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CONTRIBUTORY NEGLIGENCE

Introduction

According to English dictionary, the term negligence means “failure to take proper care of something”. In legal sense, negligence falls under tort law which arises due to improper functioning of an act by a person which causes harm/damage to the other. Thus, Negligence can be considered as a tort committed as a result of breach of proper care by being reluctant, thereby causing damages to the injured party. Contributory negligence on the other hand is where both the parties are found to be at fault. Therefore, contributory negligence can generally be used as a defence by the defendant. There are various components of negligence and contributory negligence.

The person committing the negligence can be sued by the injured party in seek for remedy and compensation. Now, “contributory negligence” is something where the injured party incurs damages due to his own fault along with that of the defendant.

Contributory negligence is generally used as a defense by the defendant alleged for negligence. This is basically based on legal maxim- “*Volenti non fit injuria*” i.e. injury sustained voluntarily. There are two principles of contributory negligence. They are-

- If the plaintiff is found to be careless in his/her act, for which he suffered damages, he/she will not be entitled to compensation.
- If both the plaintiff and the defendant are found to be careless for which the plaintiff had to suffer damages, even then he/she will not be entitled to compensation.

However, the burden of proof is on the defendant to prove that there was contributory negligence.

The concept of contributory negligence can be further substantiated by the following cases, which will be discussed below:-

- Great Central Rly. v. Bates (1940)
- Hansraj v. Tram Co.
- Butterfield v. Forrester (1809)
- Revill v. Newbery (1996)

History

The doctrine of contributory negligence was first seen in the 19th and 20th century in USA, where it was first brought up in the case of **Butterfield v. Forrester**¹

The facts of the case are- Forrester, the defendant had laid down a pole against the road next to his house for the sake of recovery of his house and at around 8pm twilight, Butterfield, the plaintiff was riding on his horse at a very high speed and then fell off from his horse and suffered injuries. The ratio decidendi went on the defendant's favour as it was found that the plaintiff had been careless by riding at a high speed and therefore he was barred from recovery.

Comparison between negligence and contributory negligence

Elements of negligence:

- Duty- the defendant has some duty towards others.
- Breach – the duty has been breached.
- Damage – by breaching the duty, damages has been faced by the injured party.

Causation–the injury to the plaintiff has been caused by the act/omission of the defendant.

Elements of contributory negligence:

- Duty – The plaintiff and the defendant both have duties towards each other and towards others.
- Breach – The duty has been breached by both of them.
- Damage –By breaching the duty, the plaintiff alone has faced damages.
- Causation –The damage has been caused by any act/omission of both the plaintiff and the defendant.

Principles of contributory negligence

- If the plaintiff is found to be careless in his/her act, for which he suffered damages, he/she will not be entitled to compensation.
- If both the plaintiff and the defendant are found to be careless for which the plaintiff had to suffer damages, even then he/she will not be entitled to compensation.

These principles are based on the maxim *Volenti Non fit Injuria* i.e.injury sustained voluntarily.

Burden of Proof

The burden of proof however lies on the defendant as he has to prove that there was carelessness even from the side of the plaintiff.

Case laws:

¹(1809) 103 E.R. 926

- **Great Central Railway v. Bates²**

The plaintiff had suffered injuries as he had fallen down from the shaft of the lift by assuming the lift to have already arrived and walked backwards. It was therefore held that the plaintiff was not entitled to compensation because it was because of his negligence.

- **Hansraj v. Tram Co³.**

Here the plaintiff wanted to board a moving tramcar and on doing so he ended up injuring himself and then he sued the company. The company was naturally not held liable due to the presence of negligence from the plaintiff.

- **S.M. Railway Co. Ltd. v. Jayammal⁴**

A 7 year old girl was ran over by an engine while crossing the railway line. The girl was held responsible for the damages as she was aware of the danger on the above action.

Rule of last opportunity

This rule states that in case of an accident where both the plaintiff and the defendant happens to be negligent, whosoever will be having the last opportunity to restraint from the damages and injuries, will be held liable if he/she fails to do so.

Case laws:

- **Davies v. Mann⁵**

While driving a wagon, the defendant killed the donkey of the plaintiff which was on the roadside. It was later found that the defendant had the last opportunity to avoid the accident and was therefore held liable.

Conclusion

In conclusion, it can be said that contributory negligence is a general defence in tort which can be used by the defendant on being alleged under negligence. Here, the burden of proof lies on the shoulder of the defendant to prove that the plaintiff suffered injury due to his/her own negligence.

²CA 1921

³35 Bom.478

⁴85 Ind Cas 969, (1924) 47 MLJ 887

⁵152 ER 588