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## Theories of Determination of Compensation under torts

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*The sole objective of a remedy under civil wrongs is to provide relief with an attempt to facilitate the victim, restoring or minimizing the loss suffered to him because of an act, done by the defendant, which caused harm to the plaintiff. The main problem suffered by the populace is that there is no codification of rules under which damages shall be awarded and thus is open to interpretations by the adjudicators under law, now there are various theories and concepts which are taken as precedents in the quantification of damages that need to be awarded in various horizons of cases.*

**Keywords:** *damages, civil wrong, compensation, damages.*

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### INTRODUCTION

“Tort means a civil wrong which is not exclusively a breach of contract or breach of trust”<sup>1</sup>. There are many ways to provide remedies against the act, damages being the primary option to go through, further, we have injunctions and specific restitution of property is some of the other desired remedies. Talking about damages, they are the first and foremost outlook for any person suffering from the tortuous act. There is no fixed rule in the determination of

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<sup>1</sup> Limitation Act 1963, s 2(m)

damages but there are certain theories and concepts which need to be undertaken while quantifying the damages suffered by the injured party and deciding over the damages to be given to them.

### **MEASURES TO DETERMINE THE DAMAGES FOR PERSONAL INJURY**

“Personal injury can apply to any injury that one person or entity causes another person, so long as that injury was caused by intentional, negligent, or reckless behavior, or by an action covered by strict liability.”<sup>2</sup> The major heads which one should remember while taking into account the compensation or damages under personal injury are:

- The pain and suffering bore by the individual.
- The depletion of the level of enjoyment an individual was entitled to.
- The pecuniary loss was suffered by the individual because of the reasonable expenses incurred by him.
- The foreseeable loss of earnings by the reason of his incapacity or a lessened capacity to work.

**There are various instances under which compensation can be granted by the courts, basically:**

- In cases of disablement of an individual;
- In cases of shortening of the life of an individual;
- In cases of death of an individual;
- In cases of foreseeable incapacitation of an individual to earn prospective profits, and more not dealt in the work.

### **IN CASES OF DISABLEMENT OF AN INDIVIDUAL**

These are such cases where the act of the tortfeasor (one who commits the tortious act) disables or limits a person’s ability to use his body to further consider the mode of employment which one practiced in due course. The disablement can be of any organ specified to be under use for

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<sup>2</sup> ‘What kinds of “injuries” does personal injury law include?’ (Legal Referral Service)

<<https://www.nycbar.org/get-legal-help/article/personal-injury-and-accidents/common-causes-of-personal-injury>> accessed on 16 January 2022

the respective course of employment which the injured person possessed such as eyes, hands, ear, and more. The theory for determination of the damages under such circumstances finds its growth from cases such as *Karnataka State Road Transport Corporation v Krishna*<sup>3</sup>, in this case, two passengers traveling in a bus owned by the state corporation bumped into another bus owned by the same, leading to the cutting off of the hands of these people who were working in a cloth factory as spinners, aged 26 years and 40 years.

The person aged 26 years was allowed a total compensation of Rs. 78,400 constituting Rs. 38,400 under the Workmen's Compensation Act, which was calculated by the fact that he earns Rs. 400 a month and under the following act, the injury meant an 80% disability of the individual to further earn and thus a hindrance of Rs. 320 a month or Rs. 3,840 a year and further multiplying it by the multiplier 10 and special damages of Rs. 40,000 for incapacitation were also awarded. While in the case of the person aged 40 years whose monthly salary was also Rs. 400, damages worth Rs. 35000 were awarded considering the age of the individual.

#### **IN CASES OF SHORTENING OF THE LIFE OF AN INDIVIDUAL**

There are various acts that lead to injuries or complications leading to a shortened life of the injured person because of the tortfeasor's negligence, here the determination of damages cannot be done on the same scale as of the disabled person and thus such damages are meant to be scaled over the pain suffered by the individual, the loss occurred due to incapacitation over earnings and more in the period between the accident and the death of the individual. The implication of such can be seen in *Dhangauriben v M. Mulchandani*<sup>4</sup>, in this case, the plaintiff's husband was knocked down by a car owned by the defendant. The deceased was an able businessman with a good state of health and settled life. Rather than the nominal damages awarded under the Fatal Accidents Act, she also received a sum of Rs. 5,000 as the damages for shortening her husband's expected life.

#### **IN CASES OF DEATH OF AN INDIVIDUAL**

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<sup>3</sup> *Karnataka State Road Transport Corporation v Krishna* [1981], AIR 1981 Kant 11

<sup>4</sup> *Dhangauriben v M. Mulchandani* [1981], AIR 1981 Guj. 264

In circumstances where the injured person dies because of the tortuous act, the damages are awarded to the legal representatives of the deceased who were dependent on him. Such cases are majorly dealt with under the Fatal Accident Act, Motor Vehicle Act, and more. Here the damages are awarded to the legal representatives as represented in the acts:

- Section 166 of the Motor Vehicle Act <sup>5</sup> tells us about the application for compensation and who can file it in the Claims tribunal established by the state government.
- Under Section 1A of the Fatal Accident Act<sup>6</sup> which tells us about compensation to the family for loss occasioned to it by his death by actionable wrong.

### WHO CAN CLAIM THE COMPENSATION HERE?

The question comes here that who are the legal representatives who can claim the damages under these acts, so the Fatal Accident Act of 1855 is the one which governs the issuance of compensation to the legal representatives in India, the act was taken from the corresponding English act which was later amended by them as Fatal Accident Act of 1976 but the latter act was not amended in India and still includes only the wife, husband, parent or child as the legal representatives entitled to the compensation. But because of the definition in the act being lenient enough, it does not debar the court to grant compensation to the dependants other than what is mentioned in the act. The damages are attributed to the dependency on the deceased and thus there stood a problem over how to determine the just compensation to the representative of the deceased and thus it gave rise to two theories namely; Interest theory and Multiplier theory.

### INTEREST THEORY

This theory stood on the idea of compensating the representatives in a way to restore their economic status such that the compensation can make up for their maintenance as it was before. In this theory, a grand amount is awarded as compensation such that the interest on the amount would be equal to the economic loss which they suffered because of the death of the individual. **For example** - If a person earned Rs. 6,000 per month or Rs. 72,000 per year,

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<sup>5</sup> Motor Vehicle Act, 1998, s 166

<sup>6</sup> Fatal Accident Act, 1976, s 1A

looking towards the standard rate of interest provided by the bank (assume 6% per year), the amount shall be Rs. 12 lakh such that its interest would be equal to the loss suffered by the representatives.

This backdrop of this theory was the grand amount which most of the defendants were unable to pay and because of the unexpected circumstances which it could create on the individuals, for example in an accident caused due to the negligence of a poor cyclist, a person who earned Rs. 12 lakh per year died. Now in order to compensate for the dependants, the poor cyclist needs to pay Rs. 2 crores which was not possible in the reality, and thus various high courts such as the Punjab and Haryana High court in *Joki Ram v Smt. Naresh Kanta*<sup>7</sup> and the Bombay High Court in *Padmadevi v Kabalsing*<sup>8</sup> condemned the theory, stating that it is not feasible to provide just compensation using the theory in most cases.

### **MULTIPLIER THEORY**

According to this theory, the right compensation shall be the likely loss that the dependant face multiplied by the number of years the loss shall remain with them. The two important constituents for determining the damages under this method are the age of the deceased and the age of the dependants. **For example**, a person aged 55 years died because of an accident caused by the defendant, he earned Rs. 5000 a month or Rs. 60,000 a year, he may work for another 5 years, and thus the multiplier would be 5 and that's how we obtain that the compensation under the theory obtained is Rs. 3 lakhs.

Now certain questions have come across while determining the amount of compensation under these theories.

- *What would be the compensation if the deceased was not earning anything?*

It has come across in various cases that if the person isn't earning anything in due course then the quantification is done on the base of how much would it cost to perform the acts, which the deceased did, by the servants. It was taken into account in *K. Narayana v P. Venugopala*

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<sup>7</sup>*Joki Ram v Smt. Naresh Kanta* [1977], AIR 1977, PH 214

<sup>8</sup>*Padmadevi v Kabalsing* [1985], AIR 1985, Bom. 357

*Reddiar*<sup>9</sup> where the plaintiff's wife died in an accident caused due to the acts of the defendant who further claimed that she wasn't earning any monetary profits. It was held by the court that the defendant shall submit the amount which shall be equal to the amount that would be paid by the plaintiff to the servant to cook a meal for the household. It came out that it costs Rs. 50 per month or Rs. 600 per year for the cook to be hired, seeing the age of the deceased (50 years), the multiplier was implicated to be 10 (representing the 10 more years she would work the same) and thus the total damages incurred were Rs. 60,000.

- *What would be the effect of any monetary help given to the dependants such as Provident funds, pensions, and more?*

On the death of the person, the dependants of the deceased are entitled to such compensation provided as provident fund, insurance, pension, and monetary benefits and these are not taken into account as suggested by Section 4(1) of the Fatal Accident Act, 1976 (the English Act). As the corresponding Indian act is based on the same act, the stand of the Indian act is also similar i.e. such monetary benefits would not be taken into account while quantifying the damages. The same cannot be said in cases of an appeal under Motor Vehicle Act as it is either the insurance or the compensation granted by the Claims tribunal which stands as relief and not both of them.

- *What would be the effect of remarriage on the dependant?*

While determining the compensation to be given under the said Act, it is taken into account the prospects of him or her getting married again. As in the case of a widow who doesn't earn anything the compensation is subjective to the fact if there are chances of remarriage as the compensation is given in order to support the widow to sustain herself and it is believed that if the remarriage of her takes place, the maintenance provided by the court is of no use as there is a partner to support her, so while determining the prospects of remarriage the age of the widow is taken primarily into account. It was implied in the case of *Jaimal Singh v Jwala Devi*<sup>10</sup> that the prospects or chances of the widow getting remarried need to be taken into account while determining the compensation as she was seeking to have littler damages but

<sup>9</sup> *K. Narayana v P. Venugopala Reddiar* [1976], AIR 1976, AP 184

<sup>10</sup> *Jaimal Singh v Jwala Devi* [1976], AIR 1976, Delhi 127

after an appeal brought by her after ten years when her son had grown up and the remarriage didn't take place. It was held by the court that the prospects of her getting married again were very remote and thus the damages were to be paid accordingly.

- *In cases of foreseeable incapacitation of an individual to earn prospective profits*

In such cases, there is a tortuous act done by the defendant such that the plaintiff is incapacitated to earn the prospective profits arising out of non-doing of the same by the plaintiff. **For example** - A was living on the land of B on rent providing an amount of Rs. 20,000, his rent agreement ended on 1<sup>st</sup> January, and was informed by B that C would be coming to live here and has agreed to pay Rs. 25,000 and after knowing, A refuses to leave the place and stays there till 1<sup>st</sup> February. B is entitled to receive a sum of Rs. 25,000 and not Rs. 20,000 from A. There are a few more additional damages that can be taken into account while asking for the compensation under torts, such as:

#### **INTEREST OVER DAMAGES**

In addition to the damages obtained from the tortfeasor, the courts have also allowed interest over the damages to be submitted in cases where it thought was necessary. The amount of interest is taken in accordance with the time period of filing of the petition to the date on which the payment of compensation is made. The same was seen in the case of *Iqbal Kaur v Chief of army staff*<sup>11</sup> in which the court allowed interest of 6% to be given over the damages received by the plaintiff.

#### **ATTENDANT'S EXPENSES**

Such damages are the amount taken into consideration to the need of the plaintiff to be attended by its fellow relatives or mates such that they incur expenses arising out because of the tortuous act of the tortfeasor. The same could be seen in the case of *Schneider v Eisovitch*<sup>12</sup> where the plaintiff's husband died in the accident and she was injured in the same, caused by the defendant. In order to assist Mrs. Schneider, Mr. Schneider's relatives approached her via flight and while filing for the compensation to be taken from the defendant, she also included

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<sup>11</sup> *Iqbal Kaur v Chief of army staff* [1978], AIR 1978, All 417

<sup>12</sup> *Schneider v Eisovitch* [1960] 2 [QB] 430

the flight expenses incurred by her attendants which was reasonably necessary for the circumstances, and thus the defendant was made liable to pay this extra cost.

## **CONCLUSION**

It can be seen from such concepts dealt in this work of how the compensation granted in case of the mentioned instance and how some events or peculiarities play a vital role in inflation or deflation of the given amount. It can be further concluded that India lacks a rigid structure that allows and enlists the representatives of the deceased or whose lives are shortened, can be seen how India still uses the Fatal Accident Act of 1855 adopted by its corresponding English act with little changes over the same and thus it requires a new framework which can provide justice to the needy individuals or the dependants who lack such support because of the subjective interpretation of the provision therein.