test the capacity ofthe driver and if after such test, he has been appointed, there cannot be any liability on the employer. The court also discussed the *Skandia*,[18] *Sohan Lal Passi*[19] and *Kamla*[20] cases in the present appeal.

The Disaster Management Act, 2005 [21]

Development is the essential feature of today's world. We have to keep pace with the science and technology in comparison to other countries to ensure our existence in this world. Development is not only necessary to boost the economy but also to make life easy and convenient to our people. But at the same time the natural rights of the people cannot be violated in the name of development. A balance needs to be struck between the development and right to life. *G. Sundarrajan* v. *Union of India*[22] is important case on the issue of development as well as the right to life guaranteed under article 21 of Constitution of India. In this case, the appellants were concerned with an issue of considerable national and international importance, pertaining to the setting up of a nuclear power plant at Kudankulam (KKNPP) in the State of Tamil Nadu. The incidents occurred in Three Miles Island Power Plant USA, Chernobyl, Ukraine, USSR, Fukoshima, Japan, Union Carbide; Bhopal might be haunting the memory of the people living in and around Kudankulam, leading to large-scale agitation and emotional reaction to thesetting up of the Nuclear Power Plant (NPP) and its commissioning. The appellants opposed the nuclear power plant at Kudankulam in, Tamil Nadu on the grounds of safety and environmental protection.[23] KKNPP has been set up by Nuclear Power Corporation of India Limited (NPCIL) based on the Indo-Russia joint agreement under the guidance and supervision of AEC, BARC, Atomic Energy Regulatory Board (AERB), Ministry of Environment and Forest (MoEF), Tamil Nadu Pollution Control Board (TNPCB), Central and state governments *etc*. The appellant submitted that having seen the experience at Three Mile Island (USA),

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17 (2003) 3 SCC 338.

18 (1987) 2 SCC 654.

19 (1996) 5 SCC 21.

20 (2001) 4 SCC 342.

21 B.C. Nirmal & P.C. Shukla; 'Disaster Management: National and International Perspective', in B.P. Panda (edn.) *Legal Response to Diaster Management.* 81-115 (2009)

22 (2013) 6 SCC 620.

23 For an Interesting discussion of nuclear safety and nuclear liability issues, see B.C. Nirmal, " 123 Agreement and Environmental Law" 51 JILI 57-60 (2011).

Chernobyl in Russia and Fukushima in Japan *etc*., safety of the people and the environment are of paramount importance and if the units are allowed to be commissioned before making sufficient safeguards on the basis of the recommendations made by the Task Force of NPCIL, it may lead to serious consequences which could not be remedied. It was submitted that unless the seventeen recommendations made by the Task Force appointed by NPCIL are implemented before commissioning the plant, serious consequences may follow. It was further submitted that AERB and NPCIL are legally obliged to implement the recommendations and the court is bound to safeguard the life and property of the people residing in and near Kudakulam which is a fundamental right guaranteed to them under article 21 of the Constitution of India. The AERB submitted that the plant has been set up after following all the safety standards laid down by it.The design of KKNPP incorporates advance safety features complying withcurrent standards of redundancy, reliability, independence and preventionof common cause failures in its safety system. Further, it was pointed out that the Board of AERB met in the light of Fukushima accident. AERB also constituted a high level committee of specialists to review and recommend safety upgrades asrequired to handle extreme external events of natural origin. It was pointed out that KKNPP design also has several advanced safety features, including those for ensuring safety against external events of natural origin and for management of design basis aswell as beyond design basis accidents. Further, it was pointed out that, over and above, steps are being taken to implement the 17 recommendations made by the Task Force of NPCIL and that, amongst them, few recommendations have already been implemented. NPCIL, submitted that KKNPP is a 3+Generation NPP and its design incorporates advanced safety features complying with current standards ofredundancy, reliability, independence and prevention of common causefailures in its safety systems. It was also submittedthat KKNPP is absolutely safe even without the 17 recommendations made outof abundant caution by AERB but the17 recommendations of AERB would also be complied with in a phased manner, out of which 7 have already been implemented. The Union of India submitted that most of the spent fuel *i.e.*, 97% is capable of being reused, the remaining 3% of the spent fuel consistsof various Fission Products (FPs) and Minor Actinides (MAs). Each NPP has a water storagepool for storage of spent fuel, namely "Spent Fuel Storage Bay" (SFSB).Those pools are temporary storage facilities for recyclable fuel and areessentially water filled concrete vaults with SS lining, having the arrangement for storing spent fuel in racks. They are designed, constructed and operated as per the AERB Guidelines and requirements. Further, it was also pointedout that the transportation of spent fuel is governed by the regulations specified by AERB in "Safety Code for the transport of radioactive materials–AERB/SC/TR-1'and international requirements given in IAEA Regulation for safe transport of radioactive material, 2005. It was submitted that the Department of Atomic Energy (DoAE) is also aware of the importance of safety and security and takes utmost care to ensure that the management and transport is carried outsafely, following the internationally recognized norms and regulations and that the same is done under the supervision of AERB and Government of India.

Dismissing the appeals and declining to direct closure of KKNPP but with additional directions to ensure safety, the Supreme Court held through Radhakrishnan J that it is not courts to determine whether a particular policy or a particular decision taken in fulfillment of a policy is fair or reasonable. The courts are concerned only with the manner in which the policy decisions have been taken *i.e.*, whether a decision can be said to be tainted with procedural impropriety. Unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere *ipse dixit* of the executive authority or is invalid in constitutional or statutory mandate, the court's interference is not called for. Further the courts also cannot stand in the way of the Union of India honouring its inter-governmental obligations entered into between India and Russia for setting up KKNPP.

Part I of the judgment deals with the safety and security of NPP, international conventions and treaties, KKNPP project, NSF and its management and transportation, deep geological repository (DGR), civil liabilities, disaster management authority (DMA), corporate social responsibility (CSR) and the other related issues. Part II mainly focuses on the environmental issues, costal regulatory zones (CRZ), desalination plant, impact of radiation on ecosystem, expert opinion, *etc*. A lot of scientific literatures, experts opinions *etc*. have been produced before the court to show its dangers, harm it may cause to human health, environment, marine lie and so on not only on the present generation but on future generation as well. Further, it was also pointed out that due to growing nuclear accidents and the resultant ecological and other dangers, many countries have started retreating from their forward nuclear programmes. The court observed that these issues are to be addressed to policy makers, not to courts because the destiny of a nation is shaped bythe people's representatives and not by a handful of judges, unless thereis an attempt to tamper with the fundamental Constitutional principles orbasic structure of the Constitution. Safety and security of the people and the nation are of paramount importance when a nuclear plant is being set up and it is vital to have inplace all safety standards in which public can have full confidence tosafeguard them against risks which they fear and to avoid serious long termor irreversible environmental consequences. Serious apprehension were voiced by the appellants that huge amounts of radioactive waste are generated with the use of nuclear energywhich, unless handled, treated, transported, stored and disposed off safely without any leaks, can cause serious contamination of land, water, food,air and the ecosystems. The court held that KKNPP design incorporates advanced safetyfeatures complying with the current standards of redundancy, reliability, independence and prevention of common cause failures in its safety systems. Design also takes care of Anticipated Operational Occurrences (AOO), Design Basis Accidents (DBA) and Beyond Design Basis Accidents (BDBA) like Station Black Out (SBO), Anticipated Transients Without Scram (ATWS), Metal Water reaction in the water core and provision of core catcher to take care of core degradation. The design also includes the provisions forwithstanding external events like earthquake, tsunami/storm, tidal waves, cyclones, shock waves, aircraft impact on main buildings and fire. The 17recommendations were made after Fukushima accident the cause of which is natural phenomenon. The facts would indicate that Tsunami-genic zone along East

Coast of India is more than 1300 km away from the nearest NPP site (Madras/ Kalpakkam) and about 1000 km. away from Kudakulam. The possibility of hitting tsunami at Kudakulam, as the one that hit Fukushima, seems to bevery remote.The Government of India, in order to allay various apprehensions raised by the people's movement against the production of nuclear energy aswell as against commissioning of KKNPP, constituted a 15 member expert group to provide clarifications on the issue raised by the agitators byinteracting with the forum provided by state government comprising of 2 state government nominees and 4 representatives of the people. Public hearing was held and views and suggestions made for and against the project were heard. The committee specifically examined the safety features of KKNPP in the wake of the accidents occurred at TMI, Chernobyl, and Fukushima *etc*.

Disaster Management is also one of the important issues in this case and dealing with it, the court held that Disaster Management Plan (DMP) is of paramount importance, since we are dealing with a substance which has huge potential of causing immense damage to human beings and to the environment, which may cross over generations after generations. To remove misgivings, the authorities of nuclear fuelcycle facilities in general, and that of nuclear power stations in particular, are actively involved in carrying out regular public awareness programmes for people living in the vicinity of these facilities. The AERB, the national regulatory authority, has beenregulating the nuclear and radiation facilities in the countryvery effectively and has, over the years, issued a large numberof codes, standards and guides.There is no network of hospitals in the countrywhich can handle radiation induced injuries on a large scale.The establishment of such a network is essential for handlingnuclear emergencies/disasters. This will also include the establishment of a nationwide capability for utilisation of the services of a large number of radiation safety officers (RSO) for managing both the rural development department (RDD) related scenarios and large scale nuclear disasters on priority. There will also be a dedicated and reliable communication facility among hospitals so that, whenever required, they can pool their resources. Resolving the issue whether the establishment of NPP wouldhave the effect of violating the right to life guaranteed under article 21to the persons who are residing in and around Kudankulam or by establishing the NPP, it will uphold the right to life in a larger sense. The court observed that while balancing the benefit of establishing KKNPP units 1 to 6, with right to life and property and the protection of environment including marine life, a balance needs to be stuck, since the production of nuclear energy is of extreme importance for the economic growth of country, alleviate poverty, generate employment *etc*. While setting up a project of this nature, we have to have an overall view of larger public interest rather than smaller violation of right to life guaranteed under article 21 of the Constitution. Much hue and cry has been raised by some sections of the people aboutthe possible impact of radiation from KKNPP units 1 and 2, a point which has been addressed by the AERB, NPCIL, MoEF and all the expert committees constituted to go into the impact and effect of radiation from the units not only on humans but also on ecology. Experts committees are of the unanimous opinion that there will not be any deleterious effects due toradiation from the operation

of KKNPP, and that adequate safety measures have already been taken. The court observed that "we cannot forget that there are many potential areas of radiation reflected in many uses of radioactive materials. Radioactive materials are used in hospitals, surgeries and so on. Mobile phone use, though minor, also causes radiation. In a report[24] of the Department of Telecommunication "Mobile Communication– Radio Wave and Safety released in October 2012, it has been stated that a human body is exposed to more electromagnetic field radiation in case of a call from mobile phone in comparison to the radiation from a mobile tower." It was further observed that we have, therefore, to balance "economic scientific benefits" withthat of "minor radiological detriments" on the touch stone of our nationalnuclear policy. The court held that justification for establishing KKNPP at Kudankulam, therefore has been vindicated and all safety and security measures have already been taken, necessary permissions and clearances have been obtained from all statutory authorities. Apprehension expressed by some sections of the public that ifthe units are commissioned or put into operation, it will have far reachingconsequences, not only on the present generation, but also on the futuregeneration, of the possible radioactive effects of the units, in the view of Court has no basis. The petitioner's contention that the establishment ofnuclear power plant at Kudankulam will make an inroad into the right to life guaranteed under article 21 of the Constitution, is therefore has no basis. On the other hand it will only protect the right to life guaranteed under article 21 of the Constitution for achieving a larger public interest and will also achieve the object and purpose of Atomic Energy Act.

The court held that AEC, DAE, BARC, AERB, NPCIL, TNPCB the expert bodies, are all unanimous in their opinions that adequate safety and security measures have already taken at KKNPP which are to be given due weight that they deserve. Further, as already indicated NPCIL task force report on security of all NPPs including KKNPP, AERB-EE expert opinion on design committee safety, 15 member expert team committee report (post Fukishama), supplementary report on the grievances raised by some of the agitators, report submitted by Sri R. Srinivasan, former President, Atomic Energy Commission appointed by the State of Tamil Nadu are all unanimous in their view on the safety and security of KKNPP MoEF, EAC, TNPCB, report of IOM, Anna University dated July 2008 on impact of NPP on Marine Eco-system, Committee on Conservation of Sea-Shoreof the State of Tamil Nadu, Report of Engineers India Limited with CHFRI, NEERI on the impact on air, water, land, eco-system *etc*. are all unanimous that the radiation aswell as the discharge of water from NPP to the sea shore will not have serious impact on the marine ecology or on marine life KKNPP has, therefore been set up as part of India's National Policy so as to develop, control and use of atomic energy for the welfare of the people of India. Policy makers consider nuclear energy as an important element in India's energy mix for sustaining economic growth of natural and domestic use. The court also issued the following directions:[25]

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24 *Available at:* http://www.indiaenvironmentportal.org.in/files/file Mobile%20 Communication- Radio%20Waves%20and%20Safety.pdf.

25 *Supra* note 22 at 230.

i. The plant should not be made operational unless AERB, NPCIL, DAE accord final clearance for commissioning of the plant ensuring thequality of various components and systems because their reliability isof vital importance.

ii. MoEF should oversee and monitor whether the NPCIL is complying with the conditions laid down, while granting clearance vide itscommunication dated 23.9.2008 under the provisions of EIA Notificationof 2006, so also the conditions laid down in the environmentalclearance granted by the MoEF vide its communication dated 31.12.2009. AERB and MoEF will see that all the conditions stipulated by them are duly complied with before the plant is made operational.

iii. Maintaining safety is an ongoing process not only at the design level, but also during the operation for the nuclear plant.SafeguardingNPP, radioactive materials, ensuring physical security of the NSF are of paramount importance. NPCIL, AERB, the regulatory authority, should maintain constant vigil and make periodical inspection of the plant at least once in three months and if any defect is noticed, thesame has to be rectified forthwith.

iv. NPCIL shall send periodical reports to AERB and the AERB shall takeprompt action on those reports, if any fallacy is noticed in thereports.

v. SNF generated needs to be managed in a safe manner to ensureprotection of human health and environment from the undue effect ofionizing radiation now and future, for which sufficient surveillance and monitoring programme have to be evolved and implemented.

vi. AERB should periodically review the design-safety aspects of AFR feasibly at KKNPP so that there will be no adverse impact on theenvironment due to such storage which may also allay the fears andapprehensions expressed by the people.

vii. DGR has to be set up at the earliest so that SNF could be transported from the nuclear plant to DGR. NPCIL says the same would be donewithin a period of five years. Effective steps should be taken by theUnion of India, NPCIL, AERB, AEC, DAE etc. to have a permanent DGR atthe earliest so that apprehension voiced by the people of keeping theNSF at the site of Kudankulam NPP could be dispelled.

viii. NPCIL should ensure that the radioactive discharges to theenvironmental aquatic atmosphere and terrestrial route shall not crossthe limits prescribed by the Regulatory Body.

ix. The Union of India, AERB and NPCIL should take steps at the earliestto comply with rest of the seventeen recommendations, within the timestipulated in the affidavit filed by the NPCIL on 3.12.2012.

x. SNF is not being re-processed at the site, which has to be transported to a Re-Processing facility. Therefore, the management andtransportation of SNF be carried out strictly by the Code of Practiceslaid down by the AERB, following the norms and regulations laid downby IAEA.

xi. NPCIL, AERB and State of Tamil Nadu should take adequate steps toimplement the National Disaster Management Guidelines, 2009 and alsocarry out the periodical emergency exercises on and off site, with thesupport of the concerned Ministries of the Government of India,Officials of the State Government and local authorities.

xii. NPCIL, in association with the District Collector, Tirunevelishouldtake steps to discharge NPCIL Corporate Social Responsibilities inaccordance with DPE Guidelines and there must be effective and propermonitoring and supervision of the various projects under taken under CSR to the fullest benefit of the people who are residing in andaround KKNPP.

xiii. NPCIL and the State of Tamil Nadu, based on the comprehensive emergency preparedness plan should conduct training courses on siteand off site administer personnel, including the State Governmentofficials and other stake holders, including police, fire service,medicos, emergency services etc.

xiv. Endeavour should be made to withdraw all the criminal cases filedagainst the agitators so that peace and normalcy be restored at Kudankulam and nearby places and steps should be taken to educate thepeople of the necessity of the plant which is in the largest interestof the nation particularly the State of Tamil Nadu.

xv. The AERB, NPCIL, MoEF and TNPCB would oversee each and every aspect ofthe matter, including the safety of the plant, impact on environment, quality of various components and systems in the plant beforecommissioning of the plant. A report to that effect is filed before this Court before commissioning of the plant.

These are, indeed welcome suggestions deserving utmost attention from the government in view of uncertainty in law in respect of the liability for negligent and also in view of the extreme hazardous nature of the activity.

Vicarious liability

Various justifications for the imposition of vicarious liability have been offered over the years. One of such justifications has been the fact that the employer will normally have much deeper pockets than the primary tort feasor. For this reason a claimant will usually be able to target a defendant worth suing. Partly this will be because the employer will carry insurance for such events partly because he will often be in a position to pass on the cost of such insurance to the public in the form

of increased price for his product.[26] A second justification is that the concept of vicarious liability may well encourage employers to maintain high standards of conduct in the running of their business.The question that whether the death of the driver on the duty is in course of employment or not was decided by the court in *Param Pal Singh Through Father* v. *M/s National Insurance Co.*[27] In this case, the appellantclaimed himself to be the adopted son of the deceased. According to the claimant the deceased was employed as truck driver by the respondent to drive truck. The deceased was assigned the duty of driving the truck in connection with the trade and business of the respondent when the vehicle reached nearabout the destination, the deceased suffered a health set-back and therefore he parked the vehicle on the road side of a nearby hotel. Immediately after parking the vehicle he fainted and the persons nearby took him to the hospital where the doctors declared that he was brought dead. The said truck was insured with the first respondent. The appellant preferred the application before the Commissioner of Workmen's Compensation, Delhi contending that the death of the deceased was in the course of his employment with the trade and business of the second respondent and that his death was due to stress and strain while driving the said truck continuously over a period of time. The claim of the appellant was resisted by the respondent substantively on two grounds. In the first place it was contended that the appellant had no *locus* to file the claim petition inasmuch as he was not a dependent. It was then contended that the death of the deceased was due to natural causes and that there was no causal connection between the death of the deceased and that of his employment. The commissioner repelled both the contentions of the respondents, namely, about the *locus* of the appellant as well as the causal connection of the death of the deceased with that of his employment and awarded the compensation a sum of Rs.2, 20,280/- along with another sum of Rs.2500/- as funeral charges under section 4(4) of the Workmen's Compensation Act. The appellant filed an appeal before the High Court of Delhi where the court held that the death of the deceased was due to natural causes and it had no causal connection with his employment and also held that the adoption of the appellant was not proved. This appeal is filed against the judgment of the High Court of Delhi. Applying the various principles laid down in the various decisions[28] to the facts of this case, the Supreme Court validly concluded that there was causal connection to the death of the deceased with that of his employment as a truck driver. One cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle, and would have definitely undergone grave strain and stress due to such long distance driving. The

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26 Jhon Murphy and Christian Witting, *Street on Torts* (Oxford University Press, 13th edn. 2012).

27 (2013) 3 SCC 409.

28 *Shakuntala Chandrakant Shreshti* v. *Prabhakar Maruti Garvali* (2007) 11 SCC 668; *Mallikarjuna G. Hiremath* v. *Branch Manager, Oriental Insurance Co. Ltd* (2009) 13 SCC 405; *Smt. Sundarbai* v. *The General Manager, Ordnance Factory, Khamaria, Jabalpur* 1976 Lab I.C. 1163.27B.C. Nirmal, "Tort Law" XLVII *ASIL*773 (2011).

deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an 'untoward mishap' can therefore be reasonably described as an'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business. Having regard to the evidence placed on record there was no scope to hold that the deceased was simply travelling in the vehicle and that there was no obligation for him to undertake the work of driving. On the other hand, the evidence as stood established proved the fact that thedeceased was actually driving the truck and that in the course of such driving activity as he felt uncomfortable he safely parked the vehicle onthe side of the road near a hotel soon whereafter he breathed his last. In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased wasin an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the judge of the high court in the order impugned in this appeal deserves to be set aside.

Medical negligence

This is an increasing area of litigation where professionals are being sued both under the Consumer Protection Act, 1986 and under the various provisions of the IPC, 1860 for rashness and criminal negligence. Today doctors, nursing home and hospitals are merely seen as service providers and mutual trust and confidence before the doctors and patient which until recently remained a hall mark of the medical profession is wanting.[29] In the case of *A. Srimannarayana* v. *Dasari Santakumari* [30] the appellants, who are doctors, conducted an operation on the left leg of the husband of the complainant. Sometime after the operation, the patient died. The complainant (wife of the deceased) filed a complaint against the appellant before the district consumer forum. The complaint was duly registered and notice was issued to the appellant. Against the issuance of the notice, the appellant filed a revision petition before the state Consumer Disputes Redressal Commission, Hyderabad on the ground that the complaint could not have been registered by the District Forum without seeking an opinion of an expert in terms of the decision of the Supreme Court reported in *Martin F. D'Souza* v. *Mohd.Ishfaq*.[31] The state commission rejected the revision petition by granting liberty to the appellant to file the necessary application before the district forum to refer the matter to an expert. He did not file any application before the district forum, but challenged the aforesaid order of the state commission by filing revision petition before the National Commission. The revision petition was dismissed

29 B.C. Nirmal, "Tart Law" XLVII *ASIL* 773 (2011).

30 (2013) 9 SCC 496.

31 (2009) 3 SCC 1.

by the National Commission by relying upon the judgment of the Supreme Court in *V.Kishan Rao* v. *Nikhil Super Speciality Hospital*,[32] wherein it was declared that the judgment rendered in Martin *F. D'Souza* is *per incuriam*. Hence the special leave petitions were filed challenging the aforesaid order of the National Commission. The appellant argued that the judgment of the court in the case of *V. Kishan Rao* has erroneously declared the earlier judgment in the case of *Martin F. D'Souza* as *per incuriam*, on a misconception of the law laid down by a three-judge bench in *Jacob Mathew* v. *State of Punjab*.[33] The court held that the judgment in *Jacob Mathew* case is clearly confined to the question of medical negligence leading to criminal prosecution, either on the basis of a criminal complaint or on the basis of an FIR. The conclusions recorded in *Jacob Mathew* case leave no manner of doubt that in the aforesaid judgment the Supreme Court was concerned with a case of medical negligence which resulted in prosecution of the concerned doctor under section 304A of the IPC. The relevant conclusions are summed up by the court as under: [34]

> (i) the jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminalnegligence, the degree of negligence should be much higher *i.e*., gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution; (ii) The word 'gross' has not been used in section 304A of IPC, yet it is settled that in criminal law negligence orrecklessness, to be so held, must be of such a high degreeas to be 'gross'. The expression 'rash or negligent act' as occurring in section 304A of the IPC has to be read as qualified by the word 'grossly'; (iii) to prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be ofsuch a nature that the injury which resulted was most likely imminent; (iv) *res ipsa loquitur* is only a rule of evidence andoperates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in servicefor determining *per se* the liability for negligence withinthe domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.

The guidelines[35] were laid down after rejecting the submission that in both jurisdictions *i.e.*, under civil law and criminal law, negligence is negligence and

32 (2010) 5 SCC 513.
33 (2005) 6 SCC 1.
34 *Id*. at 32.
35 *Ibid.*

jurisprudentially no distinction can be drawn between negligence under civil law and negligence under criminal law. It was observed[36] that the submission so made cannot be countenanced in as much as it is based upon a total departure from the established terrain of thought running ever since the beginning of the emergence of the concept of negligence up to the modern times. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. The essential ingredient of *mens rea* cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence.[37] A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient.[38] If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being the better part of valour, a medical professional would feel better advised to leave a terminal patient to his own fate in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society. The aforesaid observations leave no manner of doubt that the observations in *Jacob Mathew* were limited only with regard to the prosecution of doctors for the offence under section 304A of IPC and the judgment rendered by a two-Judge Bench of theCourt in the case of *Martin F. D'Souza*has been correctly declared *per incuriam* by the judgment in *V. KishanRao*as the law laid down in *Martin F. D'Souza* was contrary to the law laid down in *Jacob Mathew*. Thus, the court held that the conclusions recorded by the National Commission in the impugned order do not call for any interference.

Misleading advertisement

In the case of *Bhanwar* v. *R.K. Gupta*[39] the question of negligence and misleading advertisement was before the court. The appeal was filed by the

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36 *Id.* at 33
37 *Supra* note 33, at 12.
38 *Id*. at 22.
39 (2013) 4 SCC 252.

complainant-appellant against the order and judgment passed by the National Consumer Disputes Redressal Commission, New Delhi. The son of the appellant born in May 1989 suffered from febrile convulsions during fever at the age of six months. He was treated at SMS Medical College Hospital, Jaipur and at All India Institute of Medical Sciences, New Delhi. The appellant came across an advertisement published in a newspaper offering treatment of the patients having fits with *ayurvedic* medicine by respondent. Through communication she was advised to bring her son to the clinic. Accordingly the appellant along with her son visited respondent to clinic. The appellant was made to pay Rs.2,150/- towards consultancy charges and the cost of medicines for one year. It was alleged that despite medicines being given regularly the condition of her son started deteriorating day by day. On being informed of the condition of her son respondent intimated that the medicine being ayurvedic had slow effect. On making enquiry as to the nature of medicines prescribed by respondent it was revealed that the small white tablets were *selgin* which is not meant for children. It is alleged that respondent was passing off allopathic medicines as ayurvedic medicines. It is further alleged that he is a quack and guilty of medical negligence, criminal negligence and breach of duty as he was playing with the lives of innocent people without understanding the disease. He was prescribing allopathic medicines, for which he was not competent to prescribe. After hearing the parties, the National Commission held that respondent having made the false representation was guilty of unfair trade practice. The National Commission passed a direction[40] to pay compensation of Rs.5 lakhs but it ordered to pay only a sum of Rs.2.50 lakhs to the appellant and to deposit the rest of the amount of Rs.2.50 lakhs in favour of Consumer Legal Aid Account of the National Commission. In the appeal the appellant challenged the quantum of compensation ordered to be paid in favour of appellant and the part of compensation ordered to be deposited with legal aid. She also raised doubt onthe authority of respondent to prescribe allopathic medicines. The court held that the appellant and her son suffered physical and mental injury due to the misleading advertisement, unfair trade practice and negligence of the respondents. The appellantand her sons thus are entitled for an enhanced compensation for the injury suffered by them. Further, the court did not find reason for deducting 50% of the compensation amount and to deposit the same with the consumer legal aid account of the commission. The court set aside part of the order passed by the National Commission and enhance the amount of compensation to Rs.15 lakhs for payment in favour of the appellant with a direction to the respondentsto pay the amount to the appellant within three months.

III STRICT/NO FAULT LIABILIT

According to Salmond, tortuous liability is essentially a fault based liability. From the development of the law, the fault liability principle is accepted in England to provide remedy to the injured party. But, there are some situations recognized

40 The Consumer Protection Act, 1986, S. 14(1) (f).

by law known as no fault liability principle in which a person may be held liable for injury cause even though he is not negligent in causing the same, or there is no intention to cause the injury not because of his fault by way of unreasonable conduct, but on the ground of social justice. In the case of *Glotilda Syiem* v. *The Union of India, represented by Secretary, Ministry of Home Affairs, Govt. of India*[41] four writ petitions were filed, in which four persons had been killed due to the firing by the Assam Police personnel.The facts are that the petitioner was a *bona fide* citizen of India belonging to Khasi Scheduled Tribes Community of Meghalaya.The husband of the petitioner brought his crops from his native village to sell in weekly market where migrants had heated exchange of words with some of the participants and they went to the police outpost established by the Assam Police. The police personnel of the said police outpost established by the Assam Police without giving any warning and provocations fired indiscriminately to the unarmed civilians. In the said indiscriminate firing, husbands of the writ petitioners of the four writ petitions were shot dead and also a large numbers of peoples had suffered bullet injuries. The petitioner argued that the indiscriminate firing by the Assam Police is highly arbitrary, irrational and unconstitutional and therefore, the respondents/ State of Assam should accept the liabilities of the illegal indiscriminate firing of the Assam Police. The court held that the writ petitions of this nature for a direction to pay monetary compensation for the deprivation of the fundamental rights of the citizen and for the death of citizen as a result of police firing is maintainable inasmuch as a remedy for payment of monetary compensation is available in public law based on strict liability for contravention of the fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defense in private law in an action based on tort. The court awarded compensation to the petitioner and made clear that the said amounts of compensation are awarded in exercise of public law jurisdiction to meet the ends of justice in addition to other remedies available to the writ petitioners in the ordinary course of law.

IV COMPENSATION/DAMAGES

Damages are the primary relief in an action for a tort. The functions and anomalies the tort law as a system of loss distribution in society is well illustrated when we consider the overall rules governing the compensation of personal injuries.[42] Compensatory damages in tort can be broken down into two main components:[43]

i. Pecuniary Losses- primarily but not exclusively those resulting from loss of earning or earning capacity. They also include the costs of medical and hospital expenses.

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41 2014(1) GLT 879.

42 *Street on Torts*, *Supra* note 26 at 707.

43 *Id*. at 708.

ii. Non-Pecuniary Losses- that is, pain and suffering and loss of amenity.

Damages have historically been granted on a once-for-all basis, which inevitably leads to imperfection in the compensatory award made. The Supreme Court of India, through its various judgments, issued a number of guidelines to award compensation in which *Kerala SRTC* v. *Susamma Thomas*[44] is remarkable one where the court has issued certain guidelines in order to safeguard the feed from being frittered away by the beneficiaries due to ignorance, illiterate and susceptibilities to exploitation. The court ordered that it is mandatory to deposit some portion of amount of compensation in long term fixed deposits for the minor dependents of the deceased, illiterate claimers and widows. During the period of survey courts of India have decided a chain of cases to established and clarify the law of compensation which is a very challenging aspect of the law of tort. Some of the important decisions are discussed below.

The Workmen's Compensation Act, 1923

Section 167 of Motor Vehicles Act, 1988 lays down that when claim arises under this Act and under the Workmen's Compensation Act, the person entitled to claim compensation may claim compensation only under either of these Acts and not under both the Act. In the case of *Oriental Insurance Co. Ltd.* v. *Dyamavva*,[45] the issue before the apex court was that when the compensation is awarded to the dependents under section 10 of the Workmen's Compensation Act 1923, can the dependents claim compensation under section 166 of the Motor Vehicle Act 1988. In this case, the deceased who was employed as a pump operator in the Mechanical Engineering Department, was hit by a tipper and died on the spot. The aforesaid tipper was insured with the Oriental Insurance Company, *i.e.*, the appellant. The widow and the dependents of deceased filed a claim petition under section 166 of the Motor Vehicles Act, 1988 and sought compensation on account of the motor accident. During the pendency of the said claim petition, the employer deposited certain amount with the Workmen's Compensation Commissioner as compensation payable to the dependents of the deceased under the Workmen's Compensation Act 1923. After serving the notice upon the dependents of the deceased and giving hearing to them, the amount deposited with the Workmen's Compensation Commissioner was mainly released to the widow of the deceased and partly to the daughter of the deceased. Thereafter the compensation claimed by the widow under Motor Vehicle Act, 1988, was also awarded after deducting the amount already released to the claimants/ dependents under Workmen's Compensation Act, 1923. The said award, which was also affirmed by the High Court of Karnataka was challenged in appeal before the Supreme Court on the ground that since the respondent claimants had earlier exercised their option under the Workmen's Compensation Act, 1923, they were precluded from seeking compensation yet again under the provisions of Motor Vehicle Act, 1988. The issue to be determined by the Supreme Court was, whether the acceptance of the

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44 (1994)2 SCC 176.
45 (2013) 9 SCC 406.

aforesaid compensation would amount to the claimants having exercised their option, to seek compensation under the Workmen's Compensation Act, 1923. The Court held that the procedure under section 8 of the Workmen's Compensation Act, 1923 is initiated at the behest of the employer *suo-motu* and as such, cannot be considered as an exercise of option by the dependents/claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. The position would have been otherwise, if the dependents had raised a claim for compensation under section 10 of the Workmen's Compensation Act, 1923. In the said eventuality, certainly compensation would be paid to the dependents at the instance (and option) of the claimants. In other words, if the claimants had moved an application under section 10 of the Workmen's Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen's compensation Act. Suffice it to state that no such application was ever filed by the respondent's claimants under section 10. In the above view of the matter, court stated that the respondents claimants having never exercised their option to seek compensation under section 10 of the Workmen's Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under section 166 of the Motor Vehicles Act, 1988. The court also held that where the employer has not *suo-motu* initiated action under the section 8 of the Workmen's Compensation Act, 1923 for the payment of compensation to an employee or his/her dependents, in spite of an employee having suffered injuries leading to death, it is open to the dependents of such employee to raise a claim for compensation under section 10 of the Workmen's Compensation Act, 1923. In another case of *Bhanwar* case[46] the appeal was filed by the complainant-appellant againstthe order and judgment passed by the National Consumer Disputes Redressal Commission, New Delhi whereby the National Commission passed a direction[47] to pay compensation of Rs.5 lakhs but it ordered to pay only a sum of Rs.2.50 lakhs to the appellant and to deposit the rest of the amount of Rs.2.50 lakhs in favour of Consumer Legal Aid Account of the National Commission. The courts set aside part of the order passed by the National Commission and enhance the amount of compensation at Rs.15 lakhs for the physical and mental injurysuffered by them due to the misleading advertisement, unfair trade practice and negligence.

The Motor Vehicle Act, 1988

In the case *Vimal Kanwar* v. *Kishore Dan*[48] the deceased was sitting on his scooter which was parked onthe side of the road. At that time, the driver of the jeep came driving from the railway station side with high speed, recklessly and negligently and hitthe scooter. The deceased along with his scooter came under the jeep and was dragged with the vehicle. Due to this accident fatal injury was caused to him and on reaching the hospital, he expired. The scooter was also

46 *Supra* note 39.

47 The Consumer Protection Act, 1986, S. 14 (1)(f).

48 (2013) 7 SCC 476.

damaged completely. Appellant, the wife of the deceased, was aged about 24 years, the daughter was aged about 2 years and the mother was aged about 55 years at the time of death of the deceased. They jointly filed an application to the tribunal alleging negligent and rash driving and claimed compensation of Rs.80, 40,160/-. It was brought to the notice of the tribunal that, the jeep driver was in the employment and, the United India Insurance Co. Ltd. was the insurer of the vehicle. The insurance company on appearance filed written statement and alleged that the vehicle owner has violated the conditions of the insurance policy by not informing them about the accident. Further, according to the insurance company the vehicle owner should prove the fact that at the time of accident, the jeep driver, was holding a valid and effective driving licence. The tribunal awarded the compensation to be granted in favour of the appellants at Rs. 14, 93,700/- jointly. Aggrieved by the order of the tribunal the two appeals, one preferred by the appellant claimants and another by the insurance company were filed and dismissed by the high court. The issues involved in this case were:[49]

i. Whether Provident Fund, Pension and Insurance receivable by theclaimants come within the periphery of the Motor Vehicles Act to be termedas "Pecuniary Advantage" liable for deduction;

ii. Whether the salary receivable by claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to betermed as "Pecuniary Advantage" liable for deduction;

iii. Whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act; and

iv. Whether the compensation awarded to the appellants is just and proper.

The first issue fell for consideration before the Supreme Court in *Helen C. Rebello (Mrs)* v. *Maharashtra State Road Transport Corporation*[50] where the court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, *etc*. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. On second issue the court held that "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness *i.e.*, while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's

49 *Id*. at 483.
50 (1999) 1 SCC 90.

death and have no correlation with the amount receivable under astatute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.The third issue came before the Supreme Court in *SarlaVerma*[51] case in which the court held that, "generally the actual income of the deceased less income tax should be the starting point for calculating the compensation." The court further observed that "where the annual income is in taxable range, the word "actual salary" should be read as "actual salary less tax". Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determinationof the actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victims receiving income chargeable under the head "salaries" one should keep in mind that under section 192 (1) of the Income-tax Act, 1961 any person responsible for paying any income chargeable under the head "salaries"shall at the time of payment, deduct income-tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source ('TDS' for short). When the employer fails in default to deduct the TDS from employee salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under section 201(1A) of the Income-tax Act, 1961.Therefore, in case the income of the victim is only from "salary", the presumption would be that the employer under section 192 (1) of the Income-Tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required toprove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee. Deciding the fourth issue "whether the compensation awarded to the appellants is just and proper" the court held that the deceased was 39 years of age. His income was Rs 1032/- per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money. While the chance of the multiplier is determined bytwo factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs 1032/- per

51 *SarlaVerma* v. *DTC* (2009) 6 SCC 121.

month. Having regard to the facts and evidence on record, the court estimate the monthly income of the deceased at Rs.9, 000 x 2 = Rs.18, 000/-per month. From this his personal living expenses, which should be 1/3rd, there being three dependents has to be deducted. Thereby, the 'actual salary' will come to Rs.18,000 – Rs.6,000/ - = Rs.12,000/- per month or Rs.12,000 x 12 =1,44,000/- *p.a.* As the deceased was 28 ½ years old at the time of death the multiplier of 17 is applied, which is appropriate to the age of the deceased. The normal compensation would then work out tobe Rs.1,44,000/- x 17 =Rs.24,48,000/- to which the court added the usual award for loss of consortium and loss of the estate by providing a conventional sum of Rs. 1,00,000/-; loss of love and affection for the daughter Rs.2,00,000/-, loss of love and affection for the widow and the mother at Rs.1,00,000/-each *i.e.* Rs.2,00,000/- and funeral expenses of Rs.25,000/-. Thus, in all a sum of Rs.29, 73,000/- was decided to be a fair, just and reasonable award in the circumstances of the case. Respondent was directed to pay the total award with interest minus the amount (if already paid) within three months. The appellant's daughter who was aged about 2 years at the time of accident of the deceased has already attained majority; money may be required for her education and marriage. In the circumstances, we direct respondent to deposit 25%of the due amount in the account of appellant. Out of the rest 75% of the due amount, 35% of the amount be invested in a nationalized bank by fixed deposit for a period of one year in the name of the daughter-appellant. Out of the rest 40% of the due amount, 20% each be invested in a nationalized bank by fixed deposit for a period of one year in the name of the appellant, the wife and the mother respectively.

Right to life

In the case of *Selina Aktar* v. *Union of India*[52] it is alleged by the petitioner that the deceased was killed by the respondent under a fake ground that he was engaged in smuggling activities and he was chased by the respondent, while under chase the deceased tried to snatch the rifle from the hand of respondent and at that time respondent, to save his life and weapon fired on the smugglers and as a result the deceased received bullet injuries and died. Thereafter with a view to escape from the misdeeds of respondent, lodged a false FIR[53] against unknown persons. It is further stated that postmortem was conducted on the dead body and it was found that the bullet injury was on the back of the shoulder of measuring. It is contended that the deceased was a daily labourer by profession and was the sole bread earner of the family consisting of the petitioners. Arising on the conclusion after hearing the contentions of both the parties the court held that it is an undisputed fact that deceased died due to bullet injuries fired by respondent. Post-mortem examination was done over the dead body. In the post-mortem report, the autopsy surgeon has mentioned that he found entry wound over the back of the shoulder. There is no dispute raised on behalf of the respondents regarding the observation made by the autopsy surgeon in the post-mortem report which clearly suggests

52 MANU/TR/0108/2014. 2014 SCC online Teri 265.

53 The IPC. 1860 ss. 307 and 398.

that the deceased was fired on his back and it also suggests that the firing was made from a reasonable distance since there was no blackening, burning or tattooing round the entry wound. If the story that deceased tried to snatch the weapon of respondent and there was any such serious attempt, in that case both deceased and respondent were likely to suffer injuries before deceased was shot dead by respondent. The story that respondent fired at the time of scuffling with fire weapon does not appear to be true. At least such story does not convince judicial conscience since the entry wound of the bullet was on the back of the deceased and there was no blackening, burning or tattooing which suggests that it was not a firing within a very close range but it was from a considerable distance. Even if there was any such incident, the outpost party would fire in non vital organ of the person and thereby precious life of a person would not have been taken away. Deciding the question of reward of compensation the court held that:[54]

> (t)he decision of General Security Force Court (for short, GSFC) is not binding on this Court while this Court is exercising jurisdiction under Article 226 of the Constitution of India in respect of compensation as a public law remedy. For remedy in public law actions, this Court can invoke new tools and would remedy to provide redressal in the case of deprivation of fundamental right like that under Article 21 of the Constitution and also may award compensation in proceedings for enforcement of fundamental rights.

The court referred the case of *Rudul Sah* v. *State of Bihar* [55] where the Supreme Court had considered the important question as to whether the Apex Court in exercise of its jurisdiction under Article 32 can pass an order for payment of money as compensation for deprivation of fundamental rights; and answer the question, thus, "awarding compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

It has well been settled that award of compensation is an appropriate and effective remedy for redress of an established infringement of a fundamental right under article 21 of the Constitution of India.

The court in instance case held that: [56]

we are aware that we are not sitting as an appellate authority over the decision taken by the GSFC. Irrespective of the decision taken by the GSFC, having considered the facts and circumstances placed before us, we are of considered

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54 *Id.* at para 13, 14.
55 (1983) 4 SCC 141.
56 *Supra* note 52, para 22.

opinion that right to life as guaranteed under Article 21 of the Constitution in respect deceased has been violated.

The court considers it as a fit case to award compensation to the next kin of the deceased.

V DEFAMATION

An injury to reputation is as likely, if not were to disturb public peace and individual comfort and happiness as an injury to person and property. Defamation is the wrong done by a person to another's reputation. [57] 'Libel' and 'Slander' are particular forms of defamation. The distribution between the two is not material in India where both are treated alike. The law of defamation has changed over years due to various judicial decisions. Today it is to be found at the point at which interests in free speech and reputation interest. Liability rules reflect the delicate balance struck by the courts between these interests. [58] Defamation occurs by way of the publication of an explicit or imputed statement that results in injury to the claimants' reputation, in the sense that a substantial and respectable proportion of society thinks less well on him.[59]

In many ways defamation is unique among torts and it is best understood in the context of its historical development. Until the sixteenth century; the ecclesiastical courts exercised the general jurisdiction over defamation. Thereafter the common law courts developed an action on the case for slander where temporal damage could be established. Much later the common law courts acquired jurisdiction over the libel too. In late nineteenth and early twentieth century, liability in defamation was extended because of menace to reputations occasioned by the mass circulation of the new and popular press. The recent history of the defamation is marked by continuing conflict between the need to protect the character and privacy of individuals, on one hand and the right to freedom of speech on other hand.[60]

One of the very important cases on defamation heard by the High Court of Delhi during the survey period is *Swatanter Kumar* v. *The Indian Express Ltd.*[61] The plaintiff filed the suit for permanent injunction and damages against the Indian Express Ltd. through editor-in-chief and publisher, Mr. Maneesh Chibber, reporter, The Indian Express Ltd., Bennett, Coleman and Company Ltd., The Managing Director & The Editor-in-Chief of 'Times Now', Global Broadcast News (GBN) through managing director, Editor-in-Chief of 'CNN-IBN' and Turner International through managing director, intern through defendant and Union of India through the Secretary, Ministry of Information and Broadcasting. The plaintiff prayed for

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57 The Indian Penal Code, 1860, s. 499.
58 *Street* on *Torts*, *supra* note 26 at 533.
59 *Ibid.*
60 *Ibid.*
61 207 (2014) DLT 221.

the relief of permanent injunction against the defendant, in print or electronic media or *via* internet or otherwise from publishing, republishing, carrying out any further reports or articles or any other matter telecasts or repeat telecasts or programs, or debates or any discussion or reporting of any kind, directly or indirectly, pertaining to the purported complaint and also prayed for a decree of damages against the said defendant. The plaintiff has been an eminent lawyer elevated as a judge of the Delhi High Court and later on elevated to Supreme Court of India. After that he took over as the Chairperson of the National Green Tribunal, a position that he presently holds. The plaintiff moved the court for the breach of his fundamental and personal rights, due to the alleged defamatory and malicious acts of defendants. One of the defendants, details relating to whose identity was not disclosed stated to the, CJ of India making certain allegations through an affidavit against the plaintiff. She claims to have interned under the plaintiff in the Supreme Court of India, however, the plaintiff on the basis of the information received mentioned that she was neither an intern nominated by the Supreme Court nor by the plaintiff himself. The defendants published a news item written by another defendant in the Newspaper of the defendants. The said news item pertained to an alleged complaint made by an individual against a retired judge of the Supreme Court, with the headline "Another intern alleges sexual harassment by another SC Judge". The plaintiff alleged that no attempt of any verification of the allegations or the authenticity of the alleged complaint was undertaken by said defendants before publishing the news item because, even as per the news report, the defendant, at the time of going to the press, did not have the alleged affidavit in their possession. The plaintiff states that the incidents that have been alleged by defendant did not take place and that the alleged complaint is baseless, fraudulent and motivated. The plaintiff argued that the aforesaid acts and omissions are also violative of all the norms and canons of responsible journalism. Such conduct has been actuated by malice, against the plaintiff in particular and generally against the justice dispensation system. The defendants have failed to abide by the minimum moral standards of ethics and there is a complete failure to comply with the etiquette and ethical standards expected from them. It is submitted that grave prejudice and irreparable injury will be caused to the plaintiff if the defendants are not immediately restrained, that the balance of convenience is in favour of the plaintiff and against the defendants and the plaintiff has a strong *prima facie* case and there is every likelihood of the suit being decreed in terms of the prayers made therein. The defendants argued that the freedom of the press which is part of the freedom of the expression is hallmark of any democracy and is part of the fundamental right under article 19(1) of the Constitution of India. It was argued that the defendant are merely publishing the write ups on the basis of the affidavit and are not making any such wild and reckless allegations as alleged by the plaintiff. It was also argued that the defendants are indulging in fair reporting and plaintiff is unnecessarily alleging the defendant as guilty of irresponsible journalism. It has been argued that the public debate or discussion on public platform on issues of the public interests is part of free and fair democracy. The defendants argued that the present suit for injunction is not maintainable in as much as the publications have already been made. The court

emphasized that in *Express Newspapers (Private) Ltd.* v. *The Union of India*,[62] the Supreme Court held that freedom of speech and expression includes within its scope the freedom of the press and the Supreme Court referred to the earlier decisions in numerous cases.[63] The Supreme Court also referred to the case of *Reliance Petrochemicals Ltd.* v. *Proprietors of Indian Express*[64] wherein Sabyasachi Mukherjee J observed that the court can pass interim orders restraining the publication if the court finds that there exists a real and imminent danger that the continuance of the publication would result in interference with the administration of justice. The Supreme Court on facts of the case of *Reliance Petrochemicals* case proceeded to apply the test of real and imminent danger. In view of the recent stringent provisions incorporated in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which provides for a mechanism of dealing with the cases of sexual harassment, the court opined that strict view would have to be applied equally to both the sides, *i.e.* complainant as well as alleged accused specially in cases where the complaint is filed after the lapse of long period. There should be a limitation of time for the purpose of filing of such complaints, otherwise no one would know when the complaint ought to have been filed and decided. The court opined that it is a question of fact which has to be examined on case to case basis as to what constitutes the offending publication which may result in future obstruction of justice after examining the content of the publication and its likely effect on the public. Applying the said test to the instant case, it was observed that it can be seen that there are some allegations against the plaintiff about his alleged involvement in the sexual harassment against which the remedial measures have been taken by the defendant by approaching the Supreme Court to set up a mechanism in view of guidelines set out in *Vishaka's*[65] case. The court held that the plaintiff has been able to make out a strong *prima facie* case on the basis of the disclosure of the material available on record especially copies of newspapers which clearly show that the defendants have published the write ups and telecasted by highlighting the allegations on the front page in order to create sensation amongst public and made it apparent by creating the impression that the plaintiff in all probability is involved in such incident. The balance of the convenience is also in favour of the plaintiff as the degree of the prejudice is far more excessive than that of the defendants. The irreparable loss shall ensue to the plaintiff at this stage and not to the defendants if such publications and telecast of TV news of such nature on similar lines are not postponed. The court passed the interim order against any other person, entity, in print or electronic media or internet in view of the settled law in the case of *ESPN Software India Private Limited* v. *M/s. Tudu Enterprises*.[66]Accordingly, the defendants, their agents, assigns or any of

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62 1959 S.C.R. 12.

63 *RomeshThappar* v. *State of Madras* AIR 1950 SC 124; *BrijBhushan* v. *State of Delhi* AIR 1950 SC 129.

64 AIR 1989 SC 190.

65 AIR 1997 SC 3011.

66 MANU/DE/1061/2011.

them acting on their behalf and/or any other person, entity, in print or electronic media or internet were restrained from further publishing the write ups or publishing any article or write up and telecast which highlights the allegations against the plaintiff in the form of headlines connecting or associating plaintiff with those allegations, particularly, without disclosing in the headlines of article that they were mere allegations against the plaintiff or any other similar nature of articles, write up and telecast. The defendants were also asked to delete the offending content from internet or other electronic media and take necessary steps within 24 hours. The defendants were further restrained from publishing the photographs of the plaintiff either in print media or electronic media or internet or on TV channels which would suggest connection of the plaintiff with the said allegations made by defendant and remove his photographs from internet or all other electronic media as well as upload defamatory articles. The outcome of the case is that the court can pass interim orders restraining publication if court finds that there exists real and imminent danger that continuance of publication will result in interference with administration of justice.

The second case on the issue of defamation came to the Supreme Court of India in *N. Sengodan* v. *Secretary to Government, Home (prohibition & excise) Department, Chennai* [67] which is a case of abuse of power to destroy the reputation of the appellant. In this case, the appellant was an Ex-service man who served in the Indian Army for a period of seven years; later he joined the Tamil Nadu Subordinate Police Services and retired as inspector of police. The respondents , a former Inspector General (IG), Commissioner of Police, and former inspector of police, registered a complaint against the appellant.[68] According to the appellant, he had served both the Indian Army and state police service with devotion and had the privilege to win the appreciation of his superior officers in both the capacities. He is a family man and his wife is working as senior. His sons having completed their seven year course in Medicine in Russia. They are all living together as a happy close knit family sharing their joys and sorrows with one another. Besides, the appellant has wide relations as well as friends who are all having high esteem on him and his family. The version of the appellant was that after his retirement, he had the opportunity to realize the difficulties encountered by each and every member of the police force in Tamil Nadu and had voiced the merits of forming an association through which demands of members of the police force could be legally made to set right the wrongs committed to them. Further, according to the appellant, he neither indulge in any act/acts leading to any resentment in the mind of any personnel in the police service nor was propagating anything seditious. While so, Tamil Daily Malai Murasu, published a news item allegedly authored by the appellant. Based on the said news item, respondent, the then Inspector of Police, Fairlands Police Station,

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67 (2013) 8 SCC 664.

68 The Police (Incitement to Disaffection) Act, 1922, s. 3; and the IPC, 1860, s. 505(1) (b).

Salem City had registered a case.[69] Further, the appellant was arrested by the respondent and remanded to judicial custody. He was remanded injudicial custody by the Judicial Magistrate, Salem in connection with the above said case and lodged in Central Prison, Salem for a period of two months. It is also alleged that while the appellant was confined in Central Prison, Salem the Superintendent, Central Prison, Salem served on him adetention order passed by respondents. By the said order, the Commissioner of Police, detained the appellant.[70] Later the appellant made a written representation to the Secretary to Government of Tamil Nadu and sent it through the Superintendent, Central Prison, Salem. The Governor of Tamil Nadu, in view of the recommendation, revoked the order of detention and directed that the appellant be released. It is alleged that after the release from prison, there was no action from the part of the respondent for a long time and no chargesheet was filed against the appellant. Ultimately, a final report was filed which was accepted by the magistrate and the same was recorded. Further, the case of the appellant was that he was subjected to harassment particularly by the respondents on the basis of a false case registered against him with the object of destroying his reputation and image. The appellant was very muchaffected both in body and mind. The appellant was also subjected to mental cruelty and was also physically affected as a result of the confinement in Central Prison, Salem. The family members of the appellant have also suffered physically and mentally due to *mala fide* acts of the respondents. The appellant filed a writ petitionin Madras High Court and the single judge dismissed the writ petition on the ground that the appellant has failed to establish *mala fide* intention on the part of the respondents in registering a criminal case and detaining him. The said judgment was upheld by the division bench by the impugned judgment. The judgment passed by the Division Bench of the Madras High Court is challenged and the only question raised for the apex court consideration is whether in the facts and circumstances of the case the appellant is entitled for anydamage for having been detained for around two months.The court held that in the present case nothing has been brought to the notice to prove that the appellant's act was done with intent to cause, fear or alarm tothe public, or to any section of the public or to induce to commit an offence against the state government or against the public tranquility. Therefore, it is not clear on what basis the charge under section 3 of the Police (Incitement to Disaffection) Act, 1922 and section 505(1) (b) of the IPC was levelled against the appellant. The respondents have failed to bring on recordthe evidence to show that the appellant was engaged, or was making preparations for engaging, in any of his activities as a 'Goonda' which may affect or are likely to affect adversely the maintenance of public order.There is nothing on record to suggest that the appellant, who either by himself or as a member of or leader of a gang habitually committed, or attempted

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69 *Ibid.*

70 The Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982.

to commit or abetted the commission of offence punishable under Chapter XVI or Chapter XVII or Chapter XXII of the IPC. It was that the respondent-state and its officers have grossly abused legal power to punish the appellant to destroy his reputation in a manner non-oriented by law by detaining him based on the wrong statements which were fullyunwarranted. The court imposed a cost of Rs. 2 Lakhs on the state of Tamil Nadu in favour of the appellant.

In another case the Delhi High Court rejected the allegations of the defamation of the plaintiff in *Naveen Jindal* v. *Zee Media Corporation Ltd.*[71] justifying the right to freedom of speech and expression under article 19(1) (a) of the Constitution of India as the plea of the plaintiff does not fall in any of the clauses of sub-clause (2) of article 19 of the Constitution. In the instant the plaintiff was the Chairman of the M/s. Jindal Steel & Power Ltd. His grievance was that the plaintiff was having a running feud with defendant, M/s. Zee Media Corporation Ltd.The defendant was engaged in the business of broadcasting news and entertainment. It was alleged by the plaintiff that the officers of the Zee Media Corporation Ltd., had been in the past attempting to blackmail plaintiff on account of the alleged role in getting allotment of coal blocks which were under the scrutiny of the CBI. It was alleged that defendant demanded a sum of Rs.100 crores from the plaintiffs in the form of advertisement contracts and aired a false news report on the basis of a forged CAG report because of which the plaintiffs laid a trap against them and subsequent, two FIRs[72] were registered and were pending investigation at Delhi. It was alleged that because of these FIRs, the defendant and its office bearers with *mala fide* intentions unleashed a campaign of vilification on their news channel by making false, vicious and pernicious allegations with a view to defame the plaintiffs. The court held that the plea of the plaintiff did not fall in any of the clauses of sub-clause (2) of article 19 of the Constitution; therefore, he was not entitled to a protection. It was also contended that the public at large has a right to know about the credentials of its proposed representative. The court observed that: [73]

> The subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of the free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear

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71 209 (2014) DLT 267.

72 The IPC, 1860, ss. 384, 511, 20B also under ss. 466, 468, 469, 471 read with s.120B IPC.

73 *Supra* note 71 at 275.

> that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with granting of interim injunctions.

In the instant case it was observed that the libelous character of the publication is beyond dispute, but the effect of it upon the defendant can be finally disposed of only by a jury. The court will invariably not grant an interim injunction to restrain the publication of defamatory material as it would be unreasonable to fetter the freedom of speech before the full trial takes place, where each of the parties can argue in detail with the help of additional evidence. Similarly, it is incumbent upon the court to decide whether it would be reasonable to fetter the reasonable criticism, comment, and parody directed at the plaintiff, which to a large extent is protected by the Constitutional guarantee to free speech, to all the citizens of India. The court opined that although the plaintiff is not entitled to any blanket pre-telecast restraint order against the news reports as is sought to be carried by the defendants in its telecast but the plaintiff is certainly entitled to invoke guidelines of National Broadcasting Standard Association (NBSA) reproduced above which obligates that the defendant while conducting their programmes, reporting, televising or interviewing various persons must also obtain the views of the affected person or the view of his authorized representative and the same be reflected simultaneously along with the said reporting.

VI DECEIT

Deliberately false representations on which the claimant is induced to, and does, rely to his detriment have been, for more than two centuries, actionable under the tort of deceit.[74] This tort is defined in terms of several key elements namely a false representation made (i) knowingly or (ii) without belief in its truth or (iii) recklessly, careless whether it be true or false with the intention that one should act in reliance upon the representation which causes damage to him in consequence of his reliance upon it.[75] Is a person, who has developed intimate relationship with the complainant and made her to believe that she had become the wife, guilty of deceit? This question came before the Apex court in the case of *Ram Chandra Bhagat* v. *State of Jharkhand*[76] where the appellant had acquaintance with the complainant and developed intimate relationship with her. By his actions he made the complainant to believe that she had become the wife of the appellant and thereby they had stayed together for nine years as husband and wife and during that period the complainant had given birth to two children - a son and a daughter. Thereafter, the allegation is that the appellant had turned the complainant out of his house. In the afore-stated circumstances, a complaint was filed by the complainant and in pursuance of the said complaint the appellant was

74 *Pasley* v. *Freeman* (1789) 3 Term Rep 51.
75 Street on *Torts, Supra* note 26.
76 (2013) 1 SCC 562.

prosecuted and convicted. A criminal revision was filed in High Court of Jharkhand against the conviction which confirmed the order of conviction of the appellant. The appellant filed appeal before the Supreme Court. As per Dave and Mukhopadhyay JJ the deceit practiced by the appellant is proved from the following facts and circumstances *i.e.*, being acquainted with the complainant, the accused had developed a close relationship with the complainant. He used to visit the complainant from time to time and he had promised the complainant to marry her. The appellant had got a form, with regard to marriage registration, signed by the complainant. The form was signed by the accused-appellant and he also induced the complainant to sign the form so as to get married. The form duly signed by both the persons had been exhibited and the signature of the appellant had been identified. The afore-stated fact made the complainant to believe that the accused-appellant had married her and, therefore, she had started residing with him as his wife. In fact, the appellant did not marry the complainant. The persons related to the complainant and the accused were also made to believe that the complainant was the wife of the appellant, though rituals necessary for Hindu marriage had never been performed. It is an admitted fact that no marriage had taken place between the complainant and the appellant but only on the basis of the documents signed by the complainant at the instance of the accused-appellant, the complainant was made to believe that she was a lawfully married wife of the accused-appellant. There is sufficient evidence on record to show that the complainant had resided with the accused-appellant and the afore-stated fact was also reflected in the voters' list. In the voters' list the name of the complainant was shown as the wife of the appellant. As a result of the cohabitation, the complainant had given birth to two children. The accused-appellant had acknowledged the fact that the said two children were his children. Several ceremonies in relation to the birth of the children had also been performed by the accused-appellant.Thus, upon perusal of the evidence, the court found that there was sufficient evidence to the effect that the accused-appellant has deceived the complainant, which ultimately resulted into a belief in the mind of the complainant that she was a lawfully married wife of the accused-appellant, though she was not. As per Lodha J. 'Deceit', in the law, has a broad significance. Any device or false representation by which one man misleads another to his injury and fraudulent misrepresentations by which one man deceives another to the injury of the latter, are deceit. Deceit is a false statement of fact made by a person knowingly or recklessly with intent that it shall be acted upon by another who does act upon it and thereby suffers an injury. It is always a personal act and is intermediate when compared with fraud. Deceit is sort of a trick or contrivance to defraud another. It is an attempt to deceive and includes any declaration that misleads another or causes him to believe what is false. If a woman is induced to change her status from that of an unmarried to that of a married woman with all the duties and obligations pertaining to the changed relationship and that result is accomplished by deceit, such woman within the law can be said to have been deceived and the offence under section 493 IPC is brought home. The victim woman has beeninduced to do that which, but for the false practice, she would not have done and has been led to change her social and domestic

status. The ingredients of section 493 can be said to be fully satisfied when it is proved (a) deceit causing a false belief of existence of a lawful marriage and (b) cohabitation or sexual intercourse with the person causing such belief. It is not necessary to establish the factum of marriage according to personal law but the proof of inducement by a man deceitfully to a woman to change her status from that of an unmarried to that of a lawful married woman and then make that woman cohabit with him establishes an offence under section 493 IPC.

VII CASUALITY

In *Dredging Corporation of India Ltd.* v. *P.K. Bhattacherjee*,[77] the commissioner, workmen's compensation considering the age, wages and injury of the respondent who had met with an accident held that he was entitled to compensation rupees 12 lakhs. The appellant thereafter filed an appeal to the High Court of Calcutta which was dismissed. It held that the respondent, at the concerned time, was on duty on board on one of the appellant's vessels and this would mean that he was on duty, any affliction or injury during such time would come within the ambit of Section 3 of the Employee's Compensation Act. In the Supreme Court, the appellant argued that the respondent/Claimant was diagnosed to be suffering an ischemic heart ailment, rendering it legally impermissible for the appellant-company to continue any further with his services. His argument was that this health malady had not arisen as a consequence of the respondent's services with the appellant, and hence no compensation was payable under section 3 of the Employee's Compensation Act, 1923 which comes into operation only in the event of an employee suffering personal injury caused by an accident arising out of and in the course of his employment. The contention on behalf of the appellant company was that an ischemic heart condition is personal to the constitution of the respondent, totally unrelated to his service. The Supreme Court held that the Employee's Compensation Act is intended for the benefit of an employee, and quintessentially is a no-fault liability. The court also held that it the courts below have misdirected themselves in law in that because the illness of the employee was discovered while he was in actual service and compensation is payable under section 3 of the Employee's Compensation Act, 1923. The commissioner ought to have distinguished between the discovery of the health condition while in service and the health condition having occurred during service. The court set aside the impugned order as well as the order of the commissioner and remands the matter back to the court of the commissioner for fresh adjudication *de novo*.

VIII CONCLUSION

The foregoing takes us to the conclusion that the Courts in India during the survey period were involved in the process of reformulating and reflecting the principles of law of torts. The case law indicates the dynamics of law of torts in India. The growing importance of the subject and increasing role of the judiciary

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77 (2013) 10 SCC 224.

have been the highlights of the judicial decisions of the survey period. The guidelines issued by the Supreme Court in *G. Sundarajan* v. case [78] case to the authorities has filled the legislative vacuum in the field and evolved certainty. The most important contribution of courts can be seen in the decisionson damages and compensation. The Survey period also included the high profile case of *Swatantra Kumar*[79] case which saw an attempt on the part of court to strike a balance between free speech claim and reputation of an individual. The proactive approach of judiciary must continue to uphold the established principles of law and to evolve newer principles at places where there is vacuum.

78 *Supra* note 22
79 *Supra* note 61.