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TORT LAW

*B C Nirmal**

I INTRODUCTION

A TORT is a civil wrong, it is a branch of law which may be better described as evolutionary. This developing branch of law is considered as part of distributive justice where the aggrieved party is entitled to claim damages. It is a general classification encompassing several civil causes of action providing a private remedy for an injury caused by the tortious conduct of other. Each cause of action is separately named and defined with its own rules of liability, defenses and damages.[1]According to Winfield, "tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by an action for un-liquidated damages."[2]According to Richard A. Epstein the simplicity of this branch of law lies in the fact that it concerns itself with fact patterns that can be understood and appreciated without the benefit of formal legal instruction and almost everyone has had occasion in contexts apart from the judicial process to apply his beliefs to the question of responsibility for some mishap that has come to pass.[3]

Tort law involves questions of entitlements and is usually posed in the context of some kind of injury to the plaintiff.[4] The scope and significance of tort law has risen significantly over the last 200 years.[5] The biggest challenge was to define tort with precision. It is submitted that most of the definitions are insufficient to

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1 Edward J. Kionka, *Torts*1 (Black Letter Series, Thomson/West, 2006).

2 W.H.V. Rogers, *Winfield and Jolowicz on Tort* 4 (Sweet & Maxwell, International Student Edition, 1998).

3 Richard A. Epstein, "A Theory of Strict Liability" 2(1) *The Journal of Legal Studies*151-204 (1973).

4 David K. De Wolf, *The Law of Torts Cases and Materials* vii (Michigan: Lupus Publications, Ltd., 2009).

5 Hans-Bernd Schäfer, "Tort Law: General", at 570, *available at*: *encyclo.findlaw.com/3000book.pdf* (last visited on June 10, 2015).

indicate what conduct is and what is not sufficient to engage person in tortious liability.

In a society conflict of interests are inevitable and regulation of conduct of individual is a necessity. The law must ensure granting of redress. In majority of tort actions claimant is seeking monetary compensation for the injury he has suffered and this fact strongly emphasizes the function of tort in allocating or redistributing loss. The fundamental principle applied to the assessment of an award of damage is that the claimant should be fully compensated for his loss. He is entitled to be restored to the position that he would have been in, had the tort not been committed, insofar as it can be done by the payment of money.[6] In many cases, however, the claimant is seeking an injunction to prevent the occurrence of harm in the future and in this area the preventive function of tort predominates.[7] Damages are the dominant remedy at common law, but the equitable remedy of injunction is also important.[8]

In the context of law of torts the role courts play 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.[9] The Supreme Court and other courts of India, in the year under survey, have attempted to clarify many aspects of the law discussed in the present survey under the headings of negligence, defamation, and nuisance. Special focus of the court is seen in the case of damages. In the present survey an attempt has been made to evaluate the role of courts in the context of law of torts.

II NEGLIGENCE

Negligence as a tort is a breach of a legal duty to take care which results in damage to the claimant.[10] The tort of negligence is a legal action which can be brought by a person to whom the wrongdoer owed a duty of care. Liability arises where there is a duty to take care and where a breach of that duty causes damage. The tort of negligence consists of three elements, which must be established by the injured person in order to succeed. These elements are a duty of care, a breach of that duty by the defendant and damage to the plaintiff from the breach of the duty which is not too remote. Negligence is somewhat similar to carelessness; however, every careless act will not result in liability. It is only those that satisfy these three elements. Negligence may mean a mental element in tortious liability or indeed any other form of liability or it may mean an independent tort.[11] Although

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6 *Livingstone* v. *Rawyards Coal Company* (1880) App Case 25, 39

7 W.H.V. Rogers, *Winfield and Jolowicz on Tort*1 (Sweet & Maxwell, International Student Edition, 2002).

8 "The Nature and Function of the Law of Torts", *available at*: *https://dspace.ndlr.ie/bitstream/10633/31111/2/Tort%20General%20Notes.pdf* (last visited on April 15, 2015).

9 B.C. Nirmal, "Tort Law" XLIX, *ASIL*, 1039 (2013).

10 W.H.V. Rogers, *supra* note 7, at 103.

11 Winfield, "The History of Negligence in the Law of Torts", *Law Quarterly Review* 42 (1926).

the tort of negligence is of very general application it frequently occurs in a number of standard situations such as accident on the road or at work, medical misadventure, defective premises, professional advice and so on. The decision of House of Lord in *Donoghue* v. *Stevenson*[12] treats negligence, where there is a duty to take care, as a specific tort in itself, and not simply as an element in some more complex relationship or in some specialized breach of duty.[13] In some of these cases, although liability is essentially based upon negligence it is put into statutory form or there are important additional statutory provisions which rest on some other basis.[14]

If the claimant's injuries have been caused partly by the negligence of the defendant and partly by his own negligence then under common law the claimant can recover nothing. This rule is known as contributory negligence which appeared at the beginning of the nineteenth century, though the general idea is traceable much earlier. The courts modified defence of contributory negligence by the so-called 'rule of last opportunity'.[15] This enabled the claimant to recover notwithstanding his own negligence, if upon the occasion of the accident the defendant could have avoided the accident while the claimant could not.[16] Contributory negligence once comprised one of the most difficult branches of the law. Fortunately, however, the Law Reform (Contributory Negligence) Act, 1945 and several decisions of highest courts introduced a straightforward and comprehensive body of principles in the place of a mass of subtle arguments and tedious refinements.[17]

Electrocution

The case of electrocution came before the High Court of Kerala in the case of *Santha* v. *Kerala State Electricity Board.*[18] The deceased was a ticket checker in a bus and when the bus reached a stop, a broken electric line was lying across the road. Seeing it as an obstruction deceased alighted from the bus and tried to clear the way for his bus by removing the electric line. According to the version of the defendant-Kerala State Electricity Board (hereinafter referred to as, the "Board") electric line was snapped due to the fall of *cadjan* leaves from a coconut tree standing in the property of St. Clara Homes. Deceased came into contact with the live wire while attempting to remove the same and consequently became the victim. A passenger in the bus testifies that deceased's attempt was only to remove the obstruction. On the facts of the case, it appears that there is no much dispute on the incident or cause of death.

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12 [1932] AC 562.

13 *Grant* v. *Australian Knitting Mills* [1936] AC 85, 103.

14 W.H.V. Rogers, *supra* note 7, at 104.

15 *Id*. 247.

16 *Ibid.*

17 R.F.V. Heuston and R.A. Buckley, *Salmond and Heuston on the Law of Torts* 499 (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2003).

18 2014 ACJ 2168, 2014(1) KLJ 833, 2014(1) KLT 1038.

In the case of *Kiron Das* v. *State of Assam*,[19]the son of the petitioner, late Sumon Das while going to school accompanied by his younger sister Ms. Mamoni Das, met with an accident. The accident occurred when the deceased son of the petitioner came in contact with a live wire hanging from the electric pole. After the accident, he was taken to hospital and declared brought dead. An FIR was lodged with the police station on the basis of postmortem report. In the report furnished by the Chief Electrical Inspector, it was stated that the death of the victim was due to non-compliance of the provisions of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, for lack of checking and corrective maintenance works. The report further revealed that a day before the accident, a goat was also electrocuted in the same place. After the incident, the people of the area had informed the staff/maintenance group of Hojai Electrical Sub-division verbally. Had the appropriate and proper maintenance measures being taken and had the line being regularly and properly checked by the concerned field officials of the Sub-division, the incident could not have taken place, the report has opined. In the counter affidavit filed by the Assam State Electricity Board (ASEB), it was stated that no intimation regarding falling of the line from the pole had been furnished. The ASEB also raised the question of delay in filing the writ petition.

The court held that the concept of strict liability, also called "no fault liability", is now being increasingly applied by the Indian courts. The doctrine is an exception to the general law of torts which is based on the principle that there can be no liability without fault. There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability is based on the proposition that the one who undertakes such activities has to compensate for the damage caused by him irrespective of any fault on his part. Thus, the court said that in a case where the principle of strict liability applies, the defendant has to pay damages for the injury caused to the plaintiff even though the defendant may not have been at any fault.

Medical negligence

Professional negligence, more specifically, medical negligence is, as the term suggests, relates to the medical profession and is the result of some irregular conduct on the part of any member of the profession or related service in discharge of professional duties. Medical negligence can be seen in various fields like when reasonable care is not taken during operations, during the diagnosis, during delivery of the child, with issues dealing with anesthesia *etc*.

In the case of *Tamil Nadu Medical Council* v. *Easwaran DNB FRCS*,[20] a writ petition was filed before the High Court of Madras by the respondent, praying for issuing direction to the Tamil Nadu Medical Council and Medical Council of India (MCI) to investigate and take appropriate actions on those doctors who were responsible for the criminal negligence in treating the father of the petitioner.

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19 2015 (1) GLT 52.

20 AIR 2015 Mad 11; (2014) 7 MLJ 220.

The respondent is a surgeon and his father was treated for cancer in Apollo Hospital, Chennai. The surgeon, anesthetist, the medical superintendent and the hospital were highly negligent and the doctor failed to take reasonable care and due to which the cancer recurred within a year and spread to other parts of the body because of the "BOTCHED UP" operation and the failure to give radiotherapy which was essential to prevent recurrence of cancer. The respondent, who was living and working in the United Kingdom (UK), came in April 2010 for his father's treatment. He found that his father had decreased hearing on the operated side. The petitioner met the doctor again and he advised MRI, which showed a big tumour and it was in fact bigger than previous time. He got his father operated in another hospital in April 2011 and he received radio therapy. But the cancer had spread to other parts of the body and he finally passed away in January 2012.

The respondent, who is a qualified medical practitioner of considerable experience was convinced that it was only on account of the sheer negligence and breach of duty of care that the cancer spread to other parts of the body, and for various violations of Professional Conduct, Etiquette and Ethics, Regulations 2002 by doctors, he preferred a complaint before the Tamil Nadu Medical Council requesting to take disciplinary action against the concerned doctors for their professional misconduct. The respondent received a letter from them refusing to investigate the complaint against the doctors, as they were not empowered to do so. A legal notice was already sent to the Apollo Specialty Hospital. He submitted a similar complaint before the MCI. Since there was no follow up action by the statutory authorities, he preferred another complaint to the MCI. He also moved the state consumer disputes redressal commission claiming compensation. The MCI, gave a reply stating that since the hospital and the doctors against whom the allegations are made are in the State of Tamil Nadu, the Tamil Nadu State Medical Council can go into the complaint and take appropriate action as per law, within a period of six months under clause 8.4 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Even then, the Tamil Nadu Medical Council failed to take any action. Aggrieved against the same, a writ petition was filed by the respondent.

The Registrar, Tamil Nadu Medical Council contended that the council has no power to take action relating to medical negligence. According to the council, only in case of professional misconduct action could be taken by the council. It was further contended that the respondent has already approached the consumer forum claiming compensation and as such the complaint before the council is not maintainable. The single judge, following the decision of the Supreme Court[21] issued a direction to the Tamil Nadu Medical Council to consider the complaints and disposed of the same on merits and as per law, with notice to the concerned medical practitioners and all concerned and such exercise was directed to be completed within a period of six months, as provided under clause 8.7 of Ethics Regulations 2003, without being influenced by the observations made in the order. As against the said direction issued, the writ appeal was filed.

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21 *Dr. P.B. Desai* v. *State of Maharashtra,* AIR 2014 SC 795; (2013) 11 SCC 429; LNIND 2013 SC 815; (2013) 4 MLJ (Cri LJ) 259.

The contention of the counsel for the appellant/Tamil Nadu Medical Council was that unless it is alleged that there is misconduct in terms of regulation 7, the Tamil Nadu Medical Council need not enquire the complaint and thus the single judge was not right in giving direction to the appellant. On the other hand, the counsel appearing for the 2nd respondent/Medical Council of India relied on chapter 8, Regulation 8.1 and 8.2 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which states that the state medical councils as well as the MCI can take appropriate action if the medical code is violated. Regulation 2.4 was also cited, it provides:

> The Patient must not he neglected: A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family. Provisionally or fully registered medical practitioner shall not willfully commit an act of negligence that may deprive his patient or patients from necessary medical care.

As per regulation 8.1 it must be clearly understood that the instances of offences and of professional misconduct in question do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the MCI and or state medical councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner. Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the MCI and/or state medical councils have to consider and decide upon the facts brought before the MCI and/or state medical councils.

The high court held that since the appellant is a statutory authority, who is competent to proceed against the doctors with reference to negligence, the single judge was right in giving direction to consider and dispose of the complaints of the respondent, regarding alleged negligence of doctors, by following the decision of the Supreme Court in the case of *Dr.P.B. Desai* v. *State of Maharashtra*[22]wherein in paragraph no. 40, the Supreme Court has held as follows:[23]

> Once, it is found that there is 'duty to treat' there would be a corresponding 'duty to take care' upon the doctor qua/his patient. In certain context, the duty acquires ethical character and in certain other situations, a legal character. Whenever the principle of 'duty to take care' is founded on a contractual relationship, it acquires a

22 AIR 2014 SC 795; (2013) 11 SCC 429.

23 *Ibid.*

> legal character. Contextually speaking, legal 'duty to treat' may arise in a contractual relationship or governmental hospital or hospital located in a public sector undertaking. Ethical 'duty to treat' on the part of doctors is clearly covered by Code of Medical Ethics, 1972. Clause 10 of this Code deals with 'Obligation to the Sick' and Clause 13 cast obligation on the part of the doctors with the captioned "Patient must not be neglected. Whenever there is a breach of the aforesaid Code, the aggrieved patient or the party can file a petition before relevant Disciplinary Committee constituted by the concerned State Medical Council.

The Supreme Court in the case of *P.T. Parmanand Katara* v. *Union of India*[24] has emphasized the duty of the doctors to treat patients with utmost care and respect as:

> Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way....

The court held that we are duty bound to point out that the MCI as well as the Tamil Nadu Medical Council, which are created under the statute to deal with the misconduct/delinquencies alleged against the doctors, who have registered their names with the medical council, are bound to enquire into the allegations/ deficiencies, based on the complaint received from the patients/their relatives. It is well settled that the right to get timely treatment from a qualified doctor is a fundamental right guaranteed under article 21 of the Constitution of India.

The court was of view that the Tamil Nadu Medical Council, who is the statutory authority is not only bound to enquire into the complaint of the respondent, but also is bound to attend any complaint received from patients/their relatives with regard to dereliction or discharge of duties by doctors so as to give confidence to the members of the public about medical profession. In fine, the writ appeal is dismissed. However, it was made clear that this order shall not be taken as a ground by the appellant that the doctors are in negligence in any manner and the appellant shall dispose of the complaints in accordance with law.

In the other case of *KAR Clinic and Hospital Pvt. Ltd.* v. *Swarna Prava Mishra*,[25] the opposite party as plaintiff filed money suit no. 242 of 2007, now pending in the court of the 2nd Additional Civil Judge (Sr. Division), Bhubaneswar, claiming damages from, the defendants-petitioners for medical negligence. The

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24 AIR 1989 SC 2039.

25 2014 (II) OLR 1101.

plaint averments clearly describe the manner of tests and operation conducted on the husband of the plaintiff for removal of gall bladder stones and how there was post operation negligence in attending the patient and demanding more money beyond the contract package, Which was also deposited by the plaintiff and the patient died only two days after the operation. It was also alleged that Endoscopic Retrograde Cholangio pancreatography (ERCP) test which was required to be conducted on the patient before the operation was not conducted as the hospital probably did not want to meet expenditure on that head. The defendants filed a petition under order 14, rule 2 of Code of Civil Procedure 1908 (CPC) for deciding the question "whether the suit is maintainable without obtaining an opinion from the Medical Board that there was medical negligence by the defendants" as a preliminary issue. The petition was resisted by the plaintiff on the ground that the point sought to be decided as a preliminary issue does not fall within the ambit of order 14, rule 2 of CPC, in asmuch as it was neither a pure question of law nor it related to the jurisdiction of the court to entertain the suit.

The court held that it is evident from the pleadings in the plaint that detail description of facts constituting negligence on the part of the defendants-have been alleged constituting cause of action for the suit. Proof of the pleadings in the plaint depends on evidence to be led by the plaintiff and no law requires or creates any bar that in the absence of an expert medical opinion with regard to *prima facie* case of medical negligence, cause of action would not arise and the suit for damages would not be maintainable. Question of negligence on the part of the defendants in the instant suit is not a pure question of law, nor does it relate to the jurisdiction of the civil court. Therefore, the question cannot be decided as a preliminary issue.

In *Sukumar Mukherjee* v. *Medical Council of India*,[26] a petition was filed for challenging validity of order by which, petitioner's name was removed from register of state council in relation to proceeding involving allegations of medical negligence. The question was whether order removing petitioner's name from register of state council was justified. The court held that in absence of express provision contained in regard to applicability regulations, provisions of clause could not be held to be applicable in proceeding initiated against petitioner. Facts adduced showed that respondent had no jurisdiction to invoke limitation provisions. Eventually, court found two of medical practitioners guilty of having committed medical negligence by considering facts, regulations held valid but decision of respondent, which appeared to had been taken by ethics committee was quashed and court dismissed the petition.

In *Kunal Saha* v. *State of West Bengal* [27] the question was whether medical negligence can create any absolute bar towards grant of the award or not? The petitioner was a doctor settled in USA and he lost his wife on April 25, 1998, during a social visit to Calcutta due to medical negligence of the respondent and some other doctors including the authorities of the AMRI Hospital. Aggrieved

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26 MANU/WB/0500/2014.

27 (2015) 1 CALLT 407 (HC).

thereby the petitioner approached the state consumer disputes redressal commission and also the appropriate criminal forum. The said disputes ultimately went up to the Supreme Court and the criminal appeals were dismissed and as regards the civil appeal, the matter was remitted to the National Consumer Disputes Redressal Commission for determining the compensation by a common judgment. The commission delivered a judgment and the matter again went up to the Supreme Court and was ultimately disposed of. Subsequent thereto, from a newspaper report dated May 16, 2014; the petitioner came to learn for the first time that the respondent was selected to receive the prestigious 'Bangabibhushan' award to be given in a public ceremony scheduled on May 20, 2014. Shocked by such attempt of the one respondent to glorify the other respondent the petitioner moved the court.

The court held that in a private action, the litigation is bipolar; two opposed parties are locked in confrontational controversy which pertains to the determination of the legal consequences unlike in public action. The character of such litigation is essentially that of vindication of private rights, proceedings being brought by the persons in whom the right personally inheres. Such strict rule of *locus standi* is applicable to private litigation. The petitioner is not a competitor in the award giving process. The impugned conferment of the award does not operate as a decision against the petitioner, much less it does not wrongfully affect his title to something. The petitioner has not been subjected to any legal wrong and he has suffered no legal grievances. The petitioner has no *locus standi* and the present writ petition is not maintainable and dismissed accordingly on the said grounds.

In the case of *Max Hospital, Pitampura* v. *Medical Council of India,*[28]a petition was filed for issuing the writ of *certiorari* by the Constitutional court and the question in this petition was whether MCI has jurisdiction to take action against appellant hospital on the matter of medical negligence in the matter of preoperative conditions when there is no provision or rules regarding aforesaid matter. In short the facts of the case Nikita Manchanda, 30 years old female was admitted in the petitioner hospital under consulting obstetrics and gynecologist of the petitioner hospital, Thereafter, the patient complained of severe pain and a call was made to doctor. Before doctor could reach the hospital, the condition of the deceased severely deteriorated and the blood pressure and pulse became non recordable. Urgent resuscitating measures were stated to have been taken. The deceased was shifted to POP/SICU for further resuscitation. Ultimately, the deceased died and was declared clinically dead. A criminal complaint with allegations of medical negligence was made by Aman Sarna, the deceased's husband to the Police. The DCP (Headquarter) sought an opinion from the Delhi Medical Council (the DMC) if there was any medical negligence on the part of the doctors. The Ethics Committee of MCI held that there was medical negligence on the part of doctors of Petitioner hospital in treating patient (Nikita Manchanda) and requested State Government Authorities to take necessary action on said hospital management for not having adequate infrastructure facilities necessary for appropriate care during post-operative period which contributed substantially to death of patient. Petition filed

28 ILR (2014) 1 Del 620.

by the Petitioner hospital sought quashing of the minutes of the meeting of the Ethics Committee of MCI whereby it was held that there was medical negligence on the part of doctor Alka Gupta, doctor Navita Kumari and doctor Pooja Bhatia in treating the patient Nitika Manchanda (deceased).

The court held that the MCI had no jurisdiction to go into the infrastructure facilities, because it has no jurisdiction to go through infrastructure of any hospital except the conduct of the hospital. The petition therefore had to succeed. The court issued a writ of certiorari quashing the adverse observations passed by the MCI against the petitioner hospital.

Res Ipsa Loquitur

The question of negligence and *res ipsa loquitur* came before High Court of Kerala in the case of *General Manager, B.S.N.L.* v. *Stella Johny.*[29] The respondent had a telephone connection in his shop. He reported some fault in that telephone to the telecom department. Defendants were deputed by the department to look into respondent's complaint. While repairs were being carried out, respondent died of electrocution. His widow and children sued for damages on account of the loss caused by respondent's death. They arrayed the three persons who went to carry out the repairs, the telecom department and Kerela State Electricity Board as defendants. Later, BSNL was impleaded as the successor of the telecom department, to be saddled with liability, if any, qua that defendant. Considering the documentary and oral evidence on record, the court below granted a decree for damages as against BSNL. Against the order of the court appeal was filed before the High Court of Kerala. The high court held that the proved fact is that respondent wanted his telephone to be repaired and three persons were sent by the telecom department for that purpose. Respondent died of electrocution while those persons were carrying out the repairs. The transaction happened under the control of the telecom department and the three persons deputed by it. The situation speaks for itself. Applying the doctrine of *res ipsa loquitur*, the fact of the matter remains that the incident occurred while defendants were carrying out the rectification works under the control of BSNL in the premises of the deceased. Therefore, negligence has to be inferred unless there is indicative evidence to the contrary. If there is a dispute between BSNL and KSE Board as to who is at fault, in the format of the facts of the case in hand, BSNL had to show that electrical energy had flown into the BSNL line as a result of negligence attributable to KSE Board or its officials in maintaining its electric supply lines. The burden of proof in that regard was necessarily on BSNL at the stage where the evidence in the case stood closed. The court did not find a way to disturb the findings of court below on the question of negligence and dismissed the appeal.

Money suit and suit for damages for negligence

In *The Haflongcherra Tea Company Ltd.* v. *Putul Sengupta,*[30]the respondent as plaintiff instituted money suit no. of 2007 against the appellants arraying them

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29 2014 (3) KHC 829; 2014 (4) KLJ 181.

30 2014 SCC Online Tri 680.

as defendants seeking a decree for granting compensation of an amount of Rs. 3,00,000/- for the death of her son, Sukanta Sengupta (12 years), who was electrocuted on September 6, 2006 at about 12/12-30 pm in her residential quarters in the premises of defendant no. 1. The plaintiff's case, in short, was that her husband, Sri Sukumar Sengupta, was working as a mechanic under the defendants and he was allotted a quarters in the premises of the tea estate, wherein facility of electricity and water were provided free of cost. The electric connection provided to the quarters was lying loose and the husband of the plaintiff repeatedly requested the defendant no. 3 to repair the loose electric connection, but the defendants did not repair the same and as a result due to rainfall on September 6, 2006 the quarters of the plaintiff's husband, which was of GCI sheet roof and the door was also made of GCI sheet, got electrified and when their minor son, aged about 12 years, touched the door to open it, to get out of the room, he got electrocuted. He was immediately taken to Dharmanagar Hospital where he was declared dead. It was the case of the plaintiff that maintenance and repairing of the electric connection was the responsibility of the defendants, but the defendants did not take care of proper maintenance and repair of the electric connection and as a result of which the accident had occurred and her minor son got electrocuted and died. It was also alleged that the husband of the plaintiff orally intimated the defendant no. 3 to repair loose electric connection, but the defendants negligently did not take up the repair work, which resulted the ultimate accident.

The plaintiff further stated that her husband served an advocate's notice upon the defendants claiming compensation of Rs. 10,00,000/-, but the defendants *vide* their reply dated January 8, 2007 denied all allegations and also denied the claim made by her husband and hence, the plaintiff instituted the suit praying for awarding compensation of Rs. 3,00,000/- with 12%interest from the date of the fatal accident. The disputed facts were that the plaintiff claimed that the maintenance, repairs *etc*. of the electric line were the responsibility of the defendants and it was because of the negligence of the defendants that the accident had occurred. It was also contended by the plaintiff that the electric connection extended to their quarters was lying loose and her husband repeatedly informed the defendants for repairing of the loose connection, but the defendants did not pay any heed to the request and that has resulted the accident on June 9, 2006.

The court held that negligence is the breach of a duty caused by the omission to do something which a reasonable man guided by the consideration which ordinarily regulate the contact of human affairs would do or doing something which a prudent and reasonable man would not do. It was an admitted position that electric line from the industrial/commercial electric connection of the tea garden was extended to the quarters of the plaintiff's husband. There was nothing placed on record by the plaintiff to show that the electric line so extended was supposed to be maintained or repaired by the defendants in a regular form or at some interval. It was clear from the pleadings and evidence on record that neither the plaintiff nor her husband gave any intimation to the defendants regarding any loose connection or defect in the electric connection before the accident. It was held that under such circumstances, holding the defendants as negligent to haul

them up for tortious liability to pay compensation is not at all justified. The appellate court without discussing the evidence and legal position at all just jumped to a conclusion that the defendants were responsible for making payment of compensation and such finding is not at all tenable in the eye of law.

The court further observed that the plaintiff set up her plaint in the form of a money suit. It ought to have been a suit for compensation for the damage because of a civil wrong. The 'rule of law' requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of a civil law. The plaintiff was supposed to bring an action under section 1A of the Fatal Accidents Act, 1855. Ultimately, in the present case, the plaintiff had chosen to approach the civil court for compensation in the form of a money suit. A money suit is generally entertained on liquidated damage whereas, an action for tortious liability against a tort-feasor is maintained for un-liquidated damages.

The dictionary meaning of 'damage' is harm, injury, loss; the value of what is lost; cost, the financial reparation due for loss or injury sustained by one person through the fault or negligence of another. 'Compensation' means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay; it need not, therefore, necessarily be in terms of money. Compensation is an act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person demnified may receive equal value for his loss. Damages constitute the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained. If any civil wrong or negligence is found to be attributable to the defendants, an action for such civil wrong, no doubt, would be maintainable, but that must be in the form of a suit for tortious liability for any un-liquidated damages and not in the form of a money suit in the ordinary civil court for claim of a liquidated amount. The court was surprised to see the judgment of the appellate court that it has jumped to a conclusion of granting compensation of Rs.1,25,000/-, but assigned no reason at all as to how he ascertained the amount in a money suit for compensation without any evidence therefore. The appellate court, therefore, as it appears, totally misconstrued the suit and arrived at a wrong finding. In ordinary course, a money suit for liquidated damage for an accidental death is simply not entertainable while there is specific provision under the Fatal Accidents Act, 1855 for claiming compensation for the death due to fatal accident.

In sum, the court concluded that the judgment and decree dated June 27, 2008 passed by the learned Additional District Judge, Dharmanagar, North Tripura is not according to law and hence, it is liable to be interfered and set aside.

III NUISANCE

Nuisance is commonly a continuing wrong, that is to say it consists in the establishment or maintenance of some state of affairs which continuously or repeatedly causes the escape of noxious things onto the plaintiff's land. An escape of something on a single occasion would not ordinarily be termed a nuisance,

although there is no reason in principle why it should not be.[31]The law of nuisance itself is preoccupied with harms that make living things wither and die with foul odors and stenches, with coal dust and chemical waste, with cesspools and toxins. Ironically, nuisance law has shown a fertility which may not be matched by any other subfield of tort.[32] Nuisances are the regrettable side effects of productive uses of land clashing with one another, vivid instantiations of the problem of harmful externalities. The thought that we should address such harmful side effects by minimizing the costs they inflict, and thereby maximizing the overall value we extract from the clashing activities is so intuitive as to seem almost self-evidently correct. The law of nuisance itself, however, has proven surprisingly inhospitable to the theory it inspired.[33]

In the modern parlance, nuisance is that branch of the law of tort, which is most closely concerned with protection of environment. It generally covers acts unwarranted by law which causes inconvenience or damage to either the individual or the public in the exercise of rights common to all subjects, acts connected with the enjoyment of land, other environmental rights and acts or omissions declared by statute to be nuisance. Thus, nuisance actions have concerned with pollution by oil or noxious fumes, interference with leisure activities, offensive smells from premises used for keeping animals or noise from industrial installations.[34]

In the case of *Balwant Singh* v. *Commissioner of Police* [35] the appellant, resident of Jaipur, who retired as Director General of Police constructed his house in a residential colony in Jaipur city. The locality and, in particular, the location of the Appellant's house is very near to "Vidhan Sabha". The appellant to his misfortune noticed that very frequently, thousand/hundreds of people belonging to political/non-political parties would gather on the road approaching to Vidhan Sabha, which is in front of his house, with agitated mood and would undertake their "Protests March", or "Dharna" or "Procession" for ventilating their grievances. The protestors then would use indiscriminately loudspeakers by erecting temporary stage on the road and go on delivering speeches one after the other throughout the day which sometimes used to continue for indefinite period regardless of time. In order to regulate such events and to maintain law and order situation, the state and police administration used to put barricades and depute hundreds of police personnel to see that no untoward incident occurs. These barricades used to be installed just in front of the gates of the houses of the residents including the appellant's house. The appellant is one of the most affected persons whose living in his house has become impossible due to these activities and finding no solution to the problem faced, compelled him to first approach the commissioner of police

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31 R.F.V. Heuston and R.A. Buckley, *supra* note 17, at 59.

32 Gregory C. Keating, "Nuisance as a Strict Liability Wrong", 14(3) *Journal of Tort Law*, 2012.

33 *Ibid.*

34 W.H.V. Rogers, *supra* note 7, at 501.

35 (2015) 4 SCC 801.

and make an oral complaint but finding that no action was taken, filed a written complaint. Since the commissioner of police did not take any action on the complaint, the appellant, filed a complaint before the National Human Rights Commission (NHRC), New Delhi. The NHRC forwarded the Appellant's complaint to the Rajasthan State Human Rights Commission (RSHRC) for taking appropriate action in accordance with law. Later on the RSHRC directed the additional home secretary was directed to order the concerned officials to effectively stop interference with the right of the appellant to lead an independent and peaceful life and ensure that:

a) The crowd of demonstrators does not assemble, on both roads opposite to the house during the assembly sessions.

b) The demonstrators are not allowed to use high powered loudspeakers during day and night.

c) The road is not closed after stopping traffic and traffic movement is maintained in a sustained and orderly manner.

d) The policemen are stopped from urinating in the proximity of the wall of the appellant's house from the side of the M.L.A.'s complex during the assembly sessions.

e) No barricading is done on the road opposite to, and near, the house of the appellant.

Despite issuance of the aforementioned directions, the state did not ensure its compliance and the appellant was compelled to file writ petition before the High Court of Rajasthan Bench at Jaipur, seeking appropriate reliefs. Single judge, disposed of the appellant's writ petition observing that since the state has already taken all necessary steps in the light of the directions given by the RSHRC in their order and hence no more orders are called for in the writ petition. The appellant, felt aggrieved, filed appeal before the division bench of the high court. The division bench, by impugned order, more or less on the same lines on which the single judge had disposed of the writ petition, decided the appellant's appeal. The division bench in the concluding part of their order observed as under:[36]

> In view of that assurance extended on behalf of the State Government, the learned single Judge has already reached the conclusion that the directions issued by the Human Rights Commission, Rajasthan in its order, have substantially been complied with. At this stage, the Division Bench of this Court cannot give further direction in the appeal. The State Government obviously shall also comply with such order and act in conformity with assurance given before the single Bench and take special care to ensure that peace and quiet of

36 *Ibid.*

> the Petitioner, living in his residential house at Jyoti Nagar locality in proximity to VidhanSabha is not unduly disturbed.

Against the order of the division bench the appellant filed appeal in the Supreme Court. The respondents stated that it was their duty to ensure that no harm, injury, damage or inconvenience/nuisance of any nature was caused to the life and property of any citizen on account of any action and activities of other person(s) or/and state authorities and all personal/fundamental/property rights guaranteed and recognized in law to every citizen were protected to enable him to lead a meaningful life with dignity and peace and to also enjoy his property. It was also stated that in compliance to the order passed by RSHRC, the state had issued directions for ensuring its compliance.

The view of the court was that the law of nuisance is well settled. Nuisance in any form as recognized in the law of torts whether private, public or common which results in affecting anyone's personal or/and property rights gives him a cause of action/right to seek remedial measures in court of law against those who caused such nuisance to him and further gives him a right to obtain necessary reliefs both in the form of preventing committing of nuisance and appropriate damages/compensation for the loss, if sustained by him, due to causing of such nuisance.

Reliance was made on the observation of the apex court in a PIL filed by one organisation called 'Forum', Prevention of environmental and sound pollution in relation to nuisance of noise pollution caused to the people at large due to use of equipment/apparatus/articles *etc*. Since it was a continuing wrong all over the country and hence, the Supreme Court, in great detail, examined the issue in the light of the citizens rights guaranteed under articles 19(1), 21 and 25 of the Constitution of India, read with all laws/rules/regulations relating to pollution, including penal laws governing this issue. In that case R.C. Lahoti CJI (as he then was) speaking for the bench, issued directions to all the states directing them to ensure that noise pollution caused due to use of various apparatus/articles/activities must be curbed and controlled by resorting to methods and modes specified in several rules/regulations dealing the subject.

The court in the case under review observed that directions were issued for ensuring compliance by all the states but it seems that these directions were not taken note of much less implemented, at least, by the State of Rajasthan in letter and spirit with the result that the residents of Jaipur city had to suffer the nuisance of noise pollution apart from other related peculiar issues so far as the Appellant's case is concerned. Needless to reiterate that once this court decides any question and declares the law and issues necessary directions then it is the duty of all concerned to follow the law laid down and comply the directions issued in letter and spirit by virtue of mandate contained in article 141 of the Constitution.

The apex court directed the respondents to ensure strict compliance of the directions contained in the judgment of the Supreme Court in *Noise Pollution (V), In Re*,[37] and for ensuring its compliance, whatever remedial steps which are required

37 (2005) 5 SCC 733.

to be taken by the State and their concerned department(s), the same be taken at the earliest to prevent/check the noise pollution as directed in the directions. So far as the disturbance created by the police/state officials/people at large in the appellant's peaceful living in his house is concerned, it was observed that they do result in adversely affecting the appellant's rights guaranteed under article 21 of the Constitution. Respondents were directed to ensure strict compliance of the conditions/steps and while ensuring its compliance, if the respondents consider that it needs some amendment(s) for ensuring better implementation then in such eventuality, the same be done in the larger interest of the residents of the concerned area and equally for the benefits of the residents of different parts in the state. Needless to say, while implementing the directions, its objective should always be to ensure that the rights of the citizens are not affected adversely by any kind of nuisance, the court added.

IV DEFAMATION

The tort of defamation is concerned with the protection of a person's reputation. It was originally divided into two parts, slander, which consisted of defaming someone orally, such as in a meeting and libel which was a written defamatory statement, as in newspapers and written reports. This distinction is no longer relevant. A defamatory statement is not necessarily made in words either written or spoken. A man may defame another by his acts no less than by his words. To exhibit an insulting picture or effigy holding up the plaintiff to ridicule or contempt is an actionable claim.[38]A plaintiff who has suffered injury or loss due to a tort committed by the defendant will generally be seeking compensation by way of damages. It is a communication (article, report, letter, news broadcast *etc.*), from one person to at least one other. It must be established that the communication lowers or harms the reputation of the plaintiff and that the publisher of that communication has no legal defence. The law of defamation claims to balance free speech with the right of an individual to enjoy a reputation free from unlawful attack.

A defamatory statement must be distinguished from one which is merely injurious. Both are falsehood told by one man to the prejudice of another and both are on certain conditions actionable but they are to a large extent governed by different rules. An injurious statement is a falsehood told about another which in no way affects his reputation but nevertheless in some other manner causes loss to him.[39]

In case of *G. Gopalaswamy* v. *N. Raghavulu Naidu*,[40]the question before the High Court of Madras was whether appellants were entitled to get interim injunction against respondent, in view of defamatory statement made by them. The applicants and the respondent were of same community and the applicants were director and

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38 *Id*. at 143.

39 *Id*. at 146.

40 (2014) 8 MLJ 322.

chairman respectively of one Prashanth Hospitals at Chennai and that the second applicant was also a trustee of one Maruthi Educational Trust, which runs Maruthi Matriculation School. The first applicant is a surgical gastroenterologist and a laparoscopic surgeon, having completed his fellowship from the Royal College of Glasgow and the second applicant is a renowned Obstetrician and Gynecologist and also a specialist in reproductive medicine and laparoscopic surgery, got life time achievement award from Gynecology and Obstetrics society for advanced learning in collaboration with Harvard University. During 1984, the respondent/ defendant had approached the applicants with a proposal to start a school. The respondent/defendant was given share in the property and a partnership deed was also drawn up and a primary school by name Maruthi Vidyalaya was started and the Maruthi Educational Trust was created. The wife of the respondent was made correspondent of the Maruthi Matriculation School at the request of the respondent. Later on there was misunderstanding between the parties and the respondent and his wife had filed a suit and obtained an order of interim injunction against the trustees from interfering with her functioning as correspondent and the respondent as principal of the school. The respondent, being a law graduate, subsequently enrolled himself as an advocate, using his credentials as an advocate and a senior citizen and he used to approach various government authorities and also sending false and frivolous complaints against the applicants to the authorities, with a mala fide intention, so as to cause loss to the reputation of the applicants, which went to the extent of attacking the moral turpitude of the applicants in running their hospital, hence, applicants/plaintiffs filed the suit, seeking interim injunction against the respondent not to cause any defamatory statement against the applicant, till the disposal of the suit. The alleged defamatory matters were published in Nakeeran Tamil magazine and therefore, applicants are not entitled to seek interim injunction restraining the respondent/defendant from stating the same in the complaints addressed to the authorities.

The high court held that it cannot be disputed that freedom of speech and expression is one of the important Fundamental Rights, guaranteed under article 19(1) (a) of the Constitution. However, it is not an absolute right to say anything either by words or any form against law. The reputation of any individual or institution is on par with assets. No one has right to cause loss to the reputation of the other with mala fide intention unreasonably. When there are various civil disputes between the applicants and the respondent, making the aforesaid averments in the complaint to the district collector could be legally presumed as an attempt with mala fide intention by the respondent in tarnishing the image of their applicants and the Institution.

The court observed that it was made clear that there existed a *prima facie* case and balance of convenience was also in favour of the applicants and if interim injunction is not granted, it would certainly cause irreparable injury or loss to the reputation of the applicants. The court was of the view that the applicants are entitled to get interim injunction against the respondent, in view of the defamatory statement made by them. Accordingly, interim injunction was granted restraining the respondent, his men, agents, servants or subordinates from publishing or causing any act, lowering the image of the applicants in the eye of the public and thereby causing harm to the reputation of the applicants, till the disposal of the suit.

In an another case *Garden reach Shipbuilders & Engineers Ltd.* v. *Akshat Commercial Pvt. Ltd.*[41] the question of entitlement of compensation for defamation arose before the High Court of Calcutta. The plaintiffs claimed to have acquired reputation and goodwill by dint of productivity, quality and human resource management and acquired a reputation in the economic field being a Dividend paying company. In a meeting of Board of Directors, it was decided to sell and dispose of the piece and parcel of land

The advertisements were published in the various newspapers inviting the bid. Subsequently a notice was published in the newspaper and also in the official web site of the plaintiff company inviting the intending buyers to submit their bid. Pursuant to the said notice, eight persons submitted their bids, which were opened in their presence. The highest offer which was received in pursuance of the said notice was from, Intikhab Alam which was below the valuation submitted by the said valuer. Thereafter, a negotiation was made with the said highest bidder who subsequently raised the price which was in tune to the price indicated in the valuation report. The sale was subsequently confirmed in favour of the said highest bidder. After the confirmation of the sale, a letter was issued by the defendant to the plaintiff offering to pay 20% higher price than what was agreed by the said highest bidder. The said letter further contained an allegation as to the irregularity in the process by which the said land was sold to the said highest bidder by the plaintiff company.

By subsequent letter, the defendant addressed to the plaintiff as well as the Ministry of Defence signifying their intention to move the high court under article 226 of the Constitution of India to set aside the said sale which was not only bad in law but was done by practicing fraud upon the Public Sector of India. The defendant further caused letter, both to the plaintiff and the Ministry of Defence, alleging that the publication of sale notice was a mere eye wash and intended to fill up the gaps. It was further alleged therein that the sale notice did not contain the reserve price and the terms of sale indicated therein reflected the clear fraud committed by the officers of the plaintiff company. In a further letter, the defendant made a defamatory statement that the public information officer of the plaintiff company had refused to supply information and documents under section 6 of the Right to Information Act, 2005, which gave rise to a presumption of fraud in respect of the sale of the said property.

The appeal against the order of the Public Information Officer further stood rejected and the said order was carried to a second appeal under section 19(3) of the Right to Information Act, 2005 to the chief information commissioner. A fresh application under Right to Information Act, 2005 was taken out by the defendant by supplying the information/documents and in the said application, it was stated that the delay in supplying the requisite documents was with an object to protect the corrupt and dishonest officers of the plaintiff company. The plaintiff has further averred in the plaint that an application under section 19(1) of the said Act addressed to the appellate authority of the plaintiff contained the defamatory statement

41 AIR 2015 Cal 103.

affecting the reputation and the goodwill of the plaintiff company. The averments proceeded further that in a subsequent letter constituting an appeal under section 19(3) of the said Act, further libelous and defamatory allegations were made despite having known that those were untrue and hardly has any semblance of truth.

The High Court of Calcutta held that there is no ambiguity in saying that even in undefended suit, the plaintiff has to prove his case by a cogent and reliable evidences. In a suit on libel, a person has right to have his reputation preserved inviolate. It provides for balancing of interest as every person has a freedom of speech. The term 'libel' connotes the wrong of defamation committed either by way of writing or its equivalent. The statement should be such to expose a person to hatred, contempt or ridicule or to injure him in his trade, business, profession, calling or office. It is distinct from slander and such distinction is not artificial but real. The real test is whether the words would tend to lower the plaintiff in the estimation of right-thinking members of a society and, therefore, the statement should be read as a whole and be given its natural and ordinary meaning.

The plaintiffs relied upon several letters caused in relation to a proceeding under Right to Information Act, 2005. The witnesses in his evidence basically relied upon the letter issued under the aforesaid Act stating that a fraud was committed in the sale of the property. It further appeared that the defendants alleged that because of certain vested interest, the necessary information and documents had been supplied to him for his future course of action. The statements were made in a legally recognized proceeding which has been taken as a libelous statement in a defamation proceeding. There is no whisper in the evidence adduced by the witness that such libelous statements have caused the reputation and affected the goodwill of the company. Even the annual turnover of the plaintiff company during the year 2005-2006 has shown the steep rise in the year 2010-2011. What is said is that, such an allegation may prompt the persons dealing with the plaintiff company twice but not an iota or piece of evidence were been produced by the plaintiff in support thereof. The annual report exhibited in the suit showed the prosperity in the business of the plaintiff company as the annual turnover rose considerably. Mere using the word 'fraud or vested interest' in a legally recognized proceeding does not automatically inculcate the sense of defamation the court concluded. Besides the court did not find that plaintiff had successfully proved that the statements made by the defendant in the correspondences or the letters are libelous in nature so as to give rise to a cause of action for defamation.

In *W.B. Shanthi* v.*Arunachalam*[42]plaintiff has been a senior member of Tenkasi Bar. He has commanded good practice, both on the civil side and on the criminal side. His volume of work is an indication that he built up a lucrative practice. Clients flocked to him. Since he is a lawyer of eminence, he has had disciples. He became a mentor of many budding lawyers. Plaintiff has been engaged by one Kathirvel Murugan. On the instruction of his said client, plaintiff issued lawyer notice to defendant. Defendant himself sent reply to advocate Arunachalam. On reading advocate Arunachalam got wounded, upset because it contained

42 (2015) 1 LW 555.

personal imputations against him, criticizing him as a lawyer. It was personal insinuation against him. Under these circumstances, advocate Arunachalam issued him notice demanding Rs.1, 00,000/- as damages. It was received by him. Now, the defendant replied him through a lawyer under that as defendant himself a relative of him and both belongs to the same community, he took little bid liberty and replied him and he did not intend to defame him, humiliate him nor question his professional integrity. Under the circumstances, advocate Arunachalam instituted the suit, claiming Rs.1, 00,000/- as damages.

Considering the submissions of both sides and the oral and documentary evidence, the trial court concluded that through his letter, defendant had defamed plaintiff/advocate Arunachalam and thus decreed the suit to the extent of Rs.40,000/-. In the meantime as the plaintiff and defendant passed away defendant's wife challenged the trial court's decree in the Subordinate Court, while Arunachalam's wife responded to it by being a respondent in the first appeal. Now, the wives fought in glory of their beloved. Ultimately, defendant's wife lost the appeal. The second appeal was filed by defendant's wife.

The court held that Arunachalam, a senior member of the Tenkasi Bar was insulted, defamed by the defendant. So far as the tort of defamation is concerned, (1) there must be a defamatory statement (2) it must be in writing (3) it should be in the nature of lowering down the name and fame of the person among the right thinking members of the society, and (4) it should be published, in other words, it should be made known to others. In short the tort of defamation is a dreaming tirade in written form launched against a person. The defence of unintentional defamation is unavailable to a defendant. At Common Law a person may become liable for defamation without any intention or fault.

In the instant case the defendant's reply was typed; therefore, the typist knew the libelous matter against advocate Arunachalam. Arunachalam's advocate, clerk and juniors also came to know about the contents of the letter. Thus, there was publication containing defamatory statement against advocate Arunachalam. It is true that advocate Arunachalam had prosecuted the defendant in the magistrate's court for the offence of defamation that is under criminal law. While the suit is under the civil law of torts for the tort of defamation, as both are different in their scope and tenor, a successful prosecution against the defendant importance of this suit cannot be belittled nor thrown away.

In another case of *M/S. Radha Krishna Exports Pvt. Ltd.* v. *Pandaul Co-operative Spinning Mills Ltd.*,[43]the suit was for recovery of damages as compensation for libel. The plaintiff claimed Rs. 2crores as compensation for libel made and published by the defendants on January 29, 2000. The suit was instituted on February 22, 2002. The suit appeared to be barred by limitation under article 75 of the Limitation Act, 1963 being instituted after one year of the publication. Since the defendants were not represented in spite of giving repeated opportunities, the plaintiff was permitted to proceed with the suit.

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43 2014 (3) CHN (CAL) 549.

It was held by the court that the question as to whether a statement is defamatory includes the question as to whether a "right thinking person" would see the statement as such. In order to found an action for libel, the statement complained off should be false in a written form and should contain defamatory content and should be published. The desire to injure must be the dominated motive for the defamatory publication to defeat any defence of privilege or justification. In a civil action for defamation truth of the defamatory matter is a complete defence. The principle is that "the law will not permit a man to recover damages in respect of an injury to a character which he either does not or ought not to possess."On account of the aforesaid view the court said that when the plaintiff has not been able to show any prejudice or damage being suffered by the plaintiff and where there is no republication of such alleged notice containing any defamatory statements. Then the statement contained in the notice cannot be said to be defamatory and the suit is also arid by the laws of limitation when it is assumed to contain defamatory words.

In another case of *Mukul M. Sangma* v. *P.A. Sangma,*[44]which was filed by the plaintiff for a sum of Rs.25 crores being compensation towards the damage caused to the plaintiff due to the alleged defamatory remarks made by defendant no.1 against the plaintiff and published by defendant. Brief facts of the case are that the plaintiff was the Chief Minister of the State of Meghalaya since the year 2010 and leader of the Indian National Congress Party in the State of Meghalaya. He is one of the longest serving chief ministers of the state and claims that the state has achieved new heights of progress, development in the last 5 years. Under his leadership, the human resource development and education has improved in the State despite the fact that the State suffers from problems of militancy.

Defendant no.1 also a politician and was a former Chief Minister of the State of Meghalaya. Defendant No.2 runs a 24 hour English News channel under the name of "Times Now". Defendant no. 3 is a newspaper which is the oldest English language daily in northeast India being in wide circulation since 1945.The plaintiff alleged that pursuant to the militant attacks in the State of Meghalaya, defendant no. 1 made certain defamatory remarks against the plaintiff on January 16, 2014 while addressing a press conference alleging that the plaintiff is the chairman of all militant groups operating in Meghalaya. The said statements made by defendant no. 1 were published in the daily newspaper of defendant no.3 on January 17, 2014 in which it was alleged that defendant No.1, while addressing a press conference in Shillong, made a number of slanderous/libelous statements against the plaintiff.

As per the case of the plaintiff, in furtherance of his design to defame the plaintiff, the defendant no.1 in an interview given on June 4, 2014 to the national news channel, "Times Now" run by defendant no.2 once again made defamatory statements against the plaintiff. This interview of defendant no.1 was aired nationwide including in Delhi, causing immense harm to the reputation of the

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44 MANU/DE/2578/2014.

plaintiff. While being interviewed by a journalist of 'Times Now', the defendant no.1 made the categorical statement that, "I gave a statement that Chief Minister is the Chairman of all insurgent groups. So how can law and order situation be controlled in Meghalaya when CM himself is involved."

The plaintiff submitted that the allegations made by defendant no.1 are baseless and without any back-up evidence. He submitted that the defendant no.2 has telecasted the statement and alleged allegations by defendant no.1 without the viewpoint taken from the plaintiff. It was held that the freedom of expression in press and media is the part of article 19(1) of the Constitution of India where by all the citizens have a right to express their view. However, the said right of the expression is also not absolute but is subjected to the reasonable restrictions imposed by the Parliament or state in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The said position is clear from the plain reading of the article 19(1) and (2) of the Constitution of India. The right to press and its freedom to express the ideas in public has always been the integral part of healthy democracy and the prior restraint on the publication was considered to be acceptable under the earlier line of authorities. The courts have always indicated that a fine balance is required to be made so that the said liberty of press should not be uncontrolled or regulated by laws including the laws relating to public order, contempt *etc.*, and the same is subject to reasonable restrictions as per the article 19(2) of the Constitution of India.

The court concluded that in the instant case the plaintiff had made a strong *prima facie* case in his favour. Balance of convenience was also in his favour. In case interim order was not passed, the plaintiff would suffer irreparable loss and injury if there would be a repeat of the statement of defendant no.1 and telecast of such statement without any verified and cogent evidence on television and other modern media including newspapers and internet. The plaintiff would suffer loss in his image which is irreparable in future even in monetary terms. Thus the case of grant of ex-parte injunction was made out. Further, till the next date of hearing, the defendant No.1 was restrained from repeating the defamatory statements made on January 17, 2014, January 19, 2014 and June 4, 2014 or releasing any defamatory statements in the manner already made against the plaintiff to the press/television channels or on the internet without any cogent and clear evidence. Similarly, the defendants no.2 and 3 were restrained from publishing any defamatory statements made by defendant no.1 either in the newspapers or on television or on the internet or in any other manner whatsoever without verifying the facts.

In the case of M/S. Radha Krishna Exports Pvt. Ltd. v. Pandaul Co-operative Spinning Mills Ltd.,[45] the key fact was a notice dated January 29, 2000, alleged to have been put up in the notice board of the defendant no. 1 by the managing director stating that owing to the nonpayment by the conversion agent of the money needed for running the mill the maintenance work of the mill shall stop with

45 2014 SCC Online Cal 6299.

immediate effect. It was also mentioned in the notice that the moment money is given by the party maintenance work production will be gradually started. Until then the mill will remain closed. The plaintiff alleged that the aforesaid statements were false and defamatory since no amount was due and payable by the plaintiff to the defendant on account of conversion charges under the agreement. The defendants have made deliberate misrepresentation in order to malign the plaintiff.

It was observed that the question as to whether a statement is defamatory includes the question as to whether a "right thinking person" would see the statement as such. In order to found an action for libel, the statement complained off should be false in a written form and should contain defamatory content and should be published. The desire to injure must be the dominant motive for the defamatory publication to defeat any defence of privilege or justification. In a civil action for defamation truth of the defamatory matter is a complete defence. The principle is that "the law will not permit a man to recover damages in respect of an injury to a character which he either does not or ought not to possess." The burden of proof, however, rests on the defendant to prove that the statement is true, and though it is not necessary that the statement is literally true, he must prove it is as a whole substantially true. The court held that the pleading and the evidence are to be considered in the background of what has been stated above. It was also held that the contents of the notice did not contain any defamatory words. All that it stated is that owing to non-payment by conversion agent of the money needed for running the mill, the maintenance work has stopped. This statement with the evidence on record does not show that the defendants had issued the said notice with any ulterior motive.

The court observed that the plea of defamation can succeed under the facts and circumstances provided that the plaintiff could establish at the trial that the statement contained in the said notice is false made deliberately to lower the plaintiff in the estimation of right thinking members of the society generally or tends to make them shun or avoid the plaintiff the court added. The court further observed that the plaintiff has also not been able to show any prejudice or damage being suffered by the plaintiff on the basis of the said notice made and published by the defendant and put up on the Notice Board on 29th January, 2000.

In the case of *Essel Infraprojects Limited* v. *Devendra Prakash Mishra*[46] the matter was of defamation of plaintiff by the defendant who has an organization formed and run by defendant no. 1. defendant no. 3 is engaged in the business of broadcasting news channel in Hindi and regional languages who has alleged to have produced the programme "Azab MP GazabGhotala" telecasted on its 'Focus News Channel'. defendant no. 4 is the chairman and managing director and defendant no. 5 and 6 are the directors of the defendant no. 3, defendant no. 7 and 8 are Group Editor in Chief of 'Focus News channel' and a reporter of the said channel respectively. It is the case of the plaintiffs that the plaintiffs have undertaken large number of road development projects, power projects, and urban infrastructure projects. The net worth of the plaintiffs for the year 2014-2015 was Rs. 3251.62

46 2015(1) Bom CR 340.

crores. The turnover of the plaintiffs for the said period was Rs. 192.40 crores. The plaintiffs have work force of about 8000 employees. It was the case of the plaintiffs that Essel Group is in diversified business which includes media/ technology/entertainment packaging/infrastructure/education *etc*., and has pioneered in number of businesses. It was the case of the plaintiffs that defendant no. 1 in connivance of defendant no. 2 to 9 hatched a criminal conspiracy and in furtherance thereof the defendant no. 1 was called to New Delhi to make false imputations against the plaintiffs, its officials and promoters by holding a Press Conference which was arranged by active involvement of defendant no. 2 to 9 on May 9, 2014 at Press Club of India, New Delhi.

It was held that perusal of averments made in plaint indicated that plaintiffs had not particularized alleged defamatory portion from press release and also telecast - plaintiffs had not been able to satisfy from averments made in plaint that any of topics tabularized in plaint would be *per se* or *prima facie* defamatory. Plaintiffs had not bothered to apply for amendment of plaint to set out verbatim alleged defamatory words in plaint though such opportunity plaintiffs had. Perusal of record indicated that though plaintiffs were given opportunity by defendants to express their views and/or fix time for interview, plaintiffs did not avail of that opportunity. Therefore, plaintiff was held entitled for temporary injunction restraining defendants.

In another case of *Harvest Securities Pvt. Ltd.* v. *B.P. Singapore Pvt. Ltd*, [47] the question was whether termination of employment of petitioner communicated could have defamed the petitioner. It was held that when other employees of defendants were aware of reason for termination of employment the communication could not constitute defamation. In addition, respondent was bound to inform them of such reasons, to avoid speculation and resultant unrest in organization affecting its business and to inculcate faith in respondent. The enquiry made against petitioner which remains largely confidential in nature showed nothing bias against petitioner and therefore, termination would not amount to have defamed petitioner and the court dismissed the petition.

V DEATH CAUSED IN POLICE CUSTODY

At common law the general rule was that death of either party extinguished any existing cause of action in tort by one against the other. It is also the approach in India. The incidence of custodial violence, and custody death, continues unabated and prevalence across a spectrum of states. The experience of courts with cases of custodial violence appears to have moved them to regard complaints with reduced suspicion, and enhanced credulity. The link between custodial violence and compensation is direct and *Rudul Sah*,[48]*Nilabati Behera*[49]and *D.K.Basu*[50]cases have

47 2014 SCC Online Del 2384.

48 (1983) 4 SCC 141.

49 (1993) 2 SCC 373.

50 (1997) 1 SCC 416.

evidently set at rest any questions there might have been on the payment of compensation for violation of article 21 rights. The regularity with which cases of custodial violence and death have reached the courts has been one reason for the increasing credulity, and lessening disbelief, when complaints are made of police violence.[51] The doctrine of *res ipsa loquitur* has been imported into this arena. In *Kamla Devi* v. *NCT of Delhi*[52]the Delhi High Court has said that when a person dies in police custody and the dead body bears telltale marks of violence or the circumstances are such that indicate foul play, the court acting under the Constitution will be justified in granting monetary relief to the relatives of the victim. While courts have generally ordered compensation to victims or their families or dependents, it has not yet become routine to direct recovery of the compensation amounts from the offending persons.[53]

In the case of *Jai Bir* v. *State of Haryana,*[54]a writ petition was filed for compensation for death of son of the petitioners while in police custody. The case in so far as it was admitted is that a case had been registered against the deceased in FIR no. 347, dated June 6,2011 for alleged offences under sections 457 and 380 IPC registered at Police Station City, Rohtak. The accused was to be produced before the court for remand, and while he was being taken by police jeep, he jumped down from the police jeep and suffered grievous injuries and admitted in the hospital.

The petitioners stated that the police had caused serious physical injury on their son that resulted in his death in the hospital on 15.07.2011. The point of contention in the case was whether the police had not caused any injuries to the petitioners' son but he had suffered serious injuries when he attempted to jump from the moving vehicle in which he was transported. An inquest carried out under section 176 by Judicial Magistrate First Class, Rohtak towed the police version and stated that the death was not on account of any police harassment but on account of the deceased's own act of jumping out of the moving vehicle and that none was responsible. It was observed that there was a serious issue of disputed question of fact, but one important thing that had to be noticed was that a normal and healthy person who had not any injury on him at the time when he was apprehended, had suffered injuries, while admittedly in the custody of the police. The burden of proof of how the injuries came about him and the alleged cause for death as accidental from a voluntary act of deceased himself was wholly on the respondents only.

It was further observed by the court that we are moving towards a compensatory regime that is just in various enactments and the Motor Vehicles Act, 1988which sets out a scheme for compensation for death and injuries delineates three categories: no fault liability under section 140, strict liability under section

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51 Usha Ramanathan, "Tort Law in India", 615- 628 *Annual Survey of Indian Law,* International Environmental Law Research Centre, 2001.

52 2000 Cri LJ 4867.

53 Usha Ramanathan, *supra* note 51.

54 (2015) 177 PLR 606.

163-A and fault liability under sections 141 and 168. Each of these approaches yield to different results as regards compensation. The minimum compensation of no fault in any event is Rs. 50,000/- under Section 140. Having regard to the fact that the death had occurred on account of injuries sustained while a person was in the custody of the police when a motor vehicle was put in use, the court invoked the principle set out in section 140 and awarded interim compensation of Rs. 50,000/- with interest payable at 7.5% per annum from the date of death till the date of payment. This was wholly provisional, for, it was not possible to determine the exact cause for the death in a writ petition. Postmortem certificate produced showed as many as 18 injuries, including skull injury on the parietal lobe region on the right side. The issue of whether the injuries that have been recorded by the doctor in the postmortem certificate could be the result of deliberate fall from a moving vehicle or was there any injury on the person that could have been caused by any assault on the deceased would be matters that could be brought out only through doctor's evidence. The inquest report itself could be taken only for a limited purpose now of what the magistrate has found on the witnesses whom he examined. They have given different versions. The issue of who was responsible for the death could not simply be concluded with what was stated in the inquest.

It was held that the petitioners' appropriate remedy was to file a civil suit and give evidence for securing such compensation as the law permits. If such a suit is filed, there shall be no objection taken on the jurisdiction of the court or any issue of limitation. If there is a requirement for exempting the petitioners from payment of court fee and such a prayer is made, the trial court shall also consider the same in accordance with law. The compensation which is awarded by the court shall be considered along with any other relief that the petitioners might be found entitled or otherwise, at the time when the decision is rendered by the civil court. It was held that the amount directed was to be paid as expeditiously as possible by the state and more preferably within a period of 8 weeks from the date of receipt of copy of the order.

VI DAMAGES

Damage is the estimated reparation in money for detriment or injury sustained; compensation or satisfaction imposed by law for a wrong or injury caused by violation of a legal right.[55] The terms reparation and compensation, as commonly understood, carry with them the idea of making whole, or giving an equivalent or substitute of equal value.[56] For every actionable injury there is a corresponding right to damages, and injury arises when a legal right is violated.[57] What the law aims at in every case is reasonable compensation to the injured party.[58] Actual

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55 Webster's New International Dictionary [571 (1993)].

56 Sandra J. Wunderlich, "Damages Generally" at 1-3, *available at*: http://www.mobar.org/esq/publications/damages.pdf (last visit on June 15, 2015).

57 *Jablonowski* v. *Modern Cap Mfg. Co*., 279 S.W. 89, 95 (Mo. banc 1925).

58 *Dimick* v. *Noonan*, 242 S.W.2d 599, 603 (Mo. App. W.D., 1951).

damages are compensatory and are measured by the loss or injury sustained. Tort law would be treating the payment of damages as "making things right," and would, in that sense, be seeing to it that corrective justice is done.[59]Hence, tort law imposes liability on certain people by saying that it is deeming them responsible for having injured certain others, and infers from this responsibility a right in those others to demand compensatory damages.[60]

In *Naveen Jindal* v. *Zee Media Corporation Ltd.*[61] the order disposed of an application of the plaintiff under Order 39 Rule 1 & 2 of CPC for grant of pre-telecasting stay against the defendant in a suit for permanent/mandatory injunction and damages. Briefly stated the facts leading to the filing of the suit are that the plaintiff was a two-time member of Parliament from the Kurukshetra Lok Sabha constituency in Haryana and was contesting election for the third time from the same constituency. He is the chairman of the plaintiff no. 2 company known as M/s. Jindal Steel & Power Limited. It was stated that plaintiff no. 1 is a man of myriad talents having a high sense of patriotism, commitment, responsibility, dedication, honesty, integrity, sincerity and passion in doing all his activities. He is the youngest of the four brothers and child of an industrialist and philanthropist politician, late Om Prakash Jindal and Savitri Devi Jindal. He enumerated his various achievements in academics, public, social service and extra-curricular field in the plaint in detail in order to show that he is a man of great standing in the society. His immediate grievance was that the plaintiff is having a running feud with defendant no. 1, M/s. Zee Media Corporation Ltd.

The court held that although the plaintiff was not entitled to any blanket pre-telecast restraint order against the news reports as was sought to be carried by the defendants in its telecast but the plaintiff was certainly entitled to invoke the relevant guidelines of, News Broadcasting Standards Authority(NBSA) 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. According to the court it was sufficient to meet the ends of justice.

The court also held the plaintiffs were not able to satisfy that they have got a *prima facie* case or that balance of convenience was in their favour or that they would suffer an irreparable loss, accordingly, the plaintiffs were not entitled to any blanket pretelecast order against the defendants; however, keeping in view the guidelines of the NBSA, the defendants were directed to obtain the views of plaintiff nos. 1 and 2 in case they intend to televise any programme pertaining to plaintiff no. 1 or his companies so that the said interview, comment or his side of the story is simultaneously reflected at the end of the said programme.

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59 Hershovitz, "Corrective Justice for Civil Recourse Theorists," 118-25 *Fla. St. L. Rev.* 39 (2011).

60 John C. P. Goldberg and Benjamin C. Zipursky, "Tort Law and Responsibility", at 14, *available at*: http://ssrn.com/abstract=2268683 (last visited on June 20, 2015).

61 209 (2014) DLT 267.

The case of *Oriental Insurance Co. Ltd.* v. *Raval Rupsibhai Pasabhai (Decd.)*[62] is on damage for negligence the facts stated briefly are that a vehicular accident took place on the Kandla-Bhildi National Highway between a truck and jeep. On account of the said vehicular accident, four persons died including one Raval Laduben Pasabhai. The heirs of deceased Laduben filed a claim petition being motor accident claim petition no. 255 of 1996 before the claims tribunal for compensation of Rs. 5,00,000/-. The tribunal, after appreciating the evidence on record, held that the accident had occurred on account of negligence on the part of drivers of both the motor vehicles and held the driver of the truck liable to the extent of 65% and the driver of jeep to the extent of 35%. Partly allowing the claim petition, the tribunal held that the appellant and the respondents numbers 4 to 6 were jointly and severally liable to pay compensation of Rs. 2, 25,500/- with interest at the rate of 9% per annum to the claimants. The appellant got aggrieved by the fact that the Tribunal after finding that the truck driver was liable to the extent of 65% and the jeep driver was liable to extent of 35% did not apportion the amount of compensation payable by the owners and drivers of the respective vehicles.

The court held that the tribunal, after holding that this was a case of composite negligence and that the liability of the truck driver was to extent of 65% and that of the jeep driver was to the extent of 35%, ought to have specified amount of compensation payable by the owner/driver/insurance company of the truck and the owner/driver of the jeep, as envisaged under section 168 of the Act for the purpose of determining their *inter se* liabilities. However, instead of remanding the matter to the tribunal for the purpose of specifying the respective liabilities of the parties, the court opined that this was a mere question of arithmetic and the amount can also be specified by this court.

P. Lakshmanan v. *The Executive Officer,*[63] presents unusual facts. On February 6, 2001, in the Post Office Street, in Panagudi, in RadhapuramTaluk, in Tirunelveli District, while the Car of Arulmigu Ramalinga Sivagami Ambal Thirukoil (Ist defendant) was in procession, an unfortunate event took place. The Kumbum atop the temple car suddenly fell down. It fell on the plaintiff. He was seriously injured and taken to Thiravium Ortho Hospital where he was treated. The plaintiff pleaded that there is a duty on the part of the defendant/temple authorities to upkeep properly the temple car ensuring safety and security of others. Since they did not do so, and allowed the car to run in such a bad condition, it resulted in causing injury to the plaintiff. There was utter failure to take proper precautionary measures by defendants. Plaintiff suffered mentally and physically. Thus, the defendants are liable to pay him damages. Plaintiff issued notice to them demanding damages. It was denied through reply. In the circumstances, plaintiff filed suit a claiming Rs. 2 lakhs as damages.

In view of the detailed deliberations, the court answered the substantial question of law against the defendants. In the result, the second appeal was

62 (2015) 1 GLR 216.

63 (2015) 1 LW 72.

preferred. The decree and judgment of the first appellate court were set aside. The decree and judgment of the trial court were restored and modified to the effect that the suit was decreed in part for Rs. 86,925/- with 6% interest on judgment, *viz.*, from the date of the judgment of the trial court *i.e.,* April 7, 2005 till realization with pro costs. The rest of the suit is dismissed, without costs.

In the case of *Kirandeep Kaur* v. *State of Punjab*,[64] petition was filed for seeking compensation from the Government of Punjab as Constable Nasib Singh, an employee of the Punjab Government had killed Parkash Singh Dhaliwal without any reason. Nasib Singh had gone to the nursing home of petitioner no. 1 and shot at her husband Parkash Singh Dhaliwal who died on the way to the hospital. Thereafter, Nasib Singh fired himself with the same rifle and made suicide. The petitioner claimed Rs. 25 lac as compensation. The husband of the petitioner was a qualified doctor and was employed at Government Dispensary village Dann Singh Wala Distt Bathinda. His salary was Rs. 8814/- per month, as per salary certificate. He was 39 years of age at the time of his death.

The court held that even though Nasib Singh was not working as a regular employee with the State of Punjab, he was working as home guard who are called out for duties during external or internal emergency or during natural calamities which may last for a short or long time. He was given the official rifle which was used for committing crime. The stand of the respondents that Nasib Singh did not commit the crime while performing his official duties and therefore the department was not liable to pay compensation was not accepted as reasonable according to the law and the petitioner was held to be entitled to a total compensation of Rs. 23, 25,800, which is to be given by the respondents, within a period of four months from the date of receipt of certified copy of the order.

In *K.Veeraraghavan* v.*The Secretary to Government, School Education Department*,[65] the petitioner hails from a poor family background and he has wife and three children. He is working as an agriculture labour for daily wages in and around his village. His only son V.Prasanth, 8 years was studying in 3rd standard at Government Middle School, administered by the seventh respondent. His son V. Prasanth went to school on March 25, 2009 and had not returned home till evening5.00 p.m. Therefore, he and other villagers went in search of his missing child and enquired in the school and they were informed by the teachers that they were unaware of his whereabouts. On enquiry with students, they informed that his son and his friends were available in the class till 12 p.m. and later on, they were not seen. They found the bag of his son inside the class room, with trembled mind and anxiety, they started searching in and around the school, and they found the trouser of his son near a pond which is 25 feet away from the school and approximately 22 feet in depth. After that, with suspicion that his son might have slipped inside the pond, they started to search inside the pond where they found the dead body of his son and friend of his son, Master Vignesh. On enquiry, he was

64 (2015) 177 FLR 882.

65 (2014) 5 MLJ 479.

told that the class teacher of his son was absent for the day and an in-charge was appointed to take care of the students, the in-charge teacher was also not present in the class and not taking the attendance for the day thus exhibiting her negligence and caused breach of duty. The headmaster of the school without the approval from the higher authorities had arranged a science exhibition in the school wherein the students of the different classes are allowed to visit the exhibition. The teachers of different classes assembled in the exhibition hall and got busy in arrangements to commence the exhibition and failed to attend their duty to take charge of the students in the class rooms, thus attracting their negligence and show causing their breach of duty.

It was contended on behalf of the petitioner that the sixth respondent/Assistant Elementary Education Officer, Kattankulathur, after enquiry about the incident of Petitioner's son's death, had initiated disciplinary proceedings against the said in-charge teacher. From the media report he came to know that the seventh respondent and two teachers were suspended during that period, which undoubtedly admits that the death of petitioner's son and his friend were caused due to gross negligence and wrongful act of the school administration. The school management had not fulfilled the basic requirements of the students like drinking water, toilet facilities, erection of compound walls *etc*. Due to non-fulfilment of basic amenities, students are constrained to go outside the school to attend their natural calls, even during the school hours. Like that his son went out of school during working hours of the school to attend his natural calls and while washing the same, he fell down into the pond and these facts were disclosed by his friends.

The court held that the petitioner's son V. Prasanth and another student went out of the school for attending to their nature's call and in the process of washing, they slipped and got drowned due to the carelessness and negligence of the school authorities, *viz*., the headmaster and the assistant teacher of the school, the state government for their act of commission/omission *viz*., for not being careful and vigilant enough in monitoring/supervising the students from going out of the school during school hours, the respondents 1 and 2 are vicariously liable to pay a compensation of Rs. 5,00,000/- (Rupees Five Lakhs only) to the petitioner for the untimely death of his son V. Prasanth [excluding the sum of Rs. 5,000/- granted to the petitioner, *vide* G.O. (1D) No. 247, Revenue (Disaster Management) 1 (1) Department, dated August 12, 2011 through District Collector vide proceedings dated 04.10.2011], which is not an exorbitant or excessive one, but the same being a Just, Fair and Equitable one [considering the high rise in prices, spiraling cost of inflation and stagflation *etc*.], to secure the ends of justice, within a period of eight weeks from the date of receipt of copy of this order. If the payment is not so made, it shall carry interest at the rate of 7.5% till date of payment/realization.

In *Zarzoliani* v. *Vanlalhmuaka*,[66]is an interesting case on damages and contributory negligence. In the instant case on May 26, 2010, the deceased Johny Vanlalhruaia who was a grade-IV employee in the police training center under the Home Department of the Government of Mizoram was proceeding towards Aizawl

66 IV (2014) ACC 779.

from the Police Training Centre at Lungverh in his scooter. At about5.30 p.m. at Phunchawng he was knocked down and run over by a truck bearing registration No. MZ01-C/4068 when he was trying to overtake the said offending truck. Due to the accident, the deceased/son of the appellant no. 1 suffered fracture of the left fibula with degloving of the leg. He was admitted at the Civil Hospital, Aizawl from the date of accident till June 3, 2010.Thereafter, he was shifted to the New Life Hospital and continued his treatment there when he developed complications and succumbed on June 10, 2010. The deceased was the sole earner of the family with the monthly income of Rs. 9,420. Appellants submitted that after hearing the parties and on examination of witness, the tribunal had passed the impugned judgment and award dated December 18, 2013 whereby an award of Rs. 12, 02,088 (Rupees twelve lakh two thousand and eighty-eight) was passed as compensation with interest @6% per annum from the date of filing the claim petition until realization of the whole amount.

The court observed that from a perusal of the records of the tribunal it is seen that the driver of the truck bearing registration No. MZ01-C/4068 was examined as a tribunal witness. In his deposition, he stated that he was carrying a full load of LPG cylinders in the truck and proceeding from Mualkhang towards the agency office at Model Veng. The truck was climbing a slight uphill and the road was curving gently when the scooterist tried to overtake him and had horned. However, as there was a pedestrian on the left side of the truck, he could not move towards the left to give space to the scooterist to overtake him and there was only 3 feet of metalled road to his right where the scooterist tried to overtake him. He had therefore veered to the right to make way for the pedestrians and he does not know how the scooterist lost control and fell under the truck. It was also in his evidence that the scooter driver was coherent and he did not know whether he had consumed liquor. The statement of the police officer who had prepared the police report was also taken as the claimant witness no. 2. He deposed that the scooter 1stattempted to overtake the truck after receiving a light signal from the truck driver but while overtaking, the scooter was struck by the right rear wheel of the truck which caused the scooter to fall down and the deceased/scooterist was run over by the truck's right rear wheel. Court observed that from a consideration of the evidence of the tribunal witness *i.e*., the truck driver, it was clear that the truck was climbing a slight uphill being fully loaded and nearing a gentle curve when the scooter had tried to overtake. Under such contention, the truck was expected to take a big turn and, therefore, he was more towards the right of the road leaving about 3 feet on the right-side. It was at this time that the deceased tried to overtake the truck. From the evidence of the truck driver it could be clearly concluded that there was only 3 feet on right side of the road when the deceased had tried to overtake the truck. It was, therefore, the duty of the deceased to have slowed down to allow the truck to take its normal turn and thereafter proceed with overtaking of the said truck. This was not done by the deceased and, in fact, he had tried to overtake when there was just 3 feet of the road on the right side.

It was observed that the whole liability could not be cast on the driver of the truck as the deceased/scooterist had also contributed to the accident. The tribunal had, therefore, rightly come to the conclusion 25% of the accident was due to the

contribution of the deceased/scooterist. Therefore, the ground against casting of contributory negligence on the deceased/scooterist by the appellants in motor application claim application no. 1 of 2014 fails. The tribunal had come to the conclusion that the deceased was having gross income of Rs. 11,061 (Rupees eleven thousand and sixty-one). However, no future prospect was computed in spite of coming to the aforesaid finding. The court, therefore, was of the opinion that the deceased was below 40 a years and his income was Rs. 11,061 (Rupees eleven thousand and sixty-one) and, therefore, the computation of 50% of the total income towards future prospect must be made.

The respondent no. 2 *i.e.*, United India Insurance Co. Ltd. in its application was directed to pay a sum of Rs. 18,85,631.25 (Rupees eighteen lakh, eighty-five thousand, six hundred thirty-one and twenty-five paise) along with simple interest @ 9% per annum from the date of filing of the claim petition *i.e.*, March 19, 2012 till realization in full.

VII CONCLUSION

In conclusion it may be said that although the cases of survey period do not show any landmark verdict, it is still a year where clarification on some of the dimensions of law of torts emerged. In today's society the decision of *Balwant Singh*[67]assumes significance where the court directed for strict compliance of directions in relation to nuisance. The powers and responsibilities of MCI of India and State Medical Councils were identified and clarified in the case of *Tamil Nadu Medical Council*.[68]In the case of *P.A.Sangma*[69] the court once again made attempts to strike a balance between free speech claim and reputation of an individual. The court is conscious of the fact that the order must also include reference of new media including social sites and internet when it comes to cause of defamation. The law relating to payment of damages and the difference between suit for damages and suit for money was also clarified by the court during the period. It is heartening to note that in relation to cases of torts the courts of India are continuing to uphold the established principles of law and innovate wherever required to meet the ends of justice.

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67 *Supra* note 35.

68 *Supra* note 20.

69 *Supra* note 44.