B.A.LL.B. II SEMESTER
SUBJECT – LAW OF TORT
CODE – BL-2005
TOPIC - NEGLIGENCE

Introduction

Negligence – A duty is imposed on a person by law to act with care towards others, if this duty exists and there is a failure to act carefully and another suffers loss, then the tort of negligence is committed.

It is already know that the India law of torts is based on the English Common Law. Thus, the law relating to negligence is adopted and modified by the courts of India on the principles of justice, equity and good conscience. The term Negligence is derived from the Latin word negligentia, which means 'failing to pick up'. In the general sense, the tem negligence means the act of being careless and in the legal sense, it signifies the failure to exercise a standard of care which the doer as a reasonable man should have exercised in a particular situation. Negligence in English law emerged as an independent cause of action only in the 18tj century. Similarly in Indian law, the IPC, 1860 contained no provision for causing the death of a person by Negligence which was subsequently amended in the year 1870 by inserting section 304A.

Definition of Negligence

- In Law of Torts Negligence may be defined as breach of duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would, do or doing something which a Prudent reasonable man would not do, actionable negligence consists in the neglect of the use of ordinary care or observing ordinary care and skill toward a person to whome the defendant owes a duty of observing ordinary care and skill.
- Negligence has been viewed in three ways firstly involving a careless state of mind, secondly, a careless conduct, and thirdly done due to negligence injury and damage may be found due to breach of conduct or tort.

According the Winfield and Jolowicz, Negligence is the beach of a legal duty of care by the plaintiff which results in undesired damage to the plaintiff.

In Blyth v. Birmingham Water Works Co, Negligence was defined as the omission to do something which a reasonable man would do or doing something which a prudent or reasonable man would not do.

According to Jay M. Feinman, The core idea of negligence is that people should exercise reasonable care when they act by taking account of the potential harm that they might forseable cause harm to other people.

How is Criminal Negligence Different from Civil Negligence?

- Criminal Negligence is said to take place when a person acts in a particular way which is an extreme departure from which a reasonable person would act in a similar or same circumstance. The difference in civil negligence is that the conduct may not be seen as a radical departure from the way a reasonable person would have responded.
- Civil negligence occurs when a person fails to exercise ordinary care or due diligence but criminal negligence relates to a conduct that is considered so extreme and rash that it is a clear divergence from the way an ordinarily prudent person would act and is considered to be more than just a mistake in judgment or distraction.
- The punishment for a person who was liable in a civil negligence case only extends to the extent of damage caused to the plaintiff i.e. compensation for the damages. In criminal negligence cases, the punishment is much more serious and can be convicted for a prison term, fine and probation supervision. Example the punishment for criminal negligence amounting to death under section 304A of IPC can extend to 2 years of jail and fine or both.
- For example, if someone driving a vehicle under the influence of drugs and alcohol and caused the death of an individual, it would amount to criminal negligence since this is considered extreme carelessness on their part.

Essentials of negligence

Three basic constituents must be proved for the plaintiff to be successful in negligence –

(a) Duty of Care
(b) Breach of the same duty
(c) Consequential damage

Duty of Care

Duty of care is a specific Legal obligation to not harm others or their property. It means a legal duty rather than a mere moral, religious or social duty. The Plaintiff has to established that the defender owed to him a specific legal duty to take care of which he has made a breach. It depends in each case whether a duty existed between defendant and claimant.

It is one of the essential conditions of negligence in order to make the person liable. It means that every person owes a duty of care, to another person while performing an act. Although this duty exists in all act, but in negligence, the duty is legal in nature and cannot be illegal or unlawful and also cannot be of moral, ethical or religious nature.

The case of Donoghue v. Stevenson (1932) has evolved the principle that we each have a duty of care to our neighbor or someone we could reasonably expect to be affected by our acts or omissions. It was held that, despite no contract existed between the manufacturer and the person suffering the damage an action for negligence could succeed since the plaintiff was successful in her claim that hat she was entitled to a duty of care even though the

defective good i.e. a bottle of ginger beer with a snail in it was bought, not by herself, but by her friend.

In landmark case Donoghue v. Stevenson, allowing the consumer of drink action in tort against the manufacturer, between whom there was no Contract. A manufacturer of goods owes a duty of care to the ultimate consumer.

The modern law of negligence can be said to have begun with the case of Donoghue v. Stevenson (1932) Lord Atkin Propunded the following rule:

> "You must take reasonable care to avoid acts or omissions which you can reasonable foresee would be likely to injury four neighbor"

Duty depends on reasonable forseeability of injury - A defendant will only owe a duty of care to Plaintiff who are reasonable foreseeable. When determining whether a defendant breached his duty of care by acting below the Standard of Care, the court first determines whether the risk was foressable. If it will not be required to take measurer to prevent it. A defendant will only be liable for damage which are reasonable forseeable (in other words, not too remafe)

Breach of Duty to take care

It's not enough for a plaintiff to prove that the defendant owed him a duty of care but he must also establish that the defendant breached his duty to the plaintiff. A defendant breaches such a duty by failing to exercise reasonable care in fulfilling the duty. In other words, the breach of a duty of care means that the person who has an existing duty of care should act wisely and not omit or commit any act which he has to do or not do as aid in the case of Blyth v. Birmingham Waterworks Co, (1856). In simple terms, it means non-observance of a standard of care.

In the case of Ramesh Kumar Nayak vs Union of India (1994), The post authorities failed to maintain the compound wall of a post office in good condition on the collapse of which the defendant sustained injuries. It was held that postal authorities were liable since that had a duty to maintain the post office premises and due to their breach of duty to do so, the collapse occurred. Hence they were liable to pay compensation. In the case of Municipal Corporation of Delhi v. Subhagvanti (AIR 1966)

A very old clock tower situated right in the middle of a crowded area of Chandni Chowk suddenly collapsed thereby causing the death of many people. The clock tower was 80 years old although the normal life span of the clock tower should have been 40-45 years. The clock tower was under the control of The Municipal Corporation of Delhi and they has a duty of care towards the citizens. By ignoring to repair the clock tower, they had breached their duty of care towards the public and were thereby liable.

Consequential damage to the plaintiff

Proving that the defendant failed to exercise reasonable care is not enough. It should also be proved that the failure of the defendant to exercise reasonable care resulted in damages to the plaintiff to whom the defendant owed a duty of care.

The harm may fall into the following classes;-

a) Bodily harm
b) Harm to the reputation
c) Harm to property
d) Financial Loss
e) Mental Harm

When such damage is proved, the defendant is bound to compensate the plaintiff for the damages occurred.

In the case of Joseph vs Dr. George Moonjely (1994). The Kerala high court awarded damages amounting to Rs. 1,60,000 against a surgeon for performing an operation on a 24 year-old girl without following proper medical procedures and not even administering local anaesthesia.

Res ipsa loquitur

Res ipsa loquitur is a Latin phrase that means “the thing speaks for itself.”

It is considered to be a type circumstantial evidence which permits the court to determine that the negligence of the defendant led to an unusual event that subsequently caused injury to the plaintiff. Although generally the duty to prove that the defendant acted negligently lies upon the plaintiff but through res ipsa loquitur, if the plaintiff presents certain circumstantial facts, it becomes the burden of the defendant to prove the was not negligent.

Thus the flowing are the three essential requirements for the application of this maxim-

1) The thing causing the damage must be under the control of the defendant or his servants.
2) The accident must be such as would not have happened in the ordinary course of things without negligence.
3) There must be no evidence of the actual cause of the accident.

Defenses available in a suit for negligence

Contributory negligence by the plaintiff

Contributory negligence means that when the immediate cause of the damage is the negligence of the plaintiff himself, the plaintiff cannot sue the defendant for damages and the defendant can use it as a defense. This is because the plaintiff in such a cause is considered to be the author of his own wrong. It is based on the maxim volenti non fit iniuria which states

that if someone willingly places themselves in position which might result in harm, they are not entitled to claim for damages caused by such harm.

The burden of proving contributory negligence rests on the defendant in the first instance and in the absence of such evidence, the plaintiff is not bound to prove its non-existence.

In the case of Shelton Vs L & W Railway (1946), while the plaintiff was crossing a railway line, a servant of the railway company who was in charge of crossing shouted a warning to him. Due to the plaintiff being deaf, he was unable to hear the warning and was consequently injured. The court held that this amounted to contributory negligence by him.

An Act of God

An Act of God is a direct, violent and sudden act of nature which by any amount of human foresight could have been foreseen and if foreseen could not by any amount of human care and shill have been resisted. Thus such acts which are caused by the basic forces of nature come under this category. For example storm, tempest, extraordinary high tide, extraordinary rainfall etc.

If the cause of injury or death of a person is due to the happening of a natural disaster, then the defendant will not be liable for the same provided that he proves the same in the court of law. This particular defence was talked in the case of Nichls v. Marsland (1876) in which the defendant has a series of artificial lakes on his land. There had been no negligence on the part of the defendant in the construction and maintenance of the artificial lakes. Due to unpredictable heavy rain, some of the reservoirs burst and swept away four country bridges, it was held by the court that the defendant could not be said to be liable since the water escaped by the act of God.

Inevitable Accident

An inevitable accident can also be called as a defense of negligence and refers to an a defense of negligence and refers to an accident that had no chance of being prevented by the exercise of ordinary care, caution, and sill. It means a physically unavoidable accident.

In case of Brown v. Kendal (1850) the plaintiff's and defendant dogs were fighting and their owners attempted to separate them. In an effort to do so, Defendant beat the dogs with a stick and accidentally injured the Plaintiff, severely injuring him in the eye. The Plaintiff brought suit against the Defendant for assault and battery. It was held that the injury of the plaintiff was as a result of an inevitable accident.

In order to prove that an act was negligent, it is necessary to prove all the essentials namely duty, breach of duty, damages and actual and proximate cause. An important maxim regarding negligence, i.e. Res Ipsa Loquitur is used by the courts when a negligent act cannot be explained. Also, the defences in a suit for negligence can be used by the defendant to defend himself from a suit issued by the plaintiff.

For further queries you may reach us via..
E-mail - kumkumsingh012@gmail.com
Mob - 9410617968
Dr Kusumavati
Assistant Professor of Law
LS, CCSU campus, Meerut