

NEGLIGENCE

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INTRODUCTION

After the first quarter of 19th century, negligence came to be accepted as a distinct & independent tort. As Winfield observes that the early cases of tort dealt with positive “acts” rather than “omissions”. In the beginning of 19th century, liability for omission was started. Negligence itself is a tort as it implies “a breach of duty to take care” which causes damage to the person making claim for such damages.

Negligence is that mental condition in which a person fails to take care which may exist in in the form of rashness, heedlessness & results in undesirable consequences. The test of reasonableness of conduct under those circumstances is applied for determining whether the person was negligent or not towards the claimant. The liability for negligence arises if people suffer harm due to unreasonable conduct of any other person. Here, the concept of duty of care of one person towards other person, if there is breach of that duty of care, the liability for negligence arises.

As a tort, negligence is an actionable wrong which arises the liability of a person who neglects the use of ordinary care or skill towards other person & by which neglect; the other person has suffered injury to his person or property.

In general sense, negligence denotes carelessness but the term negligence consists of two senses in the law of torts below: - a) Either mental element or b) An independent tort.

As an independent tort, it may consist of breach of duty to take care which is owed by the defendant towards the plaintiff who suffered harms which are undesirable by defendant while as a mental element; it is to be inferred from one of the modes in which some tort may be committed.

THEORIES OF NEGLIGENCE

It is easy to infer that there are two theories having different views regarding negligence in law of torts, these theories are described as: -

1. Subjective theory of Negligence
2. Objective theory of Negligence

Subjective Theory - According to subjective theory, “Negligence denotes “state of mind” which treat it as a specific tort.” This theory has got support by *Winfield, Salmond & John Austin*.

Salmond named it as a “Culpable Carelessness”. *Winfield*, in support of this theory, stated that ‘Negligence signifies total or partial omission to one’s conduct & its consequences as a mental element in tortious liability.’”

Objective Theory- This theory has got support by *Frederick Pollock* as this theory opposed the concept of subjective theory of negligence & rejected the concept of negligence as a state of mind. Frederick Pollock stated that Law demands certain amount of reasonable care in some circumstances & negligence is nothing but a breach of duty to take care & due to that breach some other person suffered harm.

MEANING OF NEGLIGENCE

According to *Swayne, J*,” Negligence is the failure to do what a reasonable person & prudent person would ordinarily have done under the circumstances of the situation”¹

According to *Winfield*,” Negligence as a tort is the breach of legal duty to the care which results in damage, undesired by the defendant, to the plaintiff”²

Alderson B, defined Negligence in *Blyth v/s Birmingham Waterworks* case as a tort is an omission to do something which reasonable man under those circumstances would do or not doing that which a prudent & reasonable man would not do.³

The House of Lords in *Donoghue v/s Stevenson* case, stated negligence as a duty to take care is a specific tort in itself & not simply an element in some more complex relationship or in some specialized breach of duty.⁴

¹ Arun Kumar, Universal law series, Pg. 67

² Arun Kumar, Universal law series, pg.67

³ N.V. Paranjape, 2nd edition, 2012, law of torts, central law agency, 349

⁴ N.V. Paranjape, 2nd edition, 2012, law of torts, central law agency,349

ELEMENTS ESSENTIAL FOR TORT OF NEGLIGENCE

For negligence of tort, the plaintiff has to prove that

- a. Defendant must owe some duty of care towards plaintiff.
- b. There must be breach of that duty which defendant owes towards the person making claim or can say the plaintiff.
- c. The breach of that duty must result in damages to the plaintiff.

1. **Duty of care to the Plaintiff** - the core ingredient of tort negligence is duty. The person is said to be careless if that person deviates from acting as a reasonable where he supposed to behave in reasonable manner. It is up to judge to determine whether duty to take care exists or not.

In the case *Donoghue v/s Stevenson*⁵, a bottle of ginger beer was purchased by X with his lady friend Y from retailer Z. the lady poured the beer in her tumbler & when she again poured the remaining content after consuming the first one, the decomposed body of snail was floating in that content. She suffered in her health after having that contaminated beer. She took action against it & as a result she gets compensation for the losses she suffered from the manufacturer as he owed some duty towards his consumer.

- A. Duty depends upon reasonable foreseeability of injury** - the liability of person for negligence depends upon the foresee ability of the injury suffered by any person that the damage is either proximate or remote. The defendant owes a duty towards plaintiff if he could foresee the consequences reasonably.

Case: - Dr. M. Mayi Gowda v/s state of Karnataka⁶,

In this case, there was a Mysore Dassara exhibition in which the complainant family was there for exhibition & took an elephant ride. When there were about to getting down, elephant became furious in that rush & the plaintiff was thrown because the elephant started running which resulted in serious injuries to the plaintiff. The plaintiff filed suit to recover losses but the court held that there was unfortunate behavior of elephant as the elephant was in this profession from last 13 years & this behavior of elephant was never seen before so the defendant's complaint was not considered.

⁵ (1932) A.C. 562.

⁶1996 C.P.J 307.

Case: - Booker v/s Wenborn⁷: - In this case, the defendant kept the door open of the carriage which he boarded & it just started moving. This act of the defendant created danger because the door was opened outside. It was held that a person owes a duty if he boarded a moving train towards those persons who standing on platform near it so the defendant was made liable for this.

B. No liability when injury not foreseeable: - the defendant will not be liable for those acts which could not be foresee by him. For negligence, it is necessary that the injury to the plaintiff must be foreseeable by a reasonable person.

Case: - Cates v/s Mongini bros⁸, In this case, there was a restaurant of defendant & the lady who was the plaintiff visited their & suffered injuries by the falling of a ceiling fan on her because of latent defect which could not be reasonably foreseen. The court held that there was no negligence on the part of defendant so, no liability for the losses suffered by lady.

Case: - Ryan v/s Youngs⁹, In this case, there was a servant of defendant who died while driving lorry suddenly which resulted in the injuries to the plaintiff. The defendant was not held liable by the court because the sudden health of an appearing healthy person could not be foreseen.

C. Reasonable foreseeability does not mean remote possibility: - it is not enough to prove to establish negligence that there was an injury which could be foreseeable but it should be reasonable too.

Case: - Fardon v/s Harcourt Rivington¹⁰, In this case, the defendant locked his car while parking leaving his dog inside it but the dog smashed glass panel which injured the eye of plaintiff who was passing from there. It was held by the court that there was no negligence on the part of defendant so he was not made liable for it.

Case: - Bolton v/s Stone¹¹, In this case, the plaintiff was injured by the ball hit by the cricketer which was near the highway from where the plaintiff was passing. The plaintiff took an action against the committee but the court held that the ground was being used for last 30 years & no one was injured even six occasions had been occurred there so, there was no liability of defendant on the basis of negligence.

⁷ (1962) AII E.R 431: (1932) 1 W.L.R 162.

⁸[1917] 19 Bom. L.R. 778, A.I.R 1917 BOM 282 (Z23)

⁹ (1938) 1 AII E.R. 522.

¹⁰[1932] AII E.R Rep.1: (1932) 146 L.T. 391.

¹¹[1951] A.C 850, [1951] 1 AII E.R 1078 (H.L.).

D. Breach of duty: - Here the plaintiff not only bears the burden of proof that the defendant owes some duty to take care but it is also required to prove the breach of that duty by the defendant which resulted in harm to the plaintiff. Here the standard of care required & the law takes two ways to determine it in following way: -

The importance of the object to be attained: - The law is required to take reasonable care under the circumstances to avert the injuries to plaintiff. It is permitted to take some risks for the activities of public interest should be continued.

Case: - Latimer v/s A.E.C Limited¹², In this case, the factory of defendant was flooded due to heavy rainstorm & when that water mixed with oil, it formed an oily film which remained even after the water was drained & as a result the surface became slippery so, the defendant spread sawdust over it & took all the steps to get rid of it but one of the employee slipped & injured. The House of Lords held that there was no negligence on the part of defendant. He acted as a prudent man & took every possible step so; he was not liable for the losses suffered by plaintiff.

The magnitude of risk: - The law requires taking possible care according to situation so that the harm can be averted & it can be understood that degree of care may differ from situation to situation. It is not required to be careful of same amount in all circumstances. The intensity of care can be predicted by any prudent man by knowing the magnitude of risk.

BURNISHED LAW JOURNAL

Case: - Nirmala v/s Tamil Nadu Electricity Board¹³, The husband of plaintiff dead by electrocution in this case because of the negligence of working man whose duty was to maintain the wire. The court held that the defendant liable for the death of plaintiff's husband.

Case: - Kerala State Electricity Board v/s Suresh Kumar¹⁴, In this case, a minor boy came in contact with electric wire, got electrocuted & suffered burns. The court held that it was the duty of board to keep the wires 15 feet above the ground so, the board will be liable for the breach of their duty which resulted in harms to plaintiff.

Case: - Sagar Chand v/s State of Jammu & Kashmir¹⁵, In this case, two children of age 7 & 11 years died due to electrocution by the wire passing through paddy field while they were

¹²[1953] A.C. 643

¹³A.I.R 1984 Mad. 201.

¹⁴ 1986 A.C.J. 998.

¹⁵2001 A.C.J 420: A.I.R 1999 J. & K. 154.

going for bath. The court held the state department liable for the negligence of lineman whose duty was to maintain it. The court awarded the compensation of Rs.60, 000 & Rs. 75000 for the harm suffered by plaintiff.

The amount of consideration for which services are offered, etc.: - The duty of care owed by defendant depends upon the services he avails to the plaintiff & consideration charged for those services from the plaintiff.

Case: - Klaus Mittelbarchert v/s East India Hotels Ltd¹⁶., In this case, the co-pilot of Luftiana Airways died because he was injured when he jumped in the swimming pool due to defective construction. The court observed that it is the duty of the management to take care of high degree as per the high charges they impose on the customer. The defendant was held liable for the losses suffered by the plaintiff.

E. Damages: - The law allows the compensation to the person who suffered injuries due to the breach of that duty which is owed by the defendant. The court determine the relevant number of damages which is to be given to injured party to return his position before that accident which is the result of defendant's negligence.

In the case of **Klaus mittelbarchert v/s East India Hotels Ltd.**, the plaintiff was given compensation of Rs. 50 lakhs.

In the case of **Sagar Chand v/s State of Jammu & Kashmir**, the plaintiff was given compensation of Rs. 60, 000 & Rs. 75000.

Negligence by legal professionals: - Generally, the class of lawyers & advocates represent legal professionals. They charge fees for the services when they provide by representing their clients in the courts. It is also seen that lawyer are blamed if the judgments not in favor by the parties but it is wrong because any representative of parties in the court would not like to lose the case.

In India, **section 5 of Legal Practitioners Act, 1926** provides that an advocate, pleader, vakil, mukhtiar, revenue agent who has agreed to represent his/her client before a court of law will be held liable for negligence if the client suffers damages on account of his apathy, carelessness or non-appearance before the court on the appointed date & time.¹⁷

¹⁶1999 A.C.J 287, A.I.R 1997 Delhi 201.

¹⁷ Section5, Legal Practitioners (fees) Act, 1926.

MEDICAL NEGLIGENCE

If a person gets some skills in particular profession is supposed to be knowledgeable in his field. A standard of care is required in the particular case depending upon the professional skills & expectations also differ on the basis of profession. If we talk about medicines, one of the sensitive & noblest professions which care is required of high degree. These professionals need to be very careful & concentrated when it comes to dealing with patients. A doctor owes some duty towards his patients which are explained as: -

- ✓ A doctor owes duty of care in taking decision whether to undertake the case of the patient or not.
- ✓ A doctor owes duty of care in taking decision what type of treatment should be given for the patient.
- ✓ A doctor owes duty of care in taking decision in the administration of treatment.

If there is breach of any of the above duties, the patient who suffered losses will have the right of action for the negligence on the part of doctor. The doctor would be responsible to pay compensation if he fails to attend the patient who is admitted in emergency ward. If the medical practitioner is negligent in treating his patient, he will be punishable under various laws such as, IPC, Indian Contract Act, Consumer Protection Act & tort etc.

The law requires a reasonable care & skill not only in medical field but also in almost all field.

Case: -Lakshmi Rajan v/s Malar Hospital Ltd¹⁸. A married woman of age 40, the complainant felt pain in her breast. When she went to hospital, the doctor who was appointed for her treatment removed her uterus while treating with the painful lump without giving any justification. The court held that the doctor was negligent in treating patient & he breached the duty of care in providing service, in taking decision for type of treatment so, he would be responsible & liable to pay Rs.2, 00, 000 to the patient as compensation.

- **Proof of negligence: *Res Ipsa Loquitur***

According to general rule, the burden of proof lies on the plaintiff. The plaintiff who has right to prove the injuries suffered by him was the result of negligence of defendant.

¹⁸ 1997(3) CPJ 242, 1998(3) CPJ 586 (Tamil Nadu SCDRC)

This maxim “Res Ipsa Loquitor” means *things speak for itself*.

Here the plaintiff doesn't need to prove anything because the act of defendant itself speaks that the injuries would not have been occurred, if defendant not negligent.

The origin of *res Ipsa loquitor* lies in care of defendant towards plaintiff. The defendant may escape his liability, if he successfully proves that the incident caused was the result of inevitable accident or contributory negligence. If the plaintiff fails to prove the negligence of defendant, the defendant will not be liable for it.

Generally, it is the plaintiff who has to prove but according to this maxim, the defendant has to prove that the accident caused is not because of his negligence. The court presumes the negligence by the circumstantial evidence which serves the fact that as an indirect proof in a case. Without showing any direct consequences, the court assumes that the accident caused due to the negligence on the part of defendant after conducting several different tests.

❖ Essentials of the doctrine of *Res Ipsa Loquitor*

In cases of negligence, the plaintiff always tries to cover his case under this maxim so that he could shift his burden of proof to the defendant but in order to get succeed in seeking compensation, the plaintiff has to prove that: -

- Under ordinary circumstances, the injuries sustained could not occur without negligence on the part of defendant.
- The accident that caused damages to plaintiff was in the defendant control.
- There is no voluntary action of plaintiff in the occurred incident.
- The defendant fails to give an adequate explanation for the negligence on his part.

Lord Wensleydale observed in case **Morgan v/s Sim**¹⁹ in which he stated that the party who has suffered losses must have to prove that the injuries suffered were due to negligence on defendant's part. Here the burden of proof is upon him to recover damages through compensation. If the plaintiff fails to satisfy the court, he cannot succeed to get compensation.

❖ **Cases: -Municipal Corporation of Delhi v/s Subhagwati**²⁰, In this case, there was a clock tower in Chandni chowk, Delhi situated opposite to the town hall, collapsed & number of persons died. The duty to maintain it was under Municipal Corporation of

¹⁹(1857) 11 Moo P.C. 307, 312.

²⁰A.I.R 1966 S.C. 1750.

Delhi. The Supreme Court held that the defendant liable as they failed to prove absence of negligence.

Chief executive officer, CESCO v/s Prabhati Sahoo²¹, In this case, a person died due to electrocution, the deceased came in contact with live wire which was hanging at lower height. The doctrine of Res Ipsa Loquitur was applicable & the defendant was held liable by the Orissa High Court.

Nirmala v/s Tamil Nadu Electricity Board²², The husband of plaintiff dead by electrocution in this case because of the negligence of working man whose duty was to maintain the wire. The court held the defendant liable for the death of plaintiff's husband.

Nihal Kaur v/s Director, P.G.I, Chandigarh²³, Due to the negligence of doctor, scissors were left in the body of patient during operation who died due to the worse condition. After cremation, scissors were found in the ashes. The court held the defendant liable & awarded Rs. 1, 20, 000 to the family of the deceased.

Jasbir Kaur v/s State of Punjab²⁴, In the government hospital of Amritsar, a newly born child was lost & that child was found in the profusely bleeding condition & one of his eyes totally lost in the bathroom of that hospital. The authority that the child was injured by cat as may be taken up by cat. The court held the defendant liable & awarded compensation of Rs. 1, 00, 000 to the family of child presuming the negligence of hospital authority.

❖ **Maxim will not be applied if different inferences possible: -**

- a. The court will decide whether the defendant is guilty of negligence or not, on the basis of conduct of a prudent man & amount of care required in such circumstances.
- b. The court can also determine the liability of defendant by applying the principle of foreseeability for justification.
- c. The liability to take care of defendant depends on the nature & the gravity of the seriousness of the act.
- d. As a general rule, the plaintiff has to prove the act was caused due to defendant's negligence but the court expect from the defendant to give prove

²¹ A.I.R 2012 (NOC) 83 (Ori)

²² A.I.R 1984 Mad. 201.

²³ III (1996) C.P.J 112 (Chandigarh S.C.D.R.C)

²⁴ A.I.R 1995 P. & H. 278: 1995 ACJ 1048.

of his non-negligence & if he could not to do so, he will be held liable under the doctrine of res Ipsa loquitur.

- e. The motor accident cases should be decided as far as possible by applying the doctrine of res Ipsa loquitur.
- f. The defendant cannot give false arrangements to avert his liability.

Case: - S.K. Allah Bakhas & others v/s Dharendra Nath Panda & others²⁵, In this case the accident occurred between a train & an auto- rickshaw. The auto- rickshaw driver was known to the fact that the train was at a short distance but knowingly, he crossed the unmanned level crossing & there become a collision. The auto- rickshaw driver was injured but the court held that the auto driver could approach the fast speed of train hence it lead to an only inference that there was negligence on the part of auto rickshaw driver.

❖ **Rebuttal of the presumption of negligence:** -This maxim only shifts the burden of proof on the shoulders of defendant which was on the head of the plaintiff as a general rule. The defendant can successfully escape his liability if he proves that incidence was beyond his control.

Case: - Bihar State Road Transport Corporation v/s Smt. Manju Bhushan Sinha²⁶,In this case the bus driver was negligently coming from wrong side & hit the rickshaw. The person died who was sitting in the rickshaw because he was thrown at a distance of 10 feet. The court found the negligence on the part on bus driver & held him liable because it was the bus driver's duty to drive slowly in such conditions.

❖ **Limitations of the doctrine of Res Ipsa Loquitur:** - The limitations can be described under given points:

- The rule applies only when the accident occurred within the control of defendant.
- The plaintiff may still choose to prove the negligence to get compensation if defendants absolve him from his liability by rebuttal of negligence.
- As per the general rule, the plaintiff proves the negligence on the part of defendant but here the defendant has to explain his non- negligence for the satisfaction of the court.

²⁵A.I.R 1983 Orissa 203

²⁶A.I.R 1992 Pat. 109.

❖ **Defenses:** - There are some defenses by which the defendant can escape his liability if successfully plead them before court: -

F. Act of god: - Defendant has option to take plea that the occurred accident was due to natural forces or supernatural forces which cannot be controlled by human. Some examples like heavy rainfall, flood, cyclone, lightning etc.

G. Inevitable accident: - Any incident which cannot be foreseen & avoided by any person, even after reasonable care taken up by the defendant to avert that unexpected injury, such incidents are called inevitable accidents. In the doctrine of res Ipsa loquitur defendant can take plea that he took his due care but failed to avert the injury suffered by the plaintiff.

❖ **Res Ipsa Loquitur v/s Prima Facie**

The term prima facie is confused with the maxim res Ipsa loquitur.

Prima facie means “**at first glance**”. It refers to the facts that enough evidence exists, if taken at face value, to file charges a legal action.²⁷

Res Ipsa Loquitur means “**things speak for itself**”.²⁸ It is a situation in which facts are self-evident of a case for the negligence of defendant which caused injury to the plaintiff.

• **Contributory Negligence:** -

The concept of contributory negligence states that when any damage caused by the negligence of the defendant in which the plaintiff also contributes to that damage by his own want of care. This can be made understand as when the plaintiff is also negligent to some extent with the negligence of the defendant for the damage caused to him.

The Supreme Court explained the concept of contributory negligence in case **Municipal Corporation of Greater Bombay v/s Laxman Iyer**²⁹, if any accident has been occurred to the negligence on the part of both the parties then both the parties would be alleged. Here the fact is person who is making complain for injuries was negligent himself & contributed to the situations so, the question arises that liability depends on which part. This can be a good defense if defendant successfully proved the contribution of plaintiff's negligence in the caused accident.

²⁷ Legaldictionary.net

²⁸ N.V. Paranjape, 2nd edition, law of torts, central law agency, 368

²⁹ 1991(2) BOMCR 353.

Harris v/s Toronto Transit Commission³⁰, The Supreme Court of Canada held that in a bus if a boy is sitting projected his arm outside in spite of warning & if he suffered injuries then he will be also guilty of contributory negligence.

❖ **Historical perspective:** -Back to the 18th century, industrial revolution in England, the origin of the doctrine of contributory negligence may be traced. In the field of science & technology, some kinds of new inventions & development demanded against the injuries. With reference to the plaintiff, the doctrine was called “rule of all or nothing”.

Case: - Butterfield v/s Forrester³¹: -In England, the evolution of contributory negligence was considered as a landmark judgment in this case. The facts of this case are that the defendant put a pole across a highway which was easily visible but the plaintiff riding violently struck against the pole & injured. The court held that the concept of contributory negligence applied here.

❖ **How far is contributory negligence a defense?**

The defendant can take plea when there is negligence on the part of plaintiff along with the defendant's negligence. Here the negligence on the part of plaintiff means he was not in his own care or safety.

❖ **Last opportunity rule:** -last opportunity rule can be defined as the person will be liable who has the last opportunity to avert the loss. The plaintiff cannot make the defendant liable if he has the last opportunity to avert it. Similarly, if the last opportunity is with defendant to avert the loss, he will be liable or can say he cannot escape his liability.

Case: - Davies v/s Mann³², the facts of this case are that the plaintiff left his donkey on a narrow highway with fettered forefeet. The defendant was driving his horse wagon & negligently ran over it. The donkey was killed. The court held the defendant liable ignoring the negligence on the part of plaintiff & applied the rule of last opportunity.

❖ **Doctrine of apportionment of damages in India for contributory negligence:** -In contributory negligence, both are parties are negligent as the plaintiff is not in interest of his own care & defendant breach that duty of care which he owes towards plaintiff. The court decides the percentages of liability of both parties keeping the circumstances or situations in mind & the liability is divided according to their negligence which caused

a. ³⁰ 1968 A.C.J 264.

b. ³¹ (1809) 103 E.R. 926: 103 Eng. Rep. 926 (K.B 1809): (1809) 11 East 60.

c. ³² 152 E.R 588: (1882) 10 M. & W. 546.

the accident between the parties. For example, there is a collision between a bike & car in which the car driver was negligent as he was driving on wrong side & biker was driving very fast as he couldn't approach the car coming towards it. The court awarded the compensation of Rs.5000 in which the liability of car driver was of 60% & of biker is 40%.

Case: -Maya Mukherjee v/s The Orissa Cooperative Insurance Society³³: - In this case, there was an accident b/w a car & motor cyclist in which the motor cyclist died. The Orissa High Court decided the ratio of liability in which 60% liability was of motor cyclist & 40% liability was of car driver applying the principle of apportionment of damages.

Case: - Rural transport service v/s Berlum Bibi³⁴, In this case the facts are the plaintiff was travelling on the roof of bus with the invitation of conductor. While overtaking the cart, driver put the bus on kutcha road & the plaintiff was hit by the branches of trees & fell down. He took an action against bus driver to recover the losses he suffered. The court held that there was a contributory negligence as the bus driver; conductor & the deceased all were negligent. Compensation of Rs.8000 was allowed to the family of deceased.

❖ **Rules to determine contributory negligence:** - there are some rules which are as follows: -

- For the establishment of contributory negligence as a defense, it is needed to prove that the injured party was disinterested to take care for the satisfaction of jury.
- It must also be proved that there was negligence on the part of defendant as he breached that duty of care which he was owing towards the party who is making complaint.

Case: - Bhagwat Sarup v/s Himalaya Gas Co³⁵. In this case the defendant sent its deliveryman to deliver gas cylinder which was defective. The plaintiff gave axe to the deliveryman on asking for it, the deliveryman hammered the defective cap of gas cylinder which caused fire & resulted in death of daughter of plaintiff & injuries to other members of plaintiff's family. The court didn't apply the principle of contributory negligence as the deliveryman asked for an axe, was supposed to know about the danger as he was a trained person.

³³ A.I.R 1976 Orissa 224.

³⁴ A.I.R 1980 Cal. 165.

³⁵(1985) ACC 214; A.I.R 1985 HP 41.

Case: -Agya Kaur v/s Pepsu Road Transport Corporation³⁶, In this case the overloaded rickshaw was hit by the bus which was being driven at high speed & coming from the wrong side. The court held that there was negligence only on the part of bus driver & rejected the concept of contributory negligence in this case in spite of the fact that the rickshaw was overloaded as it was having three adults & one child.

❖ **Exceptions to the doctrine of contributory negligence:** -There are some circumstances in which this doctrine is not applied even when there is involvement of plaintiff's negligence. Such conditions are as follows: -

- a. **Contributory negligence of children:** -When the plaintiff is a child who negligently contributed in the caused accident because the court presumes that the child cannot take care for himself as an adult person so, the defendant is not allowed to take plea if there is negligence on the part of child.
- b. **Doctrine of alternative danger:** - This doctrine states that when the plaintiff takes any action which can be proved dangerous to his health or life in order to save him from the danger which is created by the defendant, then the principle of contributory negligence will not be applied because plaintiff show his disinterest in his own care & take the risk of second danger in order to save himself from the first danger. In such circumstances or situations, the defendant will be liable for the losses suffered by the plaintiff.

Case: - Brandon v/s Osborne, Garret & company³⁷:-In this case, a wife suffered injuries in order to save her husband from being injured by the broken piece of glass from the light. The court held that her act was reasonable & entitled to recover damages.

- c. **Rescue cases:** -When plaintiff suffers injuries in order to avert a danger of high intensity that act will not amounts to contributory negligence.

Case: - Haynes v/s Harwood³⁸, In this case a police constable suffered some injuries in order to save a child by a horse which was left inattentively by the servant of defendant. The horse was teased by

³⁶A.I.R 1980 P. & H. 183.

³⁷(1924) 1 K.B. 548; (1924) All E.R. 703.

³⁸[1935] 1 K.B. 146.

that child & the horse became furious. The police constable filed a suit to recover the damages suffered by him but the court rejected the application of doctrine of contributory negligence in rescue cases.

COMPOSITE NEGLIGENCE

The concept of composite negligence can be defined as when the same damage is a result of negligence of two or more persons. The persons responsible for causing such incident are known as “Composite Tortfeasors”. According to law of England, the persons responsible for such incident are divided in two categories which are

1. Joint Tortfeasors

2. Independent Tortfeasors

In India, the liability of Tortfeasors is joint & several. No one escape his liability of apportionment on name of his liability not so extent. The court can give its judgment as a single sum without any division of it between Tortfeasors & the one who pay the whole sum of compensation can claim contribution from other defendants who has paid more than this liability.

Case: - Karnataka State Road Transport Corporation v/s Krishnan³⁹, The left hands of two passengers cut off below the shoulder joint travelling in the buses when the buses brushed each other. The court applied the concept of composite negligence & held liable drivers of both the buses jointly & made them to pay compensation.

Case: - Prayagadatta v/s Mahendra Singh⁴⁰, The death of pillion rider on the motor cycle when the motor cycle struck with a bus. In the case it was found that both bus driver & motor cyclist were equally responsible as the negligence on was on the part of both parties. The court held that the driver & owner of bus were made liable for 50% & 50% liability was of the motor cyclist who died during the trial of the case.

CONCLUSION

The tort of negligence is the most frequently used of all torts & thus it is most important tort in Indian system of law. Negligence protects against three types of harm: personal injury, damage to property & economic loss. Negligence is concerned with compensating people who have suffered damage as a result of the carelessness of other people. Wrong and right are

³⁹ A.I.R 1981 Kant. 11.

⁴⁰1996 A.C.J 529 (M.P.)

the sources of criteria by which rights and duties are distributed. The criteria derive from the values of interest & equality. Medical negligence which gives rise to the liability is seen as a criminal offence meanwhile in its turn, is the source of civil liability: the victim has the option b/w civil process & criminal process. Negligence is based on reasonableness, not fault. The term fault carries a lot of meanings. Instead, arguably the greatest benefit of a theoretical comparative study of the type here is pursued here is that it furthers the understanding of one's own system. On the whole the findings can be summarized as follows: -

- Lack of technical knowledge to adjudicate medical malpractice complaint.
- No competence to adjudicate complex issues.
- Struggle b/w business and noble calling.
- Protective approach of the courts towards the medical practitioners.

SUGGESTIONS

The present work aims at understanding the plight of those who are victim of malpractices in medical or negligence of other person which led them to suffer damages. In this regard, following suggestions may be considered: -

1. Medical tribunal or health care court: - Prior to CPA consumer required to approach the civil court for securing justice for the wrong done to them & it was fact adjudication took a long time involved huge litigation expenditure. The object is to protect a large body of consumers from exploitation by the unscrupulous traders.

2. Enactment of bill of rights of patients: - Every person has right to have services provided with reasonable care & skill, that comply with legal, professional, ethical and other relevant standards in a manner consistent with their needs, which minimizes the potential harm & optimizes the quality of life.

3. Medical council to take *Suo- Moto* action: - The council doesn't have power to take action without being a complaint by the affected person. There is need to confer on the council *Suo Moto* power to tackle the menace of medical malpractice.

Particular contexts regarding contributory negligence & composite negligence: -

In the consultation paper we considered the impact of the defense of contributory negligence in the context of banking. We observed that customer does not owe any duty of care in the absence of express agreement & also not a duty to take reasonable steps to check his bank

statement to detect cheque which have not been authorized by him. We conclude that the proposed reform doesn't have particular implications in the various contexts like accountancy, construction, consumer contract, employment etc., which need to be paid attention towards them.

Lord Atkin said in a case that I find it impossible to divorce any theory of contributory negligence from the concept of causation. It is negligence which contributes to cause the injury & whether you ask whose negligence was responsible for the injury, you must ultimate analysis be asking who caused the injury.

In composite negligence, there is a liability of distinct individuals. No one is allowed to say that there should be apportionment of damages and his liability should be basis of his fault. Many of the cases of contributory & composite negligence have been decided by the high court & Supreme Court of India & laid down new principles in the legal field.

